

# Union Calendar No. 621

114<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 5311

**[Report No. 114-798]**

To improve the quality of proxy advisory firms for the protection of investors and the U.S. economy, and in the public interest, by fostering accountability, transparency, responsiveness, and competition in the proxy advisory firm industry.

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## IN THE HOUSE OF REPRESENTATIVES

MAY 24, 2016

Mr. DUFFY (for himself and Mr. CARNEY) introduced the following bill; which was referred to the Committee on Financial Services

SEPTEMBER 28, 2016

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in *italie*]

[For text of introduced bill, see copy of bill as introduced on May 24, 2016]

# **A BILL**

To improve the quality of proxy advisory firms for the protection of investors and the U.S. economy, and in the public interest, by fostering accountability, transparency, responsiveness, and competition in the proxy advisory firm industry.

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 “Corporate Governance*  
5 *Reform and Transparency Act of 2016”.*

6 **SEC. 2. DEFINITIONS.**

7        (a) *SECURITIES EXCHANGE ACT OF 1934.*—Section  
8 *3(a) of the Securities Exchange Act of 1934 (15 U.S.C.*  
9 *78c(a)) is amended by adding at the end the following new*  
10 *paragraphs:*

11            *“(81) PROXY ADVISORY FIRM.—The term ‘proxy*  
12 *advisory firm’ means any person registered under sec-*  
13 *tion 15H who is engaged in the business of providing*  
14 *proxy voting research, analysis, or recommendations*  
15 *to clients, which conduct constitutes a solicitation*  
16 *within the meaning of section 14 and the Commis-*  
17 *sion’s rules and regulations thereunder, except to the*  
18 *extent that the person is exempted by such rules and*  
19 *regulations from requirements otherwise applicable to*  
20 *persons engaged in a solicitation.*

21            *“(82) PERSON ASSOCIATED WITH A PROXY ADVI-*  
22 *SORY FIRM.—The term ‘person associated with’ a*  
23 *proxy advisory firm means any partner, officer, or*  
24 *director of a proxy advisory firm (or any person oc-*  
25 *cupying a similar status or performing similar func-*

1        *tions), any person directly or indirectly controlling,*  
2        *controlled by, or under common control with a proxy*  
3        *advisory firm, or any employee of a proxy advisory*  
4        *firm, except that persons associated with a proxy ad-*  
5        *visory firm whose functions are clerical or ministerial*  
6        *shall not be included in the meaning of such term.*  
7        *The Commission may by rules and regulations clas-*  
8        *sify, for purposes or any portion or portions of this*  
9        *Act, persons, including employees controlled by a*  
10       *proxy advisory firm.”.*

11       *(b) APPLICABLE DEFINITIONS.—As used in this Act—*

12                *(1) the term “Commission” means the Securities*  
13        *and Exchange Commission; and*

14                *(2) the term “proxy advisory firm” has the same*  
15        *meaning as in section 3(a)(81) of the Securities Ex-*  
16        *change Act of 1934, as added by this Act.*

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

18        *(a) AMENDMENT.—The Securities Exchange Act of*  
19        *1934 is amended by inserting after section 15G the fol-*  
20        *lowing new section:*

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

22                *“(a) CONDUCT PROHIBITED.—It shall be unlawful for*  
23        *a proxy advisory firm to make use of the mails or any*  
24        *means or instrumentality of interstate commerce to provide*  
25        *proxy voting research, analysis, or recommendations to any*

1 *client, unless such proxy advisory firm is registered under*  
2 *this section.*

3 “(b) *REGISTRATION PROCEDURES.*—

4 “(1) *APPLICATION FOR REGISTRATION.*—

5 “(A) *IN GENERAL.*—*A proxy advisory firm*  
6 *must file with the Commission an application*  
7 *for registration, in such form as the Commission*  
8 *shall require, by rule or regulation, and con-*  
9 *taining the information described in subpara-*  
10 *graph (B).*

