



ICGN

International Corporate Governance Network

The Honorable Jeb Hensarling
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14 June 2016

Re: Corporate Governance Reform and Transparency Act of 2016 (HR 5311).

We appreciate the opportunity to provide you with our views on the draft bill sponsored by Reps. Sean Duffy and John Carney titled the “Corporate Governance Reform and Transparency Act of 2016” (“the Bill”).

The International Corporate Governance Network (ICGN) is an investor-led organisation of governance professionals with members, which include institutional investors responsible for assets under management in excess of \$26 trillion; many of these institutional investors are based in the United States. Our mission is to promote effective standards of corporate governance and investor stewardship to advance efficient financial markets and sustainable economies worldwide. ICGN’s Global Governance Principles call both for issuers of capital to have high standards of corporate governance, and for investors to have responsible investment practices, given their fiduciary duty of providing sustainable returns on capital to their ultimate beneficiaries – typically pension funds and long term savers.

ICGN investor members are among the most engaged and knowledgeable investors in the world, and include some of the largest global asset managers and asset owners. ICGN investor members use proxy advisors (PAs) to help them gather data, assess governance issues and make voting decisions on thousands of voting items at company annual and extraordinary general meetings.

We have read the letter dated 13 June 2016 by the Council of Institutional Investors (CII) that was addressed to you with regard to the Bill, and would first like to indicate our support for the CII letter—which was co-signed by many institutional investors

who are also ICGN members. The CII capably addresses many individual points in detail, which we need not present again here. But from our own perspective as a global body representing institutional investors, the key points of principal we would like to emphasise are:

- **Legislative intent.** As emphasised in the preamble to the Bill we recognise and appreciate the importance of quality in the PA profession, and we are certainly supportive of the stated ambitions relating to the protection of investors and the U.S. economy. However we question if the regulation proposed is necessary, particularly, given our view that the detail of the legislation as drafted is actually a threat to quality in the PA profession – and ultimately to the protection of investors. Moreover, we would suggest that the good original stated intent in the first part of the Bill’s preamble is disconnected to the negative practical outcomes that would result from its implementation. We believe this ultimately could diminish the ability of investors to provide the level of stewardship (including company monitoring, voting and engaging) that is being called for in stewardship codes around the world. In short we believe the Bill is not good for investors or for financial markets more generally – and its likely outcomes are likely to be anathema to its stated intent. If there is an actual need for regulation in the U.S. ICGN believes the case should be presented more clearly, and believes any proposed regulation of PAs should more carefully consider the implications for the investors who rely on, and pay for, such services.
- **Accountability.** ICGN’s Global Governance Principles call for both companies and investors to act responsibly and accountably, with clearly established governance policies and related disclosures. We also support similarly high standards of practice for service providers such as PAs; we believe it is fundamentally the role of investors, as customers of PAs and consumers of their research, to hold PAs to account to for the integrity and the quality of the services they provide. The Bill does identify important issues relating to proxy advisor accountability and the practice of internal governance, including avoiding conflicts of interests. At the same time we note that proxy advisors already have developed and implemented an industry code of practice, the Best Practice Principles for Shareholder Voting Research (“BPP”), which addresses similar concerns of policy transparency and conflict management and disclosure, quality and accuracy—effectively the same issues as addressed in the Bill. The proxy advisors that operate the most widely apply the BPP globally including in the U.S. Other regulators, like the CSA in Canada and ESMA in the European Union, that have examined the role and use of proxy advisors, have concluded that further regulation is not necessary. From an ICGN perspective it is not clear to us why the U.S. situation should materially differ from other jurisdictions so as to call for a more prescriptive regulatory approach. We are not aware of any leading investors or investor bodies that have called for regulating proxy advisors.

- **Influence of proxy advisors.** We are concerned that the Bill overstates the practical influence of proxy agencies relative to a company's actual investors. ICGN investor members use proxy advisors to help them gather data and assess governance issues voting decisions on thousands of voting items at company annual and extraordinary general meetings. Ultimately investors, not PAs, are accountable for their voting decisions. Many of the leading investors that engage PAs employ their own investment policies and voting protocols, which are often different from those recommended by PAs. In many cases PAs assist in vote execution, not in policy development or the development of specific voting rules.
- **Practical flaws.** As noted earlier we believe, notwithstanding the positively stated intent of promoting proxy advisory quality, that the practical outcomes of this legislation would work against the quality of PA services—and hence the interests of investors. The prescriptive detail, particularly in the section relating to the “Reliability of Proxy Advisory Firm Services” is potentially unworkable and highly disruptive to PA firms. There are no practical alternatives or solutions identified that would address this disruption constructively. While we believe that building understanding and dialogue between companies and PAs can be positive, we are fundamentally concerned that this legislation places undue emphasis on company relations with its PAs, and hence too little emphasis on a company's relationships with its investors.

Ultimately, ICGN believes that a market based approach is preferable to imposing unduly burdensome regulation that would be damaging to the PAs and the interests of investors and the beneficiaries they serve. We thank you for your attention to our letter and would happy to discuss this matter further and to answer any questions you have. Should you wish to discuss our comments further, please contact George Dallas, ICGN's Policy Director, by email at george.dallas@icgn.org

Yours faithfully,

Erik Breen

Chairman, ICGN Board

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