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(Original Signature of Member)

119TH CONGRESS
2^D SESSION

H. R. _____

To amend the Federal securities laws with respect to the materiality of disclosure requirements, to establish the Public Company Advisory Committee, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

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

A BILL

To amend the Federal securities laws with respect to the materiality of disclosure requirements, to establish the Public Company Advisory Committee, 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; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Protecting Americans’ Retirement Savings From Politics
6 Act”.

1 (b) TABLE OF CONTENTS.—The table of contents for
2 this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—MANDATORY MATERIALITY REQUIREMENT

Sec. 101. Limitation on disclosure requirements.

TITLE II—PUBLIC COMPANY ADVISORY COMMITTEE

Sec. 201. Public Company Advisory Committee.

TITLE III—PROTECTING U.S. BUSINESS SOVEREIGNTY

Sec. 301. Study on detrimental impact of the Corporate Sustainability Due Diligence Directive and Corporate Sustainability Reporting Directive.

TITLE IV—CORPORATE GOVERNANCE EXAMINATION

Sec. 401. Study of certain issues with respect to proxy advisory firms and the proxy process.

TITLE V—REGISTRATION OF PROXY ADVISORY FIRMS

Sec. 501. Registration of proxy advisory firms.

TITLE VI—LIABILITY FOR CERTAIN FAILURES TO DISCLOSE MATERIAL INFORMATION OR MAKING OF MATERIAL MISSTATEMENTS

Sec. 601. Liability for certain failures to disclose material information or making of material misstatements.

TITLE VII—DUTIES OF INVESTMENT ADVISERS, ASSET MANAGERS, AND PENSION FUNDS

Sec. 701. Duties of investment advisers, asset managers, and pension funds.

TITLE VIII—PROTECTING AMERICANS' SAVINGS

Sec. 801. Requirements related to proxy voting.

TITLE IX—EMPOWERING SHAREHOLDERS

Sec. 901. Proxy voting of passively managed funds.

TITLE X—BEST INTEREST BASED ON PECUNIARY FACTORS

Sec. 1001. Protecting retail investors' savings.

1 **TITLE I—MANDATORY**
2 **MATERIALITY REQUIREMENT**

3 **SEC. 101. LIMITATION ON DISCLOSURE REQUIREMENTS.**

4 (a) SECURITIES ACT OF 1933.—Section 2(b) of the
5 Securities Act of 1933 (15 U.S.C. 77b(b)) is amended—

6 (1) in the subsection heading, by inserting “;
7 LIMITATION ON DISCLOSURE REQUIREMENTS” after
8 “FORMATION”;

9 (2) by striking “Whenever” and inserting the
10 following:

11 “(1) IN GENERAL.—Whenever”; and

12 (3) by adding at the end the following:

13 “(2) LIMITATION.—

14 “(A) IN GENERAL.—Whenever pursuant to
15 this title the Commission is engaged in rule-
16 making regarding disclosure obligations of
17 issuers, the Commission shall expressly provide
18 that an issuer is only required to disclose infor-
19 mation in response to such disclosure obliga-
20 tions to the extent the issuer has determined
21 that such information is material with respect
22 to a voting or investment decision regarding the
23 securities of such issuer.

24 “(B) APPLICABILITY.—Subparagraph (A)
25 shall not apply with respect to the removal of

1 any disclosure requirement with respect to an
2 issuer.

3 “(C) RULE OF CONSTRUCTION.—For the
4 purposes of this paragraph, information is con-
5 sidered material with respect to a voting or in-
6 vestment decision regarding the securities of an
7 issuer if there is a substantial likelihood that a
8 reasonable investor would view the failure to
9 disclose that information as having significantly
10 altered the total mix of information made avail-
11 able to the investor.”.

12 (b) SECURITIES EXCHANGE ACT OF 1934.—Section
13 3(f) of the Securities Exchange Act of 1934 (15 U.S.C.
14 78c(f)) is amended—

15 (1) in the subsection heading, by inserting “;
16 LIMITATION ON DISCLOSURE REQUIREMENTS” after
17 “FORMATION”;

18 (2) by striking “Whenever” and inserting the
19 following:

20 “(1) IN GENERAL.—Whenever”; and

21 (3) by adding at the end the following:

22 “(2) LIMITATION.—

23 “(A) IN GENERAL.—Whenever pursuant to
24 this title the Commission is engaged in rule-
25 making regarding disclosure obligations of

1 issuers, the Commission shall expressly provide
2 that an issuer is only required to disclose infor-
3 mation in response to such disclosure obliga-
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5 that such information is material with respect
6 to a voting or investment decision regarding the
7 securities of such issuer.

8 “(B) APPLICABILITY.—Subparagraph (A)
9 shall not apply with respect to the removal of
10 any disclosure requirement with respect to an
11 issuer.

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13 purposes of this paragraph, information is con-
14 sidered material with respect to a voting or in-
15 vestment decision regarding the securities of an
16 issuer if there is a substantial likelihood that a
17 reasonable investor would view the failure to
18 disclose that information as having significantly
19 altered the total mix of information made avail-
20 able to the investor.”.

21 **TITLE II—PUBLIC COMPANY** 22 **ADVISORY COMMITTEE**

23 **SEC. 201. PUBLIC COMPANY ADVISORY COMMITTEE.**

24 The Securities Exchange Act of 1934 is amended by
25 inserting after section 40 (15 U.S.C. 78qq) the following:

1 **“SEC. 40A. PUBLIC COMPANY ADVISORY COMMITTEE.**

2 “(a) ESTABLISHMENT AND PURPOSE.—

3 “(1) ESTABLISHMENT.—There is established
4 within the Commission the Public Company Advi-
5 sory Committee (referred to in this section as the
6 ‘Committee’).

7 “(2) PURPOSE.—The Committee shall—

8 “(A) provide the Commission with advice
9 on the rules, regulations, and policies of the
10 Commission with regard to the Commission’s
11 mission of protecting investors, maintaining
12 fair, orderly, and efficient markets, and facili-
13 tating capital formation, as they relate to—

14 “(i) existing and emerging regulatory
15 priorities of the Commission;

16 “(ii) issues relating to the public re-
17 porting and corporate governance of public
18 companies;

19 “(iii) issues relating to the proxy proc-
20 ess for shareholder meetings held by public
21 companies;

22 “(iv) issues relating to trading in the
23 securities of public companies; and

24 “(v) issues relating to capital forma-
25 tion;

1 “(B) not provide any advice with respect to
2 any policies, practices, actions, or decisions con-
3 cerning the Commission’s enforcement program;
4 and

5 “(C) submit to the Commission such find-
6 ings and recommendations as the Committee
7 determines are appropriate, including rec-
8 ommendations for proposed regulatory and leg-
9 islative changes.

