

1 AN ACT relating to the regulation of proxy advisory services.

2 *Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

3 ➔SECTION 1. A NEW SECTION OF KRS CHAPTER 367 IS CREATED TO
4 READ AS FOLLOWS:

5 *As used in Sections 1 to 3 of this Act:*

- 6 *(1) "Company" means a publicly traded for-profit corporation, limited liability*
7 *company, partnership, or other business entity that is doing business in this state*
8 *as defined in KRS 141.010(13);*
- 9 *(2) "Company proposal" means a proposal made by a company that is included in*
10 *the company's proxy statement, including a proposal regarding director*
11 *nominations or elections, executive compensation, corporate transactions and*
12 *structure, auditor selection, or similar measures;*
- 13 *(3) "Default recommendation or policy" means a system, set of rules, principles, or*
14 *guidelines designed to assist with voting decisions on any company proposal or*
15 *proxy proposal;*
- 16 *(4) "Economic analysis" means a written analysis of the economic impact of a*
17 *shareholder-sponsored proposal, which shall include, at a minimum:*
- 18 *(a) The subject matter of the shareholder-sponsored proposal;*
- 19 *(b) Whether the board of directors of the issuer of securities opposes the*
20 *shareholder-sponsored proposal and the stated reasons for the opposition;*
- 21 *(c) Whether the shareholder-sponsored proposal is consistent with the*
22 *investment policy of the shareholder receiving the advice;*
- 23 *(d) The economic benefits and costs of implementing the shareholder-*
24 *sponsored proposal, as written, in the long and short term;*
- 25 *(e) The quantifiable impact of the shareholder-sponsored proposal, as written,*
26 *on the investment returns of the shareholder receiving the advice; and*
- 27 *(f) An explanation of the modeling, procedures, and processes used to complete*

- 1 *the economic analysis;*
- 2 *(5) A "material connection" is established if there is a substantial likelihood that a*
- 3 *reasonable investor would consider it important in determining the financial risk*
- 4 *or the financial return of an investment;*
- 5 *(6) "Materially different advice," with respect to advice or a recommendation on how*
- 6 *to vote on a company proposal or shareholder-sponsored proposal, means*
- 7 *simultaneously advising or recommending that one (1) or more clients vote for:*
- 8 *(a) The proposal and one (1) or more clients vote against the proposal;*
- 9 *(b) A nominee for a company's governing authority and one (1) or more clients*
- 10 *vote against or abstain from voting for the same nominee; or*
- 11 *(c) Or against the proposal in opposition to the recommendation of the*
- 12 *company's management;*
- 13 *(7) "Nonpecuniary interest" includes but is not limited to an environmental, social,*
- 14 *political, or ideological interest which does not have a direct and material*
- 15 *connection to the financial risk or financial return of an investment;*
- 16 *(8) "Pecuniary factor" means a consideration having a direct and material*
- 17 *connection to the financial risk or financial return of an investment;*
- 18 *(9) "Proxy advisor":*
- 19 *(a) Means any person who is engaged in the business of providing advice,*
- 20 *research, analysis, ratings, or recommendations specifically with respect to*
- 21 *proxy voting for compensation; and*
- 22 *(b) Does not include an "investment advisor" under the federal Investment*
- 23 *Advisers Act of 1940, 15 U.S.C. sec. 80b-2, except when engaged in the*
- 24 *business of providing proxy advisory service to a third party for*
- 25 *compensation;*
- 26 *(10) "Proxy advisory service" means any of the following services that are provided in*
- 27 *connection with or in relation to a company:*

1 (a) Advice or recommendations on how to vote on a shareholder-sponsored
2 proposal or company proposal;

3 (b) Proxy statement research and analysis regarding a shareholder-sponsored
4 proposal or company proposal;

5 (c) A rating or research regarding corporate governance; or

6 (d) Development of proxy voting recommendations or policies, including
7 establishing default recommendations or policies;

8 (11) "Shareholder" includes a shareholder, unitholder, limited partner, or other
9 equity owner of a company;

10 (12) "Shareholder-sponsored proposal" means a proposal by a shareholder included
11 in the proxy statement of an issuer of securities pursuant to 17 C.F.R. sec.
12 240.14a-8; and

13 (13) "Solely in the interest of shareholders" shall be determined using only pecuniary
14 factors and shall not include any purpose to further a nonpecuniary interest.

