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SENATE BILL DRS15452-MVf-45

Short Title:	Required Disclosures/Proxy Advisory Services.	(Public)
Sponsors:	Senators Craven, B. Newton, and Overcash (Primary Sponsors).	
Referred to:		

A BILL TO BE ENTITLED

AN ACT TO REQUIRE PROXY ADVISORY SERVICES TO MAKE CERTAIN DISCLOSURES.

The General Assembly of North Carolina enacts:

SECTION 1. Legislative Findings. – The General Assembly finds the following:

(1) When shareholders hire professionals to manage investments, they reasonably expect those professionals to perform services in the financial interest of the shareholders and to make recommendations that will enhance investment value based on financial analyses.

(2) There is a particular need to require disclosures from proxy advisors because their advice is provided for hundreds of thousands of shareholder votes each year. Few investors have the resources to independently research every shareholder vote. Institutional investors often use proxy advisors for guidance on how to exercise their shareholder voting rights in a manner consistent with their fiduciary duties.

(3) Fiduciaries under the Employment Retirement Income Security Act routinely hire proxy advisors to assist them in their legally required "fiduciary duty to manage plan assets . . . [including] the management of shareholder rights . . . such as the right to vote proxies." 29 C.F.R. § 2550.404a-1.

(4) Directors of publicly-held companies also have fiduciary duties to their shareholders and make recommendations in line with those fiduciary duties.

(5) Proxy advisors have recommended votes against company directors' guidance and in favor of shareholder proposals based on environmental, social, or governance (ESG) issues; diversity, equity, or inclusion (DEI) issues; and social credit and sustainability scores but have not disclosed to investors that the recommendations were made without conducting a financial analysis to determine how the recommended votes would affect shareholder value.

(6) The chief operating officer of Glass Lewis, a major proxy advisor, stated under penalty of perjury that Glass Lewis does not conduct a "written financial analysis," as defined by this act, before recommending votes on shareholder proposals, and that other proxy advisors do not do so either. Yet proxy advisors have advertised that the purpose of their recommendations is maximizing, increasing, or protecting shareholder value.

(7) These findings raise concern that proxy advisors are engaged in fraudulent or deceptive practices. They are not disclosing material information to their clients, who reasonably believe that they are choosing between

recommendations of company directors and a proxy advisor that are based on dueling financial analyses.

(8) Investors purchasing proxy advising services should be informed when recommendations against company management are or are not based on financial analyses that consider the recommended vote's effect on the financial value of the investment. Investors also should be able to access those analyses upon request, in order to assess whether the analyses are sufficient to uphold fiduciary standards.

(9) Requiring proxy advisors to provide clear, factual disclosures under these circumstances helps investors evaluate whether a proxy advisor's recommendations uphold institutional investors' fiduciary duties of prudence and loyalty.

(10) Requiring proxy advisors to inform company directors of their recommendations also promotes disclosures in line with fiduciary duties. For example, company directors considering a shareholder proposal often have additional information regarding the costs of the proposal and whether it is in shareholders' financial interests. Notice of a proxy advisor's recommended vote on the proposal allows directors seeking to uphold their fiduciary duties to provide additional responsive information to their shareholders.

SECTION 2. Chapter 78C is amended by adding a new Article to read:

"Article 10.

"Proxy Advisor Transparency Act.

"**§ 78C-110. Definitions.**

The following definitions apply in this Article:

(1) Company. – A publicly-traded for-profit corporation, limited liability company, partnership, or other business entity that is organized under the laws of this State, has its principal place of business in this State, or is a foreign entity that has made a company proposal to become a domestic entity by merger, conversion, or otherwise.

(2) Company proposal. – Any proposal made by a company to its shareholders that is included in the company's proxy statement, including but not limited to any proposal relating to director nominations or elections, executive compensation, corporate transactions, corporate structure, auditor selection, or company policy on any subject.

(3) Default recommendation or policy. – A system or set of rules, principles, or guidelines designed to assist with voting decisions on any company proposal or proxy proposal.

(4) Person. – An individual, corporation, limited liability company, partnership, association, or other legal or business entity.

(5) Proxy advisor. – A person who, for compensation, provides a proxy advisory service to shareholders of a company or to other persons with authority to vote on behalf of shareholders of a company. The term does not include a bank or bank holding company or trust company, or a broker-dealer, investment advisor, attorney, accountant, or their agents.

(6) Proxy advisory service. – Any of the following services provided in connection with a company or to a person in this State by a proxy advisor:

a. Advice or a recommendation on how to vote on a company proposal or proxy proposal.

b. Proxy statement research and analysis regarding a company proposal or proxy proposal.

c. Development of proxy voting recommendations or policies, including establishing default recommendations or policies.

