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REPORT
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PROTECTING AMERICANS' RETIREMENT SAVINGS FROM POLITICS ACT

DECEMBER 19, 2023.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. MCHENRY, from the Committee on Financial Services, submitted the following

R E P O R T

together with

MINORITY VIEWS

[To accompany H.R. 4767]

The Committee on Financial Services, to whom was referred the bill (H.R. 4767) to make revisions to the Federal securities laws with respect to shareholder proposals, proxy voting, and the registration of proxy advisory firms, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Protecting Americans' Retirement Savings from Politics Act".

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

TITLE I—PERFORMANCE OVER POLITICS

SEC. 101. EXCLUSION OF CERTAIN SUBSTANTIALLY SIMILAR SHAREHOLDER PROPOSALS.

The Securities and Exchange Commission shall revise the resubmission requirements in section 240.14a-8(i)(12) of title 17, Code of Federal Regulations, to provide that a shareholder proposal may be excluded by an issuer from its proxy or consent solicitation material for a meeting of the shareholders of such issuer if the shareholder proposal addresses substantially the same subject matter as a proposal, or proposals, previously included in the proxy or consent solicitation material for a meeting of the shareholders of such issuer—

(1) for a meeting of the shareholders conducted in the preceding 5 calendar years; and

(2) if the most recent vote—

(A) occurred in the preceding 3 calendar years; and

(B)(i) if voted on once during such 5-year period, received less than 10 percent of the votes cast;

(ii) if voted on twice during such 5-year period, received less than 20 percent of the votes cast; or

(iii) if voted on three or more times during such 5-year period, received less than 40 percent of the votes cast.

TITLE II—NO EXPENSIVE, STIFLING GOVERNANCE

SEC. 201. EXCLUSION OF CERTAIN SHAREHOLDER PROPOSALS.

(a) EXCLUSION OF CERTAIN SHAREHOLDER PROPOSALS.—A shareholder proposal submitted to an issuer pursuant to section 240.14a-8 of title 17, Code of Federal Regulations, may be excluded by an issuer from its proxy or consent solicitation material for a meeting of the shareholders of such issuer if the shareholder proposal—

(1) has been substantially implemented by the issuer by implementing policies, practices, or procedures that compare favorably with the guidelines of the proposal and address the proposal's underlying concerns; or

(2) substantially duplicates by having the same principal thrust or principal focus as another proposal previously submitted to the issuer by another proponent that will be included in such material.

(b) NULLIFICATION OF PROPOSED RULE.—The Securities and Exchange Commission may not finalize or apply the positions contained in the proposed rule entitled "Substantial Implementation, Duplication, and Resubmission of Shareholder Proposals under Exchange Act Rule 14a-8" (87 Fed. Reg. 45052), issue any substantially similar rule, or apply any substantially similar rule, including with respect to a no-action or other interpretive request.

TITLE III—EXCLUSION OF CERTAIN ESG SHAREHOLDER PROPOSALS

SEC. 301. EXCLUSION OF CERTAIN ESG SHAREHOLDER PROPOSALS.

A shareholder proposal submitted to an issuer pursuant to section 240.14a-8 of title 17, Code of Federal Regulations, may be excluded by an issuer from its proxy or consent solicitation material for a meeting of the shareholders of such issuer if the subject matter of the shareholder proposal is environmental, social, or political (or a similar subject matter).

TITLE IV—EXCLUSIONS AVAILABLE REGARDLESS OF SIGNIFICANT SOCIAL POLICY ISSUE

SEC. 401. EXCLUSIONS AVAILABLE REGARDLESS OF SIGNIFICANT SOCIAL POLICY ISSUE.

An issuer may exclude a shareholder proposal pursuant to section 240.14a-8(i) of title 17, Code of Federal Regulations, without regard to whether such shareholder proposal relates to a significant social policy issue.

TITLE V—CORPORATE GOVERNANCE EXAMINATION

SEC. 501. STUDY OF CERTAIN ISSUES WITH RESPECT TO SHAREHOLDER PROPOSALS, PROXY ADVISORY FIRMS, AND THE PROXY PROCESS.

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

"(10) STUDY OF CERTAIN ISSUES WITH RESPECT TO SHAREHOLDER PROPOSALS, PROXY ADVISORY FIRMS, AND THE PROXY PROCESS.—

"(A) IN GENERAL.—Not later than 180 days after the date of the enactment of this paragraph, and every 5 years thereafter, the Commission shall conduct a comprehensive study on shareholder proposals, proxy advisory firms, and the proxy process.

"(B) SCOPE OF STUDY.—The studies required under subparagraph (A) shall cover—

"(i) the previous 10 years, with respect to the initial study; and

"(ii) the previous 5 years, with respect to each other study.

"(C) CONTENTS.—Each study required under subparagraph (A) shall address the following issues:

"(i) The financial and other incentives and obligations of all groups involved in the proxy process.

"(ii) A consideration of whether financial and other incentives have created a process that no longer serves the economic interests of long-term retail investors.

"(iii) An analysis of whether regulations and financial incentives have created and protected the outsized influence of proxy advisors or a duopoly in proxy advice, and if so, what are the benefits and costs of that outsized influence or duopoly.

"(iv) The costs incurred by issuers in responding to politically-, environmentally-, or socially-motivated shareholder proposals.

"(v) An assessment, including a cost-benefit analysis, of the adequacy of the current submission thresholds in Rule 14a-8 (17 CFR 240.14a-8) to ensure that shareholder proponents have demonstrated a meaningful economic stake in a company, which is appropriate to effectively serve markets and shareholders at large.

"(vi) An examination of the extent to which the politicization of the shareholder proposal process is increasing the operating costs of public companies.

"(vii) An analysis of the impact that shareholder proposals have on discouraging private companies from going public.

"(viii) An evaluation of the risk that shareholder proposals may contribute to the balkanization of the U.S. economy over time.

"(ix) A thorough assessment of the economic analysis, if any, conducted by proxy advisory firms and institutional shareholders when recommending or voting in favor of shareholder proposals.

"(x) A review of the extent to which institutional investors, who owe fiduciary duties, rely on proxy advisory firm recommendations.

"(xi) An assessment of whether, in light of their significant influence on corporate actions and vote outcomes, proxy advisors are subject to sufficient and effective regulation to ensure that their policies and recommendations are accurate, free of conflicts, and benefit the economic best interest of shareholders at large.

"(D) REPORT.—At the completion of each study required under subparagraph (A) the Commission shall issue a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives that includes the results of the study.".

TITLE VI—REGISTRATION OF PROXY ADVISORY FIRMS

SEC. 601. REGISTRATION OF PROXY ADVISORY FIRMS.

(a) AMENDMENT.—The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by inserting after section 15G the following new section:

"SEC. 15H. REGISTRATION OF PROXY ADVISORY FIRMS.

"(a) CONDUCT PROHIBITED.—It shall be unlawful for a proxy advisory firm to make use of the mails or any means or instrumentality of interstate commerce to provide proxy voting advice, research, analysis, ratings or recommendations to any client, unless such proxy advisory firm is registered under this section.

"(b) REGISTRATION PROCEDURES.—

"(1) APPLICATION FOR REGISTRATION.—

"(A) IN GENERAL.—A proxy advisory firm shall file with the Commission an application for registration, in such form as the Commission shall require, by rule, and containing the information described in subparagraph (B).

"(B) REQUIRED INFORMATION.—An application for registration under this section shall contain—

"(i) a certification that the applicant is able to consistently provide proxy advice based on accurate information;

"(ii) with respect to clients of the applicant that vote shares held on behalf of shareholders, a certification that the applicant—

"(I) will provide proxy voting advice only in the best economic interest of those shareholders; and

"(II) has the requisite expertise to ensure that voting recommendations are in the best economic interest of those shareholders;

"(iii) information on the procedures and methodologies that the applicant uses to ensure that proxy voting recommendations are in the best economic interest of the ultimate shareholders;

"(iv) information on the organizational structure of the applicant;

"(v) an explanation of whether or not the applicant has in effect a code of ethics, and if not, the reasons therefor;

"(vi) a description of any potential or actual conflict of interest relating to the provision of proxy advisory services, including those arising out of or resulting from the ownership structure of the applicant or the provision of other services by the applicant or any person associated with the applicant;

"(vii) the policies and procedures in place to publicly disclose and manage conflicts of interest under subsection (f);

"(viii) information related to the professional and academic qualifications of staff tasked with providing proxy advisory services; and

"(ix) any other information and documents concerning the applicant and any person associated with such applicant as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors.

"(2) REVIEW OF APPLICATION.—

"(A) INITIAL DETERMINATION.—Not later than 90 days after the date on which the application for registration is filed with the Commission under paragraph (1) (or within such longer period as to which the applicant consents) the Commission shall—

"(i) by order, grant registration; or

"(ii) institute proceedings to determine whether registration should be denied.

"(B) CONDUCT OF PROCEEDINGS.—

"(i) CONTENT.—Proceedings referred to in subparagraph (A)(ii) shall—

"(I) include notice of the grounds for denial under consideration and an opportunity for hearing; and

"(II) be concluded not later than 120 days after the date on which the application for registration is filed with the Commission under paragraph (1).

"(ii) DETERMINATION.—At the conclusion of such proceedings, the Commission, by order, shall grant or deny such application for registration.

"(iii) EXTENSION AUTHORIZED.—The Commission may extend the time for conclusion of such proceedings for not longer than 90 days, if the Commission finds good cause for such extension and publishes its reasons for so finding, or for such longer period as to which the applicant consents.

"(C) GROUNDS FOR DECISION.—The Commission shall grant registration under this subsection—

"(i) if the Commission finds that the requirements of this section are satisfied; and

"(ii) unless the Commission finds (in which case the Commission shall deny such registration) that—

"(I) the applicant has failed to certify to the Commission's satisfaction that it is able to consistently provide proxy advice based on accurate information and to materially comply with the procedures and methodologies disclosed under paragraph (1)(B) and with subsections (f) and (g); or

"(II) if the applicant were so registered, its registration would be subject to suspension or revocation under subsection (d).

"(3) PUBLIC AVAILABILITY OF INFORMATION.—Subject to section 24, the Commission shall make the information and documents submitted to the Commission by a proxy advisory firm in its completed application for registration, or in any amendment submitted under paragraph (1) or (2) of subsection (c), publicly available on the Commission's website, or through another comparable, readily accessible means.

"(c) UPDATE OF REGISTRATION.—

"(1) UPDATE.—Each registered proxy advisory firm shall promptly amend and update its application for registration under this section if any information or document provided therein becomes materially inaccurate, except that a registered proxy advisory firm is not required to amend the information required to be filed under subsection (b)(1)(B)(i) by filing information under this paragraph, but shall amend such information in the annual submission of the organization under paragraph (2) of this subsection.

"(2) CERTIFICATION.—Not later than 90 calendar days after the end of each calendar year, each registered proxy advisory firm shall file with the Commission an amendment to its registration, in such form as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors—

"(A) certifying that the information and documents in the application for registration of such registered proxy advisory firm continue to be accurate in all material respects; and

"(B) listing any material change that occurred to such information or documents during the previous calendar year.

"(d) CENSURE, DENIAL, OR SUSPENSION OF REGISTRATION; NOTICE AND HEARING.—The Commission, by order, shall censure, place limitations on the activities, functions, or operations of, suspend for a period not exceeding 12 months, or revoke the registration of any registered proxy advisory firm if the Commission finds, on the record after notice and opportunity for hearing, that such censure, placing of limitations, suspension, or revocation is necessary for the protection of investors and in the public interest and that such registered proxy advisory firm, or any person associated with such an organization, whether prior to or subsequent to becoming so associated—

"(1) has committed or omitted any act, or is subject to an order or finding, enumerated in subparagraph (A), (D), (E), (H), or (G) of section 15(b)(4), has been convicted of any offense specified in section 15(b)(4)(B), or is enjoined from any action, conduct, or practice specified in subparagraph (C) of section 15(b)(4),

during the 10-year period preceding the date of commencement of the proceedings under this subsection, or at any time thereafter;

"(2) has been convicted during the 10-year period preceding the date on which an application for registration is filed with the Commission under this section, or at any time thereafter, of—

"(A) any crime that is punishable by imprisonment for 1 or more years, and that is not described in section 15(b)(4)(B); or

"(B) a substantially equivalent crime by a foreign court of competent jurisdiction;

"(3) is subject to any order of the Commission barring or suspending the right of the person to be associated with a registered proxy advisory firm;

"(4) fails to furnish the certifications required under subsections (b)(2)(C)(ii)(I) and (c)(2);

"(5) has engaged in one or more prohibited acts enumerated in paragraph (1);

"(6) fails to maintain adequate financial and managerial resources to consistently offer advisory services to clients that vote shares held on behalf of shareholders consistent with the best economic interest of those shareholders, including by failing to comply with subsections (f) or (g);

"(7) fails to maintain adequate expertise to ensure that proxy advisory services for clients that vote shares held on behalf of shareholders are tied to the best economic interest of those shareholders; or

"(8) engages in a prohibited act enumerated in subsection (j).

"(e) TERMINATION OF REGISTRATION.—

"(1) VOLUNTARY WITHDRAWAL.—A registered proxy advisory firm may, upon such terms and conditions as the Commission may establish as necessary in the public interest or for the protection of investors, which terms and conditions shall include at a minimum that the registered proxy advisory firm will no longer conduct such activities as to bring it within the definition of proxy advisory firm in section 3(a)(82), withdraw from registration by filing a written notice of withdrawal to the Commission.

"(2) COMMISSION AUTHORITY.—In addition to any other authority of the Commission under this title, if the Commission finds that a registered proxy advisory firm is no longer in existence or has ceased to do business as a proxy advisory firm, the Commission, by order, shall cancel the registration under this section of such registered proxy advisory firm.

"(f) MANAGEMENT OF CONFLICTS OF INTEREST.—

"(1) ORGANIZATION POLICIES AND PROCEDURES.—Each registered proxy advisory firm shall establish, maintain, and enforce written policies and procedures reasonably designed, taking into consideration the nature of the business of such registered proxy advisory firm and associated persons, to publicly disclose and manage any conflicts of interest that arise or would reasonably be expected to arise from such business.

"(2) COMMISSION AUTHORITY.—The Commission shall, within one year of the date of enactment of this section, issue final rules to prohibit, or require the management and public disclosure of, any conflicts of interest relating to the offering of proxy advisory services by a registered proxy advisory firm, including, without limitation, conflicts of interest relating to—

"(A) the manner in which a registered proxy advisory firm is compensated by the client, any affiliate of the client, or any other person for providing proxy advisory services;

"(B) business relationships, ownership interests, or any other financial or personal interests between a registered proxy advisory firm, or any person associated with such registered proxy advisory firm, and any client, or any affiliate of such client;

"(C) the formulation of proxy voting policies;

"(D) the execution, or assistance with the execution, of proxy votes if such votes are based upon recommendations made by the proxy advisory firm in which a person other than the issuer is a proponent; and

"(E) any other potential conflict of interest, as the Commission deems necessary or appropriate in the public interest or for the protection of investors.

"(3) DISCLOSURE ON FACTORS INFLUENCING RECOMMENDATIONS.—Each registered proxy advisory firm shall annually disclose to the Commission and make publicly available the economic and other factors that a reasonable investor would expect to influence the recommendations of such proxy advisory firm, including the ownership composition of such proxy advisory firm and any meetings with, or feedback received from, outside entities.

"(g) RELIABILITY OF PROXY ADVISORY FIRM SERVICES.—

"(1) IN GENERAL.—Each registered proxy advisory firm shall—

"(A) have staff and other resources sufficient to produce proxy voting recommendations that are based on accurate and current information and designed for clients that vote shares held on behalf of shareholders to advance the best economic interest of those shareholders;

"(B) implement procedures that permit issuers that are the subject of proxy voting recommendations—

"(i) access in a reasonable time to data and information used to make recommendations; and

"(ii) a reasonable opportunity to provide meaningful comment and corrections to such data and information, including the opportunity to present (in person or telephonically) details to the person responsible for developing such data and information prior to the publication of proxy voting recommendations to clients;

"(C) employ an ombudsman to receive complaints about the accuracy of information used in making recommendations from the companies that are the subject of the proxy advisory firm's voting recommendations and seek to resolve those complaints in a timely fashion and prior to the publication of proxy voting recommendations to clients; and

"(D) if the ombudsman is unable to resolve a complaint to a company's satisfaction prior to the publication of proxy voting recommendations to clients, include in the final report of the firm to clients—

"(i) a statement detailing the company's complaints, if requested in writing by the company; and

"(ii) a statement explaining why the proxy voting recommendation is in the best economic interest of shareholders.

"(2) DEFINITIONS.—In this subsection:

"(A) DATA AND INFORMATION USED TO MAKE RECOMMENDATIONS.—The term 'data and information used to make voting recommendations'—

"(i) means the financial, operational, or descriptive data and information on an issuer used by proxy advisory firms and any contextual or substantive analysis impacting the recommendation; and

"(ii) does not include the entirety of the proxy advisory firm's final report to its clients.

"(B) REASONABLE TIME.—The term 'reasonable time'—

"(i) means not less than 1 week before the publication of proxy voting recommendations for clients; and

"(ii) shall not otherwise interfere with a proxy advisory firm's ability to provide its clients with timely access to accurate proxy voting research, analysis, or recommendations.

"(h) PRIVATE RIGHT OF ACTION WITH RESPECT TO ILLEGAL RECOMMENDATIONS.—Any proxy advisory firm that endorses a proposal that is not supported by the issuer but is approved and subsequently found by a court of competent jurisdiction to violate State or Federal law shall be liable to the applicable issuer for the costs associated with the approval of such proposal, including implementation costs and any penalties incurred by the issuer.

"(i) DESIGNATION OF COMPLIANCE OFFICER.—Each registered proxy advisory firm shall designate an individual who reports directly to senior management as responsible for administering the policies and procedures that are required to be established pursuant to subsections (f) and (g), and for ensuring compliance with the securities laws and the rules and regulations thereunder, including those promulgated by the Commission pursuant to this section.

"(j) PROHIBITED CONDUCT.—

"(1) PROHIBITED ACTS AND PRACTICES.—Not later than one year after the date of enactment of this section, the Commission shall issue final rules to prohibit any act or practice relating to the offering of proxy advisory services by a registered proxy advisory firm that the Commission determines to be unfair, coercive, or abusive, including any act or practice relating to—

"(A) advisory or consulting services (offered directly or indirectly, including through an affiliate) related to corporate governance issues; or

"(B) modifying a voting recommendation or otherwise departing from its adopted systematic procedures and methodologies in the provision of proxy advisory services, based on whether an issuer, or affiliate thereof, subscribes or will subscribe to other services or product of the registered proxy advisory firm or any person associated with such organization.

"(2) RULE OF CONSTRUCTION.—Nothing in paragraph (1), or in any rules or regulations adopted thereunder, may be construed to modify, impair, or supersede the operation of any of the antitrust laws (as defined in the first section of the Clayton Act, except that such term includes section 5 of the Federal

Trade Commission Act, to the extent that such section 5 applies to unfair methods of competition).

"(k) STATEMENTS OF FINANCIAL CONDITION.—Each registered proxy advisory firm shall, on a confidential basis, file with the Commission, at intervals determined by the Commission, such financial statements, certified (if required by the rules or regulations of the Commission) by an independent public auditor, and information concerning its financial condition, as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors.

"(l) ANNUAL REPORT.—

"(1) IN GENERAL.—Each registered proxy advisory firm shall, not later than 90 calendar days after the end of each fiscal year, file with the Commission and make publicly available an annual report in such form as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors.

"(2) CONTENTS.—Each annual report required under paragraph (1) shall include, at a minimum, disclosure by the registered proxy advisory firm of the following:

"(A) A list of shareholder proposals the staff of the registered proxy advisory firm reviewed in the prior fiscal year.

"(B) A list of the recommendations made in the prior fiscal year.

"(C) The economic analysis conducted to determine that final recommendations provided in the prior fiscal year (other than recommendations relating to an issuer-sponsored proposal or recommendations consistent with that of a board of directors composed of a majority of independent directors) delivered to clients that vote shares held on behalf of shareholders were in the best economic interest of those shareholders.

"(D) The staff who reviewed and made recommendations on such proposals in the prior fiscal year.

"(E) The qualifications of such staff to ensure that each of the recommendations for clients that vote shares held on behalf of shareholders were tied to the best economic interest of those shareholders.

"(F) The recommendations made in the prior fiscal year where the proponent of such recommendation was a client of or received services from the proxy advisory firm.

"(G) A certification by the chief executive officer, chief financial officer, and the primary executive responsible for overseeing the compilation and dissemination of proxy voting advice that the final recommendations (other than recommendations relating to an issuer-sponsored proposal or recommendations consistent with that of a board of directors composed of a majority of independent directors) delivered to clients that vote shares held on behalf of shareholders in the last fiscal year—

"(i) were based on internal controls and procedures that are designed to ensure accurate information and that such internal controls and procedures are effective;

"(ii) do not violate applicable State or Federal law; and

"(iii) were based on the best economic interest of those shareholders.

"(H) The economic and other factors that a reasonable investor would expect to influence the recommendations of such proxy advisory firm, including the ownership composition of such proxy advisory firm.

"(m) TRANSPARENT POLICIES.—Each registered proxy advisory firm shall file with the Commission and make publicly available its methodology for the formulation of proxy voting policies and voting recommendations to clients that vote shares held on behalf of shareholders and how that methodology ensures that the firm's voting recommendations are in the best economic interest of those shareholders.

"(n) RULES OF CONSTRUCTION.—Registration under and compliance with this section does not constitute a waiver of, or otherwise diminish, any right, privilege, or defense that a registered proxy advisory firm may otherwise have under any provision of State or Federal law, including any rule, regulation, or order thereunder.

"(o) REGULATIONS.—

"(1) NEW PROVISIONS.—Such rules and regulations as are required by this section or are otherwise necessary to carry out this section, including the application form required under subsection (a)—

"(A) shall be issued by the Commission, not later than 180 days after the date of enactment of this section; and

"(B) shall become effective not later than 1 year after the date of enactment of this section.

"(2) REVIEW OF EXISTING REGULATIONS.—Not later than 270 days after the date of enactment of this section, the Commission shall—

"(A) review its existing rules and regulations which affect the operations of proxy advisory firms; and

"(B) amend or revise such rules and regulations in accordance with the purposes of this section, and issue such guidance as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.

"(p) APPLICABILITY.—This section, other than subsection (n), which shall apply on the date of enactment of this section, shall apply on the earlier of—

"(1) the date on which regulations are issued in final form under subsection (o)(1); or

"(2) 270 days after the date of enactment of this section.

"(q) BEST ECONOMIC INTEREST DEFINED.—In this section, the term 'best economic interest' means decisions that seek to maximize investment returns over a time horizon consistent with the investment objectives and risk management profile of the fund in which the shareholders are invested.".

(b) CONFORMING AMENDMENT.—Section 17(a)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78q(a)(1)) is amended by inserting "proxy advisory firm," after "nationally recognized statistical rating organization,".

(c) PROXY ADVISORY FIRM DEFINITIONS.—Section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)) is amended—

(1) by redesignating the second paragraph (80) (relating to funding portal) as paragraph (81); and

(2) by adding at the end the following:

"(82) PROXY ADVISORY FIRM.—The term 'proxy advisory firm'—

"(A) means any person who is primarily engaged in the business of providing proxy voting advice, research, analysis, ratings, or recommendations to clients, which conduct constitutes a solicitation within the meaning of section 14; and

"(B) does not include any person that is exempt under law or regulation from the requirements otherwise applicable to persons engaged in such a solicitation.

"(83) PERSON ASSOCIATED WITH A PROXY ADVISORY FIRM.—With respect to a proxy advisory firm—

"(A) a person is 'associated' with the proxy advisory firm if the person is—

"(i) a partner, officer, or director of the proxy advisory firm (or any person occupying a similar status or performing similar functions);

"(ii) a person directly or indirectly controlling, controlled by, or under common control with the proxy advisory firm;

"(iii) an employee of the proxy advisory firm; or

"(iv) a person the Commission determines by rule is controlled by the proxy advisory firm; and

"(B) a person is not 'associated' with the proxy advisory firm if the person only performs clerical or ministerial functions with respect to a proxy advisory firm.".

TITLE VII—LIABILITY FOR CERTAIN FAILURES TO DISCLOSE MATERIAL INFORMATION OR MAKING OF MATERIAL MISSTATEMENTS

SECTION 701. LIABILITY FOR CERTAIN FAILURES TO DISCLOSE MATERIAL INFORMATION OR MAKING OF MATERIAL MISSTATEMENTS.

Section 14 of the Securities Exchange Act of 1934 (15 U.S.C. 78n) is amended by adding at the end the following:

"(l) FALSE OR MISLEADING STATEMENTS.—For purposes of section 18, the failure to disclose material information (such as a proxy voting advice business's methodology, sources of information, or conflicts of interest) or the making of a material misstatement regarding proxy voting advice that makes a recommendation to a security holder as to the security holder's vote, consent, or authorization on a specific matter for which security holder approval is solicited, and that is furnished by a person that markets the person's expertise as a provider of such proxy voting advice separately from other forms of investment advice, and sells such proxy voting advice for a fee, shall be considered to be false or misleading with respect to a material fact.".

TITLE VIII—DUTIES OF INVESTMENT ADVISORS, ASSET MANAGERS, AND PENSION FUNDS

SEC. 801. DUTIES OF INVESTMENT ADVISORS, ASSET MANAGERS, AND PENSION FUNDS.

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

"(7) DISCLOSURES BY INSTITUTIONAL INVESTMENT MANAGERS IN CONNECTION WITH PROXY ADVISORY FIRMS.—

"(A) IN GENERAL.—Every institutional investment manager which uses the mails, or any means or instrumentality of interstate commerce in the course of its business as an institutional investment manager, which engages a proxy advisory firm, and which exercises voting power with respect to accounts holding equity securities of a class described in subsection (d)(1) or otherwise becomes or is deemed to become a beneficial owner of any security of a class described in subsection (d)(1) upon the purchase or sale of a security-based swap that the Commission may define by rule, shall file an annual report with the Commission containing—

"(i) an explanation of how the institutional investment manager voted with respect to each shareholder proposal;

"(ii) the percentage of votes cast on shareholder proposals that were consistent with proxy advisory firm recommendations, for each proxy advisory firm retained by the institutional investment manager;

"(iii) an explanation of—

"(I) how the institutional investment manager took into consideration proxy advisory firm recommendations in making voting decisions, including the degree to which the institutional investment manager used those recommendations in making voting decisions;

"(II) how often the institutional investment manager voted consistent with a recommendation made by a proxy advisory firm, expressed as a percentage;

"(III) how such votes are reconciled with the fiduciary duty of the institutional investment manager to vote in the best economic interests of shareholders;

"(IV) how frequently votes were changed when an error occurred or due to new information from issuers; and

"(V) the degree to which investment professionals of the institutional investment manager were involved in proxy voting decisions; and

"(iv) a certification that the voting decisions of the institutional investment manager were based solely on the best economic interest of the shareholders on behalf of whom the institutional investment manager holds shares.

"(B) REQUIREMENTS FOR LARGER INSTITUTIONAL INVESTMENT MANAGERS.—Every institutional investment manager described in subparagraph (A) that has assets under management with an aggregate fair market value on the last trading day in any of the preceding twelve months of at least $100,000,000,000 shall—

"(i) in any materials provided to customers and related to customers voting their shares, clarify that shareholders are not required to vote on every proposal;

"(ii) with respect to each shareholder proposal for which the institutional investment manager votes (other than votes consistent with the recommendation of a board of directors composed of a majority of independent directors) perform an economic analysis before making such vote, to determine that the vote is in the best economic interest of the shareholders on behalf of whom the institutional investment manager holds shares; and

"(iii) include each economic analysis required under clause (ii) in the annual report required under subparagraph (A).

"(C) BEST ECONOMIC INTEREST DEFINED.—In this paragraph, the term 'best economic interest' means decisions that seek to maximize investment returns over a time horizon consistent with the investment objectives and risk management profile of the fund in which shareholders are invested.".

TITLE IX—PROTECTING AMERICANS' SAVINGS

SEC. 901. REQUIREMENTS RELATED TO PROXY VOTING.

Section 14 of the Securities Exchange Act of 1934 (15 U.S.C. 78n), as amended by section 701, is further amended by adding at the end the following:

"(m) PROHIBITION ON ROBOVOTING.—

"(1) IN GENERAL.—The Commission shall issue final rules prohibiting the use of robovoting with respect to votes related to proxy or consent solicitation materials.

"(2) ROBOVOTING DEFINED.—In this subsection, the term 'robovoting' means the practice of automatically voting in a manner consistent with the recommendations of a proxy advisory firm or pre-populating votes on a proxy advisory firm's electronic voting platform with the proxy advisory firm's recommendations, in either case, without independent review and analysis.

"(n) PROHIBITION ON OUTSOURCING VOTING DECISIONS BY INSTITUTIONAL INVESTORS.—With respect to votes related to proxy or consent solicitation materials, an institutional investor may not outsource voting decisions to any person other than an investment adviser or a broker or dealer that is registered with the Commission and has a fiduciary or best interest duty to the institutional investor.

"(o) NO REQUIREMENT TO VOTE.—No person may be required to cast votes related to proxy or consent solicitation materials.

"(p) PROXY ADVISORY FIRM CALCULATION OF VOTES.—With respect to votes related to proxy or consent solicitation materials with respect to an issuer, a proxy advisor firm shall calculate the vote result consistent with the law of the State in which the issuer is incorporated.".

TITLE X—EMPOWERING SHAREHOLDERS

SEC. 1001. PROXY VOTING OF PASSIVELY MANAGED FUNDS.

(a) IN GENERAL.—The Investment Advisers Act of 1940 (15 U.S.C. 80b–1 et seq.) is amended by inserting after section 208 (15 U.S.C. 80b–8) the following:

"SEC. 208A. PROXY VOTING OF PASSIVELY MANAGED FUNDS.

"(a) INVESTMENT ADVISER PROXY VOTING.—

"(1) IN GENERAL.—An investment adviser that holds authority to vote a proxy solicited by an issuer pursuant to section 14 of the Securities Exchange Act of 1934 (15 U.S.C. 78n) in connection with any vote of covered securities held by a passively managed fund shall—

"(A) vote in accordance with the instructions of the beneficial owner of a voting security of the passively managed fund;

"(B) vote in accordance with the voting recommendations of such issuer; or

"(C) abstain from voting but make reasonable efforts to be considered present for purposes of establishing a quorum.

"(2) EXCEPTION.—Paragraph (1) shall not apply with respect to a vote on a routine matter.

"(b) SAFE HARBOR.—With respect to a matter that is not a routine matter, in the case of a vote described in subsection (a)(1), an investment adviser shall not be liable to any person under any law or regulation of the United States, any constitution, law, or regulation of any State or political subdivision thereof, or under any contract or other legally enforceable agreement (including any arbitration agreement), for any of the following:

"(1) Voting in accordance with the instructions of the beneficial owner of a voting security of the passively managed fund.

"(2) Not soliciting voting instructing from any person under subsection (a)(1) with respect to such vote.

"(3) Voting in accordance with the voting recommendations of an issuer pursuant to subparagraph (B) of such subsection.

"(4) Abstaining from voting in accordance with subparagraph (C) of such subsection.

"(c) FOREIGN PRIVATE ISSUERS EXEMPTION.—Subsection (a) shall not apply with respect to a foreign private issuer if the voting policy of the investment advisor with respect to such foreign private issuers is fully and fairly disclosed to beneficial owners, including the extent to which such policy differs from the voting policy for non-exempt issuers.

"(d) DEFINITIONS.—In this section:

"(1) COVERED SECURITY.—The term 'covered security'—

"(A) means a voting security, as that term is defined in section 2(a) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)), in which a qualified fund is invested; and

"(B) does not include any voting security (as defined in subparagraph (A)) of an issuer registered with the Commission as an investment company under section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a–8).

"(2) PASSIVELY MANAGED FUND.—The term 'passively managed fund' means a qualified fund that—

"(A) is designed to track, or is derived from, an index of securities or a portion of such an index;

"(B) discloses that the qualified fund is a passive index fund; or

"(C) allocates not less than 60 percent of the total assets of the qualified fund to an investment strategy that is designed to track, or is derived from, an index of securities or a portion of such an index fund.

"(3) QUALIFIED FUND.—The term 'qualified fund' means—

"(A) an investment company, as that term is defined in section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a–3);

"(B) a private fund;

"(C) an eligible deferred compensation plan, as that term is defined in section 457(b) of the Internal Revenue Code of 1986;

"(D) a trust, plan, account, or other entity described in section 3(c)(11) of the Investment Company Act of 1940 (15 U.S.C. 80a–3(c)(11));

"(E) a plan maintained by an employer described in clause (i), (ii), or (iii) of section 403(b)(1)(A) of the Internal Revenue Code of 1986 to provide annuity contracts described in section 403(b) of such Code;

"(F) a common trust fund, or similar fund, maintained by a bank;

"(G) any fund established under section 8438(b)(1) of title 5, United States Code; or

"(H) any separate managed account of a client of an investment adviser.

"(4) REGISTRANT.—The term 'registrant' means an issuer of covered securities.

"(5) ROUTINE MATTER.—The term 'routine matter'—

"(A) includes a proposal that relates to—

"(i) an election with respect to the board of directors of the registrant;

"(ii) the compensation of management or the board of directors of the registrant;

"(iii) the selection of auditors;

"(iv) a matter where there is a material conflict of interest between or among the issuer, members of management, members of the board of directors, or an affiliate of the issuer;

"(v) declassification; or

"(vi) transactions that would transform the structure of the registrant, including—

"(I) a merger or consolidation; and

"(II) the sale, lease, or exchange of all, or substantially all, of the property and assets of a registrant; and

"(B) does not include—

"(i) a proposal that is not submitted to a holder of covered securities by means of a proxy statement comparable to that described in section 240.14a–101 of title 17, Code of Federal Regulations, or any successor regulation; or

"(ii) a proposal that is—

"(I) the subject of a counter-solicitation; or

"(II) part of a proposal made by a person other than the applicable registrant.".

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on the first August 1 that occurs after the date that is 2 years after the date of enactment of this Act.

TITLE XI—PROTECTING RETAIL INVESTORS' SAVINGS

SEC. 1101. BEST INTEREST BASED ON PECUNIARY FACTORS.

(a) IN GENERAL.—Section 211(g) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–11(g)) is amended by adding at the end the following:

"(3) BEST INTEREST BASED ON PECUNIARY FACTORS.—

"(A) IN GENERAL.—For purposes of paragraph (1), the best interest of a customer shall be determined using pecuniary factors, which may not be

subordinated to or limited by non-pecuniary factors, unless the customer provides informed consent, in writing, that such non-pecuniary factors be considered.

"(B) DISCLOSURE OF PECUNIARY FACTORS.—If a customer provides a broker, dealer, or investment adviser with the informed consent to consider non-pecuniary factors described under subparagraph (A), the broker, dealer, or investment adviser shall—

"(i) disclose the expected pecuniary effects to the customer over a time period selected by the customer and not to exceed three years; and

"(ii) at the end of the time period described in clause (i), disclose, by comparison to a reasonably comparable index or basket of securities selected by the customer, the actual pecuniary effects of that time period, including all fees, costs, and other expenses incurred to consider non-pecuniary factors.

"(C) PECUNIARY FACTOR DEFINED.—In this paragraph, the term 'pecuniary factor' means a factor that a fiduciary prudently determines is expected to have a material effect on the risk or return of an investment based on appropriate investment horizons.".

(b) RULEMAKING.—Not later than the end of the 12-month period beginning on the date of enactment of this Act, the Securities and Exchange Commission shall revise or issue such rules as may be necessary to implement the amendment made by subsection (a).

(c) APPLICABILITY.—The amendment made by subsection (a) shall apply to actions taken by a broker, dealer, or investment adviser beginning on the date that is 12 months after the date of enactment of this Act.

SEC. 1102. STUDY ON CLIMATE CHANGE AND OTHER ENVIRONMENTAL DISCLOSURES IN MUNICIPAL BOND MARKET.

(a) IN GENERAL.—The Securities and Exchange Commission shall—

(1) conduct a study to determine the extent to which issuers of municipal securities (as such term is defined in section 3(a)(29) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(29)) make disclosures to investors regarding climate change and other environmental matters; and

(2) solicit public comment with respect to such study.

(b) CONTENTS.—The study required under subsection (a) shall consider and analyze—

(1) the frequency with which disclosures described in subsection (a)(1) are made;

(2) whether such disclosures made by issuers of municipal securities in connection with offerings of securities align with such disclosures made by issuers of municipal securities in other contexts or to audiences other than investors;

(3) any voluntary or mandatory disclosure standards observed by issuers of municipal securities in the course of making such disclosures;

(4) the degree to which investors consider such disclosures in connection with making an investment decision; and

(5) such other information as the Securities and Exchange Commission determines appropriate.

