



# Executive ALERT

Updates on issues vital to the practice of investor relations

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## Lawmakers Consider Bill to Regulate Proxy Advisors

On May 17, 2016, the U.S. House Financial Services Committee held a hearing on a draft bill, the "Proxy Advisory Firm Reform Act of 2016," which would require the Securities and Exchange Commission to impose new registration and disclosure requirements on proxy advisory firms.

The legislation's lead sponsor is Rep. Sean Duffy (R-Wisconsin), who said his bill "will foster greater accountability, transparency, responsiveness, and competition in the proxy advisory firm industry."

Rep. Duffy said greater SEC oversight is needed because the two largest proxy advisory firms (ISS and Glass Lewis) control 97 percent of the U.S. market, are largely unregulated, and have significant influence over board elections, executive compensation, and other proxy voting matters at corporate annual meetings. He noted that companies have been frustrated by the lack of transparency around the proxy firms' policymaking methodologies as well as inaccuracies in proxy reports.

The bill includes various reforms that are consistent with those that NIRI and other corporate groups have sought. NIRI representatives and others have been meeting with House and Senate staffers over the past year to educate them about the need for proxy advisory reform.

During the May 17 hearing before the House Subcommittee on Capital Markets, former SEC Commissioner Daniel M. Gallagher; Timothy J. Bartl, chief executive officer of the Center on Executive Compensation; and Thomas Quaadman, senior vice president at U.S. Chamber of Commerce's Center for Capital Markets Competitiveness, all testified about the need for greater oversight of proxy advisors. Most of the Republican lawmakers who spoke sounded supportive of the bill. Rep. John Carney (D-Delaware), who is working with Duffy on the bill, said the legislation was "straightforward" and asked his colleagues for suggested improvements. Rep. Carolyn Maloney of New York, the senior Democrat on the subcommittee, expressed openness to regulating proxy firms, but she voiced concern about several provisions.

Key elements of the legislation include:

- Proxy advisory firms would be required to register with the SEC; the bill would create a new regulatory regime under the Securities and Exchange Act of 1934.

- Proxy advisory firms would have to disclose the procedures and methodologies they use to develop voting recommendations.
- The proxy firms would have to adopt a code of ethics and disclose and mitigate conflicts of interest. Duffy expressed particular concern over the ISS practice of marketing corporate consulting services to companies that receive negative ISS recommendations.
- All public companies would receive a “reasonable time” to review and comment on draft proxy reports before they are issued to investors. (Currently, just ISS provides a draft review process, which is limited to S&P 500 companies and has a short turnaround i.e., 24-48 hour period.)
- Each proxy advisory firm would have to employ an ombudsman to address corporate complaints about report inaccuracies before voting recommendations are released.

### **Resources**

- [Proxy Advisory Firm Reform Act of 2016 \(draft bill\)](#).
- [Testimony of Daniel Gallagher, President, Patomak Global Partners, Before the U.S. House of Representatives Committee on Financial Services, May 17, 2016](#).
- [Shareholder Communications Coalition Letter on Proxy Advisory Services, December 2013](#).
- [NIRI Testimony to the House Financial Services Committee on Proxy System Reforms and Proxy Advisors, June 2013](#).

### **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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