

118TH CONGRESS
1ST SESSION

H. R. 448

To amend the Securities Exchange Act of 1934 to require the registration of proxy advisory firms, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 24, 2023

Mr. STEIL (for himself, Mr. BARR, Mr. DAVIDSON, Mr. AMODEI, Mr. GIMENEZ, Mr. FERGUSON, Mr. FLOOD, Mr. JOYCE of Ohio, Mr. ROSE, Mr. MEUSER, Mr. FITZGERALD, Ms. STEFANIK, and Mr. HILL) introduced the following bill; which was referred to the Committee on Financial Services

A BILL

To amend the Securities Exchange Act of 1934 to require 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.**

4 This Act may be cited as the “Putting Investors First
5 Act of 2023”.

6 **SEC. 2. DEFINITIONS.**

7 (a) IN GENERAL.—In this Act:

1 (1) COMMISSION.—The term “Commission”
2 means the Securities and Exchange Commission.

3 (2) PROXY ADVISORY FIRM.—The term “proxy
4 advisory firm” has the meaning given the term in
5 paragraph (81) of section 3(a) of the Securities Ex-
6 change Act of 1934 (15 U.S.C. 78c(a)), as added by
7 this Act.

8 (3) STATE.—The term “State” has the mean-
9 ing given the term in section 3(a) of the Securities
10 Exchange Act of 1934 (15 U.S.C. 78c(a)).

11 (b) SECURITIES EXCHANGE ACT OF 1934 DEFINI-
12 TIONS.—Section 3(a) of the Securities Exchange Act of
13 1934 (15 U.S.C. 78c(a)) is amended by adding at the end
14 the following:

15 “(81) PROXY ADVISORY FIRM.—The term
16 ‘proxy advisory firm’—

17 “(A) means any person who is primarily
18 engaged in the business of providing proxy vot-
19 ing advice, research, analysis, ratings, or rec-
20 ommendations to clients, which conduct con-
21 stitutes a solicitation within the meaning of sec-
22 tion 14; and

23 “(B) does not include any person that is
24 exempt under law or regulation from the re-

1 requirements otherwise applicable to persons en-
2 gaged in such a solicitation.

3 “(82) PERSON ASSOCIATED WITH A PROXY AD-
4 VISORY FIRM.—The term ‘person associated’ with a
5 proxy advisory firm—

6 “(A) means—

7 “(i) any partner, officer, or director of
8 a proxy advisory firm (or any person occu-
9 pying a similar status or performing simi-
10 lar functions);

11 “(ii) any person directly or indirectly
12 controlling, controlled by, or under com-
13 mon control with a proxy advisory firm;

14 “(iii) any employee of a proxy advi-
15 sory firm; or

16 “(iv) any person the Commission de-
17 termines by rule is controlled by a proxy
18 advisory firm; and

19 “(B) does not include any person that per-
20 forms clerical or ministerial functions with re-
21 spect to a proxy advisory firm.”.

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

23 (a) AMENDMENT.—The Securities Exchange Act of
24 1934 (15 U.S.C. 78a et seq.) is amended by inserting after
25 section 15G the following new section:

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

2 “(a) CONDUCT PROHIBITED.—It shall be unlawful
3 for a proxy advisory firm to make use of the mails or any
4 means or instrumentality of interstate commerce to pro-
5 vide proxy voting advice, research, analysis, ratings or rec-
6 ommendations to any client, unless such proxy advisory
7 firm is registered under this section.

8 “(b) REGISTRATION PROCEDURES.—

9 “(1) APPLICATION FOR REGISTRATION.—

10 “(A) IN GENERAL.—A proxy advisory firm
11 shall file with the Commission an application
12 for registration, in such form as the Commis-
13 sion shall require, by rule or regulation, and
14 containing the information described in sub-
15 paragraph (B).

