

ESG DISCLOSURE SIMPLIFICATION ACT OF 2019

JANUARY 7, 2020.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Ms. WATERS, from the Committee on Financial Services,  
submitted the following

R E P O R T

together with

MINORITY VIEWS

[To accompany H.R. 4329]

[Including cost estimate of the Congressional Budget Office]

The Committee on Financial Services, to whom was referred the bill (H.R. 4329) to provide for disclosure of additional material information about public companies and establish a Sustainable Finance Advisory Committee, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

CONTENTS

	Page
Purpose and Summary .....	3
Background and Need for Legislation .....	4
Section-by-Section Analysis .....	5
Hearings .....	7
Committee Consideration .....	7
Committee Votes .....	7
Statement of Oversight Findings and Recommendations of the Committee .....	9
Statement of Performance Goals and Objectives .....	9
New Budget Authority and CBO Cost Estimate .....	9
Committee Cost Estimate .....	11
Unfunded Mandate Statement .....	11
Advisory Committee .....	11
Application of Law to the Legislative Branch .....	11
Earmark Statement .....	11
Duplication of Federal Programs .....	11
Changes to Existing Law .....	11

The amendment is as follows:  
Strike all after the enacting clause and insert the following:

*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 “ESG Disclosure Simplification Act of 2019”.

**SEC. 2. ESG DISCLOSURES.**

(a) IN GENERAL.—Section 14 of the Securities Exchange Act of 1934 (15 U.S.C. 78n) is amended by adding at the end the following:

“(k) ESG DISCLOSURES.—

“(1) IN GENERAL.—Each issuer the securities of which are registered under section 12 or that is required to file annual reports under section 15(d) shall disclose in any proxy or consent solicitation material for an annual meeting of the shareholders—

“(A) a clear description of the views of the issuer about the link between ESG metrics and the long-term business strategy of the issuer; and

“(B) a description of any process the issuer uses to determine the impact of ESG metrics on the long-term business strategy of the issuer.

“(2) ESG METRICS DEFINED.—In this subsection, the term ‘ESG metrics’ has the meaning given the term in part 210 of title 17, Code of Federal Regulations as amended pursuant to subsection (b) of the ESG Disclosure Simplification Act of 2019.”.

(b) RULEMAKING.—

(1) IN GENERAL.—The Securities and Exchange Commission (in this Act referred to as the “Commission”) shall amend part 210 of title 17, Code of Federal Regulations (or any successor thereto) to—

(A) require each issuer, in any filing of the issuer described in such part that requires audited financial statements, to disclose environmental, social, and governance metrics (in this Act referred to as ESG metrics); and

(B) define ESG metrics.

(2) SUSTAINABLE FINANCE ADVISORY COMMITTEE.—The Sustainable Finance Advisory Committee established pursuant to section 4(k) of the Securities and Exchange Act of 1934 shall, not later than 180 days after the date of the first meeting of such Committee, submit to the Commission recommendations about what ESG metrics the Commission should require issuers to disclose.

(3) MATERIALITY.—It is the sense of Congress that ESG metrics, as such term is defined by the Commission pursuant to paragraph (2), are de facto material for the purposes of disclosures under the Securities Exchange Act of 1934 and the Securities Act of 1933.

(4) INCORPORATION OF INTERNATIONAL STANDARDS.—When amending part 210 of title 17, Code of Federal Regulations (or any successor thereto) pursuant to paragraph (1), the Commission may, as the Commission determines appropriate, incorporate any internationally recognized, independent, multi-stakeholder environmental, social, and governance disclosure standards.

(5) LOCATION OF DISCLOSURE.—Any disclosure required by paragraph (1) may be included in a notes section of the filing.

(6) DELAY FOR SMALL ISSUERS.—The Commission may use a phased approach when applying any amendments made pursuant to paragraph (1) to small issuers and may determine the criteria by which an issuer qualifies as a small issuer for purposes of such phased approach.

**SEC. 3. SUSTAINABLE FINANCE ADVISORY COMMITTEE.**

Section 4 of the Securities Exchange Act of 1934 (15 U.S.C. 78d) is amended by adding at the end the following:

“(k) SUSTAINABLE FINANCE ADVISORY COMMITTEE.—

“(1) ESTABLISHMENT.—The Securities and Exchange Commission (in this subsection referred to as the ‘Commission’) shall establish a permanent advisory committee to be called the ‘Sustainable Finance Advisory Committee’ (in this subsection referred to as the ‘Committee’).

“(2) DUTIES OF COMMITTEE.—The Committee shall—

“(A) submit a report to the Securities and Exchange Commission not later than 18 months after the date of the first meeting of the Committee that—

“(i) identifies the challenges and opportunities for investors associated with sustainable finance; and

“(ii) recommends policy changes to facilitate the flow of capital towards sustainable investments, in particular environmentally sustainable investments;

- “(B) when solicited, advise the Commission on sustainable finance; and  
“(C) communicate with individuals and entities with an interest in sustainable finance.
- “(3) MEMBERSHIP.—
- “(A) MEMBERS.—
- “(i) IN GENERAL.—The Committee shall consist of no more than 20 members who shall each serve for one four-year term.
- “(ii) REPRESENTATION.—Each member shall represent individuals and entities with an interest in sustainable finance, such as—
- “(I) experts on sustainable finance;
- “(II) operators of financial infrastructure;
- “(III) entities that provide analysis, data, or methodologies that facilitate sustainable finance;
- “(IV) insurance companies, pension funds, asset managers, depository institutions, or credit unions; or
- “(V) other financial institutions that intermediate investments in sustainable finance or manage risks related to sustainable development.
- “(iii) REPRESENTATION OF INTERESTS.—A member may not represent a single individual or entity and shall represent types of individuals and entities with similar interests in sustainable finance.
- “(B) SELECTION.—
- “(i) IN GENERAL.—The Commission shall—
- “(I) publish criteria for selection of members on the website of the Commission and in the Federal Register; and
- “(II) solicit applications for membership on the website of the Commission and in the Federal Register.
- “(ii) EQUAL SHARE.—From the individuals who submit applications for membership, each Commissioner of the Commission shall select an equal number of the members of the Committee.
- “(C) PAY.—Members may not receive pay by reason of their service on the Committee but may receive travel or transportation expenses in accordance with applicable provisions under subchapter I of chapter 57 of title 5, United States Code.
- “(D) MEMBER TRANSPARENCY.—The name of each member and the types of individuals and entities that such member represents shall be published on the website of the Commission.
- “(E) STAFF.—The Committee shall be supported by staff from the Office of the Investor Advocate of the Commission that are dedicated to environmental, social and governance (in this subsection referred to as ‘ESG’) issues.
- “(F) AUTHORIZATION OF APPROPRIATION.—There are authorized to be appropriated such sums as are necessary to finance costs associated with staff dedicated to ESG issues in the Office of the Investor Advocate of the Commission.
- “(4) SUSTAINABLE FINANCE.—For the purposes of this subsection, the term ‘sustainable finance’ means the provision of finance with respect to investments taking into account environmental, social, and governance considerations.
- “(5) SEC RESPONSE.—The Commission shall, not later than 6 months after the date on which the Committee submits a report to the Commission pursuant to paragraph (2)(A), publish a response to such report.”.

#### PURPOSE AND SUMMARY

On September 13, 2009, Representative Juan Vargas introduced H.R. 4329, the ESG Disclosure Simplification Act of 2019. H.R. 4329 requires the Securities and Exchange Commission (SEC) to issue rules requiring public companies to disclose certain environmental, social, and governance (ESG) metrics. The bill authorizes the SEC to delay the phase-in of these rules for small companies. The bill also requires public companies to disclose annually in their proxy statements a description of their views on the link between ESG metrics and long-term business performance, as well as the process the companies use to determine such impacts. Finally, this bill creates a Sustainable Finance Advisory Committee within the SEC, which would: make recommendations to the SEC on which

ESG metrics public companies should be required to disclose; submit a report to the SEC that identifies challenges and opportunities for investors in sustainable finance and recommends policy changes that would facilitate the flow of capital toward sustainable investments; advise the SEC on sustainable finance; and communicate with individuals and entities with an interest in sustainable finance.

#### BACKGROUND AND NEED FOR LEGISLATION

Environmental, social, and governance (ESG) matters generally include issues relating to environmental sustainability, such as climate change; social issues such as human rights and labor practices; and governance issues such as gender, racial, and ethnic diversity at both the executive and board levels.

