

[DISCUSSION DRAFT]

118TH CONGRESS
1ST SESSION

H. R. _____

To amend the Investment Advisers Act of 1940 with respect to proxy voting of passively managed funds, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

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

A BILL

To amend the Investment Advisers Act of 1940 with respect to proxy voting of passively managed funds, 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. PROXY VOTING OF PASSIVELY MANAGED**
4 **FUNDS.**

5 (a) IN GENERAL.—The Investment Advisers Act of
6 1940 (15 U.S.C. 80b–1 et seq.) is amended by inserting
7 after section 208 (15 U.S.C. 80b–8) the following:

1 **“SEC. 208A. PROXY VOTING OF PASSIVELY MANAGED**
2 **FUNDS.**

3 “(a) INVESTMENT ADVISER PROXY VOTING.—

4 “(1) IN GENERAL.—An investment adviser that
5 holds authority to vote a proxy solicited by an issuer
6 pursuant to section 14 of the Securities Exchange
7 Act of 1934 (15 U.S.C. 78n) in connection with any
8 vote of covered securities held by a passively man-
9 aged fund shall—

10 “(A) vote in accordance with the instruc-
11 tions of the beneficial owner of such covered se-
12 curities;

13 “(B) vote in accordance with the voting in-
14 structions of such issuer; or

15 “(C) abstain from voting.

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

18 “(b) SAFE HARBOR.—With respect to a matter that
19 is not a routine matter, in the case of a vote described
20 in subsection (a)(1), an investment adviser shall not be
21 liable to any person under any law or regulation of the
22 United States, any constitution, law, or regulation of any
23 State or political subdivision thereof, or under any con-
24 tract or other legally enforceable agreement (including any
25 arbitration agreement), for any of the following:

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

4 “(2) Voting in accordance with the voting in-
5 structions of an issuer pursuant to subparagraph
6 (B) of such subsection.

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

9 “(c) DEFINITIONS.—In this section:

10 “(1) COVERED SECURITY.—The term ‘covered
11 security’—

12 “(A) means a voting security, as that term
13 is defined in section 2(a) of the Investment
14 Company Act of 1940 (15 U.S.C. 80a–2(a)), in
15 which a qualified fund is invested; and

16 “(B) does not include any voting security
17 (as defined in subparagraph (A)) of an issuer
18 registered with the Commission as an invest-
19 ment company under section 8 of the Invest-
20 ment Company Act of 1940 (15 U.S.C. 80a–8).

21 “(2) PASSIVELY MANAGED FUND.—The term
22 ‘passively managed fund’ means a qualified fund
23 that—

1 “(A) is designed to track, or is derived
2 from, an index of securities or a portion of such
3 an index;

4 “(B) discloses that the qualified fund is a
5 passive index fund; or

6 “(C) allocates not less than 40 percent of
7 the total assets of the qualified fund to an in-
8 vestment strategy that is designed to track, or
9 is derived from, an index of securities or a por-
10 tion of such an index fund.

11 “(3) QUALIFIED FUND.—The term ‘qualified
12 fund’ means—

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

16 “(B) a private fund;

17 “(C) an eligible deferred compensation
18 plan, as that term is defined in section 457(b)
19 of the Internal Revenue Code of 1986;

20 “(D) a trust, plan, account, or other entity
21 described in section 3(e)(11) of the Investment
22 Company Act of 1940 (15 U.S.C. 80a–
23 3(e)(11));

24 “(E) a plan maintained by an employer de-
25 scribed in clause (i), (ii), or (iii) of section

1 403(b)(1)(A) of the Internal Revenue Code of
2 1986 to provide annuity contracts described in
3 section 403(b) of such Code;

4 “(F) a common trust fund, or similar
5 fund, maintained by a bank;

6 “(G) any fund established under section
7 8438(b)(1) of title 5, United States Code; or

8 “(H) any separate managed account of a
9 client of an investment adviser.

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

12 “(5) ROUTINE MATTER.—The term ‘routine
13 matter’—

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

15 “(i) an election with respect to the
16 board of directors of the registrant;

17 “(ii) the compensation of management
18 or the board of directors of the registrant;

19 “(iii) the selection of auditors;

20 “(iv) material conflicts;

21 “(v) declassification; or

22 “(vi) transactions that would trans-
23 form the structure of the registrant, in-
24 cluding—

1 “(I) a merger or consolidation;
2 and

3 “(II) the sale, lease, or exchange
4 of all, or substantially all, of the prop-
5 erty and assets of a registrant; and

6 “(B) does not include—

7 “(i) a proposal that is not submitted
8 to a holder of covered securities by means
9 of a proxy statement comparable to that
10 described in section 240.14a–101 of title
11 17, Code of Federal Regulations, or any
12 successor regulation;

13 “(ii) a proposal that is—

14 “(I) the subject of a counter-so-
15 licitation; or

16 “(II) part of a proposal made by
17 a person other than the applicable
18 registrant;

19 “(iii) any other matter determined by
20 the Commission or an exchange registered
21 under section 6 of the Securities Exchange
22 Act of 1934 (15 U.S.C. 78f) to be not rou-
23 tine.”.

24 (b) EFFECTIVE DATE.—The amendment made by
25 this section shall take effect on the first August 1 that

1 occurs after the date that is 2 years after the date of en-
2 actment of this Act.