16 “(B) REQUIRED INFORMATION.—An appli-
17 cation for registration under this section shall
18 contain information regarding—

19 “(i) a certification that the applicant
20 is able to consistently provide proxy advice
21 based on accurate information;

22 “(ii) the procedures and methodolo-
23 gies that the applicant uses in developing
24 proxy voting recommendations;

25 “(iii) the organizational structure of
26 the applicant;

1 “(iv) whether or not the applicant has
2 in effect a code of ethics, and if not, the
3 reasons therefor;

4 “(v) any potential or actual conflict of
5 interest relating to the provision of proxy
6 advisory services, including those arising
7 out of or resulting from the ownership
8 structure of the applicant or the provision
9 of other services by the applicant or any
10 person associated with the applicant;

11 “(vi) the policies and procedures in
12 place to publicly disclose and manage con-
13 flicts of interest under subsection (f);

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

18 “(viii) any other information and doc-
19 uments concerning the applicant and any
20 person associated with such applicant as
21 the Commission, by rule, may prescribe as
22 necessary or appropriate in the public in-
23 terest or for the protection of investors.

24 “(2) REVIEW OF APPLICATION.—

1 “(A) INITIAL DETERMINATION.—Not later
2 than 90 days after the date on which the appli-
3 cation for registration is filed with the Commis-
4 sion under paragraph (1) (or within such longer
5 period as to which the applicant consents) the
6 Commission shall—

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

8 “(ii) institute proceedings to deter-
9 mine whether registration should be de-
10 nied.

11 “(B) CONDUCT OF PROCEEDINGS.—

12 “(i) CONTENT.—Proceedings referred
13 to in subparagraph (A)(ii) shall—

14 “(I) include notice of the grounds
15 for denial under consideration and an
16 opportunity for hearing; and

17 “(II) be concluded not later than
18 120 days after the date on which the
19 application for registration is filed
20 with the Commission under paragraph
21 (1).

22 “(ii) DETERMINATION.—At the con-
23 clusion of such proceedings, the Commis-
24 sion, by order, shall grant or deny such ap-
25 plication for registration.

1 “(iii) EXTENSION AUTHORIZED.—The
2 Commission may extend the time for con-
3 clusion of such proceedings for not longer
4 than 90 days, if the Commission finds
5 good cause for such extension and pub-
6 lishes its reasons for so finding, or for such
7 longer period as to which the applicant
8 consents.

9 “(C) GROUNDS FOR DECISION.—The Com-
10 mission shall grant registration under this sub-
11 section—

12 “(i) if the Commission finds that the
13 requirements of this section are satisfied;
14 and

15 “(ii) unless the Commission finds (in
16 which case the Commission shall deny such
17 registration) that—

18 “(I) the applicant has failed to
19 certify to the Commission’s satisfac-
20 tion that it is able to consistently pro-
21 vide proxy advice based on accurate
22 information and to materially comply
23 with the procedures and methodolo-
24 gies disclosed under paragraph (1)(B)
25 and with subsections (f) and (g); or

1 “(II) if the applicant were so reg-
2 istered, its registration would be sub-
3 ject to suspension or revocation under
4 subsection (d).

5 “(3) PUBLIC AVAILABILITY OF INFORMATION.—
6 Subject to section 24, the Commission shall make
7 the information and documents submitted to the
8 Commission by a proxy advisory firm in its com-
9 pleted application for registration, or in any amend-
10 ment submitted under paragraph (1) or (2) of sub-
11 section (c), publicly available on the Commission’s
12 website, or through another comparable, readily ac-
13 cessible means.

14 “(c) UPDATE OF REGISTRATION.—

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

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

8 “(A) certifying that the information and
9 documents in the application for registration of
10 such registered proxy advisory firm continue to
11 be accurate in all material respects; and

12 “(B) listing any material change that oc-
13 curred to such information or documents during
14 the previous calendar year.

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

1 whether prior to or subsequent to becoming so associ-
2 ated—

3 “(1) has committed or omitted any act, or is
4 subject to an order or finding, enumerated in sub-
5 paragraph (A), (D), (E), (H), or (G) of section
6 15(b)(4), has been convicted of any offense specified
7 in section 15(b)(4)(B), or is enjoined from any ac-
8 tion, conduct, or practice specified in subparagraph
9 (C) of section 15(b)(4), during the 10-year period
10 preceding the date of commencement of the pro-
11 ceedings under this subsection, or at any time there-
12 after;

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

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

20 “(B) a substantially equivalent crime by a
21 foreign court of competent jurisdiction;

22 “(3) is subject to any order of the Commission
23 barring or suspending the right of the person to be
24 associated with a registered proxy advisory firm;

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

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

5 “(6) fails to maintain adequate financial and
6 managerial resources to consistently offer advisory
7 services with integrity, including by failing to comply
8 with subsection (f) or (g); or

9 “(7) engages in a prohibited act enumerated in
10 subsection (j).

