

117TH CONGRESS
1ST SESSION

S. 374

To amend the Securities Exchange Act of 1934 to require the submission by issuers of data relating to diversity, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 23, 2021

Mr. MENENDEZ (for himself, Ms. WARREN, Mr. VAN HOLLEN, Mr. BOOKER, Mrs. FEINSTEIN, Mr. PADILLA, Mrs. GILLIBRAND, Ms. CORTEZ MASTO, Mr. WARNOCK, and Mr. BROWN) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

A BILL

To amend the Securities Exchange Act of 1934 to require the submission by issuers of data relating to diversity, and for other purposes.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Improving Corporate
5 Governance Through Diversity Act of 2021”.

1 **SEC. 2. SUBMISSION OF DATA RELATING TO DIVERSITY BY**
 2 **ISSUERS.**

3 Section 13 of the Securities Exchange Act of 1934
 4 (15 U.S.C. 78m) is amended by adding at the end the
 5 following:

6 “(s) SUBMISSION OF DATA RELATING TO DIVER-
 7 SITY.—

8 “(1) DEFINITIONS.—In this subsection—

9 “(A) the term ‘executive officer’ has the
 10 meaning given the term in section 230.501(f) of
 11 title 17, Code of Federal Regulations, as in ef-
 12 fect on the date of enactment of this subsection;
 13 and

14 “(B) the term ‘veteran’ has the meaning
 15 given the term in section 101 of title 38, United
 16 States Code.

17 “(2) SUBMISSION OF DISCLOSURE.—Each
 18 issuer required to file an annual report under sub-
 19 section (a) shall disclose in any proxy statement and
 20 any information statement relating to the election of
 21 directors filed with the Commission the following:

22 “(A) Data, based on voluntary self-identi-
 23 fication, on the racial, ethnic, and gender com-
 24 position of—

25 “(i) the board of directors of the
 26 issuer;

1 “(ii) nominees for the board of direc-
2 tors of the issuer; and

3 “(iii) the executive officers of the
4 issuer.

5 “(B) The status of any member of the
6 board of directors of the issuer, any nominee
7 for the board of directors of the issuer, or any
8 executive officer of the issuer, based on vol-
9 untary self-identification, as a veteran.

10 “(C) Whether the board of directors of the
11 issuer, or any committee of that board of direc-
12 tors, has, as of the date on which the issuer
13 makes a disclosure under this paragraph,
14 adopted any policy, plan, or strategy to promote
15 racial, ethnic, and gender diversity among—

16 “(i) the board of directors of the
17 issuer;

18 “(ii) nominees for the board of direc-
19 tors of the issuer; or

20 “(iii) the executive officers of the
21 issuer.

22 “(3) ALTERNATIVE SUBMISSION.—In any 1-
23 year period in which an issuer required to file an an-
24 nual report under subsection (a) does not file with
25 the Commission a proxy statement or an information

1 statement relating to the election of directors, the
2 issuer shall disclose the information required under
3 paragraph (2) in the first annual report of issuer
4 that the issuer submits to the Commission after the
5 end of that 1-year period.

6 “(4) ANNUAL REPORT.—Not later than 18
7 months after the date of enactment of this sub-
8 section, and annually thereafter, the Commission
9 shall submit to the Committee on Banking, Housing,
10 and Urban Affairs of the Senate and the Committee
11 on Financial Services of the House of Representa-
12 tives, and publish on the website of the Commission,
13 a report that analyzes the information disclosed
14 under paragraphs (2) and (3) and identifies any
15 trends with respect to such information.

16 “(5) BEST PRACTICES.—

17 “(A) IN GENERAL.—The Director of the
18 Office of Minority and Women Inclusion of the
19 Commission shall, not later than 3 years after
20 the date of enactment of this subsection, and
21 every 3 years thereafter, publish best practices
22 for compliance with this subsection.

23 “(B) COMMENTS.—The Director of the Of-
24 fice of Minority and Women Inclusion of the
25 Commission may, pursuant to subchapter II of

1 chapter 5 of title 5, United States Code, solicit
2 public comments related to the best practices
3 published under subparagraph (A).”.

4 **SEC. 3. DIVERSITY ADVISORY GROUP.**

5 (a) DEFINITIONS.—For the purposes of this section:

6 (1) ADVISORY GROUP.—The term “Advisory
7 Group” means the Diversity Advisory Group estab-
8 lished under subsection (b).

9 (2) COMMISSION.—The term “Commission”
10 means the Securities and Exchange Commission.

11 (3) ISSUER.—The term “issuer” has the mean-
12 ing given the term in section 3(a) of the Securities
13 Exchange Act of 1934 (15 U.S.C. 78c(a)).

14 (b) ESTABLISHMENT.—The Commission shall estab-
15 lish a Diversity Advisory Group, which shall be composed
16 of representatives from—

17 (1) the Federal Government and State and local
18 governments;

19 (2) academia; and

20 (3) the private sector.

21 (c) STUDY AND RECOMMENDATIONS.—The Advisory
22 Group shall—

23 (1) carry out a study that identifies strategies
24 that can be used to increase gender, racial, and eth-

1 nic diversity among members of boards of directors
2 of issuers; and

3 (2) not later than 270 days after the date on
4 which the Advisory Group is established, submit to
5 the Commission, the Committee on Banking, Hous-
6 ing, and Urban Affairs of the Senate, and the Com-
7 mittee on Financial Services of the House of Rep-
8 resentatives a report that—

9 (A) describes any findings from the study
10 conducted under paragraph (1); and

11 (B) makes recommendations regarding
12 strategies that issuers could use to increase
13 gender, racial, and ethnic diversity among
14 board members.

15 (d) ANNUAL REPORT.—Not later than 1 year after
16 the date on which the Advisory Group submits the report
17 required under subsection (c)(2), and annually thereafter,
18 the Commission shall submit to the Committee on Bank-
19 ing, Housing, and Urban Affairs of the Senate and the
20 Committee on Financial Services of the House of Rep-
21 resentatives a report that describes the status of gender,
22 racial, and ethnic diversity among members of the boards
23 of directors of issuers.

24 (e) PUBLIC AVAILABILITY OF REPORTS.—The Com-
25 mission shall make all reports of the Advisory Group avail-

1 able to issuers and the public, including on the website
2 of the Commission.

3 (f) INAPPLICABILITY OF FEDERAL ADVISORY COM-
4 MITTEE ACT.—The Federal Advisory Committee Act (5
5 U.S.C. App.) shall not apply with respect to the Advisory
6 Group or the activities of the Advisory Group.

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