The Forum for Sustainable and Responsible Investment

Via Electronic Delivery

June 2, 2017

U.S. House of Representatives
Washington, DC 20515

Re: The Financial CHOICE Act

Dear Representatives:

US SIF: The Forum for Sustainable and Responsible Investment—the leading voice advancing sustainable, responsible and impact investing across all asset classes—represents more than 300 members holding more than $3 trillion in assets under management or advisement and includes investment management and advisory firms, mutual fund companies, research firms, financial planners and advisors, broker-dealers, community investing organizations, nonprofit associations, and pension funds, foundations and other asset owners. US SIF strongly opposes the Financial CHOICE Act of 2017 and urges the U.S. House of Representatives to oppose this misguided legislation.

Today $8.72 trillion dollars, more than one in five dollars of professionally managed assets in the United States, are engaged in sustainable, responsible and impact investing practices—a 33 percent increase since 2014. This growing and engaged community understands that the capital markets are most efficient when rules and regulations support robust oversight of corporate directors and management and provide access to information about company environmental and social policies, practices and performance.

The CHOICE Act will only harm the U.S. capital markets by—among other things—rolling back systemic risk protections, killing effective regulations and imposing onerous hurdles for new regulations, starving market regulators of appropriate funding, shuttering market transparency, destroying market-based accountability mechanisms, and slashing the rights of investors.

Less than 10 years have passed since the worldwide financial crisis wreaked havoc around the globe, devastating the U.S. economy and shattering the dreams of Americans who lost their homes, jobs, and savings, including those needed for retirement. Despite the rise in the markets, confidence in the U.S. markets remains damaged by the financial crisis. According to a Gallup poll (released April 20, 2016), 52 percent of Americans currently have money in the stock market—matching the lowest ownership rate in Gallup's 19-year trend. The highest ownership rate—65 percent of Americans—was reported in 2007, just before the global financial crisis. The reforms enacted by the Dodd–Frank Wall Street Reform and Consumer Protection Act were necessary to address the systemic risks that contributed to the global crisis and to protect the U.S. from a repeat of the financial crisis. These reforms remain vitally important today.

In the wake of the financial crisis, US SIF advocated for key corporate governance reforms, self-funding for the U.S. Securities and Exchange Commission (SEC), greater disclosure by public companies, and consumer financial protection. We thus oppose any legislative efforts to weaken reforms in these areas and oppose the CHOICE Act's many damaging provisions, including:

- Onerous and unworkable cost-benefit requirements that are not based on what is best for the American people, investors and a sustainable economy

- Changes to the shareholder proposal rule
- Repeal of conflict mineral, mine safety, extractive industry and pay ratio disclosure requirements
- Rollback/repeal of corporate governance reforms
- Regulation of proxy advisory firms
- Reducing the powers of the Consumer Financial Protection Bureau and changing its structure and funding

Details of our concerns with these provisions follow.

Title III: Demanding accountability from financial regulators and devolving power away from Washington

- **Subtitle A (cost-benefit analysis)**
- **Subtitle B (Congressional review of federal financial agency rulemaking)**

US SIF's numerous objections to Title III, Subtitles A&B of the CHOICE Act, which would effectively gut the ability of rulemaking to move forward, include:

- Excessive and rigid rulemaking analytical requirements: The CHOICE Act will add unnecessary and burdensome processes to an already cumbersome rulemaking process. The least-burdensome threshold will create a damaging state of "paralysis by analysis." The "indirect" effects analysis will likely result in far-fetched and speculative analyses and lengthy, unnecessary documents of no value to the rulemaking process. Many of the proposed analytical procedural requirements are one-sided in nature by outweighing considerations of costs and providing corporate interests with more opportunities to seek changes that would weaken the safeguards that rules provide.

- Inappropriate Congressional approval before rule becomes effective: The CHOICE Act stipulates that major rules can only go into effect after both chambers of Congress pass resolutions approving the proposed rule. This would damage the independent structure of regulatory agencies and open the door to political attacks on major rules.