11 “(e) TERMINATION OF REGISTRATION.—

12 “(1) VOLUNTARY WITHDRAWAL.—A registered
13 proxy advisory firm may, upon such terms and con-
14 ditions as the Commission may establish as nec-
15 essary in the public interest or for the protection of
16 investors, which terms and conditions shall include
17 at a minimum that the registered proxy advisory
18 firm will no longer conduct such activities as to
19 bring it within the definition of proxy advisory firm
20 in section 3(a)(81), withdraw from registration by
21 filing a written notice of withdrawal to the Commis-
22 sion.

23 “(2) COMMISSION AUTHORITY.—In addition to
24 any other authority of the Commission under this
25 title, if the Commission finds that a registered proxy

1 advisory firm is no longer in existence or has ceased
2 to do business as a proxy advisory firm, the Com-
3 mission, by order, shall cancel the registration under
4 this section of such registered proxy advisory firm.

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

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

15 “(2) COMMISSION AUTHORITY.—The Commis-
16 sion shall, within one year of enactment, issue final
17 rules to prohibit, or require the management and
18 public disclosure of, any conflicts of interest relating
19 to the offering of proxy advisory services by a reg-
20 istered proxy advisory firm, including, without limi-
21 tation, conflicts of interest relating to—

22 “(A) the manner in which a registered
23 proxy advisory firm is compensated by the cli-
24 ent, any affiliate of the client, or any other per-
25 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,
4 or any person associated with such registered
5 proxy advisory firm, and any client, or any af-
6 filiate of 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
13 issuer is a proponent; and

14 “(E) any other potential conflict of inter-
15 est, as the Commission deems necessary or ap-
16 propriate in the public interest or for the pro-
17 tection of investors.

18 “(3) DISCLOSURE.—Each registered proxy ad-
19 visory firm shall annually disclose to the Commission
20 and make publicly available the economic and other
21 factors that a reasonable investor would expect to in-
22 fluence the recommendations of such proxy advisory
23 firm, including the ownership composition of such
24 proxy advisory firm.

1 “(g) RELIABILITY OF PROXY ADVISORY FIRM SERV-
2 ICES.—

3 “(1) IN GENERAL.—Each registered proxy advi-
4 sory firm shall—

5 “(A) have staff and other resources suffi-
6 cient to produce proxy voting recommendations
7 that are based on accurate and current infor-
8 mation;

9 “(B) implement procedures that permit
10 issuers that are the subject of proxy voting rec-
11 ommendations—

12 “(i) access in a reasonable time to
13 data and information used to make rec-
14 ommendations; and

15 “(ii) a reasonable opportunity to pro-
16 vide meaningful comment and corrections
17 to such data and information, including
18 the opportunity to present (in person or
19 telephonically) details to the person re-
20 sponsible for developing such data and in-
21 formation prior to the publication of proxy
22 voting recommendations to clients; and

23 “(C) employ an ombudsman to receive
24 complaints about the accuracy of information
25 used in making recommendations from the sub-

1 jects of the proxy advisory firm’s voting rec-
2 ommendations and seek to resolve those com-
3 plaints in a timely fashion and prior to the pub-
4 lication of proxy voting recommendations to cli-
5 ents;

6 “(D) if such ombudsman is unable to re-
7 solve such complaints prior to the publication of
8 proxy voting recommendations to clients, in-
9 clude in the final report of the firm to clients
10 a statement detailing its complaints, if re-
11 quested in writing by the company; and

12 “(E) provide to clients receiving proxy ad-
13 visory firm recommendations—

14 “(i) information demonstrating that
15 draft recommendations (other than rec-
16 ommendations relating to an issuer-spon-
17 sored proposal or recommendations con-
18 sistent with that of the majority of the
19 board of directors of the issuer) are in the
20 best economic interest of shareholders; and

21 “(ii) a certification by the chief execu-
22 tive officer, chief financial officer, and the
23 primary executive responsible for over-
24 seeing the compilation and dissemination
25 of proxy voting advice that the draft rec-

1 ommendations (other than recommenda-
2 tions relating to an issuer-sponsored pro-
3 posal or recommendations consistent with
4 that of the majority of the board of direc-
5 tors of the issuer)—

6 “(I) are based on internal con-
7 trols and procedures that are designed
8 to ensure accurate information;

9 “(II) do not violate applicable
10 State or Federal law; and

11 “(III) prioritize economic returns
12 to shareholders.