10 “(b) MEMBERSHIP.—

11 “(1) IN GENERAL.—The membership of the
12 Committee shall be not fewer than 10, and not more
13 than 20, members appointed by the Commission
14 from among individuals who—

15 “(A) are officers, directors, or senior offi-
16 cials of public companies registered with the
17 Commission under the Securities Act of 1933
18 and this Act, except for those public companies
19 that own asset management, fixed income, in-
20 vestment advisory, broker-dealer, or proxy serv-
21 ices businesses;

22 “(B) are executives or other individuals
23 with senior managerial responsibility in busi-
24 ness, professional, trade, and industry associa-

1 tions that represent the interests of such public
2 companies; and

3 “(C) are professional advisers and service
4 providers to such public companies (including
5 attorneys, accountants, investment bankers, and
6 financial advisers).

7 “(2) QUALIFICATIONS.—At least 50 percent of
8 the Committee membership shall be drawn from in-
9 dividuals who would qualify for membership under
10 paragraph (1)(A).

11 “(3) TERM.—Each member of the Committee
12 appointed under paragraph (1) shall serve for a
13 term of 4 years. Vacancies among the members,
14 whether caused by the resignation, death, removal,
15 expiration of a term, or otherwise, shall be filled con-
16 sistent with the Commission’s procedures then in ef-
17 fect.

18 “(4) STAGGERED TERMS.—The members of the
19 Committee shall serve staggered terms, with half of
20 the initial members of the Committee each serving
21 for 2 years and half serving for 4 years.

22 “(5) MEMBERS NOT ON OTHER ADVISORY COM-
23 MITTEES.—Public companies and other organiza-
24 tions that are currently represented on any other
25 Commission Advisory Committee are not eligible to

1 have representatives also serve on the Public Com-
2 pany Advisory Committee.

3 “(6) MEMBERS NOT COMMISSION EMPLOY-
4 EES.—Members appointed under paragraph (1) shall
5 not be considered to be employees or agents of the
6 Commission solely because of membership on the
7 Committee.

8 “(c) CHAIR; VICE CHAIR; SECRETARY; ASSISTANT
9 SECRETARY.—

10 “(1) IN GENERAL.—The members of the Com-
11 mittee shall elect, from among the members of the
12 Committee—

13 “(A) a Chair;

14 “(B) a Vice Chair;

15 “(C) a Secretary; and

16 “(D) an Assistant Secretary.

17 “(2) TERM.—Each member elected under para-
18 graph (1) shall serve for a term of 2 years in the
19 capacity the member was elected under paragraph
20 (1).

21 “(3) SUBCOMMITTEES.—The Chair may create
22 subcommittees that hold public or non-public meet-
23 ings and provide recommendations to the full Com-
24 mittee.

25 “(d) MEETINGS.—

1 “(1) FREQUENCY OF MEETINGS.—The Com-
2 mittee shall meet—

3 “(A) not less frequently than twice annu-
4 ally, at the call of the chair of the Committee;
5 and

6 “(B) from time to time, at the call of the
7 Commission.

8 “(2) NOTICE.—The Chair of the Committee
9 shall give the members of the Committee written no-
10 tice of each meeting, not later than 2 weeks before
11 the date of the meeting.

12 “(e) STAFF.—The Commission shall make available
13 to the Committee such staff as the Chair of the Committee
14 determines are necessary to carry out this section.

15 “(f) REVIEW BY COMMISSION.—The Commission
16 shall—

17 “(1) review the findings and recommendations
18 of the Committee; and

19 “(2) each time the Committee submits a finding
20 or recommendation to the Commission, promptly
21 issue a public statement—

22 “(A) assessing the finding or recommenda-
23 tion of the Committee; and

1 “(B) disclosing the action, if any, the Com-
2 mission intends to take with respect to the find-
3 ing or recommendation.

4 “(g) COMMITTEE FINDINGS.—Nothing in this section
5 shall require the Commission to agree to or act upon any
6 finding or recommendation of the Committee.

7 “(h) NONAPPLICABILITY OF THE FEDERAL ADVI-
8 SORY COMMITTEE ACT.—Chapter 10 of part I of title 5,
9 United States Code, shall not apply to the Committee and
10 the activities of the Committee.”.

11 **TITLE III—PROTECTING U.S.**
12 **BUSINESS SOVEREIGNTY**

13 **SEC. 301. STUDY ON DETRIMENTAL IMPACT OF THE COR-**
14 **PORATE SUSTAINABILITY DUE DILIGENCE DI-**
15 **RECTIVE AND CORPORATE SUSTAINABILITY**
16 **REPORTING DIRECTIVE.**

17 (a) STUDY.—The Securities and Exchange Commis-
18 sion shall conduct a study to examine and evaluate—

19 (1) the detrimental impact and potential detri-
20 mental impact of each of the Directives on—

21 (A) United States companies, consumers,
22 and investors; and

23 (B) the economy of the United States;

24 (2) the extent to which each of the Directives
25 aligns with international conventions and declara-

1 tions on human rights and environmental obliga-
2 tions; and

3 (3) the legal basis for the extraterritorial reach
4 of each of the Directives.

5 (b) REPORT.—Not later than 1 year after the date
6 of the enactment of this Act, the Securities and Exchange
7 Commission shall submit to the Committee on Banking,
8 Housing, and Urban Affairs of the Senate, the Committee
9 on Financial Services of the House of Representatives, the
10 Secretary of State, the Secretary of Commerce, and the
11 United States Trade Representative a report that in-
12 cludes—

13 (1) the results of the study conducted under
14 this section; and

15 (2) recommendations for policymakers and rel-
16 evant stakeholders on potential mitigating measures,
17 alternative approaches, or modifications to each of
18 the Directives that would address any concerns iden-
19 tified in the study.

20 (c) ACCESS TO INFORMATION.—The Securities and
21 Exchange Commission may request from private entities
22 such relevant data and information as the Securities and
23 Exchange Commission determines necessary to carry out
24 the study required under this section and such private en-

1 titles shall provide such requested data and information
2 to the Securities and Exchange Commission.

