Ranking Member Pat Toomey (R-Pa.)
Opening Statement
Full Committee Hearing
June 14, 2022 at 10:00 AM

Thank you, Mr. Chairman, for holding this important hearing.

Over the last 25 years, there's been democratization of our capital markets. Today, retail investors have access to investment products more easily and at lower costs than ever before, through zero commission trading, tighter bid-offer spreads, and convenient and user-friendly interfaces.

Retail investors have access to countless low-cost, or even zero expense, passive index funds and ETFs. And it turns out, investors particularly like low-cost, diversified funds that track an index like the S&P 500.

At the end of 2021, index funds held $12.5 trillion in assets. Index funds have been a tremendous boon for retirement savings. However, their tremendous growth presents a problem.

A retail investor who buys an index fund technically doesn't own the stocks in the fund. The fund owns the stocks and the fund's manager can vote them. That gives the managers enormous influence over companies, even though they're voting shares purchased with other people's money.

This would be a problem even if this voting power were dispersed. But it's not dispersed. The stocks held by index funds are concentrated with a few very large asset managers, making these entities disproportionately influential with every large public U.S. corporation.

Collectively, BlackRock, State Street, and Vanguard, are the largest voting blocks in nearly 90% of S&P 500 companies. They derive much of their voting power from ordinary Americans who buy index funds.

Even though this isn't the managers' money, and they are supposed to be investing this money passively, they're nonetheless voting these shares. I'd like to highlight two problems that arise from this consolidation of corporate voting power.

First, some asset managers are using their voting power to advance their own political agendas. They're voting on shareholder proposals and board nominees. By virtue of this power, they can apply pressure over companies outside of formal votes.

For example, last year, BlackRock, Vanguard, and State Street backed the effort of Engine No. 1, a small hedge fund owning just 0.02% of Exxon's voting shares, to install on the board of Exxon directors who are sympathetic to the fund's global warming activism.

Engine No. 1's effort to install board members who want to fundamentally remake an oil company, succeeded because the Big Three agreed. Does anyone seriously believe all of the Big Three's investor clients actually want Exxon to transition away from fossil fuels as Engine No. 1 wants them to?

There are plenty of actively-managed funds that investors can choose from that will pursue reforms and changes at companies if those investors see fit. But passively-managed funds aren't supposed to impose a strategic vision or agenda on firms. They are supposed to benignly follow the market.

Second, as I've noted, these asset managers are voting shares purchased with other people's money. Asset managers should not be using their clients' voting power to pursue the political agenda of their CEOs or exercise control over corporations.

Investors select index funds to track the market, not to have the big asset managers change the market based on their political views. Rather, they choose an asset manager based on factors like fees, returns, and the index a fund tracks.

Congress needs to address the problems of the largest asset managers voting other people's shares and their consolidation of corporate voting power. In my view, the solution is to return voting power to the true investors in a company—the people who put their own money at risk.

Senator Dan Sullivan has introduced legislation—the INDEX Act—to do just that. I'm proud to co-sponsor it and delighted he's here today to discuss it.

The INDEX Act requires any asset manager of a passive index fund with more than 1% of a company's voting shares to vote those shares in accordance with the instructions of the fund’s investors, not at the discretion of the asset manager. Or they could choose to not vote at all.

This means such asset managers, including for index funds offered under 401(k) plans, ERISA plans, and the Thrift Savings Plan for federal workers and retirees, could no longer use and abuse the voting power of their index fund investors to advance their own agendas.

Importantly, the INDEX Act recognizes the reality that index fund investors may want some guidance in deciding how to vote their shares, since there could be numerous votes to cast. Researching and deciding on each of those votes could be incredibly time consuming for the average investor.

That’s why the INDEX Act requires asset managers to permit third-party vote recommendations on their voting platforms so that investors can consult these recommendations. And asset managers that provide third-party recommendations must do so on a non-discriminatory basis that allows investors to consult a broad diversity of views.

To make the voting process simpler and more efficient for index investors, the INDEX Act would allow recommendations to take the form of general voting instructions given in advance. That means an investor could vote according to those general instructions, not on a case-by-case basis. For example, an investor could choose to always support management’s position on votes, unless the investor decided otherwise.

I look forward to hearing from today’s witnesses. In my view, further democratizing investing and diminishing the consolidation of corporate voting power are objectives that members of both parties can, and should, get behind. I hope that today’s discussion will help us build bipartisan support for legislation that will achieve these important objectives.