US SIF believes these provisions would negatively impact rulemaking at key financial regulatory agencies and ultimately would harm the capital markets, investors and consumers.

Section 844 Shareholder proposals

US SIF opposes Section 844 of the CHOICE Act, which would eviscerate the shareholder proposal rule by increasing the requirements to file or re-submit a proposal and imposing other harmful requirements. The proposed changes are excessive, inappropriate and create a barrier between companies and shareowners which would not serve the capital markets or investors:

- Ownership requirements would skyrocket from $2,000 worth of stock held for at least one year to 1 percent of the stock held for at least three years. The change would require an Exxon Mobil shareholder to own more than $3.4 billion of stock for 3 years to submit a proposal.

- Resubmission thresholds would at least double to 6 percent in year one (from 3 percent), 15 percent in year two (from 6 percent) and 30 percent in year three (from 10 percent).

- Shareholders could no longer hire lawyers or ask their financial advisors to submit shareholder proposals

on their behalf—even with proper authorization.

These draconian changes would disenfranchise all but the very largest institutional investors and halt the extraordinary progress—including more independent and diverse boards, enhanced disclosure practices, and stronger investor rights and protections—that have resulted from the rule. Further information about the impacts of this change and the reasons for maintaining the current shareholder rule can be found in the report "The Business Case for the Current SEC Shareholder Proposal Process," co-authored by US SIF.

For investors and U.S. companies, the shareholder proposal rule is a vitally important, market-based mechanism for shareholders of all sizes to communicate with companies, directors and other shareholders and stakeholders. For decades now, the rule has been highly constructive in facilitating dialogue between shareholders and companies and providing market-driven insights on issues of deep interest to shareholders and the marketplace. By annihilating this long-standing and highly effective rule, the CHOICE Act would harm investors, companies and the U.S. capital markets.

Section 862(a)(1) (Repeal Section 1502 of Dodd-Frank Act)
Section 862(a)(2) (Repeal Section 1503 of Dodd-Frank Act)
Section 862(a)(3) (Repeal Section 1504 of Dodd-Frank Act)
Section 857(a)(24) (Repeal Section 953(b) of Dodd-Frank Act)

US SIF opposes the repeal of four vitally important disclosure requirements mandated by the Dodd-Frank Act. These disclosures—Section 1502 (Conflict Minerals Rule), Section 1503 (Mine Safety), Section 1504 (Payments by Resource Extraction Issuers) and Section 953(b) (Pay Ratio)—address potentially material corporate risks that warrant the sunlight of disclosure. All were adopted to enhance transparency and accountability, and all remain relevant and important today for investors and for companies that have already adopted or taken major steps to comply with the requirements.

While the mandated disclosures address different issues, each contribute to the efficiency of the U.S. capital markets and add to the mosaic of information incorporated by investors in their investment decisions. By providing consistent and comparable information about these potential risks, these disclosures enable investors to assess corporate risks, evaluate management's risk-mitigation strategies and allocate capital to companies with the best overall prospects for long-term shareholder value. The disclosures also promote constructive engagement between companies and investors.

US SIF and its members advance investment practices that consider environmental, social and corporate governance criteria in addition to standard financial indicators to generate long-term competitive financial returns and positive societal impact. Disclosures such as these are vitally important in enhancing corporate social responsibility, building long-term value for companies and their stakeholders, and fostering business practices that will yield community and environmental benefits. Investors want to retain current disclosure requirements, and would like to be able to obtain greater material disclosure on environmental, social and governance issues.

Repealing these important disclosures robs investors of information that has been available to investors for years now or set to be released next year. Each disclosure offers unique insights into company practices and risks, and each disclosure should be retained.

