

[DISCUSSION DRAFT]

116TH CONGRESS
2^D 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.

IN THE HOUSE OF REPRESENTATIVES

M____. _____ introduced the following bill; which was referred to the
Committee on _____

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 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Diverse Investment
5 Advisers Act”.

1 **SEC. 2. FINDINGS.**

2 The Congress finds the following:

3 (1) Diverse individual-owned and controlled
4 firms continue to face obstacles, such as discrimina-
5 tion and other related barriers, when competing for
6 investment adviser services opportunities, including
7 Federal opportunities.

8 (2) The Government Accountability Office
9 found in September 2017 that asset management
10 firms (also known as firms providing investment ad-
11 viser services) registered in the United States man-
12 age more than \$70,000,000,000,000 of assets and
13 that minority- and women-owned asset management
14 firms manage less than 1 percent of such assets.

15 (3) Conscious efforts to facilitate diverse and
16 inclusive firm selection for investment advisers serv-
17 ices opportunities are required to overcome obstacles
18 facing diverse individual-owned and controlled firms,
19 especially as women- and minority-owned businesses
20 across the financial services sector struggle to re-
21 cover from the impacts of the coronavirus disease
22 (COVID-19) outbreak and future major disasters.

23 (4) Despite evidence that women and minority-
24 owned firms perform as well as and sometimes out-
25 perform their industry counterparts, they are not
26 consistently selected to manage institutional assets.

1 Although women and minority-owned firms account
2 for approximately 8.6 percent of the asset manage-
3 ment industry, recent reports show that they only
4 manage 1.1 percent of all assets under management
5 or \$785 billion out of \$71.4 trillion, and are under-
6 represented as managers in every asset class.

7 **SEC. 3. INVESTMENT ADVISER CONTRACTING BY PERSONS**
8 **REGISTERED WITH THE SECURITIES AND EX-**
9 **CHANGE COMMISSION.**

10 The Securities Exchange Act of 1934 (15 U.S.C. 78a
11 et seq.) is amended by inserting after section 15G the fol-
12 lowing:

13 **“SEC. 15H. INVESTMENT ADVISER CONTRACTING REQUIRE-**
14 **MENTS.**

15 “(a) **REQUIRED FOR REGISTRATION.**—No broker,
16 dealer, investment adviser, investment company, or self-
17 regulatory organization may be registered with the Com-
18 mission unless such person—

19 “(1) does not contract for the services of an in-
20 vestment adviser for externally managed funds; or

21 “(2) in contracting for the services of an invest-
22 ment adviser for externally managed funds after the
23 date of the enactment of this section, has in place
24 procedures that require the person, before con-
25 tracting for such services—

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

4 “(B) if one or more diverse individual
5 owned and controlled firms submits a proposal
6 to provide such services that satisfies the cri-
7 teria set forth in the request for proposal, to in-
8 vite at least one such diverse individual-owned
9 and controlled firm to present their proposal, or
10 certify to the Commission that no diverse indi-
11 vidual-owned and controlled firms submitted a
12 proposal, unless such invitation is prohibited by
13 other law or regulation.

14 “(b) REPORTS.—

15 “(1) PERSONS CONTRACTING FOR THE SERV-
16 ICES OF INVESTMENT ADVISERS FOR EXTERNALLY
17 MANAGED FUNDS.—Each broker, dealer, investment
18 adviser, investment company, and self-regulatory or-
19 ganization who contracts for the services of an in-
20 vestment adviser for externally managed funds and
21 who is registered with the Commission shall, each
22 fiscal year of such person, submit to the Office of
23 Minority and Women Inclusion of the Commission a
24 report that identifies, for the previous fiscal year—

1 “(A) the percentage of services of invest-
2 ment advisers for externally managed funds the
3 person contracted for that were provided by a
4 diverse individual-owned and controlled firm;

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

12 “(C) the efforts made by the person to
13 communicate opportunities for investment ad-
14 viser services for externally managed funds to
15 diverse-individual owned and controlled firms
16 providing the services of investment advisers for
17 externally managed funds;

18 “(D) the number of diverse-individual
19 owned and controlled firms that were consid-
20 ered by the person to provide the services of in-
21 vestment advisers for externally managed funds
22 and, with respect to each such firm, the race
23 and gender of the owners of such firm; and

24 “(E) for any investment adviser for exter-
25 nally managed funds services contract oppor-

1 tunity in which a diverse-individual owned and
2 controlled firm was not considered, a descrip-
3 tion of why a diverse-individual owned and con-
4 trolled firm was not considered.

5 “(2) INCLUSION OF REPORT INFORMATION ON
6 FORM ADV.—Any person who is required to file a re-
7 port under paragraph (1) shall, in any Form ADV
8 filed by, or required to be filed by such person, in-
9 clude all information required to be filed in the re-
10 port under paragraph (1) in such Form ADV filing.