There is growing evidence that ESG disclosures are material to investors. In recent years, investors have increasingly been demanding more—and better—disclosure of ESG information from public companies.<sup>1</sup> Many investors view ESG information as important not just for evaluating reputational risks, but for evaluating companies' financial performance as well.<sup>2</sup> For example, Blackrock Investment Institute stated in a 2015 report that:

ESG factors cannot be divorced from financial analysis. We view a strong ESG record as a mark of operational and management excellence. Companies that score high on ESG measures tend to quickly adapt to changing environmental and social trends, use resources efficiently, have engaged (and, therefore, productive) employees, and face lower risks of regulatory fines or reputational damage.<sup>3</sup>

Moreover, credit rating agencies now incorporate ESG factors into their ratings methodologies—in fact, S&P has taken over 100 rating actions based on environmental and climate concerns.<sup>4</sup>

In recognition of the growing importance of ESG disclosures in the investment landscape, the International Organization of Securities Commissions (IOSCO) published a statement on January 18, 2019 emphasizing “the importance for issuers of considering the inclusion of environmental, social and governance (ESG) matters when disclosing information material to investors’ decisions.”<sup>5</sup> However, while the SEC is a member of IOSCO, it was the only

<sup>1</sup> See e.g., Donnelly Financial, *The Future of ESG and Sustainability Reporting: What Issuers Need to Know Right Now*, at 3 (November 14, 2018) (finding that 65% of institutional investors “often or always consider environmental and social issues in their investment decisions,” and 95% “often or always consider governance issues—for all investments.”).

<sup>2</sup> See e.g., Bank of America, *ESG: Good Companies Can Make Good Stocks*, at 1 (December 18, 2016) (finding that “[ESG] metrics have been strong indicators of future volatility, earnings risk, price declines and bankruptcies.”); Nordea, *Cracking the ESG Code*, at 1 (September 5, 2017) (“Companies that score higher on ESG demonstrate better operational performance, with regards to both the level and the stability of returns.”).

<sup>3</sup> Blackrock Investment Institute, *The Price of Climate Change: Global Warming’s Impact on Portfolios*, at 7 (October 31, 2015).

<sup>4</sup> Standard & Poor’s, *How Does S&P Global Ratings Incorporate Environmental, Social, and Governance Risks Into Its Ratings Analysis*, at 2 (November 21, 2017) (noting that between July 16, 2015 and August 29, 2017, “environmental and climate (E&C) concerns affected corporate ratings in 717 cases, or approximately 10% of corporate ratings assessments and resulted in a rating impact (an upgrade, downgrade, outlook revision, or CreditWatch placement) in 106 cases.”).

<sup>5</sup> IOSCO, *Statement on Disclosure of ESG Matters by Issuers*, at 1 (January 18, 2019), available at <https://www.iosco.org/library/pubdocs/pdf/IOSCOPD619.pdf>.

member regulator not to sign on to the IOSCO statement on ESG disclosures.<sup>6</sup>

In October 2018, a coalition of large public pension funds, asset managers, law professors, and non-profit organizations filed a petition with the SEC for a rulemaking on ESG disclosures.<sup>7</sup> The petition called on the SEC to develop a comprehensive ESG disclosure framework, and identified seven specific issues that the SEC could act on immediately: (1) climate risk; (2) annual ESG disclosures based on the Global Reporting Initiative (GRI) framework; (3) gender pay ratios; (4) human capital management; (5) human rights; (6) political spending; and (7) tax disclosure.<sup>8</sup>

In addition, over 2,300 investment managers, asset managers, and service providers representing over \$80 trillion in assets under management (AUM) are signatories to the UN-sponsored Principles for Responsible Investment (PRI), which commit these institutions to incorporating ESG factors into their investment decisions.<sup>9</sup> Of these signatories, 458 are U.S. institutions, which collectively represent over \$40 trillion AUM.

In testifying before the Subcommittee on Investor Protection, Entrepreneurship, and Capital Markets, Tim Mohin, Chief Executive of the Global Reporting Initiative (GRI) noted that “focusing strictly on short-term financial impacts will result in the exclusion of key issues such as human rights and greenhouse gas emissions from corporate disclosures. These exclusions would leave companies and investors exposed to risks which, over the long-term, can have significant financial implications.” A representative for the California Public Employees Retirement System (CalPERS) also testified that the disclosures required in H.R. 4329 “are important to better understand companies’ potential long-term performance and risks” and that “enhanced corporate reporting related to governance, risk, and compliance helps to put historical performance, as well as risks, opportunities, and prospects for the company into context” and that this information “will help investors understand a company’s strategic objectives and its progress in meeting them.”

H.R. 4329 is supported by, among others, the Teachers Insurance and Annuity Association of America-College Retirement Equities Fund (TIAA-CREF), Decatur Capital Management, Principles for Responsible Investment (PRI), and the California Public Employees Retirement System (CalPERS).

## SECTION-BY-SECTION ANALYSIS

### *Section 1. Short title*

This section states that the title of the bill is the “ESG Disclosure Simplification Act of 2019.”

<sup>6</sup> See *id.* at 1, n. 1.

<sup>7</sup> Cynthia A. Williams, Jill E. Fisch, et al., *Request for Rulemaking on Environmental, Social, and Governance (ESG) Disclosure*, File No. 4-730 (October 1, 2018), available at <https://www.sec.gov/rules/petitions/2018/petn4-730.pdf>.

<sup>8</sup> See *id.* at 13–16.

<sup>9</sup> PRI is a non-profit organization, originally formed by the United Nations in 2006, that brings together the world’s investment community in order to promote responsible investment and encourages investors to use responsible investment. See About the PRI, available at <https://www.unpri.org/pri/about-the-pri>.

### *Section 2. ESG disclosures*

Subsection (a) amends section 14 of the Securities Exchange Act of 1934 (15 U.S.C. 78n) by adding a new subsection (k). The new subsection (k) requires issuers that have registered securities or that file annual reports to disclose in any proxy or consent solicitation material for an annual shareholder meeting: a clear description of the link between environmental, social, and governance (ESG) metrics and the issuer's long-term business strategy; and any process the issuer uses to determine the impact of these ESG metrics on its long-term business strategy.

Paragraph (1) of subsection (b) requires the Securities and Exchange Commission to promulgate rules to define and require the disclosure of ESG metrics.

Paragraph (2) requires that the Sustainable Finance Advisory Committee created by the amendments contained in Section 3 of this Act to submit to the SEC recommendations regarding what ESG metrics the SEC should require issuers to disclose within 180 days of its first meeting.

Paragraph (3) states that ESG metrics defined by the SEC are de facto material for disclosure purposes.

Paragraph (4) allows the SEC to incorporate any internationally recognized, independent, multi-stakeholder environmental, social, and governance disclosure standards.

Paragraph (5) allows the SEC to incorporate any internationally recognized, independent, multi-stakeholder environmental, social, and governance disclosure standards.

Paragraph (6) allows the SEC to use a phased approach for small issuers and to determine the criteria used to determine when an issuer qualifies as a small issuer.

### *Section 3. Sustainable Finance Advisory Commission*

This section amends section 4 of the Securities and Exchange Act of 1934 (15 U.S.C. 78d) by adding a new subsection (k). The new subsection (k) establishes a permanent advisory committee to be called the Sustainable Finance Advisory Committee and sets forth the duties and membership of the Committee.

Within 18 months after the Committee's first meeting, the Committee shall issue a report that identifies challenges and opportunities for investors associated with sustainable finance and recommends policy changes that facilitate the flow of capital towards sustainable investments, particularly environmentally sustainable investments. This Sustainable Advisory Committee shall also advise the SEC on sustainable finance and communicate with interested individuals and entities.

The Committee will consist of no more than 20 members, who shall each serve for one four-year term. Without representing single individuals or entities, each member will represent types of individuals and entities with similar interests in sustainable finance, such as: experts on sustainable finance; operators of financial infrastructure; entities that provide analysis, data, or methodologies that facilitate sustainable finance; insurance companies, pension funds, asset managers, depository institutions, credit unions, or other financial institutions.

The SEC shall publish the criteria utilized for selection of members and shall solicit applications on the SEC's website and in the

Federal Register. Each SEC Commissioner shall select an equal number of members of the Committee.

Members of the Committee may not receive pay for their position on the Committee but may receive travel or transportation expenses.

The name of each member and the types of individuals and entities the Member represents shall be published on the SEC's website.

The SEC's Office of the Investor Advocate staff will support the Committee. Funds necessary to finance costs associated with these staff are authorized to be appropriated.

The term 'sustainable finance' is defined as the provision of finance with respect to investments taking into account environmental, social, and governance considerations.

The SEC shall publish a response to the Committee report within 6 months of the report's submission to the Commission.

#### HEARINGS

For the purposes of section 103(i) of H. Res. 6 for the 116th Congress, the Subcommittee on Investor Protection, Entrepreneurship, and Capital Markets of the Committee on Financial Services held a hearing on July 10, 2019, entitled: "Building a Sustainable and Competitive Economy: An Examination of Proposals to Improve Environmental, Social, and Governance Disclosures," to consider the ESG Disclosure Simplification Act. Testifying at the hearing were Tim Mohin, Chief Executive, Global Reporting Initiative (GRI), James Andrus, Investment Manager-Financial Markets, Sustainable Investment, CalPERS Investment Office, the Honorable Paul S. Atkins, Chief Executive Officer, Patomak Global Partners, Degas A. Wright, CFA, Chief Executive Officer, Decatur Capital Management, Inc., and Mindy S. Lubber, President and Chief Executive Officer, Ceres.