11 “(B) *REQUIRED INFORMATION.*—*An appli-*  
12 *cation for registration under this section shall*  
13 *contain information regarding—*

14 “(i) *a certification that the applicant*  
15 *has adequate financial and managerial re-*  
16 *sources to consistently provide proxy advice*  
17 *based on accurate information;*

18 “(ii) *the procedures and methodologies*  
19 *that the applicant uses in developing proxy*  
20 *voting recommendations, including whether*  
21 *and how the applicant considers the size of*  
22 *a company when making proxy voting rec-*  
23 *ommendations;*

24 “(iii) *the organizational structure of*  
25 *the applicant;*

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

4           “(v) any potential or actual conflict of  
5           interest relating to the ownership structure  
6           of the applicant or the provision of proxy  
7           advisory services by the applicant, includ-  
8           ing whether the proxy advisory firm en-  
9           gages in services ancillary to the provision  
10          of proxy advisory services such as con-  
11          sulting services for corporate issuers, and if  
12          so the revenues derived therefrom;

13          “(vi) the policies and procedures in  
14          place to manage conflicts of interest under  
15          subsection (f); and

16          “(vii) any other information and docu-  
17          ments concerning the applicant and any  
18          person associated with such applicant as the  
19          Commission, by rule, may prescribe as nec-  
20          essary or appropriate in the public interest  
21          or for the protection of investors.

22          “(2) *REVIEW OF APPLICATION.*—

23                 “(A) *INITIAL DETERMINATION.*—Not later  
24                 than 90 days after the date on which the appli-  
25                 cation for registration is filed with the Commis-

1           sion under paragraph (1) (or within such longer  
2           period as to which the applicant consents) the  
3           Commission shall—

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

5                   “(ii) institute proceedings to determine  
6           whether registration should be denied.

7           “(B) CONDUCT OF PROCEEDINGS.—

8                   “(i) CONTENT.—Proceedings referred to  
9           in subparagraph (A)(ii) shall—

10                   “(I) include notice of the grounds  
11           for denial under consideration and an  
12           opportunity for hearing; and

13                   “(II) be concluded not later than  
14           120 days after the date on which the  
15           application for registration is filed  
16           with the Commission under paragraph  
17           (1).

18                   “(ii) DETERMINATION.—At the conclu-  
19           sion of such proceedings, the Commission,  
20           by order, shall grant or deny such applica-  
21           tion for registration.

22                   “(iii) EXTENSION AUTHORIZED.—The  
23           Commission may extend the time for con-  
24           clusion of such proceedings for not longer  
25           than 90 days, if it finds good cause for such

1           *extension and publishes its reasons for so*  
2           *finding, or for such longer period as to*  
3           *which the applicant consents.*

4           “(C) *GROUNDS FOR DECISION.—The Com-*  
5           *mission shall grant registration under this sub-*  
6           *section—*

7                   “(i) *if the Commission finds that the*  
8                   *requirements of this section are satisfied;*  
9                   *and*

10                   “(ii) *unless the Commission finds (in*  
11                   *which case the Commission shall deny such*  
12                   *registration) that—*

13                           “(I) *the applicant has failed to*  
14                           *certify to the Commission’s satisfaction*  
15                           *that it has adequate financial and*  
16                           *managerial resources to consistently*  
17                           *provide proxy advice based on accurate*  
18                           *information and to materially comply*  
19                           *with the procedures and methodologies*  
20                           *disclosed under paragraph (1)(B) and*  
21                           *with subsections (f) and (g); or*

22                           “(II) *if the applicant were so reg-*  
23                           *istered, its registration would be sub-*  
24                           *ject to suspension or revocation under*  
25                           *subsection (e).*

