



## CENTER FOR CAPITAL MARKETS COMPETITIVENESS

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The Honorable Pat Toomey  
Ranking Member  
Committee on Banking, Housing and Urban Affairs  
United States Senate  
Washington, DC 20510

*Via Email: [submissions@banking.senate.gov](mailto:submissions@banking.senate.gov)*

Dear Senator Toomey:

Thank you for your request for legislative proposals to foster economic growth and job creation through capital formation. The U.S. Chamber of Commerce's Center for Capital Markets Competitiveness (CCMC) is pleased to share policy recommendations that would help the economy recover from the COVID-19 crisis.

Your request for capital formation proposals comes at an important moment. The COVID-19 pandemic has had an indelible effect on the American economy. In February, we learned that the U.S. real unemployment rate reached 10%<sup>1</sup>, emphasizing the hardship that so many Americans are experiencing as a result of the virus. Despite the challenges in the economy, American entrepreneurship is expected to grow at an expedient rate in the coming year,<sup>2</sup> creating new jobs that will be essential to the economic recovery from the pandemic. The fate of many of those new job-creating businesses, however, will rest on their ability to operate efficiently and raise sufficient capital. It is imperative that those businesses feel support from Washington.

In November 2020, we released a report entitled the "[Growth Engine](#)," which is our roadmap for broadly revitalizing financial markets. The report includes dozens of recommendations for policies related to closing the racial wealth gap, corporate governance reforms, financial stability requirements, consumer credit, and capital formation for small businesses. The recommendations included in this submission focus on your request for proposals that would encourage companies to be publicly traded, improve the market for private capital, and enhance investor opportunities for retail investors.

The Chamber has included 27 recommendations in the following pages. Many of our recommendations have been passed in previous Congresses and enjoy strong bipartisan support. It is our hope that policymakers can work together under your leadership to build a bipartisan capital formation package that calibrates a regulatory environment oriented toward the success of

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<sup>1</sup> <https://www.federalreserve.gov/newsevents/speech/powell20210210a.htm>

<sup>2</sup> [https://www.census.gov/econ/bfs/pdf/bfs\\_current.pdf](https://www.census.gov/econ/bfs/pdf/bfs_current.pdf)

new and existing businesses. Particularly, we have included recommendations that would help to preserve our capital markets as the deepest and most liquid in the world, re-tool the public company model to make it more accessible and allow friends and neighbors to invest more easily in their local communities.

Thank you again for soliciting information from stakeholders for your work in this space. The Chamber is committed to assisting your efforts to engender a strong economic recovery from the COVID-19 pandemic through capital formation.

Sincerely,

A handwritten signature in black ink, appearing to read 'TK' followed by a long, sweeping horizontal stroke.

Tom Quaadman

## **Expanding the On-Ramp: Recommendations to Help More Companies Go and Stay Public**

In Spring of 2018, the U.S. Chamber of Commerce, joined by seven other associations, released a report on “**Expanding the On-Ramp: Recommendations to Help More Companies Go and Stay Public.**” The report was intended to offer policy proposals to rejuvenate our capital markets and provide more opportunities for retail investors to share in the wealth created by start-up companies. The report garnered serious bipartisan interest from Congress.

In 2018, the U.S. House of Representatives passed legislation, sponsored by now-Chair of the Financial Services Committee, Rep. Maxine Waters (D-CA), and former-Chair of the Committee, Jeb Hensarling (R-TX), that they described as “a package of strong, bipartisan capital-formation legislation to help America’s small businesses and entrepreneurs and to protect investors.” The “**JOBS and Investor Confidence Act of 2018**” passed out of Committee with unanimous support, passed the House with near unanimous support, but its progress has since stagnated.

The following policy proposals, most of which were introduced with bipartisan support, were included in the Spring 2018 Report.