3 (d) DIRECTIVES DEFINED.—In this section the term
4 “Directives” means—

5 (1) Directive (EU) 2024/1760 of the European
6 Parliament and of the Council of 13 June 2024 on
7 corporate sustainability due diligence;

8 (2) Directive (EU) 2022/2464 of the European
9 Parliament and of the Council of 14 December 2022
10 on corporate sustainability reporting; and

11 (3) any directive of the European Parliament
12 and of the Council that amends, supplements, re-
13 places, or otherwise modifies a directive described in
14 paragraph (1) or (2), including Directive (EU)
15 2026/470 of the European Parliament and of the
16 Council of 26 February 2026.

17 **TITLE IV—CORPORATE**
18 **GOVERNANCE EXAMINATION**

19 **SEC. 401. STUDY OF CERTAIN ISSUES WITH RESPECT TO**
20 **PROXY ADVISORY FIRMS AND THE PROXY**
21 **PROCESS.**

22 Section 4 of the Securities Exchange Act of 1934 (15
23 U.S.C. 78d) is amended by adding at the end the fol-
24 lowing:

1 “(k) STUDY OF CERTAIN ISSUES WITH RESPECT TO
2 PROXY ADVISORY FIRMS AND THE PROXY PROCESS.—

3 “(1) IN GENERAL.—Not later than 180 days
4 after the date of the enactment of this subsection,
5 and every 5 years thereafter, the Commission shall
6 conduct a comprehensive study on proxy advisory
7 firms and the proxy process.

8 “(2) SCOPE OF STUDY.—The studies required
9 under paragraph (1) shall cover—

10 “(A) the previous 10 years, with respect to
11 the initial study; and

12 “(B) the previous 5 years, with respect to
13 each other study.

14 “(3) CONTENTS.—Each study required under
15 paragraph (1) shall address the following issues:

16 “(A) The financial and other incentives
17 and obligations of all groups involved in the
18 proxy process.

19 “(B) A consideration of whether financial
20 and other incentives have created a process that
21 no longer serves the economic interests of retail
22 investors.

23 “(C) An analysis of whether regulations
24 and financial incentives have created and pro-
25 tected the outsized influence of proxy advisors

1 or a duopoly in proxy advice, and if so, what
2 are the benefits and costs of that outsized influ-
3 ence or duopoly.

4 “(D) The costs incurred by issuers in re-
5 sponding to politically-, environmentally-, or so-
6 cially-motivated shareholder proposals.

7 “(E) An analysis of the impact that share-
8 holder proposals have on discouraging private
9 companies from going public.

10 “(F) A thorough assessment of the eco-
11 nomic analysis, if any, conducted by proxy advi-
12 sory firms and institutional shareholders when
13 recommending or voting in favor of shareholder
14 proposals.

15 “(G) A review of the extent to which insti-
16 tutional investors, who owe fiduciary duties,
17 rely on proxy advisory firm recommendations.

18 “(H) An assessment of whether, in light of
19 their significant influence on corporate actions
20 and vote outcomes, proxy advisors are subject
21 to sufficient and effective regulation to ensure
22 that their policies and recommendations are ac-
23 curate, free of conflicts, and benefit the best
24 economic interest of shareholders at large.

1 “(4) REPORT.—At the completion of each study
2 required under paragraph (1) the Commission shall
3 issue a report to the Committee on Banking, Hous-
4 ing, and Urban Affairs of the Senate and the Com-
5 mittee on Financial Services of the House of Rep-
6 resentatives that includes the results of the study.”.

7 **TITLE V—REGISTRATION OF**
8 **PROXY ADVISORY FIRMS**

9 **SEC. 501. REGISTRATION OF PROXY ADVISORY FIRMS.**

10 (a) AMENDMENT.—The Securities Exchange Act of
11 1934 (15 U.S.C. 78a et seq.) is amended by inserting after
12 section 15G the following new section:

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

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

20 “(b) REGISTRATION PROCEDURES.—

21 “(1) APPLICATION FOR REGISTRATION.—

22 “(A) IN GENERAL.—A proxy advisory firm
23 shall file with the Commission an application
24 for registration, in such form as the Commis-

1 sion shall require, by rule, and containing the
2 information described in subparagraph (B).

3 “(B) REQUIRED INFORMATION.—An appli-
4 cation for registration under this section shall
5 contain—

6 “(i) a certification that the applicant
7 is able to consistently provide proxy advice
8 based on accurate information;

9 “(ii) with respect to clients of the ap-
10 plicant that vote shares held on behalf of
11 shareholders, a certification that the appli-
12 cant—

13 “(I) will provide proxy voting ad-
14 vice only in the best economic interest
15 of those shareholders;

16 “(II) has the requisite expertise
17 to ensure that voting recommenda-
18 tions are in the best economic interest
19 of those shareholders unless otherwise
20 specified; and

21 “(III) does not violate State or
22 Federal law;

23 “(iii) information on the procedures
24 and methodologies that the applicant uses
25 to ensure that proxy voting recommenda-

1 tions are in the best economic interest of
2 the ultimate shareholders;

3 “(iv) information on the organiza-
4 tional structure of the applicant;

5 “(v) an explanation of whether or not
6 the applicant has in effect a code of ethics,
7 and if not, the reasons therefor;

8 “(vi) a description of any potential or
9 actual conflict of interest relating to the
10 provision of proxy advisory services, includ-
11 ing those arising out of or resulting from
12 the ownership structure of the applicant or
13 the provision of other services by the appli-
14 cant or any person associated with the ap-
15 plicant;

16 “(vii) the policies and procedures in
17 place to publicly disclose and manage con-
18 flicts of interest under subsection (f);

19 “(viii) information related to the pro-
20 fessional and academic qualifications of
21 staff tasked with providing proxy advisory
22 services; and

23 “(ix) any other information and docu-
24 ments concerning the applicant and any
25 person associated with such applicant as

1 the Commission, by rule, may prescribe as
2 necessary or appropriate in the public in-
3 terest or for the protection of investors.

4 “(2) REVIEW OF APPLICATION.—

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

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

12 “(ii) institute proceedings to deter-
13 mine whether registration should be de-
14 nied.

15 “(B) CONDUCT OF PROCEEDINGS.—

16 “(i) CONTENT.—Proceedings referred
17 to in subparagraph (A)(ii) shall—

18 “(I) include notice of the grounds
19 for denial under consideration and an
20 opportunity for hearing; and

21 “(II) be concluded not later than
22 120 days after the date on which the
23 application for registration is filed
24 with the Commission under paragraph
25 (1).

