

In the Senate of the United States,

June 27, 1996.

Resolved, That the bill from the House of Representatives (H.R. 3005) entitled “An Act to amend the Federal securities laws in order to promote efficiency and capital formation in the financial markets, and to amend the Investment Company Act of 1940 to promote more efficient management of mutual funds, protect investors, and provide more effective and less burdensome regulation.”, do pass with the following

AMENDMENT:

Strike out all after the enacting clause and insert:

1 ***SECTION 1. SHORT TITLE; TABLE OF CONTENTS.***

2 (a) *SHORT TITLE*.—*This Act may be cited as the “Se-*
3 *curities Investment Promotion Act of 1996”.*

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

Sec. 1. Short title; table of contents.

Sec. 2. Severability.

TITLE I—INVESTMENT ADVISERS SUPERVISION COORDINATION ACT

Sec. 101. Short title.

Sec. 102. Funding for enhanced enforcement priority.

Sec. 103. Improved supervision through State and Federal cooperation.

- Sec. 104. Interstate cooperation.*
- Sec. 105. Disqualification of convicted felons.*
- Sec. 106. Continued State authority.*
- Sec. 107. Effective date.*

TITLE II—FACILITATING INVESTMENT IN MUTUAL FUNDS

- Sec. 201. Short title.*
- Sec. 202. Funds of funds.*
- Sec. 203. Flexible registration of securities.*
- Sec. 204. Facilitating use of current information in advertising.*
- Sec. 205. Variable insurance contracts.*
- Sec. 206. Prohibition on deceptive investment company names.*
- Sec. 207. Excepted investment companies.*
- Sec. 208. Performance fees exemptions.*
- Sec. 209. Reports to the Commission and shareholders.*
- Sec. 210. Books, records, and inspections.*

TITLE III—REDUCING THE COST OF SAVING AND INVESTMENT

- Sec. 301. Exemption for economic, business, and industrial development companies.*
- Sec. 302. Intrastate closed-end investment company exemption.*
- Sec. 303. Definition of eligible portfolio company.*
- Sec. 304. Definition of business development company.*
- Sec. 305. Acquisition of assets by business development companies.*
- Sec. 306. Capital structure amendments.*
- Sec. 307. Filing of written statements.*
- Sec. 308. Facilitating national securities markets.*
- Sec. 309. Regulatory flexibility.*
- Sec. 310. Analysis of economic effects of regulation.*
- Sec. 311. Privatization of EDGAR.*
- Sec. 312. Improving coordination of supervision.*
- Sec. 313. Increased access to foreign business information.*
- Sec. 314. Short-form registration.*
- Sec. 315. Church employee pension plans.*
- Sec. 316. Promoting global preeminence of American securities markets.*
- Sec. 317. Broker-dealer exemption from State law for certain de minimis transactions.*
- Sec. 318. Studies and reports.*

1 SEC. 2. SEVERABILITY.

2 *If any provision of this Act, an amendment made by*
3 *this Act, or the application of such provision or amendment*
4 *to any person or circumstance is held to be unconstitu-*
5 *tional, the remainder of this Act, the amendments made by*
6 *this Act, and the application of the provisions of such to*
7 *any person or circumstance shall not be affected thereby.*

1 ***TITLE I—INVESTMENT ADVISERS***
 2 ***SUPERVISION COORDINATION***
 3 ***ACT***

4 ***SEC. 101. SHORT TITLE.***

5 *This title may be cited as the “Investment Advisers*
 6 *Supervision Coordination Act”.*

7 ***SEC. 102. FUNDING FOR ENHANCED ENFORCEMENT***
 8 ***PRIORITY.***

9 *There are authorized to be appropriated to the Securi-*
 10 *ties and Exchange Commission, for the enforcement of the*
 11 *Investment Advisers Act of 1940, not more than*
 12 *\$16,000,000 in each of fiscal years 1997 and 1998.*

13 ***SEC. 103. IMPROVED SUPERVISION THROUGH STATE AND***
 14 ***FEDERAL COOPERATION.***

15 *(a) STATE AND FEDERAL RESPONSIBILITIES.—The*
 16 *Investment Advisers Act of 1940 (15 U.S.C. 80b–1 et seq.)*
 17 *is amended by inserting after section 203 the following new*
 18 *section:*

19 ***“SEC. 203A. STATE AND FEDERAL RESPONSIBILITIES.***

20 ***“(a) ADVISERS SUBJECT TO STATE AUTHORITIES.—***

21 ***“(1) IN GENERAL.—No investment adviser that***
 22 ***is regulated or required to be regulated as an invest-***
 23 ***ment adviser in the State in which it maintains its***
 24 ***principal office and place of business shall register***
 25 ***under section 203, unless the investment adviser—***

1 “(A) has assets under management of not
 2 less than \$25,000,000, or such higher amount as
 3 the Commission may, by rule, deem appropriate
 4 in accordance with the purposes of this title; or

5 “(B) is an adviser to an investment com-
 6 pany registered under title I of this Act, or a
 7 company that has elected to be a business devel-
 8 opment company pursuant to section 54 of title
 9 I of this Act.

10 “(2) DEFINITION.—For purposes of this sub-
 11 section, the term ‘assets under management’ means
 12 the securities portfolios with respect to which an in-
 13 vestment adviser provides continuous and regular su-
 14 pervisory or management services.

15 “(b) ADVISERS SUBJECT TO COMMISSION
 16 AUTHORITY.—

17 “(1) IN GENERAL.—No law of any State or po-
 18 litical subdivision thereof requiring the registration,
 19 licensing, or qualification as an investment adviser or
 20 supervised person of an investment adviser shall
 21 apply to any person—

22 “(A) that is registered under section 203 as
 23 an investment adviser, or that is a supervised
 24 person of such a person; or

1 “(B) that is not registered under section
2 203 because that person is excepted from the defi-
3 nition of an investment adviser under section
4 202(a)(11).

5 “(2) *LIMITATION.*—Nothing in this subsection
6 shall prohibit the securities commission (or any agen-
7 cy or office performing like functions) of any State
8 from—

9 “(A) requiring the filing with such commis-
10 sion, agency, or office of any document filed with
11 the Commission by an investment adviser, to-
12 gether with a consent to service of process and
13 requisite fees; or

14 “(B) investigating and bringing enforce-
15 ment actions with respect to fraud or deceit
16 against an investment adviser or person associ-
17 ated with an investment adviser.

18 “(c) *EXEMPTIONS.*—Notwithstanding subsection (a),
19 the Commission, by rule or regulation upon its own motion,
20 or by order upon application, may permit the registration
21 with the Commission of any person or class of persons to
22 which the application of subsection (a) would be unfair, a
23 burden on interstate commerce, or otherwise inconsistent
24 with the purposes of this section.