- Disclosure on conflict minerals has informed and improved investors' ability to assess operational, social

(i.e., human rights) and reputational risks in issuers' supply chains, as well as companies' long-term mitigation of risks related to the supply of minerals. Investing in companies with operations or supply chains in areas of conflict is higher risk not only because violence may disrupt business activities, but also because conflict disrupts national and local governments and makes the policy and regulatory environment less predictable. It is important therefore for investors to understand the exposure of individual company supply chains to conflict zones.

- Disclosure on mine safety has led world-class mining companies to release not only statistics on U.S. worker health and safety, but safety statistics for workers worldwide, as well as policies and management analysis linking the importance of improving health and safety performance to underlying value.
- Disclosure of payments to governments by publicly-traded companies that extract natural resources has fostered corporate accountability, enabled investors to better assess investment risks and benefited the citizens of resource-rich countries, who often cannot find reliable data on the payments their governments receive for mineral, oil and gas extraction rights. As a result of the rule, investors can compare the payments that resource companies make to governments around the world and analyze whether these payments or operations pose regulatory, tax, reputational, political and social risks.
- Disclosure of the CEO-to-worker pay ratio is a key measure to ensure sound corporate governance. Responsible investors and many members of the general public have expressed deep concern over escalating executive pay as ordinary employees' incomes have stagnated. High pay disparities within companies can damage employee morale and productivity and threaten the companies' long-term performance. The pay-ratio disclosure rule finalized in 2015 by the SEC and effective for company fiscal years beginning on or after Jan. 1, 2017, strikes an appropriate balance between providing useful information to investors and providing issuers with flexibility in its implementation.

Section 843 Frequency of shareholder approval of executive compensation
Section 849 Restriction on recovery of erroneously awarded compensation
Section 857(a)(30) Repeal SEC authority to issue proxy access rule

US SIF believes that effective governance practices at U.S. companies should be a top legislative, regulatory and investor priority. Corporate governance reforms do not cost the American taxpayer a dime, and they help the SEC and other regulators do their jobs more effectively by providing greater oversight of corporations and accountability in the boardroom. US SIF strongly opposes rollbacks of the critical governance reforms noted below:

- Annual advisory vote on executive compensation: "Say on Pay" mandated by Section 951 of the Dodd-Frank Act has been a vital check and balance on executive pay packages and programs. Many Americans are outraged by excessive executive pay packages and the say-on-pay vote provides much-needed, enhanced accountability in this area. Today U.S. companies clearly are comfortable with an annual say-on-pay vote. According to a report issued by Compensation Advisory Partners, nearly all S&P 500 companies now have annual say-on-pay votes, with 93 percent of S&P 500 companies (as of May 15, 2017) seeking approval in 2017 of annual say-on-pay votes, up from 70 percent in 2011. The percentage of companies seeking approval of a triennial say-on-pay vote dropped from 23 percent in 2011 to 5 percent in 2017. And this year, as shareholders voted on whether to support one-, two- or three-year votes, they have overwhelmingly supported annual say-on-pay votes. The say-on-pay rollback proposed by the CHOICE Act is unnecessary and counter to the clear preferences of companies and investors. It would encourage a race to the bottom rather than promote best international corporate practice.

- Clawbacks: Section 954 of the Dodd-Frank Act appropriately recognized that companies should take back compensation from executives if the pay was based on inaccurate financial statements or other fraudulent acts. Today—despite the fact that a clawback rule hasn't yet been finalized by the SEC—many U.S. companies have acknowledged that this is a best practice by adopting clawback policies. Wells Fargo is just one example—so far the financial institution has clawed back tens of millions in compensation paid to executives for fraudulent sales. And Wells Fargo is not alone. According to a report by Equilar, roughly 92% of S&P 500 companies disclosed a clawback policy in 2016, and more than half of companies disclosed that a financial restatement may trigger a clawback. The market has clearly embraced the clawback standard articulated in the Dodd-Frank Act, and the rollback proposed by the CHOICE Act is unnecessary and inconsistent with company and investor preferences.

