

Union Calendar No. 275

118TH CONGRESS
1ST SESSION

H. R. 4790

[Report No. 118-336]

To amend the Federal securities laws with respect to the materiality of disclosure requirements, to establish the Public Company Advisory Committee, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JULY 20, 2023

Mr. HUIZENGA (for himself, Mr. MEUSER, Mr. LUCAS, and Mr. MOONEY) introduced the following bill; which was referred to the Committee on Financial Services

DECEMBER 22, 2023

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italics]

[For text of introduced bill, see copy of bill as introduced on July 20, 2023]

A BILL

To amend the Federal securities laws with respect to the materiality of disclosure requirements, to establish the Public Company Advisory Committee, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
 2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) *SHORT TITLE.*—*This Act may be cited as the*
 5 *“Guiding Uniform and Responsible Disclosure Require-*
 6 *ments and Information Limits Act of 2023” or the*
 7 *“GUARDRAIL Act of 2023”.*

8 (b) *TABLE OF CONTENTS.*—*The table of contents for*
 9 *this Act is as follows:*

Sec. 1. Short title; table of contents.

TITLE I—MANDATORY MATERIALITY REQUIREMENT

Sec. 101. Limitation on disclosure requirements.

*TITLE II—SEC JUSTIFICATION OF NON-MATERIAL DISCLOSURE
 MANDATES*

Sec. 201. SEC justification of non-material disclosure mandates.

TITLE III—PUBLIC COMPANY ADVISORY COMMITTEE

Sec. 301. Public Company Advisory Committee.

TITLE IV—PROTECTING U.S. BUSINESS SOVEREIGNTY

Sec. 401. Study on detrimental impact of the Directive on Corporate Sustain-
ability Due Diligence and Corporate Sustainability Reporting
Directive.

10 **TITLE I—MANDATORY**
 11 **MATERIALITY REQUIREMENT**

12 **SEC. 101. LIMITATION ON DISCLOSURE REQUIREMENTS.**

13 (a) *SECURITIES ACT OF 1933.*—*Section 2(b) of the Se-*
 14 *curities Act of 1933 (15 U.S.C. 77b(b)) is amended—*

15 (1) *in the subsection heading, by inserting “;*
 16 *LIMITATION ON DISCLOSURE REQUIREMENTS” after*
 17 *“FORMATION”;*

1 (2) by striking “Whenever” and inserting the fol-
2 lowing:

3 “(1) *IN GENERAL.*—Whenever”; and

4 (3) by adding at the end the following:

5 “(2) *LIMITATION.*—

6 “(A) *IN GENERAL.*—Whenever pursuant to
7 this title the Commission is engaged in rule-
8 making regarding disclosure obligations of
9 issuers, the Commission shall expressly provide
10 that an issuer is only required to disclose infor-
11 mation in response to such disclosure obligations
12 to the extent the issuer has determined that such
13 information is material with respect to a voting
14 or investment decision regarding the securities of
15 such issuer.

16 “(B) *APPLICABILITY.*—Subparagraph (A)
17 shall not apply with respect to the removal of
18 any disclosure requirement with respect to an
19 issuer.

20 “(C) *RULE OF CONSTRUCTION.*—For the
21 purposes of this paragraph, information is con-
22 sidered material with respect to a voting or in-
23 vestment decision regarding the securities of an
24 issuer if there is a substantial likelihood that a
25 reasonable investor would view the failure to dis-

1 *close that information as having significantly al-*
2 *tered the total mix of information made avail-*
3 *able to the investor.”.*

4 **(b) SECURITIES EXCHANGE ACT OF 1934.**—Section
5 3(f) of the Securities Exchange Act of 1934 (15 U.S.C.
6 78c(f)) is amended—

7 (1) in the subsection heading, by inserting “;
8 **LIMITATION ON DISCLOSURE REQUIREMENTS**” after
9 “**FORMATION**”;

10 (2) by striking “Whenever” and inserting the fol-
11 *lowing:*

12 “(1) **IN GENERAL.**—Whenever”; and

13 (3) by adding at the end the following:

14 “(2) **LIMITATION.**—

15 “(A) **IN GENERAL.**—Whenever pursuant to
16 this title the Commission is engaged in rule-
17 making regarding disclosure obligations of
18 issuers, the Commission shall expressly provide
19 that an issuer is only required to disclose infor-
20 mation in response to such disclosure obligations
21 to the extent the issuer has determined that such
22 information is material with respect to a voting
23 or investment decision regarding the securities of
24 such issuer.

