

[DISCUSSION DRAFT]

118TH CONGRESS
1ST SESSION

H. R. _____

To require Securities and Exchange Commission to conduct a study of certain issues with respect to shareholder proposals, proxy advisory firms, and the proxy process, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

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

A BILL

To require Securities and Exchange Commission to conduct a study of certain issues with respect to shareholder proposals, proxy advisory firms, and the proxy process, 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,*

1 **SECTION 1. STUDY OF CERTAIN ISSUES WITH RESPECT TO**
2 **SHAREHOLDER PROPOSALS, PROXY ADVI-**
3 **SORY FIRMS, AND THE PROXY PROCESS.**

4 Section 4(j) of the Securities Exchange Act of 1934
5 (15 U.S.C. 78d(j)) is amended by adding at the end the
6 following:

7 “(10) STUDY OF CERTAIN ISSUES WITH RE-
8 SPECT TO SHAREHOLDER PROPOSALS, PROXY ADVI-
9 SORY FIRMS, AND THE PROXY PROCESS.—

10 “(A) IN GENERAL.—Not later than 180
11 days after the date of the enactment of this
12 paragraph, and every 5 years thereafter, the
13 Commission shall conduct a comprehensive
14 study on shareholder proposals, proxy advisory
15 firms, and the proxy process.

16 “(B) SCOPE OF STUDY.—The studies re-
17 quired under subparagraph (A) shall cover—

18 “(i) the previous 10 years, with re-
19 spect to the initial study; and

20 “(ii) the previous 5 years, with respect
21 to each other study.

22 “(C) CONTENTS.—Each study required
23 under subparagraph (A) shall address the fol-
24 lowing issues:

1 “(i) The financial and other incentives
2 and obligations of all groups involved in
3 the proxy process.

4 “(ii) A consideration of whether finan-
5 cial and other incentives have created a
6 process that no longer serves the economic
7 interests of long-term retail investors.

8 “(iii) An analysis of whether regula-
9 tions and financial incentives have created
10 and protected the outsized influence of
11 proxy advisors or a duopoly in proxy ad-
12 vice, and if so, what are the benefits and
13 costs of that outsized influence or duopoly.

14 “(iv) The costs incurred by issuers in
15 responding to politically-, environmentally-,
16 , or socially-motivated shareholder pro-
17 posals.

18 “(v) An assessment, including a cost-
19 benefit analysis, of the adequacy of the
20 current submission thresholds in Rule 14a-
21 8 (17 CFR 240.14a-8) to ensure that
22 shareholder proponents have demonstrated
23 a meaningful economic stake in a com-
24 pany, which is appropriate to effectively
25 serve markets and shareholders at large.

1 “(vi) An examination of the extent to
2 which the politicization of the shareholder
3 proposal process is increasing the oper-
4 ating costs of public companies.

5 “(vii) An analysis of the impact that
6 shareholder proposals have on discouraging
7 private companies from going public.

8 “(viii) An evaluation of the risk that
9 shareholder proposals may contribute to
10 the balkanization of the U.S. economy over
11 time.

12 “(ix) A thorough assessment of the
13 economic analysis, if any, conducted by
14 proxy advisory firms and institutional
15 shareholders when recommending or voting
16 in favor of shareholder proposals.

17 “(x) A review of the extent to which
18 institutional investors, who owe fiduciary
19 duties, rely on proxy advisory firm rec-
20 ommendations.

21 “(xi) An assessment of whether, in
22 light of their significant influence on cor-
23 porate actions and vote outcomes, proxy
24 advisors are subject to sufficient and effec-
25 tive regulation to ensure that their policies

1 and recommendations are accurate, free of
2 conflicts, and benefit the economic best in-
3 terest of shareholders at large.

4 “(D) REPORT.—At the completion of each
5 study required under subparagraph (A) the
6 Commission shall issue a report to the Com-
7 mittee on Banking, Housing, and Urban Affairs
8 of the Senate and the Committee on Financial
9 Services of the House of Representatives that
10 includes the results of the study.

11 “(E) PROXY ADVISORY FIRM DEFINED.—
12 In this paragraph, the term ‘proxy advisory
13 firm’—

14 “(i) means any person who is pri-
15 marily engaged in the business of pro-
16 viding proxy voting advice, research, anal-
17 ysis, ratings, or recommendations to cli-
18 ents, which conduct constitutes a sollicita-
19 tion within the meaning of section 14 of
20 the Securities Exchange Act of 1934; and

21 “(ii) does not include any person that
22 is exempt under law or regulation from the
23 requirements otherwise applicable to per-
24 sons engaged in such a solicitation.”.