#### COMMITTEE CONSIDERATION

The Committee on Financial Services met in open session on, and ordered H.R. 4329 to be reported favorably to the House with an amendment in the nature of a substitute by a vote of 31 yeas and 22 nays, a quorum being present.

#### COMMITTEE VOTES AND ROLL CALL VOTES

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the Committee advises that the following roll call votes occurred during the Committee's consideration of H.R. 4329.

Present	Representatives	Ayes	Nays
	Ms. Waters, <i>Chairwoman</i>	X	
	Mrs. Maloney	X	
	Ms. Velázquez	X	
	Mr. Sherman	X	
	Mr. Meeks	X	
	Mr. Clay	X	
	Mr. Scott	X	
	Mr. Green	X	
	Mr. Cleaver	X	
	Mr. Perlmutter	X	
	Mr. Himes	X	
	Mr. Foster	X	
	Mrs. Beatty		
	Mr. Heck	X	
	Mr. Vargas	X	
	Mr. Gottheimer	X	
	Mr. Gonzalez (TX)	X	
	Mr. Lawson	X	
	Mr. San Nicolas		
	Ms. Tlaib	X	
	Ms. Porter	X	
	Ms. Axne	X	
	Mr. Casten	X	
	Ms. Pressley	X	
	Mr. McAdams	X	
	Ms. Ocasio-Cortez	X	
	Ms. Wexton	X	
	Mr. Lynch	X	
	Ms. Gabbard	X	
	Ms. Adams		
	Ms. Dean	X	
	Mr. Garcia (IL)	X	
	Ms. Garcia (TX)	X	
	Mr. Phillips	X	
34			
	Mr. McHenry, <i>Ranking Member</i>		X
	Mrs. Wagner		X
	Mr. King		
	Mr. Lucas		X
	Mr. Posey		X
	Mr. Luetkemeyer		X
	Mr. Duffy		
	Mr. Huizenga		X
	Mr. Stivers		X
	Mr. Barr		X
	Mr. Tipton		X
	Mr. Williams		X
	Mr. Hill		X
	Mr. Emmer		X
	Mr. Zeldin		X
	Mr. Loudermilk		X
	Mr. Mooney		X
	Mr. Davidson		X
	Mr. Budd		X
	Mr. Kustoff		X
	Mr. Hollingsworth		X
	Mr. Gonzalez (OH)		X
	Mr. Rose		X
	Mr. Steil		X
	Mr. Gooden		X
	Mr. Riggleman		
26			

**Committee on Financial Services**  
Full Committee  
116th Congress (1st Session)

Date: \_\_\_\_\_ 9/18/2019

Measure \_\_\_\_\_ H.R. 4329 (Final Passage)

Amendment No. \_\_\_\_\_

Offered by: \_\_\_\_\_ Mr. Vargas

Agreed To	Yes	No	Prsnt	Wdm
Voice Vote	Ayes		Nays	

Record Vote	FC
	31 Ayes- 22 Noes

STATEMENT OF OVERSIGHT FINDINGS AND RECOMMENDATIONS OF  
THE COMMITTEE

In compliance with clause 3(c)(1) of rule XIII and clause 2(b)(1) of rule X of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in the descriptive portions of this report.

STATEMENT OF PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause (3)(c) of rule XIII of the Rules of the House of Representatives, the goals of H.R. 4329 are to ensure that the Securities Exchange Act requires ESG disclosures.

NEW BUDGET AUTHORITY AND CBO COST ESTIMATE

Pursuant to clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the *Congressional Budget Act of 1974*, and pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the *Congressional Budget Act of 1974*, the Committee has received the following estimate for H.R. 4329 from the Director of the Congressional Budget Office:

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, November 20, 2019.*

Hon. MAXINE WATERS,  
*Chairwoman, Committee on Financial Services,  
House of Representatives, Washington, DC.*

DEAR MADAM CHAIRWOMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 4329, the ESG Disclosure Simplification Act of 2019.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is David Hughes.

Sincerely,

PHILLIP L. SWAGEL,  
*Director.*

Enclosure.

<b>H.R. 4329, ESG Disclosure Simplification Act of 2019</b>			
As ordered reported by the House Committee on Financial Services on September 20, 2019			
By Fiscal Year, Millions of Dollars	2020	2020-2024	2020-2029
Direct Spending (Outlays)	0	0	0
Revenues	0	0	0
Deficit Effect	0	0	0
Spending Subject to Appropriation (Outlays)	*	*	not estimated
Statutory pay-as-you-go procedures apply?	No	<b>Mandate Effects</b>	
Increases on-budget deficits in any of the four consecutive 10-year periods beginning in 2030?	No	Contains intergovernmental mandate?	No
		Contains private-sector mandate?	Yes, Cannot Determine Costs
* = between zero and \$500,000.			

H.R. 4329 would require the Securities and Exchange Commission (SEC) to issue rules that define environmental, social, and governance (ESG) metrics and require publicly traded companies to disclose their views about those metrics to their shareholders and the SEC annually. The SEC also would be required to establish a permanent advisory committee, composed of up to 20 members, to advise the agency on sustainable finance issues.

Using information from the SEC, CBO estimates that implementing H.R. 4329 would cost \$6 million over the 2020–2024 period for the SEC to issue rules and support the advisory committee. However, because the SEC is authorized to collect fees each year to offset its annual appropriation, CBO expects that any net change in discretionary spending over the 2020–2024 period would be negligible, assuming appropriation actions consistent with that authority.

By requiring publicly traded companies to disclose ESG metrics to shareholders and the SEC, H.R. 4329 would impose a private-sector mandate as defined in the Unfunded Mandates Reform Act (UMRA). The mandate's costs would equal the expenses incurred by those companies to comply with the new disclosure requirement. Because the SEC has not issued the rules required by the bill, CBO cannot determine whether the cost would exceed the private-sector threshold established in UMRA (\$164 million in 2019, adjusted annually for inflation).

If the SEC increased fees to offset the costs associated with implementing the bill, H.R. 4329 would increase the cost of an existing mandate on private entities required to pay those fees. CBO estimates that the incremental cost of the mandate would be small.

The bill contains no intergovernmental mandates as defined in UMRA.

The CBO staff contacts for this estimate are David Hughes (for federal costs) and Rachel Austin (for mandates). The estimate was reviewed by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

## COMMITTEE COST ESTIMATE

Clause 3(d)(1) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison of the costs that would be incurred in carrying out H.R. 4329. However, clause 3(d)(2)(B) of that rule provides that this requirement does not apply when the committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the *Congressional Budget Act*.

## UNFUNDED MANDATE STATEMENT

Pursuant to Section 423 of the *Congressional Budget and Impoundment Control Act* (as amended by Section 101(a)(2) of the *Unfunded Mandates Reform Act*, Pub. L. 104-4), the Committee adopts as its own the estimate of federal mandates regarding H.R. 4329, as amended, prepared by the Director of the Congressional Budget Office.

## ADVISORY COMMITTEE

H.R. 4329 establishes a sustainable finance advisory committee, which operates consistent with section 5(b) of the Federal Advisory Committee Act.

## APPLICATION OF LAW TO THE LEGISLATIVE BRANCH

Pursuant to section 102(b)(3) of the *Congressional Accountability Act*, Pub. L. No. 104-1, H.R. 4329, as amended, does not apply to terms and conditions of employment or to access to public services or accommodations within the legislative branch.

## EARMARK STATEMENT

In accordance with clause 9 of rule XXI of the Rules of the House of Representatives, H.R. 4329 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as described in clauses 9(e), 9(f), and 9(g) of rule XXI.

## DUPLICATION OF FEDERAL PROGRAMS

Pursuant to clause 3(c)(5) of rule XIII of the Rules of the House of Representatives, the Committee states that no provision of H.R. 4329 establishes or reauthorizes a program of the Federal Government known to be duplicative of another federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111-139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

## CHANGES TO EXISTING LAW

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, H.R. 4329, as reported, are shown as follows:

## CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italic and existing law in which no change is proposed is shown in roman):

**SECURITIES EXCHANGE ACT OF 1934**

## TITLE I—REGULATION OF SECURITIES EXCHANGES

\* \* \* \* \*

## SECURITIES AND EXCHANGE COMMISSION

SEC. 4. (a) There is hereby established a Securities and Exchange Commission (hereinafter referred to as the "Commission") to be composed of five commissioners to be appointed by the President by and with the advice and consent of the Senate. Not more than three of such commissioners shall be members of the same political party, and in making appointments members of different political parties shall be appointed alternately as nearly as may be practicable. No commissioner shall engage in any other business, vocation, or employment than that of serving as commissioner, nor shall any commissioner participate, directly or indirectly, in any stock-market operations or transactions of a character subject to regulation by the Commission pursuant to this title. Each commissioner shall hold office for a term of five years and until his successor is appointed and has qualified, except that he shall not so continue to serve beyond the expiration of the next session of Congress subsequent to the expiration of said fixed term of office, and except (1) any commissioner appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term, and (2) the terms of office of the commissioners first taking office after the enactment of this title shall expire as designated by the President at the time of nomination, one at the end of one year, one at the end of two years, one at the end of three years, one at the end of four years, and one at the end of five years, after the date of the enactment of this title.