(c) 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 and the Committee on Financial Services of the House of Representatives a report that includes—

(1) the results of the study required under this section;

(2) a detailed discussion of the financial risks to investors from investments in municipal securities;

(3) whether such risks are adequately disclosed to investors; and

(4) recommended regulatory or legislative steps to address any concerns identified in the study.

SEC. 1103. STUDY ON SOLICITATION OF MUNICIPAL SECURITIES BUSINESS.

(a) IN GENERAL.—The Securities and Exchange Commission shall—

(1) conduct a study on the effectiveness of each covered rule in preventing the payment of funds to elected officials or candidates for elected office in exchange for the receipt of government business in connection with the offer or sale of municipal securities; and

(2) solicit public comment with respect to such study.

(b) CONTENTS.—The study required under subsection (a) shall consider and analyze—

(1) the effectiveness of each covered rule, including whether each covered rule accomplishes the intended effect of such covered rule and has any unintended adverse effects;

(2) the frequency and scope of enforcement actions undertaken pursuant to each covered rule;

(3) the degree to which—

(A) persons subject to each covered rule—

(i) have in effect policies and procedures intended to ensure compliance with each such covered rule; and

(ii) are disadvantaged from participating in the political process generally and in relation to persons who solicit or receive government business or government licenses, permits, and approvals other than in connection with the offer or sale of municipal securities; and

(B) other State and Federal laws and regulations impact the solicitation of municipal securities business; and

(4) such other information as the Securities and Exchange Commission determines appropriate.

(c) 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 and the Committee on Financial Services of the House of Representatives a report that includes—

(1) the results of the study required under this section;

(2) an analysis of the extent to which persons affiliated with small businesses, as well as persons affiliated with minority and women opened businesses, have been affected by the covered rules; and

(3) recommended regulatory or legislative steps to address any concerns identified in the study.

(d) DEFINITIONS.—In this section:

(1) COVERED RULE.—The term "covered rule" means—

(A) Rule G–38 of the Municipal Securities Rulemaking Board; and

(B) Rule 206(4)–5 (17 CFR 275.206(4)–5).

(2) MUNICIPAL SECURITIES.—The term "municipal securities" has the meaning given the term in section 3(a)(29) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(29)).

PURPOSE AND SUMMARY

Introduced on July 20, 2023, by Representative Bryan Steil, H.R. 4767, the *Protecting Americans' Retirement Savings from Politics Act*, would enact measures aimed at preserving the integrity of the proxy voting process by reducing the impact of political activists, proxy advisory firms, and the Securities and Exchange Commission (SEC) in introducing political elements into proxy voting.

BACKGROUND AND NEED FOR LEGISLATION

H.R. 4767 is a compilation of 11 previously introduced bills, including:

H.R. 4641, the *Performance Over Politics Act*

H.R. 4644, the *No Expensive, Stifling Governance (No ESG) Act*

H.R. 4640, *a bill to authorize the exclusion of shareholder proposals from proxy or consent solicitation material if the subject matter of the shareholder proposal is environmental, social, or political*

H.R. 4657, *a bill to clarify that an issuer may exclude a shareholder proposal pursuant to section 240.14a–8(i) of title 17, Code of Federal Regulations, without regard to whether such proposal relates to a significant social policy issue*

H.R. 4662, the *Corporate Governance Examination Act*

H.R. 4589, *a bill to amend the Securities Exchange Act of 1934 to provide for the registration of proxy advisory firms, and for other purposes*

H.R. 4590, *a bill to amend the Securities Exchange Act of 1934 to provide for liability for certain failures to disclose material information in connection with proxy voting advice, and for other purposes*

H.R. 4648, *a bill to amend the Securities Exchange Act of 1934 to provide for duties of certain investment advisors, asset managers, and pension funds with respect to voting on shareholder proposals, and for other purposes*

H.R. 4656, the *Protecting Americans' Savings Act*

H.R. 4645, the *Empowering Shareholders Act*

H.R. 4600, the *Protecting Retail Investors' Savings Act*

The shareholder proxy process has lost its effectiveness in efficiently promoting long-term shareholder value. At present, unbridled shareholder activism diverts attention and resources away from core business matters, ultimately eroding the appeal of U.S. markets and discouraging companies from pursuing public offerings. The SEC has exacerbated this problem by promulgating changes that facilitate the inclusion of politically motivated shareholder proposals in annual proxy statements while also rolling back crucial reforms to proxy solicitation rules. This shift towards advancing environmental, social, and political agendas detracts from the primary purpose of public markets, which is to enable companies to raise capital and stimulate economic growth.

H.R. 4767 represents a vital step in addressing these challenges. It seeks to curb the influence of activists, proxy firms, and the SEC in politicizing the proxy process, which will enable companies and their shareholders to refocus on the fundamental issues that drive growth and long-term value creation.

Title I—H.R. 4641, the *Performance Over Politics Act*, was introduced on July 14, 2023, by Representative Scott Fitzgerald

Title I of the bill raises the resubmission thresholds for shareholder proposals that have faced repeated rejections by a substantial majority of shareholders.

BACKGROUND

The costs associated with shareholder proposals are significant. Apart from diverting management's attention from long-term value creation, immaterial shareholder proposals often siphon capital away from crucial initiatives like research, development, and corporate strategy. When management discussions are inundated with numerous immaterial proposals, it detracts from addressing economically significant matters.

These expenses escalate significantly when ideological or political shareholder proposals undergo repeated resubmissions, placing added strain on both the company and its shareholders. According to the 2020 update to Rule 14a–8(i)(12), companies can potentially exclude similar shareholder proposals based on the levels of support they receive–less than 5 percent, 15 percent, or 25 percent–when proposed once, twice, or three or more times within the previous five years. Despite this rule, the current influence of proxy advisors effectively hinders companies from excluding numerous repeat environmental, social and governance (ESG) related proposals, regardless of prior rejections. Proxy advisor firms' endorsements frequently gather 25 percent investor support easily, perpetuating the cycle of resubmission, even if these proposals don't align with the company's long-term interests.

To address these challenges, Title I aims to adjust the thresholds under Rule 14a–8(i)(12) to 10 percent, 20 percent, and 40 percent,

respectively. This adjustment seeks to strike a balance between encouraging shareholder engagement and fostering a more efficient and focused decision-making process.

Title II—H.R. 4644, the *No Expensive, Stifling Governance Act*, was introduced on July 14, 2023, by Representative Erin Houchin

Title II of the bill prevents the SEC from finalizing or implementing the positions contained in a proposed rule called "Substantial Implementation, Duplication, and Resubmission of Shareholder Proposals under Exchange Act Rule 14a–8" (87 Fed. Reg. 45052).

BACKGROUND

In 2022, the SEC proposed a rule to narrow the exclusion criteria available to companies under Rule 14a–8. The SEC's proposed rule would make it more difficult for companies to exclude shareholder proposals that have already been substantially implemented, are duplicative of other proposals on a given year's proxy ballot or have been rejected by a large percentage of shareholders in previous years. This proposal would benefit activists while reducing the power of issuers and long-term shareholders.

Title II of the bill aims to uphold the current exclusion criteria, which would strengthen the process for companies to manage their proxy ballot by preventing an overflow of substantially implemented, duplicative, and resubmitted proposals.

Title III—H.R. 4640, *a bill to authorize the exclusion of shareholder proposals from proxy or consent solicitation material if the subject matter of the shareholder proposal is environmental, social, or political*, was introduced on July 14, 2023, by Representative Byron Donalds

Title III clarifies that companies may exclude shareholder proposals that seek to advance environmental, social, and political matters unrelated to their business.

BACKGROUND

The recent rise in ESG-related proposals largely stems from SEC decisions that introduced ambiguities in the Rule 14a–8 no-action letter process. Notably, the SEC's November 2021 guidance (Staff Legal Bulletin No. 14L or "SLB 14L") mandated the inclusion of proposals addressing "broad societal impact," even if disconnected from a company's operations.

Maintaining a boardroom focus on robust financial management is crucial to prevent it from evolving into a platform for partisan politics. Multiple studies have revealed a direct link between increased shareholder activism advocating social causes and diminished stock returns. Title III ensures that the proxy ballot remains dedicated to matters pertinent to long-term growth and the creation of shareholder value.

Title IV—H.R. 4657, *a bill to clarify that an issuer may exclude a shareholder proposal pursuant to section 240.14a–8(i) of title 17, Code of Federal Regulations, without regard to whether such proposal relates to a significant social policy issue*, was introduced on July 14, 2023, by Representative John Rose

Title IV clarifies that Rule 14a–8 exclusions permit a company to exclude a shareholder proposal from their proxy ballot regardless of whether the SEC deems an issue a "significant policy" matter.

BACKGROUND

In November 2021, SLB 14L rescinded the SEC's content-neutral guardrails that previously enabled companies and investors to take a company-specific approach to evaluating the relevance and suitability of shareholder proposals submitted to company proxy ballots.

Instead, SLB 14L declared that the SEC would "no longer focus on determining the nexus between a policy issue and the company." Instead, it mandated the inclusion of all proposals with a "broad societal impact" to be included on the proxy ballot when they are submitted. Consequently, politically motivated proposals surged in annual proxy statements, with a 51 percent increase in environmental proposals and a 20 percent rise in social proposals. Meanwhile, companies are now 25 percent less likely to seek SEC no-action relief.

Title IV would overturn this detrimental policy, enabling companies to exclude shareholder proposals based on the Rule 14a–8 exclusion criteria, regardless of whether they pertain to a significant social policy issue. SLB 14L has incentivized activists to submit proposals entirely unrelated to long-term value creation. Reversing this change would signify a return to a proxy process focused on fostering business growth and enhancing investor value.

Title V—H.R. 4662, the *Corporate Governance Examination Act*, was introduced on July 14, 2023, by Representative Ann Wagner

Title V requires the SEC to conduct a comprehensive study focused on shareholder proposals, proxy advisors, and the proxy process. The study is to be initiated within 180 days of the bill's enactment, with subsequent reviews every five years. Initially, it will cover the previous 10 years, followed by evaluations of the previous 5 years in subsequent studies.

BACKGROUND

The comprehensive study will delve into critical proxy issues including the financial incentives and responsibilities of involved parties, their impact on the long-term interests of retail investors, the influence wielded by proxy advisory firms, and the costs companies incur in response to shareholder proposals. The study will also evaluate existing submission thresholds and explore how the politicization of these matters influences a company's decision to go public.

Title VI—H.R. 4589, *a bill to amend the Securities Exchange Act of 1934 to provide for the registration of proxy advisory firms, and for other purposes*, was introduced on July 12, 2023, by Representative Bryan Steil

Title VI would require proxy advisory firms to register with the SEC. It would also establish protocols for managing conflicts of interest and mandate the disclosure of certain information.

BACKGROUND

The outsized influence of proxy advisory firms, such as Institutional Shareholder Services and Glass Lewis, within the proxy voting system has sparked concerns regarding bias and accountability. These firms dominate 97 percent of the market and significantly shape the voting decisions of institutional investors, impacting the fairness and transparency of corporate governance. Their escalating influence stems from providing voting recommendations to time-constrained institutional investors and the growing prevalence of passive investing, which amplifies their sway over voting choices.

Investment advisors cannot delegate fiduciary duties to proxy advisors without ensuring additional oversight or involvement. Moreover, the SEC must actively oversee investment advisors to ensure they fulfill their duties. Under this title, proxy advisors would be required to provide economic analysis when evaluating social and political issues, aligning their recommendations with the fiduciary obligations of investment advisors.

This title also bolsters transparency and accountability by compelling proxy advisors to share draft reports with issuers, disclose methodologies and information sources, and publish annual reports summarizing their activities. These measures seek to enhance the clarity and responsibility of proxy advisory firms in the corporate governance landscape.

Title VII—H.R. 4590, *a bill to amend the Securities Exchange Act of 1934 to provide for liability for certain failures to disclose material information in connection with proxy voting advice, and for other purposes*, was introduced on July 12, 2023, by Representative Bryan Steil

Title VII amends section 14 of the Securities Exchange Act of 1934 to state that any failure to disclose material information or the inclusion of material misstatements in proxy voting advice would be deemed false or misleading concerning material facts under section 18.

BACKGROUND

Proxy advisory firms wield significant influence in shaping the voting decisions of institutional investors, who heavily rely on their recommendations. Inaccurate or incomplete information provided by these firms could lead to ill-informed decisions by investors, potentially resulting in adverse effects on their investments. Introducing liability for proxy advisory firms becomes crucial in safeguarding investors, preserving market integrity, fostering transparency, and establishing legal recourse for cases involving erroneous or misleading proxy voting guidance.

Holding proxy advisory firms accountable for material misstatements or non-disclosures serves as a pivotal measure to foster accuracy, objectivity, and independence in their recommendations. This title aims to protect the interests of shareholders and bolster confidence in the corporate governance process.

Title VIII—H.R. 4648, *a bill to amend the Securities Exchange Act of 1934 to provide for duties of certain investment advisors, asset managers, and pension funds with respect to voting on shareholder proposals, and for other purposes*, was introduced on July 14, 2023, by Representative Barry Loudermilk

Title VIII requires that proxy advisor clients furnish beneficiaries and customers with annual reports detailing their voting behavior on shareholder proposals and whether those votes align with the recommendations provided by proxy advisors. Additionally, larger entities are required to conduct economic analyses for votes contrary to board recommendations, which will subsequently be made public.

BACKGROUND

Ensuring transparency and accountability necessitates the mandatory publication of detailed annual reports by proxy advisory firm clients. These reports should encompass certain data, including the percentage of votes cast in accordance with proxy advisory recommendations, the percentage of votes supporting ESG-related shareholder proposals, and an elucidation of how firms reconcile their votes with their fiduciary duty to act in the best economic interest of shareholders. Such comprehensive reporting empowers investors with invaluable insights into the decision-making processes of proxy advisory firm clients, enabling them to assess whether these firms are meeting their fiduciary obligations effectively.

Similarly, larger asset managers must exhibit their commitment to accountability and transparency by publicly disclosing the economic analysis underpinning their shareholder voting decisions. The ESG Working Group led by Republicans on the Committee on Financial Services has highlighted instances where the boards of several asset managers recommended voting against certain proposals at their annual meetings, while their investment arms voted in favor of identical proposals at other companies. By sharing the rationale behind their voting decisions, including the financial considerations informing their opposition to boards of independent directors, asset managers should clarify these inconsistencies and empower shareholders to comprehend how economic interests are prioritized. This elevated level of transparency fosters trust and enables investors to evaluate the alignment of voting decisions with their individual financial objectives effectively.

Title IX—H.R. 4656, the *Protecting Americans' Savings Act*, was introduced on July 14, 2023, by Representative Zach Nunn

Title IX prohibits robo-voting, the automated practice of casting proxy votes based solely on recommendations from proxy advisory firms. Additionally, it clarifies that individuals are not obligated to cast votes on proxy materials.

BACKGROUND

Investment advisers bear the ultimate responsibility for overseeing the proxy advisory firms they retain. While the SEC's Staff Legal Bulletin 20 provides a foundation for this responsibility, it's essential to examine whether institutional investors genuinely fulfill their fiduciary duties when relying on these firms' recommendations. Concern arises when institutional investors unquestioningly follow proxy advisory recommendations without conducting thorough evaluations. This rushed approach not only undermines the quality of decision-making but also hampers companies' ability to effectively challenge the factual accuracy of proxy advisor recommendations.

While proxy advisory firms have a role in the proxy voting analysis, they should not wield undue influence over voting decisions. Institutional investors hold the responsibility to diligently assess recommendations and ensure alignment with their clients' best interests. By eliminating the robo-voting mechanism, this title will compel institutional investors to critically evaluate proxy advisory firm recommendations, fostering due diligence and safeguarding the financial interests of retail investors.

Title X—H.R. 4645, the *Empowering Shareholders Act, was introduced on July 14, 2023, by Representative Bill Huizenga*

Title X requires investment advisers to vote proxies in accordance with issuer voting instructions for covered securities held by passive index funds, allowing exceptions for routine matters or when beneficial owners' voting instructions dictate otherwise.

BACKGROUND

The dominant position held by the Big Three asset managers in the index fund market gives them unparalleled influence, collectively representing about a quarter of the shareholder votes in most S&P 500 companies during shareholder meetings. However, passive index funds are inherently passive by design. Their objective is not to select winners and losers but to replicate the underlying index's performance more broadly. Consequently, utilizing these funds as a platform to advance specific social and political ideologies may deviate from the core essence of passive investing and potentially divert management attention from maximizing investor returns.

This discrepancy in the intended nature of passive index funds raises concerns regarding the prioritization of political ideologies over the financial interests of retail investors by proxy advisors. Hence, it is crucial to take steps to preserve these funds' integrity and ensure their alignment with true passive investment objectives. For instance, when an investment adviser has proxy voting authority linked to a passively managed fund, deference should be given to board recommendations on shareholder proposals associated with social or political policy issues.

Title X aligns with this principle, upholding the essence of passive investing. This safeguards the long-term financial health of these funds and prevents them from being used as a platform to advocate social or political preferences.

Title XI—H.R. 4600, the *Protecting Retail Investors' Savings Act, was introduced on July 13, 2023, by Representative Andy Barr*

Title XI amends the Investment Advisers Act of 1940 to specify requirements regarding the consideration of pecuniary and non-pecuniary factors. It grants investors the option to consent to the utilization of non-pecuniary factors in decision-making. Additionally, it mandates the SEC to conduct comprehensive studies on climate change and other environmental disclosures within the municipal bond market, as well as on the solicitation of municipal securities business.

BACKGROUND

Investment advisers bear a fiduciary duty to act in the best financial interest of their clients. Title XI is designed to ensure that investment advisers do not prioritize non-financial objectives over financial returns without explicit consent of their clients. Furthermore, this title mandates the provision of information to clients regarding the anticipated pecuniary impacts, along with all associated fees, costs, and other expenses incurred due to the consideration of non-pecuniary factors. Such requirements will safeguard investors from potential adverse consequences and guarantee that ESG investing does not compromise the fiduciary duty of investment advisers.

In addition, this title directs the SEC to conduct studies focusing on climate change and other environmental disclosures within the municipal bond market. These studies are pivotal in evaluating the influence of ESG-related factors on municipal bond investments and assessing the accuracy and reliability of climate change disclosures for investors.

HEARING

Pursuant to clause 3(c)(6) of rule XIII, the following hearing was used to develop H.R. 4767: The Subcommittee on Capital Markets of the Committee on Financial Services held a hearing on July 13, 2023, titled "Reforming the Proxy Process to Safeguard Investor Interests."

COMMITTEE CONSIDERATION

The Committee on Financial Services met in open session on July 27, 2023, and ordered H.R. 4767 to be reported favorably to the House as amended by a recorded vote of 29 ayes to 21 nays (Record vote no. FC–91), a quorum being present. Before the question was called to order the bill favorably reported, the Committee adopted an amendment in the nature of a substitute offered by Mr. Steil by voice vote.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the order to report legislation and amendments thereto. H.R. 4767 was ordered reported favorably to the House as amended by a recorded vote of 29 ayes to 21 nays (Record vote no. FC–91), a quorum being present.

An amendment offered by Mr. Vargas, no. 13, was not agreed to through an en bloc recorded vote of 20 ayes to 29 nays (Record vote no. FC–90).

An amendment offered by Mr. Casten, no. 14, was not agreed to through an en bloc recorded vote of 20 ayes to 29 nays (Record vote no. FC–90).

An amendment offered by Mr. Casten, no. 15, was not agreed to through an en bloc recorded vote of 20 ayes to 29 nays (Record vote no. FC–90).

Record vote no. FC- 91

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. McHenry	X			Ms. Waters		X	
Mr. Hill	X			Mrs. Velázquez		X	
Mr. Lucas	X			Mr. Sherman		X	
Mr. Sessions	X			Mr. Meeks		X	
Mr. Posey	X			Mr. Scott			
Mr. Luetkemeyer	X			Mr. Lynch		X	
Mr. Huizenga	X			Mr. Green		X	
Mrs. Wagner	X			Mr. Cleaver			
Mr. Barr	X			Mr. Himes		X	
Mr. Williams (TX)	X			Mr. Foster		X	
Mr. Emmer	X			Mrs. Beatty		X	
Mr. Loudermilk	X			Mr. Vargas		X	
Mr. Mooney	X			Mr. Gottheimer		X	
Mr. Davidson	X			Mr. Gonzalez		X	
Mr. Rose	X			Mr. Casten		X	
Mr. Steil	X			Ms. Pressley		X	
Mr. Timmons	X			Mr. Horsford		X	
Mr. Norman	X			Ms. Tlaib		X	
Mr. Meuser	X			Mr. Torres		X	
Mr. Fitzgerald	X			Ms. Garcia		X	
Mr. Garbarino	X			Ms. Williams (GA)		X	
Mrs. Kim	X			Mr. Nickel		X	
Mr. Donalds	X			Ms. Pettersen		X	
Mr. Flood	X						
Mr. Lawler	X						
Mr. Nunn	X						
Ms. De La Cruz	X						
Mrs. Houchin	X						
Mr. Ogles	X						

Record vote no. FC- 90

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. McHenry		X		Ms. Waters	X		
Mr. Hill		X		Mrs. Velázquez	X		
Mr. Lucas		X		Mr. Sherman	X		
Mr. Sessions		X		Mr. Meeks	X		
Mr. Posey		X		Mr. Scott			
Mr. Luetkemeyer		X		Mr. Lynch	X		
Mr. Huizenga		X		Mr. Green	X		
Mrs. Wagner		X		Mr. Cleaver			
Mr. Barr		X		Mr. Himes	X		
Mr. Williams (TX)		X		Mr. Foster	X		
Mr. Emmer		X		Mrs. Beatty	X		
Mr. Loudermilk		X		Mr. Vargas	X		
Mr. Mooney		X		Mr. Gottheimer	X		
Mr. Davidson		X		Mr. Gonzalez			
Mr. Rose		X		Mr. Casten	X		
Mr. Steil		X		Ms. Pressley	X		
Mr. Timmons		X		Mr. Horsford	X		
Mr. Norman		X		Ms. Hajb	X		
Mr. Meuser		X		Mr. Torres	X		
Mr. Fitzgerald		X		Ms. García	X		
Mr. Garbarino		X		Ms. Williams (GA)	X		
Mrs. Kim		X		Mr. Nickel	X		
Mr. Donalds		X		Ms. Pettersen	X		
Mr. Flood		X					
Mr. Lawler		X					
Mr. Nunn		X					
Ms. De La Cruz		X					
Mrs. Houchin		X					
Mr. Ogles		X					

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c) of rule XIII of the Rules of the House of Representatives, the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the goal of H.R. 4767 is to enact measures aimed at preserving the integrity of the proxy voting process by reducing the impact of political activists, proxy advisory firms, and the SEC in introducing political elements into proxy voting.

CONGRESSIONAL BUDGET OFFICE ESTIMATES

The Committee has requested but not received a cost estimate from the Director of the Congressional Budget Office. However, pursuant to clause 3(d)(1) of House rule XIII, the Committee will adopt as its own the cost estimate by the Director of the Congressional Budget Office once it has been prepared.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

The Committee has requested but not received an estimate from the Director of the Congressional Budget Office. However, pursuant to clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, once an estimate has been prepared by the Director of the Congressional Budget Office, as required by section 402 of the Congressional Budget Act of 1973, the Committee will adopt as its own the estimate of new budget authority, entitlement authority, or tax expenditures or revenues.

FEDERAL MANDATES STATEMENT

The Committee has requested but not received from the Director of the Congressional Budget Office an estimate of the Federal mandates pursuant to section 423 of the Unfunded Mandates Reform Act. The Committee will adopt the estimate once it has been prepared by the Director.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

EARMARK IDENTIFICATION

With respect to clause 9 of rule XXI of the Rules of the House of Representatives, the Committee has carefully reviewed the pro-

visions of the bill and states that the provisions of the bill do not contain any congressional earmarks, limited tax benefits, or limited tariff benefits within the meaning of the rule.

DUPLICATION OF FEDERAL PROGRAMS

Pursuant to clause 3(c)(5) of rule XIII of the Rules of the House of Representatives, the Committee states that no provision of the bill establishes or reauthorizes a program of the Federal Government known to be duplicative of another Federal program, including any program that was included in a report to Congress pursuant to section 21 of the Public Law 111–139 or the most recent Catalog of Federal Domestic Assistance.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title; table of contents

This section cites H.R. 4767 as the "Protecting Americans' Retirement Savings from Politics Act." This section also provides the table of contents for the separate bills that make up H.R. 4767.

Section 101. Exclusion of certain substantially similar shareholder proposals

This section mandates the SEC to modify its resubmission criteria concerning shareholder proposals within the context of proxy or consent solicitations for company shareholder meetings. The section grants issuers the authority to omit a shareholder proposal from their proxy materials if the proposal substantially covers the same subject matter as a prior proposal included in the proxy materials for meetings held within the preceding five years. The exclusion criteria are based on the frequency of voting on the same or similar proposals and the level of support received from shareholders in those instances. Specifically, if a proposal has been voted on once within the five-year period and garnered less than 10 percent of the votes cast, or if voted on multiple times and received less than 20 percent or 40 percent of the votes cast based on the number of occurrences, the issuer is permitted to exclude a substantially similar proposal from its proxy materials for the upcoming shareholder meeting.

Section 201. Exclusion of certain shareholder proposals

This section formalizes two exclusion criteria utilized by the SEC for shareholder proposals. First, it confirms that issuers have the right to exclude a shareholder proposal from their proxy or consent solicitation materials for shareholder meetings if the proposal has been substantially implemented by the issuer. This implementation involves adopting policies, practices, or procedures that align with the proposal's guidelines and address its underlying concerns. Second, it grants issuers the ability to exclude a shareholder proposal if it substantially duplicates another proposal previously submitted to the issuer by a different proponent and slated for inclusion in the meeting materials.

Additionally, the section nullifies the SEC's ability to finalize, implement, or issue rules similar to those contained in a proposed rule titled "Substantial Implementation, Duplication, and Resubmission of Shareholder Proposals under Exchange Act Rule 14a–8"

(87 Fed. Reg. 45052). It restricts the SEC from applying or considering substantially similar rules, including in cases involving no-action requests or interpretations.

Section 301. Exclusion of certain ESG shareholder proposals

This section permits an issuer to exclude a shareholder proposal from its proxy or consent solicitation material for a shareholder meeting if the proposal pertains to environmental, social, or political subject matter, or a similar category of subject matter.

Section 401. Exclusions available regardless of significant social policy issue

This section enables companies to exclude a shareholder proposal based on Rule 14a–8 exclusion criteria, regardless of whether the shareholder proposal pertains to a significant social policy issue.

Section 501. Study of certain issues with respect to shareholder proposals, proxy advisory firms, and the proxy process

This section amends the Securities Exchange Act of 1934, directing the SEC to conduct comprehensive studies every five years on shareholder proposals, proxy advisory firms, and the proxy process. They will examine various aspects, such as financial incentives, impacts on retail investors, the influence of proxy advisors, costs to issuers, thresholds for shareholder proponents, effects on operating costs and company decisions, potential impacts on the economy, and the regulatory oversight of proxy advisors. The section also requires the SEC to issue reports to specific congressional committees after completing each study.

Section 601. Registration of proxy advisory firms

This section amends the Securities Exchange Act of 1934, mandating the registration of proxy advisory firms with the SEC. It outlines the application process, requiring proxy advisors to furnish certifications of accuracy, procedures ensuring alignment of voting advice with shareholders' best economic interest, organizational structure details, disclosures regarding conflicts of interest, and staff qualifications. The SEC is mandated to review these applications within specified timeframes.

Additionally, registered firms are required to promptly update their registration for any materially inaccurate information and annually certify its accuracy. Furthermore, this section grants the SEC authority to censure, limit activities, suspend, or revoke the registration of firms found violating regulations, lacking financial resources, or possessing conflicts of interest detrimental to investors.

Moreover, this section mandates proxy advisory firms to establish policies for managing and publicly disclosing conflicts of interest. The SEC is obligated to issue rules specifically addressing such conflicts within a year.

This section also establishes reliability standards for proxy advisory services, including access to issuer information, the presence of an ombudsman, and the disclosure of unresolved issuer complaints in client reports. Additionally, it provides a private right of action concerning proxy advisor recommendations violating state or federal law. It also requires proxy advisory firms to designate a

compliance officer, prohibits certain unfair, coercive, or abusive conduct, mandates proxy advisors to provide specific statements on their financial condition, and publishes an annual report summarizing their voting recommendations.

Section 701. Liability for certain failures to disclose material information or making of material misstatements

This section amends the Securities Exchange Act of 1934 to specify that the failure to disclose material information—such as a proxy voting advice business's methodology, sources of information, or conflicts of interest—or the issuance of a material misstatement regarding proxy voting advice directed at a security holder's vote, consent, or authorization on a specific matter for which approval is sought from security holders, will be considered false or misleading concerning a material fact.

Section 801. Duties of investment advisors, asset managers, and pension funds

This section amends the Securities Exchange Act of 1934, mandating disclosure requirements for institutional investment managers engaging proxy advisory firms and exercising voting power concerning equity securities. It mandates these managers to file an annual report with the SEC containing detailed explanations of their voting practices related to shareholder proposals. The report must include information such as the alignment of voting with proxy advisory firm recommendations, the consideration of these recommendations in voting decisions, the reconciliation of votes with shareholders' economic interests, and the involvement of investment professionals in voting decisions. Additionally, larger institutional investment managers meeting specific value criteria are required to provide customer clarifications regarding voting obligations, conduct economic analyses before voting on shareholder proposals, and include these analyses in their annual reports. Each report is to be certified by the institution's Chief Executive Officer and Chief Financial Officer. The section defines "best economic interest" as decisions aiming to maximize investment returns in alignment with the fund's investment objectives and risk profile.

Section 901. Requirements related to proxy voting

This section amends the Securities Exchange Act of 1934, mandating the SEC to issue definitive regulations prohibiting the practice of "robovoting" concerning proxy or consent solicitations. Robovoting is defined as the automatic casting of votes in accordance with a proxy advisory firm's recommendations or pre-filling votes on a proxy advisory firm's electronic platform without independent review and analysis. Additionally, this section prohibits institutional investors from outsourcing their voting decisions regarding proxy or consent solicitation materials. It also establishes that no individual can be compelled to cast votes on such materials. Furthermore, it specifies that proxy advisory firms must calculate vote results for proxy or consent solicitation materials concerning an issuer in compliance with the laws of the state in which the issuer is incorporated.

Section 1001. Proxy voting of passively managed funds

This section amends the Investment Advisers Act of 1940 to specify how investment advisers must handle proxy voting for passively managed funds. It mandates advisers to vote according to the beneficial owner's instructions, the issuer's voting directions, or abstain, with exceptions for routine matters. Additionally, it offers a safe harbor, shielding advisers from liabilities related to soliciting voting instructions or voting based on issuer guidance on non-routine matters.

Section 1101. Best interest based on pecuniary factors

This section amends the Investment Advisers Act of 1940 to specify criteria for determining a customer's best interest based on pecuniary factors. It states that the best interest of a customer must primarily consider financial factors and cannot be subordinated to or limited by non-financial factors unless the customer explicitly consents in writing to consider such non-pecuniary factors. If a customer provides this consent, the broker, dealer, or investment adviser must disclose the expected financial effects of these non-pecuniary factors over a period selected by the customer, up to three years. Additionally, at the end of this period, they must disclose the actual financial effects, including fees, costs, and expenses incurred due to considering these non-pecuniary factors, compared to a comparable index or basket of securities chosen by the customer. The term "pecuniary factor" is defined as a factor that a fiduciary reasonably determines will materially affect an investment's risk or return based on appropriate investment timelines. The section directs the SEC to create or adjust rules within 12 months of the bill's enactment to implement these changes.

Section 1102. Study on climate change and other environmental disclosures in municipal bond market

This section mandates the SEC to conduct a comprehensive study focused on disclosures made by issuers of municipal securities regarding climate change and other environmental aspects. The SEC is required to examine how frequently these disclosures are made, assessing whether they align with disclosures made in different contexts or to audiences beyond investors. The study will also delve into voluntary or mandatory disclosure standards adopted by issuers and analyze the extent to which investors take these disclosures into account when making investment decisions. Additionally, the SEC is empowered to include any other pertinent information they deem relevant for this investigation.

Within a year of the bill's enactment, the SEC must present a report to the Senate's Committee on Banking, Housing, and Urban Affairs and the House of Representatives' Committee on Financial Services. This report will encompass the study's findings, a detailed exploration of the financial risks associated with investing in municipal securities, an assessment of whether these risks are adequately disclosed to investors, and recommendations for potential regulatory or legislative actions to address any concerns highlighted in the study.

Section 1103. Study on solicitation of municipal securities business

This section directs the SEC to conduct a study assessing the effectiveness of specific rules aimed at preventing the exchange of funds to elected officials or candidates in return for government business related to the offer or sale of municipal securities. The SEC is tasked with evaluating the impact of these rules, including their intended effects and any unintended adverse consequences. The study will investigate the enforcement actions taken under these rules, analyze compliance policies of entities subject to these rules, and examine how these rules affect participation in the political process in comparison to those soliciting government business unrelated to municipal securities. Additionally, the study will consider the influence of other state and federal laws on the solicitation of municipal securities business and any other pertinent information as determined by the SEC.

Within a year of the bill's enactment, the SEC is required to present a report to the Senate's Committee on Banking, Housing, and Urban Affairs and the House of Representatives' Committee on Financial Services. This report will contain the study's findings, an analysis of the impact of these rules on small businesses, including minority and women-owned businesses, and recommendations for potential regulatory or legislative actions to address any identified concerns.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, and existing law in which no change is proposed is shown in roman):

SECURITIES EXCHANGE ACT OF 1934

TITLE I—REGULATION OF SECURITIES EXCHANGES

* * * * * * *

DEFINITIONS AND APPLICATION OF TITLE

SEC. 3. (a) When used in this title, unless the context otherwise requires—

(1) The term "exchange" means any organization, association, or group of persons, whether incorporated or unincorporated, which constitutes, maintains, or provides a market place or facilities for bringing together purchasers and sellers of securities or for otherwise performing with respect to securities the functions commonly performed by a stock exchange as that term is generally understood, and includes the market place and the market facilities maintained by such exchange.

(2) The term "facility" when used with respect to an exchange includes its premises, tangible or intangible property whether on the premises or not, any right to the use of such premises or property or any service thereof for the purpose of effecting or reporting a transaction on an exchange (including,

among other things, any system of communication to or from the exchange, by ticker or otherwise, maintained by or with the consent of the exchange), and any right of the exchange to the use of any property or service.

(3)(A) The term "member" when used with respect to a national securities exchange means (i) any natural person permitted to effect transactions on the floor of the exchange without the services of another person acting as broker, (ii) any registered broker or dealer with which such a natural person is associated, (iii) any registered broker or dealer permitted to designate as a representative such a natural person, and (iv) any other registered broker or dealer which agrees to be regulated by such exchange and with respect to which the exchange undertakes to enforce compliance with the provisions of this title, the rules and regulations thereunder, and its own rules. For purposes of sections 6(b)(1), 6(b)(4), 6(b)(6), 6(b)(7), 6(d), 17(d), 19(d), 19(e), 19(g), 19(h), and 21 of this title, the term "member" when used with respect to a national securities exchange also means, to the extent of the rules of the exchange specified by the Commission, any person required by the Commission to comply with such rules pursuant to section 6(f) of this title.

(B) The term "member" when used with respect to a registered securities association means any broker or dealer who agrees to be regulated by such association and with respect to whom the association undertakes to enforce compliance with the provisions of this title, the rules and regulations thereunder, and its own rules.

(4) BROKER.—

(A) IN GENERAL.—The term "broker" means any person engaged in the business of effecting transactions in securities for the account of others.

(B) EXCEPTION FOR CERTAIN BANK ACTIVITIES.—A bank shall not be considered to be a broker because the bank engages in any one or more of the following activities under the conditions described:

(i) THIRD PARTY BROKERAGE ARRANGEMENTS.—The bank enters into a contractual or other written arrangement with a broker or dealer registered under this title under which the broker or dealer offers brokerage services on or off the premises of the bank if—

(I) such broker or dealer is clearly identified as the person performing the brokerage services;

(II) the broker or dealer performs brokerage services in an area that is clearly marked and, to the extent practicable, physically separate from the routine deposit-taking activities of the bank;

(III) any materials used by the bank to advertise or promote generally the availability of brokerage services under the arrangement clearly indicate that the brokerage services are being provided by the broker or dealer and not by the bank;

(IV) any materials used by the bank to advertise or promote generally the availability of brokerage services under the arrangement are in compliance

with the Federal securities laws before distribution;

(V) bank employees (other than associated persons of a broker or dealer who are qualified pursuant to the rules of a self-regulatory organization) perform only clerical or ministerial functions in connection with brokerage transactions including scheduling appointments with the associated persons of a broker or dealer, except that bank employees may forward customer funds or securities and may describe in general terms the types of investment vehicles available from the bank and the broker or dealer under the arrangement;

(VI) bank employees do not receive incentive compensation for any brokerage transaction unless such employees are associated persons of a broker or dealer and are qualified pursuant to the rules of a self-regulatory organization, except that the bank employees may receive compensation for the referral of any customer if the compensation is a nominal one-time cash fee of a fixed dollar amount and the payment of the fee is not contingent on whether the referral results in a transaction;

(VII) such services are provided by the broker or dealer on a basis in which all customers that receive any services are fully disclosed to the broker or dealer;

(VIII) the bank does not carry a securities account of the customer except as permitted under clause (ii) or (viii) of this subparagraph; and

(IX) the bank, broker, or dealer informs each customer that the brokerage services are provided by the broker or dealer and not by the bank and that the securities are not deposits or other obligations of the bank, are not guaranteed by the bank, and are not insured by the Federal Deposit Insurance Corporation.