### **Extend certain JOBS Act Title I provision for EGCs from five years to ten years (Helping Startups Continue to Grow Act—H.R. 4918)**

Description/Impact: Would allow emerging growth companies (EGCs) to continue operating under certain exemptions for an additional five years. The vast majority of EGCs have taken advantage of the options to 1) Streamline financial disclosure; 2) Confidential reviews of registration statements by SEC staff; and 3) An exemption from certain executive compensation requirements.

Legislative Text: Helping Startups Continue to Grow Act (HR 4918—116<sup>th</sup>)

Legislative History/Bipartisan Support:

- Previous legislation reported favorably by the House Financial Services Committee in 2018 (HR 6130—115<sup>th</sup>)

### **SEC should develop recommendations for how to increase research coverage of pre-IPO companies and small capitalization companies**

Description/Impact: One of the major challenges of young and small public companies is obtaining research coverage in order to promote institutional and retail investor interest in a company. Studies have shown that nearly two-thirds of companies with less than \$100 million do not have any research coverage at all.<sup>3</sup> The Global Research Analyst Settlement, the EU’s Markets in Financial Instruments Directive II (MiFID II), and certain aspects of JOBS Act implementation have all contributed to a decline in analyst coverage. Additionally, while changes made to the Securities Act to liberalize the “gun-jumping” rules to permit investment banks to publish pre-IPO research on EGCs (Sec 2(a)(3)), very few investment banks have published any pre-IPO research.

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<sup>3</sup> Capital Formation, Smaller Companies, and the Declining Number of Initial Public Offerings – Jeffrey Solomon, President of Cowen. (Presentation before the SEC Investor Advisory Committee) June 22, 2017, available at <https://www.sec.gov/spotlight/investor-advisory-committee-2012/jeffrey-solomon-presentation.pdf>

The SEC should examine what, if any, regulatory or liability burdens continue to exist that may effectively prohibit investment banks from publishing research. The SEC should look at existing FINRA rules, Global Settlement implications, and Federal and State liability concerns, with the ultimate goal of developing recommendations to help more companies gain research coverage.

Legislative Text: Improving Investment Research for Small and Emerging Issuers Act (H.R. 2919—116<sup>th</sup>)

Legislative History/Bipartisan Support:

- Rep. Huizenga (R-MI) introduced bipartisan legislation HR 6130—115<sup>th</sup> that passed the House by voice vote in July 2019. <https://www.congress.gov/congressional-record/2019/07/09/house-section/article/H5282-1>
- Previous legislation included as part of JOBS and Investor Confidence Act of 2018.

### **Simplify quarterly reporting requirements/allow EGCs to issue press release w/ financials instead of full 10-Q**

Description/Impact: According to the 2011 report of the IPO Task Force, 92% of public company CEO's said that the "administrative burden of public reporting" was a significant challenge to completing an IPO and becoming a public company. As annual (10-K) and quarterly(10-Q) reports have grown in size and complexity over the years, companies find it increasingly difficult and costly to maintain compliance with a 1930's-style disclosure system. The length of annual and quarterly reports also has the potential to make it more difficult for investors to determine the most salient information about a business.

Granting EGCs the option of issuing a press release that includes earnings results every quarter – as opposed to a full 10-Q - will still provide investors with the material information they need to make informed decisions but reduce some of the unnecessary burden associated with the current quarterly reporting system.

Legislative Text: Modernizing Disclosures for Investors Act (H.R. 4076—116<sup>th</sup>)

Legislative History/Bipartisan Support:

- Previous version of this legislation was included as part of JOBS and Investor Confidence Act of 2018.

### **Allow purchases of EGC shares to qualifying investments for RIA exemption purposes**

Description/Impact: Registered Investment Adviser (RIA) rules promulgated by the SEC have disincentivized some venture capital funds from investing in Emerging Growth Companies (EGCs). The 2010 Dodd-Frank Act sought to exempt venture capital funds from the costs and challenges associated with becoming an RIA. However, the definition of "venture capital fund" promulgated by the SEC pursuant to Dodd-Frank was too narrow and did not meet the Dodd-Frank statutory obligations of a full venture capital exemption. The current definition ignores critical elements and developments related to the venture capital industry, including growth equity firms which can often be investors in EGCs around the time they are considering a public offering.

