AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 4790
OFFERED BY MR. HUIZENGA OF MICHIGAN

Strike all after the enacting clause and insert the following:

1 SECTION 1. SHORT TITLE; TABLE OF CONTENTS.
2
3 (a) SHORT TITLE.—This Act may be cited as the
4 “Guiding Uniform and Responsible Disclosure Require-
5 ments and Information Limits Act of 2023” or the
6 “GUARDRAIL Act of 2023”.
7
8 (b) TABLE OF CONTENTS.—The table of contents for
9 this Act is as follows:

Sec. 1. Short title; Table of contents.

TITLE I—MANDATORY MATERIALITY REQUIREMENT

Sec. 101. Limitation on disclosure requirements.

TITLE II—SEC JUSTIFICATION OF NON-MATERIAL DISCLOSURE MANDATES

Sec. 201. SEC justification of non-material disclosure mandates.

TITLE III—PUBLIC COMPANY ADVISORY COMMITTEE

Sec. 301. Public Company Advisory Committee.

TITLE IV—PROTECTING U.S. BUSINESS SOVEREIGNTY

Sec. 401. Study on detrimental impact of the Directive on Corporate Sustainability Due Diligence and Corporate Sustainability Reporting Directive.
TITLE I—MANDATORY
MATERIALITY REQUIREMENT

SEC. 101. LIMITATION ON DISCLOSURE REQUIREMENTS.

(a) Securities Act of 1933.—Section 2(b) of the Securities Act of 1933 (15 U.S.C. 77b(b)) is amended—

(1) in the subsection heading, by inserting ‘‘;

LIMITATION ON DISCLOSURE REQUIREMENTS’’ after ‘‘Formation’’;

(2) by striking ‘‘Whenever’’ and inserting the following:

“(1) IN GENERAL.—Whenever’’; and

(3) by adding at the end the following:

“(2) LIMITATION.—

“(A) IN GENERAL.—Whenever pursuant to this title the Commission is engaged in rule-making regarding disclosure obligations of issuers, the Commission shall expressly provide that an issuer is only required to disclose information in response to such disclosure obligations to the extent the issuer has determined that such information is material with respect to a voting or investment decision regarding the securities of such issuer.

“(B) APPLICABILITY.—Subparagraph (A) shall not apply with respect to the removal of
any disclosure requirement with respect to an issuer.

“(C) Rule of Construction.—For the purposes of this paragraph, information is considered material with respect to a voting or investment decision regarding the securities of an issuer if there is a substantial likelihood that a reasonable investor would view the failure to disclose that information as having significantly altered the total mix of information made available to the investor.”.


(1) in the subsection heading, by inserting “; LIMITATION ON DISCLOSURE REQUIREMENTS” after “FORMATION”;

(2) by striking “Whenever” and inserting the following:

“(1) In general.—Whenever”; and

(3) by adding at the end the following:

“(2) Limitation.—

“(A) In general.—Whenever pursuant to this title the Commission is engaged in rule-making regarding disclosure obligations of
issuers, the Commission shall expressly provide
that an issuer is only required to disclose infor-
mation in response to such disclosure obliga-
tions to the extent the issuer has determined
that such information is material with respect
to a voting or investment decision regarding the
securities of such issuer.

“(B) APPLICABILITY.—Subparagraph (A)
shall not apply with respect to the removal of
any disclosure requirement with respect to an
issuer.

“(C) RULE OF CONSTRUCTION.—For the
purposes of this paragraph, information is con-
sidered material with respect to a voting or in-
vestment decision regarding the securities of an
issuer if there is a substantial likelihood that a
reasonable investor would view the failure to
disclose that information as having significantly
altered the total mix of information made avail-
able to the investor.”.
TITLE II—SEC JUSTIFICATION
OF NON-MATERIAL DISCLOSURE MANDATES

SEC. 201. SEC JUSTIFICATION OF NON-MATERIAL DISCLOSURE MANDATES.