1 “(d) *FILING DEPOSITORIES.*—*The Commission may,*
2 *by rule, require an investment adviser—*

3 “(1) *to file with the Commission any fee, appli-*
4 *cation, report, or notice required by this title or by*
5 *the rules issued under this title through any entity*
6 *designated by the Commission for that purpose; and*

7 “(2) *to pay the reasonable costs associated with*
8 *such filing.*

9 “(e) *STATE ASSISTANCE.*—*Upon request of the securi-*
10 *ties commissioner (or any agency or officer performing like*
11 *functions) of any State, the Commission may provide such*
12 *training, technical assistance, or other reasonable assistance*
13 *in connection with the regulation of investment advisers by*
14 *the State.”.*

15 “(b) *ADVISERS NOT ELIGIBLE TO REGISTER.*—*Section*
16 *203 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–*
17 *3) is amended—*

18 “(1) *in subsection (c), in the matter immediately*
19 *following paragraph (2), by inserting “and that the*
20 *applicant is not prohibited from registering as an in-*
21 *vestment adviser under section 203A” after “satis-*
22 *fied”; and*

23 “(2) *in subsection (h), in the second sentence—*

24 “(A) *by striking “existence or” and inserting*
25 *“existence,”; and*

1 (B) by inserting “or is prohibited from reg-
 2 istering as an investment adviser under section
 3 203A,” after “adviser,”.

4 (c) *DEFINITION OF “SUPERVISED PERSON”*.—Section
 5 202(a) of the Investment Advisers Act of 1940 (15 U.S.C.
 6 80b–2(a)) is amended—

7 (1) by striking “requires—” and inserting “re-
 8 quires, the following definitions shall apply:”; and

9 (2) by adding at the end the following new para-
 10 graph:

11 “(25) ‘Supervised person’ means any partner, of-
 12 ficer, director (or other person occupying a similar
 13 status or performing similar functions), or employee
 14 of an investment adviser, or other person who pro-
 15 vides investment advice on behalf of the investment
 16 adviser and is subject to the supervision and control
 17 of the investment adviser.”.

18 (d) *CONFORMING AMENDMENT*.—Section 203(a) of the
 19 Investment Advisers Act of 1940 (15 U.S.C. 80b–3(a)) is
 20 amended by striking “subsection (b) of this section” and
 21 inserting “subsection (b) and section 203A”.

22 **SEC. 104. INTERSTATE COOPERATION.**

23 Section 222 of the Investment Advisers Act of 1940 (15
 24 U.S.C. 80b–18a) is amended to read as follows:

1 **“SEC. 222. STATE REGULATION OF INVESTMENT ADVISERS.**

2 “(a) *JURISDICTION OF STATE REGULATORS.*—*Nothing*
 3 *in this title shall affect the jurisdiction of the securities com-*
 4 *missioner (or any agency or officer performing like func-*
 5 *tions) of any State over any security or any person insofar*
 6 *as it does not conflict with the provisions of this title or*
 7 *the rules and regulations thereunder.*

8 “(b) *DUAL COMPLIANCE PURPOSES.*—*No State may*
 9 *enforce any law or regulation that would require an invest-*
 10 *ment adviser to maintain any books or records in addition*
 11 *to those required under the laws of the State in which it*
 12 *maintains its principal place of business, if the investment*
 13 *adviser—*

14 “(1) *is registered or licensed as such in the State*
 15 *in which it maintains its principal place of business;*
 16 *and*

17 “(2) *is in compliance with the applicable books*
 18 *and records requirements of the State in which it*
 19 *maintains its principle place of business.*

20 “(c) *LIMITATION ON CAPITAL AND BOND REQUIRE-*
 21 *MENTS.*—*No State may enforce any law or regulation that*
 22 *would require an investment adviser to maintain a higher*
 23 *minimum net capital or to post any bond in addition to*
 24 *any that is required under the laws of the State in which*
 25 *it maintains its principal place of business, if the invest-*
 26 *ment adviser—*

1 “(1) is registered or licensed as such in the State
2 in which it maintains its principal place of business;
3 and

4 “(2) is in compliance with the applicable net
5 capital or bonding requirements of the State in which
6 it maintains its principal place of business.”.

7 **SEC. 105. DISQUALIFICATION OF CONVICTED FELONS.**

8 (a) *AMENDMENT.*—Section 203(e) of the Investment
9 Advisers Act of 1940 (15 U.S.C. 80b–3(e)) is amended—

10 (1) by redesignating paragraphs (3) through (7)
11 as paragraphs (4) through (8), respectively; and

12 (2) by inserting after paragraph (2) the follow-
13 ing new paragraph:

14 “(3) has been convicted during the 10-year pe-
15 riod preceding the date of filing of any application
16 for registration, or at any time thereafter, of—

17 “(A) any crime that is punishable by im-
18 prisonment for 1 or more years, and that is not
19 described in paragraph (2); or

20 “(B) a substantially equivalent crime by a
21 foreign court of competent jurisdiction.”.

22 (b) *CONFORMING AMENDMENTS.*—Section 203 of the
23 Investment Advisers Act of 1940 (15 U.S.C. 80b–3) is
24 amended—

1 (1) in subsection (e)(6) (as redesignated by sub-
 2 section (a) of this section), by striking “this para-
 3 graph (5)” and inserting “this paragraph”;

4 (2) in subsection (f)—

5 (A) by striking “paragraph (1), (4), (5), or
 6 (7) of subsection (e) of this section” and insert-
 7 ing “paragraph (1), (5), (6), or (8) of subsection
 8 (e)”;

9 (B) by striking “paragraph (3)” and insert-
 10 ing “paragraph (4)”;

11 (C) by striking “said subsection” each place
 12 that term appears and inserting “subsection”;
 13 and

14 (3) in subsection (i)(1)(D), by striking “section
 15 203(e)(5) of this title” and inserting “subsection
 16 (e)(6)”.

17 **SEC. 106. CONTINUED STATE AUTHORITY.**

18 Notwithstanding any other provision of this title, or
 19 any amendment made by this title, a State or Territory
 20 of the United States, or the District of Columbia may con-
 21 tinue to collect filing, registration, or licensing fees in
 22 amounts determined pursuant to State law as in effect on
 23 the day before the date of enactment of this Act, until other-
 24 wise specifically provided under a State law enacted on or
 25 after that date of enactment.

