



ICGN

International Corporate Governance Network

The Honorable Paul D. Ryan

The Honorable Nancy Pelosi

United States House of Representatives
Washington, DC 20515
USA

Sent via email

19 May 2017

RE: Financial CHOICE Act of 2017

Dear Mr. Speaker and Representative Pelosi,

The International Corporate Governance Network (ICGN) is a global investor-led body based in London, whose mission is to promote high standards of governance in companies and responsible investment practices by investors, with a long-term perspective on sustainable value creation. This mission extends systematically to promoting efficient financial markets and economies world-wide. ICGN was established over 20 years ago and today our membership of governance professionals spans over 45 countries, and includes investors representing assets under management in excess of US\$26 trillion. Many ICGN members are based in the US, and most, if not all, institutional investment members will have significant investments in US companies.

We are writing to express our significant concerns relating to the Financial CHOICE Act of 2017 (Act). In our view the Act contains provisions that damage shareholder protections to the detriment of good corporate governance and sustainable value creation. This letter builds on ICGN's Viewpoint report in March 2017 on the changing political landscape in the United States.¹ This report identified several points of disconnect between ICGN's own governance principles — which reflect ICGN's global investor membership base — and the policy positioning of the US government under the new Trump Administration. The Act is a realisation of concerns outlined in that report.

There are many components of the Act, but the key aspects we would like to cite are as follows:

Systemic Risk. Our focus on systemic risk relates to one of ICGN's five policy priorities: promoting long-term perspectives and sustainable value creation.² The search for potential regulatory inefficiencies from the Dodd-Frank Act should not

¹ See: <https://www.icgn.org/governance-questions-posed-changing-us-political-landscape>

² See: <https://www.icgn.org/sites/default/files/ICGN%20Policy%20Priorities%202016-2017.pdf>

compromise financial system stability. We cite the concern expressed by the credit rating agency Moody's that the various components of the Act would increase risks in the banking sector³ — for example through repealing the Orderly Liquidation Authority (Section 111) or the Volcker rule which bans proprietary trading by banks (Title X, Section 901). Similarly, the simplicity of the single 10% capital metric to allow for the “off ramp” to lighter touch financial supervision of banks (Section 602) brings with it risks of cynical gaming or unintended consequences such as higher risk lending practices.

At a time when there is greater concentration among a small number of banks in the US than before the recent financial crisis, the Act has the potential to allow for a build-up of greater systemic risk, not just in the US, but also globally through interdependent economies and financial systems. The global investment community — providers of risk capital to US companies — will generally place much less emphasis on measures that may enhance the profitability of US banks than it does on looking to the US to maintain strong and stable banks and financial markets. The tone signalled by this relaxation of standards is concerning. The devastating effects of the recent financial crisis are still with us in many ways and we do not believe that institutional investors want to see a return to more lenient bank regulatory standards that will heighten systemic risks.

Shareholder rights and investor stewardship. Protecting minority shareholder rights and making successful stewardship a reality are also key ICGN policy priorities. We cite two particular concerns in the Act relating to these priorities. The first is Section 843, which we believe unnecessarily waters down shareholder rights for say on pay votes — and which is going in the opposite direction of developing global best practice. Section 844 sets a disproportionate hurdle with regard to shareholder proposals, and is also out of step with the development of investor stewardship and engagement in markets around the world. In a global context shareholder rights have traditionally been a comparative weakness for US companies, relative to companies in other jurisdictions. However, in recent years, there has been good progress made in the US in areas including proxy access, majority voting, and say on pay. From a global investor perspective, the Act would be broadly regarded as one major step backwards after several promising steps forward.

Proxy agencies and the SEC. Proxy agency services provide important tools for investors to conduct their proxy voting and stewardship responsibilities. Similarly, investors look to the SEC to police markets and promote market efficiency for both issuers and investors. We are concerned that Section 482 of Subtitle Q of Title IV could place an unduly harsh set of registration criteria on proxy agencies that might obstruct their operations or result in higher costs to be borne by investors. Similarly, Subtitle A of Title VIII risks diluting the SEC's enforcement abilities by adding significant new administrative requirements. We believe that the Act stands to work against institutional investors through this impact on proxy agencies and the SEC.

³ Business Insider UK, 3 May 2017

We also note that these significantly increased compliance burdens for proxy agencies and the SEC are anathema to the Act's overall thrust at de-regulation in the financial sector.

ICGN has read the letter drafted by the Council of Institutional Investors (CII) in the US as CII reaches out to members of Congress on the Act.⁴ Reflecting its own global membership of institutional investors, ICGN expresses support for and solidarity with the position outlined by CII in its outreach to the US Congress.

In summary, we think the Act is fundamentally flawed in both its intent and practical effects in the provisions we have cited. We believe these aspects of the Act are both retrograde and out of touch with recent global efforts to promote investor stewardship. Its passage would not reflect well on the US for those in the global investment community focusing on promoting sustainable companies and responsible stewardship. The challenge is to encourage responsible shareholders, not marginalise them.

Please feel free to contact us if you have further comments or questions.

Sincerely yours,

George Dallas, Policy Director: george.dallas@icgn.org
Kerrie Waring, Executive Director: kerrie.waring@icgn.org

Copies:

The Honorable Jeb Hensarling
Chairman
Committee on Financial Services
United States House of Representatives
Washington, DC 20515

The Honorable Maxine Waters
Ranking Member
Committee on Financial Services
United States House of Representatives
Washington, DC 20515

⁴ See:

http://www.cii.org/files/issues_and_advocacy/correspondence/2017/04_29_17_letter_cmte_fin_serv.pdf