15 ➔SECTION 2. A NEW SECTION OF KRS CHAPTER 367 IS CREATED TO
16 READ AS FOLLOWS:

17 (1) A proxy advisory service is not solely in the interest of shareholders of a company
18 if the service:

19 (a) Is wholly or partly based on, or otherwise takes into account, one (1) or
20 more nonpecuniary interests or subordinates the financial interests of
21 shareholders to other objectives, including sacrificing investment returns or
22 undertaking additional investment risk to promote or further nonpecuniary
23 interests;

24 (b) Involves providing a voting recommendation with respect to a shareholder-
25 sponsored proposal that:

26 1. Is inconsistent with the voting recommendation of the company's
27 board of directors or a board committee composed of a majority of the

- 1 company's independent directors; and
- 2 2. Does not include a written economic analysis of the financial impact
- 3 on shareholders of the proposal; or
- 4 (c) Advises against a company proposal to elect a governing person unless the
- 5 proxy advisor affirmatively states that the proxy advisory service rendered
- 6 such advice solely in the interest of the shareholders of the company.
- 7 (2) If a proxy advisor provides a proxy advisory service that is not solely in the
- 8 interest of shareholders as provided in subsection (1) of this section, the proxy
- 9 advisor shall:
- 10 (a) Include, in writing or by electronic means, a disclosure to each shareholder
- 11 or entity or other person acting on behalf of a shareholder receiving the
- 12 proxy advisory service that:
- 13 1. Conspicuously states that pursuant to subsection (1) of this section the
- 14 proxy advisory service is not being provided solely in the interest of
- 15 shareholders and that the advice subordinates the financial interests
- 16 of shareholders to other objectives, including sacrificing investment
- 17 returns or undertaking additional investment risk to promote one (1)
- 18 or more nonpecuniary interests; and
- 19 2. Explains, with particularity, the basis of the proxy advisor's advice
- 20 concerning each recommendation, including but not limited to the
- 21 company or companies for which the advice applies to and the
- 22 nonpecuniary interests used in the basis of the advice; and
- 23 (b) Immediately provide a copy of the disclosure required under paragraph (a)
- 24 of this subsection to the company that is subject to the proxy advisory
- 25 service.
- 26 (3) If the proxy advisor provides materially different advice to different clients who
- 27 have not expressly requested proxy advisory services for a nonpecuniary interest,

1 the advisor shall:

2 (a) If applicable, comply with the disclosure requirements in subsections (1)
 3 and (2) of this section; and

4 (b) Notify, in writing or by electronic means, each shareholder or entity or
 5 other person acting on behalf of a shareholder receiving the proxy advisory
 6 service, the company that is subject to the materially different advice
 7 provided by the proxy advisory service, and the Attorney General, of the
 8 materially different advice and disclose the advice or recommendation that
 9 is:

10 1. Provided solely in the interest of shareholders; and

11 2. Supported by an economic analysis performed and relied upon by the
 12 proxy advisor.

13 ➔SECTION 3. A NEW SECTION OF KRS CHAPTER 367 IS CREATED TO
 14 READ AS FOLLOWS:

15 (1) Failure to comply with the notification and disclosure requirements established
 16 for proxy advisors in Sections 1 and 2 of this Act shall be deemed to be an unfair,
 17 false, misleading, or deceptive act or practice in the conduct of trade or commerce
 18 in violation of KRS 367.170.

19 (2) The recipient of proxy advisory services provided by a proxy advisor, the company
 20 that is the subject of the proxy advisory services, or any shareholder of the
 21 company that is the subject of the proxy advisory services may bring a cause of
 22 action seeking declaratory or injunctive relief in the Circuit Court of the county
 23 where the plaintiff resides or where the violation occurred.

24 (3) (a) In any proceeding under subsection (2) of this section, the plaintiff shall
 25 serve the Attorney General with a copy of the petition within seven (7) days
 26 of filing. The Attorney General may intervene in the action.

27 (b) All of the remedies, powers, and duties provided to the Attorney General

1 under KRS 367.110 to 367.300, and the penalties provided in KRS 367.990,
2 pertaining to acts and practices declared unlawful by KRS 367.170, shall
3 apply with equal force and effect to a violation of Section 1 or 2 of this Act.

4 (c) Sections 1 to 3 of this Act shall not be construed to limit or restrict the
5 powers, duties, remedies, or penalties available to the Attorney General
6 under any other statutory or common law.

7 (4) (a) Notwithstanding any other provision of Sections 1 to 3 of this Act to the
8 contrary, a cause of action under Sections 1 to 3 of this Act shall not be
9 brought against a nonprofit organization exempt from taxation under 26
10 U.S.C. sec. 501(c) by any person or entity other than the Attorney General
11 of the Commonwealth of Kentucky:

12 1. Provided that the nonprofit organization has gross annual revenue
13 attributable to proxy advisory services of less than five hundred
14 thousand dollars (\$500,000); and

15 2. Provided further that in the event the nonprofit organization is a
16 member of an affiliated group, the combined gross annual revenue of
17 all members of the affiliated group attributable to proxy advisory
18 services is less than five hundred thousand dollars (\$500,000).

19 (b) This subsection shall not limit the authority of the Attorney General to
20 investigate or enforce Sections 1 to 3 of this Act against any person or
21 entity.

22 ➔Section 4. Sections 1 to 3 of this Act apply to proxy advisory services provided
23 on or after the effective date of this Act.