1 “(ii) DETERMINATION.—At the con-
2 clusion of such proceedings, the Commis-
3 sion, by order, shall grant or deny such ap-
4 plication for registration.

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

13 “(C) GROUNDS FOR DECISION.—The Com-
14 mission shall grant registration under this sub-
15 section—

16 “(i) if the Commission finds that the
17 requirements of this section are satisfied;
18 and

19 “(ii) unless the Commission finds (in
20 which case the Commission shall deny such
21 registration) that—

22 “(I) the applicant has failed to
23 certify to the Commission’s satisfac-
24 tion that it is able to consistently pro-
25 vide proxy advice based on accurate

1 information and to materially comply
2 with the procedures and methodolo-
3 gies disclosed under paragraph (1)(B)
4 and with subsections (f) and (g); or

5 “(II) if the applicant were so reg-
6 istered, its registration would be sub-
7 ject to suspension or revocation under
8 subsection (d).

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

18 “(c) UPDATE OF REGISTRATION.—

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

1 filing information under this paragraph, but shall
2 amend such information in the annual submission of
3 the organization under paragraph (2) of this sub-
4 section.

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

12 “(A) certifying that the information and
13 documents in the application for registration of
14 such registered proxy advisory firm continue to
15 be accurate in all material respects; and

16 “(B) listing any material change that oc-
17 curred to such information or documents during
18 the previous calendar year.

19 “(d) CENSURE, DENIAL, OR SUSPENSION OF REG-
20 ISTRATION; NOTICE AND HEARING.—The Commission, by
21 order, shall censure, place limitations on the activities,
22 functions, or operations of, suspend for a period not ex-
23 ceeding 12 months, or revoke the registration of any reg-
24 istered proxy advisory firm if the Commission finds, on
25 the record after notice and opportunity for hearing, that

1 such censure, placing of limitations, suspension, or revoca-
2 tion is necessary for the protection of investors and in the
3 public interest and that such registered proxy advisory
4 firm, or any person associated with such an organization,
5 whether prior to or subsequent to becoming so associ-
6 ated—

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

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

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

24 “(B) a substantially equivalent crime by a
25 foreign court of competent jurisdiction;

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

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

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

8 “(6) fails to maintain adequate financial and
9 managerial resources to consistently offer advisory
10 services to clients that vote shares held on behalf of
11 shareholders consistent with the best economic inter-
12 est of those shareholders, including by failing to
13 comply with subsections (f) or (g);

14 “(7) fails to maintain adequate expertise to en-
15 sure that proxy advisory services for clients that vote
16 shares held on behalf of shareholders are tied to the
17 best economic interest of those shareholders; or

18 “(8) engages in a prohibited act enumerated in
19 subsection (j).

20 “(e) TERMINATION OF REGISTRATION.—

21 “(1) VOLUNTARY WITHDRAWAL.—A registered
22 proxy advisory firm may, upon such terms and con-
23 ditions as the Commission may establish as nec-
24 essary in the public interest or for the protection of
25 investors, which terms and conditions shall include

1 at a minimum that the registered proxy advisory
2 firm will no longer conduct such activities as to
3 bring it within the definition of proxy advisory firm
4 in section 3(a)(82), withdraw from registration by
5 filing a written notice of withdrawal to the Commis-
6 sion.

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

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

15 “(1) ORGANIZATION POLICIES AND PROCE-
16 DURES.—Each registered proxy advisory firm shall
17 establish, maintain, and enforce written policies and
18 procedures reasonably designed, taking into consid-
19 eration the nature of the business of such registered
20 proxy advisory firm and associated persons, to pub-
21 licly disclose and manage any conflicts of interest
22 that arise or would reasonably be expected to arise
23 from such business.

24 “(2) COMMISSION AUTHORITY.—The Commis-
25 sion shall, within one year of the date of enactment

1 of this section, issue final rules to prohibit, or re-
2 quire the management and public disclosure of, any
3 conflicts of interest relating to the offering of proxy
4 advisory services by a registered proxy advisory firm,
5 including, without limitation, conflicts of interest re-
6 lating to—

7 “(A) the manner in which a registered
8 proxy advisory firm is compensated by the cli-
9 ent, any affiliate of the client, or any other per-
10 son for providing proxy advisory services;

11 “(B) business relationships, ownership in-
12 terests, or any other financial or personal inter-
13 ests between a registered proxy advisory firm,
14 or any person associated with such registered
15 proxy advisory firm, and any client, or any af-
16 filiate of such client;

17 “(C) the formulation of proxy voting poli-
18 cies;

19 “(D) the execution, or assistance with the
20 execution, of proxy votes if such votes are based
21 upon recommendations made by the proxy advi-
22 sory firm in which a person other than the
23 issuer is a proponent; and

24 “(E) any other potential conflict of inter-
25 est, as the Commission deems necessary or ap-

1 appropriate in the public interest or for the pro-
2 tection of investors.

3 “(3) DISCLOSURE ON FACTORS INFLUENCING
4 RECOMMENDATIONS.—Each registered proxy advi-
5 sory firm shall annually disclose to the Commission
6 and make publicly available the economic and other
7 factors that a reasonable investor would expect to in-
8 fluence the recommendations of such proxy advisory
9 firm, including the ownership composition of such
10 proxy advisory firm and any meetings with, or feed-
11 back received from, outside entities.

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

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

16 “(A) have staff and other resources suffi-
17 cient to produce proxy voting recommendations
18 that are based on accurate and current infor-
19 mation and designed for clients that vote shares
20 held on behalf of shareholders to advance the
21 best economic interest of those shareholders un-
22 less otherwise specified;

23 “(B) implement procedures that permit
24 issuers that are the subject of proxy voting rec-
25 ommendations—

1 “(i) access in a reasonable time to
2 data and information used to make rec-
3 ommendations; and

4 “(ii) a reasonable opportunity to pro-
5 vide meaningful comment and corrections
6 to such data and information, including
7 the opportunity to present (in person or
8 telephonically) details to the person re-
9 sponsible for developing such data and in-
10 formation prior to the publication of proxy
11 voting recommendations to clients;

12 “(C) employ an ombudsman to receive
13 complaints about the accuracy of information
14 used in making recommendations from the com-
15 panies that are the subject of the proxy advi-
16 sory firm’s voting recommendations and seek to
17 resolve those complaints in a timely fashion and
18 prior to the publication of proxy voting rec-
19 ommendations to clients; and

20 “(D) if the ombudsman is unable to re-
21 solve a complaint to a company’s satisfaction
22 prior to the publication of proxy voting rec-
23 ommendations to clients, include in the final re-
24 port of the firm to clients—

1 “(i) a statement detailing the com-
2 pany’s complaints, if requested in writing
3 by the company; and

4 “(ii) a statement explaining why the
5 proxy voting recommendation is in the best
6 economic interest of shareholders.