(ii) TRUST ACTIVITIES.—The bank effects transactions in a trustee capacity, or effects transactions in a fiduciary capacity in its trust department or other department that is regularly examined by bank examiners for compliance with fiduciary principles and standards, and—

(I) is chiefly compensated for such transactions, consistent with fiduciary principles and standards, on the basis of an administration or annual fee (payable on a monthly, quarterly, or other basis), a percentage of assets under management, or a flat or capped per order processing fee equal to not more than the cost incurred by the bank in connection with executing securities transactions for trustee and fiduciary customers, or any combination of such fees; and

(II) does not publicly solicit brokerage business, other than by advertising that it effects transactions in securities in conjunction with advertising its other trust activities.

(iii) PERMISSIBLE SECURITIES TRANSACTIONS.—The bank effects transactions in—

(I) commercial paper, bankers acceptances, or commercial bills;

(II) exempted securities;

(III) qualified Canadian government obligations as defined in section 5136 of the Revised Statutes, in conformity with section 15C of this title and the rules and regulations thereunder, or obligations of the North American Development Bank; or

(IV) any standardized, credit enhanced debt security issued by a foreign government pursuant to the March 1989 plan of then Secretary of the Treasury Brady, used by such foreign government to retire outstanding commercial bank loans.

(iv) CERTAIN STOCK PURCHASE PLANS.—

(I) EMPLOYEE BENEFIT PLANS.—The bank effects transactions, as part of its transfer agency activities, in the securities of an issuer as part of any pension, retirement, profit-sharing, bonus, thrift, savings, incentive, or other similar benefit plan for the employees of that issuer or its affiliates (as defined in section 2 of the Bank Holding Company Act of 1956), if the bank does not solicit transactions or provide investment advice with respect to the purchase or sale of securities in connection with the plan.

(II) DIVIDEND REINVESTMENT PLANS.—The bank effects transactions, as part of its transfer agency activities, in the securities of an issuer as part of that issuer's dividend reinvestment plan, if—

(aa) the bank does not solicit transactions or provide investment advice with respect to the purchase or sale of securities in connection with the plan; and

(bb) the bank does not net shareholders' buy and sell orders, other than for programs for odd-lot holders or plans registered with the Commission.

(III) ISSUER PLANS.—The bank effects transactions, as part of its transfer agency activities, in the securities of an issuer as part of a plan or program for the purchase or sale of that issuer's shares, if—

(aa) the bank does not solicit transactions or provide investment advice with respect to the purchase or sale of securities in connection with the plan or program; and

(bb) the bank does not net shareholders' buy and sell orders, other than for programs

for odd-lot holders or plans registered with the Commission.

(IV) PERMISSIBLE DELIVERY OF MATERIALS.—The exception to being considered a broker for a bank engaged in activities described in subclauses (I), (II), and (III) will not be affected by delivery of written or electronic plan materials by a bank to employees of the issuer, shareholders of the issuer, or members of affinity groups of the issuer, so long as such materials are—

(aa) comparable in scope or nature to that permitted by the Commission as of the date of the enactment of the Gramm-Leach-Bliley Act; or

(bb) otherwise permitted by the Commission.

(v) SWEEP ACCOUNTS.—The bank effects transactions as part of a program for the investment or reinvestment of deposit funds into any no-load, open-end management investment company registered under the Investment Company Act of 1940 that holds itself out as a money market fund.

(vi) AFFILIATE TRANSACTIONS.—The bank effects transactions for the account of any affiliate of the bank (as defined in section 2 of the Bank Holding Company Act of 1956) other than—

(I) a registered broker or dealer; or

(II) an affiliate that is engaged in merchant banking, as described in section 4(k)(4)(H) of the Bank Holding Company Act of 1956.

(vii) PRIVATE SECURITIES OFFERINGS.—The bank—

(I) effects sales as part of a primary offering of securities not involving a public offering, pursuant to section 3(b), 4(2), or 4(5) of the Securities Act of 1933 or the rules and regulations issued thereunder;

(II) at any time after the date that is 1 year after the date of the enactment of the Gramm-Leach-Bliley Act, is not affiliated with a broker or dealer that has been registered for more than 1 year in accordance with this Act, and engages in dealing, market making, or underwriting activities, other than with respect to exempted securities; and

(III) if the bank is not affiliated with a broker or dealer, does not effect any primary offering described in subclause (I) the aggregate amount of which exceeds 25 percent of the capital of the bank, except that the limitation of this subclause shall not apply with respect to any sale of government securities or municipal securities.

(viii) SAFEKEEPING AND CUSTODY ACTIVITIES.—

(I) IN GENERAL.—The bank, as part of customary banking activities—

(aa) provides safekeeping or custody services with respect to securities, including the exercise of warrants and other rights on behalf of customers;

(bb) facilitates the transfer of funds or securities, as a custodian or a clearing agency, in connection with the clearance and settlement of its customers' transactions in securities;

(cc) effects securities lending or borrowing transactions with or on behalf of customers as part of services provided to customers pursuant to division (aa) or (bb) or invests cash collateral pledged in connection with such transactions;

(dd) holds securities pledged by a customer to another person or securities subject to purchase or resale agreements involving a customer, or facilitates the pledging or transfer of such securities by book entry or as otherwise provided under applicable law, if the bank maintains records separately identifying the securities and the customer; or

(ee) serves as a custodian or provider of other related administrative services to any individual retirement account, pension, retirement, profit sharing, bonus, thrift savings, incentive, or other similar benefit plan.

(II) EXCEPTION FOR CARRYING BROKER ACTIVITIES.—The exception to being considered a broker for a bank engaged in activities described in subclause (I) shall not apply if the bank, in connection with such activities, acts in the United States as a carrying broker (as such term, and different formulations thereof, are used in section 15(c)(3) of this title and the rules and regulations thereunder) for any broker or dealer, unless such carrying broker activities are engaged in with respect to government securities (as defined in paragraph (42) of this subsection).

(ix) IDENTIFIED BANKING PRODUCTS.—The bank effects transactions in identified banking products as defined in section 206 of the Gramm-Leach-Bliley Act.

(x) MUNICIPAL SECURITIES.—The bank effects transactions in municipal securities.

(xi) DE MINIMIS EXCEPTION.—The bank effects, other than in transactions referred to in clauses (i) through (x), not more than 500 transactions in securities in any calendar year, and such transactions are not effected by an employee of the bank who is also an employee of a broker or dealer.

(C) EXECUTION BY BROKER OR DEALER.—The exception to being considered a broker for a bank engaged in activities described in clauses (ii), (iv), and (viii) of subparagraph (B) shall not apply if the activities described in such provisions result in the trade in the United States of any secu-

rity that is a publicly traded security in the United States, unless—

(i) the bank directs such trade to a registered broker or dealer for execution;

(ii) the trade is a cross trade or other substantially similar trade of a security that—

(I) is made by the bank or between the bank and an affiliated fiduciary; and

(II) is not in contravention of fiduciary principles established under applicable Federal or State law; or

(iii) the trade is conducted in some other manner permitted under rules, regulations, or orders as the Commission may prescribe or issue.

(D) FIDUCIARY CAPACITY.—For purposes of subparagraph (B)(ii), the term "fiduciary capacity" means—

(i) in the capacity as trustee, executor, administrator, registrar of stocks and bonds, transfer agent, guardian, assignee, receiver, or custodian under a uniform gift to minor act, or as an investment adviser if the bank receives a fee for its investment advice;

(ii) in any capacity in which the bank possesses investment discretion on behalf of another; or

(iii) in any other similar capacity.

(E) EXCEPTION FOR ENTITIES SUBJECT TO SECTION 15(e).—The term "broker" does not include a bank that—

(i) was, on the day before the date of enactment of the Gramm-Leach-Bliley Act, subject to section 15(e); and

(ii) is subject to such restrictions and requirements as the Commission considers appropriate.

(F) JOINT RULEMAKING REQUIRED.—The Commission and the Board of Governors of the Federal Reserve System shall jointly adopt a single set of rules or regulations to implement the exceptions in subparagraph (B).

(5) DEALER.—

(A) IN GENERAL.—The term "dealer" means any person engaged in the business of buying and selling securities (not including security-based swaps, other than security-based swaps with or for persons that are not eligible contract participants) for such person's own account through a broker or otherwise.

(B) EXCEPTION FOR PERSON NOT ENGAGED IN THE BUSINESS OF DEALING.—The term "dealer" does not include a person that buys or sells securities (not including security-based swaps, other than security-based swaps with or for persons that are not eligible contract participants) for such person's own account, either individually or in a fiduciary capacity, but not as a part of a regular business.

(C) EXCEPTION FOR CERTAIN BANK ACTIVITIES.—A bank shall not be considered to be a dealer because the bank engages in any of the following activities under the conditions described:

(i) PERMISSIBLE SECURITIES TRANSACTIONS.—The bank buys or sells—

(I) commercial paper, bankers acceptances, or commercial bills;

(II) exempted securities;

(III) qualified Canadian government obligations as defined in section 5136 of the Revised Statutes of the United States, in conformity with section 15C of this title and the rules and regulations thereunder, or obligations of the North American Development Bank; or

(IV) any standardized, credit enhanced debt security issued by a foreign government pursuant to the March 1989 plan of then Secretary of the Treasury Brady, used by such foreign government to retire outstanding commercial bank loans.

(ii) INVESTMENT, TRUSTEE, AND FIDUCIARY TRANSACTIONS.—The bank buys or sells securities for investment purposes—

(I) for the bank; or

(II) for accounts for which the bank acts as a trustee or fiduciary.

(iii) ASSET-BACKED TRANSACTIONS.—The bank engages in the issuance or sale to qualified investors, through a grantor trust or other separate entity, of securities backed by or representing an interest in notes, drafts, acceptances, loans, leases, receivables, other obligations (other than securities of which the bank is not the issuer), or pools of any such obligations predominantly originated by—

(I) the bank;

(II) an affiliate of any such bank other than a broker or dealer; or

(III) a syndicate of banks of which the bank is a member, if the obligations or pool of obligations consists of mortgage obligations or consumer-related receivables.

(iv) IDENTIFIED BANKING PRODUCTS.—The bank buys or sells identified banking products, as defined in section 206 of the Gramm-Leach-Bliley Act.

(6) The term "bank" means (A) a banking institution organized under the laws of the United States or a Federal savings association, as defined in section 2(5) of the Home Owners' Loan Act, (B) a member bank of the Federal Reserve System, (C) any other banking institution or savings association, as defined in section 2(4) of the Home Owners' Loan Act, whether incorporated or not, doing business under the laws of any State or of the United States, a substantial portion of the business of which consists of receiving deposits or exercising fiduciary powers similar to those permitted to national banks under the authority of the Comptroller of the Currency pursuant to the first section of Public Law 87–722 (12 U.S.C. 92a), and which is supervised and examined by State or Federal authority having supervision over banks or savings associations, and which is not operated for the purpose of evading the provisions of this title, and (D) a receiver, conservator, or other liquidating agent

of any institution or firm included in clauses (A), (B), or (C) of this paragraph.

(7) The term "director" means any director of a corporation or any person performing similar functions with respect to any organization, whether incorporated or unincorporated.

(8) The term "issuer" means any person who issues or proposes to issue any security; except that with respect to certificates of deposit for securities, voting-trust certificates, or collateral-trust certificates, or with respect to certificates of interest or shares in an unincorporated investment trust not having a board of directors or of the fixed, restricted management, or unit type, the term "issuer" means the person or persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which such securities are issued; and except that with respect to equipment-trust certificates or like securities, the term "issuer" means the person by whom the equipment or property is, or is to be, used.

(9) The term "person" means a natural person, company, government, or political subdivision, agency, or instrumentality of a government.

(10) The term "security" means any note, stock, treasury stock, security future, security-based swap,bond, debenture, certificate of interest or participation in any profit-sharing agreement or in any oil, gas, or other mineral royalty or lease, any collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, certificate of deposit for a security, any put, call, straddle, option, or privilege on any security, certificate of deposit, or group or index of securities (including any interest therein or based on the value thereof), or any put, call, straddle, option, or privilege entered into on a national securities exchange relating to foreign currency, or in general, any instrument commonly known as a "security"; or any certificate of interest or participation in, temporary or interim certificate for, receipt for, or warrant or right to subscribe to or purchase, any of the foregoing; but shall not include currency or any note, draft, bill of exchange, or banker's acceptance which has a maturity at the time of issuance of not exceeding nine months, exclusive of days of grace, or any renewal thereof the maturity of which is likewise limited.

(11) The term "equity security" means any stock or similar security; or any security future on any such security; or any security convertible, with or without consideration, into such a security, or carrying any warrant or right to subscribe to or purchase such a security; or any such warrant or right; or any other security which the Commission shall deem to be of similar nature and consider necessary or appropriate, by such rules and regulations as it may prescribe in the public interest or for the protection of investors, to treat as an equity security.

(12)(A) The term "exempted security" or "exempted securities" includes—

(i) government securities, as defined in paragraph (42) of this subsection;

(ii) municipal securities, as defined in paragraph (29) of this subsection;

(iii) any interest or participation in any common trust fund or similar fund that is excluded from the definition of the term "investment company" under section 3(c)(3) of the Investment Company Act of 1940;

(iv) any interest or participation in a single trust fund, or a collective trust fund maintained by a bank, or any security arising out of a contract issued by an insurance company, which interest, participation, or security is issued in connection with a qualified plan as defined in subparagraph (C) of this paragraph;

(v) any security issued by or any interest or participation in any pooled income fund, collective trust fund, collective investment fund, or similar fund that is excluded from the definition of an investment company under section 3(c)(10)(B) of the Investment Company Act of 1940;

(vi) solely for purposes of sections 12, 13, 14, and 16 of this title, any security issued by or any interest or participation in any church plan, company, or account that is excluded from the definition of an investment company under section 3(c)(14) of the Investment Company Act of 1940; and

(vii) such other securities (which may include, among others, unregistered securities, the market in which is predominantly intrastate) as the Commission may, by such rules and regulations as it deems consistent with the public interest and the protection of investors, either unconditionally or upon specified terms and conditions or for stated periods, exempt from the operation of any one or more provisions of this title which by their terms do not apply to an "exempted security" or to "exempted securities".

(B)(i) Notwithstanding subparagraph (A)(i) of this paragraph, government securities shall not be deemed to be "exempted securities" for the purposes of section 17A of this title.

(ii) Notwithstanding subparagraph (A)(ii) of this paragraph, municipal securities shall not be deemed to be "exempted securities" for the purposes of sections 15 and 17A of this title.

(C) For purposes of subparagraph (A)(iv) of this paragraph, the term "qualified plan" means (i) a stock bonus, pension, or profit-sharing plan which meets the requirements for qualification under section 401 of the Internal Revenue Code of 1954, (ii) an annuity plan which meets the requirements for the deduction of the employer's contribution under section 404(a)(2) of such Code, (iii) a governmental plan as defined in section 414(d) of such Code which has been established by an employer for the exclusive benefit of its employees or their beneficiaries for the purpose of distributing to such employees or their beneficiaries the corpus and income of the funds accumulated under such plan, if under such plan it is impossible, prior to the satisfaction of all liabilities with respect to such employees and their beneficiaries, for any part of the corpus or income to be used for, or diverted to, purposes other than the exclusive benefit of such employees or their beneficiaries, or (iv) a church plan, company, or account that is excluded from the definition

of an investment company under section 3(c)(14) of the Investment Company Act of 1940, other than any plan described in clause (i), (ii), or (iii) of this subparagraph which (I) covers employees some or all of whom are employees within the meaning of section 401(c) of such Code, or (II) is a plan funded by an annuity contract described in section 403(b) of such Code.

(13) The terms "buy" and "purchase" each include any contract to buy, purchase, or otherwise acquire. For security futures products, such term includes any contract, agreement, or transaction for future delivery. For security-based swaps, such terms include the execution, termination (prior to its scheduled maturity date), assignment, exchange, or similar transfer or conveyance of, or extinguishing of rights or obligations under, a security-based swap, as the context may require.

(14) The terms "sale" and "sell" each include any contract to sell or otherwise dispose of. For security futures products, such term includes any contract, agreement, or transaction for future delivery. For security-based swaps, such terms include the execution, termination (prior to its scheduled maturity date), assignment, exchange, or similar transfer or conveyance of, or extinguishing of rights or obligations under, a security-based swap, as the context may require.

(15) The term "Commission" means the Securities and Exchange Commission established by section 4 of this title.

(16) The term "State" means any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, or any other possession of the United States.

(17) The term "interstate commerce" means trade, commerce, transportation, or communication among the several States, or between any foreign country and any State, or between any State and any place or ship outside thereof. The term also includes intrastate use of (A) any facility of a national securities exchange or of a telephone or other interstate means of communication, or (B) any other interstate instrumentality.

(18) The term "person associated with a broker or dealer" or "associated person of a broker or dealer" means any partner, officer, director, or branch manager of such broker or dealer (or any person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with such broker or dealer, or any employee of such broker or dealer, except that any person associated with a broker or dealer whose functions are solely clerical or ministerial shall not be included in the meaning of such term for purposes of section 15(b) of this title (other than paragraph (6) thereof).

(19) The terms "investment company,""affiliated person,""insurance company,""separate account," and "company" have the same meanings as in the Investment Company Act of 1940.

(20) The terms "investment adviser" and "underwriter" have the same meanings as in the Investment Advisers Act of 1940.

(21) The term "persons associated with a member" or "associated person of a member" when used with respect to a member of a national securities exchange or registered securities association means any partner, officer, director, or branch manager

of such member (or any person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with such member, or any employee of such member.

(22)(A) The term "securities information processor" means any person engaged in the business of (i) collecting, processing, or preparing for distribution or publication, or assisting, participating in, or coordinating the distribution or publication of, information with respect to transactions in or quotations for any security (other than an exempted security) or (ii) distributing or publishing (whether by means of a ticker tape, a communications network, a terminal display device, or otherwise) on a current and continuing basis, information with respect to such transactions or quotations. The term "securities information processor" does not include any bona fide newspaper, news magazine, or business or financial publication of general and regular circulation, any self-regulatory organization, any bank, broker, dealer, building and loan, savings and loan, or homestead association, or cooperative bank, if such bank, broker, dealer, association, or cooperative bank would be deemed to be a securities information processor solely by reason of functions performed by such institutions as part of customary banking, brokerage, dealing, association, or cooperative bank activities, or any common carrier, as defined in section 3 of the Communications Act of 1934, subject to the jurisdiction of the Federal Communications Commission or a State commission, as defined in section 3 of that Act, unless the Commission determines that such carrier is engaged in the business of collecting, processing, or preparing for distribution or publication, information with respect to transactions in or quotations for any security.

(B) The term "exclusive processor" means any securities information processor or self-regulatory organization which, directly or indirectly, engages on an exclusive basis on behalf of any national securities exchange or registered securities association, or any national securities exchange or registered securities association which engages on an exclusive basis on its own behalf, in collecting, processing, or preparing for distribution or publication any information with respect to (i) transactions or quotations on or effected or made by means of any facility of such exchange or (ii) quotations distributed or published by means of any electronic system operated or controlled by such association.

(23)(A) The term "clearing agency" means any person who acts as an intermediary in making payments or deliveries or both in connection with transactions in securities or who provides facilities for comparison of data respecting the terms of settlement of securities transactions, to reduce the number of settlements of securities transactions, or for the allocation of securities settlement responsibilities. Such term also means any person, such as a securities depository, who (i) acts as a custodian of securities in connection with a system for the central handling of securities whereby all securities of a particular class or series of any issuer deposited within the system are treated as fungible and may be transferred, loaned, or pledged

by bookkeeping entry without physical delivery of securities certificates, or (ii) otherwise permits or facilitates the settlement of securities transactions or the hypothecation or lending of securities without physical delivery of securities certificates.

(B) The term "clearing agency" does not include (i) any Federal Reserve bank, Federal home loan bank, or Federal land bank; (ii) any national securities exchange or registered securities association solely by reason of its providing facilities for comparison of data respecting the terms of settlement of securities transactions effected on such exchange or by means of any electronic system operated or controlled by such association; (iii) any bank, broker, dealer, building and loan, savings and loan, or homestead association, or cooperative bank if such bank, broker, dealer, association, or cooperative bank would be deemed to be a clearing agency solely by reason of functions performed by such institution as part of customary banking, brokerage, dealing, association, or cooperative banking activities, or solely by reason of acting on behalf of a clearing agency or a participant therein in connection with the furnishing by the clearing agency of services to its participants or the use of services of the clearing agency by its participants, unless the Commission, by rule, otherwise provides as necessary or appropriate to assure the prompt and accurate clearance and settlement of securities transactions or to prevent evasion of this title; (iv) any life insurance company, its registered separate accounts, or a subsidiary of such insurance company solely by reason of functions commonly performed by such entities in connection with variable annuity contracts or variable life policies issued by such insurance company or its separate accounts; (v) any registered open-end investment company or unit investment trust solely by reason of functions commonly performed by it in connection with shares in such registered open-end investment company or unit investment trust, or (vi) any person solely by reason of its performing functions described in paragraph 25(E) of this subsection.

(24) The term "participant" when used with respect to a clearing agency means any person who uses a clearing agency to clear or settle securities transactions or to transfer, pledge, lend, or hypothecate securities. Such term does not include a person whose only use of a clearing agency is (A) through another person who is a participant or (B) as a pledgee of securities.

(25) The term "transfer agent" means any person who engages on behalf of an issuer of securities or on behalf of itself as an issuer of securities in (A) countersigning such securities upon issuance; (B) monitoring the issuance of such securities with a view to preventing unauthorized issuance, a function commonly performed by a person called a registrar; (C) registering the transfer of such securities; (D) exchanging or converting such securities; or (E) transferring record ownership of securities by bookkeeping entry without physical issuance of securities certificates. The term "transfer agent" does not include any insurance company or separate account which performs such functions solely with respect to variable annuity contracts or variable life policies which it issues or any reg-

istered clearing agency which performs such functions solely with respect to options contracts which it issues.

(26) The term "self-regulatory organization" means any national securities exchange, registered securities association, or registered clearing agency, or (solely for purposes of sections 19(b), 19(c), and 23(b) of this title) the Municipal Securities Rulemaking Board established by section 15B of this title.

(27) The term "rules of an exchange", "rules of an association", or "rules of a clearing agency" means the constitution, articles of incorporation, bylaws, and rules, or instruments corresponding to the foregoing, of an exchange, association of brokers and dealers, or clearing agency, respectively, and such of the stated policies, practices, and interpretations of such exchange, association, or clearing agency as the Commission, by rule, may determine to be necessary or appropriate in the public interest or for the protection of investors to be deemed to be rules of such exchange, association, or clearing agency.

(28) The term "rules of a self-regulatory organization" means the rules of an exchange which is a national securities exchange, the rules of an association of brokers and dealers which is a registered securities association, the rules of a clearing agency which is a registered clearing agency, or the rules of the Municipal Securities Rulemaking Board.

(29) The term "municipal securities" means securities which are direct obligations of, or obligations guaranteed as to principal or interest by, a State or any political subdivision thereof, or any agency or instrumentality of a State or any political subdivision thereof, or any municipal corporate instrumentality of one or more States, or any security which is an industrial development bond (as defined in section 103(c)(2) of the Internal Revenue Code of 1954) the interest on which is excludable from gross income under section 103(a)(1) of such Code if, by reason of the application of paragraph (4) or (6) of section 103(c) of such Code (determined as if paragraphs (4)(A), (5), and (7) were not included in such section 103(c)), paragraph (1) of such section 103(c) does not apply to such security.

(30) The term "municipal securities dealer" means any person (including a separately identifiable department or division of a bank) engaged in the business of buying and selling municipal securities for his own account, through a broker or otherwise, but does not include—

(A) any person insofar as he buys or sells such securities for his own account, either individually or in some fiduciary capacity, but not as a part of a regular business; or

(B) a bank, unless the bank is engaged in the business of buying and selling municipal securities for its own account other than in a fiduciary capacity, through a broker or otherwise; *Provided, however,* That if the bank is engaged in such business through a separately identifiable department or division (as defined by the Municipal Securities Rulemaking Board in accordance with section 15B(b)(2)(H) of this title), the department or division and not the bank itself shall be deemed to be the municipal securities dealer.

(31) The term "municipal securities broker" means a broker engaged in the business of effecting transactions in municipal securities for the account of others.

(32) The term "person associated with a municipal securities dealer" when used with respect to a municipal securities dealer which is a bank or a division or department of a bank means any person directly engaged in the management, direction, supervision, or performance of any of the municipal securities dealer's activities with respect to municipal securities, and any person directly or indirectly controlling such activities or controlled by the municipal securities dealer in connection with such activities.

(33) The term "municipal securities investment portfolio" means all municipal securities held for investment and not for sale as part of a regular business by a municipal securities dealer or by a person, directly or indirectly, controlling, controlled by, or under common control with a municipal securities dealer.

(34) The term "appropriate regulatory agency" means—

(A) When used with respect to a municipal securities dealer:

(i) the Comptroller of the Currency, in the case of a national bank, a subsidiary or a department or division of any such bank, a Federal savings association (as defined in section 3(b)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(2))), the deposits of which are insured by the Federal Deposit Insurance Corporation, or a subsidiary or department or division of any such Federal savings association;

(ii) the Board of Governors of the Federal Reserve System, in the case of a State member bank of the Federal Reserve System, a subsidiary or a department or division thereof, a bank holding company, a subsidiary of a bank holding company which is a bank other than a bank specified in clause (i), (iii), or (iv) of this subparagraph, a subsidiary or a department or division of such subsidiary, or a savings and loan holding company;

(iii) the Federal Deposit Insurance Corporation, in the case of a bank insured by the Federal Deposit Insurance Corporation (other than a member of the Federal Reserve System), a subsidiary or department or division of any such bank, a State savings association (as defined in section 3(b)(3) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(3))), the deposits of which are insured by the Federal Deposit Insurance Corporation, or a subsidiary or a department or division of any such State savings association; and

(iv) the Commission in the case of all other municipal securities dealers.

(B) When used with respect to a clearing agency or transfer agent:

(i) the Comptroller of the Currency, in the case of a national bank, a subsidiary of any such bank, a Federal savings association (as defined in section 3(b)(2) of

the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(2))), the deposits of which are insured by the Federal Deposit Insurance Corporation, or a subsidiary of any such Federal savings association;

(ii) the Board of Governors of the Federal Reserve System, in the case of a State member bank of the Federal Reserve System, a subsidiary thereof, a bank holding company, a subsidiary of a bank holding company that is a bank other than a bank specified in clause (i) or (iii) of this subparagraph, or a savings and loan holding company;

(iii) the Federal Deposit Insurance Corporation, in the case of a bank insured by the Federal Deposit Insurance Corporation (other than a member of the Federal Reserve System), a subsidiary of any such bank, a State savings association (as defined in section 3(b)(3) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(3))), the deposits of which are insured by the Federal Deposit Insurance Corporation, or a subsidiary of any such State savings association; and

(iv) the Commission in the case of all other clearing agencies and transfer agents.

(C) When used with respect to a participant or applicant to become a participant in a clearing agency or a person requesting or having access to services offered by a clearing agency:

(i) the Comptroller of the Currency, in the case of a national bank or a Federal savings association (as defined in section 3(b)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(2))), the deposits of which are insured by the Federal Deposit Insurance Corporation when the appropriate regulatory agency for such clearing agency is not the Commission;

(ii) the Board of Governors of the Federal Reserve System in the case of a State member bank of the Federal Reserve System, a bank holding company, or a subsidiary of a bank holding company, a subsidiary of a bank holding company that is a bank other than a bank specified in clause (i) or (iii) of this subparagraph, or a savings and loan holding company when the appropriate regulatory agency for such clearing agency is not the Commission;

(iii) the Federal Deposit Insurance Corporation, in the case of a bank insured by the Federal Deposit Insurance Corporation (other than a member of the Federal Reserve System) or a State savings association (as defined in section 3(b)(3) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(3))), the deposits of which are insured by the Federal Deposit Insurance Corporation; and when the appropriate regulatory agency for such clearing agency is not the Commission;

(iv) the Commission in all other cases.

(D) When used with respect to an institutional investment manager which is a bank the deposits of which are

insured in accordance with the Federal Deposit Insurance Act:

(i) the Comptroller of the Currency, in the case of a national bank or a Federal savings association (as defined in section 3(b)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(2))), the deposits of which are insured by the Federal Deposit Insurance Corporation;

(ii) the Board of Governors of the Federal Reserve System, in the case of any other member bank of the Federal Reserve System; and

(iii) the Federal Deposit Insurance Corporation, in the case of any other insured bank or a State savings association (as defined in section 3(b)(3) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(3))), the deposits of which are insured by the Federal Deposit Insurance Corporation.

(E) When used with respect to a national securities exchange or registered securities association, member thereof, person associated with a member thereof, applicant to become a member thereof or to become associated with a member thereof, or person requesting or having access to services offered by such exchange or association or member thereof, or the Municipal Securities Rulemaking Board, the Commission.

(F) When used with respect to a person exercising investment discretion with respect to an account:

(i) the Comptroller of the Currency, in the case of a national bank or a Federal savings association (as defined in section 3(b)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(2))), the deposits of which are insured by the Federal Deposit Insurance Corporation;

(ii) the Board of Governors of the Federal Reserve System in the case of any other member bank of the Federal Reserve System;

(iii) the Federal Deposit Insurance Corporation, in the case of any other bank the deposits of which are insured in accordance with the Federal Deposit Insurance Act or a State savings association (as defined in section 3(b)(3) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(3))), the deposits of which are insured by the Federal Deposit Insurance Corporation; and

(iv) the Commission in the case of all other such persons.

(G) When used with respect to a government securities broker or government securities dealer, or person associated with a government securities broker or government securities dealer:

(i) the Comptroller of the Currency, in the case of a national bank, a Federal savings association (as defined in section 3(b)(2) of the Federal Deposit Insurance Act), the deposits of which are insured by the Federal Deposit Insurance Corporation, or a Federal

branch or Federal agency of a foreign bank (as such terms are used in the International Banking Act of 1978);

(ii) the Board of Governors of the Federal Reserve System, in the case of a State member bank of the Federal Reserve System, a foreign bank, an uninsured State branch or State agency of a foreign bank, a commercial lending company owned or controlled by a foreign bank (as such terms are used in the International Banking Act of 1978), or a corporation organized or having an agreement with the Board of Governors of the Federal Reserve System pursuant to section 25 or section 25A of the Federal Reserve Act;

(iii) the Federal Deposit Insurance Corporation, in the case of a bank insured by the Federal Deposit Insurance Corporation (other than a member of the Federal Reserve System or a Federal savings bank), a State savings association (as defined in section 3(b)(3) of the Federal Deposit Insurance Act), the deposits of which are insured by the Federal Deposit Insurance Corporation, or an insured State branch of a foreign bank (as such terms are used in the International Banking Act of 1978); and

(iv) the Commission, in the case of all other government securities brokers and government securities dealers.

(H) When used with respect to an institution described in subparagraph (D), (F), or (G) of section 2(c)(2), or held under section 4(f), of the Bank Holding Company Act of 1956—

(i) the Comptroller of the Currency, in the case of a national bank;

(ii) the Board of Governors of the Federal Reserve System, in the case of a State member bank of the Federal Reserve System or any corporation chartered under section 25A of the Federal Reserve Act;

(iii) the Federal Deposit Insurance Corporation, in the case of any other bank the deposits of which are insured in accordance with the Federal Deposit Insurance Act; or

(iv) the Commission in the case of all other such institutions.

As used in this paragraph, the terms "bank holding company" and "subsidiary of a bank holding company" have the meanings given them in section 2 of the Bank Holding Company Act of 1956. As used in this paragraph, the term "savings and loan holding company" has the same meaning as in section 10(a) of the Home Owners' Loan Act (12 U.S.C. 1467a(a)).

(35) A person exercises "investment discretion" with respect to an account if, directly or indirectly, such person (A) is authorized to determine what securities or other property shall be purchased or sold by or for the account, (B) makes decisions as to what securities or other property shall be purchased or sold by or for the account even though some other person may have responsibility for such investment decisions, or (C) other-

wise exercises such influence with respect to the purchase and sale of securities or other property by or for the account as the Commission, by rule, determines, in the public interest or for the protection of investors, should be subject to the operation of the provisions of this title and rules and regulations thereunder.

(36) A class of persons or markets is subject to "equal regulation" if no member of the class has a competitive advantage over any other member thereof resulting from a disparity in their regulation under this title which the Commission determines is unfair and not necessary or appropriate in furtherance of the purposes of this title.

(37) The term "records" means accounts, correspondence, memorandums, tapes, discs, papers, books, and other documents or transcribed information of any type, whether expressed in ordinary or machine language.

(38) The term "market maker" means any specialist permitted to act as a dealer, any dealer acting in the capacity of block positioner, and any dealer who, with respect to a security, holds himself out (by entering quotations in an inter-dealer communications system or otherwise) as being willing to buy and sell such security for his own account on a regular or continuous basis.

(39) A person is subject to a "statutory disqualification" with respect to membership or participation in, or association with a member of, a self-regulatory organization, if such person—

(A) has been and is expelled or suspended from membership or participation in, or barred or suspended from being associated with a member of, any self-regulatory organization, foreign equivalent of a self-regulatory organization, foreign or international securities exchange, contract market designated pursuant to section 5 of the Commodity Exchange Act (7 U.S.C. 7), or any substantially equivalent foreign statute or regulation, or futures association registered under section 17 of such Act (7 U.S.C. 21), or any substantially equivalent foreign statute or regulation, or has been and is denied trading privileges on any such contract market or foreign equivalent;

(B) is subject to—

(i) an order of the Commission, other appropriate regulatory agency, or foreign financial regulatory authority—

(I) denying, suspending for a period not exceeding 12 months, or revoking his registration as a broker, dealer, municipal securities dealer, government securities broker, government securities dealer, security-based swap dealer, or major security-based swap participant or limiting his activities as a foreign person performing a function substantially equivalent to any of the above; or

(II) barring or suspending for a period not exceeding 12 months his being associated with a broker, dealer, municipal securities dealer, government securities broker, government securities dealer, security-based swap dealer, major security-based swap participant, or

foreign person performing a function substantially equivalent to any of the above;

(ii) an order of the Commodity Futures Trading Commission denying, suspending, or revoking his registration under the Commodity Exchange Act (7 U.S.C. 1 et seq.); or

(iii) an order by a foreign financial regulatory authority denying, suspending, or revoking the person's authority to engage in transactions in contracts of sale of a commodity for future delivery or other instruments traded on or subject to the rules of a contract market, board of trade, or foreign equivalent thereof;

(C) by his conduct while associated with a broker, dealer, municipal securities dealer, government securities broker, government securities dealer, security-based swap dealer, or major security-based swap participant, or while associated with an entity or person required to be registered under the Commodity Exchange Act, has been found to be a cause of any effective suspension, expulsion, or order of the character described in subparagraph (A) or (B) of this paragraph, and in entering such a suspension, expulsion, or order, the Commission, an appropriate regulatory agency, or any such self-regulatory organization shall have jurisdiction to find whether or not any person was a cause thereof;

(D) by his conduct while associated with any broker, dealer, municipal securities dealer, government securities broker, government securities dealer, security-based swap dealer, major security-based swap participant, or any other entity engaged in transactions in securities, or while associated with an entity engaged in transactions in contracts of sale of a commodity for future delivery or other instruments traded on or subject to the rules of a contract market, board of trade, or foreign equivalent thereof, has been found to be a cause of any effective suspension, expulsion, or order by a foreign or international securities exchange or foreign financial regulatory authority empowered by a foreign government to administer or enforce its laws relating to financial transactions as described in subparagraph (A) or (B) of this paragraph;

(E) has associated with him any person who is known, or in the exercise of reasonable care should be known, to him to be a person described by subparagraph (A), (B), (C), or (D) of this paragraph; or

(F) has committed or omitted any act, or is subject to an order or finding, enumerated in subparagraph (D), (E), (H), or (G) of paragraph (4) of section 15(b) of this title, has been convicted of any offense specified in subparagraph (B) of such paragraph (4) or any other felony within ten years of the date of the filing of an application for membership or participation in, or to become associated with a member of, such self-regulatory organization, is enjoined from any action, conduct, or practice specified in subparagraph (C) of such paragraph (4), has willfully made or caused to be made in any application for membership or participation

in, or to become associated with a member of, a self-regulatory organization, report required to be filed with a self-regulatory organization, or proceeding before a self-regulatory organization, any statement which was at the time, and in the light of the circumstances under which it was made, false or misleading with respect to any material fact, or has omitted to state in any such application, report, or proceeding any material fact which is required to be stated therein.