1 **SEC. 107. EFFECTIVE DATE.**

2 *This title and the amendments made by this title shall*
 3 *take effect 180 days after the date of enactment of this Act.*

4 **TITLE II—FACILITATING**
 5 **INVESTMENT IN MUTUAL FUNDS**

6 **SEC. 201. SHORT TITLE.**

7 *This title may be cited as the “Investment Company*
 8 *Amendments Act of 1996”.*

9 **SEC. 202. FUNDS OF FUNDS.**

10 *Section 12(d)(1) of the Investment Company Act of*
 11 *1940 (15 U.S.C. 80a–12(d)(1)) is amended—*

12 *(1) in subparagraph (E)(iii)—*

13 *(A) by striking “in the event such invest-*
 14 *ment company is not a registered investment*
 15 *company,”; and*

16 *(B) by inserting “in the event that such in-*
 17 *vestment company is not a registered investment*
 18 *company,” after “(bb)”;*

19 *(2) by redesignating subparagraphs (G) and (H)*
 20 *as subparagraphs (H) and (I), respectively;*

21 *(3) by striking “this paragraph (1)” each place*
 22 *that term appears and inserting “this paragraph”;*

23 *(4) by inserting after subparagraph (F) the fol-*
 24 *lowing new subparagraph:*

25 *“(G)(i) This paragraph does not apply to securities*
 26 *of a registered open-end investment company or a registered*

1 *unit investment trust (hereafter in this subparagraph re-*
2 *ferred to as the ‘acquired company’) purchased or otherwise*
3 *acquired by a registered open-end investment company or*
4 *a registered unit investment trust (hereafter in this sub-*
5 *paragraph referred to as the ‘acquiring company’) if—*

6 “(I) *the acquired company and the acquiring*
7 *company are part of the same group of investment*
8 *companies;*

9 “(II) *the securities of the acquired company, se-*
10 *curities of other registered open-end investment com-*
11 *panies and registered unit investment trusts that are*
12 *part of the same group of investment companies, Gov-*
13 *ernment securities, and short-term paper are the only*
14 *investments held by the acquiring company;*

15 “(III)(aa) *the acquiring company does not pay*
16 *and is not assessed any charges or fees for distribu-*
17 *tion-related activities with respect to securities of the*
18 *acquired company, unless the acquiring company does*
19 *not charge a sales load or other fees or charges for dis-*
20 *tribution-related activities; or*

21 “(bb) *any sales loads and other distribution-re-*
22 *lated fees charged with respect to securities of the ac-*
23 *quiring company, when aggregated with any sales*
24 *load and distribution-related fees paid by the acquir-*
25 *ing company with respect to securities of the acquired*

1 *fund, are not excessive under rules adopted pursuant*
2 *to section 22(b) or section 22(c) by a securities asso-*
3 *ciation registered under section 15A of the Securities*
4 *Exchange Act of 1934 or the Commission;*

5 *“(IV) the acquired company has a policy that*
6 *prohibits it from acquiring any securities of reg-*
7 *istered open-end investment companies or registered*
8 *unit investment trusts in reliance on this subpara-*
9 *graph or subparagraph (F); and*

10 *“(V) such acquisition is not in contravention of*
11 *such rules and regulations as the Commission may*
12 *from time to time prescribe with respect to acquisi-*
13 *tions in accordance with this subparagraph, as nec-*
14 *essary and appropriate for the protection of investors.*

15 *“(ii) For purposes of this subparagraph, the term*
16 *‘group of investment companies’ means any 2 or more reg-*
17 *istered investment companies that hold themselves out to in-*
18 *vestors as related companies for purposes of investment and*
19 *investor services.”; and*

20 *(5) by adding at the end the following new sub-*
21 *paragraph:*

22 *“(J) The Commission, by rules and regulations, upon*
23 *its own motion, or by order upon application, may condi-*
24 *tionally or unconditionally exempt any person, security, or*
25 *transaction, or any class or classes of persons, securities,*

1 *or transactions from any provision of this subsection, if and*
 2 *to the extent that such exemption is consistent with the pub-*
 3 *lic interest and the protection of investors.”.*

4 **SEC. 203. FLEXIBLE REGISTRATION OF SECURITIES.**

5 *(a) AMENDMENTS TO REGISTRATION STATEMENTS.—*
 6 *Section 24(e) of the Investment Company Act of 1940 (15*
 7 *U.S.C. 80a–24(e)) is amended—*

8 *(1) by striking paragraphs (1) and (2);*

9 *(2) by striking “(3) For” and inserting “For”;*

10 *and*

11 *(3) by striking “pursuant to this subsection or*
 12 *otherwise”.*

13 *(b) REGISTRATION OF INDEFINITE AMOUNT OF SECU-*
 14 *RITIES.—Section 24(f) of the Investment Company Act of*
 15 *1940 (15 U.S.C. 80a–24(f)) is amended to read as follows:*

16 *“(f) REGISTRATION OF INDEFINITE AMOUNT OF SECU-*
 17 *RITIES.—*

18 *“(1) REGISTRATION OF SECURITIES.—Upon the*
 19 *effective date of its registration statement, as provided*
 20 *by section 8 of the Securities Act of 1933, a face-*
 21 *amount certificate company, open-end management*
 22 *company, or unit investment trust, shall be deemed to*
 23 *have registered an indefinite amount of securities.*

24 *“(2) PAYMENT OF REGISTRATION FEES.—Not*
 25 *later than 90 days after the end of the fiscal year of*

1 *an entity referred to in paragraph (1), the entity*
2 *shall pay a registration fee to the Commission, cal-*
3 *culated in the manner specified in section 6(b) of the*
4 *Securities Act of 1933, based on the aggregate sales*
5 *price for which its securities (including, for purposes*
6 *of this paragraph, all securities issued pursuant to a*
7 *dividend reinvestment plan) were sold pursuant to a*
8 *registration of an indefinite amount of securities*
9 *under this subsection during the previous fiscal year*
10 *of the entity, reduced by—*

11 “(A) *the aggregate redemption or repur-*
12 *chase price of the securities of the entity during*
13 *that year; and*

14 “(B) *the aggregate redemption or repur-*
15 *chase price of the securities of the entity during*
16 *any prior fiscal year ending not more than 1*
17 *year before the date of enactment of the Invest-*
18 *ment Company Amendments Act of 1996, that*
19 *were not used previously by the entity to reduce*
20 *fees payable under this section.*

21 “(3) *INTEREST DUE ON LATE PAYMENT.—An en-*
22 *tity paying the fee required by this subsection or any*
23 *portion thereof more than 90 days after the end of the*
24 *fiscal year of the entity shall pay to the Commission*
25 *interest on unpaid amounts, compounded daily, at*

