

The House Financial Services Committee to Hold a Hearing on Financial CHOICE Act 2.0 this Wednesday – Here's a Summary of Governance and Executive Compensation Provisions

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by Cam C. Hoang

While passage in the House seems likely, the Financial Choice Act may undergo significant changes before it may pass in the Senate. Here is a summary of certain governance and executive compensation provisions that are included in the discussion draft:

- **Prohibit Universal Proxy Ballots.** Currently, companies are not required to use a universal proxy ballot in the event of a proxy contest, so shareholders receive one ballot listing candidates nominated by the board of directors and separate ballot(s) listing candidates nominated by the shareholder proponents. The Financial CHOICE Act would prohibit the SEC from requiring that companies use a universal proxy ballot.
- **Modernize Shareholder Proposal Thresholds.** The Financial CHOICE Act would increase share ownership thresholds for submitting shareholder proposals, from ownership of 1% of outstanding shares or \$2,000 for one year, to 1% of outstanding shares for three years; increase resubmission thresholds; and prohibit proposals by a proxy other than the shareholders.
- **Amend Frequency of Say-on-Pay Votes.** Currently, under the Dodd-Frank Act, non-binding shareholder votes approving executive compensation must occur at least once every three years. The Financial CHOICE Act would amend the frequency to "each year in which there has been a material change to the compensation..."
- **Require proxy advisory firms to register with the SEC and to provide companies with an opportunity to review and provide meaningful comment on draft recommendations.** The registration application would include a certification that the firm has the financial and managerial resources to consistently provide proxy advice based on accurate information. The firm would be required to disclose the procedures and methodologies used in developing proxy voting recommendations, its organizational structure, whether or not it has a code of ethics, any potential or actual conflict of interest, and its policies and procedures to manage conflicts of interest. The registration would be updated as there are material changes, and at least on an annual basis.
- **Repeal CEO Pay Ratio Disclosure.** The Financial CHOICE Act would repeal the section of the Dodd-Frank Act which requires companies to disclose the ratio of pay between CEOs and the median employees. Acting SEC Chairman Michael S.

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Piwowar's has requested an expedited review of unanticipated challenges to implementing the CEO pay ratio disclosure rule.

- **Repeal Incentive-Based Compensation Disclosure by Covered Financial Institutions.** The Financial CHOICE Act would repeal the Dodd-Frank provision which requires enhanced disclosure and reporting of incentive-based compensation by covered financial institutions. This Dodd-Frank Act provision targets excessive compensation and compensation that could lead to material financial loss. More broadly, President Trump has issued an executive order mandating that the Department of the Treasury review financial regulations, including the Dodd-Frank Act.
- **Repeal Disclosure of Hedging Policies.** The Financial CHOICE Act would repeal the Dodd-Frank requirement that companies disclose whether employees or directors may engage in hedging transactions in the company's equity securities.
- **Limit Clawbacks.** Under the Dodd-Frank Act, companies that haven't developed and implemented compensation clawback policies cannot be listed on national securities exchanges and associations. The Financial CHOICE Act would limit the scope of the clawback rule to current and former executives who had "control or authority over the financial reporting that resulted in the accounting restatement."
- **Pay vs. Performance Disclosure.** The future of the pay versus performance provision is *uncertain* because it isn't addressed by the Financial CHOICE Act or Hensarling's memo. Section 953(a) of Dodd-Frank requires companies to disclose the relationship between executive compensation actually paid and the financial performance of the company.