13 “(2) DEFINITIONS.—In this subsection:

14 “(A) DATA AND INFORMATION USED TO
15 MAKE RECOMMENDATIONS.—The term ‘data
16 and information used to make voting rec-
17 ommendations’—

18 “(i) means the financial, operational,
19 or descriptive data and information on an
20 issuer used by proxy advisory firms and
21 any contextual or substantive analysis im-
22 pacting the recommendation; and

23 “(ii) does not include the entirety of
24 the proxy advisory firm’s final report to its
25 clients.

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

3 “(i) means not less than 1 week be-
4 fore the publication of proxy voting rec-
5 ommendations for clients, unless otherwise
6 defined through a final rule issued by the
7 Commission; and

8 “(ii) shall not otherwise interfere with
9 a proxy advisory firm’s ability to provide
10 its clients with timely access to accurate
11 proxy voting research, analysis, or rec-
12 ommendations.

13 “(h) PRIVATE RIGHT OF ACTION WITH RESPECT TO
14 ILLEGAL RECOMMENDATIONS.—Any proxy advisory firm
15 that endorses a proposal that is not supported by the
16 issuer but is approved and subsequently found by a court
17 of competent jurisdiction to violate State or Federal law
18 shall be liable to the applicable issuer for the costs associ-
19 ated with the approval of such proposal, including imple-
20 mentation costs and any penalties incurred by the issuer.

21 “(i) DESIGNATION OF COMPLIANCE OFFICER.—Each
22 registered proxy advisory firm shall designate an indi-
23 vidual who reports directly to senior management as re-
24 sponsible for administering the policies and procedures
25 that are required to be established pursuant to subsections

1 (f) and (g), and for ensuring compliance with the securi-
2 ties laws and the rules and regulations thereunder, includ-
3 ing those promulgated by the Commission pursuant to this
4 section.

5 “(j) PROHIBITED CONDUCT.—

6 “(1) PROHIBITED ACTS AND PRACTICES.—Not
7 later than one year after the date of enactment of
8 this section, the Commission shall issue final rules
9 to prohibit any act or practice relating to the offer-
10 ing of proxy advisory services by a registered proxy
11 advisory firm that the Commission determines to be
12 unfair, coercive, or abusive, including any act or
13 practice relating to—

14 “(A) advisory or consulting services (of-
15 fered directly or indirectly, including through
16 an affiliate) related to corporate governance
17 issues; or

18 “(B) modifying a voting recommendation
19 or otherwise departing from its adopted system-
20 atic procedures and methodologies in the provi-
21 sion of proxy advisory services, based on wheth-
22 er an issuer, or affiliate thereof, subscribes or
23 will subscribe to other services or product of the
24 registered proxy advisory firm or any person as-
25 sociated with such organization.

1 “(2) RULE OF CONSTRUCTION.—Nothing in
2 paragraph (1), or in any rules or regulations adopt-
3 ed thereunder, may be construed to modify, impair,
4 or supersede the operation of any of the antitrust
5 laws (as defined in the first section of the Clayton
6 Act, except that such term includes section 5 of the
7 Federal Trade Commission Act, to the extent that
8 such section 5 applies to unfair methods of competi-
9 tion).

10 “(k) STATEMENTS OF FINANCIAL CONDITION.—
11 Each registered proxy advisory firm shall, on a confiden-
12 tial basis, file with the Commission, at intervals deter-
13 mined by the Commission, such financial statements, cer-
14 tified (if required by the rules or regulations of the Com-
15 mission) by an independent public auditor, and informa-
16 tion concerning its financial condition, as the Commission,
17 by rule, may prescribe as necessary or appropriate in the
18 public interest or for the protection of investors.

19 “(l) ANNUAL REPORT.—Each registered proxy advi-
20 sory firm shall, at the beginning of each fiscal year of such
21 firm, report to the Commission on the number of—

22 “(1) shareholder proposals its staff reviewed in
23 the prior fiscal year;

24 “(2) recommendations made in the prior fiscal
25 year;

1 “(3) staff who reviewed and made recommenda-
2 tions on such proposals in the prior fiscal year (and
3 the qualifications of such staff); and

4 “(4) recommendations made in the prior fiscal
5 year where the proponent of such recommendation
6 was a client of or received services from the proxy
7 advisory firm.

