

115TH CONGRESS  
1ST SESSION

# H. R. 4015

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

OCTOBER 11, 2017

Mr. DUFFY introduced the following bill; which was referred to the Committee on Financial Services

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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.

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 2017”.

1 **SEC. 2. DEFINITIONS.**

2 (a) SECURITIES EXCHANGE ACT OF 1934.—Section  
3 3(a) of the Securities Exchange Act of 1934 (15 U.S.C.  
4 78c(a)) is amended by adding at the end the following new  
5 paragraphs:

6 “(81) PROXY ADVISORY FIRM.—The term  
7 ‘proxy advisory firm’ means any person who is pri-  
8 marily engaged in the business of providing proxy  
9 voting research, analysis, ratings, or recommenda-  
10 tions to clients, which conduct constitutes a sollicita-  
11 tion within the meaning of section 14 and the Com-  
12 mission’s rules and regulations thereunder, except to  
13 the extent that the person is exempted by such rules  
14 and regulations from requirements otherwise appli-  
15 cable to persons engaged in a solicitation.

16 “(82) PERSON ASSOCIATED WITH A PROXY AD-  
17 VISORY FIRM.—The term ‘person associated with’ a  
18 proxy advisory firm means any partner, officer, or  
19 director of a proxy advisory firm (or any person oc-  
20 cupying a similar status or performing similar func-  
21 tions), any person directly or indirectly controlling,  
22 controlled by, or under common control with a proxy  
23 advisory firm, or any employee of a proxy advisory  
24 firm, except that persons associated with a proxy ad-  
25 visory firm whose functions are clerical or ministe-  
26 rial shall not be included in the meaning of such

1 term. The Commission may by rules and regulations  
2 classify, for purposes or any portion or portions of  
3 this Act, persons, including employees controlled by  
4 a proxy advisory firm.”.

5 (b) APPLICABLE DEFINITIONS.—As used in this  
6 Act—

7 (1) the term “Commission” means the Securi-  
8 ties and Exchange Commission; and

9 (2) the term “proxy advisory firm” has the  
10 same meaning as in section 3(a)(81) of the Securi-  
11 ties Exchange Act of 1934, as added by this Act.

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

13 (a) AMENDMENT.—The Securities Exchange Act of  
14 1934 is amended by inserting after section 15G the fol-  
15 lowing new section:

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

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

23 “(b) REGISTRATION PROCEDURES.—

24 “(1) APPLICATION FOR REGISTRATION.—

1           “(A) IN GENERAL.—A proxy advisory firm  
2 must file with the Commission an application  
3 for registration, in such form as the Commis-  
4 sion shall require, by rule or regulation, and  
5 containing the information described in sub-  
6 paragraph (B).

7           “(B) REQUIRED INFORMATION.—An appli-  
8 cation for registration under this section shall  
9 contain information regarding—

10           “(i) a certification that the applicant  
11 is able to consistently provide proxy advice  
12 based on accurate information;

13           “(ii) the procedures and methodolo-  
14 gies that the applicant uses in developing  
15 proxy voting recommendations, including  
16 whether and how the applicant considers  
17 the size of a company when making proxy  
18 voting recommendations;

19           “(iii) the organizational structure of  
20 the applicant;

21           “(iv) whether or not the applicant has  
22 in effect a code of ethics, and if not, the  
23 reasons therefor;

24           “(v) any potential or actual conflict of  
25 interest relating to the ownership structure

1 of the applicant or the provision of proxy  
2 advisory services by the applicant, includ-  
3 ing whether the proxy advisory firm en-  
4 gages in services ancillary to the provision  
5 of proxy advisory services such as con-  
6 sulting services for corporate issuers, and  
7 if so the revenues derived therefrom;

8 “(vi) the policies and procedures in  
9 place to manage conflicts of interest under  
10 subsection (f); and

11 “(vii) any other information and docu-  
12 ments concerning the applicant and any  
13 person associated with such applicant as  
14 the Commission, by rule, may prescribe as  
15 necessary or appropriate in the public in-  
16 terest or for the protection of investors.

17 “(2) REVIEW OF APPLICATION.—

18 “(A) INITIAL DETERMINATION.—Not later  
19 than 90 days after the date on which the appli-  
20 cation for registration is filed with the Commis-  
21 sion under paragraph (1) (or within such longer  
22 period as to which the applicant consents) the  
23 Commission shall—

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

1           “(ii) institute proceedings to deter-  
2           mine whether registration should be de-  
3           nied.

