



# Executive ALERT

Updates on issues vital to the practice of investor relations

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## House Committee Approves Financial Regulatory Legislation

On May 4, the U.S. House Financial Services Committee voted 34-26 to approve the Financial CHOICE Act of 2017, a wide-ranging bill that seeks to repeal significant portions of the Dodd-Frank Act. While most of the CHOICE Act relates to banks and the financial sector, the 591-page bill includes various sections that would impact the disclosure or corporate governance practices of most public companies.

The legislation, which was introduced by Committee Chair Jeb Hensarling (R-Texas), seeks to repeal Dodd-Frank mandates that “inhibit capital formation” while modernizing “the corporate governance system to better promote value creation for public companies and their shareholders,” according to a committee summary of the bill.

The CHOICE Act was supported by all the Republicans on the Financial Services Committee and could pass the House within the next month. Committee Democrats, who all opposed the bill, offered various amendments, but those measures were defeated on party-line votes. However, the legislation appears to have little chance of advancing in the U.S. Senate, where Republicans would need to win support from at least eight Democrats to overcome a likely filibuster.

Here are notable provisions of the CHOICE Act that would impact most companies:

- The Securities and Exchange Commission (SEC) and other financial regulators would have to conduct a detailed economic analysis of all proposed regulations to ensure that the costs imposed are outweighed by the benefits.
- The bill would repeal the Dodd-Frank “non-material specialized” disclosure mandates on CEO pay ratios, African “conflict” minerals, mine safety data, and resource extraction payments to foreign and state governments (Sections 857 and 862). NIRI has urged the

SEC to reduce the onerous compliance burdens of the CEO pay ratio rule, which requires most companies to provide their first disclosures in early 2018.

- Proxy advisory firms would be required to register with SEC, provide a draft review process for all issuers, and improve disclosure of conflicts of interest. (Section 482). NIRI has repeatedly asked the SEC to regulate proxy firms and ensure that companies are treated fairly.
- Companies would only have to hold a Say-on-Pay vote on executive compensation if there is a “material change” in their executive compensation practices (Section 843). Under Dodd-Frank, companies are required to hold pay votes at least every three years. Most issuers conduct votes every year, because the proxy advisory firms have persuaded their investor clients to support annual votes.
- The bill would significantly limit the number of shareholder proposals on corporate proxy statements each spring by requiring investors to own a 1 percent stake for three years to file a resolution at a company (Section 844). Currently, investors only must hold a \$2,000 stake for one year. The Council of Institutional Investors and ESG activists object to this provision, pointing out that investors at mega-cap firms like Apple would have to own multi-billion-dollar stakes to file shareholder resolutions. The bill also would increase the vote support thresholds investors must meet to resubmit the same proposal at a company.
- The SEC would be barred from adopting a universal proxy ballot rule (Section 845). In October 2016, the SEC released a draft rule to require companies in proxy contests to provide a universal ballot that lists both management and dissident nominees, which would make it easier for dissidents to gain partial board representation.
- More companies would be exempted from the auditor attestation requirements of Section 404(b) of the Sarbanes-Oxley Act as the compliance threshold would be raised to \$500 million in market capitalization (Section 847). Advocates for institutional investors and accounting firms oppose this provision.
- Emerging growth companies and smaller issuers (with less than \$250 million in total annual gross revenues) would be exempted from XBRL data-tagging requirements for financial statements and other periodic reports. The SEC also would have to perform a cost-benefit analysis of its XBRL mandates (Sections 411-412).
- The bill would scale back a Dodd-Frank provision that directs the exchanges to approve listing standards to require companies to adopt stricter “claw back” policies. Under Section 849 of the CHOICE Act, erroneously awarded compensation could only be recovered from executives who “had control or authority” over the financial reporting that resulted in an accounting restatement. The SEC proposed a “claw back” rule in 2015, but it was never finalized.

- The legislation would repeal Dodd-Frank Section 929X, which directs the SEC to adopt a short-selling disclosure rule. While the SEC has not implemented this provision, NIRI, the NYSE, and Nasdaq have petitioned the agency to adopt such a rule to increase transparency and protect companies from short-selling abuses.

NIRI staff has met with several members of Congress to ensure that the views of the IR community are reflected in the legislation. NIRI will continue to monitor developments and advise members as appropriate.

### **Resources**

- U.S. House Financial Services Committee, [Executive Summary](#) and [Legislative Text](#) of the Financial CHOICE (Creating Hope and Opportunity for Investors, Consumers, and Entrepreneurs) Act of 2017.
- [Covington & Burling, "Choice Act 2.0: Key Capital Markets and Securities Law Provisions," May 2, 2017.](#)
- [Davis Polk & Wardwell, Briefing: Governance blog, "Financial CHOICE Act Imposes Sweeping Shareholder Proposal Reforms," April 25, 2017.](#)
- [Adena Friedman, President and CEO, Nasdaq, "Commentary: Nasdaq's Blueprint for a New Era of Trading," The Wall Street Journal, May 4, 2017.](#)

### **About the National Investor Relations Institute (NIRI)**

Founded in 1969, NIRI ([www.NIRI.org](http://www.NIRI.org)) is the professional association of corporate officers and investor relations consultants responsible for communication among corporate management, shareholders, securities analysts and other financial community constituents. NIRI is the largest professional investor relations association in the world with more than 3,300 members representing 1,600 publicly held companies and \$9 trillion in stock market capitalization.

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