

September __, 2016

The Honorable Richard C. Shelby
Chairman
Committee on Banking, Housing, and Urban Affairs
United States Senate
Washington, DC 20515

The Honorable Sherrod Brown
Ranking Member
Committee on Banking, Housing, and Urban Affairs
United States Senate
Washington, DC 20515

Re: Proposed Legislation Relating to Proxy Advisory Firms

Dear Mr. Chairman and Ranking Member Brown:

I am writing on behalf of the Council of Institutional Investors (CII), a nonpartisan, nonprofit association of employee benefit plans, foundations and endowments with combined assets under management exceeding \$3 trillion. Our member funds include major long-term shareowners with a duty to protect the retirement savings of millions of workers and their families. Our associate members include a range of asset managers with more than \$20 trillion in assets under management.¹ This letter has been co-signed by __ CII members and other institutional investors.

We are writing to share our concerns about proposed legislation currently under consideration in the U.S. House of Representatives regarding proxy advisory firms. H.R. 5311, the Corporate Governance Reform and Transparency Act,² aims to tighten regulation of proxy advisory firms to the detriment of pension funds and other institutional investors.

¹ For more information about the Council of Institutional Investors (Council or CII) and our members, please visit the Council's website at http://www.cii.org/about_us. We note that the two largest U.S. proxy advisory firms, Glass Lewis & Co. and Institutional Shareholder Services Inc. (ISS), are non-voting associate members of CII, paying an aggregate of \$24,000 in annual dues—less than 1.0 percent of CII's membership revenues. In addition, CII is a client of ISS, paying approximately \$19,600 annually to ISS for its proxy research.

² On June 16, 2016, the Committee on Financial Services of the United States House of Representatives approved H.R. 5311, as amended, by a vote of 41 to 18. All actions, Congress.Gov (last viewed Aug. 4, 2016), available at <https://www.congress.gov/bill/114th-congress/house-bill/5311/all-actions?q=%7B%22search%22%3A%5B%22H.R.+5311%22%5D%7D&resultIndex=1&overview=closed#tabs>. On June 23, 2016, Committee on Financial Services Chairman Jeb Hensarling issued a Discussion Draft of a bill that included the provisions of H.R. 5311. §§ 1081-83, the Financial CHOICE Act of 2016, available at http://financialservices.house.gov/uploadedfiles/choice_act_discussion_draft.pdf.

The proposed legislation appears to be based on the false premise that proxy advisory firms dictate proxy voting results. Many pension funds and other institutional investors contract with proxy advisory firms to obtain and review their research. But most large holders vote according to their own guidelines.

The independence that shareowners exercise when voting their proxies is evident in the statistics related to “say on pay” proposals and director elections. Although Institutional Shareholder Services Inc. (ISS), the largest proxy advisory firm, recommended against these proposals at 12 percent of Russell 3000 companies in 2016, only 1.7 percent of those proposals received less than majority support from shareowners.³ Similarly, although ISS opposed the election of 6.5 percent of director-nominees during the most recent proxy season, just 0.2 percent failed to obtain majority support.⁴ We are unaware of any compelling empirical evidence indicating that pension funds and other institutional investors are outsourcing their voting responsibilities to proxy advisory firms.

We believe the proposed legislation would weaken corporate governance in the United States; undercut proxy advisory firms’ ability to uphold their fiduciary obligation to their investor clients; and reorient any surviving firms to serve companies rather than investors. The U.S. system of corporate governance relies on the accountability of boards of directors to shareowners, and proxy voting is a critical means by which shareowners hold boards to account.

Proxy advisory firms, while imperfect, play an important and useful role in enabling effective and cost-efficient independent research, analysis and informed proxy voting advice. In our view, the proposed legislation would undermine proxy advisory firms’ ability to provide a valuable service to pension funds and other institutional investors.

We are particularly concerned that, if enacted, H.R. 5311 would:

- **Require that proxy advisory firms (1) provide companies advance copies of their recommendations and most elements of the research informing their reports, (2) give companies an opportunity to review and lobby the firms to change their recommendations, and (3) establish a heavy-handed “ombudsman” construct to address issues that companies raise.**

This right of pre-review would give companies substantial influence over proxy advisory firms’ reports, potentially undermining the objectivity of the firms’ recommendations. On a practical level, this right of review would delay pension funds and other institutional investor’s receipt of the reports and recommendations for which they have paid.

³ Semler Brossy, 2016 Say on Pay Results 2-3 (July 27, 2016), available at <http://www.semlebrossy.com/wp-content/uploads/SBCG-2016-SOP-Report-07-27-2016.pdf>.

⁴ ISS Voting Analytics Database (last viewed on Aug. 4, 2016 & on file with CII).

The requirement that the proxy advisory firms resolve company complaints prior to the voting on the matter would create an incentive for companies subject to criticism to delay publication of reports as long as possible. Pension funds and other institutional investors would have less time to analyze the reports and recommendations in the context of their own customized proxy voting guidelines to arrive at informed voting decisions. Time already is tight, particularly in the highly concentrated spring “proxy season,” due to the limited period between company publication of the annual meeting proxy statement and annual meeting dates.

