AFR Americans for Financial Reform

The Honorable French Hill
Chairman
House Committee on Financial Services
2129 Rayburn House Office Building
Washington DC, 20515

The Honorable Maxine Waters
Ranking Member
House Committee on Financial Services
2129 Rayburn House Office Building
Washington DC, 20515

September 8, 2025

Re: Full Committee September 10th "Proxy Power and Proposal Abuse: Reforming Rule 14a-8 to Protect Shareholder Value" Hearing

Dear Chairman Hill and Ranking Member Waters:

Americans for Financial Reform writes to oppose the bills noticed for the September 10th "Proxy Power and Proposal Abuse: Reforming Rule 14a-8 to Protect Shareholder Value" hearing and to express its concern over alarming corporate governance developments we believe the House Financial Services Committee should be focusing on instead. A coalition of 40 investors, labor unions, and public interest organizations wrote to oppose these bills last Congress.[1]

Corporate boards and executives have long sought to curtail shareholders' ability to file proposals about important issues that affect their investments — and undermine the proxy advisors who sometimes recommend votes in their favor. But the right of shareholders to file and vote on proposals — and the ability of proxy advisors to provide research and recommendations not unduly influenced by corporate leadership — are crucial to identifying and pushing corporations to address important risks related to unsound governance practices, climate change, union busting, racial discrimination, worker health and safety issues, lobbying activities, and more that affect corporate performance and shareholder returns.

For example, corporate governance scholars note that "shareholder proposals have proven to be an effective stewardship tool for bringing about governance changes at large numbers of public companies."[2] Indeed, between 2003 and 2018, shareholder proposals were behind the increased adoption of corporate governance changes including declassifying the board, establishing an independent board chair, and adopting a majority vote standard, proxy access, say-on-pay, and a

[1] Americans for Financial Reform et al. "Re: Opposition to anti-ESG bills that threaten workers' retirement security and our financial system, and weaken tools of corporate accountability." Letter to Members of the U.S. House of Representatives. September 17, 2024.
[2] Bebchuk, Lucian and Scott Hirst. "Index Funds and the Future of Corporate Governance: Theory, Evidence, and Policy." Columbia Law Review. December 2019 at 2040.

shareholder right to call a special meeting.[3] These changes reverberated beyond the companies where shareholder proposals were filed.[4]

The real threat to corporate governance comes from a race to the bottom in state corporate law triggered by Elon Musk, as well as from other players in the corporate governance ecosystem that are consolidating power over corporate decision-making — not from minority shareholders trying to get their voices heard on important issues through shareholder proposals that are generally non-binding.

When a Delaware judge invalidated Musk's Tesla pay package, calling it "an unfathomable sum,"[5] he derided her and Delaware corporate law, and led the reincorporation of Tesla and SpaceX in Texas. Since then, Delaware and Texas have both changed their corporate laws to make them more favorable to corporate insiders and less favorable to retirement savers and other investors who want to protect their investments.

Delaware changed its laws to make it easier for corporate insiders to escape scrutiny for conflicted transactions by, amongst other changes, creating a generous safe harbor for transactions involving conflicted corporate insiders, redefining what it means to be an independent director and controlling shareholder, and limiting what documents shareholders can request from corporations.[6]

Texas has passed three laws undermining the rights of minority shareholders and insulating corporate insiders from accountability: one allowing corporations to amend their bylaws to require a 3 percent ownership threshold to bring shareholder derivative lawsuits, another allowing corporations to amend their bylaws to require a 3 percent or $1 million ownership threshold to file shareholder proposals, and another requiring proxy advisors to falsely say they incorporated "nonfinancial factors" and "subordinated the financial interest of shareholders" if they take into account environmental, social, or governance factors when making recommendations to clients to cast votes against the recommendations of corporate management.[7]

Meanwhile, the four largest asset managers — BlackRock, Vanguard, State Street, and Fidelity — now have de facto regulatory power over public companies. Instead of using this power to compel public companies to address important risks, they use it to further their own private, short-term interests in retaining and gaining assets under management and avoiding government regulation.

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[3] Papadopoulos, Kosmas. "The Long View: The Role of Shareholder Proposals in Shaping U.S. Corporate Governance (2000-2018)." Harvard Law School Forum on Corporate Governance. February 6, 2019.
[4] Kastiel, Kobi and Yaron Nili. "The Giant Shadow of Corporate Gadflies." Southern California Law Review. 2021 at 584.
[5] Hals, Tom. "Judge voids Elon Musk's 'unfathomable' $56 billion Tesla pay package." Reuters. January 31, 2024.
[6] Annunziata, Michelle J. et al. "Delaware Changes Its Corporate Law: What Litigators and Clients Need to Know about Senate Bill 21." Mayer Brown. April 30, 2025.
[7] Gallogly, Niko. "New Texas Laws Open a Wild West for Corporate Governance." New York Times. August 16, 2025.