1           “(3) *PUBLIC AVAILABILITY OF INFORMATION.*—  
2           *Subject to section 24, the Commission shall make the*  
3           *information and documents submitted to the Commis-*  
4           *sion by a proxy advisory firm in its completed appli-*  
5           *cation for registration, or in any amendment sub-*  
6           *mitted under paragraph (1) or (2) of subsection (c),*  
7           *publicly available on the Commission’s website, or*  
8           *through another comparable, readily accessible means.*

9           “(c) *UPDATE OF REGISTRATION.*—

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

21           “(2) *CERTIFICATION.*—*Not later than 90 cal-*  
22           *endar days after the end of each calendar year, each*  
23           *registered proxy advisory firm shall file with the*  
24           *Commission an amendment to its registration, in*  
25           *such form as the Commission, by rule, may prescribe*

1       *as necessary or appropriate in the public interest or*  
2       *for the protection of investors—*

3               “(A) *certifying that the information and*  
4               *documents in the application for registration of*  
5               *such registered proxy advisory firm continue to*  
6               *be accurate in all material respects; and*

7               “(B) *listing any material change that oc-*  
8               *curred to such information or documents during*  
9               *the previous calendar year.*

10       “(d) *CENSURE, DENIAL, OR SUSPENSION OF REG-*  
11 *ISTRATION; NOTICE AND HEARING.—The Commission, by*  
12 *order, shall censure, place limitations on the activities,*  
13 *functions, or operations of, suspend for a period not exceed-*  
14 *ing 12 months, or revoke the registration of any registered*  
15 *proxy advisory firm if the Commission finds, on the record*  
16 *after notice and opportunity for hearing, that such censure,*  
17 *placing of limitations, suspension, or revocation is nec-*  
18 *essary for the protection of investors and in the public inter-*  
19 *est and that such registered proxy advisory firm, or any*  
20 *person associated with such an organization, whether prior*  
21 *to or subsequent to becoming so associated—*

22               “(1) *has committed or omitted any act, or is*  
23               *subject to an order or finding, enumerated in sub-*  
24               *paragraph (A), (D), (E), (H), or (G) of section*  
25               *15(b)(4), has been convicted of any offense specified in*

1 *section 15(b)(4)(B), or is enjoined from any action,*  
2 *conduct, or practice specified in subparagraph (C) of*  
3 *section 15(b)(4), during the 10-year period preceding*  
4 *the date of commencement of the proceedings under*  
5 *this subsection, or at any time thereafter;*

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

10 *“(A) any crime that is punishable by im-*  
11 *prisonment for one or more years, and that is*  
12 *not described in section 15(b)(4)(B); or*

13 *“(B) a substantially equivalent crime by a*  
14 *foreign court of competent jurisdiction;*

15 *“(3) is subject to any order of the Commission*  
16 *barring or suspending the right of the person to be as-*  
17 *sociated with a registered proxy advisory firm;*

18 *“(4) fails to furnish the certifications required*  
19 *under subsections (b)(2)(C)(i)(I) and (c)(2);*

20 *“(5) has engaged in one or more prohibited acts*  
21 *enumerated in paragraph (1); or*

22 *“(6) fails to maintain adequate financial and*  
23 *managerial resources to consistently offer advisory*  
24 *services with integrity, including by failing to comply*  
25 *with subsections (f) or (g).*

1       “(e) *TERMINATION OF REGISTRATION.*—

2               “(1) *VOLUNTARY WITHDRAWAL.*—*A registered*  
3       *proxy advisory firm may, upon such terms and con-*  
4       *ditions as the Commission may establish as necessary*  
5       *in the public interest or for the protection of investors,*  
6       *which terms and conditions shall include at a min-*  
7       *imum that the registered proxy advisory firm will no*  
8       *longer conduct such activities as to bring it within*  
9       *the definition of proxy advisory firm in section*  
10       *3(a)(81) of the Securities Exchange Act of 1934, with-*  
11       *draw from registration by filing a written notice of*  
12       *withdrawal to the Commission.*