4           “(B) CONDUCT OF PROCEEDINGS.—

5           “(i) CONTENT.—Proceedings referred  
6           to in subparagraph (A)(ii) shall—

7                   “(I) include notice of the grounds  
8                   for denial under consideration and an  
9                   opportunity for hearing; and

10                   “(II) be concluded not later than  
11                   120 days after the date on which the  
12                   application for registration is filed  
13                   with the Commission under paragraph  
14                   (1).

15           “(ii) DETERMINATION.—At the con-  
16           clusion of such proceedings, the Commis-  
17           sion, by order, shall grant or deny such ap-  
18           plication for registration.

19           “(iii) EXTENSION AUTHORIZED.—The  
20           Commission may extend the time for con-  
21           clusion of such proceedings for not longer  
22           than 90 days, if it finds good cause for  
23           such extension and publishes its reasons  
24           for so finding, or for such longer period as  
25           to which the applicant consents.

1           “(C) GROUNDS FOR DECISION.—The Com-  
2 mission shall grant registration under this sub-  
3 section—

4           “(i) if the Commission finds that the  
5 requirements of this section are satisfied;  
6 and

7           “(ii) unless the Commission finds (in  
8 which case the Commission shall deny such  
9 registration) that—

10           “(I) the applicant has failed to  
11 certify to the Commission’s satisfac-  
12 tion that it is able to consistently pro-  
13 vide proxy advice based on accurate  
14 information and to materially comply  
15 with the procedures and methodolo-  
16 gies disclosed under paragraph (1)(B)  
17 and with subsections (f) and (g); or

18           “(II) if the applicant were so reg-  
19 istered, its registration would be sub-  
20 ject to suspension or revocation under  
21 subsection (e).

22           “(3) PUBLIC AVAILABILITY OF INFORMATION.—  
23 Subject to section 24, the Commission shall make  
24 the information and documents submitted to the  
25 Commission by a proxy advisory firm in its com-

1 pleted application for registration, or in any amend-  
2 ment submitted under paragraph (1) or (2) of sub-  
3 section (c), publicly available on the Commission’s  
4 website, or through another comparable, readily ac-  
5 cessible means.

6 “(c) UPDATE OF REGISTRATION.—

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

18 “(2) CERTIFICATION.—Not later than 90 cal-  
19 endar days after the end of each calendar year, each  
20 registered proxy advisory firm shall file with the  
21 Commission an amendment to its registration, in  
22 such form as the Commission, by rule, may prescribe  
23 as necessary or appropriate in the public interest or  
24 for the protection of investors—

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

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

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

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

1 tion, conduct, or practice specified in subparagraph  
2 (C) of section 15(b)(4), during the 10-year period  
3 preceding the date of commencement of the pro-  
4 ceedings under this subsection, or at any time there-  
5 after;

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  
17 associated with a registered proxy advisory firm;

18 “(4) fails to furnish the certifications required  
19 under subsections (b)(2)(C)(ii)(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 nec-  
5 essary in the public interest or for the protection of  
6 investors, which terms and conditions shall include  
7 at a minimum that the registered proxy advisory  
8 firm will no longer conduct such activities as to  
9 bring it within the definition of proxy advisory firm  
10 in section 3(a)(81) of the Securities Exchange Act  
11 of 1934, withdraw from registration by filing a writ-  
12 ten notice of 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 Com-  
18 mission, by order, shall cancel the registration under  
19 this 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 consid-  
25 eration 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 Commis-  
5 sion shall issue final rules to prohibit, or require the  
6 management and disclosure of, any conflicts of inter-  
7 est relating to the offering of proxy advisory services  
8 by a registered proxy advisory firm, including, with-  
9 out 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,  
21 or any person associated with such registered  
22 proxy advisory firm, and any client, or any af-  
23 filiate of 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 inter-  
9           est, as the Commission deems necessary or ap-  
10          propriate in the public interest or for the pro-  
11          tection 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  
21                 draft recommendations, with an opportunity to pro-  
22                 vide meaningful comment thereon, including the op-  
23                 portunity to present details to the person responsible  
24                 for 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 ad-  
4 visory firm’s voting recommendations, and shall seek  
5 to resolve those complaints in a timely fashion and  
6 in any event prior to voting on the matter to which  
7 the recommendation relates. If the ombudsman is  
8 unable to resolve such complaints prior to voting on  
9 the matter, the proxy advisory firm shall include in  
10 its final report to its clients a statement from the  
11 company detailing its complaints, if requested in  
12 writing by the company.