The term does not include services carried out as part of securities brokerage, investment advisory, fiduciary, trust, or estate administrative services.

(7) Proxy proposal. – Any proposal made by a shareholder of a company that is included in the company's proxy statement, including but not limited to a proposal relating to any of the subjects that could be covered by a company proposal.

(8) Shareholder. – A shareholder, unitholder, limited partner, member, or other equity owner of a company.

(9) Written financial analysis. – A written document that does all of the following:

a. Analyzes the expected short-term and long-term financial benefits and costs to a company of implementing a company proposal or proxy proposal.

b. Concludes what vote or course of action is most likely to positively affect shareholder financial value.

c. Explains the methods and processes used to prepare the analysis, including the experience and geographic location of the personnel who formed the recommendation.

"**§ 78C-111. Disclosure of lack of financial analysis to prevent fraud or deceit.**

(a) If a proxy advisor makes a recommendation against company management on a company proposal or proxy proposal, or makes a default recommendation or policy involving votes against company management on company proposals or proxy proposals, and the proxy advisor does not do so based on a written financial analysis, the proxy advisor shall do all of the following:

(1) Concurrently with providing the proxy advisory service, include a clear and conspicuous disclosure to each shareholder or other person acting on behalf of a shareholder, that does all of the following:

a. Identifies the service being provided.

b. Identifies the recommendation or policy at issue.

c. States that the proxy advisory service has not based its recommendation or policy on a written financial analysis of the impact of that recommended action on investors.

(2) For a proxy advisory service under G.S. 78C-110(6)a. or b., concurrently with providing the proxy advisory service, provide the disclosure under subdivision (1) of this subsection to the board of directors of each company that is the subject of the service.

(3) While any proxy advisory services described under this subsection are being provided, publicly and conspicuously disclose on the home page or front page of the proxy advisor's website a statement that the proxy advisory services include one or more recommendations or policies against company management on company proposals or proxy proposals that are not based on a written financial analysis, as defined in G.S. 78C-110, regarding the impact of the recommendations or policies on investors.

(b) If a proxy advisor makes a recommendation against company management on a company proposal or proxy proposal, or makes a default recommendation or policy involving votes against company management on company proposals or proxy proposals, and the proxy advisor does so based on a written financial analysis, the proxy advisor shall do all of the following:

(1) Concurrently with providing the proxy advisory service, include a clear and conspicuous disclosure to each shareholder or other person acting on behalf of a shareholder that does all of the following:
a. Identifies the service being provided.
b. Identifies the recommendation or policy at issue.
c. States that the proxy advisory service has made the recommendation or policy based on a written financial analysis, as defined in G.S. 78C-110.
d. States that the analysis is available upon request.
(2) Make the analysis available within a reasonable time to any client of the proxy advisory service upon request.
(3) For a proxy advisory service covered under G.S. 78C-110(6)a. or b., concurrently with providing the proxy advisory service, provide a copy of the analysis to the board of directors of each company that is the subject of the service.

"**§ 78C-112. Enforcement.**

(a) A proxy advisor that provides proxy advisory service shall register annually with the Secretary of State in the manner provided by the Secretary. The proxy advisor shall submit a fee of one hundred dollars ($100.00) with each annual registration.

(b) A violation of this Article is an unfair and deceptive trade practice under Chapter 75 of the General Statutes and is actionable under the enforcement provisions of that Chapter. The Attorney General may exercise all investigative powers under Chapter 75 of the General Statutes if the Attorney General has reason to believe a violation has occurred, is occurring, or is about to occur.

(c) In addition to enforcement under subsection (a) of this section, any person aggrieved by a violation of this Article may bring an action seeking a declaratory judgment or injunctive relief against a proxy advisor. Not later than the seventh day after the date on which an action is brought under this Article, the plaintiff shall provide written notice to the Attorney General, who may intervene in the action. For purposes of this subsection, an aggrieved person includes all of the following:
(1) A recipient of proxy advisory services provided by a proxy advisor.
(2) A company that is the subject of proxy advisory services under G.S. 78C-110(6)a. or b.
(3) Any shareholder of a company described in subdivision (2) of this subsection."

SECTION 3. If any provision of this act or its application is held invalid, the invalidity does not affect other provisions or applications of this act that can be given effect without the invalid provisions or application and, to this end, the provisions of this act are severable.

SECTION 4. This act becomes effective October 1, 2026 and applies to proxy advisory services provided on or after that date. Nothing in this act eliminates any claim under Chapter 75 of the General Statutes, regardless of whether that claim accrues before, on, or after the effective date of this act.