1 *the underpayment rate established by the Secretary of*
 2 *the Treasury pursuant to section 3717 of title 31,*
 3 *United States Code. The payment of interest pursuant*
 4 *to this paragraph shall not preclude the Commission*
 5 *from bringing an action to enforce the requirements*
 6 *of paragraph (2).*

7 *“(4) RULEMAKING AUTHORITY.—The Commis-*
 8 *sion may adopt rules and regulations to implement*
 9 *this subsection.”.*

10 *(c) EFFECTIVE DATE.—The amendments made by this*
 11 *section shall become effective on the earlier of—*

12 *(1) 1 year after the date of enactment of this Act;*

13 *or*

14 *(2) the effective date of final rules or regulations*
 15 *issued in accordance with section 24(f) of the Invest-*
 16 *ment Company Act of 1940, as amended by this sec-*
 17 *tion.*

18 **SEC. 204. FACILITATING USE OF CURRENT INFORMATION**

19 **IN ADVERTISING.**

20 *Section 24 of the Investment Company Act of 1940 (15*
 21 *U.S.C. 80a–24) is amended by adding at the end the follow-*
 22 *ing new subsection:*

23 *“(g) ADDITIONAL PROSPECTUSES.—In addition to*
 24 *any prospectus permitted or required by section 10(a) of*
 25 *the Securities Act of 1933, the Commission shall permit,*

1 *by rules or regulations deemed necessary or appropriate in*
 2 *the public interest or for the protection of investors, the use*
 3 *of a prospectus for the purposes of section 5(b)(1) of that*
 4 *Act with respect to securities issued by a registered invest-*
 5 *ment company. Such a prospectus, which may include in-*
 6 *formation the substance of which is not included in the pro-*
 7 *spectus specified in section 10(a) of the Securities Act of*
 8 *1933, shall be deemed to be permitted by section 10(b) of*
 9 *that Act.”.*

10 **SEC. 205. VARIABLE INSURANCE CONTRACTS.**

11 *(a) UNIT INVESTMENT TRUST TREATMENT.—Section*
 12 *26 of the Investment Company Act of 1940 (15 U.S.C. 80a–*
 13 *26) is amended by adding at the end the following new sub-*
 14 *section:*

15 *“(e) EXEMPTION.—*

16 *“(1) IN GENERAL.—Subsection (a) does not*
 17 *apply to any registered separate account funding*
 18 *variable insurance contracts, or to the sponsoring in-*
 19 *surance company and principal underwriter of such*
 20 *account.*

21 *“(2) LIMITATION ON SALES.—It shall be unlaw-*
 22 *ful for any registered separate account funding vari-*
 23 *able insurance contracts, or for the sponsoring insur-*
 24 *ance company of such account, to sell any such con-*
 25 *tract, unless—*

1 “(A) the fees and charges deducted under
2 the contract, in the aggregate, are reasonable in
3 relation to the services rendered, the expenses ex-
4 pected to be incurred, and the risks assumed by
5 the insurance company, and the insurance com-
6 pany so represents in the registration statement
7 for the contract; and

8 “(B) the insurance company—

9 “(i) complies with all other applicable
10 provisions of this section, as if it were a
11 trustee or custodian of the registered sepa-
12 rate account;

13 “(ii) files with the insurance regu-
14 latory authority of the State or territory of
15 the United States or of the District of Co-
16 lumbia in which is located the principal
17 place of business of the insurance company,
18 an annual statement of its financial condi-
19 tion, which most recent statement indicates
20 that the insurance company has a combined
21 capital and surplus, if a stock company, or
22 an unassigned surplus, if a mutual com-
23 pany, of not less than \$1,000,000, or such
24 other amount as the Commission may from
25 time to time prescribe by rule, as necessary

1 or appropriate in the public interest or for
2 the protection of investors; and

3 “(iii) together with its registered sepa-
4 rate accounts, is supervised and examined
5 periodically by the insurance authority of
6 such State, territory, or the District of Co-
7 lumbia.

8 “(3) *FEEES AND CHARGES.*—For purposes of
9 paragraph (2), the fees and charges deducted under
10 the contract shall include all fees and charges imposed
11 for any purpose and in any manner.

12 “(4) *REGULATORY AUTHORITY.*—The Commis-
13 sion may issue such rules and regulations to carry
14 out paragraph (2)(A) as it determines are necessary
15 or appropriate in the public interest or for the protec-
16 tion of investors.”.

17 (b) *PERIODIC PAYMENT PLAN TREATMENT.*—Section
18 27 of the Investment Company Act of 1940 (15 U.S.C. 80a–
19 27) is amended by adding at the end the following new sub-
20 section:

21 “(i)(1) This section does not apply to any registered
22 separate account funding variable insurance contracts, or
23 to the sponsoring insurance company and principal under-
24 writer of such account, except as provided in paragraph
25 (2).

1 “(2) *It shall be unlawful for any registered separate*
 2 *account funding variable insurance contracts, or for the*
 3 *sponsoring insurance company of such account, to sell any*
 4 *such contract unless—*

5 “(A) *such contract is a redeemable security; and*

6 “(B) *the insurance company complies with sec-*
 7 *tion 26(e) and any rules or regulations issued by the*
 8 *Commission under section 26(e).”.*

9 **SEC. 206. PROHIBITION ON DECEPTIVE INVESTMENT COM-**
 10 **PANY NAMES.**

11 *Section 35(d) of the Investment Company Act of 1940*
 12 *(15 U.S.C. 80a–34(d)) is amended to read as follows:*

13 “(d) *It shall be unlawful for any registered investment*
 14 *company to adopt as a part of the name or title of such*
 15 *company, or of any securities of which it is the issuer, any*
 16 *word or words that the Commission finds are materially*
 17 *deceptive or misleading. The Commission is authorized, by*
 18 *rule, regulation, or order, to define such names or titles as*
 19 *are materially deceptive or misleading.”.*

20 **SEC. 207. EXCEPTED INVESTMENT COMPANIES.**

21 (a) *AMENDMENTS.—Section 3(c) of the Investment*
 22 *Company Act of 1940 (15 U.S.C. 80a–3(c)) is amended—*

23 (1) *in paragraph (1), by inserting after the first*
 24 *sentence the following: “Such issuer shall be deemed*
 25 *to be an investment company for purposes of the limi-*

tations set forth in subparagraphs (A)(i) and (B)(i) of section 12(d)(1) governing the purchase or other acquisition by such issuer of any security issued by any registered investment company and the sale of any security issued by any registered open-end investment company to any such issuer.”;