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

8 “(A) DATA AND INFORMATION USED TO
9 MAKE RECOMMENDATIONS.—The term ‘data
10 and information used to make voting rec-
11 ommendations’—

12 “(i) means the financial, operational,
13 or descriptive data and information on an
14 issuer used by proxy advisory firms and
15 any contextual or substantive analysis im-
16 pacting the recommendation; and

17 “(ii) does not include the entirety of
18 the proxy advisory firm’s final report to its
19 clients.

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

22 “(i) means not less than 1 week be-
23 fore the publication of proxy voting rec-
24 ommendations for clients; and

1 “(ii) shall not otherwise interfere with
2 a proxy advisory firm’s ability to provide
3 its clients with timely access to accurate
4 proxy voting research, analysis, or rec-
5 ommendations.

6 “(h) PRIVATE RIGHT OF ACTION WITH RESPECT TO
7 ILLEGAL RECOMMENDATIONS.—Any proxy advisory firm
8 that endorses a proposal that is not supported by the
9 issuer but is approved and subsequently found by a court
10 of competent jurisdiction to violate State or Federal law
11 shall be liable to the applicable issuer for the costs associ-
12 ated with the approval of such proposal, including imple-
13 mentation costs and any penalties incurred by the issuer,
14 and any issuer seeking to enforce such liability may sue
15 at law or in equity in any court of competent jurisdiction.

16 “(i) DESIGNATION OF COMPLIANCE OFFICER.—Each
17 registered proxy advisory firm shall designate an indi-
18 vidual who reports directly to senior management as re-
19 sponsible for administering the policies and procedures
20 that are required to be established pursuant to subsections
21 (f) and (g), and for ensuring compliance with the securi-
22 ties laws and the rules and regulations thereunder, includ-
23 ing those promulgated by the Commission pursuant to this
24 section.

25 “(j) PROHIBITED CONDUCT.—

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

9 “(A) advisory or consulting services (of-
10 fered directly or indirectly, including through
11 an affiliate) related to corporate governance
12 issues; or

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

21 “(2) RULE OF CONSTRUCTION.—Nothing in
22 paragraph (1), or in any rules or regulations adopt-
23 ed thereunder, may be construed to modify, impair,
24 or supersede the operation of any of the antitrust
25 laws (as defined in the first section of the Clayton

1 Act, except that such term includes section 5 of the
2 Federal Trade Commission Act, to the extent that
3 such section 5 applies to unfair methods of competi-
4 tion).

5 “(k) ANNUAL REPORT.—

6 “(1) IN GENERAL.—Each registered proxy advi-
7 sory firm shall, not later than 90 calendar days after
8 the end of each fiscal year, file with the Commission
9 and make publicly available an annual report in such
10 form as the Commission, by rule, may prescribe as
11 necessary or appropriate in the public interest or for
12 the protection of investors.

13 “(2) CONTENTS.—Each annual report required
14 under paragraph (1) shall include, at a minimum,
15 disclosure by the registered proxy advisory firm of
16 the following:

17 “(A) A list of shareholder proposals the
18 staff of the registered proxy advisory firm re-
19 viewed in the prior fiscal year.

20 “(B) A list of the recommendations made
21 in the prior fiscal year.

22 “(C) The economic analysis conducted to
23 determine that final recommendations provided
24 in the prior fiscal year (other than rec-
25 ommendations relating to an issuer-sponsored

1 proposal or recommendations consistent with
2 that of a board of directors composed of a ma-
3 jority of independent directors) delivered to cli-
4 ents that vote shares held on behalf of share-
5 holders were in the best economic interest of
6 those shareholders.

7 “(D) The staff who reviewed and made
8 recommendations on such proposals in the prior
9 fiscal year.

10 “(E) The qualifications of such staff to en-
11 sure that each of the recommendations for cli-
12 ents that vote shares held on behalf of share-
13 holders were tied to the best economic interest
14 of those shareholders.

15 “(F) The recommendations made in the
16 prior fiscal year where the proponent of such
17 recommendation was a client of or received
18 services from the proxy advisory firm.

19 “(G) A certification by the chief executive
20 officer, chief financial officer, and the primary
21 executive responsible for overseeing the compila-
22 tion and dissemination of proxy voting advice
23 that the final recommendations (other than rec-
24 ommendations relating to an issuer-sponsored
25 proposal or recommendations consistent with

1 that of a board of directors composed of a ma-
2 jority of independent directors) delivered to cli-
3 ents that vote shares held on behalf of share-
4 holders in the last fiscal year—

5 “(i) were based on internal controls
6 and procedures that are designed to ensure
7 accurate information and that such inter-
8 nal controls and procedures are effective;
9 and

10 “(ii) were based on the best economic
11 interest of those shareholders unless other-
12 wise specified.

13 “(H) The economic and other factors that
14 a reasonable investor would expect to influence
15 the recommendations of such proxy advisory
16 firm, including the ownership composition of
17 such proxy advisory firm.

18 “(3) REPORT FORMAT.—Each annual report re-
19 quired under paragraph (1) shall be made available
20 in a structured, machine-readable format, consistent
21 with existing electronic reporting standards.

22 “(l) TRANSPARENT POLICIES.—Each registered
23 proxy advisory firm shall file with the Commission and
24 make publicly available its methodology for the formula-
25 tion of proxy voting policies and voting recommendations

1 to clients that vote shares held on behalf of shareholders
2 and how that methodology ensures that the firm’s voting
3 recommendations are in the best economic interest of
4 those shareholders unless otherwise specified.

5 “(m) RULES OF CONSTRUCTION.—Registration
6 under and compliance with this section does not constitute
7 a waiver of, or otherwise diminish, any right, privilege, or
8 defense that a registered proxy advisory firm may other-
9 wise have under any provision of State or Federal law,
10 including any rule, regulation, or order thereunder.