13               “(2) *COMMISSION AUTHORITY.*—*In addition to*  
14       *any other authority of the Commission under this*  
15       *title, if the Commission finds that a registered proxy*  
16       *advisory firm is no longer in existence or has ceased*  
17       *to do business as a proxy advisory firm, the Commis-*  
18       *sion, by order, shall cancel the registration under this*  
19       *section of such registered proxy advisory firm.*

20       “(f) *MANAGEMENT OF CONFLICTS OF INTEREST.*—

21               “(1) *ORGANIZATION POLICIES AND PROCE-*  
22       *DURES.*—*Each registered proxy advisory firm shall*  
23       *establish, maintain, and enforce written policies and*  
24       *procedures reasonably designed, taking into consider-*  
25       *ation the nature of the business of such registered*

1 *proxy advisory firm and associated persons, to ad-*  
2 *dress and manage any conflicts of interest that can*  
3 *arise from such business.*

4 “(2) *COMMISSION AUTHORITY.—The Commission*  
5 *shall issue final rules to prohibit, or require the man-*  
6 *agement and disclosure of, any conflicts of interest re-*  
7 *lating to the offering of proxy advisory services by a*  
8 *registered proxy advisory firm, including, without*  
9 *limitation, conflicts of interest relating to—*

10 “(A) *the manner in which a registered*  
11 *proxy advisory firm is compensated by the cli-*  
12 *ent, or any affiliate of the client, for providing*  
13 *proxy advisory services;*

14 “(B) *the provision of consulting, advisory,*  
15 *or other services by a registered proxy advisory*  
16 *firm, or any person associated with such reg-*  
17 *istered proxy advisory firm, to the client;*

18 “(C) *business relationships, ownership in-*  
19 *terests, or any other financial or personal inter-*  
20 *ests between a registered proxy advisory firm, or*  
21 *any person associated with such registered proxy*  
22 *advisory firm, and any client, or any affiliate of*  
23 *such client;*

24 “(D) *transparency around the formulation*  
25 *of proxy voting policies;*

1           “(E) the execution of proxy votes if such  
2           votes are based upon recommendations made by  
3           the proxy advisory firm in which someone other  
4           than the issuer is a proponent;

5           “(F) issuing recommendations where proxy  
6           advisory firms provide advisory services to a  
7           company; and

8           “(G) any other potential conflict of interest,  
9           as the Commission deems necessary or appro-  
10          priate in the public interest or for the protection  
11          of investors.

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

14           “(1) *IN GENERAL.—*Each registered proxy advi-  
15          sory firm shall have staff sufficient to produce proxy  
16          voting recommendations that are based on accurate  
17          and current information. Each registered proxy advi-  
18          sory firm shall detail procedures sufficient to permit  
19          companies receiving proxy advisory firm rec-  
20          ommendations access in a reasonable time to the draft  
21          recommendations, with an opportunity to provide  
22          meaningful comment thereon, including the oppor-  
23          tunity to present details to the person responsible for  
24          developing the recommendation in person or tele-  
25          phonically. Each registered proxy advisory firm shall

1        *employ an ombudsman to receive complaints about*  
2        *the accuracy of voting information used in making*  
3        *recommendations from the subjects of the proxy advi-*  
4        *sory firm’s voting recommendations, and shall resolve*  
5        *those complaints in a timely fashion and in any*  
6        *event prior to voting on the matter to which the rec-*  
7        *ommendation relates.*

8                *“(2) DRAFT RECOMMENDATIONS DEFINED.—For*  
9        *purposes of this subsection, the term ‘draft rec-*  
10        *ommendations’—*

11                *“(A) means the overall conclusions of proxy*  
12        *voting recommendations prepared for the clients*  
13        *of a proxy advisory firm, including any public*  
14        *data cited therein, any company information or*  
15        *substantive analysis impacting the recommenda-*  
16        *tion, and the specific voting recommendations on*  
17        *individual proxy ballot issues; and*

