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House Financial Services Committee Revives Bill that Would Regulate ISS, Glass Lewis

The House Committee passed a bill that would put more regulations on proxy advisory firms. While unlikely to pass Congress during an election year, it could be resurrected in the future.

The House Financial Services Committee passed two separate bills this month that would have a direct impact on executive compensation voting policies and disclosure regimes. While there is a good chance neither bill makes it out of the full House, let alone taken up in the Senate, they are important barometers for reading where the focus of the committee is right now. It's also entirely possible the legislation is revisited once the US presidential election is over.

The Proxy Advisory Firm Reform Act of 2016, which passed with a 35-25 vote, would place more regulations on the bill's namesake— that is, proxy advisory firms such as Institutional Shareholder Services (ISS) and Glass, Lewis & Co. (Glass Lewis). The Act would allow issuers to access and comment on proxy advisory firms' recommendations to the person responsible for developing the recommendation. It would also require these firms to hire an ombudsman to field complaints about the accuracy of voting information used in developing recommendations, and resolve the complaints prior to a vote on the proxy item(s) in question.

The political capital to regulate proxy advisory firms has been reignited several times since the financial crisis of 2008-09. There is a chorus of lobbyists, politicians and watchdog groups that have said ISS and Glass Lewis have too much influence over the voting policies and outcomes of investors and there should be more transparency to their practices.

For their part, ISS and Glass Lewis have attempted to self-regulate in recent years. Both firms allow a limited number of companies to review their proxy reports and/or equity data used to calculate voting recommendations. Glass Lewis has said it plans to expand the number of participants eligible for its "data verification center."

ISS and Glass Lewis submitted separate statements that were entered into the House bill testimony in May. They can be found here and here, respectively.

The second bill to pass the committee this month would require the SEC to weigh the costs and benefits of future regulations, both qualitative and quantitative. Only in cases where a "reasonable determination" is made that benefits outweigh costs should future regulations be made, the bill states. The SEC Regulatory Accountability Act passed by a higher margin of 41-18. The bill brings back memories of the SEC's proxy access rule in 2010, which would have allowed eligible investors to nominate dissident directors to the corporate proxy. The rule was later vacated by the D.C. circuit court on the basis that the SEC didn't take into account the considerable costs associated with the regulation.

These bills might seem small potatoes compared to another draft legislation that was introduced earlier this month by same House committee's chairman, Texas Republican Jeb Hensarling. Dubbed The Financial Choice Act, it would roll back or repeal many sections of the Dodd-Frank Financial Reform Act, including most corporate governance provisions. You can read about the specific governance sections that would be stripped if the law was passed at law firm Cooley's blog here. The blog post notes that political observers are skeptical the law would ever pass Congress before the presidential election in November, but as with the other two bills we discuss, it could serve the purpose of raising the national and political conversation around corporate governance regulation as well as hint at Republicans' priorities in the fall.

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