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# S. 1138

To amend the Bank Holding Company Act of 1956 and the Financial Stability Act of 2010 to require a reduction of financed emissions to protect financial stability, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 30, 2023

Mr. MARKEY (for himself, Mr. MERKLEY, and Mr. SANDERS) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

# A BILL

To amend the Bank Holding Company Act of 1956 and the Financial Stability Act of 2010 to require a reduction of financed emissions to protect financial stability, and for other purposes.

*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 ''Fossil Free Finance Act of 2023''.

**SEC. 2. ALIGNMENT OF FINANCED EMISSIONS WITH SCIENCE-BASED TARGETS.**

The Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.) is amended by adding at the end the following:

**"SEC. 15. ALIGNMENT OF FINANCED EMISSIONS WITH SCIENCE-BASED TARGETS.**

"(a) DEFINITIONS.—In this section:

"(1) Carbon offsets—The term 'carbon offsets' means an emissions reduction or removal of greenhouse gases in a manner calculated and traced for the purpose of offsetting an entity's greenhouse gas emissions.

"(2) COVERED BANK HOLDING COMPANY.—The term 'covered bank holding company' means a bank holding company with total consolidated assets not less than $50,000,000,000.

"(3) DEFORESTATION RISK COMMODITIES.—The term 'deforestation risk commodities' means globally traded goods and raw materials—

"(A) that originate from natural forest ecosystems—

"(i) directly from within forest areas; or

"(ii) from areas previously under forest cover; and

"(B) the extraction or production of which contributes significantly to the conversion of natural forest to agriculture, tree plantation, or other nonforest land use.

"(4) FINANCED EMISSIONS.—The term 'financed emissions' means, with respect to a covered bank holding company, and any nonbank financial company supervised by the Board in accordance with section 113 of the Financial Stability Act of 2010 (12 U.S.C. 5323), the greenhouse gas emissions of such company, expressed in metric tons of carbon dioxide equivalent, attributable to investment in, or the providing of financial services to, another company or project of another company, including—

"(A) investments in a debt or equity investment in such another company or the assets of such another company;

"(B) project finance investment;

"(C) underwriting;

"(D) syndication or securitization of loans or asset-backed securities;

"(E) derivative transactions related to financing or hedging; and

"(F) market making.

"(5) FOSSIL FUEL FINANCING.—The term 'fossil fuel financing' means, with respect to a covered bank holding company, investment in—

"(A) a company that derives not less than 15 percent revenue from exploration, extraction, processing, exporting, transporting, and any other significant action with respect to oil, natural gas, coal, or any byproduct thereof; or

"(B) a fossil fuel project.

"(6) FOSSIL FUEL PROJECT.—The term 'fossil fuel project' means a project intended to—

"(A) facilitate or expand exploration, extraction, processing, exporting, transporting, or any other significant action with respect to oil, natural gas, coal; or

"(B) construct any infrastructure related to the activities described in subparagraph (A), such as wells, pipelines, terminals, refineries, or utility-sale generation facilities.

"(7) GREENHOUSE GAS.—The term 'greenhouse gas' means carbon dioxide, methane, nitrous oxide, nitrogen trifluoride, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

"(8) NATURAL FOREST.—The term 'natural forest' means a natural arboreal ecosystem that—

''(A) has a species composition a significant percentage of which is native species; and

''(B) contains a tree canopy cover of more than 10 percent over an area of not less than 0.5 hectares.

''(9) NEW OR EXPANDED FOSSIL FUEL PROJECT.—The term 'new or expanded fossil fuel project' means a fossil fuel project that would increase the—

''(A) level of proven or developable oil, natural gas, or coal reserves;

''(B) midstream throughput of pipelines, terminals, or refineries; or

''(C) combustion of oil, natural gas, or coal for utility-scale electricity generation.

''(b) REQUIREMENTS.—Not later than 210 days after the date of enactment of this section, and not less than once every 2 years thereafter, a covered bank holding company shall—

''(1) submit to the Board an emission reduction plan for reducing emissions in accordance with this section; and

''(2) if the plan is accepted under subsection (d), implement such plan.