8 “(m) TRANSPARENT POLICIES.—Each registered
9 proxy advisory firm shall file with the Commission and
10 make publicly available its methodology for the formula-
11 tion of proxy voting policies and voting recommendations.

12 “(n) RULES OF CONSTRUCTION.—Registration under
13 and compliance with this section does not constitute a
14 waiver of, or otherwise diminish, any right, privilege, or
15 defense that a registered proxy advisory firm may other-
16 wise have under any provision of State or Federal law,
17 including any rule, regulation, or order thereunder.

18 “(o) 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 regula-
11 tions 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 “(p) 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 (o)(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. DUTIES OF INVESTMENT ADVISORS, ASSET MAN-**
4 **AGERS, AND PENSION FUNDS.**

5 (a) REPORTING REQUIREMENTS.—Not later than 1
6 year after the date of the enactment of this Act and annu-
7 ally thereafter, any covered entity that retains the services
8 of a proxy advisory firm with respect to the preceding year
9 shall provide to the beneficiaries and customers of the cov-
10 ered entity, as applicable, a report that includes—

11 (1) the percentage of votes cast on shareholder
12 proposals that follow proxy advisor firm rec-
13 ommendations for each proxy advisory firm retained
14 by the covered entity;

15 (2) the percentage of votes cast on environ-
16 mental-, social-, or governance-related shareholder
17 proposals that follow proxy advisory firm rec-
18 ommendations for each proxy advisory firm retained
19 by the covered entity; and

20 (3) an explanation of—

21 (A) how proxy advisory firm recommenda-
22 tions are used by the covered entity in making
23 voting decisions;

24 (B) how such recommendations are rec-
25 onciled with the fiduciary duty of the covered

1 entity to vote in the best economic interests of
2 shareholders;

3 (C) how frequently votes are changed when
4 an error occurs or due to new information from
5 issuers; and

6 (D) the degree to which investment profes-
7 sionals of the covered entity are involved in
8 such voting decisions.

9 (b) REQUIREMENTS.—With respect to shareholder
10 proposals of an issuer, a covered entity with more than
11 \$100,000,000,000 in assets under management shall—

12 (1) provide customers with a mechanism to in-
13 dicate how the covered entity should vote on their
14 behalf;

15 (2) in any materials provided to customers and
16 related to customers voting their shares, clarify that
17 shareholders are not required to vote on every pro-
18 posal; and

19 (3) with respect to each shareholder proposal
20 for which the covered entity voted (other than an
21 issuer-sponsored proposal or a vote consistent with
22 the recommendation of the majority of the board of
23 directors of the issuer), make publicly available the
24 economic analysis the covered entity conducted to

1 determine that the vote is in the best economic inter-
2 est of the customers.

3 (c) COVERED ENTITY DEFINED.—In this section, the
4 term “covered entity” means an investment advisor, asset
5 manager, or pension fund with more than \$100,000,000
6 in assets under management.

7 **SEC. 5. TRANSPARENCY REGARDING ESG FUNDS.**

8 Section 10 of the Securities Act of 1933 (15 U.S.C.
9 77j) is amended by adding at the end the following:

10 “(g) TRANSPARENCY REGARDING ESG FUNDS.—An
11 investment company that holds itself out as offering an
12 index fund under which investments are made pursuant
13 to a set of environmental, social, or governance standards
14 shall disclose in tabular form on the first page of each
15 prospectus required pursuant to this section the 1-, 3-,
16 and 5-year annual returns and fees charged to investors
17 with respect to such fund compared with the annual re-
18 turns and fees charged to investors for the most readily
19 comparable broad-based index fund offered by such invest-
20 ment company under which investments are not made pur-
21 suant to such standards, or if such investment company
22 does not offer a comparable index fund, a reasonably simi-
23 lar comparison to a readily comparable broad-based index
24 fund.”.