Section 23 of the Securities Exchange Act of 1934 (15 U.S.C. 78w) is amended by adding at the end the following:

“(e) NON-MATERIAL DISCLOSURE MANDATES.—

“(1) Disclosure.—The Commission shall maintain a list on the website of the Commission that contains—

“(A) each mandate under the Federal securities laws and regulations that requires the disclosure of non-material information; and

“(B) for each such disclosure mandate, an explanation of why the mandate is required.

“(2) Study and report.—The Commission shall, every 5 years, issue a report to the Congress justifying each disclosure contained on the list required under paragraph (1).

“(3) No private liability for failing to make a non-material disclosure.—A person who fails to disclose non-material information required to be disclosed under the Federal securities
laws or regulations shall not be liable for such fail-
ure in any private action.”.

TITLE III—PUBLIC COMPANY
ADVISORY COMMITTEE

SEC. 301. PUBLIC COMPANY ADVISORY COMMITTEE.
The Securities Exchange Act of 1934 is amended by
inserting after section 40 (15 U.S.C. 78qq) the following:

“SEC. 40A. PUBLIC COMPANY ADVISORY COMMITTEE.

“(a) Establishment and Purpose.—

“(1) Establishment.—There is established
within the Commission the Public Company Advi-
sory Committee (referred to in this section as the
‘Committee’).

“(2) Purpose.—The Committee shall—

“(A) provide the Commission with advice
on its rules, regulations, and policies with re-
gard to its mission of protecting investors,
maintaining fair, orderly, and efficient markets,
and facilitating capital formation, as they relate
to the following:

“(i) existing and emerging regulatory
priorities of the Commission;

“(ii) issues relating to the public re-
porting and corporate governance of public
companies;
“(iii) issues relating to the proxy process for shareholder meetings held by public companies;

“(iv) issues relating to trading in the securities of public companies; and

“(v) issues relating to capital formation; and

“(B) submit to the Commission such findings and recommendations as the Committee determines are appropriate, including recommendations for proposed regulatory and legislative changes.

“(b) Membership.—

“(1) In general.—The membership of the Committee shall be not fewer than 10, and not more than 20, members appointed by the Commission from among individuals who—

“(A) are officers, directors, or senior officials of public companies registered with the Commission under the Securities Act or 1933 and this Act, except for those public companies that own asset management, fixed income, investment advisory, broker-dealer, or proxy services businesses;
“(B) are executives or other individuals with senior managerial responsibility in business, professional, trade, and industry associations that represent the interests of such public companies; or

“(C) are professional advisers and service providers to such public companies (including attorneys, accountants, investment bankers, and financial advisers).

“(2) QUALIFICATIONS.— At least 50 percent of the Committee membership shall be drawn from individuals who would qualify for membership under paragraph (1)(A).

“(3) TERM.—

“(A) IN GENERAL.—Each member of the Committee appointed under paragraph (1) shall serve for a term of 4 years.

“(B) VACANCIES.—Vacancies among the members, whether caused by the resignation, death, removal, expiration of a term, or otherwise, will be filled consistent with the Commission’s procedures then in effect.

“(C) STAGGERED TERMS.—The members of the Committee shall serve staggered terms,
with one-third of the initial members of the Committee each serving for 1, 2, or 3 years.

“(4) Members not on other advisory committees.—Public companies and other organizations that are currently represented on any other Commission Advisory Committee are not eligible to have representatives also serve on the Public Company Advisory Committee.

“(5) Members not Commission employees.—Members appointed under paragraph (1) shall not be considered to be employees or agents of the Commission solely because of membership on the Committee.

“(c) Chair; Vice Chair; Secretary; Assistant Secretary.—

“(1) In general.—The members of the Committee shall elect, from among the members of the Committee—

“(A) a Chair;

“(B) a Vice Chair;

“(C) a Secretary; and

“(D) an Assistant Secretary.