1 “(B) *APPLICABILITY.*—Subparagraph (A)
 2 *shall not apply with respect to the removal of*
 3 *any disclosure requirement with respect to an*
 4 *issuer.*

5 “(C) *RULE OF CONSTRUCTION.*—*For the*
 6 *purposes of this paragraph, information is con-*
 7 *sidered material with respect to a voting or in-*
 8 *vestment decision regarding the securities of an*
 9 *issuer if there is a substantial likelihood that a*
 10 *reasonable investor would view the failure to dis-*
 11 *close that information as having significantly al-*
 12 *tered the total mix of information made avail-*
 13 *able to the investor.”.*

14 **TITLE II—SEC JUSTIFICATION**
 15 **OF NON-MATERIAL DISCLO-**
 16 **SURE MANDATES**

17 **SEC. 201. SEC JUSTIFICATION OF NON-MATERIAL DISCLO-**
 18 **SURE MANDATES.**

19 *Section 23 of the Securities Exchange Act of 1934 (15*
 20 *U.S.C. 78w) is amended by adding at the end the following:*

21 “(e) *NON-MATERIAL DISCLOSURE MANDATES.*—

22 “(1) *DISCLOSURE.*—*The Commission shall*
 23 *maintain a list on the website of the Commission that*
 24 *contains—*

1 “(A) each mandate under the Federal secu-
2 rities laws and regulations that requires the dis-
3 closure of non-material information; and

4 “(B) for each such disclosure mandate, an
5 explanation of why the mandate is required.

6 “(2) *STUDY AND REPORT.*—The Commission
7 shall, every 5 years, issue a report to the Congress jus-
8 tifying each disclosure contained on the list required
9 under paragraph (1).

10 “(3) *NO PRIVATE LIABILITY FOR FAILING TO*
11 *MAKE A NON-MATERIAL DISCLOSURE.*—A person who
12 fails to disclose non-material information required to
13 be disclosed under the Federal securities laws or regu-
14 lations shall not be liable for such failure in any pri-
15 vate action.”.

16 ***TITLE III—PUBLIC COMPANY***
17 ***ADVISORY COMMITTEE***

18 ***SEC. 301. PUBLIC COMPANY ADVISORY COMMITTEE.***

19 *The Securities Exchange Act of 1934 is amended by*
20 *inserting after section 40 (15 U.S.C. 78qq) the following:*

21 ***“SEC. 40A. PUBLIC COMPANY ADVISORY COMMITTEE.***

22 ***“(a) ESTABLISHMENT AND PURPOSE.—***

23 ***“(1) ESTABLISHMENT.—There is established***
24 ***within the Commission the Public Company Advisory***

1 *Committee (referred to in this section as the ‘Com-*
2 *mittee’).*

3 *“(2) PURPOSE.—The Committee shall—*

4 *“(A) provide the Commission with advice*
5 *on its rules, regulations, and policies with regard*
6 *to its mission of protecting investors, maintain-*
7 *ing fair, orderly, and efficient markets, and fa-*
8 *cilitating capital formation, as they relate to—*

9 *“(i) existing and emerging regulatory*
10 *priorities of the Commission;*

11 *“(ii) issues relating to the public re-*
12 *porting and corporate governance of public*
13 *companies;*

14 *“(iii) issues relating to the proxy proc-*
15 *ess for shareholder meetings held by public*
16 *companies;*

17 *“(iv) issues relating to trading in the*
18 *securities of public companies; and*

19 *“(v) issues relating to capital forma-*
20 *tion; and*

21 *“(B) submit to the Commission such find-*
22 *ings and recommendations as the Committee de-*
23 *termines are appropriate, including rec-*
24 *ommendations for proposed regulatory and legis-*
25 *lative changes.*