Moreover, the proposed legislation does not appear to contemplate a parallel requirement that dissidents in a proxy fight, or proponents of shareowner proposals, also receive the recommendations and research in advance. This would violate an underlying tenet of U.S. corporate governance that where matters are contested in corporate elections, management and dissident shareowners should operate on an even playing field.

- **Require the Securities and Exchange Commission (SEC) to assess the adequacy of proxy advisory firms’ “financial and managerial resources.”**

The entities that are in the best position to make these types of assessments are the pension funds and other institutional investors that choose to purchase and use the proxy advisory firms’ reports and recommendations. In 2014, the SEC staff issued guidance reaffirming that investment advisors have a duty to maintain sufficient oversight of proxy advisory firms and other third-party voting agents.⁵ We publicly supported that guidance.⁶ We are unaware of any compelling empirical evidence indicating that the guidance is not being followed or that the burdensome federal regulatory scheme contemplated by the proposed legislation is needed.

- **Create costs for institutional investors with no clear benefits.**

The proposed legislation would appear to result in higher costs for pension plans and other institutional investors – potentially much higher costs if investors seek to maintain current levels of scrutiny and due diligence around proxy voting. Moreover, the proposed legislation is highly likely to limit competition, by reducing the current number of proxy advisory firms in the U.S. market and imposing serious barriers to entry for potential new firms. This would also drive up costs to investors. Given these economic impacts, we are

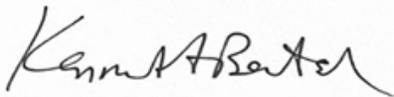
⁵ Staff Legal Bulletin No. 20 at 3 (June 13, 2014) (“it is the staff’s position that an investment adviser that receives voting recommendations from a proxy advisory firm should ascertain that the proxy advisory firm has the capacity and competency to adequately analyze proxy issues, which includes the ability to make voting recommendations based on materially accurate information”), available at <https://www.sec.gov/interps/legal/cfslb20.htm>.

⁶ Letter from Jeff Mahoney, General Counsel, CII, to The Honorable Scott Garrett, Chairman, Subcommittee on Capital Markets and Government Sponsored Enterprises, Committee on Financial Services et al. 4 (July 23, 2014), available at <https://www.sec.gov/interps/legal/cfslb20.htm>.

troubled that there appears to be no cost estimate on the provisions of this proposed legislation.⁷

Thank you for considering these views. We would be very happy to discuss our perspective in more detail. I am available at ken@cii.org, or by telephone at (202) 822-0800. You may also contact our General Counsel Jeff Mahoney at jeff@cii.org, or by telephone at the same number.

Sincerely,



Kenneth A. Bertsch
Executive Director, Council of Institutional Investors

CC: The Honorable Michael D. Crapo, Chairman, Subcommittee on Securities, Insurance, and Investment, Committee on Banking, Housing, and Urban Affairs
The Honorable Mark Warner, Ranking Member, Subcommittee on Securities, Insurance and Investment, Committee on Banking, Housing, and Urban Affairs
The Honorable Bob Corker, Committee on Banking, Housing, and Urban Affairs
The Honorable David Vitter, Committee on Banking, Housing, and Urban Affairs
The Honorable Patrick J. Toomey, Committee on Banking, Housing, and Urban Affairs
The Honorable Mark S. Kirk, Committee on Banking, Housing, and Urban Affairs
The Honorable Dean Heller, Committee on Banking, Housing, and Urban Affairs
The Honorable Tim Scott, Committee on Banking, Housing, and Urban Affairs
The Honorable Ben Sasse, Committee on Banking, Housing, and Urban Affairs
The Honorable Tom Cotton, Committee on Banking, Housing, and Urban Affairs
The Honorable Michael Rounds, Committee on Banking, Housing, and Urban Affairs
The Honorable Jerry Moran, Committee on Banking, Housing, and Urban Affairs
The Honorable Jack Reed, Committee on Banking, Housing, and Urban Affairs
The Honorable Charles E. Schumer, Committee on Banking, Housing, and Urban Affairs
The Honorable Robert Menendez, Committee on Banking, Housing, and Urban Affairs
The Honorable John Tester, Committee on Banking, Housing, and Urban Affairs
The Honorable Jeff Merkley, Committee on Banking, Housing, and Urban Affairs
The Honorable Elizabeth Warren, Committee on Banking, Housing, and Urban Affairs

⁷ To date, the Congressional Budget Office has not produced a cost estimate for H.R. 5311. More on This Bill, Congress.Gov (last viewed Aug. 5, 2016).

The Honorable Heidi Heitkamp, Committee on Banking, Housing, and Urban Affairs

The Honorable Paul D. Ryan, Speaker, United States House of Representatives

The Honorable Nancy Pelosi, Minority Leader, United States House of Representatives

The Honorable Jeb Hensarling, Chairman, Committee on Financial Services, United States House of Representatives

The Honorable Maxine Waters, Ranking Member, Committee on Financial Services, United States House of Representatives

The Honorable Sean P. Duffy, Committee on Financial Services, United States House of Representatives

The Honorable John C. Carney, Committee on Financial Services, United States House of Representatives

EMBARGOED