- Proxy access: US SIF continues to strongly support the SEC's authority to adopt a proxy access rule, and we advocated for the inclusion of Section 971 of the Dodd-Frank Act. We believe the SEC's promulgation of a rule would benefit the capital markets by setting a single, uniform standard for shareholders to nominate directors at U.S. companies without engaging in a costly proxy contest. We believe granting long-term shareholders the right to nominate directors, thereby ending the de facto monopoly the board and management has in picking director slates, is an important component of achieving the goals of effective oversight of U.S. publicly traded companies' boards and true financial reform.

  Clearly companies and investors are moving forward with proxy access without an SEC rule. According to a report by law firm Sidley Austin, just over half of the S&P 500 companies have voluntarily adopted a proxy access mechanism. While this progress is welcomed by US SIF, we continue to believe a single standard approved by the SEC is the most efficient and effective way to establish a market-wide proxy access mechanism.

  The CHOICE Act's provision revoking the SEC's authority as specified by the Dodd-Frank Act is unnecessary and out of step with company and investor preferences.

Sections 481-483 (Registration of proxy advisory firms)

US SIF opposes burdensome and unnecessary regulation of proxy advisory firms. In our view, the proposed legislation would undermine proxy advisory firms' ability to provide a valuable service, limit competition in the proxy advisory business and impose significant costs on institutional investors with no clear benefits.

Today many institutional investors, including members of US SIF, contract with proxy advisory firms for proxy-related research. However, this does not mean that these investors blindly follow the proxy advisory firm's recommendations. Indeed, today most large holders vote according to their own guidelines.

Statistics overwhelming show that shareowners vote independent of proxy advisory firm recommendations. For example, although Institutional Shareholder Services Inc. (ISS), the largest U.S. proxy advisory firm, recommended against say-on-pay proposals at 12 percent of Russell 3000 companies in 2016, only 1.7 percent of those proposals received less than majority support from shareowners.

We believe the CHOICE Act's misguided provisions addressing proxy advisory firms would have the unintended consequence of weakening corporate governance in the United States. The U.S. system of corporate governance relies on the accountability of boards of directors to shareowners, and proxy voting is the key way

shareowners hold boards to account. Proxy advisory firms, while imperfect, play an important and useful role in enabling effective and cost-efficient independent research, analysis and informed proxy voting advice.

Title VII (Consumer Financial Protection Bureau)

US SIF opposes restructuring and weakening the Consumer Financial Protection Bureau (CFPB). The financial crisis proved beyond a doubt that the United States needs an effective regulator to protect consumers from predatory lending and to ensure that all Americans have adequate access to capital to start small businesses and buy homes. US SIF advocated for the creation of the CFPB as an entirely independent regulatory body, free from political and special interest influence. To date, the CFPB has fulfilled this goal and has successfully fought on behalf of American consumers and is restoring confidence among the public in our economic institutions.

The CHOICE Act would reverse this progress and put the economy back on unstable footing that led to the financial crisis. Title VII eliminates the CFPB's supervision and enforcement authority over large banks, scales back supervision of non-banks, and repeals authority to stop unfair, deceptive, and abusive acts such as Wells Fargo's practice of opening accounts in their customers' names without their consent.

In addition, the Act eliminates the CFPB's independence by giving the President new authority to remove the CFPB's director at will. It also subjects the CFPB to the appropriations process which may invite political decisions to influence the bureau's enforcement and supervision capabilities.

The Financial CHOICE Act is simply a bad choice for America. US SIF members care deeply about the health of the U.S. capital markets, the effectiveness of the rules and regulations governing the markets, and the long-term impact of rules and regulations. They understand that investor confidence—from retail clients to the largest institutional investors—in the health and integrity of these markets is vital. They know that the CHOICE Act will not rebuild confidence and trust in the U.S. markets. Instead it will tarnish the reputation of the US markets and undermine the health and confidence in the markets. We urge you to vote down this deeply flawed and harmful legislation.

We would welcome the opportunity to meet to discuss these important topics.

Sincerely,

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