These incentives have come to the fore in the last few years, as large asset managers have responded to political pressure by increasingly siding with management in their votes, instead of with minority shareholders pushing them to address important risks.[8]

We therefore urge the Committee to focus on these concerning corporate governance developments that threaten the retirement security of millions, not the below bills that would make matters worse.

- *AFR Opposes H.R. 4098, Stopping Proxy Advisor Racketeering Act*

This bill would effectively prohibit proxy advisory firms from operating and subject them to civil penalties if the firm "possesses a conflict of interest, direct or indirect." Individuals can also be subject to civil penalties. A proxy advisor "being a member of any organization that supports a shareholder-sponsored proposal that is, or is substantially the same subject matter as, the proxy voting advice" is listed as falling within the prohibited conduct.

This language is broad and vague and has the potential of creating paralyzing uncertainty regarding what could be considered a conflict of interest that could subject the firm *and* individuals to liability. It would also unduly restrict proxy advisors' ability to join membership organizations.

- *AFR Opposes H.R. 3402, a bill to amend the Securities Exchange Act of 1934 to require certain disclosures by institutional investment managers in connection with proxy advisory firms, and for other purposes*

This bill would require institutional investment managers to file an annual report with the Securities and Exchange Commission (SEC) that explains how they voted in every shareholder proposal, what percentage of votes were consistent with proxy advisers' recommendations, and more. The bill would also require asset managers with at least $100 billion in assets under management to tell their clients that they are not required to vote on every proposal, provide an economic analysis when voting against management in a shareholder proposal, and include it in their annual report to the SEC. This bill was introduced as H.R. 4648 in the last Congress.

This bill is a solution in search of a problem, as institutional investment managers already have a fiduciary duty to vote proxies in the best interests of beneficiaries and the SEC enhanced proxy voting disclosures by investment funds as recently as 2022.[9] The bill would serve to further tilt the playing field in favor of management by incentivizing either voting against shareholder proposals or not voting on them at all.

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[8] Masters, Brooke and Kenza Bryan. "BlackRock's support for ESG measures falls to new low." Financial Times. August 21, 2024; RI Journalists. "ESG round-up: Vanguard supported no E&S proposals at US firms in 2025 proxy year." Responsible Investor. August 28, 2025.

[9] Securities and Exchange Commission. "SEC Adopts Rules to Enhance Proxy Voting Disclosure by Registered Investment Funds and Require Disclosures of 'Say-on-Pay' Votes for Institutional Investment Managers." November 2, 2022.

- *AFR Opposes H.R. _____, a bill to amend the Securities Exchange Act of 1934 to provide for the registration of proxy advisory firms, and for other purposes*

This bill would require proxy advisory firms to register with the SEC, set up a process for companies to have a say before voting recommendations go out to investors (including by having an ombudsman to resolve issues raised by companies), allow companies to sue proxy advisory firms in cases where they recommend voting in favor of shareholder proposals later found by a court to be illegal, and require an annual report that includes economic analyses used to make recommendations in favor of shareholder proposals (a requirement absent from recommendations related to company-sponsored proposals and shareholder proposals the proxy advisor recommends voting against). This bill was introduced as H.R. 4589 in the last Congress.

This bill would allow corporate management to inappropriately influence what are supposed to be independent recommendations that proxy advisory firms give their clients. It would also make voting recommendations against management more difficult, costly, and legally risky.

Lastly, the part of the bill that would allow companies to sue proxy advisory firms if they recommend voting in favor of shareholder proposals that were later found to be illegal appears to be a nod toward attempts — including by the Trump administration and some Republican Attorneys General[10] — to paint diversity, equity, and inclusion and other efforts to address racial inequities as unlawful. However, as some Democratic Attorneys General noted, "corporate efforts to recruit diverse workforces and create inclusive work environments are legal and reduce corporate risk for claims of discrimination."[11] If passed, this bill would inappropriately influence proxy advisory firms' advice to their clients about shareholder proposals related to investigating or addressing issues related racial inequity.

- *AFR Opposes H.R. _____, a bill to amend the Securities Exchange Act of 1934 to provide for liability for certain failures to disclose material information or making of material misstatements, and for other purposes*

This bill would make proxy advisory firms liable for the "the failure to disclose material information (such as a proxy voting advice business's methodology, sources of information, or conflicts of interest) or the making of a material misstatement regarding proxy voting advice." It was introduced as H.R. 4590 in the last Congress.

