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Corporate Human Rights Risk Assessment, Prevention, and Mitigation Act of 2019

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Over the past few decades, investors and the general public have become increasingly interested in the impacts U.S. businesses have on human rights, both at home and abroad. From blood diamonds and conflict minerals, to child labor, to gender wage gap ratios and political spending, high profile cases of corporate contribution to human rights abuses and injustices have captured the collective American interest and changed the type of information investors are demanding. National demand for increased disclosures of economic, social, and governance (ESG) practices, including human rights policies, practices, and impacts, can no longer be ignored.

Now is the time for mandatory human rights disclosures.

Today, over 86% of the United States' largest publicly traded companies included in the S&P 500 have responded to investor demand by publishing voluntary sustainability reports, which include information on ESG performance. A 2017 survey of institutional investors, Ernst & Young found that 32% of investors would "rule out an investment immediately" if there was a human rights risk in operations.[1] In late 2018, a group of investors representing more than $5 trillion in assets under management submitted a petition to the SEC asking for mandatory disclosure of ESG information, including human rights policies, practices, and impacts. These are but a few examples of how investor demand for more information of a company's human rights risks and impacts have manifested in the last few years. As investor demand for human rights disclosures increase, it is time for the government to require U.S. companies to provide investors with the information they need to make informed and sound investment decisions.

What does this bill require?

This bill requires all publicly-listed companies that file an annual report with the SEC to conduct an annual assessment of the human rights risks or impacts in their operations or value chain, to rank those risks on their severity of harm to the right's holder, and to disclose in their annual report a description of their risk assessment process, the results of the assessment, and any actions the company has taken to avoid, mitigate, or remediate identified risks or impacts.

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[1]Ernst & Young, *ESG Information: Why Investors Aren't Getting What They Want* ((May 1, 2017), https://www.ey.com/en_gl/assurance/esg-information--why-investors-aren-t-getting-what-they-want. This represents a 13% increase from the E&Y 2014 survey. Value of Sustainability Reporting, Ernst & Young Boston Coll. Ctr. For Corporate Citizenship 18 (May 2013).

Why is this bill important?

The purpose of this bill is to provide investors with complete, consistent, and comparable information regarding the human rights policies, practices, and impacts of listed companies, so that investors are better able to assess both the short and long-term financial viability of investments, and consider the broader implications of their investment decisions. Currently, voluntary reporting does not provide investors with the information they need to make well-informed investment decisions. Voluntary reporting often utilized a range of different voluntary reporting guidelines, and reports vary across companies within a sector, and within companies across reporting years. This variation in application and consistency greatly reduces the usefulness and effectiveness of existing human rights disclosures.

Mandatory human rights disclosures would increase both informational efficiency, through the creation of consistent, comparable, and complete reporting, and allocative efficiency, as investors would have a better understanding of the short and long-term profitability of their potential investments.

This bill would be the first step in filling a growing gap in the information available to U.S. investors. More than 20 countries worldwide, 28 member states of EU and 7 stock exchanges are already requiring some mandatory ESG disclosures. The U.S. markets risk loosing a competitive edge as long as ESG reporting, including human rights reporting is disclosed on an ad hoc, informal, and voluntary basis.

Why should the SEC regulate these disclosures?

ESG information, including human rights policies, practices, and impacts is critical to assessing both the short and long-term success of a company, especially in relation to assessing risks, and is therefore financially material to a reasonable investor. Adverse human rights impacts in a company's operations or global value chain can lead to decreased stock prices, costly litigation, and reputational damage, resulting in direct profit loss for investors. Various studies have found ESG factors to be strong indicators of "future volatility, earnings risk, price declines, and bankruptcies" and confirmed strong links between sustainability and profit.[2]

Because human rights disclosures are material to a reasonable investor, they fall squarely within the SEC's mandate to protect investors; maintain fair, orderly, and efficient markets; and facilitate capital formation.[3] The SEC is the right agency, given its expertise in corporate disclosures, and broad mandate to protect investors and the public interest.

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[2] Bank of American Merrill Lynch, Equity Strategy Focus Point—ESG Part II: A Deeper Dive (June 15, 2017); Gordon L. Clark, Andreas Feiner & Michael Viehs, *From the Stockholder to the Stakeholder: How Sustainability Can Drive Financial Outperformance* (2015).

[3] U.S. Securities and Exchange Commission, *What We Do*, SEC.gov http://www.sec.gov/about/whatwedo.html (last visited June 10, 2016)