Shares of EGCs, including the purchase of EGC shares on the secondary market, should be considered qualifying investments. Creating a more accurate venture capital exemption definition will expand the pool of possible investors for EGCs.

Legislative Text: Developing and Empowering our Aspiring Leaders (DEAL) Act of 2020 (H.R. 8603—116th)

Legislative History/Bipartisan Support:

- Previous version of this legislation was included as part of the JOBS and Investor Confidence Act of 2018
- Passed House Financial Services Committee in 2018 by voice vote.  
<https://www.congress.gov/congressional-report/115th-congress/house-report/889>

### **Amend Form S-3 to eliminate baby-shelf restrictions and allow all issuers to use Form S-3 (Accelerating Access to Capital Act, H.R. 4529)**

Description/Impact: Forms S-3 and F-3 – commonly referred to as “shelf registration” forms – are the most simplified registration forms that a company can file with the SEC, and typically bring significant cost savings for those companies that are eligible to use one or the other. However, EGCs and many small issuers are prohibited from using these forms which leads to increased reporting and compliance costs that do not promote investor protection. The SEC’s Annual Government-Business Forum on Small Business Capital Formation has recommended over the past several years that all issuers become eligible for use of Forms S-3 and F-3. Letting all companies use a shelf registration form without a limit on the amount they can raise would significantly improve the capital formation process for small public companies.

Legislative Text: Accelerating Access to Capital Act (H.R. 4529—115<sup>th</sup>)

Legislative History/Bipartisan Support:

- HR 4529 was favorably reported by the House Financial Services Committee in 2018

### **Make XBRL compliance optional for EGCs and SRCs**

Description/Impact: Public companies are currently required to provide their financial statements in an interactive data format using eXtensible Business Reporting Language (XBRL). XBRL “tags” certain data points in an issuer’s filing statement and exports them in a standardized layout. The ostensible goal of XBRL is to make financial data comparable across issuers, but it falls prey to the one-size-fits-all approach that afflicts so many reporting requirements, resulting in significant costs for EGCs and other small companies without much, if any, benefits to investors.

We believe that EGCs, SRCs, and non-accelerated filers should be exempt from XBRL reporting requirements. These issuers would still be allowed to opt-in to compliance if they choose to do so, but otherwise would be free from a costly regulatory burden that provides no useful information to investors. The SEC’s annual Government-Business Forum on Small Business Capital Formation has also included such an XBRL exemption on several occasions over the past decade.

Legislative Text: Small Company Disclosure Simplification Act (H.R. 5054—115<sup>th</sup>)

Legislative History/Bipartisan Support:

- The legislation was favorably reported by the House Financial Services Committee in 2018 (H.R. 5054) and 2016 (H.R. 1912)

### **Increase threshold for mutual funds to take positions in companies from 10% of voting shares to 15% (Expanding Investment in Small Businesses Act, H.R. 3050)**

Description/Impact: As the size of mutual funds have increased in recent years, the diversified fund limit rules have constrained their ability to take meaningful positions in small-cap companies. Mutual funds have historically played an important role in helping to provide liquid markets for the shares of newly public companies. Modestly moving the threshold up to 15% would make investments in EGCs and other small-cap companies more attractive to mutual funds and help provide more robust secondary markets for the trading of these stocks.

Legislative Text: Expanding Investment in Small Businesses Act of 2019 (H.R. 3050—116<sup>th</sup>)

Legislative History/Bipartisan Support:

- Previous version of this legislation (H.R. 6319 – 115<sup>th</sup>) was favorably reported by the House Financial Services Committee via a voice vote and included as part of the JOBS and Investor Confidence Act of 2018

### **Congress should pass legislation to establish the legal framework for venture exchanges**

Description/Impact: While the JOBS Act did a great deal to help EGCs raise capital in primary offerings, it did comparatively little to address the secondary market trading in these companies. Venture exchanges would remedy this issue by providing a tailored trading platform for EGCs and stocks with distressed liquidity. Companies that choose to list on a venture exchange would have their shares traded on a single venue, thereby concentrating liquidity and exempting these shares from rules that are more appropriate for deeply liquid and highly valued stocks. Venture exchanges would also be afforded the flexibility to develop intelligent “tick sizes” that could help incentivize market makers to trade in the shares of companies listed on the exchange.