While the Business Roundtable, National Association of Manufacturers, and other corporate management groups have long claimed that proxy advice is rife with errors, there is little evidence that this is the case. A study that purports to document proxy advisor errors alleges just 39 factual

[10] Thadani, Trisha. "Republican attorneys general warn companies against 'race-based quotas.'" The Washington Post. July 13, 2023.
[11] Olander, Olivia. "Democratic AGs blast Republicans trying to 'intimidate' corporations on diversity efforts." Politico. July 19, 2023.

errors over nearly three years (or 0.1% of more than 30,000 reports by proxy advisory firms Institutional Shareholder Services (ISS) and Glass Lewis during that period).[12] However, the Council of Institutional Investors' analysis of the study found that no more than 17 of the claimed factual errors had any merit.[13]

This bill appears designed to intimidate proxy advisory firms into siding with management more often by increasing the tools available to companies to challenge their recommendations and increasing their exposure to liability.

- *AFR Opposes H.R. _____, the Mandatory Materiality Requirement Act*

The Mandatory Materiality Act would require SEC to "expressly provide" within each of its disclosure rulemakings that disclosures are required only "if the issuer has determined that such information is important with respect to a voting or investment decision regarding the issuer."

If enacted, this legislation would functionally make all SEC disclosure requirements discretionary, and it would limit the ability of SEC or investors to scrutinize determinations by issuers that certain disclosures were not important and seek additional information. Issuers would receive unquestionable authority to determine what information is important to investors.

Issuer-determined materiality has often yielded incomplete and incomparable information for investors.[14] Making the entire SEC disclosure regime based on this principle would be disastrous. This bill was introduced as H.R. 4168 in the last Congress.

- *AFR Opposes H.R. _____, the Empowering Shareholders Act*

The bill would require asset managers of passively managed funds to vote based on the instructions of beneficiaries, with management, or not at all, except when it comes to "routine matters," defined, largely, as votes management wants, like director elections, approvals of executive pay, and mergers and acquisitions. This bill would tilt the playing field more dramatically in favor of management when it comes to proxy voting by passively managed funds. This bill was introduced as H.R. 4645 in the last Congress.

- *AFR Opposes H.R. _____, the Public Company Advisory Committee Act*

[12] Placenti, Frank M. "Are Proxy Advisors Really a Problem?" Harvard Law School Forum on Corporate Governance. November 7, 2018.
[13] Council of Institutional Investors. "Re: File No. 4-725 Proxy Advisor Regulation." Letter to the Securities and Exchange Commission. October 24, 2019.
[14] *See* SEC Investor Advisory Committee's Investor-as-Owner Subcommittee. "Recommendation of the SEC Investor Advisory Committee's Investor-as-Owner Subcommittee regarding Human Capital Management Disclosure." September 21, 2023. *See also* Miller, Rena S., Gary Shorter, and Nicole Vanatko. "Climate Change Risk Disclosures and the Securities and Exchange Commission." Congressional Research Service. February 17, 2022.

The "Public Company Advisory Committee Act" would amend the Exchange Act to establish within the SEC a new "Public Company Advisory Committee." The proposed new advisory committee would exclusively represent the interests of the management of public companies within the SEC. The advisory committee — whose members would be executives and directors of public companies and professionals who work for them — would provide advice on rules, regulations, and policies and be entitled to "such staff as the chairman of the Committee determines are necessary" and a swift public response to its findings and recommendations.

The proposed legislation's core goal is to increase the influence that top executives of public companies have on the SEC. The proposed Advisory Committee is both unnecessary and at odds with the Commission's three part statutory mission that includes investor protection — not the protection of the management of public companies. This bill was introduced as H.R. 4652 in the last Congress.

- *AFR Opposes H.R. _____, the Performance Over Politics Act*

This bill would require the SEC to significantly increase the percentage of votes a shareholder proposal must obtain in order for a proposal that "address[es] substantially the same subject matter" to be resubmitted for consideration within five years.[15]

If enacted, H.R. 4641 would make it much more difficult for shareholders to have their voices heard by the management of public companies they are invested in by increasing the threshold shareholders' proposals need to break through and have an impact. Shareholder proposals play an important role in identifying, raising awareness, and addressing risks at public companies. A high resubmission threshold would mean emerging risks important to investors are more likely to go unaddressed. This bill was introduced as H.R. 4641 in the last Congress.

- *AFR Opposes H.R. _____, the Businesses Over Activists Act*

This bill would prohibit the SEC from mandating companies include shareholder proposals or discussions of shareholder proposals in their proxy statements. This could functionally end the ability of shareholders to have a meaningful opportunity to bring important issues to the attention of the management of public companies by gutting the shareholder proposal process as we know it. This bill was introduced as H.R. 4655 in the last Congress.

- *AFR Opposes H.R. _____, the Protecting American's Savings Act*

This bill would prohibit voting automatically based on the recommendations of a proxy advisory firm or pre-populating votes on a proxy advisory firm's electronic platform with the proxy advisory

[15] Under the bill, a failed proposal would need 10% shareholder voting support the first time it is voted on, 20% the second time it is voted on, and 40% the third time it is voted on to be resubmitted (within a five-year period). This would significantly increase the thresholds from the current 5%, 15%, and 25% respectively.

firm's recommendations "without independent review and analysis." The bill also prohibits institutional investors from outsourcing voting decisions and prohibits any requirement to vote at all.