(b) APPOINTMENT AND COMPENSATION OF STAFF AND LEASING AUTHORITY.—

(1) APPOINTMENT AND COMPENSATION.—The Commission shall appoint and compensate officers, attorneys, economists, examiners, and other employees in accordance with section 4802 of title 5, United States Code.

(2) REPORTING OF INFORMATION.—In establishing and adjusting schedules of compensation and benefits for officers, attorneys, economists, examiners, and other employees of the Commission under applicable provisions of law, the Commission shall inform the heads of the agencies referred to under section 1206 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 1833b) and Congress of such compensation and benefits and shall seek to maintain com-

parability with such agencies regarding compensation and benefits.

(3) LEASING AUTHORITY.—Notwithstanding any other provision of law, the Commission is authorized to enter directly into leases for real property for office, meeting, storage, and such other space as is necessary to carry out its functions, and shall be exempt from any General Services Administration space management regulations or directives.

(c) Notwithstanding any other provision of law, in accordance with regulations which the Commission shall prescribe to prevent conflicts of interest, the Commission may accept payment and reimbursement, in cash or in kind, from non-Federal agencies, organizations, and individuals for travel, subsistence, and other necessary expenses incurred by Commission members and employees in attending meetings and conferences concerning the functions or activities of the Commission. Any payment or reimbursement accepted shall be credited to the appropriated funds of the Commission. The amount of travel, subsistence, and other necessary expenses for members and employees paid or reimbursed under this subsection may exceed per diem amounts established in official travel regulations, but the Commission may include in its regulations under this subsection a limitation on such amounts.

(d) Notwithstanding any other provision of law, former employers of participants in the Commission's professional fellows programs may pay such participants their actual expenses for relocation to Washington, District of Columbia, to facilitate their participation in such programs, and program participants may accept such payments.

(e) Notwithstanding any other provision of law, whenever any fee is required to be paid to the Commission pursuant to any provision of the securities laws or any other law, the Commission may provide by rule that such fee shall be paid in a manner other than in cash and the Commission may also specify the time that such fee shall be determined and paid relative to the filing of any statement or document with the Commission.

(f) REIMBURSEMENT OF EXPENSES FOR ASSISTING FOREIGN SECURITIES AUTHORITIES.—Notwithstanding any other provision of law, the Commission may accept payment and reimbursement, in cash or in kind, from a foreign securities authority, or made on behalf of such authority, for necessary expenses incurred by the Commission, its members, and employees in carrying out any investigation pursuant to section 21(a)(2) of this title or in providing any other assistance to a foreign securities authority. Any payment or reimbursement accepted shall be considered a reimbursement to the appropriated funds of the Commission.

(g) OFFICE OF THE INVESTOR ADVOCATE.—

(1) OFFICE ESTABLISHED.—There is established within the Commission the Office of the Investor Advocate (in this subsection referred to as the "Office").

(2) INVESTOR ADVOCATE.—

(A) IN GENERAL.—The head of the Office shall be the Investor Advocate, who shall—

- (i) report directly to the Chairman; and
- (ii) be appointed by the Chairman, in consultation with the Commission, from among individuals having

experience in advocating for the interests of investors in securities and investor protection issues, from the perspective of investors.

(B) COMPENSATION.—The annual rate of pay for the Investor Advocate shall be equal to the highest rate of annual pay for other senior executives who report to the Chairman of the Commission.

(C) LIMITATION ON SERVICE.—An individual who serves as the Investor Advocate may not be employed by the Commission—

(i) during the 2-year period ending on the date of appointment as Investor Advocate; or

(ii) during the 5-year period beginning on the date on which the person ceases to serve as the Investor Advocate.

(3) STAFF OF OFFICE.—The Investor Advocate, after consultation with the Chairman of the Commission, may retain or employ independent counsel, research staff, and service staff, as the Investor Advocate deems necessary to carry out the functions, powers, and duties of the Office.

(4) FUNCTIONS OF THE INVESTOR ADVOCATE.—The Investor Advocate shall—

(A) assist retail investors in resolving significant problems such investors may have with the Commission or with self-regulatory organizations;

(B) identify areas in which investors would benefit from changes in the regulations of the Commission or the rules of self-regulatory organizations;

(C) identify problems that investors have with financial service providers and investment products;

(D) analyze the potential impact on investors of—

(i) proposed regulations of the Commission; and

(ii) proposed rules of self-regulatory organizations registered under this title; and

(E) to the extent practicable, propose to the Commission changes in the regulations or orders of the Commission and to Congress any legislative, administrative, or personnel changes that may be appropriate to mitigate problems identified under this paragraph and to promote the interests of investors.

(5) ACCESS TO DOCUMENTS.—The Commission shall ensure that the Investor Advocate has full access to the documents of the Commission and any self-regulatory organization, as necessary to carry out the functions of the Office.

(6) ANNUAL REPORTS.—

(A) REPORT ON OBJECTIVES.—

(i) IN GENERAL.—Not later than June 30 of each year after 2010, the Investor Advocate shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report on the objectives of the Investor Advocate for the following fiscal year.

(ii) CONTENTS.—Each report required under clause (i) shall contain full and substantive analysis and explanation.

(B) REPORT ON ACTIVITIES.—

(i) IN GENERAL.—Not later than December 31 of each year after 2010, the Investor Advocate shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report on the activities of the Investor Advocate during the immediately preceding fiscal year.

(ii) CONTENTS.—Each report required under clause (i) shall include—

(I) appropriate statistical information and full and substantive analysis;

(II) information on steps that the Investor Advocate has taken during the reporting period to improve investor services and the responsiveness of the Commission and self-regulatory organizations to investor concerns;

(III) a summary of the most serious problems encountered by investors during the reporting period;

(IV) an inventory of the items described in subclause (III) that includes—

(aa) identification of any action taken by the Commission or the self-regulatory organization and the result of such action;

(bb) the length of time that each item has remained on such inventory; and

(cc) for items on which no action has been taken, the reasons for inaction, and an identification of any official who is responsible for such action;

(V) recommendations for such administrative and legislative actions as may be appropriate to resolve problems encountered by investors; and

(VI) any other information, as determined appropriate by the Investor Advocate.

(iii) INDEPENDENCE.—Each report required under this paragraph shall be provided directly to the committees listed in clause (i) without any prior review or comment from the Commission, any commissioner, any other officer or employee of the Commission, or the Office of Management and Budget.

(iv) CONFIDENTIALITY.—No report required under clause (i) may contain confidential information.

(7) REGULATIONS.—The Commission shall, by regulation, establish procedures requiring a formal response to all recommendations submitted to the Commission by the Investor Advocate, not later than 3 months after the date of such submission.

(8) OMBUDSMAN.—

(A) APPOINTMENT.—Not later than 180 days after the date on which the first Investor Advocate is appointed

under paragraph (2)(A)(i), the Investor Advocate shall appoint an Ombudsman, who shall report directly to the Investor Advocate.

(B) DUTIES.—The Ombudsman appointed under subparagraph (A) shall—

(i) act as a liaison between the Commission and any retail investor in resolving problems that retail investors may have with the Commission or with self-regulatory organizations;

(ii) review and make recommendations regarding policies and procedures to encourage persons to present questions to the Investor Advocate regarding compliance with the securities laws; and

(iii) establish safeguards to maintain the confidentiality of communications between the persons described in clause (ii) and the Ombudsman.

(C) LIMITATION.—In carrying out the duties of the Ombudsman under subparagraph (B), the Ombudsman shall utilize personnel of the Commission to the extent practicable. Nothing in this paragraph shall be construed as replacing, altering, or diminishing the activities of any ombudsman or similar office of any other agency.

(D) REPORT.—The Ombudsman shall submit a semi-annual report to the Investor Advocate that describes the activities and evaluates the effectiveness of the Ombudsman during the preceding year. The Investor Advocate shall include the reports required under this section in the reports required to be submitted by the Inspector Advocate under paragraph (6).

(h) EXAMINERS.—

(1) DIVISION OF TRADING AND MARKETS.—The Division of Trading and Markets of the Commission, or any successor organizational unit, shall have a staff of examiners who shall—

(A) perform compliance inspections and examinations of entities under the jurisdiction of that Division; and

(B) report to the Director of that Division.

(2) DIVISION OF INVESTMENT MANAGEMENT.—The Division of Investment Management of the Commission, or any successor organizational unit, shall have a staff of examiners who shall—

(A) perform compliance inspections and examinations of entities under the jurisdiction of that Division; and

(B) report to the Director of that Division.