Importantly, both the creation of the venture exchange and the decision to list on such an exchange should be completely optional – companies should be allowed to choose whether not to list on a venture exchange.

Legislative Text: Main Street Growth Act (H.R. 2899—116<sup>th</sup>)

Legislative History/Bipartisan Support:

- Previous version of this legislation included as part of the JOBS and Investor Confidence Act of 2018

## **Growth Engine Recommendations**

The Chamber released a report in November 17, “The Growth Engine,” with the objective of modernizing financial regulation in order to promote economic growth. The following recommendations are drawn from The Growth Engine in response to your request for proposals that would encourage companies to be public traded, improve the market for private capital, and enhance investor opportunities for retail investors.

### **Congress should direct the SEC small business advocate to develop recommendations for how to help minority-owned businesses raise capital**

Description/Impact: Black entrepreneurs are nearly three times more likely than White entrepreneurs to have business growth and profitability negatively impacted by a lack of financial capital. Congress should initiate a formal process through the SEC to develop recommendations for changes in existing law and regulations that would improve access to capital for minority-owned businesses. This process could be conducted through the SEC’s Office of the Advocate for Small Business Capital Formation by prioritizing outreach to minority-owned businesses to understand their financial needs and by working with financial companies to understand what public policy barriers stand in the way of providing capital.

Legislative Text: N/A

Legislative History/Bipartisan Support: N/A

### **Improve Corporate Board Diversity Disclosure**

Description/Impact: According to PwC’s 2019 Annual Corporate Directors survey, 94% of board directors surveyed indicated that a diverse board brings unique perspectives, 87% responded that diversity enhances performance, and 84% responded that it improves relationships with investors. In addition, 76% of directors agree that board diversity enhances the performance of the company.

The “Improving Corporate Governance through Diversity Act of 2021” would establish a model to organically boost diversity on boards through disclosure, rather than the counterproductive quota-driven strategies that some jurisdictions have attempted. The legislation would also establish an advisory group that would carry out a study and provide recommendations on private sector strategies to increase gender, racial, and ethnic diversity among boards of directors.

Legislative Text: Improving Corporate Governance Through Diversity Act (S. 374 / H.R. 1277—117<sup>th</sup>)

Legislative History/Bipartisan Support:

- H.R. 5084 passed House in 116<sup>th</sup> Congress with bipartisan support – <https://clerk.house.gov/Votes/2019630>
- S. 360 introduced in Senate in 116 Congress with bipartisan support

### **Relief for Small Businesses Through Micro-Offering Act (H.R. 6252—116<sup>th</sup>)**

Description/Impact: This legislation would provide an exemption from registration requirements for small offerings that do not exceed \$250,000 in the aggregate, or more than \$5,000 to any one investor, and that is conducted through a regulated broker or funding portal. This would benefit

entrepreneurs who are looking to raise relatively small amounts of capital and cannot afford costly legal and registration requirements.

Legislative Text: Relief for Small Businesses Through Micro-Offering Act (H.R. 6252—116<sup>th</sup>)

Legislative History/Bipartisan Support:

- Introduced

### **The Crowdfunding Amendments Act (H.R. 4860—116<sup>th</sup>)**

Description/Impact: The legislation would address some of the unnecessary compliance burdens that currently exist under the SEC’s crowdfunding rules by allowing for the use of “crowdfunding vehicles” and also exempting securities issued in crowdfunding offerings from registration requirements under the Securities Exchange Act of 1934.