11 “(n) REGULATIONS.—

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

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

19 “(B) shall become effective not later than
20 1 year after the date of enactment of this sec-
21 tion.

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

1 “(A) review its existing rules and regula-
2 tions which affect the operations of proxy advi-
3 sory firms; and

4 “(B) amend or revise such rules and regu-
5 lations in accordance with the purposes of this
6 section, and issue such guidance as the Com-
7 mission may prescribe as necessary or appro-
8 priate in the public interest or for the protec-
9 tion of investors.

10 “(o) APPLICABILITY.—This section, other than sub-
11 section (m), which shall apply on the date of enactment
12 of this section, shall apply on the earlier of—

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

15 “(2) 270 days after the date of enactment of
16 this section.

17 “(p) BEST ECONOMIC INTEREST DEFINED.—In this
18 section, the term ‘best economic interest’ means decisions
19 that seek to maximize investment returns over a time hori-
20 zon consistent with the investment objectives and risk
21 management profile of the fund in which the shareholders
22 are invested.”.

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 (c) PROXY ADVISORY FIRM DEFINITIONS.—Section
4 3(a) of the Securities Exchange Act of 1934 (15 U.S.C.
5 78c(a)) is amended—

6 (1) by redesignating the second paragraph (80)
7 (relating to funding portal) as paragraph (81); and

8 (2) by adding at the end the following:

9 “(82) PROXY ADVISORY FIRM.—The term
10 ‘proxy advisory firm’—

11 “(A) means any person that—

12 “(i) makes a recommendation to a se-
13 curity holder as to the security holder’s
14 vote, consent, or authorization on a specific
15 matter for which security holder approval
16 is solicited;

17 “(ii) markets the person’s expertise as
18 a provider of such proxy voting advice sep-
19 arately from other forms of investment ad-
20 vice; and

21 “(iii) sells such proxy voting advice
22 for a fee; and

23 “(B) does not include—

24 “(i) a registered investment adviser;
25 or

1 “(ii) any person that is exempt under
2 law or regulation from the requirements
3 otherwise applicable to persons engaged in
4 such a solicitation.

5 “(83) PERSON ASSOCIATED WITH A PROXY AD-
6 VISORY FIRM.—With respect to a proxy advisory
7 firm—

8 “(A) a person is ‘associated’ with the
9 proxy advisory firm if the person is—

10 “(i) a partner, officer, or director of
11 the proxy advisory firm (or any person oc-
12 cupying a similar status or performing
13 similar functions);

14 “(ii) a person directly or indirectly
15 controlling, controlled by, or under com-
16 mon control with the proxy advisory firm;

17 “(iii) an employee of the proxy advi-
18 sory firm; or

19 “(iv) a person the Commission deter-
20 mines by rule is controlled by the proxy
21 advisory firm; and

22 “(B) a person is not ‘associated’ with the
23 proxy advisory firm if the person only performs
24 clerical or ministerial functions with respect to
25 a proxy advisory firm.”.

1 **TITLE VI—LIABILITY FOR CER-**
2 **TAIN FAILURES TO DISCLOSE**
3 **MATERIAL INFORMATION OR**
4 **MAKING OF MATERIAL**
5 **MISSTATEMENTS**

6 **SEC. 601. LIABILITY FOR CERTAIN FAILURES TO DISCLOSE**
7 **MATERIAL INFORMATION OR MAKING OF MA-**
8 **TERIAL MISSTATEMENTS.**

9 Section 14 of the Securities Exchange Act of 1934
10 (15 U.S.C. 78n) is amended by adding at the end the fol-
11 lowing:

12 “(1) FALSE OR MISLEADING STATEMENTS.—For
13 purposes of subsection (a) and Rule 14a-9 (17 CFR
14 240.14a-9) and any successor rule, the failure to disclose
15 material information (such as a proxy voting advice
16 business’s methodology, sources of information, or con-
17 flicts of interest) or the making of a material
18 misstatement regarding proxy voting advice that makes a
19 recommendation to a security holder as to the security
20 holder’s vote, consent, or authorization on a specific mat-
21 ter for which security holder approval is solicited, and that
22 is furnished by a person that markets the person’s exper-
23 tise as a provider of such proxy voting advice separately
24 from other forms of investment advice, and sells such

1 proxy voting advice for a fee, shall be considered to be
2 false or misleading with respect to a material fact.”.

3 **TITLE VII—DUTIES OF INVEST-**
4 **MENT ADVISERS, ASSET MAN-**
5 **AGERS, AND PENSION FUNDS**

6 **SEC. 701. DUTIES OF INVESTMENT ADVISERS, ASSET MAN-**
7 **AGERS, AND PENSION FUNDS.**

8 Section 13(f) of the Securities Exchange Act of 1934
9 (15 U.S.C. 78m(f)) is amended by adding at the end the
10 following:

11 “(7) DISCLOSURES BY INSTITUTIONAL INVEST-
12 MENT MANAGERS IN CONNECTION WITH PROXY AD-
13 VISORY FIRMS.—

14 “(A) IN GENERAL.—Every institutional in-
15 vestment manager which uses the mails, or any
16 means or instrumentality of interstate com-
17 merce in the course of its business as an insti-
18 tutional investment manager, which engages a
19 proxy advisory firm, and which exercises voting
20 power with respect to accounts holding equity
21 securities of a class described in subsection
22 (d)(1) or otherwise becomes or is deemed to be-
23 come a beneficial owner of any security of a
24 class described in subsection (d)(1) upon the
25 purchase or sale of a security-based swap that

1 the Commission may define by rule, shall file an
2 annual report with the Commission con-
3 taining—

4 “(i) an explanation of how the institu-
5 tional investment manager voted with re-
6 spect to each shareholder proposal;

7 “(ii) the percentage of votes cast on
8 shareholder proposals that were consistent
9 with proxy advisory firm recommendations,
10 for each proxy advisory firm retained by
11 the institutional investment manager;

12 “(iii) an explanation of—

13 “(I) how the institutional invest-
14 ment manager took into consideration
15 proxy advisory firm recommendations
16 in making voting decisions, including
17 the degree to which the institutional
18 investment manager used those rec-
19 ommendations in making voting deci-
20 sions;

21 “(II) how often the institutional
22 investment manager voted consistent
23 with a recommendation made by a
24 proxy advisory firm, expressed as a
25 percentage;

1 “(III) how such votes are rec-
2 onciled with the fiduciary duty of the
3 institutional investment manager to
4 vote in the best economic interests of
5 shareholders;

6 “(IV) how frequently votes were
7 changed when an error occurred or
8 due to new information from issuers;
9 and

10 “(V) the degree to which invest-
11 ment professionals of the institutional
12 investment manager were involved in
13 proxy voting decisions; and

14 “(iv) a certification that the voting de-
15 cisions of the institutional investment man-
16 ager were based solely on the best eco-
17 nomic interest of the shareholders on be-
18 half of whom the institutional investment
19 manager holds shares.