1 **SEC. 6. RESUBMISSION THRESHOLDS FOR SHAREHOLDER**
2 **PROPOSALS.**

3 Section 14 of the Securities Exchange Act of 1934
4 (15 U.S.C. 78n) is amended by adding at the end the fol-
5 lowing:

6 “(k) **EXCLUSION OF CERTAIN SHAREHOLDER PRO-**
7 **POSAL RESUBMISSIONS.**—A shareholder proposal may be
8 excluded from any proxy or consent solicitation material
9 for an annual meeting of the shareholders of an issuer
10 if the proposal—

11 “(1) is not germane (without regard to whether
12 the proposal involves a significant social policy
13 issue); or

14 “(2) addresses substantially the same subject
15 matter (without regard to whether the proposal in-
16 volves a significant social policy issue) as a proposal
17 previously included in the proxy or consent sollicita-
18 tion material for an annual meeting of the share-
19 holders of an issuer—

20 “(A) for a meeting of the shareholders con-
21 ducted in the preceding 5 years; and

22 “(B) if the most recent vote—

23 “(i) occurred in the preceding 3 years;

24 and

1 “(ii)(I) if voted on once during such
2 period, received less than 5 percent of the
3 votes;

4 “(II) if voted on twice during such pe-
5 riod, received less than 15 percent of the
6 votes; or

7 “(III) if voted on three or more times
8 during such period, received less 25 per-
9 cent of the votes.”.

10 **SEC. 7. PROHIBITION ON ROBOVOTING.**

11 Section 14 of the Securities Exchange Act of 1934
12 (15 U.S.C. 78n) is further amended by adding at the end
13 the following:

14 “(1) PROHIBITION ON ROBOVOTING.—

15 “(1) IN GENERAL.—The Commission shall issue
16 final rules prohibiting the use of robovoting with re-
17 spect to votes related to proxy or consent solicitation
18 materials.

19 “(2) ROBOVOTING DEFINED.—The term
20 ‘robovoting’ means the practice of automatically vot-
21 ing in a manner consistent with the recommenda-
22 tions of a proxy advisory firm.”.

1 **SEC. 8. LIABILITY FOR CERTAIN FAILURES TO DISCLOSE**
2 **MATERIAL INFORMATION.**

3 Section 14 of the Securities Exchange Act of 1934
4 (15 U.S.C. 78n) is further amended by adding at the end
5 the following:

6 “(m) FALSE OR MISLEADING STATEMENTS.—For
7 purposes of section 18, failure to disclose material infor-
8 mation regarding proxy voting advice that makes a rec-
9 ommendation to a security holder as to its vote, consent,
10 or authorization on a specific matter for which security
11 holder approval is solicited, and that is furnished by a per-
12 son that markets its expertise as a provider of such proxy
13 voting advice, separately from other forms of investment
14 advice, and sells such proxy voting advice for a fee, shall
15 be considered to be false or misleading with respect to a
16 material fact.”.

17 **SEC. 9. STUDY OF CERTAIN ISSUES WITH RESPECT TO**
18 **SHAREHOLDER PROPOSALS AND PROXY AD-**
19 **VISORY FIRMS.**

20 Not later than 180 days after the date of the enact-
21 ment of this Act, and every 5 years thereafter, the Securi-
22 ties and Exchange Commission, including the Office of the
23 Advocate for Small Business Capital Formation, shall
24 carry out a study and submit a report to the Committee
25 on Banking, Housing, and Urban Affairs of the Senate
26 and the Committee on Financial Services of the House of

1 Representatives on shareholder proposals and proxy advisory firms that includes, with respect to, in the case of
2 the first report, the preceding 10 years, and in the case
3 of each subsequent report, the preceding 5 years, the following:
4

5
6 (1) The costs that issuers incurred in responding to—
7

8 (A) politically, environmentally, or socially
9 motivated shareholder proposals; and

10 (B) shareholder proposals that failed to be
11 agreed to more than once.

12 (2) The amount of fees that public companies
13 paid to proxy advisory firms and persons associated
14 with proxy advisory firms.

15 (3) The source of funds with respect to payment of such fees.
16

17 (4) The academic or professional qualifications
18 of the staff members that provide proxy advisory
19 services at proxy advisory firms.

20 (5) The number of shareholder proposals that,
21 if adopted, would require an issuer to violate a State
22 or Federal law.

23 (6) An estimate of the costs that issuers would
24 incur if such proposals were adopted.

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