1 “(b) *MEMBERSHIP.*—

2 “(1) *IN GENERAL.*—*The membership of the Com-*
3 *mittee shall be not fewer than 10, and not more than*
4 *20, members appointed by the Commission from*
5 *among individuals who—*

6 “(A) *are officers, directors, or senior offi-*
7 *cials of public companies registered with the*
8 *Commission under the Securities Act of 1933*
9 *and this Act, except for those public companies*
10 *that own asset management, fixed income, in-*
11 *vestment advisory, broker-dealer, or proxy serv-*
12 *ices businesses;*

13 “(B) *are executives or other individuals*
14 *with senior managerial responsibility in busi-*
15 *ness, professional, trade, and industry associa-*
16 *tions that represent the interests of such public*
17 *companies; or*

18 “(C) *are professional advisers and service*
19 *providers to such public companies (including*
20 *attorneys, accountants, investment bankers, and*
21 *financial advisers).*

22 “(2) *QUALIFICATIONS.*—*At least 50 percent of*
23 *the Committee membership shall be drawn from indi-*
24 *viduals who would qualify for membership under*
25 *paragraph (1)(A).*

1 “(3) *TERM.*—

2 “(A) *IN GENERAL.*—*Each member of the*
3 *Committee appointed under paragraph (1) shall*
4 *serve for a term of 4 years.*

5 “(B) *VACANCIES.*—*Vacancies among the*
6 *members, whether caused by the resignation,*
7 *death, removal, expiration of a term, or other-*
8 *wise, will be filled consistent with the Commis-*
9 *sion’s procedures then in effect.*

10 “(C) *STAGGERED TERMS.*—*The members of*
11 *the Committee shall serve staggered terms, with*
12 *one-third of the initial members of the Com-*
13 *mittee each serving for 1, 2, or 3 years.*

14 “(4) *MEMBERS NOT ON OTHER ADVISORY COM-*
15 *MITTEES.*—*Public companies and other organizations*
16 *that are currently represented on any other Commis-*
17 *sion Advisory Committee are not eligible to have rep-*
18 *resentatives also serve on the Public Company Advi-*
19 *sory Committee.*

20 “(5) *MEMBERS NOT COMMISSION EMPLOYEES.*—
21 *Members appointed under paragraph (1) shall not be*
22 *considered to be employees or agents of the Commis-*
23 *sion solely because of membership on the Committee.*

24 “(c) *CHAIR; VICE CHAIR; SECRETARY; ASSISTANT*
25 *SECRETARY.*—

1 “(1) *IN GENERAL.*—*The members of the Com-*
2 *mittee shall elect, from among the members of the*
3 *Committee—*

4 “(A) *a Chair;*

5 “(B) *a Vice Chair;*

6 “(C) *a Secretary; and*

7 “(D) *an Assistant Secretary.*

8 “(2) *TERM.*—*Each member elected under para-*
9 *graph (1) shall serve for a term of two years in the*
10 *capacity the member was elected under paragraph*
11 *(1).*

12 “(3) *SUBCOMMITTEES.*—*The Chair may create*
13 *subcommittees that hold public or non-public meet-*
14 *ings and provide recommendations to the full Com-*
15 *mittee.*

16 “(d) *MEETINGS.*—

17 “(1) *FREQUENCY OF MEETINGS.*—*The Committee*
18 *shall meet—*

19 “(A) *not less frequently than twice annu-*
20 *ally, at the call of the Chair of the Committee;*
21 *and*

22 “(B) *from time to time, at the call of the*
23 *Commission.*

24 “(2) *NOTICE.*—*The Chair of the Committee shall*
25 *give the members of the Committee written notice of*

1 *each meeting, not later than two weeks before the date*
2 *of the meeting.*

3 “(e) *COMPENSATION AND TRAVEL EXPENSES.—Each*
4 *member of the Committee who is not a full-time employee*
5 *of the United States shall—*