(40) The term "financial responsibility rules" means the rules and regulations of the Commission or the rules and regulations prescribed by any self-regulatory organization relating to financial responsibility and related practices which are designated by the Commission, by rule or regulation, to be financial responsibility rules.

(41) The term "mortgage related security" means a security that meets standards of credit-worthiness as established by the Commission, and either:

(A) represents ownership of one or more promissory notes or certificates of interest or participation in such notes (including any rights designed to assure servicing of, or the receipt or timeliness of receipt by the holders of such notes, certificates, or participations of amounts payable under, such notes, certificates, or participations), which notes:

(i) are directly secured by a first lien on a single parcel of real estate, including stock allocated to a dwelling unit in a residential cooperative housing corporation, upon which is located a dwelling or mixed residential and commercial structure, on a residential manufactured home as defined in section 603(6) of the National Manufactured Housing Construction and Safety Standards Act of 1974, whether such manufactured home is considered real or personal property under the laws of the State in which it is to be located, or on one or more parcels of real estate upon which is located one or more commercial structures; and

(ii) were originated by a savings and loan association, savings bank, commercial bank, credit union, insurance company, or similar institution which is supervised and examined by a Federal or State authority, or by a mortgage approved by the Secretary of Housing and Urban Development pursuant to sections 203 and 211 of the National Housing Act, or, where such notes involve a lien on the manufactured home, by any such institution or by any financial institution approved for insurance by the Secretary of Housing and Urban Development pursuant to section 2 of the National Housing Act; or

(B) is secured by one or more promissory notes or certificates of interest or participations in such notes (with or without recourse to the issuer thereof) and, by its terms, provides for payments of principal in relation to payments, or reasonable projections of payments, on notes meeting the requirements of subparagraphs (A) (i) and (ii) or cer-

tificates of interest or participations in promissory notes meeting such requirements.

For the purpose of this paragraph, the term "promissory note", when used in connection with a manufactured home, shall also include a loan, advance, or credit sale as evidence by a retail installment sales contract or other instrument.

(42) The term "government securities" means—

(A) securities which are direct obligations of, or obligations guaranteed as to principal or interest by, the United States;

(B) securities which are issued or guaranteed by the Tennessee Valley Authority or by corporations in which the United States has a direct or indirect interest and which are designated by the Secretary of the Treasury for exemption as necessary or appropriate in the public interest or for the protection of investors;

(C) securities issued or guaranteed as to principal or interest by any corporation the securities of which are designated, by statute specifically naming such corporation, to constitute exempt securities within the meaning of the laws administered by the Commission;

(D) for purposes of sections 15C and 17A, any put, call, straddle, option, or privilege on a security described in subparagraph (A), (B), or (C) other than a put, call, straddle, option, or privilege—

(i) that is traded on one or more national securities exchanges; or

(ii) for which quotations are disseminated through an automated quotation system operated by a registered securities association; or

(E) for purposes of sections 15, 15C, and 17A as applied to a bank, a qualified Canadian government obligation as defined in section 5136 of the Revised Statutes of the United States.

(43) The term "government securities broker" means any person regularly engaged in the business of effecting transactions in government securities for the account of others, but does not include—

(A) any corporation the securities of which are government securities under subparagraph (B) or (C) of paragraph (42) of this subsection; or

(B) any person registered with the Commodity Futures Trading Commission, any contract market designated by the Commodity Futures Trading Commission, such contract market's affiliated clearing organization, or any floor trader on such contract market, solely because such person effects transactions in government securities that the Commission, after consultation with the Commodity Futures Trading Commission, has determined by rule or order to be incidental to such person's futures-related business.

(44) The term "government securities dealer" means any person engaged in the business of buying and selling government securities for his own account, through a broker or otherwise, but does not include—

(A) any person insofar as he buys or sells such securities for his own account, either individually or in some fiduciary capacity, but not as a part of a regular business;

(B) any corporation the securities of which are government securities under subparagraph (B) or (C) of paragraph (42) of this subsection;

(C) any bank, unless the bank is engaged in the business of buying and selling government securities for its own account other than in a fiduciary capacity, through a broker or otherwise; or

(D) any person registered with the Commodity Futures Trading Commission, any contract market designated by the Commodity Futures Trading Commission, such contract market's affiliated clearing organization, or any floor trader on such contract market, solely because such person effects transactions in government securities that the Commission, after consultation with the Commodity Futures Trading Commission, has determined by rule or order to be incidental to such person's futures-related business.

(45) The term "person associated with a government securities broker or government securities dealer" means any partner, officer, director, or branch manager of such government securities broker or government securities dealer (or any person occupying a similar status or performing similar functions), and any other employee of such government securities broker or government securities dealer who is engaged in the management, direction, supervision, or performance of any activities relating to government securities, and any person directly or indirectly controlling, controlled by, or under common control with such government securities broker or government securities dealer.

(46) The term "financial institution" means—

(A) a bank (as defined in paragraph (6) of this subsection);

(B) a foreign bank (as such term is used in the International Banking Act of 1978); and

(C) a savings association (as defined in section 3(b) of the Federal Deposit Insurance Act) the deposits of which are insured by the Federal Deposit Insurance Corporation.

(47) The term "securities laws" means the Securities Act of 1933 (15 U.S.C. 77a et seq.), the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.), the Sarbanes-Oxley Act of 2002, the Trust Indenture Act of 1939 (15 U.S.C. 77aaa et seq.), the Investment Company Act of 1940 (15 U.S.C. 80a–1 et seq.), the Investment Advisers Act of 1940 (15 U.S.C. 80b et seq.), and the Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa et seq.).

(48) The term "registered broker or dealer" means a broker or dealer registered or required to register pursuant to section 15 or 15B of this title, except that in paragraph (3) of this subsection and sections 6 and 15A the term means such a broker or dealer and a government securities broker or government securities dealer registered or required to register pursuant to section 15C(a)(1)(A) of this title.

(49) The terms "person associated with a transfer agent" and "associated person of a transfer agent" mean any person (except an employee whose functions are solely clerical or ministerial) directly engaged in the management, direction, supervision, or performance of any of the transfer agent's activities with respect to transfer agent functions, and any person directly or indirectly controlling such activities or controlled by the transfer agent in connection with such activities.

(50) The term "foreign securities authority" means any foreign government, or any governmental body or regulatory organization empowered by a foreign government to administer or enforce its laws as they relate to securities matters.

(51)(A) The term "penny stock" means any equity security other than a security that is—

(i) registered or approved for registration and traded on a national securities exchange that meets such criteria as the Commission shall prescribe by rule or regulation for purposes of this paragraph;

(ii) authorized for quotation on an automated quotation system sponsored by a registered securities association, if such system (I) was established and in operation before January 1, 1990, and (II) meets such criteria as the Commission shall prescribe by rule or regulation for purposes of this paragraph;

(iii) issued by an investment company registered under the Investment Company Act of 1940;

(iv) excluded, on the basis of exceeding a minimum price, net tangible assets of the issuer, or other relevant criteria, from the definition of such term by rule or regulation which the Commission shall prescribe for purposes of this paragraph; or

(v) exempted, in whole or in part, conditionally or unconditionally, from the definition of such term by rule, regulation, or order prescribed by the Commission.

(B) The Commission may, by rule, regulation, or order, designate any equity security or class of equity securities described in clause (i) or (ii) of subparagraph (A) as within the meaning of the term "penny stock" if such security or class of securities is traded other than on a national securities exchange or through an automated quotation system described in clause (ii) of subparagraph (A).

(C) In exercising its authority under this paragraph to prescribe rules, regulations, and orders, the Commission shall determine that such rule, regulation, or order is consistent with the public interest and the protection of investors.

(52) The term "foreign financial regulatory authority" means any (A) foreign securities authority, (B) other governmental body or foreign equivalent of a self-regulatory organization empowered by a foreign government to administer or enforce its laws relating to the regulation of fiduciaries, trusts, commercial lending, insurance, trading in contracts of sale of a commodity for future delivery, or other instruments traded on or subject to the rules of a contract market, board of trade, or foreign equivalent, or other financial activities, or (C) membership

organization a function of which is to regulate participation of its members in activities listed above.

(53)(A) The term "small business related security" means a security that meets standards of credit-worthiness as established by the Commission, and either—

(i) represents an interest in 1 or more promissory notes or leases of personal property evidencing the obligation of a small business concern and originated by an insured depository institution, insured credit union, insurance company, or similar institution which is supervised and examined by a Federal or State authority, or a finance company or leasing company; or

(ii) is secured by an interest in 1 or more promissory notes or leases of personal property (with or without recourse to the issuer or lessee) and provides for payments of principal in relation to payments, or reasonable projections of payments, on notes or leases described in clause (i).

(B) For purposes of this paragraph—

(i) an "interest in a promissory note or a lease of personal property" includes ownership rights, certificates of interest or participation in such notes or leases, and rights designed to assure servicing of such notes or leases, or the receipt or timely receipt of amounts payable under such notes or leases;

(ii) the term "small business concern" means a business that meets the criteria for a small business concern established by the Small Business Administration under section 3(a) of the Small Business Act;

(iii) the term "insured depository institution" has the same meaning as in section 3 of the Federal Deposit Insurance Act; and

(iv) the term "insured credit union" has the same meaning as in section 101 of the Federal Credit Union Act.

(54) QUALIFIED INVESTOR.—

(A) DEFINITION.—Except as provided in subparagraph (B), for purposes of this title, the term "qualified investor" means—

(i) any investment company registered with the Commission under section 8 of the Investment Company Act of 1940;

(ii) any issuer eligible for an exclusion from the definition of investment company pursuant to section 3(c)(7) of the Investment Company Act of 1940;

(iii) any bank (as defined in paragraph (6) of this subsection), savings association (as defined in section 3(b) of the Federal Deposit Insurance Act), broker, dealer, insurance company (as defined in section 2(a)(13) of the Securities Act of 1933), or business development company (as defined in section 2(a)(48) of the Investment Company Act of 1940);

(iv) any small business investment company licensed by the United States Small Business Administration under section 301 (c) or (d) of the Small Business Investment Act of 1958;

(v) any State sponsored employee benefit plan, or any other employee benefit plan, within the meaning of the Employee Retirement Income Security Act of 1974, other than an individual retirement account, if the investment decisions are made by a plan fiduciary, as defined in section 3(21) of that Act, which is either a bank, savings and loan association, insurance company, or registered investment adviser;

(vi) any trust whose purchases of securities are directed by a person described in clauses (i) through (v) of this subparagraph;

(vii) any market intermediary exempt under section 3(c)(2) of the Investment Company Act of 1940;

(viii) any associated person of a broker or dealer other than a natural person;

(ix) any foreign bank (as defined in section 1(b)(7) of the International Banking Act of 1978);

(x) the government of any foreign country;

(xi) any corporation, company, or partnership that owns and invests on a discretionary basis, not less than $25,000,000 in investments;

(xii) any natural person who owns and invests on a discretionary basis, not less than $25,000,000 in investments;

(xiii) any government or political subdivision, agency, or instrumentality of a government who owns and invests on a discretionary basis not less than $50,000,000 in investments; or

(xiv) any multinational or supranational entity or any agency or instrumentality thereof.

(B) ALTERED THRESHOLDS FOR ASSET-BACKED SECURITIES AND LOAN PARTICIPATIONS.—For purposes of section 3(a)(5)(C)(iii) of this title and section 206(a)(5) of the Gramm-Leach-Bliley Act, the term "qualified investor" has the meaning given such term by subparagraph (A) of this paragraph except that clauses (xi) and (xii) shall be applied by substituting "$10,000,000" for "$25,000,000".

(C) ADDITIONAL AUTHORITY.—The Commission may, by rule or order, define a "qualified investor" as any other person, taking into consideration such factors as the financial sophistication of the person, net worth, and knowledge and experience in financial matters.

(55)(A) The term "security future" means a contract of sale for future delivery of a single security or of a narrow-based security index, including any interest therein or based on the value thereof, except an exempted security under section 3(a)(12) of this title as in effect on the date of the enactment of the Futures Trading Act of 1982 (other than any municipal security as defined in section 3(a)(29) as in effect on the date of the enactment of the Futures Trading Act of 1982). The term "security future" does not include any agreement, contract, or transaction excluded from the Commodity Exchange Act under section 2(c), 2(d), 2(f), or 2(g) of the Commodity Exchange Act (as in effect on the date of the enactment of the Commodity

Futures Modernization Act of 2000) or title IV of the Commodity Futures Modernization Act of 2000.

(B) The term "narrow-based security index" means an index—

(i) that has 9 or fewer component securities;

(ii) in which a component security comprises more than 30 percent of the index's weighting;

(iii) in which the five highest weighted component securities in the aggregate comprise more than 60 percent of the index's weighting; or

(iv) in which the lowest weighted component securities comprising, in the aggregate, 25 percent of the index's weighting have an aggregate dollar value of average daily trading volume of less than $50,000,000 (or in the case of an index with 15 or more component securities, $30,000,000), except that if there are two or more securities with equal weighting that could be included in the calculation of the lowest weighted component securities comprising, in the aggregate, 25 percent of the index's weighting, such securities shall be ranked from lowest to highest dollar value of average daily trading volume and shall be included in the calculation based on their ranking starting with the lowest ranked security.

(C) Notwithstanding subparagraph (B), an index is not a narrow-based security index if—

(i)(I) it has at least nine component securities;

(II) no component security comprises more than 30 percent of the index's weighting; and

(III) each component security is—

(aa) registered pursuant to section 12 of the Securities Exchange Act of 1934;

(bb) one of 750 securities with the largest market capitalization; and

(cc) one of 675 securities with the largest dollar value of average daily trading volume;

(ii) a board of trade was designated as a contract market by the Commodity Futures Trading Commission with respect to a contract of sale for future delivery on the index, before the date of the enactment of the Commodity Futures Modernization Act of 2000;

(iii)(I) a contract of sale for future delivery on the index traded on a designated contract market or registered derivatives transaction execution facility for at least 30 days as a contract of sale for future delivery on an index that was not a narrow-based security index; and

(II) it has been a narrow-based security index for no more than 45 business days over 3 consecutive calendar months;

(iv) a contract of sale for future delivery on the index is traded on or subject to the rules of a foreign board of trade and meets such requirements as are jointly established by rule or regulation by the Commission and the Commodity Futures Trading Commission;

(v) no more than 18 months have passed since the date of the enactment of the Commodity Futures Modernization Act of 2000 and—

(I) it is traded on or subject to the rules of a foreign board of trade;

(II) the offer and sale in the United States of a contract of sale for future delivery on the index was authorized before the date of the enactment of the Commodity Futures Modernization Act of 2000; and

(III) the conditions of such authorization continue to be met; or

(vi) a contract of sale for future delivery on the index is traded on or subject to the rules of a board of trade and meets such requirements as are jointly established by rule, regulation, or order by the Commission and the Commodity Futures Trading Commission.

(D) Within 1 year after the enactment of the Commodity Futures Modernization Act of 2000, the Commission and the Commodity Futures Trading Commission jointly shall adopt rules or regulations that set forth the requirements under clause (iv) of subparagraph (C).

(E) An index that is a narrow-based security index solely because it was a narrow-based security index for more than 45 business days over 3 consecutive calendar months pursuant to clause (iii) of subparagraph (C) shall not be a narrow-based security index for the 3 following calendar months.

(F) For purposes of subparagraphs (B) and (C) of this paragraph—

(i) the dollar value of average daily trading volume and the market capitalization shall be calculated as of the preceding 6 full calendar months; and

(ii) the Commission and the Commodity Futures Trading Commission shall, by rule or regulation, jointly specify the method to be used to determine market capitalization and dollar value of average daily trading volume.

(56) The term "security futures product" means a security future or any put, call, straddle, option, or privilege on any security future.

(57)(A) The term "margin", when used with respect to a security futures product, means the amount, type, and form of collateral required to secure any extension or maintenance of credit, or the amount, type, and form of collateral required as a performance bond related to the purchase, sale, or carrying of a security futures product.

(B) The terms "margin level" and "level of margin", when used with respect to a security futures product, mean the amount of margin required to secure any extension or maintenance of credit, or the amount of margin required as a performance bond related to the purchase, sale, or carrying of a security futures product.

(C) The terms "higher margin level" and "higher level of margin", when used with respect to a security futures product, mean a margin level established by a national securities exchange registered pursuant to section 6(g) that is higher than

the minimum amount established and in effect pursuant to section 7(c)(2)(B).

(58) AUDIT COMMITTEE.—The term "audit committee" means—

(A) a committee (or equivalent body) established by and amongst the board of directors of an issuer for the purpose of overseeing the accounting and financial reporting processes of the issuer and audits of the financial statements of the issuer; and

(B) if no such committee exists with respect to an issuer, the entire board of directors of the issuer.

(59) REGISTERED PUBLIC ACCOUNTING FIRM.—The term "registered public accounting firm" has the same meaning as in section 2 of the Sarbanes-Oxley Act of 2002.

(60) CREDIT RATING.—The term "credit rating" means an assessment of the creditworthiness of an obligor as an entity or with respect to specific securities or money market instruments.

(61) CREDIT RATING AGENCY.—The term "credit rating agency" means any person—

(A) engaged in the business of issuing credit ratings on the Internet or through another readily accessible means, for free or for a reasonable fee, but does not include a commercial credit reporting company;

(B) employing either a quantitative or qualitative model, or both, to determine credit ratings; and

(C) receiving fees from either issuers, investors, or other market participants, or a combination thereof.

(62) NATIONALLY RECOGNIZED STATISTICAL RATING ORGANIZATION.—The term "nationally recognized statistical rating organization" means a credit rating agency that—

(A) issues credit ratings certified by qualified institutional buyers, in accordance with section 15E(a)(1)(B)(ix), with respect to—

(i) financial institutions, brokers, or dealers;

(ii) insurance companies;

(iii) corporate issuers;

(iv) issuers of asset-backed securities (as that term is defined in section 1101(c) of part 229 of title 17, Code of Federal Regulations, as in effect on the date of enactment of this paragraph);

(v) issuers of government securities, municipal securities, or securities issued by a foreign government; or

(vi) a combination of one or more categories of obligors described in any of clauses (i) through (v); and

(B) is registered under section 15E.

(63) PERSON ASSOCIATED WITH A NATIONALLY RECOGNIZED STATISTICAL RATING ORGANIZATION.—The term "person associated with" a nationally recognized statistical rating organization means any partner, officer, director, or branch manager of a nationally recognized statistical rating organization (or any person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with a nationally recognized sta-

tistical rating organization, or any employee of a nationally recognized statistical rating organization.

(64) QUALIFIED INSTITUTIONAL BUYER.—The term "qualified institutional buyer" has the meaning given such term in section 230.144A(a) of title 17, Code of Federal Regulations, or any successor thereto.

(79) ASSET-BACKED SECURITY.—The term "asset-backed security"—

(A) means a fixed-income or other security collateralized by any type of self-liquidating financial asset (including a loan, a lease, a mortgage, or a secured or unsecured receivable) that allows the holder of the security to receive payments that depend primarily on cash flow from the asset, including—

(i) a collateralized mortgage obligation;

(ii) a collateralized debt obligation;

(iii) a collateralized bond obligation;

(iv) a collateralized debt obligation of asset-backed securities;

(v) a collateralized debt obligation of collateralized debt obligations; and

(vi) a security that the Commission, by rule, determines to be an asset-backed security for purposes of this section; and

(B) does not include a security issued by a finance subsidiary held by the parent company or a company controlled by the parent company, if none of the securities issued by the finance subsidiary are held by an entity that is not controlled by the parent company.

(65) ELIGIBLE CONTRACT PARTICIPANT.—The term "eligible contract participant" has the same meaning as in section 1a of the Commodity Exchange Act (7 U.S.C. 1a).

(66) MAJOR SWAP PARTICIPANT.—The term "major swap participant" has the same meaning as in section 1a of the Commodity Exchange Act (7 U.S.C. 1a).

(67) MAJOR SECURITY-BASED SWAP PARTICIPANT.—

(A) IN GENERAL.—The term "major security-based swap participant" means any person—

(i) who is not a security-based swap dealer; and

(ii)(I) who maintains a substantial position in security-based swaps for any of the major security-based swap categories, as such categories are determined by the Commission, excluding both positions held for hedging or mitigating commercial risk and positions maintained by any employee benefit plan (or any contract held by such a plan) as defined in paragraphs (3) and (32) of section 3 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002) for the primary purpose of hedging or mitigating any risk directly associated with the operation of the plan;

(II) whose outstanding security-based swaps create substantial counterparty exposure that could have serious adverse effects on the financial stability of the United States banking system or financial markets; or

(III) that is a financial entity that—

(aa) is highly leveraged relative to the amount of capital such entity holds and that is not subject to capital requirements established by an appropriate Federal banking agency; and

(bb) maintains a substantial position in outstanding security-based swaps in any major security-based swap category, as such categories are determined by the Commission.

(B) DEFINITION OF SUBSTANTIAL POSITION.—For purposes of subparagraph (A), the Commission shall define, by rule or regulation, the term "substantial position" at the threshold that the Commission determines to be prudent for the effective monitoring, management, and oversight of entities that are systemically important or can significantly impact the financial system of the United States. In setting the definition under this subparagraph, the Commission shall consider the person's relative position in uncleared as opposed to cleared security-based swaps and may take into consideration the value and quality of collateral held against counterparty exposures.

(C) SCOPE OF DESIGNATION.—For purposes of subparagraph (A), a person may be designated as a major security-based swap participant for 1 or more categories of security-based swaps without being classified as a major security-based swap participant for all classes of security-based swaps.

(68) SECURITY-BASED SWAP.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the term "security-based swap" means any agreement, contract, or transaction that—

(i) is a swap, as that term is defined under section 1a of the Commodity Exchange Act (without regard to paragraph (47)(B)(x) of such section); and

(ii) is based on—

(I) an index that is a narrow-based security index, including any interest therein or on the value thereof;

(II) a single security or loan, including any interest therein or on the value thereof; or

(III) the occurrence, nonoccurrence, or extent of the occurrence of an event relating to a single issuer of a security or the issuers of securities in a narrow-based security index, provided that such event directly affects the financial statements, financial condition, or financial obligations of the issuer.

(B) RULE OF CONSTRUCTION REGARDING MASTER AGREEMENTS.—The term "security-based swap" shall be construed to include a master agreement that provides for an agreement, contract, or transaction that is a security-based swap pursuant to subparagraph (A), together with all supplements to any such master agreement, without regard to whether the master agreement contains an agreement, contract, or transaction that is not a security-based swap pursuant to subparagraph (A), except that the master

agreement shall be considered to be a security-based swap only with respect to each agreement, contract, or transaction under the master agreement that is a security-based swap pursuant to subparagraph (A).

(C) EXCLUSIONS.—The term "security-based swap" does not include any agreement, contract, or transaction that meets the definition of a security-based swap only because such agreement, contract, or transaction references, is based upon, or settles through the transfer, delivery, or receipt of an exempted security under paragraph (12), as in effect on the date of enactment of the Futures Trading Act of 1982 (other than any municipal security as defined in paragraph (29) as in effect on the date of enactment of the Futures Trading Act of 1982), unless such agreement, contract, or transaction is of the character of, or is commonly known in the trade as, a put, call, or other option.

(D) MIXED SWAP.—The term "security-based swap" includes any agreement, contract, or transaction that is as described in subparagraph (A) and also is based on the value of 1 or more interest or other rates, currencies, commodities, instruments of indebtedness, indices, quantitative measures, other financial or economic interest or property of any kind (other than a single security or a narrow-based security index), or the occurrence, non-occurrence, or the extent of the occurrence of an event or contingency associated with a potential financial, economic, or commercial consequence (other than an event described in subparagraph (A)(ii)(III)).

(E) RULE OF CONSTRUCTION REGARDING USE OF THE TERM INDEX.—The term "index" means an index or group of securities, including any interest therein or based on the value thereof.

(69) SWAP.—The term "swap" has the same meaning as in section 1a of the Commodity Exchange Act (7 U.S.C. 1a).

(70) PERSON ASSOCIATED WITH A SECURITY-BASED SWAP DEALER OR MAJOR SECURITY-BASED SWAP PARTICIPANT.—

(A) IN GENERAL.—The term "person associated with a security-based swap dealer or major security-based swap participant" or "associated person of a security-based swap dealer or major security-based swap participant" means—

(i) any partner, officer, director, or branch manager of such security-based swap dealer or major security-based swap participant (or any person occupying a similar status or performing similar functions);

(ii) any person directly or indirectly controlling, controlled by, or under common control with such security-based swap dealer or major security-based swap participant; or

(iii) any employee of such security-based swap dealer or major security-based swap participant.

(B) EXCLUSION.—Other than for purposes of section 15F(l)(2), the term "person associated with a security-based swap dealer or major security-based swap participant" or "associated person of a security-based swap dealer or major security-based swap participant" does not include

any person associated with a security-based swap dealer or major security-based swap participant whose functions are solely clerical or ministerial.

(71) SECURITY-BASED SWAP DEALER.—

(A) IN GENERAL.—The term "security-based swap dealer" means any person who—

(i) holds themself out as a dealer in security-based swaps;

(ii) makes a market in security-based swaps;

(iii) regularly enters into security-based swaps with counterparties as an ordinary course of business for its own account; or

(iv) engages in any activity causing it to be commonly known in the trade as a dealer or market maker in security-based swaps.

(B) DESIGNATION BY TYPE OR CLASS.—A person may be designated as a security-based swap dealer for a single type or single class or category of security-based swap or activities and considered not to be a security-based swap dealer for other types, classes, or categories of security-based swaps or activities.

(C) EXCEPTION.—The term "security-based swap dealer" does not include a person that enters into security-based swaps for such person's own account, either individually or in a fiduciary capacity, but not as a part of regular business.

(D) DE MINIMIS EXCEPTION.—The Commission shall exempt from designation as a security-based swap dealer an entity that engages in a de minimis quantity of security-based swap dealing in connection with transactions with or on behalf of its customers. The Commission shall promulgate regulations to establish factors with respect to the making of any determination to exempt.

(72) APPROPRIATE FEDERAL BANKING AGENCY.—The term "appropriate Federal banking agency" has the same meaning as in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)).

(73) BOARD.—The term "Board" means the Board of Governors of the Federal Reserve System.

(74) PRUDENTIAL REGULATOR.—The term "prudential regulator" has the same meaning as in section 1a of the Commodity Exchange Act (7 U.S.C. 1a).

(75) SECURITY-BASED SWAP DATA REPOSITORY.—The term "security-based swap data repository" means any person that collects and maintains information or records with respect to transactions or positions in, or the terms and conditions of, security-based swaps entered into by third parties for the purpose of providing a centralized recordkeeping facility for security-based swaps.

(76) SWAP DEALER.—The term "swap dealer" has the same meaning as in section 1a of the Commodity Exchange Act (7 U.S.C. 1a).

(77) SECURITY-BASED SWAP EXECUTION FACILITY.—The term "security-based swap execution facility" means a trading system or platform in which multiple participants have the ability

to execute or trade security-based swaps by accepting bids and offers made by multiple participants in the facility or system, through any means of interstate commerce, including any trading facility, that—

(A) facilitates the execution of security-based swaps between persons; and

(B) is not a national securities exchange.

(78) SECURITY-BASED SWAP AGREEMENT.—

(A) IN GENERAL.—For purposes of sections 9, 10, 16, 20, and 21A of this Act, and section 17 of the Securities Act of 1933 (15 U.S.C. 77q), the term "security-based swap agreement" means a swap agreement as defined in section 206A of the Gramm-Leach-Bliley Act (15 U.S.C. 78c note) of which a material term is based on the price, yield, value, or volatility of any security or any group or index of securities, or any interest therein.

(B) EXCLUSIONS.—The term "security-based swap agreement" does not include any security-based swap.

(80) EMERGING GROWTH COMPANY.—The term "emerging growth company" means an issuer that had total annual gross revenues of less than $1,000,000,000 (as such amount is indexed for inflation every 5 years by the Commission to reflect the change in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics, setting the threshold to the nearest 1,000,000) during its most recently completed fiscal year. An issuer that is an emerging growth company as of the first day of that fiscal year shall continue to be deemed an emerging growth company until the earliest of—

(A) the last day of the fiscal year of the issuer during which it had total annual gross revenues of $1,000,000,000 (as such amount is indexed for inflation every 5 years by the Commission to reflect the change in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics, setting the threshold to the nearest 1,000,000) or more;

(B) the last day of the fiscal year of the issuer following the fifth anniversary of the date of the first sale of common equity securities of the issuer pursuant to an effective registration statement under the Securities Act of 1933;

(C) the date on which such issuer has, during the previous 3-year period, issued more than $1,000,000,000 in non-convertible debt; or

(D) the date on which such issuer is deemed to be a "large accelerated filer", as defined in section 240.12b–2 of title 17, Code of Federal Regulations, or any successor thereto.

[(80)] *(81)* FUNDING PORTAL.—The term "funding portal" means any person acting as an intermediary in a transaction involving the offer or sale of securities for the account of others, solely pursuant to section 4(6) of the Securities Act of 1933 (15 U.S.C. 77d(6)), that does not—

(A) offer investment advice or recommendations;

(B) solicit purchases, sales, or offers to buy the securities offered or displayed on its website or portal;

(C) compensate employees, agents, or other persons for such solicitation or based on the sale of securities displayed or referenced on its website or portal;

(D) hold, manage, possess, or otherwise handle investor funds or securities; or

(E) engage in such other activities as the Commission, by rule, determines appropriate.

(82) PROXY ADVISORY FIRM.—The term "proxy advisory firm"—

(A) means any person who is primarily engaged in the business of providing proxy voting advice, research, analysis, ratings, or recommendations to clients, which conduct constitutes a solicitation within the meaning of section 14; and

(B) does not include any person that is exempt under law or regulation from the requirements otherwise applicable to persons engaged in such a solicitation.

(83) PERSON ASSOCIATED WITH A PROXY ADVISORY FIRM.—With respect to a proxy advisory firm—

(A) a person is "associated" with the proxy advisory firm if the person is—

(i) a partner, officer, or director of the proxy advisory firm (or any person occupying a similar status or performing similar functions);

(ii) a person directly or indirectly controlling, controlled by, or under common control with the proxy advisory firm;

(iii) an employee of the proxy advisory firm; or

(iv) a person the Commission determines by rule is controlled by the proxy advisory firm; and

(B) a person is not "associated" with the proxy advisory firm if the person only performs clerical or ministerial functions with respect to a proxy advisory firm.

(b) The Commission and the Board of Governors of the Federal Reserve System, as to matters within their respective jurisdictions, shall have power by rules and regulations to define technical, trade, accounting, and other terms used in this title, consistently with the provisions and purposes of this title.

(c) No provision of this title shall apply to, or be deemed to include, any executive department or independent establishment of the United States, or any lending agency which is wholly owned, directly or indirectly, by the United States, or any officer, agent, or employee of any such department, establishment, or agency, acting in the course of his official duty as such, unless such provision makes specific reference to such department, establishment, or agency.

(d) No issuer of municipal securities or officer or employee thereof acting in the course of his official duties as such shall be deemed to be a "broker", "dealer", or "municipal securities dealer" solely by reason of buying, selling, or effecting transactions in the issuer's securities.

(e) CHARITABLE ORGANIZATIONS.—

(1) EXEMPTION.—Notwithstanding any other provision of this title, but subject to paragraph (2) of this subsection, a charitable organization, as defined in section 3(c)(10)(D) of the In-

vestment Company Act of 1940, or any trustee, director, officer, employee, or volunteer of such a charitable organization acting within the scope of such person's employment or duties with such organization, shall not be deemed to be a "broker", "dealer", "municipal securities broker", "municipal securities dealer", "government securities broker", or "government securities dealer" for purposes of this title solely because such organization or person buys, holds, sells, or trades in securities for its own account in its capacity as trustee or administrator of, or otherwise on behalf of or for the account of—

(A) such a charitable organization;

(B) a fund that is excluded from the definition of an investment company under section 3(c)(10)(B) of the Investment Company Act of 1940; or

(C) a trust or other donative instrument described in section 3(c)(10)(B) of the Investment Company Act of 1940, or the settlors (or potential settlors) or beneficiaries of any such trust or other instrument.

(2) LIMITATION ON COMPENSATION.—The exemption provided under paragraph (1) shall not be available to any charitable organization, or any trustee, director, officer, employee, or volunteer of such a charitable organization, unless each person who, on or after 90 days after the date of enactment of this subsection, solicits donations on behalf of such charitable organization from any donor to a fund that is excluded from the definition of an investment company under section 3(c)(10)(B) of the Investment Company Act of 1940, is either a volunteer or is engaged in the overall fund raising activities of a charitable organization and receives no commission or other special compensation based on the number or the value of donations collected for the fund.

(f) CONSIDERATION OF PROMOTION OF EFFICIENCY, COMPETITION, AND CAPITAL FORMATION.—Whenever pursuant to this title the Commission is engaged in rulemaking, or in the review of a rule of a self-regulatory organization, and is required to consider or determine whether an action is necessary or appropriate in the public interest, the Commission shall also consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.

(g) CHURCH PLANS.—No church plan described in section 414(e) of the Internal Revenue Code of 1986, no person or entity eligible to establish and maintain such a plan under the Internal Revenue Code of 1986, no company or account that is excluded from the definition of an investment company under section 3(c)(14) of the Investment Company Act of 1940, and no trustee, director, officer or employee of or volunteer for such plan, company, account, person, or entity, acting within the scope of that person's employment or activities with respect to such plan, shall be deemed to be a "broker", "dealer", "municipal securities broker", "municipal securities dealer", "government securities broker", "government securities dealer", "clearing agency", or "transfer agent" for purposes of this title—

(1) solely because such plan, company, person, or entity buys, holds, sells, trades in, or transfers securities or acts as an intermediary in making payments in connection with trans-

actions in securities for its own account in its capacity as trustee or administrator of, or otherwise on behalf of, or for the account of, any church plan, company, or account that is excluded from the definition of an investment company under section 3(c)(14) of the Investment Company Act of 1940; and

(2) if no such person or entity receives a commission or other transaction-related sales compensation in connection with any activities conducted in reliance on the exemption provided by this subsection.

(h) LIMITED EXEMPTION FOR FUNDING PORTALS.—

(1) IN GENERAL.—The Commission shall, by rule, exempt, conditionally or unconditionally, a registered funding portal from the requirement to register as a broker or dealer under section 15(a)(1), provided that such funding portal—

(A) remains subject to the examination, enforcement, and other rulemaking authority of the Commission;

(B) is a member of a national securities association registered under section 15A; and

(C) is subject to such other requirements under this title as the Commission determines appropriate under such rule.

(2) NATIONAL SECURITIES ASSOCIATION MEMBERSHIP.—For purposes of sections 15(b)(8) and 15A, the term "broker or dealer" includes a funding portal and the term "registered broker or dealer" includes a registered funding portal, except to the extent that the Commission, by rule, determines otherwise, provided that a national securities association shall only examine for and enforce against a registered funding portal rules of such national securities association written specifically for registered funding portals.

* * * * * * *

SECURITIES AND EXCHANGE COMMISSION

SEC. 4. (a) There is hereby established a Securities and Exchange Commission (hereinafter referred to as the "Commission") to be composed of five commissioners to be appointed by the President by and with the advice and consent of the Senate. Not more than three of such commissioners shall be members of the same political party, and in making appointments members of different political parties shall be appointed alternately as nearly as may be practicable. No commissioner shall engage in any other business, vocation, or employment than that of serving as commissioner, nor shall any commissioner participate, directly or indirectly, in any stock-market operations or transactions of a character subject to regulation by the Commission pursuant to this title. Each commissioner shall hold office for a term of five years and until his successor is appointed and has qualified, except that he shall not so continue to serve beyond the expiration of the next session of Congress subsequent to the expiration of said fixed term of office, and except (1) any commissioner appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term, and (2) the terms of office of the commissioners first taking office after the enactment of this title shall expire as designated by the Presi-

dent at the time of nomination, one at the end of one year, one at the end of two years, one at the end of three years, one at the end of four years, and one at the end of five years, after the date of the enactment of this title.

(b) APPOINTMENT AND COMPENSATION OF STAFF AND LEASING AUTHORITY.—

(1) APPOINTMENT AND COMPENSATION.—The Commission shall appoint and compensate officers, attorneys, economists, examiners, and other employees in accordance with section 4802 of title 5, United States Code.

(2) REPORTING OF INFORMATION.—In establishing and adjusting schedules of compensation and benefits for officers, attorneys, economists, examiners, and other employees of the Commission under applicable provisions of law, the Commission shall inform the heads of the agencies referred to under section 1206 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 1833b) and Congress of such compensation and benefits and shall seek to maintain comparability with such agencies regarding compensation and benefits.