20 “(B) REQUIREMENTS FOR LARGER INSTI-
21 TUTIONAL INVESTMENT MANAGERS.—Every in-
22 stitutional investment manager described in
23 subparagraph (A) that has regulatory assets
24 under management with an aggregate fair mar-
25 ket value on the last trading day in any of the

1 preceding twelve months of at least
2 \$100,000,000,000 shall—

3 “(i) in any materials provided to cus-
4 tomers and related to customers voting
5 their shares, clarify that shareholders are
6 not required to vote on every proposal;

7 “(ii) with respect to each shareholder
8 proposal for which the institutional invest-
9 ment manager votes (other than votes con-
10 sistent with the recommendation of a
11 board of directors composed of a majority
12 of independent directors) perform an eco-
13 nomic analysis before making such vote, to
14 determine that the vote is in the best eco-
15 nomic interest of the shareholders on be-
16 half of whom the institutional investment
17 manager holds shares; and

18 “(iii) include each economic analysis
19 required under clause (ii) in the annual re-
20 port required under subparagraph (A).

21 “(C) BEST ECONOMIC INTEREST DE-
22 FINED.—In this paragraph, the term ‘best eco-
23 nomic interest’ means decisions that seek to
24 maximize investment returns over a time hori-
25 zon consistent with the investment objectives

1 and risk management profile of the fund in
2 which shareholders are invested.”.

3 **TITLE VIII—PROTECTING** 4 **AMERICANS’ SAVINGS**

5 **SEC. 801. REQUIREMENTS RELATED TO PROXY VOTING.**

6 Section 14 of the Securities Exchange Act of 1934
7 (15 U.S.C. 78n), as amended by section 601, is further
8 amended by adding at the end the following:

9 “(m) PROHIBITION ON ROBOVOTING.—

10 “(1) IN GENERAL.—The Commission shall issue
11 final rules prohibiting the use of robovoting with re-
12 spect to votes related to proxy or consent solicitation
13 materials.

14 “(2) ROBOVOTING DEFINED.—In this sub-
15 section, the term ‘robovoting’ means the practice of
16 automatically voting in a manner consistent with the
17 recommendations of a proxy advisory firm or on a
18 proxy advisory firm’s electronic voting platform with
19 the proxy advisory firm’s recommendations, in either
20 case, without independent review and analysis.

21 “(n) PROHIBITION ON OUTSOURCING VOTING DECI-
22 SIONS BY INSTITUTIONAL INVESTORS.—With respect to
23 votes related to proxy or consent solicitation materials, an
24 institutional investor may not outsource voting decisions
25 to any person other than an investment adviser or a

1 broker or dealer that is registered with the Commission,
2 or is exempt from such registration, and has a fiduciary
3 or best interest duty to the institutional investor.

4 “(o) NO REQUIREMENT TO VOTE.—No person may
5 be required to cast votes related to proxy or consent solici-
6 tation materials, unless obligated by their fiduciary duty
7 or Rule 206(4)–6 (17 CFR 275.206(4)–6).”.

8 **TITLE IX—EMPOWERING**
9 **SHAREHOLDERS**

10 **SEC. 901. PROXY VOTING OF PASSIVELY MANAGED FUNDS.**

11 (a) IN GENERAL.—The Investment Advisers Act of
12 1940 (15 U.S.C. 80b-1 et seq.) is amended by inserting
13 after section 208 (15 U.S.C. 80b-8) the following:

14 **“SEC. 208A. PROXY VOTING OF PASSIVELY MANAGED**
15 **FUNDS.**

16 “(a) INVESTMENT ADVISER PROXY VOTING.—

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

23 “(A) vote in accordance with the instruc-
24 tions (which may include the selection of a pub-
25 lished voting policy) of the beneficial owner (or

1 fiduciary or other designee with proxy voting
2 authority on their behalf) of a voting security of
3 the passively managed fund;

4 “(B) vote in accordance with the voting
5 recommendations of the board of directors (or
6 similar governing body) of such issuer;

7 “(C) abstain from voting such securities
8 but make reasonable efforts to be considered
9 present for purposed of establishing a quorum;
10 or

11 “(D) pursuant to rules issued by the Com-
12 mission, instruct vote tabulators to make a rea-
13 sonable effort to mirror vote shares to reflect
14 the elections of the other shareholders in the
15 covered security.

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 routine or
19 non-routine vote, voted in the manner required by sub-
20 section (a)(1), an investment adviser shall not be liable
21 to any person under any law or regulation of the United
22 States, any constitution, law, or regulation of any State
23 or political subdivision thereof, or under any contract or
24 other legally enforceable agreement (including any arbitra-
25 tion agreement), for any of the following:

1 “(1) Voting in accordance with the instructions
2 of the beneficial owner (or that beneficial owner’s
3 designee with proxy voting authority) of a voting se-
4 curity of the passively managed fund.

5 “(2) Not soliciting voting instructions from any
6 person.

7 “(3) Voting in accordance with the voting rec-
8 ommendations of an issuer under subsection
9 (a)(1)(B) with respect to such vote.

10 “(4) Abstaining from voting in accordance with
11 subsection (a)(1)(C) with respect to such vote.

12 “(5) Instructing vote tabulators to make a rea-
13 sonable effort to mirror vote shares to reflect the
14 elections of the other shareholders in a covered secu-
15 rity, pursuant to rules issued by the Commission de-
16 scribed in subsection (a)(1)(D).

17 “(c) FOREIGN PRIVATE ISSUERS EXEMPTION.—Sub-
18 section (a) shall not apply with respect to a foreign private
19 issuer if the published voting policy of the investment advi-
20 sor with respect to such foreign private issuer is fully and
21 fairly disclosed to beneficial owners, including the extent
22 to which such policy differs from the published voting pol-
23 icy for non-exempt issuers.