6 “(1) *be entitled to receive compensation at a rate*
7 *not to exceed the daily equivalent of the annual rate*
8 *of basic pay in effect for a position at level V of the*
9 *Executive Schedule under section 5316 of title 5,*
10 *United States Code, for each day during which the*
11 *members is engaged in the actual performance of the*
12 *duties of the Committee; and*

13 “(2) *while away from the home or regular place*
14 *of business of the member in the performance of serv-*
15 *ices for the Committee, be allowed travel expenses, in-*
16 *cluding per diem in lieu of subsistence, in the same*
17 *manner as persons employed intermittently in the*
18 *Government service are allowed expenses under sec-*
19 *tion 5703(b) of title 5, United States Code.*

20 “(f) *STAFF.—The Commission shall make available to*
21 *the Committee such staff as the Chair of the Committee de-*
22 *termines are necessary to carry out this section.*

23 “(g) *REVIEW BY COMMISSION.—The Commission*
24 *shall—*

1 “(1) review the findings and recommendations of
2 the Committee; and

3 “(2) each time the Committee submits a finding
4 or recommendation to the Commission, promptly
5 issue a public statement—

6 “(A) assessing the finding or recommenda-
7 tion of the Committee; and

8 “(B) disclosing the action, if any, the Com-
9 mission intends to take with respect to the find-
10 ing or recommendation.

11 “(h) COMMITTEE FINDINGS.—Nothing in this section
12 shall require the Commission to agree to or act upon any
13 finding or recommendation of the Committee.

14 “(i) NONAPPLICABILITY OF FACCA.—Chapter 10 of
15 part I of title 5, United States Code, shall not apply to
16 the Committee and its activities.”.

17 **TITLE IV—PROTECTING U.S.**
18 **BUSINESS SOVEREIGNTY**

19 **SEC. 401. STUDY ON DETRIMENTAL IMPACT OF THE DIREC-**
20 **TIVE ON CORPORATE SUSTAINABILITY DUE**
21 **DILIGENCE AND CORPORATE SUSTAIN-**
22 **ABILITY REPORTING DIRECTIVE.**

23 (a) STUDY.—The Securities and Exchange Commis-
24 sion shall conduct a study to examine and evaluate—

1 (1) *the detrimental impact and potential detri-*
2 *mental impact of each of the Directives on—*

3 (A) *United States companies, consumers,*
4 *and investors; and*

5 (B) *the economy of the United States;*

6 (2) *the extent to which each of the Directives*
7 *aligns with international conventions and declara-*
8 *tions on human rights and environmental obligations;*
9 *and*

10 (3) *the legal basis for the extraterritorial reach*
11 *of each of the Directives.*

12 (b) *REPORT.—Not later than 1 year after the date of*
13 *the enactment of this Act, the Securities and Exchange*
14 *Commission shall submit to the Committee on Banking,*
15 *Housing, and Urban Affairs of the Senate, the Committee*
16 *on Financial Services of the House of Representatives, the*
17 *Secretary of State, the Secretary of Commerce, and the*
18 *United States Trade Representative a report that in-*
19 *cludes—*

20 (1) *the results of the study conducted under this*
21 *section; and*

22 (2) *recommendations for policymakers and rel-*
23 *evant stakeholders on potential mitigating measures,*
24 *alternative approaches, or modifications to each of the*

1 *Directives that would address any concerns identified*
2 *in the study.*

3 (c) *ACCESS TO INFORMATION.*—*The Securities and Ex-*
4 *change Commission may request from private entities such*
5 *relevant data and information as the Securities and Ex-*
6 *change Commission determines necessary to carry out the*
7 *study required under this section and such private entities*
8 *shall provide such requested data and information to the*
9 *Securities and Exchange Commission.*

10 (d) *DIRECTIVES DEFINED.*—*In this section the term*
11 *“Directives” means—*

12 (1) *the proposed directive entitled “Corporate*
13 *Sustainability Due Diligence” adopted by the Euro-*
14 *pean Commission on February 23, 2022; and*

15 (2) *the Corporate Sustainability Reporting Di-*
16 *rective of the European Commission effective January*
17 *5, 2023.*

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[Report No. 118-336]

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