



National Investor Relations Institute

225 Reinekers Lane, Suite 560, Alexandria, VA 22314  
(703) 562-7700; FAX (703) 562-7701  
Website: [www.niri.org](http://www.niri.org)

November 13, 2017

The Honorable Sean Duffy  
Member of Congress  
2330 Rayburn House Office Building  
Washington, D.C. 20515

Subject: Support for H.R. 4015 (Corporate Governance Reform and Transparency Act of 2017)

Dear Representative Duffy:

On behalf of the National Investor Relations Institute<sup>1</sup> (NIRI), I am writing to express our support for H.R. 4015, the Corporate Governance Reform and Transparency Act of 2017. We believe that your legislation will promote greater transparency and more accurate proxy research and will benefit all public companies and their investors.

As you know, Institutional Shareholder Services (ISS) and Glass Lewis & Co. collectively control 97 percent of the U.S. market for proxy advisory services, and thus have substantial influence over the corporate governance practices of public companies. However, unlike public issuers, institutional investment managers, and the national exchanges, the proxy firms are not subject to effective oversight by the Securities and Exchange Commission.

Collectively, ISS and Glass Lewis clients may own between 20 and 50 percent of a company's shares. While not all institutional investors follow the advice of the proxy advisors in all cases, many of them do so, particularly small and medium-size institutions that don't have their own corporate governance staffs. Although the proxy firms' influence varies by company and subject matter, governance experts have found that a negative proxy advisor recommendation can lead to a 15 to 30 percentage point differential in support for management.

The influence of the proxy advisors has further increased since the arrival of Say on Pay votes on executive compensation in 2011. Many ISS and Glass Lewis clients now use automated

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<sup>1</sup> Founded in 1969, the National Investor Relations Institute (NIRI) 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 over 1,600 publicly held companies and \$9 trillion in stock market capitalization.

proxy voting systems whereby votes are cast based on preset voting policies without the investor having to take any action.<sup>2</sup>

Despite their significant influence, proxy advisors remain largely unregulated, while substantial concerns have been raised by companies and academics about: (1) a lack of transparency concerning their standards and methodologies; (2) the risk that their voting recommendations may be based on incorrect information; and (3) the conflicts of interest posed by several of their business practices.

Unlike investors and companies whose proxy filings are subject to review by the SEC, proxy advisors generally are exempt from regulation. Although ISS has registered as an investment advisor, the SEC does not provide systematic oversight over the proxy firms' research processes, how the firms interact with companies, and how they communicate with investors.

Given the large number of companies that the proxy advisors opine on each year, the inexperience of their research staffs, and the complexity of executive pay practices, it's inevitable that proxy reports will have some errors.<sup>3</sup> Unfortunately, most companies don't have an opportunity to review draft reports for accuracy before investors start voting.<sup>4</sup> ISS provides draft reports only to S&P 500 firms, while Glass Lewis does not allow any companies to see drafts. Glass Lewis also charges companies that wish to review their final reports.

The lack of SEC regulation over proxy research is yet another deterrent to private companies that are considering whether to go public. Many private companies are reluctant to have their compensation and governance practices second-guessed by a proxy advisor that doesn't have the staff resources to carefully evaluate a company's business model or other unique circumstances.

NIRI believes that H.R. 4015 takes a commonsense approach to providing greater oversight without placing an undue burden on proxy advisors and investors. We support the bill's mandate for the proxy advisors to register with the SEC and to disclose their methodology for formulating proxy voting policies. We also welcome the bill's grant of broad authority to the SEC to regulate conflicts of interest.<sup>5</sup>

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<sup>2</sup> See NIRI Letter to SEC Chair Jay Clayton re Proxy Advisory Services, August 3, 2017, available at: <https://www.niri.org/NIRI/media/NIRI-Resources/NIRI-SEC-Letter-PA-Firms-August-2017.pdf> (NIRI urged the SEC to examine the automated proxy voting systems used by ISS and Glass Lewis).

<sup>3</sup> To cope with its heavy proxy season workload, ISS has hired temporary employees and outsourced research work to employees in the Philippines.

<sup>4</sup> A draft review process is an essential safeguard because one cannot expect most institutional investors to carefully fact-check the work of their proxy advisors. Many of these institutions own shares in thousands of companies and thus have a very limited time to review each proxy report during the height of proxy season.

<sup>5</sup> To promote transparency, NIRI supports the disclosure of specific conflicts of interest on every research report so that investors (and the news media) will know if the proxy firm has a business relationship with an activist hedge

We are particularly pleased that H.R. 4015 includes a draft review requirement, whereby all companies would have at least three business days to review draft recommendations for accuracy.<sup>6</sup> This provision will help ensure that all companies are treated fairly and that investors receive more accurate proxy reports.<sup>7</sup> We also support the bill's requirement for the proxy advisors to designate an ombudsman to review complaints about accuracy and to include a corporate response in the final proxy report if the ombudsman cannot resolve the dispute.

NIRI is pleased to endorse H.R. 4015, and we believe that this bill deserves bipartisan support. We thank you for your leadership on this issue.

Sincerely,

A handwritten signature in cursive script that reads "Gary LaBranche".

Gary A. LaBranche, FASAE, CAE  
President and CEO  
National Investor Relations Institute

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fund that is seeking board seats, a shareholder resolution proponent, or the issuer covered in the report.

<sup>6</sup> In a May 2016 survey of 342 NIRI members, 87 percent of respondents said they “strongly agreed” or “agreed” that the SEC should mandate a draft review process.

<sup>7</sup> To ensure that issuers fully understand how they are being portrayed in proxy reports, NIRI requests that H.R. 4015 be amended to provide for companies to receive the full draft report and not just excerpts.