Legislative Text: The Crowdfunding Amendments Act (H.R. 4860—116<sup>th</sup>)

Legislative History/Bipartisan Support:

- H.R. 4860 passed the House via voice vote on October 28, 2019

### **The Helping Angels Lead our Startups (“HALOS”) Act (S. 1063 / H.R. 1909—116<sup>th</sup>)**

Description/Impact: The legislation would help startup businesses communicate with potential investors by clarifying the definition of “general solicitation” under the 2012 JOBS Act. The bill would affirm that startups and angel investors can participate in “demo days” or other similar events where no specific offerings of securities are made.

Legislative Text: The Helping Angels Lead our Startups (“HALOS”) Act (H.R. 1909—116<sup>th</sup>)

Legislative History/Bipartisan Support:

- Sen. Murphy (D-CT) introduced bipartisan legislation in the 116<sup>th</sup> Congress
- Rep. Chabot (R-OH) introduced bipartisan legislation in the 116<sup>th</sup> Congress
  - The bill was favorably reported by the House with bipartisan support in the 115<sup>th</sup> Congress 344-73 (H.R. 79) – <https://clerk.house.gov/Votes/201731>

### **Access to Small Business Investor Capital Act (H.R. 7375—116<sup>th</sup>)**

Description/Impact: The legislation would exempt business development companies (BDCs) from the acquired fund fees and expenses requirement that currently mandates the disclosure of misleading information regarding the costs of investments in BDCs. Passage of this bill will increase institutional investment in BDCs, which are a critical source of nonbank financing for small and middle market companies throughout the country.

Legislative Text: Access to Small Business Investor Capital Act (H.R. 7375—116<sup>th</sup>)

Legislative History/Bipartisan Support:

- Rep. Brad Sherman (D-CA) introduced bipartisan legislation in the 116<sup>th</sup> Congress

### **Gig Economy Infrastructure Act (H.R. 6254—116<sup>th</sup>)**

Description/Impact: The legislation would expand the pool of workers who can receive equity compensation under the SEC’s Rule 701 to include independent contractors and “gig” economy workers. Rule 701 exempts certain sales of securities made to compensate employees, consultants and advisors.

On November 24, 2020, the SEC proposed temporary rules that would permit an issuer to provide equity compensation in certain “platform workers” who provide services available

through the issuer’s technology-based platform or system. This proposed rule was a step in the right direction, given it recognized the challenges for the gig economy, but was never finalized.

Legislative Text: Gig Economy Infrastructure Act (H.R. 6254—116<sup>th</sup>)

Legislative History/Bipartisan Support:

- Rep. McHenry (R-NC) introduced legislation in the 116<sup>th</sup> Congress

### **The Expanding Access to Capital for Rural Job Creators Act (H.R. 2409 / S. 566—116<sup>th</sup>)**

Description/Impact: The legislation would expand the focus of the Office of the Advocate for Small Business Capital Formation at the SEC to include ways to increase capital access for rural small businesses. The legislation would help ensure that rural areas receive due consideration during any future SEC rulemaking process.

A [2016 report](#) from the Economic Innovation Group found that half of all post-recession business creation in the U.S. occurred across only 20 counties, and that many rural areas have not seen experienced economic growth since the 2008 financial crisis. This bill is an incremental but important step that would focus the SEC on the needs of businesses in rural communities.

Legislative Text: The Expanding Access to Capital for Rural Job Creators Act (H.R. 2409—116<sup>th</sup>)

Legislative History/Bipartisan Support:

- Rep. Axne (D-IA) introduced bipartisan legislation in the 116<sup>th</sup> Congress
- Sen. Doug Jones (D-AL) introduced bipartisan legislation in the 116<sup>th</sup> Congress

### **Small Business Mergers Acquisitions, Sales, and Brokerage Simplification Act**

Description/Impact: The legislation would simplify SEC registration requirements and provide a safe harbor for certain financial professionals who assist small and mid-size businesses that are looking to transfer corporate ownership. Importantly, the legislation also includes strong investor protections such as requiring the disclosure of relevant information to clients as well as the owners of eligible privately held companies. The bill does not impede in any way on the ability of the SEC to crack down on bad actors, or to prohibit past securities law violators from taking advantage of the exemption.

