

**Minority Views on H.R. 5311,
“Corporate Governance Reform and Transparency Act of 2016”**

H.R. 5311, the “Corporate Governance Reform and Transparency Act of 2016,” would create an untested, inappropriate and costly regulatory framework for proxy advisory firms – or firms that provide research and voting recommendations to shareholders – under the guise of limiting conflicts of interest and improving transparency. However, rather than improve public company corporate governance, the legislation would create numerous problems that would make it more difficult for shareholders to hold company management accountable. Indeed, H.R. 5311 would only serve to limit the impartial information available to shareholders when making proxy voting decisions, make it more difficult for institutional investors to fulfill their fiduciary duty to their clients, and create barriers to entry that would stifle competition in the proxy advisory firm industry.

Many stakeholders wrote to the Committee to say as much when H.R. 5311 was being considered. This includes investors like TIAA, and their trade association representatives, including the Investment Company Institute and the Council of Institutional Investors; union pension funds representing carpenters, automobile workers and Teamsters; as well as public pension funds from the states of California, New York, Florida, Colorado, Washington, Ohio, Vermont and Oregon. Advocates representing the interests of investors likewise opposed H.R. 5311, including the Consumer Federation of America, Americans for Financial Reform, and Public Citizen.

The correspondence and testimony received by the Committee on H.R. 5311 noted numerous problems with the legislation.

First, H.R. 5311 would require that proxy advisory firms provide an opportunity for companies to comment on the editorial decisions reflected in the firms’ research before that research could be disseminated to paying clients. This mandatory pre-publication consultation with companies would essentially open up the independent research process to lobbying from special interests. This provision would be made more unworkable by the fact that the U.S. proxy season is compressed, occurring over just a few months in the spring. Further, the Minority notes that H.R. 5311 does not provide shareholders with proposals on the proxy the same opportunity for pre-review and lobbying as company management.

Second, H.R. 5311 would make it more difficult for institutional investors to fulfill their fiduciary duty to their clients. Staff Legal Bulletin No. 20 (SLB-20) from the Securities and Exchange Commission (SEC) has already provided needed clarity to investment advisors, outlining the due diligence and oversight that advisors must undertake in order to ensure that research providers and third-party voting agents are serving their clients’ best interests. H.R. 5311 would replace this clear guidance with an untested regulatory framework, which may be inconsistent with the Department of Labor’s recently finalized conflict of interest rule, Financial Industry Regulatory Authority (FINRA) rules prohibiting pre-review of research reports, as well as best practice principles adopted by the European Securities and Markets Authority and the Canadian Securities Administrators.

Finally, H.R. 5311 would create barriers to entry that would only serve to further concentrate the proxy advisory firm industry. Investors writing to the Committee have noted that the legislation would likely reduce the number of firms in the marketplace offering independent proxy advisory services, and, as a result, the remaining firm(s) in the industry may drive up the costs of their research. Alternatively, investors expressed concern that they may be left without independent research providers at all, and may instead have to spend significant amounts to develop extensive in-house research divisions.

In summary, the Minority believes that corporate governance works best when shareholders are empowered with independent, impartial information when making voting decisions on key ballot issues – from director elections to corporate boards, to Dodd-Frank’s “say on pay” votes, to countless other measures. H.R. 5311 represents a step in the wrong direction, which would leave shareholders reliant on biased information tilted towards the interests of company management.

For these reasons, the Minority opposes H.R. 5311.

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