(i) SECURITIES AND EXCHANGE COMMISSION RESERVE FUND.—

(1) RESERVE FUND ESTABLISHED.—There is established in the Treasury of the United States a separate fund, to be known as the “Securities and Exchange Commission Reserve Fund” (referred to in this subsection as the “Reserve Fund”).

(2) RESERVE FUND AMOUNTS.—

(A) IN GENERAL.—Except as provided in subparagraph (B), any registration fees collected by the Commission under section 6(b) of the Securities Act of 1933 (15 U.S.C. 77f(b)) or section 24(f) of the Investment Company Act of 1940 (15 U.S.C. 80a-24(f)) shall be deposited into the Reserve Fund.

(B) LIMITATIONS.—For any 1 fiscal year—

(i) the amount deposited in the Fund may not exceed \$50,000,000; and

(ii) the balance in the Fund may not exceed \$100,000,000.

(C) EXCESS FEES.—Any amounts in excess of the limitations described in subparagraph (B) that the Commission collects from registration fees under section 6(b) of the Securities Act of 1933 (15 U.S.C. 77f(b)) or section 24(f) of the Investment Company Act of 1940 (15 U.S.C. 80a-24(f)) shall be deposited in the General Fund of the Treasury of the United States and shall not be available for obligation by the Commission.

(3) USE OF AMOUNTS IN RESERVE FUND.—The Commission may obligate amounts in the Reserve Fund, not to exceed a total of \$100,000,000 in any 1 fiscal year, as the Commission determines is necessary to carry out the functions of the Commission. Any amounts in the reserve fund shall remain available until expended. Not later than 10 days after the date on which the Commission obligates amounts under this paragraph, the Commission shall notify Congress of the date, amount, and purpose of the obligation.

(4) RULE OF CONSTRUCTION.—Amounts collected and deposited in the Reserve Fund shall not be construed to be Government funds or appropriated monies and shall not be subject to apportionment for the purpose of chapter 15 of title 31, United States Code, or under any other authority.

(j) OFFICE OF THE ADVOCATE FOR SMALL BUSINESS CAPITAL FORMATION.—

(1) OFFICE ESTABLISHED.—There is established within the Commission the Office of the Advocate for Small Business Capital Formation (hereafter in this subsection referred to as the “Office”).

(2) ADVOCATE FOR SMALL BUSINESS CAPITAL FORMATION.—

(A) IN GENERAL.—The head of the Office shall be the Advocate for Small Business Capital Formation, who shall—

(i) report directly to the Commission; and

(ii) be appointed by the Commission, from among individuals having experience in advocating for the interests of small businesses and encouraging small business capital formation.

(B) COMPENSATION.—The annual rate of pay for the Advocate for Small Business Capital Formation shall be equal to the highest rate of annual pay for other senior executives who report directly to the Commission.

(C) NO CURRENT EMPLOYEE OF THE COMMISSION.—An individual may not be appointed as the Advocate for Small Business Capital Formation if the individual is currently employed by the Commission.

(3) STAFF OF OFFICE.—The Advocate for Small Business Capital Formation, after consultation with the Commission, may retain or employ independent counsel, research staff, and service staff, as the Advocate for Small Business Capital Formation determines to be necessary to carry out the functions of the Office.

(4) **FUNCTIONS OF THE ADVOCATE FOR SMALL BUSINESS CAPITAL FORMATION.**—The Advocate for Small Business Capital Formation shall—

(A) assist small businesses and small business investors in resolving significant problems such businesses and investors may have with the Commission or with self-regulatory organizations;

(B) identify areas in which small businesses and small business investors would benefit from changes in the regulations of the Commission or the rules of self-regulatory organizations;

(C) identify problems that small businesses have with securing access to capital, including any unique challenges to minority-owned small businesses, women-owned small businesses, and small businesses affected by hurricanes or other natural disasters;

(D) analyze the potential impact on small businesses and small business investors of—

(i) proposed regulations of the Commission that are likely to have a significant economic impact on small businesses and small business capital formation; and

(ii) proposed rules that are likely to have a significant economic impact on small businesses and small business capital formation of self-regulatory organizations registered under this title;

(E) conduct outreach to small businesses and small business investors, including through regional roundtables, in order to solicit views on relevant capital formation issues;

(F) to the extent practicable, propose to the Commission changes in the regulations or orders of the Commission and to Congress any legislative, administrative, or personnel changes that may be appropriate to mitigate problems identified under this paragraph and to promote the interests of small businesses and small business investors;

(G) consult with the Investor Advocate on proposed recommendations made under subparagraph (F); and

(H) advise the Investor Advocate on issues related to small businesses and small business investors.

(5) **ACCESS TO DOCUMENTS.**—The Commission shall ensure that the Advocate for Small Business Capital Formation has full access to the documents and information of the Commission and any self-regulatory organization, as necessary to carry out the functions of the Office.

(6) **ANNUAL REPORT ON ACTIVITIES.**—

(A) **IN GENERAL.**—Not later than December 31 of each year after 2015, the Advocate for Small Business Capital Formation shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report on the activities of the Advocate for Small Business Capital Formation during the immediately preceding fiscal year.

(B) **CONTENTS.**—Each report required under subparagraph (A) shall include—

(i) appropriate statistical information and full and substantive analysis;

(ii) information on steps that the Advocate for Small Business Capital Formation has taken during the reporting period to improve small business services and the responsiveness of the Commission and self-regulatory organizations to small business and small business investor concerns;

(iii) a summary of the most serious issues encountered by small businesses and small business investors, including any unique issues encountered by minority-owned small businesses, women-owned small businesses, and small businesses affected by hurricanes or other natural disasters and their investors, during the reporting period;

(iv) an inventory of the items summarized under clause (iii) (including items summarized under such clause for any prior reporting period on which no action has been taken or that have not been resolved to the satisfaction of the Advocate for Small Business Capital Formation as of the beginning of the reporting period covered by the report) that includes—

(I) identification of any action taken by the Commission or the self-regulatory organization and the result of such action;

(II) the length of time that each item has remained on such inventory; and

(III) for items on which no action has been taken, the reasons for inaction, and an identification of any official who is responsible for such action;

(v) recommendations for such changes to the regulations, guidance and orders of the Commission and such legislative actions as may be appropriate to resolve problems with the Commission and self-regulatory organizations encountered by small businesses and small business investors and to encourage small business capital formation; and

(vi) any other information, as determined appropriate by the Advocate for Small Business Capital Formation.

(C) CONFIDENTIALITY.—No report required by subparagraph (A) may contain confidential information.

(D) INDEPENDENCE.—Each report required under subparagraph (A) shall be provided directly to the committees of Congress listed in such subparagraph without any prior review or comment from the Commission, any commissioner, any other officer or employee of the Commission, or the Office of Management and Budget.

(7) REGULATIONS.—The Commission shall establish procedures requiring a formal response to all recommendations submitted to the Commission by the Advocate for Small Business Capital Formation, not later than 3 months after the date of such submission.

(8) GOVERNMENT-BUSINESS FORUM ON SMALL BUSINESS CAPITAL FORMATION.—The Advocate for Small Business Capital Formation shall be responsible for planning, organizing, and executing the annual Government-Business Forum on Small Business Capital Formation described in section 503 of the Small Business Investment Incentive Act of 1980 (15 U.S.C. 80c–1).

(9) RULE OF CONSTRUCTION.—Nothing in this subsection may be construed as replacing or reducing the responsibilities of the Investor Advocate with respect to small business investors.

(k) SUSTAINABLE FINANCE ADVISORY COMMITTEE.—

(1) ESTABLISHMENT.—*The Securities and Exchange Commission (in this subsection referred to as the “Commission”) shall establish a permanent advisory committee to be called the “Sustainable Finance Advisory Committee” (in this subsection referred to as the “Committee”).*

(2) DUTIES OF COMMITTEE.—*The Committee shall—*

(A) *submit a report to the Securities and Exchange Commission not later than 18 months after the date of the first meeting of the Committee that—*

(i) *identifies the challenges and opportunities for investors associated with sustainable finance; and*

(ii) *recommends policy changes to facilitate the flow of capital towards sustainable investments, in particular environmentally sustainable investments;*

(B) *when solicited, advise the Commission on sustainable finance; and*

(C) *communicate with individuals and entities with an interest in sustainable finance.*

(3) MEMBERSHIP.—

(A) MEMBERS.—

(i) IN GENERAL.—*The Committee shall consist of no more than 20 members who shall each serve for one four-year term.*

(ii) REPRESENTATION.—*Each member shall represent individuals and entities with an interest in sustainable finance, such as—*

(I) *experts on sustainable finance;*

(II) *operators of financial infrastructure;*

(III) *entities that provide analysis, data, or methodologies that facilitate sustainable finance;*

(IV) *insurance companies, pension funds, asset managers, depository institutions, or credit unions;*  
*or*

(V) *other financial institutions that intermediate investments in sustainable finance or manage risks related to sustainable development.*

(iii) REPRESENTATION OF INTERESTS.—*A member may not represent a single individual or entity and shall represent types of individuals and entities with similar interests in sustainable finance.*

(B) SELECTION.—

(i) IN GENERAL.—*The Commission shall—*

(I) publish criteria for selection of members on the website of the Commission and in the Federal Register; and

(II) solicit applications for membership on the website of the Commission and in the Federal Register.