"(c) ELEMENTS OF PLAN.—Each plan required under subsection (b)(1)—

"(1) shall include—

"(A) a plan for the covered bank holding company to reach zero financed emissions not later than January 1, 2050;

"(B) a plan to reduce the financed emissions of the bank holding company by 50 percent not later than January 1, 2030;

"(C) a plan to discontinue new or expanded fossil fuel projects not later than 60 days after the date of enactment of this section;

"(D) a plan for the covered bank holding company to discontinue thermal coal financing not later than January 1, 2025;

"(E) a plan for the covered bank holding company to discontinue all fossil fuel financing not later than January 1, 2030;

"(F) a plan for the covered bank holding company to eliminate financing of deforestation risk commodities; and

"(G) such other requirements as the Board determines is necessary to protect the financial stability of the United States;

"(2) may not include carbon offsets;

“(3) may include proven negative carbon emission technologies to meet the requirements under paragraph (1)(A) if the technologies do not negatively impact low-income, minority, or indigenous communities;

“(4) shall prioritize—

“(A) the covered bank holding company withdrawing funding from companies and projects that have a disproportionately negative impact on the health and well-being of low-income and minority communities;

“(B) lending to companies for purposes of carrying out severance, retraining, and other benefits to workers impacted by the transition to zero financed emissions; and

“(C) enhanced due diligence about the impacts of financing on biodiversity and community and the framework of the client for and track record in—

“(i) managing greenhouse gas and other emissions; and

“(ii) compliance with regulations and international standards.

"(d) CONSIDERATION OF PLAN.—Not later than 180 days after the date on which the Board receives a plan submitted under subsection (b)(1), the Board shall—

"(1) accept the plan; or

"(2)(A) reject the plan if the plan does not align with science-based targets without the use of offsets or unproven carbon emission reduction technologies; and

"(B) require the covered bank holding company to revise such plan in accordance with the suggestions of the Board.

"(e) PENALTIES.—If a covered bank holding company does not submit a plan in accordance with this section or meet the requirements set out in such a plan—

"(1) the Board shall—

"(A) apply the penalties under section 8 under regulations prescribed by the Board;

"(B) require divestiture of assets in order to bring the financed emissions of a covered bank holding company into compliance with the requirements set out in such a plan; and

"(C) notify the Board of Directors of the Federal Deposit Insurance Corporation of the noncompliance of the covered bank holding company; and

"(2) the Board of Directors of the Federal Deposit Insurance Corporation may, with respect to any covered bank holding company described in paragraph (1)(C) or a subsidiary of the bank holding company that contributes to the failure of the covered bank holding company to comply with this section—

"(A) terminate the insured status of the insured depository institution of which the bank holding company has control under section 8(a)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1818(a)(2)); and

"(B) carry out any other corrective action available under section 38 of the Federal Deposit Insurance Act (12 U.S.C. 1831o) for the insured depository institution of which the bank holding company has control under section 8(a)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1818(a)(2)).

"(f) REGULATIONS.—Not later than 180 days after the date of enactment of this section, the Board shall issue regulations establishing the format and timing for submission of the plans required under this section.".

**SEC. 3. CONTRIBUTION TO CLIMATE CHANGE INCLUDED IN FSOC DESIGNATION.**

(a) AUTHORITY TO REQUIRE SUPERVISION AND REGULATION OF CERTAIN NONBANK FINANCIAL COMPANIES.—Section 113 of the Financial Stability Act of 2010 (12 U.S.C. 5323) is amended—

(1) in subsection (a)(2)—

(A) in subparagraph (J), by striking ''and'' at the end;

(B) by redesignating subparagraph (K) as subparagraph (L); and

(C) by inserting after subparagraph (J) the following:

''(K) the extent to which the company makes a nontrivial contribution to the financed emissions, as defined in section 15 of the Bank Holding Company Act of 1956, of the financial system of the United States; and''; and

(2) in subsection (b)(2)—

(A) in subparagraph (J), by striking ''and'' at the end;

(B) by redesignating subparagraph (K) as subparagraph (L); and

(C) by inserting after subparagraph (J) the following:

"(K) the extent to which the company makes a nontrivial contribution to the financed emissions, as defined in section 15 of the Bank Holding Company Act of 1956, of the financial system of the United States; and".