(2) in subparagraph (A) of paragraph (1)—

(A) by inserting after “issuer,” the first place that term appears, the following: “and is or, but for the exception provided for in this paragraph or paragraph (7), would be an investment company,”; and

(B) by striking “unless, as of” and all that follows through the end of the subparagraph and inserting a period;

(3) in paragraph (2)—

(A) by striking “and acting as broker,” and inserting “acting as broker, and acting as market intermediary,”;

(B) by inserting “(A)” after “(2)”; and

(C) by adding at the end the following new subparagraph:

“(B) For purposes of this paragraph—

“(i) the term ‘market intermediary’ means any person that regularly holds itself out as

1 *being willing contemporaneously to engage in,*
2 *and that is regularly engaged in, the business of*
3 *entering into transactions on both sides of the*
4 *market for a financial contract or one or more*
5 *such financial contracts; and*

6 “(ii) the term ‘financial contract’ means
7 any arrangement that—

8 “(I) takes the form of an individually
9 negotiated contract, agreement, or option to
10 buy, sell, lend, swap, or repurchase, or other
11 similar individually negotiated transaction
12 commonly entered into by participants in
13 the financial markets;

14 “(II) is in respect of securities, com-
15 modities, currencies, interest or other rates,
16 other measures of value, or any other finan-
17 cial or economic interest similar in purpose
18 or function to any of the foregoing; and

19 “(III) is entered into in response to a
20 request from a counter party for a
21 quotation, or is otherwise entered into and
22 structured to accommodate the objectives of
23 the counter party to such arrangement.”;
24 and

1 (4) by striking paragraph (7) and inserting the
2 *following:*

3 “(7)(A) *Any issuer, the outstanding securities of*
4 *which are owned exclusively by persons who, at the*
5 *time of acquisition of such securities, are qualified*
6 *purchasers, and which is not making and does not at*
7 *that time propose to make a public offering of such*
8 *securities. Securities that are owned by persons who*
9 *received the securities from a qualified purchaser as*
10 *a gift or bequest, or in a case in which the transfer*
11 *was caused by legal separation, divorce, death, or*
12 *other involuntary event, shall be deemed to be owned*
13 *by a qualified purchaser, subject to such rules, regula-*
14 *tions, and orders as the Commission may prescribe as*
15 *necessary or appropriate in the public interest or for*
16 *the protection of investors.*

17 “(B) *Notwithstanding subparagraph (A), an is-*
18 *suer is within the exception provided by this para-*
19 *graph if—*

20 “(i) *in addition to qualified purchasers,*
21 *outstanding securities of that issuer are bene-*
22 *ficially owned by not more than 100 persons who*
23 *are not qualified purchasers, if—*

24 “(I) *such persons acquired such securi-*
25 *ties on or before April 30, 1996; and*

1 “(II) at the time such securities were
2 acquired by such persons, the issuer was ex-
3 cepted by paragraph (1); and

4 “(ii) prior to availing itself of the exception
5 provided by this paragraph—

6 “(I) such issuer has disclosed to each
7 beneficial owner that future investors will
8 be limited to qualified purchasers, and that
9 ownership in such issuer is no longer lim-
10 ited to not more than 100 persons; and

11 “(II) concurrently with or after such
12 disclosure, such issuer has provided each
13 beneficial owner with a reasonable oppor-
14 tunity to redeem any part or all of their in-
15 terests in the issuer, notwithstanding any
16 agreement to the contrary between the issuer
17 and such persons, for that person’s propor-
18 tionate share of the issuer’s net assets.

19 “(C) Each person that elects to redeem under
20 subparagraph (B)(ii)(II) shall receive an amount in
21 cash equal to that person’s proportionate share of the
22 issuer’s net assets, unless the issuer elects to provide
23 such person with the option of receiving, and such
24 person agrees to receive, all or a portion of such per-
25 son’s share in assets of the issuer. If the issuer elects

1 *to provide such persons with such an opportunity,*
2 *disclosure concerning such opportunity shall be made*
3 *in the disclosure required by subparagraph (B)(ii)(I).*

4 *“(D) An issuer that is excepted under this para-*
5 *graph shall nonetheless be deemed to be an investment*
6 *company for purposes of the limitations set forth in*
7 *subparagraphs (A)(i) and (B)(i) of section 12(d)(1)*
8 *relating to the purchase or other acquisition by such*
9 *issuer of any security issued by any registered invest-*
10 *ment company and the sale of any security issued by*
11 *any registered open-end investment company to any*
12 *such issuer.*

13 *“(E) For purposes of determining compliance*
14 *with this paragraph and paragraph (1), an issuer*
15 *that is otherwise excepted under this paragraph and*
16 *an issuer that is otherwise excepted under paragraph*
17 *(1) shall not be treated by the Commission as being*
18 *a single issuer for purposes of determining whether*
19 *the outstanding securities of the issuer excepted under*
20 *paragraph (1) are beneficially owned by not more*
21 *than 100 persons or whether the outstanding securi-*
22 *ties of the issuer excepted under this paragraph are*
23 *owned by persons that are not qualified purchasers.*
24 *Nothing in this subparagraph shall be construed to es-*
25 *tablish that a person is a bona fide qualified pur-*

1 *chaser for purposes of this paragraph or a bona fide*
 2 *beneficial owner for purposes of paragraph (1).”.*

3 (b) *DEFINITION OF QUALIFIED PURCHASER.*—Section
 4 *2(a) of the Investment Company Act of 1940 (15 U.S.C.*
 5 *80a–2(a)) is amended by adding at the end the following*
 6 *new paragraph:*

7 “(51)(A) ‘Qualified purchaser’ means—

8 “(i) *any natural person (including any per-*
 9 *son who holds a joint, community property, or*
 10 *other similar shared ownership interest in an is-*
 11 *suer that is excepted under section 3(c)(7) with*
 12 *that person’s qualified purchaser spouse) who*
 13 *owns not less than \$5,000,000 in investments, as*
 14 *defined by the Commission;*

15 “(ii) *any company that owns not less than*
 16 *\$5,000,000 in investments and that is owned di-*
 17 *rectly or indirectly by or for 2 or more natural*
 18 *persons who are related as siblings or spouse (in-*
 19 *cluding former spouses), or direct lineal descend-*
 20 *ants by birth or adoption, spouses of such per-*
 21 *sons, the estates of such persons, or foundations,*
 22 *charitable organizations, or trusts established by*
 23 *or for the benefit of such persons;*

24 “(iii) *any trust that is not covered by sub-*
 25 *paragraph (B) and that was not formed for the*