(3) LEASING AUTHORITY.—Nothwithstanding any other provision of law, the Commission is authorized to enter directly into leases for real property for office, meeting, storage, and such other space as is necessary to carry out its functions, and shall be exempt from any General Services Administration space management regulations or directives.

(c) Notwithstanding any other provision of law, in accordance with regulations which the Commission shall prescribe to prevent conflicts of interest, the Commission may accept payment and reimbursement, in cash or in kind, from non-Federal agencies, organizations, and individuals for travel, subsistence, and other necessary expenses incurred by Commission members and employees in attending meetings and conferences concerning the functions or activities of the Commission. Any payment or reimbursement accepted shall be credited to the appropriated funds of the Commission. The amount of travel, subsistence, and other necessary expenses for members and employees paid or reimbursed under this subsection may exceed per diem amounts established in official travel regulations, but the Commission may include in its regulations under this subsection a limitation on such amounts.

(d) Notwithstanding any other provision of law, former employers of participants in the Commission's professional fellows programs may pay such participants their actual expenses for relocation to Washington, District of Columbia, to facilitate their participation in such programs, and program participants may accept such payments.

(e) Notwithstanding any other provision of law, whenever any fee is required to be paid to the Commission pursuant to any provision of the securities laws or any other law, the Commission may provide by rule that such fee shall be paid in a manner other than in cash and the Commission may also specify the time that such fee shall be determined and paid relative to the filing of any statement or document with the Commission.

(f) REIMBURSEMENT OF EXPENSES FOR ASSISTING FOREIGN SECURITIES AUTHORITIES.—Notwithstanding any other provision of law,

the Commission may accept payment and reimbursement, in cash or in kind, from a foreign securities authority, or made on behalf of such authority, for necessary expenses incurred by the Commission, its members, and employees in carrying out any investigation pursuant to section 21(a)(2) of this title or in providing any other assistance to a foreign securities authority. Any payment or reimbursement accepted shall be considered a reimbursement to the appropriated funds of the Commission.

(g) OFFICE OF THE INVESTOR ADVOCATE.—

(1) OFFICE ESTABLISHED.—There is established within the Commission the Office of the Investor Advocate (in this subsection referred to as the "Office").

(2) INVESTOR ADVOCATE.—

(A) IN GENERAL.—The head of the Office shall be the Investor Advocate, who shall—

(i) report directly to the Chairman; and

(ii) be appointed by the Chairman, in consultation with the Commission, from among individuals having experience in advocating for the interests of investors in securities and investor protection issues, from the perspective of investors.

(B) COMPENSATION.—The annual rate of pay for the Investor Advocate shall be equal to the highest rate of annual pay for other senior executives who report to the Chairman of the Commission.

(C) LIMITATION ON SERVICE.—An individual who serves as the Investor Advocate may not be employed by the Commission—

(i) during the 2-year period ending on the date of appointment as Investor Advocate; or

(ii) during the 5-year period beginning on the date on which the person ceases to serve as the Investor Advocate.

(3) STAFF OF OFFICE.—The Investor Advocate, after consultation with the Chairman of the Commission, may retain or employ independent counsel, research staff, and service staff, as the Investor Advocate deems necessary to carry out the functions, powers, and duties of the Office.

(4) FUNCTIONS OF THE INVESTOR ADVOCATE.—The Investor Advocate shall—

(A) assist retail investors in resolving significant problems such investors may have with the Commission or with self-regulatory organizations;

(B) identify areas in which investors would benefit from changes in the regulations of the Commission or the rules of self-regulatory organizations;

(C) identify problems that investors have with financial service providers and investment products;

(D) analyze the potential impact on investors of—

(i) proposed regulations of the Commission; and

(ii) proposed rules of self-regulatory organizations registered under this title; and

(E) to the extent practicable, propose to the Commission changes in the regulations or orders of the Commission and to Congress any legislative, administrative, or per-

sonnel changes that may be appropriate to mitigate problems identified under this paragraph and to promote the interests of investors.

(5) ACCESS TO DOCUMENTS.—The Commission shall ensure that the Investor Advocate has full access to the documents of the Commission and any self-regulatory organization, as necessary to carry out the functions of the Office.

(6) ANNUAL REPORTS.—

(A) REPORT ON OBJECTIVES.—

(i) IN GENERAL.—Not later than June 30 of each year after 2010, the Investor Advocate shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report on the objectives of the Investor Advocate for the following fiscal year.

(ii) CONTENTS.—Each report required under clause (i) shall contain full and substantive analysis and explanation.

(B) REPORT ON ACTIVITIES.—

(i) IN GENERAL.—Not later than December 31 of each year after 2010, the Investor Advocate shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report on the activities of the Investor Advocate during the immediately preceding fiscal year.

(ii) CONTENTS.—Each report required under clause (i) shall include—

(I) appropriate statistical information and full and substantive analysis;

(II) information on steps that the Investor Advocate has taken during the reporting period to improve investor services and the responsiveness of the Commission and self-regulatory organizations to investor concerns;

(III) a summary of the most serious problems encountered by investors during the reporting period;

(IV) an inventory of the items described in subclause (III) that includes—

(aa) identification of any action taken by the Commission or the self-regulatory organization and the result of such action;

(bb) the length of time that each item has remained on such inventory; and

(cc) for items on which no action has been taken, the reasons for inaction, and an identification of any official who is responsible for such action;

(V) recommendations for such administrative and legislative actions as may be appropriate to resolve problems encountered by investors; and

(VI) any other information, as determined appropriate by the Investor Advocate.

(iii) INDEPENDENCE.—Each report required under this paragraph shall be provided directly to the Committees listed in clause (i) without any prior review or comment from the Commission, any commissioner, any other officer or employee of the Commission, or the Office of Management and Budget.

(iv) CONFIDENTIALITY.—No report required under clause (i) may contain confidential information.

(7) REGULATIONS.—The Commission shall, by regulation, establish procedures requiring a formal response to all recommendations submitted to the Commission by the Investor Advocate, not later than 3 months after the date of such submission.

(8) OMBUDSMAN.—

(A) APPOINTMENT.—Not later than 180 days after the date on which the first Investor Advocate is appointed under paragraph (2)(A)(i), the Investor Advocate shall appoint an Ombudsman, who shall report directly to the Investor Advocate.

(B) DUTIES.—The Ombudsman appointed under subparagraph (A) shall—

(i) act as a liaison between the Commission and any retail investor in resolving problems that retail investors may have with the Commission or with self-regulatory organizations;

(ii) review and make recommendations regarding policies and procedures to encourage persons to present questions to the Investor Advocate regarding compliance with the securities laws; and

(iii) establish safeguards to maintain the confidentiality of communications between the persons described in clause (ii) and the Ombudsman.

(C) LIMITATION.—In carrying out the duties of the Ombudsman under subparagraph (B), the Ombudsman shall utilize personnel of the Commission to the extent practicable. Nothing in this paragraph shall be construed as replacing, altering, or diminishing the activities of any ombudsman or similar office of any other agency.

(D) REPORT.—The Ombudsman shall submit a semiannual report to the Investor Advocate that describes the activities and evaluates the effectiveness of the Ombudsman during the preceding year. The Investor Advocate shall include the reports required under this section in the reports required to be submitted by the Inspector Advocate under paragraph (6).

(h) EXAMINERS.—

(1) DIVISION OF TRADING AND MARKETS.—The Division of Trading and Markets of the Commission, or any successor organizational unit, shall have a staff of examiners who shall—

(A) perform compliance inspections and examinations of entities under the jurisdiction of that Division; and

(B) report to the Director of that Division.

(2) DIVISION OF INVESTMENT MANAGEMENT.—The Division of Investment Management of the Commission, or any successor organizational unit, shall have a staff of examiners who shall—

(A) perform compliance inspections and examinations of entities under the jurisdiction of that Division; and

(B) report to the Director of that Division.

(i) SECURITIES AND EXCHANGE COMMISSION RESERVE FUND.—

(1) RESERVE FUND ESTABLISHED.—There is established in the Treasury of the United States a separate fund, to be known as the "Securities and Exchange Commission Reserve Fund" (referred to in this subsection as the "Reserve Fund").

(2) RESERVE FUND AMOUNTS.—

(A) IN GENERAL.—Except as provided in subparagraph (B), any registration fees collected by the Commission under section 6(b) of the Securities Act of 1933 (15 U.S.C. 77f(b)) or section 24(f) of the Investment Company Act of 1940 (15 U.S.C. 80a-24(f)) shall be deposited into the Reserve Fund.

(B) LIMITATIONS.—For any 1 fiscal year—

(i) the amount deposited in the Fund may not exceed $50,000,000; and

(ii) the balance in the Fund may not exceed $100,000,000.

(C) EXCESS FEES.—Any amounts in excess of the limitations described in subparagraph (B) that the Commission collects from registration fees under section 6(b) of the Securities Act of 1933 (15 U.S.C. 77f(b)) or section 24(f) of the Investment Company Act of 1940 (15 U.S.C. 80a-24(f)) shall be deposited in the General Fund of the Treasury of the United States and shall not be available for obligation by the Commission.

(3) USE OF AMOUNTS IN RESERVE FUND.—The Commission may obligate amounts in the Reserve Fund, not to exceed a total of $100,000,000 in any 1 fiscal year, as the Commission determines is necessary to carry out the functions of the Commission. Any amounts in the reserve fund shall remain available until expended. Not later than 10 days after the date on which the Commission obligates amounts under this paragraph, the Commission shall notify Congress of the date, amount, and purpose of the obligation.

(4) RULE OF CONSTRUCTION.—Amounts collected and deposited in the Reserve Fund shall not be construed to be Government funds or appropriated monies and shall not be subject to apportionment for the purpose of chapter 15 of title 31, United States Code, or under any other authority.

(j) OFFICE OF THE ADVOCATE FOR SMALL BUSINESS CAPITAL FORMATION.—

(1) OFFICE ESTABLISHED.—There is established within the Commission the Office of the Advocate for Small Business Capital Formation (hereafter in this subsection referred to as the "Office").

(2) ADVOCATE FOR SMALL BUSINESS CAPITAL FORMATION.—

(A) IN GENERAL.—The head of the Office shall be the Advocate for Small Business Capital Formation, who shall—

(i) report directly to the Commission; and

(ii) be appointed by the Commission, from among individuals having experience in advocating for the in-

terests of small businesses and encouraging small business capital formation.

(B) COMPENSATION.—The annual rate of pay for the Advocate for Small Business Capital Formation shall be equal to the highest rate of annual pay for other senior executives who report directly to the Commission.

(C) NO CURRENT EMPLOYEE OF THE COMMISSION.—An individual may not be appointed as the Advocate for Small Business Capital Formation if the individual is currently employed by the Commission.

(3) STAFF OF OFFICE.—The Advocate for Small Business Capital Formation, after consultation with the Commission, may retain or employ independent counsel, research staff, and service staff, as the Advocate for Small Business Capital Formation determines to be necessary to carry out the functions of the Office.

(4) FUNCTIONS OF THE ADVOCATE FOR SMALL BUSINESS CAPITAL FORMATION.—The Advocate for Small Business Capital Formation shall—

(A) assist small businesses and small business investors in resolving significant problems such businesses and investors may have with the Commission or with self-regulatory organizations;

(B) identify areas in which small businesses and small business investors would benefit from changes in the regulations of the Commission or the rules of self-regulatory organizations;

(C) identify problems that small businesses have with securing access to capital, including any unique challenges to minority-owned small businesses, women-owned small businesses, and small businesses affected by hurricanes or other natural disasters;

(D) analyze the potential impact on small businesses and small business investors of—

(i) proposed regulations of the Commission that are likely to have a significant economic impact on small businesses and small business capital formation; and

(ii) proposed rules that are likely to have a significant economic impact on small businesses and small business capital formation of self-regulatory organizations registered under this title;

(E) conduct outreach to small businesses and small business investors, including through regional roundtables, in order to solicit views on relevant capital formation issues;

(F) to the extent practicable, propose to the Commission changes in the regulations or orders of the Commission and to Congress any legislative, administrative, or personnel changes that may be appropriate to mitigate problems identified under this paragraph and to promote the interests of small businesses and small business investors;

(G) consult with the Investor Advocate on proposed recommendations made under subparagraph (F); and

(H) advise the Investor Advocate on issues related to small businesses and small business investors.

(5) ACCESS TO DOCUMENTS.—The Commission shall ensure that the Advocate for Small Business Capital Formation has full access to the documents and information of the Commission and any self-regulatory organization, as necessary to carry out the functions of the Office.

(6) ANNUAL REPORT ON ACTIVITIES.—

(A) IN GENERAL.—Not later than December 31 of each year after 2015, the Advocate for Small Business Capital Formation shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report on the activities of the Advocate for Small Business Capital Formation during the immediately preceding fiscal year.

(B) CONTENTS.—Each report required under subparagraph (A) shall include—

(i) appropriate statistical information and full and substantive analysis;

(ii) information on steps that the Advocate for Small Business Capital Formation has taken during the reporting period to improve small business services and the responsiveness of the Commission and self-regulatory organizations to small business and small business investor concerns;

(iii) a summary of the most serious issues encountered by small businesses and small business investors, including any unique issues encountered by minority-owned small businesses, women-owned small businesses, and small businesses affected by hurricanes or other natural disasters and their investors, during the reporting period;

(iv) an inventory of the items summarized under clause (iii) (including items summarized under such clause for any prior reporting period on which no action has been taken or that have not been resolved to the satisfaction of the Advocate for Small Business Capital Formation as of the beginning of the reporting period covered by the report) that includes—

(I) identification of any action taken by the Commission or the self-regulatory organization and the result of such action;

(II) the length of time that each item has remained on such inventory; and

(III) for items on which no action has been taken, the reasons for inaction, and an identification of any official who is responsible for such action;

(v) recommendations for such changes to the regulations, guidance and orders of the Commission and such legislative actions as may be appropriate to resolve problems with the Commission and self-regulatory organizations encountered by small businesses and small business investors and to encourage small business capital formation; and

(vi) any other information, as determined appropriate by the Advocate for Small Business Capital Formation.

(C) CONFIDENTIALITY.—No report required by subparagraph (A) may contain confidential information.

(D) INDEPENDENCE.—Each report required under subparagraph (A) shall be provided directly to the committees of Congress listed in such subparagraph without any prior review or comment from the Commission, any commissioner, any other officer or employee of the Commission, or the Office of Management and Budget.

(7) REGULATIONS.—The Commission shall establish procedures requiring a formal response to all recommendations submitted to the Commission by the Advocate for Small Business Capital Formation, not later than 3 months after the date of such submission.

(8) GOVERNMENT-BUSINESS FORUM ON SMALL BUSINESS CAPITAL FORMATION.—The Advocate for Small Business Capital Formation shall be responsible for planning, organizing, and executing the annual Government-Business Forum on Small Business Capital Formation described in section 503 of the Small Business Investment Incentive Act of 1980 (15 U.S.C. 80c–1).

(9) RULE OF CONSTRUCTION.—Nothing in this subsection may be construed as replacing or reducing the responsibilities of the Investor Advocate with respect to small business investors.

(10) STUDY OF CERTAIN ISSUES WITH RESPECT TO SHAREHOLDER PROPOSALS, PROXY ADVISORY FIRMS, AND THE PROXY PROCESS.—

(A) IN GENERAL.—Not later than 180 days after the date of the enactment of this paragraph, and every 5 years thereafter, the Commission shall conduct a comprehensive study on shareholder proposals, proxy advisory firms, and the proxy process.

(B) SCOPE OF STUDY.—The studies required under subparagraph (A) shall cover—

(i) the previous 10 years, with respect to the initial study; and

(ii) the previous 5 years, with respect to each other study.

(C) CONTENTS.—Each study required under subparagraph (A) shall address the following issues:

(i) The financial and other incentives and obligations of all groups involved in the proxy process.

(ii) A consideration of whether financial and other incentives have created a process that no longer serves the economic interests of long-term retail investors.

(iii) An analysis of whether regulations and financial incentives have created and protected the outsized influence of proxy advisors or a duopoly in proxy advice, and if so, what are the benefits and costs of that outsized influence or duopoly.

(iv) The costs incurred by issuers in responding to politically-, environmentally-, or socially-motivated shareholder proposals.

(v) An assessment, including a cost-benefit analysis, of the adequacy of the current submission thresholds in Rule 14a-8 (17 CFR 240.14a-8) to ensure that shareholder proponents have demonstrated a meaningful economic stake in a company, which is appropriate to effectively serve markets and shareholders at large.

(vi) An examination of the extent to which the politicization of the shareholder proposal process is increasing the operating costs of public companies.

(vii) An analysis of the impact that shareholder proposals have on discouraging private companies from going public.

(viii) An evaluation of the risk that shareholder proposals may contribute to the balkanization of the U.S. economy over time.

(ix) A thorough assessment of the economic analysis, if any, conducted by proxy advisory firms and institutional shareholders when recommending or voting in favor of shareholder proposals.

(x) A review of the extent to which institutional investors, who owe fiduciary duties, rely on proxy advisory firm recommendations.

(xi) An assessment of whether, in light of their significant influence on corporate actions and vote outcomes, proxy advisors are subject to sufficient and effective regulation to ensure that their policies and recommendations are accurate, free of conflicts, and benefit the economic best interest of shareholders at large.

(D) REPORT.—At the completion of each study required under subparagraph (A) the Commission shall issue a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives that includes the results of the study.

(k) OPEN DATA PUBLICATION.—All public data assets published by the Commission under the securities laws and the Dodd-Frank Wall Street Reform and Consumer Protection Act (Public Law 111–203; 124 Stat. 1376) shall be—

(1) made available as an open Government data asset (as defined in section 3502 of title 44, United States Code);

(2) freely available for download;

(3) rendered in a human-readable format; and

(4) accessible via application programming interface where appropriate.

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PERIODICAL AND OTHER REPORTS

SEC. 13. (a) Every issuer of a security registered pursuant to section 12 of this title shall file with the Commission, in accordance with such rules and regulations as the Commission may prescribe as necessary or appropriate for the proper protection of investors and to insure fair dealing in the security—

(1) such information and documents (and such copies thereof) as the Commission shall require to keep reasonably current

the information and documents required to be included in or filed with an application or registration statement filed pursuant to section 12, except that the Commission may not require the filing of any material contract wholly executed before July 1, 1962.

(2) such annual reports (and such copies thereof), certified if required by the rules and regulations of the Commission by independent public accountants, and such quarterly reports (and such copies thereof), as the Commission may prescribe.

Every issuer of a security registered on a national securities exchange shall also file a duplicate original of such information, documents, and reports with the exchange. In any registration statement, periodic report, or other reports to be filed with the Commission, an emerging growth company need not present selected financial data in accordance with section 229.301 of title 17, Code of Federal Regulations, for any period prior to the earliest audited period presented in connection with its first registration statement that became effective under this Act or the Securities Act of 1933 and, with respect to any such statement or reports, an emerging growth company may not be required to comply with any new or revised financial accounting standard until such date that a company that is not an issuer (as defined under section 2(a) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7201(a))) is required to comply with such new or revised accounting standard, if such standard applies to companies that are not issuers.

(b)(1) The Commission may prescribe, in regard to reports made pursuant to this title, the form or forms in which the required information shall be set forth, the items or details to be shown in the balance sheet and the earnings statement, and the methods to be followed in the preparation of reports, in the appraisal or valuation of assets and liabilities, in the determination of depreciation and depletion, in the differentiation of recurring and nonrecurring income, in the differentiation of investment and operating income, and in the preparation, where the Commission deems it necessary or desirable, of separate and/or consolidated balance sheets or income accounts of any person directly or indirectly controlling or controlled by the issuer, or any person under direct or indirect common control with the issuer; but in the case of the reports of any person whose methods of accounting are prescribed under the provisions of any law of the United States, or any rule or regulation thereunder, the rules and regulations of the Commission with respect to reports shall not be inconsistent with the requirements imposed by such law or rule or regulation in respect of the same subject matter (except that such rules and regulations of the Commission may be inconsistent with such requirements to the extent that the Commission determines that the public interest or the protection of investors so requires).

(2) Every issuer which has a class of securities registered pursuant to section 12 of this title and every issuer which is required to file reports pursuant to section 15(d) of this title shall—

(A) make and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the issuer;

(B) devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that—

(i) transactions are executed in accordance with management's general or specific authorization;

(ii) transactions are recorded as necessary (I) to permit preparation of financial statements in conformity with generally accepted accounting principles or any other criteria applicable to such statements, and (II) to maintain accountability for assets;

(iii) access to assets is permitted only in accordance with management's general or specific authorization; and

(iv) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences; and

(C) notwithstanding any other provision of law, pay the allocable share of such issuer of a reasonable annual accounting support fee or fees, determined in accordance with section 109 of the Sarbanes-Oxley Act of 2002.

(3)(A) With respect to matters concerning the national security of the United States, no duty or liability under paragraph (2) of this subsection shall be imposed upon any person acting in cooperation with the head of any Federal department or agency responsible for such matters if such act in cooperation with such head of a department or agency was done upon the specific, written directive of the head of such department or agency pursuant to Presidential authority to issue such directives. Each directive issued under this paragraph shall set forth the specific facts and circumstances with respect to which the provisions of this paragraph are to be invoked. Each such directive shall, unless renewed in writing, expire one year after the date of issuance.

(B) Each head of a Federal department or agency of the United States who issues a directive pursuant to this paragraph shall maintain a complete file of all such directives and shall, on October 1 of each year, transmit a summary of matters covered by such directives in force at any time during the previous year to the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate.

(4) No criminal liability shall be imposed for failing to comply with the requirements of paragraph (2) of this subsection except as provided in paragraph (5) of this subsection.

(5) No person shall knowingly circumvent or knowingly fail to implement a system of internal accounting controls or knowingly falsify any book, record, or account described in paragraph (2).

(6) Where an issuer which has a class of securities registered pursuant to section 12 of this title or an issuer which is required to file reports pursuant to section 15(d) of this title holds 50 per centum or less of the voting power with respect to a domestic or foreign firm, the provisions of paragraph (2) require only that the issuer proceed in good faith to use its influence, to the extent reasonable under the issuer's circumstances, to cause such domestic or foreign firm to devise and maintain a system of internal accounting controls consistent with paragraph (2). Such circumstances include the relative degree of the issuer's ownership of the domestic or foreign firm and the laws and practices governing the business operations of the country in which such firm is located. An issuer which demonstrates good faith efforts to use such influence shall be con-

clusively presumed to have complied with the requirements of paragraph (2).

(7) For the purpose of paragraph (2) of this subsection, the terms "reasonable assurances" and "reasonable detail" mean such level of detail and degree of assurance as would satisfy prudent officials in the conduct of their own affairs.

(c) If in the judgment of the Commission any report required under subsection (a) is inapplicable to any specified class or classes of issuers, the Commission shall require in lieu thereof the submission of such reports of comparable character as it may deem applicable to such class or classes of issuers.

(d)(1) Any person who, after acquiring directly or indirectly the beneficial ownership of any equity security of a class which is registered pursuant to section 12 of this title, or any equity security of an insurance company which would have been required to be so registered except for the exemption contained in section 12(g)(2)(G) of this title, or any equity security issued by a closed-end investment company registered under the Investment Company Act of 1940 or any equity security issued by a Native Corporation pursuant to section 37(d)(6) of the Alaska Native Claims Settlement Act, or otherwise becomes or is deemed to become a beneficial owner of any of the foregoing upon the purchase or sale of a security-based swap that the Commission may define by rule, and is directly or indirectly the beneficial owner of more than 5 per centum of such class shall, within ten days after such acquisition or within such shorter time as the Commission may establish by rule, file with the Commission, a statement containing such of the following information, and such additional information, as the Commission may by rules and regulations, prescribe as necessary or appropriate in the public interest or for the protection of investors—

(A) the background, and identity, residence, and citizenship of, and the nature of such beneficial ownership by, such person and all other persons by whom or on whose behalf the purchases have been or are to be effected;

(B) the source and amount of the funds or other consideration used or to be used in making the purchases, and if any part of the purchase price is represented or is to be represented by funds or other consideration borrowed or otherwise obtained for the purpose of acquiring, holding, or trading such security, a description of the transaction and the names of the parties thereto, except that where a source of funds is a loan made in the ordinary course of business by a bank, as defined in section 3(a)(6) of this title, if the person filing such statement so requests, the name of the bank shall not be made available to the public;

(C) if the purpose of the purchases or prospective purchases is to acquire control of the business of the issuer of the securities any plans or proposals which such persons may have to liquidate such issuer, to sell its assets to or merge it with any other persons, or to make any other major change in its business or corporate structure;

(D) the number of shares of such security which are beneficially owned, and the number of shares concerning which there is a right to acquire, directly or indirectly, by (i) such person, and (ii) by each associate of such person, giving the

background, identity, residence, and citizenship of each such associate; and

(E) information as to any contracts, arrangements, or understandings with any person with respect to any securities of the issuer, including but not limited to transfer of any of the securities, joint ventures, loan or option arrangements, puts or calls, guaranties of loans, guaranties against loss or guaranties of profits, division of losses or profits, or the giving or withholding of proxies, naming the persons with whom such contracts, arrangements, or understandings have been entered into, and giving the details thereof.

(2) If any material change occurs in the facts set forth in the statement filed with the Commission, an amendment shall be filed with the Commission, in accordance with such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.

(3) When two or more persons act as a partnership, limited partnership, syndicate, or other group for the purpose of acquiring, holding, or disposing of securities of an issuer, such syndicate or group shall be deemed a "person" for the purposes of this subsection.

(4) In determining, for purposes of this subsection, any percentage of a class of any security, such class shall be deemed to consist of the amount of the outstanding securities of such class, exclusive of any securities of such class held by or for the account of the issuer or a subsidiary of the issuer.

(5) The Commission, by rule or regulation or by order, may permit any person to file in lieu of the statement required by paragraph (1) of this subsection or the rules and regulations thereunder, a notice stating the name of such person, the number of shares of any equity securities subject to paragraph (1) which are owned by him, the date of their acquisition and such other information as the Commission may specify, if it appears to the Commission that such securities were acquired by such person in the ordinary course of his business and were not acquired for the purpose of and do not have the effect of changing or influencing the control of the issuer nor in connection with or as a participant in any transaction having such purpose or effect.

(6) The provisions of this subsection shall not apply to—

(A) any acquisition or offer to acquire securities made or proposed to be made by means of a registration statement under the Securities Act of 1933;

(B) any acquisition of the beneficial ownership of a security which, together with all other acquisitions by the same person of securities of the same class during the preceding twelve months, does not exceed 2 per centum of that class;

(C) any acquisition of an equity security by the issuer of such security;

(D) any acquisition or proposed acquisition of a security which the Commission, by rules or regulations or by order, shall exempt from the provisions of this subsection as not entered into for the purpose of, and not having the effect of, changing or influencing the control of the issuer or otherwise as not comprehended within the purposes of this subsection.

(e)(1) It shall be unlawful for an issuer which has a class of equity securities registered pursuant to section 12 of this title, or which is a closed-end investment company registered under the Investment Company Act of 1940, to purchase any equity security issued by it if such purchase is in contravention of such rules and regulations as the Commission, in the public interest or for the protection of investors, may adopt (A) to define acts and practices which are fraudulent, deceptive, or manipulative, and (B) to prescribe means reasonably designed to prevent such acts and practices. Such rules and regulations may require such issuer to provide holders of equity securities of such class with such information relating to the reasons for such purchase, the source of funds, the number of shares to be purchased, the price to be paid for such securities, the method of purchase, and such additional information, as the Commission deems necessary or appropriate in the public interest or for the protection of investors, or which the Commission deems to be material to a determination whether such security should be sold.

(2) For the purpose of this subsection, a purchase by or for the issuer or any person controlling, controlled by, or under common control with the issuer, or a purchase subject to control of the issuer or any such person, shall be deemed to be a purchase by the issuer. The Commission shall have power to make rules and regulations implementing this paragraph in the public interest and for the protection of investors, including exemptive rules and regulations covering situations in which the Commission deems it unnecessary or inappropriate that a purchase of the type described in this paragraph shall be deemed to be a purchase by the issuer for purposes of some or all of the provisions of paragraph (1) of this subsection.

(3) At the time of filing such statement as the Commission may require by rule pursuant to paragraph (1) of this subsection, the person making the filing shall pay to the Commission a fee at a rate that, subject to paragraph (4), is equal to $92 per $1,000,000 of the value of securities proposed to be purchased. The fee shall be reduced with respect to securities in an amount equal to any fee paid with respect to any securities issued in connection with the proposed transaction under section 6(b) of the Securities Act of 1933, or the fee paid under that section shall be reduced in an amount equal to the fee paid to the Commission in connection with such transaction under this paragraph.

(4) ANNUAL ADJUSTMENT.—For each fiscal year, the Commission shall by order adjust the rate required by paragraph (3) for such fiscal year to a rate that is equal to the rate (expressed in dollars per million) that is applicable under section 6(b) of the Securities Act of 1933 for such fiscal year.

(5) FEE COLLECTIONS.—Fees collected pursuant to this subsection for fiscal year 2012 and each fiscal year thereafter shall be deposited and credited as general revenue of the Treasury and shall not be available for obligation.

(6) EFFECTIVE DATE; PUBLICATION.—In exercising its authority under this subsection, the Commission shall not be required to comply with the provisions of section 553 of title 5, United States Code. An adjusted rate prescribed under paragraph (4)

shall be published and take effect in accordance with section 6(b) of the Securities Act of 1933 (15 U.S.C. 77f(b)).

(7) PRO RATA APPLICATION.—The rates per $1,000,000 required by this subsection shall be applied pro rata to amounts and balances of less than $1,000,000.

(f)(1) Every institutional investment manager which uses the mails, or any means or instrumentality of interstate commerce in the course of its business as an institutional investment manager and which exercises investment discretion with respect to accounts holding equity securities of a class described in section 13(d)(1) of this title having an aggregate fair market value on the last trading day in any of the preceding twelve months of at least $100,000,000 or such lesser amount (but in no case less than $10,000,000) as the Commission, by rule, may determine, shall file reports with the Commission in such form, for such periods, and at such times after the end of such periods as the Commission, by rule, may prescribe, but in no event shall such reports be filed for periods longer than one year or shorter than one quarter. Such reports shall include for each such equity security held on the last day of the reporting period by accounts (in aggregate or by type as the Commission, by rule, may prescribe) with respect to which the institutional investment manager exercises investment discretion (other than securities held in amounts which the Commission, by rule, determines to be insignificant for purposes of this subsection), the name of the issuer and the title, class, CUSIP number, number of shares or principal amount, and aggregate fair market value of each such security. Such reports may also include for accounts (in aggregate or by type) with respect to which the institutional investment manager exercises investment discretion such of the following information as the Commission, by rule, prescribes—

(A) the name of the issuer and the title, class, CUSIP number, number of shares or principal amount, and aggregate fair market value or cost or amortized cost of each other security (other than an exempted security) held on the last day of the reporting period by such accounts;

(B) the aggregate fair market value or cost or amortized cost of exempted securities (in aggregate or by class) held on the last day of the reporting period by such accounts;

(C) the number of shares of each equity security of a class described in section 13(d)(1) of this title held on the last day of the reporting period by such accounts with respect to which the institutional investment manager possesses sole or shared authority to exercise the voting rights evidenced by such securities;

(D) the aggregate purchases and aggregate sales during the reporting period of each security (other than an exempted security) effected by or for such accounts; and

(E) with respect to any transaction or series of transactions having a market value of at least $500,000 or such other amount as the Commission, by rule, may determine, effected during the reporting period by or for such accounts in any equity security of a class described in section 13(d)(1) of this title—

(i) the name of the issuer and the title, class, and CUSIP number of the security;

(ii) the number of shares or principal amount of the security involved in the transaction;

(iii) whether the transaction was a purchase or sale;

(iv) the per share price or prices at which the transaction was effected;

(v) the date or dates of the transaction;

(vi) the date or dates of the settlement of the transaction;

(vii) the broker or dealer through whom the transaction was effected;

(viii) the market or markets in which the transaction was effected; and

(ix) such other related information as the Commission, by rule, may prescribe.

(2) The Commission shall prescribe rules providing for the public disclosure of the name of the issuer and the title, class, CUSIP number, aggregate amount of the number of short sales of each security, and any additional information determined by the Commission following the end of the reporting period. At a minimum, such public disclosure shall occur every month.

(3) The Commission, by rule or order, may exempt, conditionally or unconditionally, any institutional investment manager or security or any class of institutional investment managers or securities from any or all of the provisions of this subsection or the rules thereunder.

(4) The Commission shall make available to the public for a reasonable fee a list of all equity securities of a class described in section 13(d)(1) of this title, updated no less frequently than reports are required to be filed pursuant to paragraph (1) of this subsection. The Commission shall tabulate the information contained in any report filed pursuant to this subsection in a manner which will, in the view of the Commission, maximize the usefulness of the information to other Federal and State authorities and the public. Promptly after the filing of any such report, the Commission shall make the information contained therein conveniently available to the public for a reasonable fee in such form as the Commission, by rule, may prescribe, except that the Commission, as it determines to be necessary or appropriate in the public interest or for the protection of investors, may delay or prevent public disclosure of any such information in accordance with section 552 of title 5, United States Code. Notwithstanding the preceding sentence, any such information identifying the securities held by the account of a natural person or an estate or trust (other than a business trust or investment company) shall not be disclosed to the public.

(5) In exercising its authority under this subsection, the Commission shall determine (and so state) that its action is necessary or appropriate in the public interest and for the protection of investors or to maintain fair and orderly markets or, in granting an exemption, that its action is consistent with the protection of investors and the purposes of this subsection. In exercising such authority the Commission shall take such steps as are within its power, including consulting with the Comptroller General of the United States, the Director of the Office of Management and Budget, the appropriate regulatory agencies, Federal and State authorities which, directly or indirectly, require reports from institutional in-

vestment managers of information substantially similar to that called for by this subsection, national securities exchanges, and registered securities associations, (A) to achieve uniform, centralized reporting of information concerning the securities holdings of and transactions by or for accounts with respect to which institutional investment managers exercise investment discretion, and (B) consistently with the objective set forth in the preceding subparagraph, to avoid unnecessarily duplicative reporting by, and minimize the compliance burden on, institutional investment managers. Federal authorities which, directly or indirectly, require reports from institutional investment managers of information substantially similar to that called for by this subsection shall cooperate with the Commission in the performance of its responsibilities under the preceding sentence. An institutional investment manager which is a bank, the deposits of which are insured in accordance with the Federal Deposit Insurance Act, shall file with the appropriate regulatory agency a copy of every report filed with the Commission pursuant to this subsection.

(6)(A) For purposes of this subsection the term "institutional investment manager" includes any person, other than a natural person, investing in or buying and selling securities for its own account, and any person exercising investment discretion with respect to the account of any other person.

(B) The Commission shall adopt such rules as it deems necessary or appropriate to prevent duplicative reporting pursuant to this subsection by two or more institutional investment managers exercising investment discretion with respect to the same amount.

(7) DISCLOSURES BY INSTITUTIONAL INVESTMENT MANAGERS IN CONNECTION WITH PROXY ADVISORY FIRMS.—

(A) IN GENERAL.—Every institutional investment manager which uses the mails, or any means or instrumentality of interstate commerce in the course of its business as an institutional investment manager, which engages a proxy advisory firm, and which exercises voting power with respect to accounts holding equity securities of a class described in subsection (d)(1) or otherwise becomes or is deemed to become a beneficial owner of any security of a class described in subsection (d)(1) upon the purchase or sale of a security-based swap that the Commission may define by rule, shall file an annual report with the Commission containing—

(i) an explanation of how the institutional investment manager voted with respect to each shareholder proposal;

(ii) the percentage of votes cast on shareholder proposals that were consistent with proxy advisory firm recommendations, for each proxy advisory firm retained by the institutional investment manager;

(iii) an explanation of—

(I) how the institutional investment manager took into consideration proxy advisory firm recommendations in making voting decisions, including the degree to which the institutional investment manager used those recommendations in making voting decisions;

(II) how often the institutional investment manager voted consistent with a recommendation made by a proxy advisory firm, expressed as a percentage;

(III) how such votes are reconciled with the fiduciary duty of the institutional investment manager to vote in the best economic interests of shareholders;

(IV) how frequently votes were changed when an error occurred or due to new information from issuers; and

(V) the degree to which investment professionals of the institutional investment manager were involved in proxy voting decisions; and

(iv) a certification that the voting decisions of the institutional investment manager were based solely on the best economic interest of the shareholders on behalf of whom the institutional investment manager holds shares.

(B) REQUIREMENTS FOR LARGER INSTITUTIONAL INVESTMENT MANAGERS.—Every institutional investment manager described in subparagraph (A) that has assets under management with an aggregate fair market value on the last trading day in any of the preceding twelve months of at least $100,000,000,000 shall—

(i) in any materials provided to customers and related to customers voting their shares, clarify that shareholders are not required to vote on every proposal;

(ii) with respect to each shareholder proposal for which the institutional investment manager votes (other than votes consistent with the recommendation of a board of directors composed of a majority of independent directors) perform an economic analysis before making such vote, to determine that the vote is in the best economic interest of the shareholders on behalf of whom the institutional investment manager holds shares; and

(iii) include each economic analysis required under clause (ii) in the annual report required under subparagraph (A).