(b) ENHANCED SUPERVISION AND PRUDENTIAL STANDARDS FOR NONBANK FINANCIAL COMPANIES SUPERVISED BY THE BOARD OF GOVERNORS AND CERTAIN BANK HOLDING COMPANIES.—

(1) DEVELOPMENT OF PRUDENTIAL STANDARDS.—Section 115(b)(1) of the Financial Stability Act of 2010 (12 U.S.C. 5325(b)(1)) is amended—

(A) in subparagraph (H), by striking "and";

(B) in subparagraph (I), by striking the period at the end and inserting "; and"; and

(C) by adding at the end the following:

"(J) divestiture of financed emissions, as defined in section 15 of the Bank Holding Company Act of 1956.".

(2) REQUIRED STANDARDS.—Section 165(b)(1)(A) of the Financial Stability Act of 2010 (12 U.S.C. 5365(b)(1)(A)) is amended—

(A) in clause (iv), by striking "and" at the end;

(B) in clause (v), by striking the period and inserting ''; and''; and

(C) by adding at the end the following:

''(vi) emissions reduction plans in accordance with section 15 of the Bank Holding Company Act of 1956.''.

**SEC. 4. REPORTS.**

(a) DEFINITIONS.—In this section:

(1) COVERED BANK HOLDING COMPANY; FINANCED EMISSIONS.—The terms ''covered bank holding company'' and ''financed emissions'' have the meanings given the terms in section 15 of the Bank Holding Company Act of 1956, as added by section 2 of this Act.

(2) SCIENCE-BASED EMISSIONS TARGETS.—The term ''science-based emissions targets'' means reduction in greenhouse gas emissions consistent with preventing an increase in global average temperature of not less than 1.5 degrees Celsius compared to preindustrial levels.

(b) INITIAL REPORT.—Not later than 180 days after the date of enactment of this Act, the Board of Governors of the Federal Reserve System shall submit to Congress a report that—

(1) identifies the current level of financed emissions in the financial system of the United States;

(2) includes an analysis of trends in financed emissions reductions;

(3) includes a summary of the commitments of covered bank holding companies to reduce financed emissions;

(4) estimates the financed emissions in the financial system of the United States needed to meet science-based emissions targets;

(5) identifies regulatory gaps in reducing financed emissions that cannot be addressed with authorities of the Board and recommendations for addressing such gaps;

(6) identifies data quality challenges for assessing financed emissions and recommendations to address those challenges;

(7) identifies the equitable transition needs for workers and communities that will be impacted by a shift to a zero financed emissions economy;

(8) analyzes—

(A) the number and groups of people affected by a transition to zero financed emissions; and

(B) the economic impact of such a transition with respect to such groups; and

(9) identifies regulatory and legislative options for mitigating the economic impacts described in paragraph (8)(B), including—

(A) the use of existing authorities, including the Community Reinvestment Act of 1977 (12 U.S.C. 2901 et seq.) and emergency lending powers under section 13 of the Federal Reserve Act (12 U.S.C. 342); and

(B) the establishment of a public investment bank to finance investment in an equitable transition to a zero financed emissions economy.

(c) PERIODIC REPORT.—Not later than 180 days after the date of enactment of this Act, and not less than once every 2 years thereafter, the Board of Governors of the Federal Reserve System shall submit to Congress a report that includes—

(1) an analysis of the progress against aligning with financed emissions targets;

(2) the estimates described in subsection (b)(4);

(3) an analysis of the progress made in the preceding 2 years toward an equitable transition to a zero financed emissions economy; and

(4) recommendations with respect to assistance Congress and Federal agencies may provide to—

(A) facilitate a reduction of financed emissions; and

(B) support an equitable transition to a zero financed emissions economy.

(d) COLLECTION OF DATA.—The Board of Governors of the Federal Reserve System shall collect such data as needed from bank holding companies to carry out the reports required under this section.

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