[DISCUSSION DRAFT]

116TH CONGRESS 2D SESSION  H. R. _____

To require companies registered with the Securities and Exchange Commission, and companies registering securities with the Commission, to consider diverse individual-owned and controlled firms when seeking the services of investment advisers, and for other purposes.

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IN THE HOUSE OF REPRESENTATIVES

M. ______ introduced the following bill; which was referred to the Committee on ______

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A BILL

To require companies registered with the Securities and Exchange Commission, and companies registering securities with the Commission, to consider diverse individual-owned and controlled firms when seeking the services of investment advisers, 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  
4  SECTION 1. SHORT TITLE.
5  This Act may be cited as the “Diverse Investment
6  Advisers Act”.
SEC. 2. FINDINGS.

The Congress finds the following:

(1) Diverse individual-owned and controlled firms continue to face obstacles, such as discrimination and other related barriers, when competing for investment adviser services opportunities, including Federal opportunities.

(2) The Government Accountability Office found in September 2017 that asset management firms (also known as firms providing investment adviser services) registered in the United States manage more than $70,000,000,000,000 of assets and that minority- and women-owned asset management firms manage less than 1 percent of such assets.

(3) Conscious efforts to facilitate diverse and inclusive firm selection for investment advisers services opportunities are required to overcome obstacles facing diverse individual-owned and controlled firms, especially as women- and minority-owned businesses across the financial services sector struggle to recover from the impacts of the coronavirus disease (COVID–19) outbreak and future major disasters.

(4) Despite evidence that women and minority-owned firms perform as well as and sometimes outperform their industry counterparts, they are not consistently selected to manage institutional assets.
Although women and minority-owned firms account for approximately 8.6 percent of the asset management industry, recent reports show that they only manage 1.1 percent of all assets under management or $785 billion out of $71.4 trillion, and are underrepresented as managers in every asset class.

SEC. 3. INVESTMENT ADVISER CONTRACTING BY PERSONS REGISTERED WITH THE SECURITIES AND EXCHANGE COMMISSION.

The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by inserting after section 15G the following:

“SEC. 15H. INVESTMENT ADVISER CONTRACTING REQUIREMENTS.

“(a) REQUIRED FOR REGISTRATION.—No broker, dealer, investment adviser, investment company, or self-regulatory organization may be registered with the Commission unless such person—

“(1) does not contract for the services of an investment adviser for externally managed funds; or

“(2) in contracting for the services of an investment adviser for externally managed funds after the date of the enactment of this section, has in place procedures that require the person, before contracting for such services—

March 20, 2020 (9:25 p.m.)
“(A) to publish, unless prohibited by law or regulation, a request for proposal for such services; and

“(B) if one or more diverse individual owned and controlled firms submits a proposal to provide such services that satisfies the criteria set forth in the request for proposal, to invite at least one such diverse individual-owned and controlled firm to present their proposal, or certify to the Commission that no diverse individual-owned and controlled firms submitted a proposal, unless such invitation is prohibited by other law or regulation.

“(b) REPORTS.—

“(1) PERSONS CONTRACTING FOR THE SERVICES OF INVESTMENT ADVISERS FOR EXTERNALLY MANAGED FUNDS.—Each broker, dealer, investment adviser, investment company, and self-regulatory organization who contracts for the services of an investment adviser for externally managed funds and who is registered with the Commission shall, each fiscal year of such person, submit to the Office of Minority and Women Inclusion of the Commission a report that identifies, for the previous fiscal year—
“(A) the percentage of services of investment advisers for externally managed funds the person contracted for that were provided by a diverse individual-owned and controlled firm;

“(B) the dollar value of any contracts with diverse-individual owned and controlled firms providing the services of investment advisers for externally managed funds as a percentage of the dollar value of all contracts with all firms providing the services of investment advisers for externally managed funds;

“(C) the efforts made by the person to communicate opportunities for investment adviser services for externally managed funds to diverse-individual owned and controlled firms providing the services of investment advisers for externally managed funds;

“(D) the number of diverse-individual owned and controlled firms that were considered by the person to provide the services of investment advisers for externally managed funds and, with respect to each such firm, the race and gender of the owners of such firm; and

“(E) for any investment adviser for externally managed funds services contract oppor-
tunity in which a diverse-individual owned and controlled firm was not considered, a description of why a diverse-individual owned and controlled firm was not considered.

“(2) INCLUSION OF REPORT INFORMATION ON FORM ADV.—Any person who is required to file a report under paragraph (1) shall, in any Form ADV filed by, or required to be filed by such person, include all information required to be filed in the report under paragraph (1) in such Form ADV filing.

“(3) ANNUAL REPORT BY THE OFFICE OF MINORITY AND WOMEN INCLUSION.—The Director of the Office of Minority and Women Inclusion of the Commission shall issue an annual report to the Commission and the Congress on the use of diverse individual-owned and controlled firms offering investment advising services for externally managed funds, including a summary of reports received under paragraph (1) and under section 13B(b).

“(4) COMMISSION REPORT TO CONGRESS.—The Commission shall issue a report every 5 years to the Congress on the steps taken by the Commission to implement this section and section 13B.