Legislative Text: Small Business Mergers Acquisitions, Sales, and Brokerage Simplification Act (H.R. 935—117<sup>th</sup>)

Legislative History/Bipartisan Support:

- Rep. Huizenga (R-MI) introduced bipartisan legislation in the 117<sup>th</sup> Congress
- Rep. Huizenga (R-MI) introduced bipartisan legislation in the 116<sup>th</sup> Congress
- Sen. Peters (D-MI) introduced bipartisan legislation in the 115<sup>th</sup> Congress
- Rep. Huizenga (R-MI) introduced legislation that passed the House in the 115<sup>th</sup> Congress 426 – 0 – <https://clerk.house.gov/Votes/2017669>

### **Family Office Technical Correction Act (H.R. 3972—115<sup>th</sup>)**

Description/Impact: The legislation would provide certainty for “family offices” defined under securities laws by clarifying that such offices are accredited investors. This bill would help preserve the ability of family offices to invest in certain private offerings and help them remain an important source of capital for growing businesses.

Legislative Text: Family Office Technical Correction Act (H.R. 3972—115<sup>th</sup>)

Legislative History/Bipartisan Support:

- Rep. Maloney (D-NY) introduced legislation that was reported by the House Financial Services Committee via unanimous [vote](#) and passed the House in the 115<sup>th</sup> Congress under a voice vote

### **Public Company Registration Threshold Act (H.R. 5051—115<sup>th</sup>)**

Description/Impact: The legislation would increase from 500 to 2,000 the number of non-accredited shareholders a company may have before being required to register with the SEC. This legislation would build on the 2012 JOBS Act, and would help many companies, including companies that raise money through crowdfunding and the private markets, avoid having to undergo costly registration with the SEC.

Legislative Text: Public Company Registration Threshold Act (H.R. 5051—115<sup>th</sup>)

Legislative History/Bipartisan Support:

- Rep. Duffy (R-WI) introduced legislation in the 115<sup>th</sup> Congress

### **Small Business Audit Correction Act (H.R. 6021—115<sup>th</sup>)**

Description/Impact: The legislation would exempt privately held non-custodial brokerage firms from a requirement to have a Public Company Accounting Oversight Board (PCAOB)-registered firm conduct their annual audit. Small broker-dealers are often important sources of capital for startups or small businesses around the country, and there is no compelling reason to subject them to an audit process that is more fitting of a large company.

Legislative Text: Small Business Audit Correction Act (H.R. 6021—115<sup>th</sup>)

Legislative History/Bipartisan Support:

- Rep. Hill (R-AR) introduced bipartisan legislation in the 115<sup>th</sup> Congress and was reported by the Financial Services Committee with a bipartisan vote.

<https://www.congress.gov/congressional-report/115th-congress/house-report/1075>

### **Developing and Empowering our Aspiring Leaders Act (H.R. 6117—115<sup>th</sup>)**

Description/Impact: The legislation would expand the definition of a “qualifying investment” in venture capital funds to include certain equity securities bought on the secondary market. It would allow venture funds to continue to play an important role in deploying capital to growing businesses without having to undergo costly registration requirements.

Legislative Text: Developing and Empowering our Aspiring Leaders Act (H.R. 6117—115<sup>th</sup>)

Legislative History/Bipartisan Support:

- Rep. Hollingsworth (R-IN) introduced legislation in the 115<sup>th</sup> Congress that was reported by the Financial Services Committee via voice vote.