1 *specific purpose of acquiring the securities of-*
2 *fered, as to which the trustee or other person au-*
3 *thorized to make decisions with respect to the*
4 *trust, and each settlor or other person who has*
5 *contributed assets to the trust, is a person de-*
6 *scribed in clause (i), (ii), or (iv);*

7 *“(iv) any person, acting for its own account*
8 *or the accounts of other qualified purchasers,*
9 *who in the aggregate owns and invests on a dis-*
10 *cretionary basis, not less than \$25,000,000 in in-*
11 *vestments; or*

12 *“(v) any person that the Commission, by*
13 *rule or regulation, has determined does not need*
14 *the protections of this title, after consideration of*
15 *factors such as—*

16 *“(I) a high degree of financial sophis-*
17 *tication, including extensive knowledge of*
18 *and experience in financial matters;*

19 *“(II) a substantial amount of assets*
20 *owned or under management;*

21 *“(III) relationship with an issuer; and*

22 *“(IV) such other factors as the Com-*
23 *mission may determine to be consistent*
24 *with the purposes of this paragraph.*

1 “(B) *The Commission may adopt such rules and*
2 *regulations applicable to the persons and trusts speci-*
3 *fied in clauses (i) through (v) of subparagraph (A) as*
4 *it determines are necessary or appropriate in the*
5 *public interest or for the protection of investors.*

6 “(C) *The term ‘qualified purchaser’ does not in-*
7 *clude a company that, but for the exceptions provided*
8 *for in paragraph (1) or (7) of section 3(c), would be*
9 *an investment company (hereafter in this paragraph*
10 *referred to as an ‘excepted investment company’), un-*
11 *less all beneficial owners of its outstanding securities*
12 *(other than short-term paper), determined in accord-*
13 *ance with section 3(c)(1)(A), that acquired such secu-*
14 *rities on or before April 30, 1996 (hereafter in this*
15 *paragraph referred to as ‘pre-amendment beneficial*
16 *owners’), and all pre-amendment beneficial owners of*
17 *the outstanding securities (other than short-term*
18 *paper) of any excepted investment company that, di-*
19 *rectly or indirectly, owns any outstanding securities*
20 *of such excepted investment company, have consented*
21 *to its treatment as a qualified purchaser. Unanimous*
22 *consent of all trustees, directors, or general partners*
23 *of a company or trust referred to in clause (ii) or*
24 *(iii) of subparagraph (A) shall constitute consent for*
25 *purposes of this subparagraph.”.*

1 (c) *CONFORMING AMENDMENTS.*—Section 3(a) of the
 2 *Investment Company Act of 1940* (15 U.S.C. 80a–3(a)) is
 3 *amended*—

4 (1) *by striking “(1)” and inserting “(A)”;*

5 (2) *by striking “(2)” and inserting “(B)”;*

6 (3) *by striking “(3)” and inserting “(C)”;*

7 (4) *by inserting “(1)” after “(a)”;*

8 (5) *by striking “As used” and inserting “(2) As*
 9 *used”;* and

10 (6) *in paragraph (2)(C), as designated by para-*
 11 *graph (5) of this subsection—*

12 (A) *by striking “which are” and inserting*
 13 *the following: “which (i) are”;* and

14 (B) *by inserting before the period at the*
 15 *end, the following: “, and (ii) are not relying on*
 16 *the exception from the definition of investment*
 17 *company in paragraph (1) or (7) of subsection*
 18 *(c)”.*

19 (d) *RULEMAKING REQUIRED.*—

20 (1) *IMPLEMENTATION OF SECTION 3(c)(1)(B).*—

21 *Not later than 1 year after the date of enactment of*
 22 *this Act, the Commission shall prescribe rules to im-*
 23 *plement the requirements of section 3(c)(1)(B) of the*
 24 *Investment Company Act of 1940* (15 U.S.C. 80a–
 25 *3(c)(1)(B)).*

1 (2) *IDENTIFICATION OF INVESTMENTS.*—Not
 2 *later than 180 days after the date of enactment of this*
 3 *Act, the Commission shall prescribe rules defining the*
 4 *term, or otherwise identifying, “investments” for pur-*
 5 *poses of section 2(a)(51) of the Investment Company*
 6 *Act of 1940, as added by this Act.*

7 (3) *EMPLOYEE EXCEPTION.*—Not later than 1
 8 *year after the date of enactment of this Act, the Com-*
 9 *mission shall prescribe rules pursuant to its authority*
 10 *under section 6 of the Investment Company Act of*
 11 *1940 to permit the ownership of securities by knowl-*
 12 *edgeable employees of the issuer of the securities or an*
 13 *affiliated person without loss of the exception of the*
 14 *issuer under paragraph (1) or (7) of section 3(c) of*
 15 *that Act from treatment as an investment company*
 16 *under that Act.*

17 (e) *EFFECTIVE DATE.*—The amendments made by this
 18 *section shall take effect on the earlier of—*

19 (1) *180 days after the date of enactment of this*
 20 *Act; or*

21 (2) *the date on which the rulemaking required*
 22 *under subsection (d)(2) is completed.*

23 **SEC. 208. PERFORMANCE FEES EXEMPTIONS.**

24 *Section 205 of the Investment Advisers Act of 1940 (15*
 25 *U.S.C. 80b–5) is amended—*

1 (1) *in subsection (b)—*

2 (A) *in paragraph (2), by striking “or” at*
3 *the end;*

4 (B) *in paragraph (3), by striking the period*
5 *at the end and inserting a semicolon; and*

6 (C) *by adding at the end the following new*
7 *paragraphs:*

8 “(4) *apply to an investment advisory contract*
9 *with a company excepted from the definition of an*
10 *investment company under section 3(c)(7) of title I of*
11 *this Act; or*

12 “(5) *apply to an investment advisory contract*
13 *with a person who is not a resident of the United*
14 *States.”; and*

15 (2) *by adding at the end the following new sub-*
16 *section:*

17 “(e) *The Commission, by rule or regulation, upon its*
18 *own motion, or by order upon application, may condi-*
19 *tionally or unconditionally exempt any person or trans-*
20 *action, or any class or classes of persons or transactions,*
21 *from subsection (a)(1), if and to the extent that the exemp-*
22 *tion relates to an investment advisory contract with any*
23 *person that the Commission determines does not need the*
24 *protections of subsection (a)(1), on the basis of such factors*
25 *as financial sophistication, net worth, knowledge of and ex-*

1 *perience in financial matters, amount of assets under man-*
 2 *agement, relationship with a registered investment adviser,*
 3 *and such other factors as the Commission determines are*
 4 *consistent with this section.”.*

