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OFFICE OF THE STATE COMPTROLLER

April 26, 2017

Honorable Jeb Hensarling, Chairman
Committee on Financial Services
United States House of Representatives
Washington, DC 20515

Dear Chairman Hensarling:

I am writing to express my concerns regarding various provisions of the Financial CHOICE Act of 2017 (FCA), legislation that is intended to repeal and replace the Dodd Frank Wall Street Reform and Consumer Protection Act enacted in 2010. I supported many of the provisions in the Dodd Frank Act, including the strengthening of shareholder rights, and I am concerned that amendments proposed by the FCA would undermine Dodd Frank reforms intended to protect consumers, investors and our financial markets generally. Various provisions of the FCA would overturn important principles relating to systemic risk that have made the financial system safer and more stable, and would undo key consumer protections that were put in place after the financial crisis. Of particular concern to me as a fiduciary and a major institutional investor, I believe the FCA would harm the interests of investors by significantly constraining corporate engagement and diminishing corporate accountability.

As Comptroller of the State of New York, I am the Trustee of the New York State Common Retirement Fund (Fund) and the administrative head of the New York State and Local Retirement System (the System). The System provides retirement, disability and death benefits to more than one million public sector members, retirees and beneficiaries, and distributed more than \$10.9 billion in benefits in State Fiscal Year 2015-16. The Fund holds the System's assets, currently valued as of December 31, 2016 at \$186 billion – approximately 39 percent of which is invested in the stock of domestic public corporations – and I have a fiduciary duty to invest prudently and for the exclusive benefit of the System's participants.

In order to monitor and safeguard the Fund's investments, my Office maintains a robust corporate governance program by which we engage corporate management and boards of directors on an array of environmental, social and governance issues. The ability to file shareholder resolutions is a vitally important component of our corporate engagement strategy. It has been my experience over the past ten years as Comptroller that shareholder resolutions are an effective means to voice concerns and propose changes in order to both protect Fund investments and encourage sustainable, robust corporate practices at our portfolio companies.

Currently, a shareholder who holds one percent or \$2,000 of a company's stock for one year may submit a shareholder proposal for consideration at the company's annual meeting. Section 844 of the FCA, however, would restrict the right to submit a proposal to shareholders who hold one percent of a company's stock for three years. Such severe holding requirements would effectively deprive the Fund, and most other shareholders, of the ability to file proposals. To illustrate, under the FCA an investor would have to own approximately \$3 billion in Exxon Mobil Corporation shares for three years in order to be eligible to submit a shareholder proposal to that company. Thus, even with nearly \$1 billion in Exxon Mobil Corporation stock in its portfolio, I would be unable to file a shareholder proposal on behalf of the Fund – a result that I find absurd.

Shareholders, large and small, play an integral role in improving corporate behavior on a host of issues including executive compensation, excessive risk taking, workplace rights and climate change. Much of that engagement is accomplished by means of shareholder resolutions. The Fund is the third largest public pension fund in the nation and a long term institutional investor. It is inconceivable that we would be denied the opportunity to engage portfolio companies by means of filing shareholder resolutions.

The Fund is also a longtime member of the Council of Institutional Investors (CII) and members of my staff have served in leadership roles at that organization over the years. I refer you to the April 24, 2017 letter you and Congresswoman Waters received from the CII.¹ The letter provides a thoughtful analysis of several additional provisions of the FCA that would negatively impact the institutional investor community and reduce corporate accountability.

I urge the Committee to consider the concerns I have expressed on behalf of the members, retirees and beneficiaries of the System for whom the Fund invests and investors generally. The FCA has far-reaching implications for consumers, investors, and the financial system as a whole and such proposed changes should be carefully analyzed and thoughtfully considered. Thank you for your attention to my concerns.

Sincerely,

Thomas P. DiNapoli
State Comptroller

¹http://www.cii.org/files/issues_and_advocacy/correspondence/2017/Apr%2024%20Letter%20Committee%20on%20Financial%20Services_FINAL.pdf