“(c) EXCEPTION.—This section shall not apply to—
“(1) a contract described in section 15 of the Investment Company Act of 1940, except for an initial contract—

“(A) pursuant to which a person serves or acts as an unaffiliated sub-adviser to a registered investment company; and

“(B) which is exempt from the shareholder approval requirement of section 15 in reliance on an order or rule of the Commission; or

“(2) a diverse individual-owned and controlled firm with assets under $100,000,000.

“(d) DEFINITIONS.—For the purposes of this section:

“(1) AFFILIATED PERSON.—The term ‘affiliated person’ has the meaning given that term under section 2(a) of the Investment Company Act of 1940.

“(2) DIVERSE INDIVIDUAL-OWNED AND CONTROLLED FIRM.—The term ‘diverse individual-owned and controlled firm’ means a firm—

“(A) which is at least 51 percent owned by one or more individuals who are women, minorities, or veterans; or

“(B) whose management and daily business operations are—
“(i) in the case of a firm the shares of which are traded on a national securities exchange, controlled by a board with a majority of members who are women, minorities, or veterans; and

“(ii) in the case of any other firm, at least 51 percent controlled by one or more individuals who are women, minorities, or veterans.

“(3) INVESTMENT ADVISER.—The term ‘investment adviser’ has the meaning given the term in section 202(a)(11) of the Investment Advisers Act of 1940.

“(4) MINORITY.—The term ‘minority’ has the meaning given the term in section 308(b) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 and also includes any indigenous person in the United States or its territories.

“(5) UNAFFILIATED SUB-ADVISER TO A REGISTERED INVESTMENT COMPANY.—With respect to a registered investment company, the term ‘unaffiliated sub-adviser to a registered investment company’ means a person described under section 2(a)(20)(B) of the Investment Company Act of 1940 that is not an affiliated person of a person described under sec-
tion 2(a)(20)(A) of the Investment Company Act of 1940.

“(6) VETERAN.—The term ‘veteran’ has the meaning given the term in section 101 of title 38, United States Code.”.

SEC. 4. INVESTMENT ADVISER CONTRACTING BY PERSONS REGISTERING SECURITIES.

The Securities Exchange Act of 1934 is amended by inserting after section 13A the following:

“SEC. 13B. INVESTMENT ADVISER CONTRACTING REQUIREMENTS.

“(a) IN GENERAL.—Any issuer required to file an annual report under section 13 shall, when contracting for the services of an investment adviser for externally manage funds—

“(1) publish, unless prohibited by law or regulation, a request for proposal for such services; and

“(2) if one or more diverse individual owned and controlled firms submits a proposal to provide such services that satisfies the criteria set forth in the request for proposal, invite at least one such diverse individual-owned and controlled firm to present their proposal, or certify to the Commission that no diverse individual-owned and controlled firms sub-
mitted a proposal, unless such invitation is prohibited by other law or regulation.

“(b) REPORT.—Any issuer required to file an annual report under section 13 who contracts for the services of an investment adviser for externally managed funds shall, each fiscal year of such issuer, submit to the Office of Minority and Women Inclusion of the Commission a report that identifies, for the previous fiscal year—

“(1) the percentage of services of investment advisers for externally managed funds the issuer contracted for that were provided by a diverse individual-owned and controlled firm;

“(2) the dollar value of any contracts with diverse-individual owned and controlled firms providing the services of investment advisers for externally managed funds as a percentage of the dollar value of all contracts with all firms providing the services of investment advisers for externally managed funds;

“(3) the efforts made by the issuer to communicate investment adviser services for externally managed funds contract opportunities to diverse-individual owned and controlled firms providing the services of investment advisers for externally managed funds;
“(4) the number of diverse-individual owned and controlled firms that were considered by the issuer to provide the services of investment advisers for externally managed funds and, with respect to each such firm, the race and gender of the owners of such firm; and

“(5) for any investment adviser services for externally managed funds contract opportunity in which a diverse-individual owned and controlled firm was not considered, a description of why a diverse-individual owned and controlled firm was not considered.

“(c) EXCEPTION.—This section shall not apply to—

“(1) a contract described in section 15 of the Investment Company Act of 1940, except for an initial contract—

“(A) pursuant to which a person serves or acts as an unaffiliated sub-adviser to a registered investment company; and

“(B) which is exempt from the shareholder approval requirement of section 15 in reliance on an order or rule of the Commission; or

“(2) a diverse individual-owned and controlled firm with assets under $100,000,000.
“(d) DEFINITIONS.—In this section, the terms, ‘affiliated person’, ‘diverse individual-owned and controlled firm’, ‘investment adviser’, ‘minority’, ‘unaffiliated sub-adviser to a registered investment company’, and ‘veteran’ have the meaning given such terms in section 15H(d).”.

SEC. 5. EFFECTIVE DATE.

The amendments made by this Act shall take effect after the end of the 180-day period beginning on the date of the termination by the Federal Emergency Management Administration of the emergency declared on March 13, 2020, by the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 4121 et seq.) relating to the Coronavirus Disease 2019 (COVID-19) pandemic.