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

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

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

1 “(1) a contract described in section 15 of the
2 Investment Company Act of 1940, except for an ini-
3 tial contract—

4 “(A) pursuant to which a person serves or
5 acts as an unaffiliated sub-adviser to a reg-
6 istered investment company; and

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

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

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

13 “(1) AFFILIATED PERSON.—The term ‘affili-
14 ated person’ has the meaning given that term under
15 section 2(a) of the Investment Company Act of
16 1940.

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

20 “(A) which is at least 51 percent owned by
21 one or more individuals who are women, minori-
22 ties, or veterans; or

23 “(B) whose management and daily busi-
24 ness operations are—

1 “(i) in the case of a firm the shares
2 of which are traded on a national securities
3 exchange, controlled by a board with a ma-
4 jority of members who are women, minori-
5 ties, or veterans; and

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

10 “(3) INVESTMENT ADVISER.—The term ‘invest-
11 ment adviser’ has the meaning given the term in sec-
12 tion 202(a)(11) of the Investment Advisers Act of
13 1940.

14 “(4) MINORITY.—The term ‘minority’ has the
15 meaning given the term in section 308(b) of the Fi-
16 nancial Institutions Reform, Recovery, and Enforce-
17 ment Act of 1989 and also includes any indigenous
18 person in the United States or its territories.

19 “(5) UNAFFILIATED SUB-ADVISER TO A REG-
20 ISTERED INVESTMENT COMPANY.—With respect to a
21 registered investment company, the term ‘unaffili-
22 ated sub-adviser to a registered investment company’
23 means a person described under section 2(a)(20)(B)
24 of the Investment Company Act of 1940 that is not
25 an affiliated person of a person described under sec-

1 tion 2(a)(20)(A) of the Investment Company Act of
2 1940.

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

6 **SEC. 4. INVESTMENT ADVISER CONTRACTING BY PERSONS**
7 **REGISTERING SECURITIES.**

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

10 **“SEC. 13B. INVESTMENT ADVISER CONTRACTING REQUIRE-**
11 **MENTS.**

12 “(a) IN GENERAL.—Any issuer required to file an an-
13 nual report under section 13 shall, when contracting for
14 the services of an investment adviser for externally man-
15 age funds—

16 “(1) publish, unless prohibited by law or regula-
17 tion, a request for proposal for such services; and

18 “(2) if one or more diverse individual owned
19 and controlled firms submits a proposal to provide
20 such services that satisfies the criteria set forth in
21 the request for proposal, invite at least one such di-
22 verse individual-owned and controlled firm to present
23 their proposal, or certify to the Commission that no
24 diverse individual-owned and controlled firms sub-

1 mitted a proposal, unless such invitation is prohib-
2 ited by other law or regulation.

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

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

13 “(2) the dollar value of any contracts with di-
14 verse-individual owned and controlled firms pro-
15 viding the services of investment advisers for exter-
16 nally managed funds as a percentage of the dollar
17 value of all contracts with all firms providing the
18 services of investment advisers for externally man-
19 aged funds;

20 “(3) the efforts made by the issuer to commu-
21 nicate investment adviser services for externally
22 managed funds contract opportunities to diverse-in-
23 dividual owned and controlled firms providing the
24 services of investment advisers for externally man-
25 aged funds;

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

7 “(5) for any investment adviser services for ex-
8 ternally managed funds contract opportunity in
9 which a diverse-individual owned and controlled firm
10 was not considered, a description of why a diverse-
11 individual owned and controlled firm was not consid-
12 ered.

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

14 “(1) a contract described in section 15 of the
15 Investment Company Act of 1940, except for an ini-
16 tial contract—

17 “(A) pursuant to which a person serves or
18 acts as an unaffiliated sub-adviser to a reg-
19 istered investment company; and

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

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

1 “(d) DEFINITIONS.—In this section, the terms, ‘af-
2 filiated person’, ‘diverse individual-owned and controlled
3 firm’, ‘investment adviser’, ‘minority’, ‘unaffiliated sub-ad-
4 viser to a registered investment company’, and ‘veteran’
5 have the meaning given such terms in section 15H(d).”.

6 **SEC. 5. EFFECTIVE DATE.**

7 The amendments made by this Act shall take effect
8 after the end of the 180-day period beginning on the date
9 of the termination by the Federal Emergency Manage-
10 ment Administration of the emergency declared on March
11 13, 2020, by the President under the Robert T. Stafford
12 Disaster Relief and Emergency Assistance Act (42 U.S.C.
13 4121 et seq.) relating to the Coronavirus Disease 2019
14 (COVID-19) pandemic.