5 **SEC. 209. REPORTS TO THE COMMISSION AND SHAREHOLD-**
 6 **ERS.**

7 *Section 30 of the Investment Company Act of 1940 (15*
 8 *U.S.C. 80a–29) is amended—*

9 *(1) in subsection (b), by striking paragraph (1)*
 10 *and inserting the following:*

11 *“(1) such information, documents, and reports*
 12 *(other than financial statements), as the Commission*
 13 *may require to keep reasonably current the informa-*
 14 *tion and documents contained in the registration*
 15 *statement of such company filed under this title;”;*

16 *(2) by redesignating subsections (c), (d), (e), and*
 17 *(f) as subsections (d), (e), (g), and (h), respectively;*

18 *(3) by inserting after subsection (b) the following*
 19 *new subsection:*

20 *“(c)(1) The Commission shall take such action as it*
 21 *deems necessary or appropriate, consistent with the public*
 22 *interest and the protection of investors, to avoid unneces-*
 23 *sary reporting by, and minimize the compliance burdens*
 24 *on, registered investment companies and their affiliated*
 25 *persons in exercising its authority—*

1 “(A) under subsection (f); and

2 “(B) under subsection (b)(1), if the Commission
3 requires the filing of information, documents, and re-
4 ports under that subsection on a basis more frequently
5 than semiannually.

6 “(2) Action taken by the Commission under paragraph
7 (1) shall include considering, and requesting public com-
8 ment on—

9 “(A) feasible alternatives that minimize the re-
10 reporting burdens on registered investment companies;
11 and

12 “(B) the utility of such information, documents,
13 and reports to the Commission in relation to the costs
14 to registered investment companies and their affili-
15 ated persons of providing such information, docu-
16 ments, and reports.”;

17 (4) by inserting after subsection (e) (as redesign-
18 ated by paragraph (2) of this section), the following
19 new subsection:

20 “(f) The Commission may, by rule, require that semi-
21 annual reports containing the information set forth in sub-
22 section (e) include such other information as the Commis-
23 sion deems necessary or appropriate in the public interest
24 or for the protection of investors.”; and

1 (5) in subsection (g) (as redesignated by para-
 2 graph (2) of this section), by striking “subsections (a)
 3 and (d)” and inserting “subsections (a) and (e)”.

4 **SEC. 210. BOOKS, RECORDS, AND INSPECTIONS.**

5 Section 31 of the Investment Company Act of 1940 (15
 6 U.S.C. 80a–30) is amended—

7 (1) by striking subsections (a) and (b) and in-
 8 serting the following:

9 “(a)(1) Each registered investment company, and each
 10 underwriter, broker, dealer, or investment adviser that is
 11 a majority-owned subsidiary of such a company, shall
 12 maintain and preserve such records (as defined in section
 13 3(a)(37) of the Securities Exchange Act of 1934) for such
 14 period or periods as the Commission, by rules and regula-
 15 tions, may prescribe as necessary or appropriate in the
 16 public interest or for the protection of investors. Each in-
 17 vestment adviser that is not a majority-owned subsidiary
 18 of, and each depositor of any registered investment com-
 19 pany, and each principal underwriter for any registered
 20 investment company other than a closed-end company, shall
 21 maintain and preserve for such period or periods as the
 22 Commission shall prescribe by rules and regulations, such
 23 records as are necessary or appropriate to record such per-
 24 son’s transactions with such registered company.

1 “(2) *In exercising its authority under this subsection,*
2 *the Commission shall take such steps as it deems necessary*
3 *or appropriate, consistent with the public interest and for*
4 *the protection of investors, to avoid unnecessary record-*
5 *keeping by, and minimize the compliance burden on, per-*
6 *sons required to maintain records under this subsection*
7 *(hereafter in this section referred to as ‘subject persons’).*
8 *Such steps shall include considering, and requesting public*
9 *comment on—*

10 “(A) *feasible alternatives that minimize the rec-*
11 *ordkeeping burdens on subject persons;*

12 “(B) *the necessity of such records in view of the*
13 *public benefits derived from the independent scrutiny*
14 *of such records through Commission examination;*

15 “(C) *the costs associated with maintaining the*
16 *information that would be required to be reflected in*
17 *such records; and*

18 “(D) *the effects that a proposed recordkeeping re-*
19 *quirement would have on internal compliance policies*
20 *and procedures.*

21 “(b) *All records required to be maintained and pre-*
22 *served in accordance with subsection (a) shall be subject at*
23 *any time and from time to time to such reasonable periodic,*
24 *special, and other examinations by the Commission, or any*
25 *member or representative thereof, as the Commission may*

1 *prescribe. For purposes of such examinations, any subject*
2 *person shall make available to the Commission or its rep-*
3 *resentatives any copies or extracts from such records as may*
4 *be prepared without undue effort, expense, or delay as the*
5 *Commission or its representatives may reasonably request.*
6 *The Commission shall exercise its authority under this sub-*
7 *section with due regard for the benefits of internal compli-*
8 *ance policies and procedures and the effective implementa-*
9 *tion and operation thereof.”;*

10 *(2) by redesignating subsections (c) and (d) as*
11 *subsections (e) and (f), respectively; and*

12 *(3) by inserting after subsection (b) the following*
13 *new subsections:*

14 *“(c) Notwithstanding any other provision of law, the*
15 *Commission shall not be compelled to disclose any internal*
16 *compliance or audit records, or information contained*
17 *therein, provided to the Commission under this section.*
18 *Nothing in this subsection shall authorize the Commission*
19 *to withhold information from the Congress or prevent the*
20 *Commission from complying with a request for information*
21 *from any other Federal department or agency requesting*
22 *the information for purposes within the scope of the juris-*
23 *isdiction of that department or agency, or complying with*
24 *an order of a court of the United States in an action*
25 *brought by the United States or the Commission. For pur-*

1 *poses of section 552 of title 5, United States Code, this sec-*
 2 *tion shall be considered a statute described in subsection*
 3 *(b)(3)(B) of such section 552.*

4 “(d) *For purposes of this section—*

5 “(1) *the term ‘internal compliance policies and*
 6 *procedures’ means policies and procedures designed*
 7 *by subject persons to promote compliance with the*
 8 *Federal securities laws; and*

9 “(2) *the term ‘internal compliance and audit*
 10 *record’ means any record prepared by a subject per-*
 11 *son in accordance with internal compliance policies*
 12 *and procedures.’.*

