

[DISCUSSION DRAFT]

117TH CONGRESS
1ST 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 contacted
20 or interviewed by the person to provide the
21 services of investment advisers for externally
22 managed funds and, with respect to each such
23 firm, the race and gender of the owners of such
24 firm; and

1 “(E) for any investment adviser for exter-
2 nally managed funds services contract oppor-
3 tunity in which a diverse-individual owned and
4 controlled firm was not contacted or inter-
5 viewed, a description of why a diverse-individual
6 owned and controlled firm was not contacted or
7 interviewed.

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

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

23 “(4) COMMISSION REPORT TO CONGRESS.—The
24 Commission shall issue a report every 5 years to the

1 Congress on the steps taken by the Commission to
2 implement this section and section 13B.

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

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

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

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

13 “(2) a firm with assets under \$100,000,000.

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

15 “(1) AFFILIATED PERSON.—The term ‘affili-
16 ated person’ has the meaning given that term under
17 section 2(a) of the Investment Company Act of
18 1940.

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

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

1 “(B) whose management and daily busi-
2 ness operations are—

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

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

12 “(3) INVESTMENT ADVISER.—The term ‘invest-
13 ment adviser’ has the meaning given the term in sec-
14 tion 202(a)(11) of the Investment Advisers Act of
15 1940.

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

21 “(5) UNAFFILIATED SUB-ADVISER TO A REG-
22 ISTERED INVESTMENT COMPANY.—With respect to a
23 registered investment company, the term ‘unaffili-
24 ated sub-adviser to a registered investment company’
25 means a person described under section 2(a)(20)(B)

1 of the Investment Company Act of 1940 that is not
2 an affiliated person of a person described under sec-
3 tion 2(a)(20)(A) of the Investment Company Act of
4 1940.

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

8 **SEC. 4. INVESTMENT ADVISER CONTRACTING BY PERSONS**
9 **REGISTERING SECURITIES.**

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

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

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

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

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

1 diverse individual-owned and controlled firms sub-
2 mitted a proposal, unless such invitation is prohib-
3 ited by other law or regulation.

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

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

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

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

1 services of investment advisers for externally man-
2 aged funds;

3 “(4) the number of diverse-individual owned
4 and controlled firms that were contacted or inter-
5 viewed by the issuer to provide the services of invest-
6 ment advisers for externally managed funds and,
7 with respect to each such firm, the race and gender
8 of the owners of such firm; and

9 “(5) for any investment adviser services for ex-
10 ternally managed funds contract opportunity in
11 which a diverse-individual owned and controlled firm
12 was not contacted or interviewed, a description of
13 why a diverse-individual owned and controlled firm
14 was not contacted or interviewed.

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

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

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

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

25 “(2) a 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.