This bill ignores the fact that the Investment Advisers Act already requires investment advisers to vote their clients' shares in their best interests and implement policies and procedures reasonably designed to ensure their clients' shares are voted in the best interests of its clients.[16] If passed, this bill would put the thumb on the scale against voting by making it more difficult and costly for investors to cast their votes — which ultimately would benefit the management of public companies. This bill was introduced as H.R. 4656 in the last Congress.

- *AFR Opposes H.R. _____, a bill to clarify that an issuer may exclude a shareholder proposal pursuant to section 240.14a-8(i) of title 17, Code of Federal Regulations, without regard to whether such proposal relates to a significant social policy issue*

This bill would allow companies to exclude proposals "without regard to whether [it] relates to a significant policy issue." This bill would undermine the viability of shareholder proposals seeking to address important issues. This bill was introduced as H.R. 4657 in the last Congress.

- *AFR Opposes H.R. _____, a bill to authorize the exclusion of shareholder proposals from proxy or consent solicitation material if the subject matter of the shareholder proposal is environmental, social, or political*

This bill would allow public companies to exclude proposals if they are about "environmental, social, or political (or a similar subject matter)" issues. In other words, the bill would specifically take away corporate accountability tools from shareholders with respect to many issues that have an impact on the value of their investments — for example, workplace safety,[17] racial equity,[18] climate change,[19] and workers' freedom of association[20] — and that shareholders care about. This bill was introduced as H.R. 4640 in the last Congress.

- *AFR Opposes H.R. _____, the Corporate Governance Examination Act*

This bill would require the SEC to waste resources conducting a needless study after the bill's passage and every five years after that. The list of topics to study and their framing makes clear that the intention is to put the thumb on the scale of management in the proxy voting process and undermine investors' ability to hold companies accountable. For example, the study would scrutinize "the economic analyses, if any, conducted by proxy advisory firms and institutional shareholders

[16] 17 CFR Part 275 (Proxy Voting by Investment Advisers)
[17] *See* Fonrouge, Gabrielle. "Dollar General shareholders pass proposal to improve worker safety." CNBC. May 31, 2023.
[18] *See* SOC Investment Group. "Racial equity audit."
[19] *See* Majority Action. "Climate in the Boardroom: 2024 Proxy Season." February 2025.
[20] *See* Committee on Workers' Capital. "Shared Prosperity: The Investor Case for Freedom of Association and Collective Bargaining." November 29, 2022.

when recommending or voting in favor of shareholder proposals," while such scrutiny would be absent from management-friendly votes. This bill was introduced as H.R. 4662 in the last Congress.

- *AFR Opposes H.R. _____, a bill to amend the Securities Exchange Act of 1934 to require the Securities and Exchange Commission to disclose and report on non-material disclosure mandates, and for other purposes*

This bill would require the SEC to have a public list of all its legal mandates and regulations that require disclosure of "non-material" information, along with an explanation of why that disclosure is required. Every five years, the SEC would have to present a report to Congress justifying the disclosures on the list. It would also prohibit private lawsuits against entities that fail to disclose "non-material" information.

This bill is designed to minimize a company's responsibility to disclose information that investors need to make better decisions about their investments by requiring the SEC to engage in an unnecessary and wasteful exercise. The bill would also close an avenue for investor accountability by prohibiting private lawsuits over "non-material" information that is nonetheless important for investor protection and informed decision-making. This bill was introduced as H.R. 4628 in the last Congress.

- *AFR Opposes H.R. _____, a bill to amend the Securities Exchange Act of 1934 with respect to prohibitions relating to the solicitation and influence of proxies*

This bill would effectively outlaw proxy advisory services altogether. Proxy advisors help investors analyze thousands of corporate ballot items. They are information intermediaries, providing investors with independent research and voting recommendations. Proxy advisors' recommendations are just that — recommendations. Investors are free to vote in whatever way they believe is in their best interest. Proxy advisors are a resource that investors use to make informed decisions and exercise their voting rights on important issues that impact their investments. Taking away this resource would undermine the ability of shareholders — especially those that are not well-resourced —- to meaningfully engage in the proxy process and protect their investments.

For all the reasons stated above, we urge you to oppose these bills that would be detrimental to the proxy process by unduly favoring the interests of the management of public companies at the expense of shareholders pushing them to address important risks. Thank you for your consideration of our perspective. Please do not hesitate to contact Natalia Renta at natalia@ourfinancialsecurity.org if you have any questions.

Sincerely,

Americans for Financial Reform