13 “(2) REASONABLE TIME DEFINED.—For pur-  
14 poses of this subsection, the term ‘reasonable  
15 time’—

16 “(A) means not less than 3 business days  
17 unless otherwise defined through a final rule  
18 issued by the Commission; and

19 “(B) shall not otherwise interfere with a  
20 proxy advisory firm’s ability to provide its cli-  
21 ents with timely access to accurate proxy voting  
22 research, analysis, or recommendations.

23 “(3) DRAFT RECOMMENDATIONS DEFINED.—  
24 For purposes of this subsection, the term ‘draft rec-  
25 ommendations’—

1           “(A) means the overall conclusions of  
2 proxy voting recommendations prepared for the  
3 clients of a proxy advisory firm, including any  
4 public data cited therein, any company informa-  
5 tion or substantive analysis impacting the rec-  
6 ommendation, and the specific voting rec-  
7 ommendations on individual proxy ballot issues;  
8 and

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

11       “(h) DESIGNATION OF COMPLIANCE OFFICER.—

12 Each registered proxy advisory firm shall designate an in-  
13 dividual responsible for administering the policies and pro-  
14 cedures that are required to be established pursuant to  
15 subsections (f) and (g), and for ensuring compliance with  
16 the securities laws and the rules and regulations there-  
17 under, including those promulgated by the Commission  
18 pursuant to this section.

19       “(i) PROHIBITED CONDUCT.—

20           “(1) PROHIBITED ACTS AND PRACTICES.—The  
21 Commission shall issue final rules to prohibit any  
22 act or practice relating to the offering of proxy advi-  
23 sory services by a registered proxy advisory firm  
24 that the Commission determines to be unfair, coer-

1 cive, or abusive, including any act or practice relat-  
2 ing to—

3 “(A) conditioning a voting recommendation  
4 or other proxy advisory firm recommendation  
5 on the purchase by an issuer or an affiliate  
6 thereof of other services or products, of the reg-  
7 istered proxy advisory firm or any person asso-  
8 ciated with such registered proxy advisory firm;  
9 and

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

18 “(2) RULE OF CONSTRUCTION.—Nothing in  
19 paragraph (1), or in any rules or regulations adopt-  
20 ed thereunder, may be construed to modify, impair,  
21 or supersede the operation of any of the antitrust  
22 laws (as defined in the first section of the Clayton  
23 Act, except that such term includes section 5 of the  
24 Federal Trade Commission Act, to the extent that

1 such section 5 applies to unfair methods of competi-  
2 tion).

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

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

23 “(l) TRANSPARENT POLICIES.—Each registered  
24 proxy advisory firm shall file with the Commission and

1 make publicly available its methodology for the formula-  
2 tion of proxy voting policies and voting recommendations.

3 “(m) RULES OF CONSTRUCTION.—

4 “(1) NO WAIVER OF RIGHTS, PRIVILEGES, OR  
5 DEFENSES.—Registration under and compliance  
6 with this section does not constitute a waiver of, or  
7 otherwise diminish, any right, privilege, or defense  
8 that a registered proxy advisory firm may otherwise  
9 have under any provision of State or Federal law,  
10 including any rule, regulation, or order thereunder.

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

18 “(n) REGULATIONS.—

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

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

1           “(B) shall become effective not later than  
2           1 year after the date of enactment of this sec-  
3           tion.

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

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

10                   “(B) amend or revise such rules and regu-  
11                   lations in accordance with the purposes of this  
12                   section, and issue such guidance, as the Com-  
13                   mission may prescribe as necessary or appro-  
14                   priate in the public interest or for the protec-  
15                   tion of investors; and

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

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

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

1           “(2) 270 days after the date of enactment of  
2 this section.”.

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

8 **SEC. 4. COMMISSION ANNUAL REPORT.**

9           The Commission shall make an annual report publicly  
10 available on the Commission’s Internet website. Such re-  
11 port shall, with respect to the year to which the report  
12 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  
20 methodologies, and conflicts of interest among proxy  
21 advisory firms;

22           (4) include the determination of the Commis-  
23 sion 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  
5 of 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 deter-  
11 mines necessary to bring to the attention of the  
12 Congress;

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).

○