

117TH CONGRESS
1ST SESSION

S. 1743

To amend the Investment Company Act of 1940 to impose certain requirements relating to the use of market indexes, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 20, 2021

Mr. RUBIO introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

A BILL

To amend the Investment Company Act of 1940 to impose certain requirements relating to the use of market indexes, and for other purposes.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Index Provider Trans-
5 parency and Accountability Act”.

6 **SEC. 2. MARKET INDEXES.**

7 (a) IN GENERAL.—The Investment Company Act of
8 1940 (15 U.S.C. 80a–1 et seq.) is amended—

9 (1) in section 8(b) (15 U.S.C. 80a–8(b))—

1 (A) in paragraph (4), by striking “and” at
 2 the end;

3 (B) in paragraph (5), by striking the pe-
 4 riod at the end and inserting “; and”; and

5 (C) by adding at the end the following:

6 “(6) a disclosure of—

7 “(A) whether the registrant intends to
 8 track the returns of, or benchmark against, a
 9 specific index of securities; and

10 “(B) if the registrant intends to track the
 11 returns of, or benchmark against, a specific
 12 index of securities—

13 “(i) the identity of the index provider;

14 “(ii) any involvement of the registrant
 15 in designing the index;

16 “(iii) any ability of the registrant to
 17 influence the construction or composition
 18 of the index; and

19 “(iv) any licensing fees paid by the
 20 registrant to the index provider.”;

21 (2) in section 13 (15 U.S.C. 80a-13)—

22 (A) by redesignating subsection (c) as sub-
 23 section (d); and

24 (B) by inserting after subsection (b) the
 25 following:

1 “(c) CHANGE IN INVESTMENT POLICY RELATING TO
2 INDEXING.—

3 “(1) IN GENERAL.—With respect to a reg-
4 istered investment company that tracks the returns
5 of, or benchmarks against, a specific index of securi-
6 ties, if a deviation with respect to that index occurs
7 such that the deviation would be permitted under
8 subsection (a)(3) if made directly by the investment
9 company only if authorized by the vote of a majority
10 of the outstanding voting securities of the invest-
11 ment company, the investment company may not
12 continue to so track, or benchmark against, the
13 index, unless so authorized by such a vote or by a
14 vote by the board of directors of the investment com-
15 pany.

16 “(2) RULE OF CONSTRUCTION.—For the pur-
17 poses of paragraph (1), a deviation with respect to
18 an index that requires a vote, as described in that
19 paragraph, includes such a deviation that adds new,
20 or increases the weighting of, securities—

21 “(A) of issuers that are headquartered or
22 incorporated in the People’s Republic of China;
23 or

24 “(B) that are listed on exchanges in the
25 People’s Republic of China.”; and

1 (3) in section 30 (15 U.S.C. 80a-29)—

2 (A) in subsection (b)(1), by striking “this
3 title; and” and inserting the following: “this
4 title, which shall include—

5 “(A) information regarding whether the
6 registered investment company tracks the re-
7 turns of, or benchmarks against (or intends to
8 track, or benchmark against), a specific index
9 of securities; and

10 “(B) if the registered investment company
11 engages in, or intends to engage in, the action
12 described in subparagraph (A), the information
13 described in section 8(b)(6)(B) with respect to
14 the index described in subparagraph (A) of this
15 paragraph; and”;

16 (B) by adding at the end the following:

17 “(k) ANNUAL DISCLOSURE REGARDING CHINESE
18 SECURITIES.—

19 “(1) IN GENERAL.—Each registered investment
20 company shall annually transmit to the stockholders
21 of the investment company a report containing infor-
22 mation regarding, with respect to any security
23 owned by the investment company that is issued by
24 an issuer that is headquartered or incorporated in

1 the People's Republic of China or listed on an ex-
2 change in the People's Republic of China—

3 “(A) the percentage of the securities of
4 that issuer that are owned by governmental en-
5 tities in the People's Republic of China;

6 “(B) whether the entities described in sub-
7 paragraph (A) have a controlling financial in-
8 terest with respect to the issuer;

9 “(C) the name of any official of the Chi-
10 nese Communist Party who is a member of the
11 board of directors of—

12 “(i) the issuer; or

13 “(ii) the operating entity with respect
14 to the issuer;

15 “(D) whether the articles of incorporation
16 of the issuer (or equivalent organizing docu-
17 ment) contains any charter of the Chinese Com-
18 munist Party, including the text of any such
19 charter; and

20 “(E) whether the investment company was
21 unable to obtain any of the information re-
22 quired under any of subparagraphs (A) through
23 (D).

24 “(2) INCLUSION PERMITTED.—A report that a
25 registered investment company is required to trans-

1 mit under paragraph (1) may be included in a report
2 that the investment company is required to transmit
3 under subsection (e).”.

4 (b) TECHNICAL AND CONFORMING AMENDMENT.—
5 Section 401(a) of the Comprehensive Iran Sanctions, Ac-
6 countability, and Divestment Act of 2010 (22 U.S.C.
7 8551(a)) is amended, in the matter preceding paragraph
8 (1), by striking “section 13(c)(1)(B)” and inserting “sec-
9 tion 13(d)(1)(B)”.

10 (c) UPDATES TO RULES.—Not later than 1 year after
11 the date of enactment of this Act, the Securities and Ex-
12 change Commission shall make any updates to the rules
13 of the Commission that are necessary as a result of this
14 section and the amendments made by this section.

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