(C) BEST ECONOMIC INTEREST DEFINED.—In this paragraph, the term "best economic interest" means decisions that seek to maximize investment returns over a time horizon consistent with the investment objectives and risk management profile of the fund in which shareholders are invested.

(g)(1) Any person who is directly or indirectly the beneficial owner of more than 5 per centum of any security of a class described in subsection (d)(1) of this section or otherwise becomes or is deemed to become a beneficial owner of any security of a class described in subsection (d)(1) upon the purchase or sale of a security-based swap that the Commission may define by ruleshall file with the Commission a statement setting forth, in such form and at such time as the Commission may, by rule, prescribe—

(A) such person's identity, residence, and citizenship; and

(B) the number and description of the shares in which such person has an interest and the nature of such interest.

(2) If any material change occurs in the facts set forth in the statement filed with the Commission, an amendment shall be filed with the Commission, in accordance with such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.

(3) When two or more persons act as a partnership, limited partnership, syndicate, or other group for the purpose of acquiring, holding, or disposing of securities of an issuer, such syndicate or group shall be deemed a "person" for the purposes of this subsection.

(4) In determining, for purposes of this subsection, any percentage of a class of any security, such class shall be deemed to consist of the amount of the outstanding securities of such class, exclusive of any securities of such class held by or for the account of the issuer or a subsidiary of the issuer.

(5) In exercising its authority under this subsection, the Commission shall take such steps as it deems necessary or appropriate in the public interest or for the protection of investors (A) to achieve centralized reporting of information regarding ownership, (B) to avoid unnecessarily duplicative reporting by and minimize the compliance burden on persons required to report, and (C) to tabulate and promptly make available the information contained in any report filed pursuant to this subsection in a manner which will, in the view of the Commission, maximize the usefulness of the information to other Federal and State agencies and the public.

(6) The Commission may, by rule or order, exempt, in whole or in part, any person or class of persons from any or all of the reporting requirements of this subsection as it deems necessary or appropriate in the public interest or for the protection of investors.

(h) LARGE TRADER REPORTING.—

(1) IDENTIFICATION REQUIREMENTS FOR LARGE TRADERS.—For the purpose of monitoring the impact on the securities markets of securities transactions involving a substantial volume or a large fair market value or exercise value and for the purpose of otherwise assisting the Commission in the enforcement of this title, each large trader shall—

(A) provide such information to the Commission as the Commission may by rule or regulation prescribe as necessary or appropriate, identifying such large trader and all accounts in or through which such large trader effects such transactions; and

(B) identify, in accordance with such rules or regulations as the Commission may prescribe as necessary or appropriate, to any registered broker or dealer by or through whom such large trader directly or indirectly effects securities transactions, such large trader and all accounts directly or indirectly maintained with such broker or dealer by such large trader in or through which such transactions are effected.

(2) RECORDKEEPING AND REPORTING REQUIREMENTS FOR BROKERS AND DEALERS.—Every registered broker or dealer shall make and keep for prescribed periods such records as the Commission by rule or regulation prescribes as necessary or appro-

priate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this title, with respect to securities transactions that equal or exceed the reporting activity level effected directly or indirectly by or through such registered broker or dealer of or for any person that such broker or dealer knows is a large trader, or any person that such broker or dealer has reason to know is a large trader on the basis of transactions in securities effected by or through such broker or dealer. Such records shall be available for reporting to the Commission, or any self-regulatory organization that the Commission shall designate to receive such reports, on the morning of the day following the day the transactions were effected, and shall be reported to the Commission or a self-regulatory organization designated by the Commission immediately upon request by the Commission or such a self-regulatory organization. Such records and reports shall be in a format and transmitted in a manner prescribed by the Commission (including, but not limited to, machine readable form).

(3) AGGREGATION RULES.—The Commission may prescribe rules or regulations governing the manner in which transactions and accounts shall be aggregated for the purpose of this subsection, including aggregation on the basis of common ownership or control.

(4) EXAMINATION OF BROKER AND DEALER RECORDS.—All records required to be made and kept by registered brokers and dealers pursuant to this subsection with respect to transactions effected by large traders are subject at any time, or from time to time, to such reasonable periodic, special, or other examinations by representatives of the Commission as the Commission deems necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this title.

(5) FACTORS TO BE CONSIDERED IN COMMISSION ACTIONS.—In exercising its authority under this subsection, the Commission shall take into account—

(A) existing reporting systems;

(B) the costs associated with maintaining information with respect to transactions effected by large traders and reporting such information to the Commission or self-regulatory organizations; and

(C) the relationship between the United States and international securities markets.

(6) EXEMPTIONS.—The Commission, by rule, regulation, or order, consistent with the purposes of this title, may exempt any person or class of persons or any transaction or class of transactions, either conditionally or upon specified terms and conditions or for stated periods, from the operation of this subsection, and the rules and regulations thereunder.

(7) AUTHORITY OF COMMISSION TO LIMIT DISCLOSURE OF INFORMATION.—Notwithstanding any other provision of law, the Commission shall not be compelled to disclose any information required to be kept or reported under this subsection. Nothing in this subsection shall authorize the Commission to withhold information from Congress, or prevent the Commission from complying with a request for information from any other Fed-

eral department or agency requesting information for purposes within the scope of its jurisdiction, or complying with an order of a court of the United States in an action brought by the United States or the Commission. For purposes of section 552 of title 5, United States Code, this subsection shall be considered a statute described in subsection (b)(3)(B) of such section 552.

(8) DEFINITIONS.—For purposes of this subsection—

(A) the term "large trader" means every person who, for his own account or an account for which he exercises investment discretion, effects transactions for the purchase or sale of any publicly traded security or securities by use of any means or instrumentality of interstate commerce or of the mails, or of any facility of a national securities exchange, directly or indirectly by or through a registered broker or dealer in an aggregate amount equal to or in excess of the identifying activity level;

(B) the term "publicly traded security" means any equity security (including an option on individual equity securities, and an option on a group or index of such securities) listed, or admitted to unlisted trading privileges, on a national securities exchange, or quoted in an automated interdealer quotation system;

(C) the term "identifying activity level" means transactions in publicly traded securities at or above a level of volume, fair market value, or exercise value as shall be fixed from time to time by the Commission by rule or regulation, specifying the time interval during which such transactions shall be aggregated;

(D) the term "reporting activity level" means transactions in publicly traded securities at or above a level of volume, fair market value, or exercise value as shall be fixed from time to time by the Commission by rule, regulation, or order, specifying the time interval during which such transactions shall be aggregated; and

(E) the term "person" has the meaning given in section 3(a)(9) of this title and also includes two or more persons acting as a partnership, limited partnership, syndicate, or other group, but does not include a foreign central bank.

(i) ACCURACY OF FINANCIAL REPORTS.—Each financial report that contains financial statements, and that is required to be prepared in accordance with (or reconciled to) generally accepted accounting principles under this title and filed with the Commission shall reflect all material correcting adjustments that have been identified by a registered public accounting firm in accordance with generally accepted accounting principles and the rules and regulations of the Commission.

(j) OFF-BALANCE SHEET TRANSACTIONS.—Not later than 180 days after the date of enactment of the Sarbanes-Oxley Act of 2002, the Commission shall issue final rules providing that each annual and quarterly financial report required to be filed with the Commission shall disclose all material off-balance sheet transactions, arrangements, obligations (including contingent obligations), and other relationships of the issuer with unconsolidated entities or other persons, that may have a material current or future effect on financial

condition, changes in financial condition, results of operations, liquidity, capital expenditures, capital resources, or significant components of revenues or expenses.

(k) PROHIBITION ON PERSONAL LOANS TO EXECUTIVES.—

(1) IN GENERAL.—It shall be unlawful for any issuer (as defined in section 2 of the Sarbanes-Oxley Act of 2002), directly or indirectly, including through any subsidiary, to extend or maintain credit, to arrange for the extension of credit, or to renew an extension of credit, in the form of a personal loan to or for any director or executive officer (or equivalent thereof) of that issuer. An extension of credit maintained by the issuer on the date of enactment of this subsection shall not be subject to the provisions of this subsection, provided that there is no material modification to any term of any such extension of credit or any renewal of any such extension of credit on or after that date of enactment.

(2) LIMITATION.—Paragraph (1) does not preclude any home improvement and manufactured home loans (as that term is defined in section 5 of the Home Owners' Loan Act (12 U.S.C. 1464)), consumer credit (as defined in section 103 of the Truth in Lending Act (15 U.S.C. 1602)), or any extension of credit under an open end credit plan (as defined in section 103 of the Truth in Lending Act (15 U.S.C. 1602)), or a charge card (as defined in section 127(c)(4)(e) of the Truth in Lending Act (15 U.S.C. 1637(c)(4)(e)), or any extension of credit by a broker or dealer registered under section 15 of this title to an employee of that broker or dealer to buy, trade, or carry securities, that is permitted under rules or regulations of the Board of Governors of the Federal Reserve System pursuant to section 7 of this title (other than an extension of credit that would be used to purchase the stock of that issuer), that is—

(A) made or provided in the ordinary course of the consumer credit business of such issuer;

(B) of a type that is generally made available by such issuer to the public; and

(C) made by such issuer on market terms, or terms that are no more favorable than those offered by the issuer to the general public for such extensions of credit.

(3) RULE OF CONSTRUCTION FOR CERTAIN LOANS.—Paragraph (1) does not apply to any loan made or maintained by an insured depository institution (as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813)), if the loan is subject to the insider lending restrictions of section 22(h) of the Federal Reserve Act (12 U.S.C. 375b).

(l) REAL TIME ISSUER DISCLOSURES.—Each issuer reporting under section 13(a) or 15(d) shall disclose to the public on a rapid and current basis such additional information concerning material changes in the financial condition or operations of the issuer, in plain English, which may include trend and qualitative information and graphic presentations, as the Commission determines, by rule, is necessary or useful for the protection of investors and in the public interest.

(m) PUBLIC AVAILABILITY OF SECURITY-BASED SWAP TRANSACTION DATA.—

(1) IN GENERAL.—

(A) DEFINITION OF REAL-TIME PUBLIC REPORTING.—In this paragraph, the term "real-time public reporting" means to report data relating to a security-based swap transaction, including price and volume, as soon as technologically practicable after the time at which the security-based swap transaction has been executed.

(B) PURPOSE.—The purpose of this subsection is to authorize the Commission to make security-based swap transaction and pricing data available to the public in such form and at such times as the Commission determines appropriate to enhance price discovery.

(C) GENERAL RULE.—The Commission is authorized to provide by rule for the public availability of security-based swap transaction, volume, and pricing data as follows:

(i) With respect to those security-based swaps that are subject to the mandatory clearing requirement described in section 3C(a)(1) (including those security-based swaps that are excepted from the requirement pursuant to section 3C(g)), the Commission shall require real-time public reporting for such transactions.

(ii) With respect to those security-based swaps that are not subject to the mandatory clearing requirement described in section 3C(a)(1), but are cleared at a registered clearing agency, the Commission shall require real-time public reporting for such transactions.

(iii) With respect to security-based swaps that are not cleared at a registered clearing agency and which are reported to a security-based swap data repository or the Commission under section 3C(a)(6), the Commission shall require real-time public reporting for such transactions, in a manner that does not disclose the business transactions and market positions of any person.

(iv) With respect to security-based swaps that are determined to be required to be cleared under section 3C(b) but are not cleared, the Commission shall require real-time public reporting for such transactions.

(D) REGISTERED ENTITIES AND PUBLIC REPORTING.—The Commission may require registered entities to publicly disseminate the security-based swap transaction and pricing data required to be reported under this paragraph.

(E) RULEMAKING REQUIRED.—With respect to the rule providing for the public availability of transaction and pricing data for security-based swaps described in clauses (i) and (ii) of subparagraph (C), the rule promulgated by the Commission shall contain provisions—

(i) to ensure such information does not identify the participants;

(ii) to specify the criteria for determining what constitutes a large notional security-based swap transaction (block trade) for particular markets and contracts;

(iii) to specify the appropriate time delay for reporting large notional security-based swap transactions (block trades) to the public; and

(iv) that take into account whether the public disclosure will materially reduce market liquidity.

(F) TIMELINESS OF REPORTING.—Parties to a security-based swap (including agents of the parties to a security-based swap) shall be responsible for reporting security-based swap transaction information to the appropriate registered entity in a timely manner as may be prescribed by the Commission.

(G) REPORTING OF SWAPS TO REGISTERED SECURITY-BASED SWAP DATA REPOSITORIES.—Each security-based swap (whether cleared or uncleared) shall be reported to a registered security-based swap data repository.

(H) REGISTRATION OF CLEARING AGENCIES.—A clearing agency may register as a security-based swap data repository.

(2) SEMIANNUAL AND ANNUAL PUBLIC REPORTING OF AGGREGATE SECURITY-BASED SWAP DATA.—

(A) IN GENERAL.—In accordance with subparagraph (B), the Commission shall issue a written report on a semi-annual and annual basis to make available to the public information relating to—

(i) the trading and clearing in the major security-based swap categories; and

(ii) the market participants and developments in new products.

(B) USE; CONSULTATION.—In preparing a report under subparagraph (A), the Commission shall—

(i) use information from security-based swap data repositories and clearing agencies; and

(ii) consult with the Office of the Comptroller of the Currency, the Bank for International Settlements, and such other regulatory bodies as may be necessary.

(C) AUTHORITY OF COMMISSION.—The Commission may, by rule, regulation, or order, delegate the public reporting responsibilities of the Commission under this paragraph in accordance with such terms and conditions as the Commission determines to be appropriate and in the public interest.

(n) SECURITY-BASED SWAP DATA REPOSITORIES.—

(1) REGISTRATION REQUIREMENT.—It shall be unlawful for any person, unless registered with the Commission, directly or indirectly, to make use of the mails or any means or instrumentality of interstate commerce to perform the functions of a security-based swap data repository.

(2) INSPECTION AND EXAMINATION.—Each registered security-based swap data repository shall be subject to inspection and examination by any representative of the Commission.

(3) COMPLIANCE WITH CORE PRINCIPLES.—

(A) IN GENERAL.—To be registered, and maintain registration, as a security-based swap data repository, the security-based swap data repository shall comply with—

(i) the requirements and core principles described in this subsection; and

(ii) any requirement that the Commission may impose by rule or regulation.

(B) REASONABLE DISCRETION OF SECURITY-BASED SWAP DATA REPOSITORY.—Unless otherwise determined by the Commission, by rule or regulation, a security-based swap data repository described in subparagraph (A) shall have reasonable discretion in establishing the manner in which the security-based swap data repository complies with the core principles described in this subsection.

(4) STANDARD SETTING.—

(A) DATA IDENTIFICATION.—

(i) IN GENERAL.—In accordance with clause (ii), the Commission shall prescribe standards that specify the data elements for each security-based swap that shall be collected and maintained by each registered security-based swap data repository.

(ii) REQUIREMENT.—In carrying out clause (i), the Commission shall prescribe consistent data element standards applicable to registered entities and reporting counterparties.

(B) DATA COLLECTION AND MAINTENANCE.—The Commission shall prescribe data collection and data maintenance standards for security-based swap data repositories.

(C) COMPARABILITY.—The standards prescribed by the Commission under this subsection shall be comparable to the data standards imposed by the Commission on clearing agencies in connection with their clearing of security-based swaps.

(5) DUTIES.—A security-based swap data repository shall—

(A) accept data prescribed by the Commission for each security-based swap under subsection (b);

(B) confirm with both counterparties to the security-based swap the accuracy of the data that was submitted;

(C) maintain the data described in subparagraph (A) in such form, in such manner, and for such period as may be required by the Commission;

(D)(i) provide direct electronic access to the Commission (or any designee of the Commission, including another registered entity); and

(ii) provide the information described in subparagraph (A) in such form and at such frequency as the Commission may require to comply with the public reporting requirements set forth in subsection (m);

(E) at the direction of the Commission, establish automated systems for monitoring, screening, and analyzing security-based swap data;

(F) maintain the privacy of any and all security-based swap transaction information that the security-based swap data repository receives from a security-based swap dealer, counterparty, or any other registered entity; and

(G) on a confidential basis pursuant to section 24, upon request, and after notifying the Commission of the request, make available security-based swap data obtained by the security-based swap data repository, including individual counterparty trade and position data, to—

(i) each appropriate prudential regulator;

(ii) the Financial Stability Oversight Council;

(iii) the Commodity Futures Trading Commission;

(iv) the Department of Justice; and

(v) any other person that the Commission determines to be appropriate, including—

(I) foreign financial supervisors (including foreign futures authorities);

(II) foreign central banks;

(III) foreign ministries; and

(IV) other foreign authorities.

(H) CONFIDENTIALITY AGREEMENT.—Before the security-based swap data repository may share information with any entity described in subparagraph (G), the security-based swap data repository shall receive a written agreement from each entity stating that the entity shall abide by the confidentiality requirements described in section 24 relating to the information on security-based swap transactions that is provided.

(6) DESIGNATION OF CHIEF COMPLIANCE OFFICER.—

(A) IN GENERAL.—Each security-based swap data repository shall designate an individual to serve as a chief compliance officer.

(B) DUTIES.—The chief compliance officer shall—

(i) report directly to the board or to the senior officer of the security-based swap data repository;

(ii) review the compliance of the security-based swap data repository with respect to the requirements and core principles described in this subsection;

(iii) in consultation with the board of the security-based swap data repository, a body performing a function similar to the board of the security-based swap data repository, or the senior officer of the security-based swap data repository, resolve any conflicts of interest that may arise;

(iv) be responsible for administering each policy and procedure that is required to be established pursuant to this section;

(v) ensure compliance with this title (including regulations) relating to agreements, contracts, or transactions, including each rule prescribed by the Commission under this section;

(vi) establish procedures for the remediation of noncompliance issues identified by the chief compliance officer through any—

(I) compliance office review;

(II) look-back;

(III) internal or external audit finding;

(IV) self-reported error; or

(V) validated complaint; and

(vii) establish and follow appropriate procedures for the handling, management response, remediation, retesting, and closing of noncompliance issues.

(C) ANNUAL REPORTS.—

(i) IN GENERAL.—In accordance with rules prescribed by the Commission, the chief compliance officer shall

annually prepare and sign a report that contains a description of—

(I) the compliance of the security-based swap data repository of the chief compliance officer with respect to this title (including regulations); and

(II) each policy and procedure of the security-based swap data repository of the chief compliance officer (including the code of ethics and conflict of interest policies of the security-based swap data repository).

(ii) REQUIREMENTS.—A compliance report under clause (i) shall—

(I) accompany each appropriate financial report of the security-based swap data repository that is required to be furnished to the Commission pursuant to this section; and

(II) include a certification that, under penalty of law, the compliance report is accurate and complete.

(7) CORE PRINCIPLES APPLICABLE TO SECURITY-BASED SWAP DATA REPOSITORIES.—

(A) ANTITRUST CONSIDERATIONS.—Unless necessary or appropriate to achieve the purposes of this title, the swap data repository shall not—

(i) adopt any rule or take any action that results in any unreasonable restraint of trade; or

(ii) impose any material anticompetitive burden on the trading, clearing, or reporting of transactions.

(B) GOVERNANCE ARRANGEMENTS.—Each security-based swap data repository shall establish governance arrangements that are transparent—

(i) to fulfill public interest requirements; and

(ii) to support the objectives of the Federal Government, owners, and participants.

(C) CONFLICTS OF INTEREST.—Each security-based swap data repository shall—

(i) establish and enforce rules to minimize conflicts of interest in the decision-making process of the security-based swap data repository; and

(ii) establish a process for resolving any conflicts of interest described in clause (i).

(D) ADDITIONAL DUTIES DEVELOPED BY COMMISSION.—

(i) IN GENERAL.—The Commission may develop 1 or more additional duties applicable to security-based swap data repositories.

(ii) CONSIDERATION OF EVOLVING STANDARDS.—In developing additional duties under subparagraph (A), the Commission may take into consideration any evolving standard of the United States or the international community.

(iii) ADDITIONAL DUTIES FOR COMMISSION DESIGNEES.—The Commission shall establish additional duties for any registrant described in section 13(m)(2)(C) in order to minimize conflicts of interest, protect data, ensure compliance, and guarantee the

safety and security of the security-based swap data repository.

(8) REQUIRED REGISTRATION FOR SECURITY-BASED SWAP DATA REPOSITORIES.—Any person that is required to be registered as a security-based swap data repository under this subsection shall register with the Commission, regardless of whether that person is also licensed under the Commodity Exchange Act as a swap data repository.

(9) RULES.—The Commission shall adopt rules governing persons that are registered under this subsection.

(o) BENEFICIAL OWNERSHIP.—For purposes ofthis section and section 16, a person shall be deemed to acquire beneficialownership of an equity security based on the purchase or sale of asecurity-based swap, only to the extent that the Commission, by rule,determines after consultation with the prudential regulators and the Secretaryof the Treasury, that the purchase or sale of the security-based swap, or classof security-based swap, provides incidents of ownership comparable to directownership of the equity security, and that it is necessary to achieve thepurposes of this section that the purchase or sale of the security-based swaps,or class of security-based swap, be deemed the acquisition of beneficialownership of the equitysecurity.

(p) DISCLOSURES RELATING TO CONFLICT MINERALS ORIGINATING IN THE DEMOCRATIC REPUBLIC OF THE CONGO.—

(1) REGULATIONS.—

(A) IN GENERAL.—Not later than 270 days after the date of the enactment of this subsection, the Commission shall promulgate regulations requiring any person described in paragraph (2) to disclose annually, beginning with the person's first full fiscal year that begins after the date of promulgation of such regulations, whether conflict minerals that are necessary as described in paragraph (2)(B), in the year for which such reporting is required, did originate in the Democratic Republic of the Congo or an adjoining country and, in cases in which such conflict minerals did originate in any such country, submit to the Commission a report that includes, with respect to the period covered by the report—

(i) a description of the measures taken by the person to exercise due diligence on the source and chain of custody of such minerals, which measures shall include an independent private sector audit of such report submitted through the Commission that is conducted in accordance with standards established by the Comptroller General of the United States, in accordance with rules promulgated by the Commission, in consultation with the Secretary of State; and

(ii) a description of the products manufactured or contracted to be manufactured that are not DRC conflict free ("DRC conflict free" is defined to mean the products that do not contain minerals that directly or indirectly finance or benefit armed groups in the Democratic Republic of the Congo or an adjoining country), the entity that conducted the independent private sector audit in accordance with clause (i), the

facilities used to process the conflict minerals, the country of origin of the conflict minerals, and the efforts to determine the mine or location of origin with the greatest possible specificity.

(B) CERTIFICATION.—The person submitting a report under subparagraph (A) shall certify the audit described in clause (i) of such subparagraph that is included in such report. Such a certified audit shall constitute a critical component of due diligence in establishing the source and chain of custody of such minerals.

(C) UNRELIABLE DETERMINATION.—If a report required to be submitted by a person under subparagraph (A) relies on a determination of an independent private sector audit, as described under subparagraph (A)(i), or other due diligence processes previously determined by the Commission to be unreliable, the report shall not satisfy the requirements of the regulations promulgated under subparagraph (A)(i).

(D) DRC CONFLICT FREE.—For purposes of this paragraph, a product may be labeled as "DRC conflict free" if the product does not contain conflict minerals that directly or indirectly finance or benefit armed groups in the Democratic Republic of the Congo or an adjoining country.

(E) INFORMATION AVAILABLE TO THE PUBLIC.—Each person described under paragraph (2) shall make available to the public on the Internet website of such person the information disclosed by such person under subparagraph (A).

(2) PERSON DESCRIBED.—A person is described in this paragraph if—

(A) the person is required to file reports with the Commission pursuant to paragraph (1)(A); and

(B) conflict minerals are necessary to the functionality or production of a product manufactured by such person.

(3) REVISIONS AND WAIVERS.—The Commission shall revise or temporarily waive the requirements described in paragraph (1) if the President transmits to the Commission a determination that—

(A) such revision or waiver is in the national security interest of the United States and the President includes the reasons therefor; and

(B) establishes a date, not later than 2 years after the initial publication of such exemption, on which such exemption shall expire.

(4) TERMINATION OF DISCLOSURE REQUIREMENTS.—The requirements of paragraph (1) shall terminate on the date on which the President determines and certifies to the appropriate congressional committees, but in no case earlier than the date that is one day after the end of the 5-year period beginning on the date of the enactment of this subsection, that no armed groups continue to be directly involved and benefitting from commercial activity involving conflict minerals.

(5) DEFINITIONS.—For purposes of this subsection, the terms "adjoining country", "appropriate congressional committees", "armed group", and "conflict mineral" have the meaning given those terms under section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

(q) DISCLOSURE OF PAYMENTS BY RESOURCE EXTRACTION ISSUERS.—

(1) DEFINITIONS.—In this subsection—

(A) the term "commercial development of oil, natural gas, or minerals" includes exploration, extraction, processing, export, and other significant actions relating to oil, natural gas, or minerals, or the acquisition of a license for any such activity, as determined by the Commission;

(B) the term "foreign government" means a foreign government, a department, agency, or instrumentality of a foreign government, or a company owned by a foreign government, as determined by the Commission;

(C) the term "payment"—

(i) means a payment that is—

(I) made to further the commercial development of oil, natural gas, or minerals; and

(II) not de minimis; and

(ii) includes taxes, royalties, fees (including license fees), production entitlements, bonuses, and other material benefits, that the Commission, consistent with the guidelines of the Extractive Industries Transparency Initiative (to the extent practicable), determines are part of the commonly recognized revenue stream for the commercial development of oil, natural gas, or minerals;

(D) the term "resource extraction issuer" means an issuer that—

(i) is required to file an annual report with the Commission; and

(ii) engages in the commercial development of oil, natural gas, or minerals;

(E) the term "interactive data format" means an electronic data format in which pieces of information are identified using an interactive data standard; and

(F) the term "interactive data standard" means standardized list of electronic tags that mark information included in the annual report of a resource extraction issuer.

(2) DISCLOSURE.—

(A) INFORMATION REQUIRED.—Not later than 270 days after the date of enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act, the Commission shall issue final rules that require each resource extraction issuer to include in an annual report of the resource extraction issuer information relating to any payment made by the resource extraction issuer, a subsidiary of the resource extraction issuer, or an entity under the control of the resource extraction issuer to a foreign government or the Federal Government for the purpose of the commercial development of oil, natural gas, or minerals, including—

(i) the type and total amount of such payments made for each project of the resource extraction issuer relating to the commercial development of oil, natural gas, or minerals; and

(ii) the type and total amount of such payments made to each government.

(B) CONSULTATION IN RULEMAKING.—In issuing rules under subparagraph (A), the Commission may consult with any agency or entity that the Commission determines is relevant.

(C) INTERACTIVE DATA FORMAT.—The rules issued under subparagraph (A) shall require that the information included in the annual report of a resource extraction issuer be submitted in an interactive data format.

(D) INTERACTIVE DATA STANDARD.—

(i) IN GENERAL.—The rules issued under subparagraph (A) shall establish an interactive data standard for the information included in the annual report of a resource extraction issuer.

(ii) ELECTRONIC TAGS.—The interactive data standard shall include electronic tags that identify, for any payments made by a resource extraction issuer to a foreign government or the Federal Government—

(I) the total amounts of the payments, by category;

(II) the currency used to make the payments;

(III) the financial period in which the payments were made;

(IV) the business segment of the resource extraction issuer that made the payments;

(V) the government that received the payments, and the country in which the government is located;

(VI) the project of the resource extraction issuer to which the payments relate; and

(VII) such other information as the Commission may determine is necessary or appropriate in the public interest or for the protection of investors.

(E) INTERNATIONAL TRANSPARENCY EFFORTS.—To the extent practicable, the rules issued under subparagraph (A) shall support the commitment of the Federal Government to international transparency promotion efforts relating to the commercial development of oil, natural gas, or minerals.

(F) EFFECTIVE DATE.—With respect to each resource extraction issuer, the final rules issued under subparagraph (A) shall take effect on the date on which the resource extraction issuer is required to submit an annual report relating to the fiscal year of the resource extraction issuer that ends not earlier than 1 year after the date on which the Commission issues final rules under subparagraph (A).

(3) PUBLIC AVAILABILITY OF INFORMATION.—

(A) IN GENERAL.—To the extent practicable, the Commission shall make available online, to the public, a compilation of the information required to be submitted under the rules issued under paragraph (2)(A).

(B) OTHER INFORMATION.—Nothing in this paragraph shall require the Commission to make available online information other than the information required to be submitted under the rules issued under paragraph (2)(A).

(4) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Commission such sums as may be necessary to carry out this subsection.

(r) DISCLOSURE OF CERTAIN ACTIVITIES RELATING TO IRAN.—

(1) IN GENERAL.—Each issuer required to file an annual or quarterly report under subsection (a) shall disclose in that report the information required by paragraph (2) if, during the period covered by the report, the issuer or any affiliate of the issuer—

(A) knowingly engaged in an activity described in subsection (a) or (b) of section 5 of the Iran Sanctions Act of 1996 (Public Law 104–172; 50 U.S.C. 1701 note);

(B) knowingly engaged in an activity described in subsection (c)(2) of section 104 of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (22 U.S.C. 8513) or a transaction described in subsection (d)(1) of that section;

(C) knowingly engaged in an activity described in section 105A(b)(2) of that Act; or

(D) knowingly conducted any transaction or dealing with—

(i) any person the property and interests in property of which are blocked pursuant to Executive Order No. 13224 (66 Fed. Reg. 49079; relating to blocking property and prohibiting transactions with persons who commit, threaten to commit, or support terrorism);

(ii) any person the property and interests in property of which are blocked pursuant to Executive Order No. 13382 (70 Fed. Reg. 38567; relating to blocking of property of weapons of mass destruction proliferators and their supporters); or

(iii) any person or entity identified under section 560.304 of title 31, Code of Federal Regulations (relating to the definition of the Government of Iran) without the specific authorization of a Federal department or agency.

(2) INFORMATION REQUIRED.—If an issuer or an affiliate of the issuer has engaged in any activity described in paragraph (1), the issuer shall disclose a detailed description of each such activity, including—

(A) the nature and extent of the activity;

(B) the gross revenues and net profits, if any, attributable to the activity; and

(C) whether the issuer or the affiliate of the issuer (as the case may be) intends to continue the activity.

(3) NOTICE OF DISCLOSURES.—If an issuer reports under paragraph (1) that the issuer or an affiliate of the issuer has knowingly engaged in any activity described in that paragraph, the issuer shall separately file with the Commission, concurrently with the annual or quarterly report under subsection (a), a notice that the disclosure of that activity has been included in that annual or quarterly report that identifies the issuer and contains the information required by paragraph (2).

(4) PUBLIC DISCLOSURE OF INFORMATION.—Upon receiving a notice under paragraph (3) that an annual or quarterly report

includes a disclosure of an activity described in paragraph (1), the Commission shall promptly—

(A) transmit the report to—

(i) the President;

(ii) the Committee on Foreign Affairs and the Committee on Financial Services of the House of Representatives; and

(iii) the Committee on Foreign Relations and the Committee on Banking, Housing, and Urban Affairs of the Senate; and

(B) make the information provided in the disclosure and the notice available to the public by posting the information on the Internet website of the Commission.

(5) INVESTIGATIONS.—Upon receiving a report under paragraph (4) that includes a disclosure of an activity described in paragraph (1) (other than an activity described in subparagraph (D)(iii) of that paragraph), the President shall—

(A) initiate an investigation into the possible imposition of sanctions under the Iran Sanctions Act of 1996 (Public Law 104–172; 50 U.S.C. 1701 note), section 104 or 105A of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010, an Executive order specified in clause (i) or (ii) of paragraph (1)(D), or any other provision of law relating to the imposition of sanctions with respect to Iran, as applicable; and

(B) not later than 180 days after initiating such an investigation, make a determination with respect to whether sanctions should be imposed with respect to the issuer or the affiliate of the issuer (as the case may be).

(6) SUNSET.—The provisions of this subsection shall terminate on the date that is 30 days after the date on which the President makes the certification described in section 401(a) of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (22 U.S.C. 8551(a)).

(s) DATA STANDARDS.—

(1) REQUIREMENT.—The Commission shall, by rule, adopt data standards for all collections of information with respect to periodic and current reports required to be filed or furnished under this section or under section 15(d), except that the Commission may exempt exhibits, signatures, and certifications from those data standards.

(2) CONSISTENCY.—The data standards required under paragraph (1) shall incorporate, and ensure compatibility with (to the extent feasible), all applicable data standards established in the rules promulgated under section 124 of the Financial Stability Act of 2010, including, to the extent practicable, by having the characteristics described in clauses (i) through (vi) of subsection (c)(1)(B) of such section 124.

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PROXIES

SEC. 14. (a)(1) It shall be unlawful for any person, by the use of the mails or by any means or instrumentality of interstate commerce or of any facility of a national securities exchange or other-

wise, in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors, to solicit or to permit the use of his name to solicit any proxy or consent or authorization in respect of any security (other than an exempted security) registered pursuant to section 12 of this title.

(2) The rules and regulations prescribed by the Commission under paragraph (1) may include—

(A) a requirement that a solicitation of proxy, consent, or authorization by (or on behalf of) an issuer include a nominee submitted by a shareholder to serve on the board of directors of the issuer; and

(B) a requirement that an issuer follow a certain procedure in relation to a solicitation described in subparagraph (A).

(b)(1) It shall be unlawful for any member of a national securities exchange, or any broker or dealer registered under this title, or any bank, association, or other entity that exercises fiduciary powers, in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors, to give, or to refrain from giving a proxy, consent, authorization, or information statement in respect of any security registered pursuant to section 12 of this title, or any security issued by an investment company registered under the Investment Company Act of 1940, and carried for the account of a customer.

(2) With respect to banks, the rules and regulations prescribed by the Commission under paragraph (1) shall not require the disclosure of the names of beneficial owners of securities in an account held by the bank on the date of enactment of this paragraph unless the beneficial owner consents to the disclosure. The provisions of this paragraph shall not apply in the case of a bank which the Commission finds has not made a good faith effort to obtain such consent from such beneficial owners.

(c) Unless proxies, consents, or authorizations in respect of a security registered pursuant to section 12 of this title, or a security issued by an investment company registered under the Investment Company Act of 1940, are solicited by or on behalf of the management of the issuer from the holders of record of such security in accordance with the rules and regulations prescribed under subsection (a) of this section, prior to any annual or other meeting of the holders of such security, such issuer shall, in accordance with rules and regulations prescribed by the Commission, file with the Commission and transmit to all holders of record of such security information substantially equivalent to the information which would be required to be transmitted if a solicitation were made, but no information shall be required to be filed or transmitted pursuant to this subsection before July 1, 1964.

(d)(1) It shall be unlawful for any person, directly or indirectly, by use of the mails or by any means or instrumentality of interstate commerce or of any facility of a national securities exchange or otherwise, to make a tender offer for, or a request or invitation for tenders of, any class of any equity security which is registered pursuant to section 12 of this title, or any equity security of an insurance company which would have been required to be so registered except for the exemption contained in section 12(g)(2)(G) of

this title, or any equity security issued by a closed-end investment company registered under the Investment Company Act of 1940, if, after consummation thereof, such person would, directly or indirectly, be the beneficial owner of more than 5 per centum of such class, unless at the time copies of the offer or request or invitation are first published or sent or given to security holders such person has filed with the Commission a statement containing such of the information specified in section 13(d) of this title, and such additional information as the Commission may by rules and regulations prescribe as necessary or appropriate in the public interest or for the protection of investors. All requests or invitations for tenders or advertisements making a tender offer or requesting or inviting tenders, of such a security shall be filed as a part of such statement and shall contain such of the information contained in such statement as the Commission may by rules and regulations prescribe. Copies of any additional material soliciting or requesting such tender offers subsequent to the initial solicitation or request shall contain such information as the Commission may by rules and regulations prescribe as necessary or appropriate in the public interest or for the protection of investors, and shall be filed with the Commission not later than the time copies of such material are first published or sent or given to security holders. Copies of all statements, in the form in which such material is furnished to security holders and the Commission, shall be sent to the issuer not later than the date such material is first published or sent or given to any security holders.

(2) When two or more persons act as a partnership, limited partnership, syndicate, or other group for the purpose of acquiring, holding, or disposing of securities of an issuer, such syndicate or group shall be deemed a "person" for purposes of this subsection.

(3) In determining, for purposes of this subsection, any percentage of a class of any security, such class shall be deemed to consist of the amount of the outstanding securities of such class, exclusive of any securities of such class held by or for the account of the issuer or a subsidiary of the issuer.

(4) Any solicitation or recommendation to the holders of such a security to accept or reject a tender offer or request or invitation for tenders shall be made in accordance with such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.

