

House Pursues Regulation of Proxy Advisory Firms (Again)

A bill that passed the House this month would put more regulations on proxy advisory firms like ISS and Glass Lewis. However, the fate of the bill in the Senate is less certain.

Many of our clients have asked recently about the purpose and impact of proposed legislation in the United States (US) House of Representatives that would create a regulatory regime for proxy advisory firms such as Institutional Shareholder Services (ISS) and Glass Lewis. The Corporate Governance Reform and Transparency Act of 2017 passed the House on December 20, 2017, by a 238-182 vote. However, what the US Senate will do is presently unclear.

This bill was reintroduced this fall by Rep. Sean Duffy (R-WI) and is similar to the Proxy Advisory Firm Reform Act of 2016. (Read our summary of that bill [here](#).)

The most significant parts of the bill include:

- **Registration.** Proxy advisory firms will be required to file an application for registration with the Securities and Exchange Commission (SEC), certifying that the firm has adequate financial and managerial resources to consistently provide proxy advice based on accurate information, identifying any actual or potential conflicts of interest (including written policies and procedures in place to manage such actual or potential conflicts), and identifying the procedures and methodologies used in developing proxy voting recommendations, including whether and how the firm evaluates the size of a company when making recommendations.
- **Censure, Denial, or Suspension of Registration.** The SEC may censure, suspend, place limitations on, or revoke the registration of a proxy advisory firm if such action is “necessary for the protection of investors and in the public interest.” Specific grounds for these disciplinary actions are listed in the bill (click [here](#) to see the full text of the bill).
- **Management of Conflicts of Interest.** Each proxy advisory firm will be required to establish, maintain and enforce written policies and procedures reasonably designed to “address and manage any conflicts of interest that can arise from such business.” The SEC is granted broad authority to prohibit, or otherwise regulate specific conflicts of interest, including the offering of consulting services to an issuer.
- **Draft Reports.** Proxy advisory firms will be required to develop procedures that allow companies access to draft ballot recommendations, with an opportunity for companies provide comment to the firms, including the opportunity to present details to the person responsible for developing the recommendation.

- **Ombudsman.** Each proxy advisory firm will be required to employ an ombudsman to receive complaints about the accuracy of voting information used in making recommendations from the subjects of the proxy firm's voting recommendations. The ombudsman is required to resolve complaints in a timely fashion and "in any event prior to the voting on the matter to which the recommendation relates."

We will continue to monitor developments and update our clients on the status of similar action in the Senate. If you have any questions about this issue and want to speak with a member of our consulting team, please write to consulting@radford.com.

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