<https://www.congress.gov/congressional-report/115th-congress/house-report/889>

- Sen. Rounds (R-SD) introduced legislation in the 115<sup>th</sup> Congress

### **Fair Investment Opportunities for Professional Experts Act (H.R. 4762—115<sup>th</sup>)**

Description/Impact: An accredited investor is an individual who is permitted to trade securities that may not be registered with the SEC. Securities in early-stage, non-public companies, have a significant potential for growth, but are also considered to be higher-risk. The accredited investor definition is intended to limit investors from participating in this market.

Traditionally, the accredited investor threshold has been determined through asset and income tests, which have resulted in both an under- and overinclusive outcomes. The definition leaves

out sophisticated and savvy investors who may not meet financial thresholds while including a wealthy person with no experience in financial markets.

This legislation would expand the definition of accredited investor. It would allow sophisticated investors, including licensed brokers and investors advisors, and other individuals the SEC determines have qualifying education or experience, to meet the definition of accredited investor. It would also update the net worth threshold and income threshold to include more investors.

In August 2020, the SEC finalized a [rule](#) expanding the definition of “accredited investor” to include more individual investors, such as those with professional qualifications in the financial industry; however, further expansion is warranted. For example, updating the net worth thresholds and recognizing more individuals with demonstrable education or job experience—is necessary to properly reflect certain individual investors’ level of sophistication.

Legislative Text: Fair Investment Opportunities for Professional Experts Act (H.R. 4762—115th)

Legislative History/Bipartisan Support:

- Rep. Hill (R-AR) introduced legislation in the 116<sup>th</sup> Congress
- Rep. Schweikert (R-AZ) introduced bipartisan legislation in the 115<sup>th</sup> Congress that passed the House under a voice vote. <https://www.congress.gov/congressional-record/volume-163/house-section/page/H8320-8321>
- Sen. Tillis (R-NC) introduced bipartisan legislation in the 115<sup>th</sup> Congress

### **SEC should properly oversee and implement proxy advisor/shareholder proposal rules**

Description/Impact: Despite being plagued by conflicts of interest, a lack of transparency, and significant errors in voting recommendations, proxy advisory firms continue to carry a significant amount of influence over corporate governance at America’s public companies. The two dominant proxy firms—Institutional Shareholder Services (ISS) and Glass Lewis—control roughly 97% of the proxy advisory industry, constituting a duopoly that has become the de facto standard setter for corporate governance in the U.S. without any meaningful input from shareholders or issuers. The status quo has created distortions in the capital markets and has made it more difficult for companies to go and stay public.

In July 2020, the SEC adopted a [rule](#) that provides investors using proxy voting advice more transparent, accurate, and complete information, and provided supplemental guidance regarding proxy voting responsibilities of investment advisers. The rule codifies the SEC’s longstanding position that proxy advice is generally a “solicitation” under SEC rules and reaffirms that the anti-fraud provisions under Exchange Act Rule 14a-9 apply to proxy advisory firms. Findings from the Chamber’s 2020 Proxy Season Survey show public companies are prepared to participate in the new SEC process, specifically welcoming the ability to “review and comment” on draft proxy advisory firm recommendations

Congress should continue to exert its oversight authority to ensure proxy advisory firms are void of conflicts of interest, that proxy advisory firms make recommendations based on material information, and to promote market competition. Congress could, for example, require the GAO

or SEC to perennially issue a public study analyzing if policy objectives are being met by the Commission's rules governing proxy advisory firms.

Legislative Text: N/A

Legislative History/Bipartisan Support:

- Rep. Steil (R-WI) introduced the Corporate Governance Reform and Transparency Act of 2019 (H.R. 5116—116<sup>th</sup>)
- Rep. Duffy (R-W) introduced bipartisan legislation in the 115<sup>th</sup> Congress, the Corporate Governance Reform and Transparency Act of 2017 (H.R. 4015—115<sup>th</sup>), which passed the House 238-192 <https://clerk.house.gov/Votes/2017702>
- Sen. Reed (D-RI) introduced bipartisan legislation in the 115<sup>th</sup> Congress, the Corporate Governance Fairness Act (S. 3614—115<sup>th</sup>)