(5) Securities deposited pursuant to a tender offer or request or invitation for tenders may be withdrawn by or on behalf of the depositor at any time until the expiration of seven days after the time definitive copies of the offer or request or invitation are first published or sent or given to security holders, and at any time after sixty days from the date of the original tender offer or request or invitation, except as the Commission may otherwise prescribe by rules, regulations, or order as necessary or appropriate in the public interest or for the protection of investors.

(6) Where any person makes a tender offer, or request or invitation for tenders, for less than all the outstanding equity securities of a class, and where a greater number of securities is deposited pursuant thereto within ten days after copies of the offer or request or invitation are first published or sent or given to security holders than such person is bound or willing to take up and pay for, the

securities taken up shall be taken up as nearly as may be pro rata, disregarding fractions, according to the number of securities deposited by each depositor. The provisions of this subsection shall also apply to securities deposited within ten days after notice of an increase in the consideration offered to security holders, as described in paragraph (7), is first published or sent or given to security holders.

(7) Where any person varies the terms of a tender offer or request or invitation for tenders before the expiration thereof by increasing the consideration offered to holders of such securities, such person shall pay the increased consideration to each security holder whose securities are taken up and paid for pursuant to the tender offer or request or invitation for tenders whether or not such securities have been taken up by such person before the variation of the tender offer or request or invitation.

(8) The provisions of this subsection shall not apply to any offer for, or request or invitation for tenders of, any security—

(A) if the acquisition of such security, together with all other acquisitions by the same person of securities of the same class during the preceding twelve months, would not exceed 2 per centum of that class;

(B) by the issuer of such security; or

(C) which the Commission, by rules or regulations or by order, shall exempt from the provisions of this subsection as not entered into for the purpose of, and not having the effect of, changing or influencing the control of the issuer or otherwise as not comprehended within the purposes of this subsection.

(e) It shall be unlawful for any person to make any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading, or to engage in any fraudulent, deceptive, or manipulative acts or practices, in connection with any tender offer or request or invitation for tenders, or any solicitation of security holders in opposition to or in favor of any such offer, request, or invitation. The Commission shall, for the purposes of this subsection, by rules and regulations define, and prescribe means reasonably designed to prevent, such acts and practices as are fraudulent, deceptive, or manipulative.

(f) If, pursuant to any arrangement or understanding with the person or persons acquiring securities in a transaction subject to subsection (d) of this section or subsection (d) of section 13 of this title, any persons are to be elected or designated as directors of the issuer, otherwise than at a meeting of security holders, and the persons so elected or designated will constitute a majority of the directors of the issuer, then, prior to the time any such person takes office as a director, and in accordance with rules and regulations prescribed by the Commission, the issuer shall file with the Commission, and transmit to all holders of record of securities of the issuer who would be entitled to vote at a meeting for election of directors, information substantially equivalent to the information which would be required by subsection (a) or (c) of this section to be transmitted if such person or persons were nominees for election as directors at a meeting of such security holders.

(g)(1)(A) At the time of filing such preliminary proxy solicitation material as the Commission may require by rule pursuant to subsection (a) of this section that concerns an acquisition, merger, consolidation, or proposed sale or other disposition of substantially all the assets of a company, the person making such filing, other than a company registered under the Investment Company Act of 1940, shall pay to the Commission the following fees:

(i) for preliminary proxy solicitation material involving an acquisition, merger, or consolidation, if there is a proposed payment of cash or transfer of securities or property to shareholders, a fee at a rate that, subject to paragraph (4), is equal to $92 per $1,000,000 of such proposed payment, or of the value of such securities or other property proposed to be transferred; and

(ii) for preliminary proxy solicitation material involving a proposed sale or other disposition of substantially all of the assets of a company, a fee at a rate that, subject to paragraph (4), is equal to $92 per $1,000,000 of the cash or of the value of any securities or other property proposed to be received upon such sale or disposition.

(B) The fee imposed under subparagraph (A) shall be reduced with respect to securities in an amount equal to any fee paid to the Commission with respect to such securities in connection with the proposed transaction under section 6(b) of the Securities Act of 1933 (15 U.S.C. 77f(b)), or the fee paid under that section shall be reduced in an amount equal to the fee paid to the Commission in connection with such transaction under this subsection. Where two or more companies involved in an acquisition, merger, consolidation, sale, or other disposition of substantially all the assets of a company must file such proxy material with the Commission, each shall pay a proportionate share of such fee.

(2) At the time of filing such preliminary information statement as the Commission may require by rule pursuant to subsection (c) of this section, the issuer shall pay to the Commission the same fee as required for preliminary proxy solicitation material under paragraph (1) of this subsection.

(3) At the time of filing such statement as the Commission may require by rule pursuant to subsection (d)(1) of this section, the person making the filing shall pay to the Commission a fee at a rate that, subject to paragraph (4), is equal to $92 per $1,000,000 of the aggregate amount of cash or of the value of securities or other property proposed to be offered. The fee shall be reduced with respect to securities in an amount equal to any fee paid with respect to such securities in connection with the proposed transaction under section 6(b) of the Securities Act of 1933 (15 U.S.C. 77f(b)), or the fee paid under that section shall be reduced in an amount equal to the fee paid to the Commission in connection with such transaction under this subsection.

(4) ANNUAL ADJUSTMENT.—For each fiscal year, the Commission shall by order adjust the rate required by paragraphs (1) and (3) for such fiscal year to a rate that is equal to the rate (expressed in dollars per million) that is applicable under section 6(b) of the Securities Act of 1933 (15 U.S.C. 77f(b)) for such fiscal year.

(5) FEE COLLECTION.—Fees collected pursuant to this subsection for fiscal year 2012 and each fiscal year thereafter shall be deposited and credited as general revenue of the Treasury and shall not be available for obligation.

(6) REVIEW; EFFECTIVE DATE; PUBLICATION.—In exercising its authority under this subsection, the Commission shall not be required to comply with the provisions of section 553 of title 5, United States Code. An adjusted rate prescribed under paragraph (4) shall be published and take effect in accordance with section 6(b) of the Securities Act of 1933 (15 U.S.C. 77f(b)).

(7) PRO RATA APPLICATION.—The rates per $1,000,000 required by this subsection shall be applied pro rata to amounts and balances of less than $1,000,000.

(8) Notwithstanding any other provision of law, the Commission may impose fees, charges, or prices for matters not involving any acquisition, merger, consolidation, sale, or other disposition of assets described in this subsection, as authorized by section 9701 of title 31, United States Code, or otherwise.

(h) PROXY SOLICITATIONS AND TENDER OFFERS IN CONNECTION WITH LIMITED PARTNERSHIP ROLLUP TRANSACTIONS.—

(1) PROXY RULES TO CONTAIN SPECIAL PROVISIONS.—It shall be unlawful for any person to solicit any proxy, consent, or authorization concerning a limited partnership rollup transaction, or to make any tender offer in furtherance of a limited partnership rollup transaction, unless such transaction is conducted in accordance with rules prescribed by the Commission under subsections (a) and (d) as required by this subsection. Such rules shall—

(A) permit any holder of a security that is the subject of the proposed limited partnership rollup transaction to engage in preliminary communications for the purpose of determining whether to solicit proxies, consents, or authorizations in opposition to the proposed limited partnership rollup transaction, without regard to whether any such communication would otherwise be considered a solicitation of proxies, and without being required to file soliciting material with the Commission prior to making that determination, except that—

(i) nothing in this subparagraph shall be construed to limit the application of any provision of this title prohibiting, or reasonably designed to prevent, fraudulent, deceptive, or manipulative acts or practices under this title; and

(ii) any holder of not less than 5 percent of the outstanding securities that are the subject of the proposed limited partnership rollup transaction who engages in the business of buying and selling limited partnership interests in the secondary market shall be required to disclose such ownership interests and any potential conflicts of interests in such preliminary communications;

(B) require the issuer to provide to holders of the securities that are the subject of the limited partnership rollup transaction such list of the holders of the issuer's securities as the Commission may determine in such form and

subject to such terms and conditions as the Commission may specify;

(C) prohibit compensating any person soliciting proxies, consents, or authorizations directly from security holders concerning such a limited partnership rollup transaction—

(i) on the basis of whether the solicited proxy, consent, or authorization either approves or disapproves the proposed limited partnership rollup transaction; or

(ii) contingent on the approval, disapproval, or completion of the limited partnership rollup transaction;

(D) set forth disclosure requirements for soliciting material distributed in connection with a limited partnership rollup transaction, including requirements for clear, concise, and comprehensible disclosure with respect to—

(i) any changes in the business plan, voting rights, form of ownership interest, or the compensation of the general partner in the proposed limited partnership rollup transaction from each of the original limited partnerships;

(ii) the conflicts of interest, if any, of the general partner;

(iii) whether it is expected that there will be a significant difference between the exchange values of the limited partnerships and the trading price of the securities to be issued in the limited partnership rollup transaction;

(iv) the valuation of the limited partnerships and the method used to determine the value of the interests of the limited partners to be exchanged for the securities in the limited partnership rollup transaction;

(v) the differing risks and effects of the limited partnership rollup transaction for investors in different limited partnerships proposed to be included, and the risks and effects of completing the limited partnership rollup transaction with less than all limited partnerships;

(vi) the statement by the general partner required under subparagraph (E);

(vii) such other matters deemed necessary or appropriate by the Commission;

(E) require a statement by the general partner as to whether the proposed limited partnership rollup transaction is fair or unfair to investors in each limited partnership, a discussion of the basis for that conclusion, and an evaluation and a description by the general partner of alternatives to the limited partnership rollup transaction, such as liquidation;

(F) provide that, if the general partner or sponsor has obtained any opinion (other than an opinion of counsel), appraisal, or report that is prepared by an outside party and that is materially related to the limited partnership rollup transaction, such soliciting materials shall contain or be accompanied by clear, concise, and comprehensible disclosure with respect to—

(i) the analysis of the transaction, scope of review, preparation of the opinion, and basis for and methods of arriving at conclusions, and any representations and undertakings with respect thereto;

(ii) the identity and qualifications of the person who prepared the opinion, the method of selection of such person, and any material past, existing, or contemplated relationships between the person or any of its affiliates and the general partner, sponsor, successor, or any other affiliate;

(iii) any compensation of the preparer of such opinion, appraisal, or report that is contingent on the transaction's approval or completion; and

(iv) any limitations imposed by the issuer on the access afforded to such preparer to the issuer's personnel, premises, and relevant books and records;

(G) provide that, if the general partner or sponsor has obtained any opinion, appraisal, or report as described in subparagraph (F) from any person whose compensation is contingent on the transaction's approval or completion or who has not been given access by the issuer to its personnel and premises and relevant books and records, the general partner or sponsor shall state the reasons therefor;

(H) provide that, if the general partner or sponsor has not obtained any opinion on the fairness of the proposed limited partnership rollup transaction to investors in each of the affected partnerships, such soliciting materials shall contain or be accompanied by a statement of such partner's or sponsor's reasons for concluding that such an opinion is not necessary in order to permit the limited partners to make an informed decision on the proposed transaction;

(I) require that the soliciting material include a clear, concise, and comprehensible summary of the limited partnership rollup transaction (including a summary of the matters referred to in clauses (i) through (vii) of subparagraph (D) and a summary of the matter referred to in subparagraphs (F), (G), and (H)), with the risks of the limited partnership rollup transaction set forth prominently in the fore part thereof;

(J) provide that any solicitation or offering period with respect to any proxy solicitation, tender offer, or information statement in a limited partnership rollup transaction shall be for not less than the lesser of 60 calendar days or the maximum number of days permitted under applicable State law; and

(K) contain such other provisions as the Commission determines to be necessary or appropriate for the protection of investors in limited partnership rollup transactions.

(2) EXEMPTIONS.—The Commission may, consistent with the public interest, the protection of investors, and the purposes of this title, exempt by rule or order any security or class of securities, any transaction or class of transactions, or any person or class of persons, in whole or in part, conditionally or unconditionally, from the requirements imposed pursuant to paragraph (1) or from the definition contained in paragraph (4).

(3) EFFECT ON COMMISSION AUTHORITY.—Nothing in this subsection limits the authority of the Commission under subsection (a) or (d) or any other provision of this title or precludes the Commission from imposing, under subsection (a) or (d) or any other provision of this title, a remedy or procedure required to be imposed under this subsection.

(4) DEFINITION OF LIMITED PARTNERSHIP ROLLUP TRANSACTION.—Except as provided in paragraph (5), as used in this subsection, the term "limited partnership rollup transaction" means a transaction involving the combination or reorganization of one or more limited partnerships, directly or indirectly, in which—

(A) some or all of the investors in any of such limited partnerships will receive new securities, or securities in another entity, that will be reported under a transaction reporting plan declared effective before the date of enactment of this subsection by the Commission under section 11A;

(B) any of the investors' limited partnership securities are not, as of the date of filing, reported under a transaction reporting plan declared effective before the date of enactment of this subsection by the Commission under section 11A;

(C) investors in any of the limited partnerships involved in the transaction are subject to a significant adverse change with respect to voting rights, the term of existence of the entity, management compensation, or investment objectives; and

(D) any of such investors are not provided an option to receive or retain a security under substantially the same terms and conditions as the original issue.

(5) EXCLUSIONS FROM DEFINITION.—Notwithstanding paragraph (4), the term "limited partnership rollup transaction" does not include—

(A) a transaction that involves only a limited partnership or partnerships having an operating policy or practice of retaining cash available for distribution and reinvesting proceeds from the sale, financing, or refinancing of assets in accordance with such criteria as the Commission determines appropriate;

(B) a transaction involving only limited partnerships wherein the interests of the limited partners are repurchased, recalled, or exchanged in accordance with the terms of the preexisting limited partnership agreements for securities in an operating company specifically identified at the time of the formation of the original limited partnership;

(C) a transaction in which the securities to be issued or exchanged are not required to be and are not registered under the Securities Act of 1933;

(D) a transaction that involves only issuers that are not required to register or report under section 12, both before and after the transaction;

(E) a transaction, except as the Commission may otherwise provide by rule for the protection of investors, involv-

ing the combination or reorganization of one or more limited partnerships in which a non-affiliated party succeeds to the interests of a general partner or sponsor, if—

(i) such action is approved by not less than 66⅔ percent of the outstanding units of each of the participating limited partnerships; and

(ii) as a result of the transaction, the existing general partners will receive only compensation to which they are entitled as expressly provided for in the preexisting limited partnership agreements; or

(F) a transaction, except as the Commission may otherwise provide by rule for the protection of investors, in which the securities offered to investors are securities of another entity that are reported under a transaction reporting plan declared effective before the date of enactment of this subsection by the Commission under section 11A, if—

(i) such other entity was formed, and such class of securities was reported and regularly traded, not less than 12 months before the date on which soliciting material is mailed to investors; and

(ii) the securities of that entity issued to investors in the transaction do not exceed 20 percent of the total outstanding securities of the entity, exclusive of any securities of such class held by or for the account of the entity or a subsidiary of the entity.

(i) DISCLOSURE OF PAY VERSUS PERFORMANCE.—The Commission shall, by rule, require each issuer to disclose in any proxy or consent solicitation material for an annual meeting of the shareholders of the issuer a clear description of any compensation required to be disclosed by the issuer under section 229.402 of title 17, Code of Federal Regulations (or any successor thereto), including, for any issuer other than an emerging growth company, information that shows the relationship between executive compensation actually paid and the financial performance of the issuer, taking into account any change in the value of the shares of stock and dividends of the issuer and any distributions. The disclosure under this subsection may include a graphic representation of the information required to be disclosed.

(j) DISCLOSURE OF HEDGING BY EMPLOYEES AND DIRECTORS.—The Commission shall, by rule, require each issuer to disclose in any proxy or consent solicitation material for an annual meeting of the shareholders of the issuer whether any employee or member of the board of directors of the issuer, or any designee of such employee or member, is permitted to purchase financial instruments (including prepaid variable forward contracts, equity swaps, collars, and exchange funds) that are designed to hedge or offset any decrease in the market value of equity securities—

(1) granted to the employee or member of the board of directors by the issuer as part of the compensation of the employee or member of the board of directors; or

(2) held, directly or indirectly, by the employee or member of the board of directors.

(k) DATA STANDARDS FOR PROXY AND CONSENT SOLICITATION MATERIALS.—

(1) REQUIREMENT.—The Commission shall, by rule, adopt data standards for all information contained in any proxy or consent solicitation material prepared by an issuer for an annual meeting of the shareholders of the issuer, except that the Commission may exempt exhibits, signatures, and certifications from those data standards.

(2) CONSISTENCY.—The data standards required under paragraph (1) shall incorporate, and ensure compatibility with (to the extent feasible), all applicable data standards established in the rules promulgated under section 124 of the Financial Stability Act of 2010, including, to the extent practicable, by having the characteristics described in clauses (i) through (vi) of subsection (c)(1)(B) of such section 124.

(l) FALSE OR MISLEADING STATEMENTS.—For purposes of section 18, the failure to disclose material information (such as a proxy voting advice business's methodology, sources of information, or conflicts of interest) or the making of a material misstatement regarding proxy voting advice that makes a recommendation to a security holder as to the security holder's vote, consent, or authorization on a specific matter for which security holder approval is solicited, and that is furnished by a person that markets the person's expertise as a provider of such proxy voting advice separately from other forms of investment advice, and sells such proxy voting advice for a fee, shall be considered to be false or misleading with respect to a material fact.

(m) PROHIBITION ON ROBOVOTING.—

(1) IN GENERAL.—The Commission shall issue final rules prohibiting the use of robovoting with respect to votes related to proxy or consent solicitation materials.

(2) ROBOVOTING DEFINED.—In this subsection, the term "robovoting" means the practice of automatically voting in a manner consistent with the recommendations of a proxy advisory firm or pre-populating votes on a proxy advisory firm's electronic voting platform with the proxy advisory firm's recommendations, in either case, without independent review and analysis.

(n) PROHIBITION ON OUTSOURCING VOTING DECISIONS BY INSTITUTIONAL INVESTORS.—With respect to votes related to proxy or consent solicitation materials, an institutional investor may not outsource voting decisions to any person other than an investment adviser or a broker or dealer that is registered with the Commission and has a fiduciary or best interest duty to the institutional investor.

(o) NO REQUIREMENT TO VOTE.—No person may be required to cast votes related to proxy or consent solicitation materials.

(p) PROXY ADVISORY FIRM CALCULATION OF VOTES.—With respect to votes related to proxy or consent solicitation materials with respect to an issuer, a proxy advisor firm shall calculate the vote result consistent with the law of the State in which the issuer is incorporated.

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SEC. 15H. REGISTRATION OF PROXY ADVISORY FIRMS.

(a) CONDUCT PROHIBITED.—It shall be unlawful for a proxy advisory firm to make use of the mails or any means or instrumentality

of interstate commerce to provide proxy voting advice, research, analysis, ratings or recommendations to any client, unless such proxy advisory firm is registered under this section.

(b) REGISTRATION PROCEDURES.—

(1) APPLICATION FOR REGISTRATION.—

(A) IN GENERAL.—A proxy advisory firm shall file with the Commission an application for registration, in such form as the Commission shall require, by rule, and containing the information described in subparagraph (B).

(B) REQUIRED INFORMATION.—An application for registration under this section shall contain—

(i) a certification that the applicant is able to consistently provide proxy advice based on accurate information;

(ii) with respect to clients of the applicant that vote shares held on behalf of shareholders, a certification that the applicant—

(I) will provide proxy voting advice only in the best economic interest of those shareholders; and

(II) has the requisite expertise to ensure that voting recommendations are in the best economic interest of those shareholders;

(iii) information on the procedures and methodologies that the applicant uses to ensure that proxy voting recommendations are in the best economic interest of the ultimate shareholders;

(iv) information on the organizational structure of the applicant;

(v) an explanation of whether or not the applicant has in effect a code of ethics, and if not, the reasons therefor;

(vi) a description of any potential or actual conflict of interest relating to the provision of proxy advisory services, including those arising out of or resulting from the ownership structure of the applicant or the provision of other services by the applicant or any person associated with the applicant;

(vii) the policies and procedures in place to publicly disclose and manage conflicts of interest under subsection (f);

(viii) information related to the professional and academic qualifications of staff tasked with providing proxy advisory services; and

(ix) any other information and documents concerning the applicant and any person associated with such applicant as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors.

(2) REVIEW OF APPLICATION.—

(A) INITIAL DETERMINATION.—Not later than 90 days after the date on which the application for registration is filed with the Commission under paragraph (1) (or within such longer period as to which the applicant consents) the Commission shall—

(i) by order, grant registration; or

(ii) institute proceedings to determine whether registration should be denied.

(B) CONDUCT OF PROCEEDINGS.—

(i) CONTENT.—Proceedings referred to in subparagraph (A)(ii) shall—

(I) include notice of the grounds for denial under consideration and an opportunity for hearing; and

(II) be concluded not later than 120 days after the date on which the application for registration is filed with the Commission under paragraph (1).

(ii) DETERMINATION.—At the conclusion of such proceedings, the Commission, by order, shall grant or deny such application for registration.

(iii) EXTENSION AUTHORIZED.—The Commission may extend the time for conclusion of such proceedings for not longer than 90 days, if the Commission finds good cause for such extension and publishes its reasons for so finding, or for such longer period as to which the applicant consents.

(C) GROUNDS FOR DECISION.—The Commission shall grant registration under this subsection—

(i) if the Commission finds that the requirements of this section are satisfied; and

(ii) unless the Commission finds (in which case the Commission shall deny such registration) that—

(I) the applicant has failed to certify to the Commission's satisfaction that it is able to consistently provide proxy advice based on accurate information and to materially comply with the procedures and methodologies disclosed under paragraph (1)(B) and with subsections (f) and (g); or

(II) if the applicant were so registered, its registration would be subject to suspension or revocation under subsection (d).

(3) PUBLIC AVAILABILITY OF INFORMATION.—Subject to section 24, the Commission shall make the information and documents submitted to the Commission by a proxy advisory firm in its completed application for registration, or in any amendment submitted under paragraph (1) or (2) of subsection (c), publicly available on the Commission's website, or through another comparable, readily accessible means.

(c) UPDATE OF REGISTRATION.—

(1) UPDATE.—Each registered proxy advisory firm shall promptly amend and update its application for registration under this section if any information or document provided therein becomes materially inaccurate, except that a registered proxy advisory firm is not required to amend the information required to be filed under subsection (b)(1)(B)(i) by filing information under this paragraph, but shall amend such information in the annual submission of the organization under paragraph (2) of this subsection.

(2) CERTIFICATION.—Not later than 90 calendar days after the end of each calendar year, each registered proxy advisory firm shall file with the Commission an amendment to its registration, in such form as the Commission, by rule, may pre-

scribe as necessary or appropriate in the public interest or for the protection of investors—

(A) certifying that the information and documents in the application for registration of such registered proxy advisory firm continue to be accurate in all material respects; and

(B) listing any material change that occurred to such information or documents during the previous calendar year.

(d) CENSURE, DENIAL, OR SUSPENSION OF REGISTRATION; NOTICE AND HEARING.—The Commission, by order, shall censure, place limitations on the activities, functions, or operations of, suspend for a period not exceeding 12 months, or revoke the registration of any registered proxy advisory firm if the Commission finds, on the record after notice and opportunity for hearing, that such censure, placing of limitations, suspension, or revocation is necessary for the protection of investors and in the public interest and that such registered proxy advisory firm, or any person associated with such an organization, whether prior to or subsequent to becoming so associated—

(1) has committed or omitted any act, or is subject to an order or finding, enumerated in subparagraph (A), (D), (E), (H), or (G) of section 15(b)(4), has been convicted of any offense specified in section 15(b)(4)(B), or is enjoined from any action, conduct, or practice specified in subparagraph (C) of section 15(b)(4), during the 10-year period preceding the date of commencement of the proceedings under this subsection, or at any time thereafter;

(2) has been convicted during the 10-year period preceding the date on which an application for registration is filed with the Commission under this section, or at any time thereafter, of—

(A) any crime that is punishable by imprisonment for 1 or more years, and that is not described in section 15(b)(4)(B); or

(B) a substantially equivalent crime by a foreign court of competent jurisdiction;

(3) is subject to any order of the Commission barring or suspending the right of the person to be associated with a registered proxy advisory firm;

(4) fails to furnish the certifications required under subsections (b)(2)(C)(ii)(I) and (c)(2);

(5) has engaged in one or more prohibited acts enumerated in paragraph (1);

(6) fails to maintain adequate financial and managerial resources to consistently offer advisory services to clients that vote shares held on behalf of shareholders consistent with the best economic interest of those shareholders, including by failing to comply with subsections (f) or (g);

(7) fails to maintain adequate expertise to ensure that proxy advisory services for clients that vote shares held on behalf of shareholders are tied to the best economic interest of those shareholders; or

(8) engages in a prohibited act enumerated in subsection (j).

(e) TERMINATION OF REGISTRATION.—

(1) VOLUNTARY WITHDRAWAL.—A registered proxy advisory firm may, upon such terms and conditions as the Commission may establish as necessary in the public interest or for the protection of investors, which terms and conditions shall include at a minimum that the registered proxy advisory firm will no longer conduct such activities as to bring it within the definition of proxy advisory firm in section 3(a)(82), withdraw from registration by filing a written notice of withdrawal to the Commission.

(2) COMMISSION AUTHORITY.—In addition to any other authority of the Commission under this title, if the Commission finds that a registered proxy advisory firm is no longer in existence or has ceased to do business as a proxy advisory firm, the Commission, by order, shall cancel the registration under this section of such registered proxy advisory firm.

(f) MANAGEMENT OF CONFLICTS OF INTEREST.—

(1) ORGANIZATION POLICIES AND PROCEDURES.—Each registered proxy advisory firm shall establish, maintain, and enforce written policies and procedures reasonably designed, taking into consideration the nature of the business of such registered proxy advisory firm and associated persons, to publicly disclose and manage any conflicts of interest that arise or would reasonably be expected to arise from such business.

(2) COMMISSION AUTHORITY.—The Commission shall, within one year of the date of enactment of this section, issue final rules to prohibit, or require the management and public disclosure of, any conflicts of interest relating to the offering of proxy advisory services by a registered proxy advisory firm, including, without limitation, conflicts of interest relating to—

(A) the manner in which a registered proxy advisory firm is compensated by the client, any affiliate of the client, or any other person for providing proxy advisory services;

(B) business relationships, ownership interests, or any other financial or personal interests between a registered proxy advisory firm, or any person associated with such registered proxy advisory firm, and any client, or any affiliate of such client;

(C) the formulation of proxy voting policies;

(D) the execution, or assistance with the execution, of proxy votes if such votes are based upon recommendations made by the proxy advisory firm in which a person other than the issuer is a proponent; and

(E) any other potential conflict of interest, as the Commission deems necessary or appropriate in the public interest or for the protection of investors.

(3) DISCLOSURE ON FACTORS INFLUENCING RECOMMENDATIONS.—Each registered proxy advisory firm shall annually disclose to the Commission and make publicly available the economic and other factors that a reasonable investor would expect to influence the recommendations of such proxy advisory firm, including the ownership composition of such proxy advisory firm and any meetings with, or feedback received from, outside entities.

(g) RELIABILITY OF PROXY ADVISORY FIRM SERVICES.—

(1) IN GENERAL.—Each registered proxy advisory firm shall—

(A) have staff and other resources sufficient to produce proxy voting recommendations that are based on accurate and current information and designed for clients that vote shares held on behalf of shareholders to advance the best economic interest of those shareholders;

(B) implement procedures that permit issuers that are the subject of proxy voting recommendations—

(i) access in a reasonable time to data and information used to make recommendations; and

(ii) a reasonable opportunity to provide meaningful comment and corrections to such data and information, including the opportunity to present (in person or telephonically) details to the person responsible for developing such data and information prior to the publication of proxy voting recommendations to clients;

(C) employ an ombudsman to receive complaints about the accuracy of information used in making recommendations from the companies that are the subject of the proxy advisory firm's voting recommendations and seek to resolve those complaints in a timely fashion and prior to the publication of proxy voting recommendations to clients; and

(D) if the ombudsman is unable to resolve a complaint to a company's satisfaction prior to the publication of proxy voting recommendations to clients, include in the final report of the firm to clients—

(i) a statement detailing the company's complaints, if requested in writing by the company; and

(ii) a statement explaining why the proxy voting recommendation is in the best economic interest of shareholders.

(2) DEFINITIONS.—In this subsection:

(A) DATA AND INFORMATION USED TO MAKE RECOMMENDATIONS.—The term "data and information used to make voting recommendations"—

(i) means the financial, operational, or descriptive data and information on an issuer used by proxy advisory firms and any contextual or substantive analysis impacting the recommendation; and

(ii) does not include the entirety of the proxy advisory firm's final report to its clients.

(B) REASONABLE TIME.—The term "reasonable time"—

(i) means not less than 1 week before the publication of proxy voting recommendations for clients; and

(ii) shall not otherwise interfere with a proxy advisory firm's ability to provide its clients with timely access to accurate proxy voting research, analysis, or recommendations.

(h) PRIVATE RIGHT OF ACTION WITH RESPECT TO ILLEGAL RECOMMENDATIONS.—Any proxy advisory firm that endorses a proposal that is not supported by the issuer but is approved and subsequently found by a court of competent jurisdiction to violate State or Federal law shall be liable to the applicable issuer for the costs associated with the approval of such proposal, including implementation costs and any penalties incurred by the issuer.

(i) DESIGNATION OF COMPLIANCE OFFICER.—Each registered proxy advisory firm shall designate an individual who reports directly to senior management as responsible for administering the policies and procedures that are required to be established pursuant to subsections (f) and (g), and for ensuring compliance with the securities laws and the rules and regulations thereunder, including those promulgated by the Commission pursuant to this section.

(j) PROHIBITED CONDUCT.—

(1) PROHIBITED ACTS AND PRACTICES.—Not later than one year after the date of enactment of this section, the Commission shall issue final rules to prohibit any act or practice relating to the offering of proxy advisory services by a registered proxy advisory firm that the Commission determines to be unfair, coercive, or abusive, including any act or practice relating to—

(A) advisory or consulting services (offered directly or indirectly, including through an affiliate) related to corporate governance issues; or

(B) modifying a voting recommendation or otherwise departing from its adopted systematic procedures and methodologies in the provision of proxy advisory services, based on whether an issuer, or affiliate thereof, subscribes or will subscribe to other services or product of the registered proxy advisory firm or any person associated with such organization.

(2) RULE OF CONSTRUCTION.—Nothing in paragraph (1), or in any rules or regulations adopted thereunder, may be construed to modify, impair, or supersede the operation of any of the antitrust laws (as defined in the first section of the Clayton Act, except that such term includes section 5 of the Federal Trade Commission Act, to the extent that such section 5 applies to unfair methods of competition).

(k) STATEMENTS OF FINANCIAL CONDITION.—Each registered proxy advisory firm shall, on a confidential basis, file with the Commission, at intervals determined by the Commission, such financial statements, certified (if required by the rules or regulations of the Commission) by an independent public auditor, and information concerning its financial condition, as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors.

(l) ANNUAL REPORT.—

(1) IN GENERAL.—Each registered proxy advisory firm shall, not later than 90 calendar days after the end of each fiscal year, file with the Commission and make publicly available an annual report in such form as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors.

(2) CONTENTS.—Each annual report required under paragraph (1) shall include, at a minimum, disclosure by the registered proxy advisory firm of the following:

(A) A list of shareholder proposals the staff of the registered proxy advisory firm reviewed in the prior fiscal year.

(B) A list of the recommendations made in the prior fiscal year.

(C) The economic analysis conducted to determine that final recommendations provided in the prior fiscal year (other than recommendations relating to an issuer-sponsored proposal or recommendations consistent with that of a board of directors composed of a majority of independent directors) delivered to clients that vote shares held on behalf of shareholders were in the best economic interest of those shareholders.

(D) The staff who reviewed and made recommendations on such proposals in the prior fiscal year.

(E) The qualifications of such staff to ensure that each of the recommendations for clients that vote shares held on behalf of shareholders were tied to the best economic interest of those shareholders.

(F) The recommendations made in the prior fiscal year where the proponent of such recommendation was a client of or received services from the proxy advisory firm.

(G) A certification by the chief executive officer, chief financial officer, and the primary executive responsible for overseeing the compilation and dissemination of proxy voting advice that the final recommendations (other than recommendations relating to an issuer-sponsored proposal or recommendations consistent with that of a board of directors composed of a majority of independent directors) delivered to clients that vote shares held on behalf of shareholders in the last fiscal year—

(i) were based on internal controls and procedures that are designed to ensure accurate information and that such internal controls and procedures are effective;

(ii) do not violate applicable State or Federal law; and

(iii) were based on the best economic interest of those shareholders.

(H) The economic and other factors that a reasonable investor would expect to influence the recommendations of such proxy advisory firm, including the ownership composition of such proxy advisory firm.

(m) TRANSPARENT POLICIES.—Each registered proxy advisory firm shall file with the Commission and make publicly available its methodology for the formulation of proxy voting policies and voting recommendations to clients that vote shares held on behalf of shareholders and how that methodology ensures that the firm's voting recommendations are in the best economic interest of those shareholders.

(n) RULES OF CONSTRUCTION.—Registration under and compliance with this section does not constitute a waiver of, or otherwise diminish, any right, privilege, or defense that a registered proxy advisory firm may otherwise have under any provision of State or Federal law, including any rule, regulation, or order thereunder.

(o) REGULATIONS.—

(1) NEW PROVISIONS.—Such rules and regulations as are required by this section or are otherwise necessary to carry out this section, including the application form required under subsection (a)—

(A) shall be issued by the Commission, not later than 180 days after the date of enactment of this section; and

(B) shall become effective not later than 1 year after the date of enactment of this section.

(2) REVIEW OF EXISTING REGULATIONS.—Not later than 270 days after the date of enactment of this section, the Commission shall—

(A) review its existing rules and regulations which affect the operations of proxy advisory firms; and

(B) amend or revise such rules and regulations in accordance with the purposes of this section, and issue such guidance as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.

(p) APPLICABILITY.—This section, other than subsection (n), which shall apply on the date of enactment of this section, shall apply on the earlier of—

(1) the date on which regulations are issued in final form under subsection (o)(1); or

(2) 270 days after the date of enactment of this section.

(q) BEST ECONOMIC INTEREST DEFINED.—In this section, the term "best economic interest" means decisions that seek to maximize investment returns over a time horizon consistent with the investment objectives and risk management profile of the fund in which the shareholders are invested.

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ACCOUNTS AND RECORDS, EXAMINATIONS OF EXCHANGES, MEMBERS, AND OTHERS

SEC. 17. (a)(1) Every national securities exchange, member thereof, broker or dealer who transacts a business in securities through the medium of any such member, registered securities association, registered broker or dealer, registered municipal securities dealer municipal advisor,, registered securities information processor, registered transfer agent, nationally recognized statistical rating organization, *proxy advisory firm,* and registered clearing agency and the Municipal Securities Rulemaking Board shall make and keep for prescribed periods such records, furnish such copies thereof, and make and disseminate such reports as the Commission, by rule, prescribes as necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this title. Any report that a nationally recognized statistical rating organization is required by Commission rules under this paragraph to make and disseminate to the Commission shall be deemed furnished to the Commission.

(2) Every registered clearing agency shall also make and keep for prescribed periods such records, furnish such copies thereof, and make and disseminate such reports, as the appropriate regulatory agency for such clearing agency, by rule, prescribes as necessary or appropriate for the safeguarding of securities and funds in the custody or control of such clearing agency or for which it is responsible.

(3) Every registered transfer agent shall also make and keep for prescribed periods such records, furnish such copies thereof, and

make such reports as the appropriate regulatory agency for such transfer agent, by rule, prescribes as necessary or appropriate in furtherance of the purposes of section 17A of this title.

(b) RECORDS SUBJECT TO EXAMINATION.—

(1) PROCEDURES FOR COOPERATION WITH OTHER AGENCIES.—All records of persons described in subsection (a) of this section are subject at any time, or from time to time, to such reasonable periodic, special, or other examinations by representatives of the Commission and the appropriate regulatory agency for such persons as the Commission or the appropriate regulatory agency for such persons deems necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this title: *Provided, however,* That the Commission shall, prior to conducting any such examination of a—

(A) registered clearing agency, registered transfer agent, or registered municipal securities dealer for which it is not the appropriate regulatory agency, give notice to the appropriate regulatory agency for such clearing agency, transfer agent, or municipal securities dealer of such proposed examination and consult with such appropriate regulatory agency concerning the feasibility and desirability of coordinating such examination with examinations conducted by such appropriate regulatory agency with a view to avoiding unnecessary regulatory duplication or undue regulatory burdens for such clearing agency, transfer agent, or municipal securities dealer; or

(B) broker or dealer registered pursuant to section 15(b)(11), exchange registered pursuant to section 6(g), or national securities association registered pursuant to section 15A(k), give notice to the Commodity Futures Trading Commission of such proposed examination and consults with the Commodity Futures Trading Commission concerning the feasibility and desirability of coordinating such examination with examinations conducted by the Commodity Futures Trading Commission in order to avoid unnecessary regulatory duplication or undue regulatory burdens for such broker or dealer or exchange.

