

**AMENDMENT TO THE AMENDMENT IN THE
NATURE OF A SUBSTITUTE TO H.R. 5339
OFFERED BY MR. DESAULNIER OF CALIFORNIA**

In lieu of the matter proposed to be inserted by the amendment, insert the following:

1 SECTION 1. ERISA AMENDMENTS.

2 Subsection (a) of section 404 of the Employee Retirement
3 Income Security Act of 1974 (29 U.S.C. 1104) is
4 amended by adding at the end the following new paragraph:
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6 “(3)(A) Provided that a fiduciary discharges the fiduciary’s
7 duties with respect to a plan in a manner otherwise
8 consistent with this subsection, a fiduciary may—

9 “(i) consider environmental, social, governance,
10 or similar factors, in connection with carrying out an
11 investment decision, strategy, or objective, or other
12 fiduciary act; and

13 “(ii) consider collateral environmental, social,
14 governance, or similar factors as tie-breakers when
15 competing investments can reasonably be expected to
16 serve the plan’s economic interests equally well with
17 respect to expected return and risk over the appropriate
18 time horizon.

1 “(B) In a case described in clause (i) or (ii) of sub-
2 paragraph (A), a fiduciary shall not be required to main-
3 tain any greater documentation, substantiation, or other
4 justification of the fiduciary’s actions relating to such fi-
5 duciary act than is otherwise required under this part.

6 “(C) Nothing in this part shall preclude an invest-
7 ment selected in accordance with clause (i) or (ii) of sub-
8 paragraph (A) from being treated as a default investment
9 or a component of such a default investment (as described
10 in regulations issued by the Secretary under subsection
11 (c)(5)(A)), if such investment would otherwise qualify for
12 such treatment under such regulations.”.