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

20                *“(h) DESIGNATION OF COMPLIANCE OFFICER.—Each*  
21        *registered proxy advisory firm shall designate an indi-*  
22        *vidual responsible for administering the policies and proce-*  
23        *dures that are required to be established pursuant to sub-*  
24        *sections (f) and (g), and for ensuring compliance with the*  
25        *securities laws and the rules and regulations thereunder,*

1 *including those promulgated by the Commission pursuant*  
2 *to this section.*

3 “(i) *PROHIBITED CONDUCT.*—

4 “(1) *PROHIBITED ACTS AND PRACTICES.*—*The*  
5 *Commission shall issue final rules to prohibit any act*  
6 *or practice relating to the offering of proxy advisory*  
7 *services by a registered proxy advisory firm that the*  
8 *Commission determines to be unfair, coercive, or abu-*  
9 *sive, including any act or practice relating to—*

10 “(A) *conditioning a voting recommendation*  
11 *or other proxy advisory firm recommendation on*  
12 *the purchase by an issuer or an affiliate thereof*  
13 *of other services or products, of the registered*  
14 *proxy advisory firm or any person associated*  
15 *with such registered proxy advisory firm; and*

16 “(B) *modifying a voting recommendation or*  
17 *otherwise departing from its adopted systematic*  
18 *procedures and methodologies in the provision of*  
19 *proxy advisory services, based on whether an*  
20 *issuer, or affiliate thereof, subscribes or will sub-*  
21 *scribe to other services or product of the reg-*  
22 *istered proxy advisory firm or any person asso-*  
23 *ciated with such organization.*

24 “(2) *RULE OF CONSTRUCTION.*—*Nothing in*  
25 *paragraph (1), or in any rules or regulations adopted*

1        *thereunder, may be construed to modify, impair, or*  
2        *supersede the operation of any of the antitrust laws*  
3        *(as defined in the first section of the Clayton Act, ex-*  
4        *cept that such term includes section 5 of the Federal*  
5        *Trade Commission Act, to the extent that such section*  
6        *5 applies to unfair methods of competition).*

7        “(j) *STATEMENTS OF FINANCIAL CONDITION.—Each*  
8        *registered proxy advisory firm shall, on a confidential*  
9        *basis, file with the Commission, at intervals determined by*  
10       *the Commission, such financial statements, certified (if re-*  
11       *quired by the rules or regulations of the Commission) by*  
12       *an independent public auditor, and information concerning*  
13       *its financial condition, as the Commission, by rule, may*  
14       *prescribe as necessary or appropriate in the public interest*  
15       *or for the protection of investors.*

16       “(k) *ANNUAL REPORT.—Each registered proxy advi-*  
17       *sory firm shall, at the beginning of each fiscal year of such*  
18       *firm, report to the Commission on the number of share-*  
19       *holder proposals its staff reviewed in the prior fiscal year,*  
20       *the number of recommendations made in the prior fiscal*  
21       *year, the number of staff who reviewed and made rec-*  
22       *ommendations on such proposals in the prior fiscal year,*  
23       *and the number of recommendations made in the prior fis-*  
24       *cal year where the proponent of such recommendation was*  
25       *a client of or received services from the proxy advisory firm.*

1       “(l) *TRANSPARENT POLICIES.*—Each registered proxy  
2 advisory firm shall file with the Commission and make  
3 publicly available its methodology for the formulation of  
4 proxy voting policies and voting recommendations.

5       “(m) *RULES OF CONSTRUCTION.*—

6               “(1) *NO WAIVER OF RIGHTS, PRIVILEGES, OR DE-*  
7 *FENSES.*—Registration under and compliance with  
8 this section does not constitute a waiver of, or other-  
9 wise diminish, any right, privilege, or defense that a  
10 registered proxy advisory firm may otherwise have  
11 under any provision of State or Federal law, includ-  
12 ing any rule, regulation, or order thereunder.