(2) FURNISHING DATA AND REPORTS TO CFTC.—The Commission shall notify the Commodity Futures Trading Commission of any examination conducted of any broker or dealer registered pursuant to section 15(b)(11), exchange registered pursuant to section 6(g), or national securities association registered pursuant to section 15A(k) and, upon request, furnish to the Commodity Futures Trading Commission any examination report and data supplied to, or prepared by, the Commission in connection with such examination.

(3) USE OF CFTC REPORTS.—Prior to conducting an examination under paragraph (1), the Commission shall use the reports of examinations, if the information available therein is sufficient for the purposes of the examination, of—

(A) any broker or dealer registered pursuant to section 15(b)(11);

(B) exchange registered pursuant to section 6(g); or

(C) national securities association registered pursuant to section 15A(k);

that is made by the Commodity Futures Trading Commission, a national securities association registered pursuant to section 15A(k), or an exchange registered pursuant to section 6(g).

(4) RULES OF CONSTRUCTION.—

(A) Notwithstanding any other provision of this subsection, the records of a broker or dealer registered pursuant to section 15(b)(11), an exchange registered pursuant to section 6(g), or a national securities association registered pursuant to section 15A(k) described in this subparagraph shall not be subject to routine periodic examinations by the Commission.

(B) Any recordkeeping rules adopted under this subsection for a broker or dealer registered pursuant to section 15(b)(11), an exchange registered pursuant to section 6(g), or a national securities association registered pursuant to section 15A(k) shall be limited to records with respect to persons, accounts, agreements, contracts, and transactions involving security futures products.

(C) Nothing in the proviso in paragraph (1) shall be construed to impair or limit (other than by the requirement of prior consultation) the power of the Commission under this subsection to examine any clearing agency, transfer agent, or municipal securities dealer or to affect in any way the power of the Commission under any other provision of this title or otherwise to inspect, examine, or investigate any such clearing agency, transfer agent, or municipal securities dealer.

(c)(1) Every clearing agency, transfer agent, and municipal securities dealer for which the Commission is not the appropriate regulatory agency shall (A) file with the appropriate regulatory agency for such clearing agency, transfer agent, or municipal securities dealer a copy of any application, notice, proposal, report, or document filed with the Commission by reason of its being a clearing agency, transfer agent, or municipal securities dealer and (B) file with the Commission a copy of any application, notice, proposal, report, or document filed with such appropriate regulatory agency by reason of its being a clearing agency, transfer agent, or municipal securities dealer. The Municipal Securities Rulemaking Board shall file with each agency enumerated in section 3(a)(34)(A) of this title copies of every proposed rule change filed with the Commission pursuant to section 19(b) of this title.

(2) The appropriate regulatory agency for a clearing agency, transfer agent, or municipal securities dealer for which the Commission is not the appropriate regulatory agency shall file with the Commission notice of the commencement of any proceeding and a copy of any order entered by such appropriate regulatory agency against any clearing agency, transfer agent, municipal securities dealer, or person associated with a transfer agent or municipal securities dealer, and the Commission shall file with such appropriate regulatory agency, if any, notice of the commencement of any proceeding and a copy of any order entered by the Commission against the clearing agency, transfer agent, or municipal securities dealer, or against any person associated with a transfer agent or

municipal securities dealer for which the agency is the appropriate regulatory agency.

(3) The Commission and the appropriate regulatory agency for a clearing agency, transfer agent, or municipal securities dealer for which the Commission is not the appropriate regulatory agency shall each notify the other and make a report of any examination conducted by it of such clearing agency, transfer agent, or municipal securities dealer, and, upon request, furnish to the other a copy of such report and any data supplied to it in connection with such examination.

(4) The Commission or the appropriate regulatory agency may specify that documents required to be filed pursuant to this subsection with the Commission or such agency, respectively, may be retained by the originating clearing agency, transfer agent, or municipal securities dealer, or filed with another appropriate regulatory agency. The Commission or the appropriate regulatory agency (as the case may be) making such a specification shall continue to have access to the document on request.

(d)(1) The Commission, by rule or order, as it deems necessary or appropriate in the public interest and for the protection of investors, to foster cooperation and coordination among self-regulatory organizations, or to remove impediments to and foster the development of a national market system and national system for the clearance and settlement of securities transactions, may—

(A) with respect to any person who is a member of or participant in more than one self-regulatory organization, relieve any such self-regulatory organization of any responsibility under this title (i) to receive regulatory reports from such person, (ii) to examine such person for compliance, or to enforce compliance by such person, with specified provisions of this title, the rules and regulations thereunder, and its own rules, or (iii) to carry out other specified regulatory functions with respect to such person, and

(B) allocate among self-regulatory organizations the authority to adopt rules with respect to matters as to which, in the absence of such allocation, such self-regulatory organizations share authority under this title.

In making any such rule or entering any such order, the Commission shall take into consideration the regulatory capabilities and procedures of the self-regulatory organizations, availability of staff, convenience of location, unnecessary regulatory duplication, and such other factors as the Commission may consider germane to the protection of investors, cooperation and coordination among self-regulatory organizations, and the development of a national market system and a national system for the clearance and settlement of securities transactions. The Commission, by rule or order, as it deems necessary or appropriate in the public interest and for the protection of investors, may require any self-regulatory organization relieved of any responsibility pursuant to this paragraph, and any person with respect to whom such responsibility relates, to take such steps as are specified in any such rule or order to notify customers of, and persons doing business with, such person of the limited nature of such self-regulatory organization's responsibility for such person's acts, practices, and course of business.

(2) A self-regulatory organization shall furnish copies of any report of examination of any person who is a member of or a participant in such self-regulatory organization to any other self-regulatory organization of which such person is a member or in which such person is a participant upon the request of such person, such other self-regulatory organization, or the Commission.

(e)(1)(A) Every registered broker or dealer shall annually file with the Commission a balance sheet and income statement certified by a independent public accounting firm, or by a registered public accounting firm if the firm is required to be registered under the Sarbanes-Oxley Act of 2002,, prepared on a calendar or fiscal year basis, and such other financial statements (which shall, as the Commission specifies, be certified) and information concerning its financial condition as the Commission, by rule may prescribe as necessary or appropriate in the public interest or for the protection of investors.

(B) Every registered broker and dealer shall annually send to its customers its certified balance sheet and such other financial statements and information concerning its financial condition as the Commission, by rule, may prescribe pursuant to subsection (a) of this section.

(C) The Commission, by rule or order, may conditionally or unconditionally exempt any registered broker or dealer, or class of such brokers or dealers, from any provision of this paragraph if the Commission determines that such exemption is consistent with the public interest and the protection of investors.

(2) The Commission, by rule, as it deems necessary or appropriate in the public interest or for the protection of investors, may prescribe the form and content of financial statements filed pursuant to this title and the accounting principles and accounting standards used in their preparation.

(f)(1) Every national securities exchange, member thereof, registered securities association, broker, dealer, municipal securities dealer, government securities broker, government securities dealer, registered transfer agent, registered clearing agency, participant therein, member of the Federal Reserve System, and bank whose deposits are insured by the Federal Deposit Insurance Corporation shall—

(A) report to the Commission or other person designated by the Commission and, in the case of securities issued pursuant to chapter 31 of title 31, United States Code, to the Secretary of the Treasury such information about securities that are missing, lost, counterfeit, stolen, or cancelled, in such form and within such time as the Commission, by rule, determines is necessary or appropriate in the public interest or for the protection of investors; such information shall be available on request for a reasonable fee, to any such exchange, member, association, broker, dealer, municipal securities dealer, transfer agent, clearing agency, participant, member of the Federal Reserve System, or insured bank, and such other persons as the Commission, by rule, designates; and

(B) make such inquiry with respect to information reported pursuant to this subsection as the Commission, by rule, prescribes as necessary or appropriate in the public interest or for the protection of investors, to determine whether securities in

their custody or control, for which they are responsible, or in which they are effecting, clearing, or settling a transaction have been reported as missing, lost, counterfeit, stolen, cancelled, or reported in such other manner as the Commission, by rule, may prescribe.

(2) Every member of a national securities exchange, broker, dealer, registered transfer agent, registered clearing agency, registered securities information processor, national securities exchange, and national securities association shall require that each of its partners, directors, officers, and employees be fingerprinted and shall submit such fingerprints, or cause the same to be submitted, to the Attorney General of the United States for identification and appropriate processing. The Commission, by rule, may exempt from the provisions of this paragraph upon specified terms, conditions, and periods, any class of partners, directors, officers, or employees of any such member, broker, dealer, transfer agent, clearing agency, securities information processor, national securities exchange, or national securities association, if the Commission finds that such action is not inconsistent with the public interest or the protection of investors. Notwithstanding any other provision of law, in providing identification and processing functions, the Attorney General shall provide the Commission and self-regulatory organizations designated by the Commission with access to all criminal history record information.

(3)(A) In order to carry out the authority under paragraph (1) above, the Commission or its designee may enter into agreement with the Attorney General to use the facilities of the National Crime Information Center ("NCIC") to receive, store, and disseminate information in regard to missing, lost, counterfeit, or stolen securities and to permit direct inquiry access to NCIC's file on such securities for the financial community.

(B) In order to carry out the authority under paragraph (1) of this subsection, the Commission or its designee and the Secretary of the Treasury shall enter into an agreement whereby the Commission or its designee will receive, store, and disseminate information in the possession, and which comes into the possession, of the Department of the Treasury in regard to missing, lost, counterfeit, or stolen securities.

(4) In regard to paragraphs (1), (2), and (3), above insofar as such paragraphs apply to any bank or member of the Federal Reserve System, the Commission may delegate its authority to:

(A) the Comptroller of the Currency as to national banks;

(B) the Federal Reserve Board in regard to any member of the Federal Reserve System which is not a national bank; and

(C) the Federal Deposit Insurance Corporation for any State bank which is insured by the Federal Deposit Insurance Corporation but which is not a member of the Federal Reserve System.

(5) The Commission shall encourage the insurance industry to require their insured to report expeditiously instances of missing, lost, counterfeit, or stolen securities to the Commission or to such other person as the Commission may, by rule, designate to receive such information.

(g) Any broker, dealer, or other person extending credit who is subject to the rules and regulations prescribed by the Board of Gov-

ernors of the Federal Reserve System pursuant to this title shall make such reports to the Board as it may require as necessary or appropriate to enable it to perform the functions conferred upon it by this title. If any such broker, dealer, or other person shall fail to make any such report or fail to furnish full information therein, or, if in the judgment of the Board it is otherwise necessary, such broker, dealer, or other person shall permit such inspections to be made by the Board with respect to the business operations of such broker, dealer, or other person as the Board may deem necessary to enable it to obtain the required information.

(h) RISK ASSESSMENT FOR HOLDING COMPANY SYSTEMS.—

(1) OBLIGATIONS TO OBTAIN, MAINTAIN, AND REPORT INFORMATION.—Every person who is (A) a registered broker or dealer, or (B) a registered municipal securities dealer for which the Commission is the appropriate regulatory agency, shall obtain such information and make and keep such records as the Commission by rule prescribes concerning the registered person's policies, procedures, or systems for monitoring and controlling financial and operational risks to it resulting from the activities of any of its associated persons, other than a natural person. Such records shall describe, in the aggregate, each of the financial and securities activities conducted by, and the customary sources of capital and funding of, those of its associated persons whose business activities are reasonably likely to have a material impact on the financial or operational condition of such registered person, including its net capital, its liquidity, or its ability to conduct or finance its operations. The Commission, by rule, may require summary reports of such information to be filed with the Commission no more frequently than quarterly.

(2) AUTHORITY TO REQUIRE ADDITIONAL INFORMATION.—If, as a result of adverse market conditions or based on reports provided to the Commission pursuant to paragraph (1) of this subsection or other available information, the Commission reasonably concludes that it has concerns regarding the financial or operational condition of (A) any registered broker or dealer, or (B) any registered municipal securities dealer, government securities broker, or government securities dealer for which the Commission is the appropriate regulatory agency, the Commission may require the registered person to make reports concerning the financial and securities activities of any of such person's associated persons, other than a natural person, whose business activities are reasonably likely to have a material impact on the financial or operational condition of such registered person. The Commission, in requiring reports pursuant to this paragraph, shall specify the information required, the period for which it is required, the time and date on which the information must be furnished, and whether the information is to be furnished directly to the Commission or to a self-regulatory organization with primary responsibility for examining the registered person's financial and operational condition.

(3) SPECIAL PROVISIONS WITH RESPECT TO ASSOCIATED PERSONS SUBJECT TO FEDERAL BANKING AGENCY REGULATION.—

(A) COOPERATION IN IMPLEMENTATION.—In developing and implementing reporting requirements pursuant to paragraph (1) of this subsection with respect to associated persons subject to examination by or reporting requirements of a Federal banking agency, the Commission shall consult with and consider the views of each such Federal banking agency. If a Federal banking agency comments in writing on a proposed rule of the Commission under this subsection that has been published for comment, the Commission shall respond in writing to such written comment before adopting the proposed rule. The Commission shall, at the request of the Federal banking agency, publish such comment and response in the Federal Register at the time of publishing the adopted rule.

(B) USE OF BANKING AGENCY REPORTS.—A registered broker, dealer, or municipal securities dealer shall be in compliance with any recordkeeping or reporting requirement adopted pursuant to paragraph (1) of this subsection concerning an associated person that is subject to examination by or reporting requirements of a Federal banking agency if such broker, dealer, or municipal securities dealer utilizes for such recordkeeping or reporting requirement copies of reports filed by the associated person with the Federal banking agency pursuant to section 5211 of the Revised Statutes, section 9 of the Federal Reserve Act, section 7(a) of the Federal Deposit Insurance Act, section 10(b) of the Home Owners' Loan Act, or section 8 of the Bank Holding Company Act of 1956. The Commission may, however, by rule adopted pursuant to paragraph (1), require any broker, dealer, or municipal securities dealer filing such reports with the Commission to obtain, maintain, or report supplemental information if the Commission makes an explicit finding that such supplemental information is necessary to inform the Commission regarding potential risks to such broker, dealer, or municipal securities dealer. Prior to requiring any such supplemental information, the Commission shall first request the Federal banking agency to expand its reporting requirements to include such information.

(C) PROCEDURE FOR REQUIRING ADDITIONAL INFORMATION.—Prior to making a request pursuant to paragraph (2) of this subsection for information with respect to an associated person that is subject to examination by or reporting requirements of a Federal banking agency, the Commission shall—

(i) notify such agency of the information required with respect to such associated person; and

(ii) consult with such agency to determine whether the information required is available from such agency and for other purposes, unless the Commission determines that any delay resulting from such consultation would be inconsistent with ensuring the financial and operational condition of the broker, dealer, municipal securities dealer, government securities broker, or gov-

ernment securities dealer or the stability or integrity of the securities markets.

(D) EXCLUSION FOR EXAMINATION REPORTS.—Nothing in this subsection shall be construed to permit the Commission to require any registered broker or dealer, or any registered municipal securities dealer, government securities broker, or government securities dealer for which the Commission is the appropriate regulatory agency, to obtain, maintain, or furnish any examination report of any Federal banking agency or any supervisory recommendations or analysis contained therein.

(E) CONFIDENTIALITY OF INFORMATION PROVIDED.—No information provided to or obtained by the Commission from any Federal banking agency pursuant to a request by the Commission under subparagraph (C) of this paragraph regarding any associated person which is subject to examination by or reporting requirements of a Federal banking agency may be disclosed to any other person (other than a self-regulatory organization), without the prior written approval of the Federal banking agency. Nothing in this subsection shall authorize the Commission to withhold information from Congress, or prevent the Commission from complying with a request for information from any other Federal department or agency requesting the information for purposes within the scope of its jurisdiction, or complying with an order of a court of the United States in an action brought by the United States or the Commission.

(F) NOTICE TO BANKING AGENCIES CONCERNING FINANCIAL AND OPERATIONAL CONDITION CONCERNS.—The Commission shall notify the Federal banking agency of any concerns of the Commission regarding significant financial or operational risks resulting from the activities of any registered broker or dealer, or any registered municipal securities dealer, government securities broker, or government securities dealer for which the Commission is the appropriate regulatory agency, to any associated person thereof which is subject to examination by or reporting requirements of the Federal banking agency.

(G) DEFINITION.—For purposes of this paragraph, the term "Federal banking agency" shall have the same meaning as the term "appropriate Federal bank agency" in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)).

(4) EXEMPTIONS.—The Commission by rule or order may exempt any person or class of persons, under such terms and conditions and for such periods as the Commission shall provide in such rule or order, from the provisions of this subsection, and the rules thereunder. In granting such exemptions, the Commission shall consider, among other factors—

(A) whether information of the type required under this subsection is available from a supervisory agency (as defined in section 1101(6) of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3401(6))), a State insurance commission or similar State agency, the Commodity Futures Trading Commission, or a similar foreign regulator;

(B) the primary business of any associated person;

(C) the nature and extent of domestic or foreign regulation of the associated person's activities;

(D) the nature and extent of the registered person's securities activities; and

(E) with respect to the registered person and its associated persons, on a consolidated basis, the amount and proportion of assets devoted to, and revenues derived from, activities in the United States securities markets.

(5) AUTHORITY TO LIMIT DISCLOSURE OF INFORMATION.—Notwithstanding any other provision of law, the Commission shall not be compelled to disclose any information required to be reported under this subsection, or any information supplied to the Commission by any domestic or foreign regulatory agency that relates to the financial or operational condition of any associated person of a registered broker, dealer, government securities broker, government securities dealer, or municipal securities dealer. Nothing in this subsection shall authorize the Commission to withhold information from Congress, or prevent the Commission from complying with a request for information from any other Federal department or agency requesting the information for purposes within the scope of its jurisdiction, or complying with an order of a court of the United States in an action brought by the United States or the Commission. For purposes of section 552 of title 5, United States Code, this subsection shall be considered a statute described in subsection (b)(3)(B) of such section 552. In prescribing regulations to carry out the requirements of this subsection, the Commission shall designate information described in or obtained pursuant to subparagraph (B) or (C) of paragraph (3) of this subsection as confidential information for purposes of section 24(b)(2) of this title.

(i) AUTHORITY TO LIMIT DISCLOSURE OF INFORMATION.—Notwithstanding any other provision of law, the Commission shall not be compelled to disclose any information required to be reported under subsection (h) or (i) or any information supplied to the Commission by any domestic or foreign regulatory agency that relates to the financial or operational condition of any associated person of a broker or dealer, investment bank holding company, or any affiliate of an investment bank holding company. Nothing in this subsection shall authorize the Commission to withhold information from Congress, or prevent the Commission from complying with a request for information from any other Federal department or agency or any self-regulatory organization requesting the information for purposes within the scope of its jurisdiction, or complying with an order of a court of the United States in an action brought by the United States or the Commission. For purposes of section 552 of title 5, United States Code, this subsection shall be considered a statute described in subsection (b)(3)(B) of such section 552. In prescribing regulations to carry out the requirements of this subsection, the Commission shall designate information described in or obtained pursuant to subparagraphs (A), (B), and (C) of subsection (i)(5) as confidential information for purposes of section 24(b)(2) of this title.

(j) COORDINATION OF EXAMINING AUTHORITIES.—

(1) ELIMINATION OF DUPLICATION.—The Commission and the examining authorities, through cooperation and coordination of examination and oversight activities, shall eliminate any unnecessary and burdensome duplication in the examination process.

(2) COORDINATION OF EXAMINATIONS.—The Commission and the examining authorities shall share such information, including reports of examinations, customer complaint information, and other nonpublic regulatory information, as appropriate to foster a coordinated approach to regulatory oversight of brokers and dealers that are subject to examination by more than one examining authority.

(3) EXAMINATIONS FOR CAUSE.—At any time, any examining authority may conduct an examination for cause of any broker or dealer subject to its jurisdiction.

(4) CONFIDENTIALITY.—

(A) IN GENERAL.—Section 24 shall apply to the sharing of information in accordance with this subsection. The Commission shall take appropriate action under section 24(c) to ensure that such information is not inappropriately disclosed.

(B) APPROPRIATE DISCLOSURE NOT PROHIBITED.—Nothing in this paragraph authorizes the Commission or any examining authority to withhold information from the Congress, or prevent the Commission or any examining authority from complying with a request for information from any other Federal department or agency requesting the information for purposes within the scope of its jurisdiction, or complying with an order of a court of the United States in an action brought by the United States or the Commission.

(5) DEFINITION.—For purposes of this subsection, the term "examining authority" means a self-regulatory organization registered with the Commission under this title (other than a registered clearing agency) with the authority to examine, inspect, and otherwise oversee the activities of a registered broker or dealer.

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INVESTMENT ADVISERS ACT OF 1940

TITLE II—INVESTMENT ADVISERS

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SEC. 208A. PROXY VOTING OF PASSIVELY MANAGED FUNDS.

(a) INVESTMENT ADVISER PROXY VOTING.—

(1) IN GENERAL.—An investment adviser that holds authority to vote a proxy solicited by an issuer pursuant to section 14 of the Securities Exchange Act of 1934 (15 U.S.C. 78n) in connection with any vote of covered securities held by a passively managed fund shall—

(A) vote in accordance with the instructions of the beneficial owner of a voting security of the passively managed fund;

(B) vote in accordance with the voting recommendations of such issuer; or

(C) abstain from voting but make reasonable efforts to be considered present for purposes of establishing a quorum.

(2) EXCEPTION.—Paragraph (1) shall not apply with respect to a vote on a routine matter.

(b) SAFE HARBOR.—With respect to a matter that is not a routine matter, in the case of a vote described in subsection (a)(1), an investment adviser shall not be liable to any person under any law or regulation of the United States, any constitution, law, or regulation of any State or political subdivision thereof, or under any contract or other legally enforceable agreement (including any arbitration agreement), for any of the following:

(1) Voting in accordance with the instructions of the beneficial owner of a voting security of the passively managed fund.

(2) Not soliciting voting instructing from any person under subsection (a)(1) with respect to such vote.

(3) Voting in accordance with the voting recommendations of an issuer pursuant to subparagraph (B) of such subsection.

(4) Abstaining from voting in accordance with subparagraph (C) of such subsection.

(c) FOREIGN PRIVATE ISSUERS EXEMPTION.—Subsection (a) shall not apply with respect to a foreign private issuer if the voting policy of the investment advisor with respect to such foreign private issuers is fully and fairly disclosed to beneficial owners, including the extent to which such policy differs from the voting policy for non-exempt issuers.

(d) DEFINITIONS.—In this section:

(1) COVERED SECURITY.—The term "covered security"—

(A) means a voting security, as that term is defined in section 2(a) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)), in which a qualified fund is invested; and

(B) does not include any voting security (as defined in subparagraph (A)) of an issuer registered with the Commission as an investment company under section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a–8).

(2) PASSIVELY MANAGED FUND.—The term "passively managed fund" means a qualified fund that—

(A) is designed to track, or is derived from, an index of securities or a portion of such an index;

(B) discloses that the qualified fund is a passive index fund; or

(C) allocates not less than 60 percent of the total assets of the qualified fund to an investment strategy that is designed to track, or is derived from, an index of securities or a portion of such an index fund.

(3) QUALIFIED FUND.—The term "qualified fund" means—

(A) an investment company, as that term is defined in section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a–3);

(B) a private fund;

(C) an eligible deferred compensation plan, as that term is defined in section 457(b) of the Internal Revenue Code of 1986;

(D) a trust, plan, account, or other entity described in section 3(c)(11) of the Investment Company Act of 1940 (15 U.S.C. 80a–3(c)(11));

(E) a plan maintained by an employer described in clause (i), (ii), or (iii) of section 403(b)(1)(A) of the Internal Revenue Code of 1986 to provide annuity contracts described in section 403(b) of such Code;

(F) a common trust fund, or similar fund, maintained by a bank;

(G) any fund established under section 8438(b)(1) of title 5, United States Code; or

(H) any separate managed account of a client of an investment adviser.

(4) REGISTRANT.—The term "registrant" means an issuer of covered securities.

(5) ROUTINE MATTER.—The term "routine matter"—

(A) includes a proposal that relates to—

(i) an election with respect to the board of directors of the registrant;

(ii) the compensation of management or the board of directors of the registrant;

(iii) the selection of auditors;

(iv) a matter where there is a material conflict of interest between or among the issuer, members of management, members of the board of directors, or an affiliate of the issuer;

(v) declassification; or

(vi) transactions that would transform the structure of the registrant, including—

(I) a merger or consolidation; and

(II) the sale, lease, or exchange of all, or substantially all, of the property and assets of a registrant; and

(B) does not include—

(i) a proposal that is not submitted to a holder of covered securities by means of a proxy statement comparable to that described in section 240.14a–101 of title 17, Code of Federal Regulations, or any successor regulation; or

(ii) a proposal that is—

(I) the subject of a counter-solicitation; or

(II) part of a proposal made by a person other than the applicable registrant.

* * * * * * *

RULES, REGULATIONS, AND ORDERS

SEC. 211. (a) The Commission shall have authority from time to time to make, issue, amend, and rescind such rules and regulations and such orders as are necessary or appropriate to the exercise of the functions and powers conferred upon the Commission elsewhere in this title, including rules and regulations defining technical, trade, and other terms used in this title, except that the Commission may not define the term "client" for purposes of paragraphs (1) and (2) of section 206 to include an investor in a private

fund managed by an investment adviser, if such private fund has entered into an advisory contract with such adviser. For the purposes of its rules or regulations the Commission may classify persons and matters within its jurisdiction and prescribe different requirements for different classes of persons or matters.

(b) Subject to the provisions of chapter 15 of title 44, United States Code, and regulations prescribed under the authority thereof, the rules and regulations of the Commission under this title, and amendments thereof, shall be effective upon publication in the manner which the Commission shall prescribe, or upon such later date as may be provided in such rules and regulations.

(c) Orders of the Commission under this title shall be issued only after appropriate notice and opportunity for hearing. Notice to the parties to a proceeding before the Commission shall be given by personal service upon each party or by registered mail or certified mail or confirmed telegraphic notice to the party's last known business address. Notice to interested persons, if any, other than parties may be given in the same manner or by publication in the Federal Register.

(d) No provision of this title imposing any liability shall apply to any act done or omitted in good faith in conformity with any rule, regulation, or order of the Commission, notwithstanding that such rule, regulation, or order may, after such act or omission, be amended or rescinded or be determined by judicial or other authority to be invalid for any reason.

(e) DISCLOSURE RULES ON PRIVATE FUNDS.—The Commission and the Commodity Futures Trading Commission shall, after consultation with the Council but not later than 12 months after the date of enactment of the Private Fund Investment Advisers Registration Act of 2010, jointly promulgate rules to establish the form and content of the reports required to be filed with the Commission under subsection 204(b) and with the Commodity Futures Trading Commission by investment advisers that are registered both under this title and the Commodity Exchange Act (7 U.S.C. 1a et seq.).

(g) STANDARD OF CONDUCT.—

(1) IN GENERAL.—The Commission may promulgate rules to provide that the standard of conduct for all brokers, dealers, and investment advisers, when providing personalized investment advice about securities to retail customers (and such other customers as the Commission may by rule provide), shall be to act in the best interest of the customer without regard to the financial or other interest of the broker, dealer, or investment adviser providing the advice. In accordance with such rules, any material conflicts of interest shall be disclosed and may be consented to by the customer. Such rules shall provide that such standard of conduct shall be no less stringent than the standard applicable to investment advisers under section 206(1) and (2) of this Act when providing personalized investment advice about securities, except the Commission shall not ascribe a meaning to the term "customer" that would include an investor in a private fund managed by an investment adviser, where such private fund has entered into an advisory contract with such adviser. The receipt of compensation based on commission or fees shall not, in and of itself, be considered

a violation of such standard applied to a broker, dealer, or investment adviser.

(2) RETAIL CUSTOMER DEFINED.—For purposes of this subsection, the term "retail customer" means a natural person, or the legal representative of such natural person, who—

(A) receives personalized investment advice about securities from a broker, dealer, or investment adviser; and

(B) uses such advice primarily for personal, family, or household purposes.

(3) BEST INTEREST BASED ON PECUNIARY FACTORS.—

(A) IN GENERAL.—For purposes of paragraph (1), the best interest of a customer shall be determined using pecuniary factors, which may not be subordinated to or limited by non-pecuniary factors, unless the customer provides informed consent, in writing, that such non-pecuniary factors be considered.

(B) DISCLOSURE OF PECUNIARY FACTORS.—If a customer provides a broker, dealer, or investment adviser with the informed consent to consider non-pecuniary factors described under subparagraph (A), the broker, dealer, or investment adviser shall—

(i) disclose the expected pecuniary effects to the customer over a time period selected by the customer and not to exceed three years; and

(ii) at the end of the time period described in clause (i), disclose, by comparison to a reasonably comparable index or basket of securities selected by the customer, the actual pecuniary effects of that time period, including all fees, costs, and other expenses incurred to consider non-pecuniary factors.

(C) PECUNIARY FACTOR DEFINED.—In this paragraph, the term "pecuniary factor" means a factor that a fiduciary prudently determines is expected to have a material effect on the risk or return of an investment based on appropriate investment horizons.

(h) OTHER MATTERS.—The Commission shall—

(1) facilitate the provision of simple and clear disclosures to investors regarding the terms of their relationships with brokers, dealers, and investment advisers, including any material conflicts of interest; and

(2) examine and, where appropriate, promulgate rules prohibiting or restricting certain sales practices, conflicts of interest, and compensation schemes for brokers, dealers, and investment advisers that the Commission deems contrary to the public interest and the protection of investors.

(i) HARMONIZATION OF ENFORCEMENT.—The enforcement authority of the Commission with respect to violations of the standard of conduct applicable to an investment adviser shall include—

(1) the enforcement authority of the Commission with respect to such violations provided under this Act; and

(2) the enforcement authority of the Commission with respect to violations of the standard of conduct applicable to a broker or dealer providing personalized investment advice about securities to a retail customer under the Securities Ex-

change Act of 1934, including the authority to impose sanctions for such violations, and

the Commission shall seek to prosecute and sanction violators of the standard of conduct applicable to an investment adviser under this Act to same extent as the Commission prosecutes and sanctions violators of the standard of conduct applicable to a broker or dealer providing personalized investment advice about securities to a retail customer under the Securities Exchange Act of 1934.

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MINORITY VIEWS

This bill is part of the Republican war on so-called "woke capitalism." H.R. 4767 would make it harder for shareholders to offer proposals to strengthen the companies that they own, targeting shareholder proposals that push companies to be more diverse, more inclusive, better managed, and more concerned about their impact on our climate. These are all issues that research has demonstrated have a significant impact on a company's profitability. For example, corporations that are actively managing and planning for climate change—which includes providing public climate-related disclosures—secure an 18% higher return on investment than companies that aren't—and 67% higher than companies who refuse to disclose their emissions.[1] Furthermore, research shows that diverse boards lead to improved financial results; indeed, companies with the highest percentages of women board directors outperformed those with the least by 53% when it comes to return on equity.[2] Ultimately, this bill runs counter to the most basic principles of capitalism and democracy by taking away the ability of the holders of capital—investors—from being able to influence corporate decisions and make informed investment decisions.

In addition to making it harder for shareholders to offer proposals this bill also places burdensome new requirements on proxy advisory firms, which provide independent analysis and data to help shareholders and their representatives to make informed voting decisions on the proposals that are voted on at a company's annual meeting. Proxy advisory firms level the playing field for investors as their research and recommendations offer an independent perspective on proposals that can differ from what management is recommending. Proxy advisory firms effectively provide a check on management's ability to influence votes in their favor, overall increasing ordinary investors' say in the corporate decision-making process. This bill caters to corporate managers who don't want to be bothered by the true owners of the company they run and who dislike the fact that proxy advisory firms help shareholders get information and analysis beyond what corporate managers provide.

The bill is comprised of eleven titles, each briefly discussed below.

- Title I is a direct attempt by Republicans and the corporate managerial class to limit the ability of shareholders to influence the direction of the companies they are invested in. This title would increase the thresholds to resubmit a proposal, in effect, making it harder for shareholders to have their proposals included in a company's annual meeting.

[1] The Guardian, "*Sustainable corporations perform better financially, report finds*" (accessed Sep. 25, 2023).

[2] BoardReady, *Lessons from the Pandemic: Board Diversity and Performance*, (Jul. 13, 2021).

• Title II, like Title I, also makes it harder for shareholders to have their proposals included in a company's annual meeting. Specifically, this title nullifies the SEC's pending amendments [3] to its shareholder proposal rule regarding implementation, duplication, and resubmission.

• Title III directly limits shareholders' ability to call for votes on environmental, social, or corporate governance ("ESG") -related topics—in the process making management less accountable to the desires of their investors. Research shows that the vast majority of investors want companies to disclose information about what they are doing to combat climate risk, instate diverse workforces, and invest in their employees.[4]

• Title IV would allow company management to wholesale exclude any shareholder proposal related to ESG issues.

• Title V asks the SEC to use economic cost-benefit analysis to examine the totality of the proxy process; cost-benefit analyses are often used by conservative policy makers as a justification to strike down regulations they find unfavorable.[5] Cost-benefit analyses are also often flawed because the full impact of many regulations is hard to quantify accurately; they disregard benefits, such as stronger corporate governance or the long term impacts on climate change, that can be difficult to measure but are still critical to the goals of regulation.[6]

• Title VI would compromise the independence of proxy advisory firms by inserting corporate management into their decision-making process. Proxy advisors are a valuable part of our capital markets in large part because they are independent. They help provide independent advice to shareholders to help them make more informed voting decisions.

• Title VII makes proxy advisors liable for failures to disclose material information (such as a proxy advisor's methodology, sources of information, and conflicts of interest) or making material misstatements regarding that advice.

• Title VIII would effectively discourage the use of proxy advisors by requiring extensive and burdensome reporting for institutional investors who choose to utilize the services of a proxy advisor. The title needlessly requires institutional investors who hire proxy advisors to certify that their voting decisions were based solely on the best economic interest of the shareholders they represent; to be clear, institutional investment managers already have existing fiduciary duties and legal obligations to vote proxies in accordance with the best interests of their beneficiaries.

• Title IX outlaws the ability of investment advisers, asset managers, and pension funds—who do not have the ability to conduct their own independent investment research given the sheer number of proxies they must cast on behalf of their investors—to trust the advice of their proxy advisors, and straps

[3] Sidley, *SEC Proposes Amendments to the Substantial Implementation, Duplication, and Resubmission Bases* (Jul. 2022).
[4] PRNewswire, *Nuveen ESG Investor Survey* (Feb. 2, 2023).
[5] Center for American Progress, *Reckoning With Conservatives' Bad Faith Cost-Benefit Analysis* (Aug. 2020).
[6] *Id.*

the former with the burden of having to conduct their own research which is costly and likely not to be as high quality as the research provided by the expert proxy advisors whom they outsource this task to.[7]

- Title X effectively prevents investment advisers that vote on behalf of shares held by passively managed funds—funds that merely track an industry or market index rather than employing an active buy-or-sell strategy—from voting based on the advice of a proxy advisor.
- Title XI, amongst other things, prevents an investment adviser from considering ESG-related metrics when investing their client's money. Furthermore, the latter part of the title is just another attempt by Republicans to limit the availability of investors to see information related to climate risk as well as to prevent shareholders from having a say in corporate decision-making, this time within the context of municipal (ie, government-issued) bonds.

Democratic members offered three amendments to this bill, all of which Republicans rejected:

1. An amendment offered by Rep. Vargas which prohibits the bill from taking effect if the SEC's economic analysis of the bill concludes the bill would limit information that investors consider material or limit the ability for shareholders to submit proposals.

2. An amendment offered by Rep. Casten that prohibits the bill from going into effect unless the SEC has determined that no provisions in the bill will negatively affect State pension fund earnings, increase municipal borrowing costs and indirectly increase costs to taxpayers.

3. An amendment offered by Rep. Casten expressing a sense of Congress that praises the virtues of capitalism and expresses concerns that government should not interfere with investor choice and market forces.

H.R. 4767 is opposed by several groups, including (but not limited to): Americans for Financial Reform, Better Markets, US SIF, the Interfaith Center on Corporate Responsibility, Ceres, OUT Leadership, the US Impact Investing Alliance, the Shareholder Rights Group, Green America, PRI, the Family Farm Defenders, Food and Water Watch, the Institute for Agriculture and Trade Policy, and the Union for Concerned Scientists.

For these reasons, we oppose H.R. 4767.

Sincerely,

MAXINE WATERS,
Ranking Member, Committee on Financial Services.
NYDIA M. VELÁZQUEZ,
BRAD SHERMAN,
GREGORY W. MEEKS,
STEPHEN F. LYNCH,
EMANUEL CLEAVER II,
BILL FOSTER,
JUAN VARGAS,
DAVID SCOTT,

[7] *Id.*

AL GREEN,
JIM HIMES,
JOYCE BEATTY,
VICENTE GONZALEZ,
SEAN CASTEN,
RASHIDA TLAIB,
NIKEMA WILLIAMS,
AYANNA PRESSLEY,
SYLVIA R. GARCIA,
BRITTANY PETTERSEN.
Members of Congress.

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