(ii) *EQUAL SHARE.*—From the individuals who submit applications for membership, each Commissioner of the Commission shall select an equal number of the members of the Committee.

(C) *PAY.*—Members may not receive pay by reason of their service on the Committee but may receive travel or transportation expenses in accordance with applicable provisions under subchapter I of chapter 57 of title 5, United States Code.

(D) *MEMBER TRANSPARENCY.*—The name of each member and the types of individuals and entities that such member represents shall be published on the website of the Commission.

(E) *STAFF.*—The Committee shall be supported by staff from the Office of the Investor Advocate of the Commission that are dedicated to environmental, social and governance (in this subsection referred to as “ESG”) issues.

(F) *AUTHORIZATION OF APPROPRIATION.*—There are authorized to be appropriated such sums as are necessary to finance costs associated with staff dedicated to ESG issues in the Office of the Investor Advocate of the Commission.

(4) *SUSTAINABLE FINANCE.*—For the purposes of this subsection, the term “sustainable finance” means the provision of finance with respect to investments taking into account environmental, social, and governance considerations.

(5) *SEC RESPONSE.*—The Commission shall, not later than 6 months after the date on which the Committee submits a report to the Commission pursuant to paragraph (2)(A), publish a response to such report.

\* \* \* \* \*

#### PROXIES

SEC. 14. (a)(1) It shall be unlawful for any person, by the use of the mails or by any means or instrumentality of interstate commerce or of any facility of a national securities exchange or otherwise, in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors, to solicit or to permit the use of his name to solicit any proxy or consent or authorization in respect of any security (other than an exempted security) registered pursuant to section 12 of this title.

(2) The rules and regulations prescribed by the Commission under paragraph (1) may include—

(A) a requirement that a solicitation of proxy, consent, or authorization by (or on behalf of) an issuer include a nominee submitted by a shareholder to serve on the board of directors of the issuer; and

(B) a requirement that an issuer follow a certain procedure in relation to a solicitation described in subparagraph (A).

(b)(1) It shall be unlawful for any member of a national securities exchange, or any broker or dealer registered under this title, or any bank, association, or other entity that exercises fiduciary powers, in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors, to give, or to refrain from giving a proxy, consent, authorization, or information statement in respect of any security registered pursuant to section 12 of this title, or any security issued by an investment company registered under the Investment Company Act of 1940, and carried for the account of a customer.

(2) With respect to banks, the rules and regulations prescribed by the Commission under paragraph (1) shall not require the disclosure of the names of beneficial owners of securities in an account held by the bank on the date of enactment of this paragraph unless the beneficial owner consents to the disclosure. The provisions of this paragraph shall not apply in the case of a bank which the Commission finds has not made a good faith effort to obtain such consent from such beneficial owners.

(c) Unless proxies, consents, or authorizations in respect of a security registered pursuant to section 12 of this title, or a security issued by an investment company registered under the Investment Company Act of 1940, are solicited by or on behalf of the management of the issuer from the holders of record of such security in accordance with the rules and regulations prescribed under subsection (a) of this section, prior to any annual or other meeting of the holders of such security, such issuer shall, in accordance with rules and regulations prescribed by the Commission, file with the Commission and transmit to all holders of record of such security information substantially equivalent to the information which would be required to be transmitted if a solicitation were made, but no information shall be required to be filed or transmitted pursuant to this subsection before July 1, 1964.

(d)(1) It shall be unlawful for any person, directly or indirectly, by use of the mails or by any means or instrumentality of interstate commerce or of any facility of a national securities exchange or otherwise, to make a tender offer for, or a request or invitation for tenders of, any class of any equity security which is registered pursuant to section 12 of this title, or any equity security of an insurance company which would have been required to be so registered except for the exemption contained in section 12(g)(2)(G) of this title, or any equity security issued by a closed-end investment company registered under the Investment Company Act of 1940, if, after consummation thereof, such person would, directly or indirectly, be the beneficial owner of more than 5 per centum of such class, unless at the time copies of the offer or request or invitation are first published or sent or given to security holders such person has filed with the Commission a statement containing such of the information specified in section 13(d) of this title, and such additional information as the Commission may by rules and regulations prescribe as necessary or appropriate in the public interest or for the protection of investors. All requests or invitations for tenders or advertisements making a tender offer or requesting or inviting

tenders, of such a security shall be filed as a part of such statement and shall contain such of the information contained in such statement as the Commission may by rules and regulations prescribe. Copies of any additional material soliciting or requesting such tender offers subsequent to the initial solicitation or request shall contain such information as the Commission may by rules and regulations prescribe as necessary or appropriate in the public interest or for the protection of investors, and shall be filed with the Commission not later than the time copies of such material are first published or sent or given to security holders. Copies of all statements, in the form in which such material is furnished to security holders and the Commission, shall be sent to the issuer not later than the date such material is first published or sent or given to any security holders.

(2) When two or more persons act as a partnership, limited partnership, syndicate, or other group for the purpose of acquiring, holding, or disposing of securities of an issuer, such syndicate or group shall be deemed a "person" for purposes of this subsection.

(3) In determining, for purposes of this subsection, any percentage of a class of any security, such class shall be deemed to consist of the amount of the outstanding securities of such class, exclusive of any securities of such class held by or for the account of the issuer or a subsidiary of the issuer.

(4) Any solicitation or recommendation to the holders of such a security to accept or reject a tender offer or request or invitation for tenders shall be made in accordance with such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.

(5) Securities deposited pursuant to a tender offer or request or invitation for tenders may be withdrawn by or on behalf of the depositor at any time until the expiration of seven days after the time definitive copies of the offer or request or invitation are first published or sent or given to security holders, and at any time after sixty days from the date of the original tender offer or request or invitation, except as the Commission may otherwise prescribe by rules, regulations, or order as necessary or appropriate in the public interest or for the protection of investors.

(6) Where any person makes a tender offer, or request or invitation for tenders, for less than all the outstanding equity securities of a class, and where a greater number of securities is deposited pursuant thereto within ten days after copies of the offer or request or invitation are first published or sent or given to security holders than such person is bound or willing to take up and pay for, the securities taken up shall be taken up as nearly as may be pro rata, disregarding fractions, according to the number of securities deposited by each depositor. The provisions of this subsection shall also apply to securities deposited within ten days after notice of an increase in the consideration offered to security holders, as described in paragraph (7), is first published or sent or given to security holders.

(7) Where any person varies the terms of a tender offer or request or invitation for tenders before the expiration thereof by increasing the consideration offered to holders of such securities, such person shall pay the increased consideration to each security holder whose securities are taken up and paid for pursuant to the

tender offer or request or invitation for tenders whether or not such securities have been taken up by such person before the variation of the tender offer or request or invitation.

(8) The provisions of this subsection shall not apply to any offer for, or request or invitation for tenders of, any security—

(A) if the acquisition of such security, together with all other acquisitions by the same person of securities of the same class during the preceding twelve months, would not exceed 2 per centum of that class;

(B) by the issuer of such security; or

(C) which the Commission, by rules or regulations or by order, shall exempt from the provisions of this subsection as not entered into for the purpose of, and not having the effect of, changing or influencing the control of the issuer or otherwise as not comprehended within the purposes of this subsection.

(e) It shall be unlawful for any person to make any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading, or to engage in any fraudulent, deceptive, or manipulative acts or practices, in connection with any tender offer or request or invitation for tenders, or any solicitation of security holders in opposition to or in favor of any such offer, request, or invitation. The Commission shall, for the purposes of this subsection, by rules and regulations define, and prescribe means reasonably designed to prevent, such acts and practices as are fraudulent, deceptive, or manipulative.

(f) If, pursuant to any arrangement or understanding with the person or persons acquiring securities in a transaction subject to subsection (d) of this section or subsection (d) of section 13 of this title, any persons are to be elected or designated as directors of the issuer, otherwise than at a meeting of security holders, and the persons so elected or designated will constitute a majority of the directors of the issuer, then, prior to the time any such person takes office as a director, and in accordance with rules and regulations prescribed by the Commission, the issuer shall file with the Commission, and transmit to all holders of record of securities of the issuer who would be entitled to vote at a meeting for election of directors, information substantially equivalent to the information which would be required by subsection (a) or (c) of this section to be transmitted if such person or persons were nominees for election as directors at a meeting of such security holders.