13               “(2) *NO PRIVATE RIGHT OF ACTION.*—Nothing in  
14 this section may be construed as creating any private  
15 right of action, and no report filed by a registered  
16 proxy advisory firm in accordance with this section  
17 or section 17 shall create a private right of action  
18 under section 18 or any other provision of law.

19       “(n) *REGULATIONS.*—

20               “(1) *NEW PROVISIONS.*—Such rules and regula-  
21 tions as are required by this section or are otherwise  
22 necessary to carry out this section, including the ap-  
23 plication form required under subsection (a)—

1           “(A) shall be issued by the Commission, not  
2 later than 180 days after the date of enactment  
3 of this section; and

4           “(B) shall become effective not later than 1  
5 year after the date of enactment of this section.

6           “(2) *REVIEW OF EXISTING REGULATIONS.*—Not  
7 later than 270 days after the date of enactment of this  
8 section, the Commission shall—

9           “(A) review its existing rules and regula-  
10 tions which affect the operations of proxy advi-  
11 sory firms;

12           “(B) amend or revise such rules and regula-  
13 tions in accordance with the purposes of this sec-  
14 tion, and issue such guidance, as the Commis-  
15 sion may prescribe as necessary or appropriate  
16 in the public interest or for the protection of in-  
17 vestors; and

18           “(C) direct Commission staff to withdraw  
19 the Egan Jones Proxy Services (May 27, 2004)  
20 and Institutional Shareholder Services, Inc.  
21 (September 15, 2004) no-action letters.

22           “(o) *APPLICABILITY.*—This section, other than sub-  
23 section (n), which shall apply on the date of enactment of  
24 this section, shall apply on the earlier of—

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

3           “(2) 270 days after the date of enactment of this  
4           *section.*”.

5           **(b) CONFORMING AMENDMENT.**—Section 17(a)(1) of  
6           *the Securities Exchange Act of 1934 (15 U.S.C. 78q(a)(1))*  
7           *is amended by inserting “proxy advisory firm,” after “na-*  
8           *tionally recognized statistical rating organization,”.*

9           **SEC. 4. COMMISSION ANNUAL REPORT.**

10           *The Commission shall make an annual report publicly*  
11           *available on the Commission’s Internet website. Such report*  
12           *shall, with respect to the year to which the report relates—*

13                   (1) *identify applicants for registration under*  
14                   *section 15H of the Securities Exchange Act of 1934,*  
15                   *as added by this Act;*

16                   (2) *specify the number of and actions taken on*  
17                   *such applications;*

18                   (3) *specify the views of the Commission on the*  
19                   *state of competition, transparency, policies and meth-*  
20                   *odologies, and conflicts of interest among proxy advi-*  
21                   *sory firms;*

22                   (4) *include the determination of the Commission*  
23                   *with regards to—*

24                           (A) *the quality of proxy advisory services*  
25                           *issued by proxy advisory firms;*

1                   (B) the financial markets;

2                   (C) competition among proxy advisory  
3 firms;

4                   (D) the incidence of undisclosed conflicts of  
5 interest by proxy advisory firms;

6                   (E) the process for registering as a proxy  
7 advisory firm; and

8                   (F) such other matters relevant to the im-  
9 plementation of this Act and the amendments  
10 made by this Act, as the Commission determines  
11 necessary to bring to the attention of the Con-  
12 gress;

13                   (5) identify problems, if any, that have resulted  
14 from the implementation of this Act and the amend-  
15 ments made by this Act; and

16                   (6) recommend solutions, including any legisla-  
17 tive or regulatory solutions, to any problems identi-  
18 fied under paragraphs (4) and (5).

Union Calendar No. 621

114<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

**H. R. 5311**

[Report No. 114-798]

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## **A BILL**

To improve the quality of proxy advisory firms for the protection of investors and the U.S. economy, and in the public interest, by fostering accountability, transparency, responsiveness, and competition in the proxy advisory firm industry.

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SEPTEMBER 28, 2016

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed