

[DISCUSSION DRAFT]

118TH CONGRESS
1ST SESSION

H. R. _____

To amend the Investment Advisers Act of 1940 to specify requirements concerning the consideration of pecuniary and non-pecuniary factors, to require the Securities and Exchange Commission to conduct a study on climate change and other environmental disclosures in the municipal bond market, and to require the Securities and Exchange Commission to conduct a study on the solicitation of municipal securities business.

IN THE HOUSE OF REPRESENTATIVES

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

A BILL

To amend the Investment Advisers Act of 1940 to specify requirements concerning the consideration of pecuniary and non-pecuniary factors, to require the Securities and Exchange Commission to conduct a study on climate change and other environmental disclosures in the municipal bond market, and to require the Securities and Exchange Commission to conduct a study on the solicitation of municipal securities business.

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

1 **SECTION 1. BEST INTEREST BASED ON PECUNIARY FAC-**
2 **TORS.**

3 (a) IN GENERAL.—Section 211(g) of the Investment
4 Advisers Act of 1940 (15 U.S.C. 80b–11(g)) is amended
5 by adding at the end the following:

6 “(3) BEST INTEREST BASED ON PECUNIARY
7 FACTORS.—

8 “(A) IN GENERAL.—For purposes of para-
9 graph (1), the best interest of a customer shall
10 be determined using pecuniary factors, which
11 may not be subordinated to or limited by non-
12 pecuniary factors, unless the customer provides
13 informed consent, in writing, that such non-pe-
14 cuniary factors be considered.

15 “(B) DISCLOSURE OF PECUNIARY FAC-
16 TORS.—If a customer provides a broker, dealer,
17 or investment adviser with the informed consent
18 to consider non-pecuniary factors described
19 under subparagraph (A), the broker, dealer, or
20 investment adviser shall—

21 “(i) disclose the expected pecuniary
22 effects to the customer over a time period
23 selected by the customer and not to exceed
24 three years; and

25 “(ii) at the end of the time period de-
26 scribed in clause (i), disclose, by compari-

1 son to a reasonably comparable index or
2 basket of securities selected by the cus-
3 tomer, the actual pecuniary effects of that
4 time period, including all fees, costs, and
5 other expenses incurred to consider non-pe-
6 cuniary factors.

7 “(C) PECUNIARY FACTOR DEFINED.—In
8 this paragraph, the term ‘pecuniary factor’
9 means a factor that a fiduciary prudently deter-
10 mines is expected to have a material effect on
11 the risk or return of an investment based on
12 appropriate investment horizons.”.

13 (b) RULEMAKING.—Not later than the end of the 12-
14 month period beginning on the date of enactment of this
15 Act, the Securities and Exchange Commission shall revise
16 or issue such rules as may be necessary to implement the
17 amendment made by subsection (a).

18 (c) APPLICABILITY.—The amendment made by sub-
19 section (a) shall apply to actions taken by a broker, dealer,
20 or investment adviser beginning on the date that is 12
21 months after the date of enactment of this Act.

1 **SEC. 2. STUDY ON CLIMATE CHANGE AND OTHER ENVIRON-**
2 **MENTAL DISCLOSURES IN MUNICIPAL BOND**
3 **MARKET.**

4 (a) IN GENERAL.—The Securities and Exchange
5 Commission shall—

6 (1) conduct a study to determine the extent to
7 which issuers of municipal securities (as such term
8 is defined in section 3(a)(29) of the Securities Ex-
9 change Act of 1934 (15 U.S.C. 78c(a)(29)) make
10 disclosures to investors regarding climate change
11 and other environmental matters; and

12 (2) solicit public comment with respect to such
13 study.

14 (b) CONTENTS.—The study required under sub-
15 section (a) shall consider and analyze—

16 (1) the frequency with which disclosures de-
17 scribed in subsection (a)(1) are made;

18 (2) whether such disclosures made by issuers of
19 municipal securities in connection with offerings of
20 securities align with such disclosures made by
21 issuers of municipal securities in other contexts or to
22 audiences other than investors;

23 (3) any voluntary or mandatory disclosure
24 standards observed by issuers of municipal securities
25 in the course of making such disclosures;

1 (4) the degree to which investors consider such
2 disclosures in connection with making an investment
3 decision; and

4 (5) such other information as the Securities
5 and Exchange Commission determines appropriate.

6 (c) REPORT.—Not later than 1 year after the date
7 of the enactment of this Act, the Securities and Exchange
8 Commission shall submit to the Committee on Banking,
9 Housing, and Urban Affairs of the Senate and the Com-
10 mittee on Financial Services of the House of Representa-
11 tives a report that includes—

12 (1) the results of the study required under this
13 section;

14 (2) a detailed discussion of the financial risks
15 to investors from investments in municipal securi-
16 ties;

17 (3) whether such risks are adequately disclosed
18 to investors; and

19 (4) recommended regulatory or legislative steps
20 to address any concerns identified in the study.

21 **SEC. 3. STUDY ON SOLICITATION OF MUNICIPAL SECURI-**
22 **TIES BUSINESS.**

23 (a) IN GENERAL.—The Securities and Exchange
24 Commission shall—

1 (1) conduct a study on the effectiveness of each
2 covered rule in preventing the payment of funds to
3 elected officials or candidates for elected office in ex-
4 change for the receipt of government business in
5 connection with the offer or sale of municipal securi-
6 ties; and

7 (2) solicit public comment with respect to such
8 study.

9 (b) CONTENTS.—The study required under sub-
10 section (a) shall consider and analyze—

11 (1) the effectiveness of each covered rule, in-
12 cluding whether each covered rule accomplishes the
13 intended effect of such covered rule and has any un-
14 intended adverse effects;

15 (2) the frequency and scope of enforcement ac-
16 tions undertaken pursuant to each covered rule;

17 (3) the degree to which—

18 (A) persons subject to each covered rule—

19 (i) have in effect policies and proce-
20 dures intended to ensure compliance with
21 each such covered rule; and

22 (ii) are disadvantaged from partici-
23 pating in the political process generally
24 and in relation to persons who solicit or re-
25 ceive government business or government

1 licenses, permits, and approvals other than
2 in connection with the offer or sale of mu-
3 nicipal securities; and

4 (B) other State and Federal laws and reg-
5 ulations impact the solicitation of municipal se-
6 curities business; and

7 (4) such other information as the Securities
8 and Exchange Commission determines appropriate.

9 (c) REPORT.—Not later than 1 year after the date
10 of the enactment of this Act, the Securities and Exchange
11 Commission shall submit to the Committee on Banking,
12 Housing, and Urban Affairs of the Senate and the Com-
13 mittee on Financial Services of the House of Representa-
14 tives a report that includes—

15 (1) the results of the study required under this
16 section;

17 (2) an analysis of the extent to which persons
18 affiliated with small businesses, as well as persons
19 affiliated with minority and women opened busi-
20 nesses, have been affected by the covered rules; and

21 (3) recommended regulatory or legislative steps
22 to address any concerns identified in the study.

23 (d) DEFINITIONS.—In this section:

24 (1) COVERED RULE.—The term “covered rule”
25 means—

1 (A) Rule G–38 of the Municipal Securities
2 Rulemaking Board; and

3 (B) Rule 206(4)–5 (17 CFR 275.206(4)–
4 5).

5 (2) MUNICIPAL SECURITIES.—The term “mu-
6 nicipal securities” has the meaning given the term in
7 section 3(a)(29) of the Securities Exchange Act of
8 1934 (15 U.S.C. 78c(a)(29)).