“(2) Term.—Each member elected under paragraph (1) shall serve for a term of two years in the
capacity the member was elected under paragraph (1).

“(3) SUBCOMMITTEES.—The Chair may create subcommittees that hold public or non-public meetings and provide recommendations to the full Committee.

“(d) MEETINGS.—

“(1) FREQUENCY OF MEETINGS.—The Committee shall meet—

“(A) not less frequently than twice annually, at the call of the chair of the Committee; and

“(B) from time to time, at the call of the Commission.

“(2) NOTICE.—The Chair of the Committee shall give the members of the Committee written notice of each meeting, not later than two weeks before the date of the meeting.

“(e) COMPENSATION AND TRAVEL EXPENSES.— Each member of the Committee who is not a full-time employee of the United States shall—

“(1) be entitled to receive compensation at a rate not to exceed the daily equivalent of the annual rate of basic pay in effect for a position at level V of the Executive Schedule under section 5316 of title
5, United States Code, for each day during which
the members is engaged in the actual performance
of the duties of the Committee; and

“(2) while away from the home or regular place
of business of the member in the performance of
services for the Committee, be allowed travel ex-
penses, including per diem in lieu of subsistence, in
the same manner as persons employed intermittently
in the Government service are allowed expenses
under section 5703(b) of title 5, United States Code.

“(f) STAFF.—The Commission shall make available
to the Committee such staff as the chairman of the Com-
mittee determines are necessary to carry out this section.

“(g) REVIEW BY COMMISSION.—The Commission
shall—

“(1) review the findings and recommendations
of the Committee; and

“(2) each time the Committee submits a finding
or recommendation to the Commission, promptly
issue a public statement—

“(A) assessing the finding or recommenda-
tion of the Committee; and

“(B) disclosing the action, if any, the Com-
mission intends to take with respect to the find-
ing or recommendation.
“(h) COMMITTEE FINDINGS.—Nothing in this section shall require the Commission to agree to or act upon any finding or recommendation of the Committee.

“(i) NONAPPLICABILITY OF FACA.—Chapter 10 of part I of title 5, United States Code, shall not apply to the Committee and its activities.”.

**TITLE IV—PROTECTING U.S. BUSINESS SOVEREIGNTY**

**SEC. 401. STUDY ON DETRIMENTAL IMPACT OF THE DIRECTIVE ON CORPORATE SUSTAINABILITY DUE DILIGENCE AND CORPORATE SUSTAINABILITY REPORTING DIRECTIVE.**

(a) STUDY.—The Securities and Exchange Commission shall conduct a study to examine and evaluate—

(1) the detrimental impact and potential detrimental impact of each of the Directives on—

(A) United States companies, consumers, and investors; and

(B) the economy of the United States;

(2) the extent to which each of the Directives aligns with international conventions and declarations on human rights and environmental obligations; and

(3) the legal basis for the extraterritorial reach of each of the Directives.
(b) REPORT.—Not later than 1 year after the date of the enactment of this Act, the Securities and Exchange Commission shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate, the Committee on Financial Services of the House of Representatives, the Secretary of State, the Secretary of Commerce, and the United States Trade Representative a report that includes—

(1) the results of the study conducted under this section; and

(2) recommendations for policymakers and relevant stakeholders on potential mitigating measures, alternative approaches, or modifications to each of the Directives that would address any concerns identified in the study.

(e) ACCESS TO INFORMATION.—The Securities and Exchange Commission may request from private entities such relevant data and information as the Securities and Exchange Commission determines necessary to carry out the study required under this section and such private entities shall provide such requested data and information to the Securities and Exchange Commission.

(d) DIRECTIVES DEFINED.—In this section the term “Directives” means—
(1) the proposed directive entitled “Corporate Sustainability Due Diligence” adopted by the European Commission on February 23, 2022; and

(2) the Corporate Sustainability Reporting Directive of the European Commission effective January 5, 2023.