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116TH CONGRESS
2D SESSION

H. R. 8960

To amend the Investment Advisers Act of 1940 to require large asset managers to establish Sustainable Investment Policies.

IN THE HOUSE OF REPRESENTATIVES

DECEMBER 14, 2020

Mr. LEVIN of Michigan (for himself, Mr. BRENDAN F. BOYLE of Pennsylvania, Mrs. AXNE, and Mr. GARCÍA of Illinois) introduced the following bill; which was referred to the Committee on Financial Services

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A BILL

To amend the Investment Advisers Act of 1940 to require large asset managers to establish Sustainable Investment Policies.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ‘‘Sustainable Investment Policies Act of 2020’’.

SEC. 2. FINDINGS.

The Congress finds the following:

(1) There is now incontrovertible evidence that ESG factors are financially material.

(2) Decades of policy interpretations from the Department of Labor and Securities and Exchange Commission have created confusion as to fiduciaries' obligations with regard to ESG integration.

(3) Recent policies of the Securities and Exchange Commission have had a chilling effect on ESG integration and active ownership with a view toward advancing a sustainable economy.

SEC. 3. PURPOSE.

The purpose of this Act is to require large investment advisors to adopt and implement policies to consider Environmental, Social, and Governance (ESG) factors when making investments.

SEC. 4. SUSTAINABLE INVESTMENT POLICY OF INVESTMENT ADVISERS.

Section 203 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–3) is amended by adding at the end the following:

"(o) SUSTAINABLE INVESTMENT POLICY.—

"(1) IN GENERAL.—No person may be registered as an investment adviser under this section unless the person files a sustainable investment policy with the Commission that such person follows in carrying out the duties of an investment adviser.

"(2) CONTENTS.—

"(A) IN GENERAL.—A sustainable investment policy described under paragraph (1) shall include policies of the person, with respect to—

"(i) corporate governance practices by entities in which the plan invests, including executive compensation, board diversity, the independence of board chairs, political spending and lobbying disclosure;

"(ii) characteristics of workforces employed by entities in which the plan invests, including compensation and benefits, health and safety, diversity and demographics, skills and training, retention and turnover, full-time and part-time employment, and the use of independent contractors;

"(iii) labor and human rights compliance by entities in which the plan invests, including workers' freedom of association, the right to collectively bargain, and the prevention of employment discrimination, child labor, and forced labor in company operations and supply chains;

"(iv) the implementation, to the extent practicable, of practices which enhance diversity and inclusion performance within the workforce, senior leadership, business procurement, philanthropy and/or board of directors;

"(v) environmental risks to the assets and properties of entities in which the funds advised by the person invest, including—

"(I) climate risks and contributions;

"(II) environmental risks that are not related to climate, such as industrial pollution, habitat destruction, and other forms of environmental degradation;

"(III) impact to species endangerment and extinction; and

"(IV) pollution of land, air, and water related to the operation of the entities invested in by the plan; pollution of land, air and water related to the operation of the entities in which funds advised by the person invest;

"(vi) due diligence and practices regarding supply chain management, including environmental, human rights, and worker compensation considerations; and

"(vii) tax practices of entities in which the plan invests, including international tax avoidance strategies and tax payment disclosure.

"(3) COMPLIANCE AUDIT.—

"(A) IN GENERAL.—Each registered investment adviser shall contract with an auditor (as described in rule 2–10 of section 210.01 of title 17, Code of Federal Regulations) to perform an annual evaluation of the adviser's compliance with the sustainable investment policy filed with the Commission.

"(B) REPORT.—An auditor performing an evaluation under subparagraph (A) shall file, and make publicly available, a report on such evaluation to the adviser and the Commission.

"(4) FIDUCIARY SAFE HARBOR.—The Commission may, by order, determine that an investment adviser has not breached its fiduciary duty with respect to consideration of factors outlined under this subsection if the investment adviser is in compliance with this subsection.".

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