(g)(1)(A) At the time of filing such preliminary proxy solicitation material as the Commission may require by rule pursuant to subsection (a) of this section that concerns an acquisition, merger, consolidation, or proposed sale or other disposition of substantially all the assets of a company, the person making such filing, other than a company registered under the Investment Company Act of 1940, shall pay to the Commission the following fees:

(i) for preliminary proxy solicitation material involving an acquisition, merger, or consolidation, if there is a proposed payment of cash or transfer of securities or property to shareholders, a fee at a rate that, subject to paragraph (4), is equal to \$92 per \$1,000,000 of such proposed payment, or of the

value of such securities or other property proposed to be transferred; and

(ii) for preliminary proxy solicitation material involving a proposed sale or other disposition of substantially all of the assets of a company, a fee at a rate that, subject to paragraph (4), is equal to \$92 per \$1,000,000 of the cash or of the value of any securities or other property proposed to be received upon such sale or disposition.

(B) The fee imposed under subparagraph (A) shall be reduced with respect to securities in an amount equal to any fee paid to the Commission with respect to such securities in connection with the proposed transaction under section 6(b) of the Securities Act of 1933 (15 U.S.C. 77f(b)), or the fee paid under that section shall be reduced in an amount equal to the fee paid to the Commission in connection with such transaction under this subsection. Where two or more companies involved in an acquisition, merger, consolidation, sale, or other disposition of substantially all the assets of a company must file such proxy material with the Commission, each shall pay a proportionate share of such fee.

(2) At the time of filing such preliminary information statement as the Commission may require by rule pursuant to subsection (c) of this section, the issuer shall pay to the Commission the same fee as required for preliminary proxy solicitation material under paragraph (1) of this subsection.

(3) At the time of filing such statement as the Commission may require by rule pursuant to subsection (d)(1) of this section, the person making the filing shall pay to the Commission a fee at a rate that, subject to paragraph (4), is equal to \$92 per \$1,000,000 of the aggregate amount of cash or of the value of securities or other property proposed to be offered. The fee shall be reduced with respect to securities in an amount equal to any fee paid with respect to such securities in connection with the proposed transaction under section 6(b) of the Securities Act of 1933 (15 U.S.C. 77f(b)), or the fee paid under that section shall be reduced in an amount equal to the fee paid to the Commission in connection with such transaction under this subsection.

(4) ANNUAL ADJUSTMENT.—For each fiscal year, the Commission shall by order adjust the rate required by paragraphs (1) and (3) for such fiscal year to a rate that is equal to the rate (expressed in dollars per million) that is applicable under section 6(b) of the Securities Act of 1933 (15 U.S.C. 77f(b)) for such fiscal year.

(5) FEE COLLECTION.—Fees collected pursuant to this subsection for fiscal year 2012 and each fiscal year thereafter shall be deposited and credited as general revenue of the Treasury and shall not be available for obligation.

(6) REVIEW; EFFECTIVE DATE; PUBLICATION.—In exercising its authority under this subsection, the Commission shall not be required to comply with the provisions of section 553 of title 5, United States Code. An adjusted rate prescribed under paragraph (4) shall be published and take effect in accordance with section 6(b) of the Securities Act of 1933 (15 U.S.C. 77f(b)).

(7) PRO RATA APPLICATION.—The rates per \$1,000,000 required by this subsection shall be applied pro rata to amounts and balances of less than \$1,000,000.

(8) Notwithstanding any other provision of law, the Commission may impose fees, charges, or prices for matters not involving any acquisition, merger, consolidation, sale, or other disposition of assets described in this subsection, as authorized by section 9701 of title 31, United States Code, or otherwise.

(h) PROXY SOLICITATIONS AND TENDER OFFERS IN CONNECTION WITH LIMITED PARTNERSHIP ROLLUP TRANSACTIONS.—

(1) PROXY RULES TO CONTAIN SPECIAL PROVISIONS.—It shall be unlawful for any person to solicit any proxy, consent, or authorization concerning a limited partnership rollup transaction, or to make any tender offer in furtherance of a limited partnership rollup transaction, unless such transaction is conducted in accordance with rules prescribed by the Commission under subsections (a) and (d) as required by this subsection. Such rules shall—

(A) permit any holder of a security that is the subject of the proposed limited partnership rollup transaction to engage in preliminary communications for the purpose of determining whether to solicit proxies, consents, or authorizations in opposition to the proposed limited partnership rollup transaction, without regard to whether any such communication would otherwise be considered a solicitation of proxies, and without being required to file soliciting material with the Commission prior to making that determination, except that—

(i) nothing in this subparagraph shall be construed to limit the application of any provision of this title prohibiting, or reasonably designed to prevent, fraudulent, deceptive, or manipulative acts or practices under this title; and

(ii) any holder of not less than 5 percent of the outstanding securities that are the subject of the proposed limited partnership rollup transaction who engages in the business of buying and selling limited partnership interests in the secondary market shall be required to disclose such ownership interests and any potential conflicts of interests in such preliminary communications;

(B) require the issuer to provide to holders of the securities that are the subject of the limited partnership rollup transaction such list of the holders of the issuer's securities as the Commission may determine in such form and subject to such terms and conditions as the Commission may specify;

(C) prohibit compensating any person soliciting proxies, consents, or authorizations directly from security holders concerning such a limited partnership rollup transaction—

(i) on the basis of whether the solicited proxy, consent, or authorization either approves or disapproves the proposed limited partnership rollup transaction; or

(ii) contingent on the approval, disapproval, or completion of the limited partnership rollup transaction;

(D) set forth disclosure requirements for soliciting material distributed in connection with a limited partnership

rollup transaction, including requirements for clear, concise, and comprehensible disclosure with respect to—

(i) any changes in the business plan, voting rights, form of ownership interest, or the compensation of the general partner in the proposed limited partnership rollup transaction from each of the original limited partnerships;

(ii) the conflicts of interest, if any, of the general partner;

(iii) whether it is expected that there will be a significant difference between the exchange values of the limited partnerships and the trading price of the securities to be issued in the limited partnership rollup transaction;

(iv) the valuation of the limited partnerships and the method used to determine the value of the interests of the limited partners to be exchanged for the securities in the limited partnership rollup transaction;

(v) the differing risks and effects of the limited partnership rollup transaction for investors in different limited partnerships proposed to be included, and the risks and effects of completing the limited partnership rollup transaction with less than all limited partnerships;

(vi) the statement by the general partner required under subparagraph (E);

(vii) such other matters deemed necessary or appropriate by the Commission;

(E) require a statement by the general partner as to whether the proposed limited partnership rollup transaction is fair or unfair to investors in each limited partnership, a discussion of the basis for that conclusion, and an evaluation and a description by the general partner of alternatives to the limited partnership rollup transaction, such as liquidation;

(F) provide that, if the general partner or sponsor has obtained any opinion (other than an opinion of counsel), appraisal, or report that is prepared by an outside party and that is materially related to the limited partnership rollup transaction, such soliciting materials shall contain or be accompanied by clear, concise, and comprehensible disclosure with respect to—

(i) the analysis of the transaction, scope of review, preparation of the opinion, and basis for and methods of arriving at conclusions, and any representations and undertakings with respect thereto;

(ii) the identity and qualifications of the person who prepared the opinion, the method of selection of such person, and any material past, existing, or contemplated relationships between the person or any of its affiliates and the general partner, sponsor, successor, or any other affiliate;

(iii) any compensation of the preparer of such opinion, appraisal, or report that is contingent on the transaction's approval or completion; and

(iv) any limitations imposed by the issuer on the access afforded to such preparer to the issuer's personnel, premises, and relevant books and records;

(G) provide that, if the general partner or sponsor has obtained any opinion, appraisal, or report as described in subparagraph (F) from any person whose compensation is contingent on the transaction's approval or completion or who has not been given access by the issuer to its personnel and premises and relevant books and records, the general partner or sponsor shall state the reasons therefor;

(H) provide that, if the general partner or sponsor has not obtained any opinion on the fairness of the proposed limited partnership rollup transaction to investors in each of the affected partnerships, such soliciting materials shall contain or be accompanied by a statement of such partner's or sponsor's reasons for concluding that such an opinion is not necessary in order to permit the limited partners to make an informed decision on the proposed transaction;

(I) require that the soliciting material include a clear, concise, and comprehensible summary of the limited partnership rollup transaction (including a summary of the matters referred to in clauses (i) through (vii) of subparagraph (D) and a summary of the matter referred to in subparagraphs (F), (G), and (H)), with the risks of the limited partnership rollup transaction set forth prominently in the fore part thereof;

(J) provide that any solicitation or offering period with respect to any proxy solicitation, tender offer, or information statement in a limited partnership rollup transaction shall be for not less than the lesser of 60 calendar days or the maximum number of days permitted under applicable State law; and

(K) contain such other provisions as the Commission determines to be necessary or appropriate for the protection of investors in limited partnership rollup transactions.

(2) EXEMPTIONS.—The Commission may, consistent with the public interest, the protection of investors, and the purposes of this title, exempt by rule or order any security or class of securities, any transaction or class of transactions, or any person or class of persons, in whole or in part, conditionally or unconditionally, from the requirements imposed pursuant to paragraph (1) or from the definition contained in paragraph (4).