24 “(d) DISSEMINATION OF INFORMATION.—

1 “(1) IN GENERAL.—Any investment adviser
2 subject to the requirements of subsection (a)(1)
3 shall, with respect to the dissemination of informa-
4 tion and other material to a voting person, comply
5 with the following requirements, unless the voting
6 person affirmatively declines to receive that informa-
7 tion and other material:

8 “(A) Provide the voting person (or the rel-
9 evant intermediary with whom the investment
10 adviser has access) with a form to select a pub-
11 lished voting policy.

12 “(B) Provide the voting person with not
13 less than 5 business days after the date on
14 which the voting person receives the form de-
15 scribed under subparagraph (A) to return that
16 form to the investment adviser.

17 “(2) ELECTRONIC DELIVERY.—All, or any por-
18 tion, of the materials that an investment adviser is
19 required to provide under paragraph (1)(A) may be
20 provided electronically, including through—

21 “(A) an internet website;

22 “(B) another digital, internet, or elec-
23 tronic-based information repository; or

24 “(C) a mobile application.

25 “(e) DEFINITIONS.—In this section:

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

3 “(A) means a voting security, as that term
4 is defined in section 2(a) of the Investment
5 Company Act of 1940 (15 U.S.C. 80a-2(a)), in
6 which a qualified fund is invested; and

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

12 “(2) PASSIVELY MANAGED FUND.—The term
13 ‘passively managed fund’ means a qualified fund—

14 “(A) that—

15 “(i) is designed to track, or is derived
16 from, an index of securities or a portion of
17 such an index;

18 “(ii) discloses that the qualified fund
19 is a passive index fund; or

20 “(iii) allocates not less than 60 per-
21 cent of the total assets of the qualified
22 fund to an investment strategy that is de-
23 signed to track, or is derived from, an
24 index of securities or a portion of such an
25 index fund; and

1 “(B) that commits to refrain from exer-
2 cising control over an issuer through voting or
3 investment authority.

4 “(3) PUBLISHED VOTING POLICY.—The term
5 ‘published voting policy’ means—

6 “(A) a policy that—

7 “(i) articulates how proportionate
8 shares would be expected to be voted in an-
9 ticipated proxy voting matters; and

10 “(ii) is made available to investors, in-
11 cluding via website or other electronic
12 means; and

13 “(B) in the case of a policy of a passively
14 managed fund or an investment adviser, a pol-
15 icy that does not—

16 “(i) seek to set the strategy or day-to-
17 day management decisions of the issuer;

18 “(ii) involve submitting shareholder
19 proposals;

20 “(iii) seek to nominate directors; and

21 “(iv) coordinate votes with other index
22 managers.

23 “(4) QUALIFIED FUND.—The term ‘qualified
24 fund’ means—

25 “(A) an investment company;

1 “(B) a private fund;

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

5 “(D) a trust, plan, account, or other entity
6 described in section 3(e)(11) of the Investment
7 Company Act of 1940 (15 U.S.C. 80a-
8 3(e)(11));

9 “(E) a plan maintained by an employer de-
10 scribed in clause (i), (ii), or (iii) of section
11 403(b)(1)(A) of the Internal Revenue Code of
12 1986 to provide annuity contracts described in
13 section 403(b) of such Code;

14 “(F) a common trust fund, or similar
15 fund, maintained by a bank;

16 “(G) any fund established under section
17 8438(b)(1) of title 5, United States Code; or

18 “(H) any separate managed account of a
19 client of an investment adviser.

20 “(5) ROUTINE MATTER.—The term ‘routine
21 matter’—

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

23 “(i) an election with respect to the
24 board of directors of a registrant;

1 “(ii) the compensation of management
2 or the board of directors of a registrant;

3 “(iii) the selection of auditors; or

4 “(iv) declassification; and

5 “(B) does not include—

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

12 “(ii) a proposal that is—

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

15 “(II) part of a proposal made by
16 a person other than the applicable
17 registrant.”.

18 (b) EFFECTIVE DATE.—The amendment made by
19 this section shall take effect 1 year after the date of enact-
20 ment of this Act.

21 **TITLE X—BEST INTEREST BASED**
22 **ON PECUNIARY FACTORS**

23 **SEC. 1001. PROTECTING RETAIL INVESTORS’ SAVINGS.**

24 (a) BEST INTEREST BASED ON PECUNIARY FAC-
25 TORS.—Section 211(g) of the Investment Advisers Act of

1 1940 (15 U.S.C. 80b–11(g)) is amended by adding at the
2 end the following:

3 “(3) BEST INTEREST BASED ON PECUNIARY
4 FACTORS.—

5 “(A) IN GENERAL.—For purposes of para-
6 graph (1), when providing personalized invest-
7 ment advice, the best interest of a customer
8 shall be determined using pecuniary factors,
9 which, subject to applicable law, may not be
10 subordinated to or limited by non-pecuniary
11 factors, unless—

12 “(i) the customer provides informed
13 consent, whether by e-delivery or e-sign,
14 that such non-pecuniary factors be consid-
15 ered; or

16 “(ii) the personalized investment ad-
17 vice is consistent with the customer’s writ-
18 ten investment profile information.

19 “(B) DISCLOSURE OF PECUNIARY EF-
20 FECTS.—If a customer provides a broker, deal-
21 er, or investment adviser with the informed con-
22 sent to consider non-pecuniary factors described
23 under subparagraph (A), the broker, dealer, or
24 investment adviser shall provide qualitative dis-
25 closure of the potential pecuniary effects to the

1 customer of prioritizing non-pecuniary factors
2 over pecuniary factors in making investment de-
3 cisions.

4 “(C) PECUNIARY FACTOR DEFINED.—In
5 this paragraph, the term ‘pecuniary factor’
6 means a factor that a fiduciary prudently deter-
7 mines is expected to have a material effect on
8 the risk or return of an investment based on in-
9 vestment objectives, risk tolerance, and time ho-
10 rizon.”.

11 (b) RULEMAKING.—Not later than the end of the 12-
12 month period beginning on the date of enactment of this
13 Act, the Securities and Exchange Commission shall revise
14 or issue such rules as may be necessary to implement the
15 amendment made by paragraph (1).

16 (c) APPLICABILITY.—The amendment made by para-
17 graph (1) shall apply to a recommendation made by a
18 broker or dealer and investment advice provided by an in-
19 vestment adviser beginning on the date that is 12 months
20 after the date of enactment of this Act.