(3) EFFECT ON COMMISSION AUTHORITY.—Nothing in this subsection limits the authority of the Commission under subsection (a) or (d) or any other provision of this title or precludes the Commission from imposing, under subsection (a) or (d) or any other provision of this title, a remedy or procedure required to be imposed under this subsection.

(4) DEFINITION OF LIMITED PARTNERSHIP ROLLUP TRANSACTION.—Except as provided in paragraph (5), as used in this subsection, the term "limited partnership rollup transaction" means a transaction involving the combination or reorganization of one or more limited partnerships, directly or indirectly, in which—

(A) some or all of the investors in any of such limited partnerships will receive new securities, or securities in another entity, that will be reported under a transaction reporting plan declared effective before the date of enactment of this subsection by the Commission under section 11A;

(B) any of the investors' limited partnership securities are not, as of the date of filing, reported under a transaction reporting plan declared effective before the date of enactment of this subsection by the Commission under section 11A;

(C) investors in any of the limited partnerships involved in the transaction are subject to a significant adverse change with respect to voting rights, the term of existence of the entity, management compensation, or investment objectives; and

(D) any of such investors are not provided an option to receive or retain a security under substantially the same terms and conditions as the original issue.

(5) EXCLUSIONS FROM DEFINITION.—Notwithstanding paragraph (4), the term “limited partnership rollup transaction” does not include—

(A) a transaction that involves only a limited partnership or partnerships having an operating policy or practice of retaining cash available for distribution and reinvesting proceeds from the sale, financing, or refinancing of assets in accordance with such criteria as the Commission determines appropriate;

(B) a transaction involving only limited partnerships wherein the interests of the limited partners are repurchased, recalled, or exchanged in accordance with the terms of the preexisting limited partnership agreements for securities in an operating company specifically identified at the time of the formation of the original limited partnership;

(C) a transaction in which the securities to be issued or exchanged are not required to be and are not registered under the Securities Act of 1933;

(D) a transaction that involves only issuers that are not required to register or report under section 12, both before and after the transaction;

(E) a transaction, except as the Commission may otherwise provide by rule for the protection of investors, involving the combination or reorganization of one or more limited partnerships in which a non-affiliated party succeeds to the interests of a general partner or sponsor, if—

(i) such action is approved by not less than 66 $\frac{2}{3}$  percent of the outstanding units of each of the participating limited partnerships; and

(ii) as a result of the transaction, the existing general partners will receive only compensation to which they are entitled as expressly provided for in the preexisting limited partnership agreements; or

(F) a transaction, except as the Commission may otherwise provide by rule for the protection of investors, in

which the securities offered to investors are securities of another entity that are reported under a transaction reporting plan declared effective before the date of enactment of this subsection by the Commission under section 11A, if—

(i) such other entity was formed, and such class of securities was reported and regularly traded, not less than 12 months before the date on which soliciting material is mailed to investors; and

(ii) the securities of that entity issued to investors in the transaction do not exceed 20 percent of the total outstanding securities of the entity, exclusive of any securities of such class held by or for the account of the entity or a subsidiary of the entity.

(i) **DISCLOSURE OF PAY VERSUS PERFORMANCE.**—The Commission shall, by rule, require each issuer to disclose in any proxy or consent solicitation material for an annual meeting of the shareholders of the issuer a clear description of any compensation required to be disclosed by the issuer under section 229.402 of title 17, Code of Federal Regulations (or any successor thereto), including, for any issuer other than an emerging growth company, information that shows the relationship between executive compensation actually paid and the financial performance of the issuer, taking into account any change in the value of the shares of stock and dividends of the issuer and any distributions. The disclosure under this subsection may include a graphic representation of the information required to be disclosed.

(j) **DISCLOSURE OF HEDGING BY EMPLOYEES AND DIRECTORS.**—The Commission shall, by rule, require each issuer to disclose in any proxy or consent solicitation material for an annual meeting of the shareholders of the issuer whether any employee or member of the board of directors of the issuer, or any designee of such employee or member, is permitted to purchase financial instruments (including prepaid variable forward contracts, equity swaps, collars, and exchange funds) that are designed to hedge or offset any decrease in the market value of equity securities—

(1) granted to the employee or member of the board of directors by the issuer as part of the compensation of the employee or member of the board of directors; or

(2) held, directly or indirectly, by the employee or member of the board of directors.

(k) **ESG DISCLOSURES.**—

(1) **IN GENERAL.**—*Each issuer the securities of which are registered under section 12 or that is required to file annual reports under section 15(d) shall disclose in any proxy or consent solicitation material for an annual meeting of the shareholders—*

*(A) a clear description of the views of the issuer about the link between ESG metrics and the long-term business strategy of the issuer; and*

*(B) a description of any process the issuer uses to determine the impact of ESG metrics on the long-term business strategy of the issuer.*

(2) **ESG METRICS DEFINED.**—*In this subsection, the term “ESG metrics” has the meaning given the term in part 210 of*

*title 17, Code of Federal Regulations as amended pursuant to  
subsection (b) of the ESG Disclosure Simplification Act of 2019.*

\* \* \* \* \*

## MINORITY VIEWS

Committee Republicans believe information that is useful for investment decisions should be disclosed. Unfortunately, H.R. 4329, the *ESG Disclosure Simplification Act of 2019*, is yet another Democrat mandatory disclosure bill that will not provide useful information to investors but will instead be costly for many public companies.

H.R. 4329 would require the SEC to create a “Sustainable Finance Advisory Committee” comprised of individuals and entities “with an interest in sustainable finance.” That committee would make rulemaking recommendations to the SEC, who would then be required to undertake a rulemaking to define “ESG metrics.” Under the bill, these “ESG metrics” would be “de facto material” for the purposes of disclosures under the Securities Exchange Act and the Securities Act.

Committee Republicans believe that information required to be made available to investors or prospective investors should be *actually material* (that is, actually useful) for investment decisions. Currently, under the Securities Exchange Act of 1934, public companies are required to file annual reports with the SEC to publicly disclose information that investors would find important to making investment decisions.<sup>1</sup> If there is ESG-related information that is actually material to the investors of a public company, those companies are already required to make those disclosures. H.R. 4329 simply adds unnecessary, costly, and potentially very confusing disclosures for companies that do not need to make them. That will only discourage companies from going (or staying) public, which means fewer investment options for Main Street Americans saving for education or retirement.

Additionally, to the extent that the company is otherwise engaging in lawful activity, but not in ways that comport well with the ESG metrics developed by the Sustainable Finance Advisory Committee and/or the SEC, the required disclosure could (and likely would) be used to name and shame those companies, making the U.S. public markets less attractive to such companies. Instead of attacking American companies, Committee Republicans want to support American businesses and everyday Americans trying to save their hard-earned money. Like so many of the Democrat-sponsored mandatory disclosure bills from the 116th Congress, the bill has a greater appeal to a social activists than Main Street investors.

Committee Republicans are also concerned that the bill fails to define “ESG metrics” and leaves it to the SEC to do the difficult work of figuring out how to make this bill workable. SEC Commissioner Hester Peirce has highlighted this difficulty: “[t]he collection

<sup>1</sup>See 15 U.S.C. § 78m(a); see also, e.g., Securities Exchange Act rule 12b–20.

of issues that gets dropped into the ESG bucket is diverse, but many of them simply cannot be reduced to a single, standardizable score.”<sup>2</sup> Committee Democrats want the SEC to do the impossible, and expect the SEC to take the blame (rather than themselves) if and when the “ESG metrics” disclosure inevitably fail to be useful for everyday investors.

For these reasons, Committee Republicans are opposed to the bill.

DAVID KUSTOFF.  
BARRY LOUDERMILK.  
LANCE GOODEN.  
TOM EMMER.  
WILLIAM R. TIMMONS IV.  
SCOTT R. TIPTON.  
TED BUDD.  
PETER T. KING.  
ROGER WILLIAMS.  
TREY HOLLINGSWORTH.  
J. FRENCH HILL.  
BRYAN STEIL.  
JOHN W. ROSE.  
WARREN DAVIDSON.  
ANTHONY GONZALEZ.  
DENVER RIGGLEMAN.  
ANDY BARR.  
ALEXANDER X. MOONEY.  
LEE M. ZELDIN.  
FRANK D. LUCAS.  
ANN WAGNER.  
STEVE STIVERS.  
BILL HUIZENGA.  
BLAINE LUETKEMEYER.  
BILL POSEY.  
PATRICK T. MCHENRY.

○

---

<sup>2</sup>See Hester Peirce, “Scarlet Letters: Remarks Before the American Enterprise Institute” (Jun. 18, 2019), available at <https://www.sec.gov/news/speech/speech-peirce-061819>. Ms. Peirce also noted that ESG scores often “oversimplify complicated facts and thus may send companies scrambling to take actions that neither achieve the broader social goals of ESG proponents, nor serve their shareholders well.”