13 ***TITLE III—REDUCING THE COST*** 14 ***OF SAVING AND INVESTMENT***

15 ***SEC. 301. EXEMPTION FOR ECONOMIC, BUSINESS, AND IN-*** 16 ***DUSTRIAL DEVELOPMENT COMPANIES.***

17 *Section 6(a) of the Investment Company Act of 1940*
 18 *(15 U.S.C. 80a–6(a)) is amended by adding at the end the*
 19 *following new paragraph:*

20 “(5)(A) *Any company that is not engaged in the*
 21 *business of issuing redeemable securities, the oper-*
 22 *ations of which are subject to regulation by the State*
 23 *in which the company is organized under a statute*
 24 *governing entities that provide financial or manage-*

1 *rial assistance to enterprises doing business, or pro-*
2 *posing to do business, in that State if—*

3 *“(i) the organizational documents of the*
4 *company state that the activities of the company*
5 *are limited to the promotion of economic, busi-*
6 *ness, or industrial development in the State*
7 *through the provision of financial or managerial*
8 *assistance to enterprises doing business, or pro-*
9 *posing to do business, in that State, and such*
10 *other activities that are incidental or necessary*
11 *to carry out that purpose;*

12 *“(ii) immediately following each sale of the*
13 *securities of the company by the company or any*
14 *underwriter for the company, not less than 80*
15 *percent of the securities of the company being of-*
16 *fered in such sale, on a class-by-class basis, are*
17 *held by persons who reside or who have a sub-*
18 *stantial business presence in that State;*

19 *“(iii) the securities of the company are sold,*
20 *or proposed to be sold, by the company or by any*
21 *underwriter for the company, solely to accredited*
22 *investors, as that term is defined in section 2(15)*
23 *of the Securities Act of 1933, or to such other*
24 *persons that the Commission, as necessary or ap-*
25 *propriate in the public interest and consistent*

1 *with the protection of investors, may permit by*
2 *rule, regulation, or order; and*

3 “(iv) *the company does not purchase any*
4 *security issued by an investment company or by*
5 *any company that would be an investment com-*
6 *pany except for the exclusions from the definition*
7 *of the term ‘investment company’ under para-*
8 *graph (1) or (7) of section 3(c), other than—*

9 “(I) *any debt security that is rated in-*
10 *vestment grade by not less than 1 nation-*
11 *ally recognized statistical rating organiza-*
12 *tion; or*

13 “(II) *any security issued by a reg-*
14 *istered open-end investment company that*
15 *is required by its investment policies to in-*
16 *vest not less than 65 percent of its total as-*
17 *sets in securities described in subclause (I)*
18 *or securities that are determined by such*
19 *registered open-end investment company to*
20 *be comparable in quality to securities de-*
21 *scribed in subclause (I).*

22 “(B) *Notwithstanding the exemption provided by*
23 *this paragraph, section 9 (and, to the extent necessary*
24 *to enforce section 9, sections 38 through 51) shall*
25 *apply to a company described in this paragraph as*

1 *if the company were an investment company reg-*
 2 *istered under this title.*

3 “(C) Any company proposing to rely on the ex-
 4 *emption provided by this paragraph shall file with*
 5 *the Commission a notification stating that the com-*
 6 *pany intends to do so, in such form and manner as*
 7 *the Commission may prescribe by rule.*

8 “(D) Any company meeting the requirements of
 9 *this paragraph may rely on the exemption provided*
 10 *by this paragraph upon filing with the Commission*
 11 *the notification required by subparagraph (C), until*
 12 *such time as the Commission determines by order that*
 13 *such reliance is not in the public interest or is not*
 14 *consistent with the protection of investors.*

15 “(E) The exemption provided by this paragraph
 16 *may be subject to such additional terms and condi-*
 17 *tions as the Commission may by rule, regulation, or*
 18 *order determine are necessary or appropriate in the*
 19 *public interest or for the protection of investors.”.*

20 **SEC. 302. INTRASTATE CLOSED-END INVESTMENT COM-**
 21 **PANY EXEMPTION.**

22 *Section 6(d)(1) of the Investment Company Act of*
 23 *1940 (15 U.S.C. 80a-6(d)(1)) is amended by striking*
 24 *“\$100,000” and inserting “\$10,000,000, or such other*

1 *amount as the Commission may set by rule, regulation, or*
 2 *order”.*

3 **SEC. 303. DEFINITION OF ELIGIBLE PORTFOLIO COMPANY.**

4 *Section 2(a)(46)(C) of the Investment Company Act of*
 5 *1940 (15 U.S.C. 80a-2(a)(46)(C)) is amended—*

6 *(1) in clause (ii), by striking “or” at the end;*

7 *(2) by redesignating clause (iii) as clause (iv);*

8 *and*

9 *(3) by inserting after clause (ii) the following:*

10 *“(iii) it has total assets of not more*
 11 *than \$4,000,000, and capital and surplus*
 12 *(shareholders’ equity less retained earnings)*
 13 *of not less than \$2,000,000, except that the*
 14 *Commission may adjust such amounts by*
 15 *rule, regulation, or order to reflect changes*
 16 *in 1 or more generally accepted indices or*
 17 *other indicators for small businesses; or”.*

18 **SEC. 304. DEFINITION OF BUSINESS DEVELOPMENT COM-**
 19 **PANY.**

20 *Section 2(a)(48)(B) of the Investment Company Act*
 21 *of 1940 (15 U.S.C. 80a-2(a)(48)(B)) is amended by adding*
 22 *at the end the following: “provided further that a business*
 23 *development company need not make available significant*
 24 *managerial assistance with respect to any company de-*
 25 *scribed in paragraph (46)(C)(iii), or with respect to any*

1 *other company that meets such criteria as the Commission*
 2 *may by rule, regulation, or order permit, as consistent with*
 3 *the public interest, the protection of investors, and the pur-*
 4 *poses of this title; and”.*

5 **SEC. 305. ACQUISITION OF ASSETS BY BUSINESS DEVELOP-**
 6 **MENT COMPANIES.**

7 *Section 55(a)(1)(A) of the Investment Company Act*
 8 *of 1940 (15 U.S.C. 80a-54(a)(1)(A)) is amended—*

9 *(1) by striking “or from any person” and insert-*
 10 *ing “from any person”; and*

11 *(2) by inserting before the semicolon “, or from*
 12 *any other person, subject to such rules and regula-*
 13 *tions as the Commission may prescribe as necessary*
 14 *or appropriate in the public interest or for the protec-*
 15 *tion of investors”.*

16 **SEC. 306. CAPITAL STRUCTURE AMENDMENTS.**

17 *Section 61(a) of the Investment Company Act of 1940*
 18 *(15 U.S.C. 80a-60(a)) is amended—*

19 *(1) in paragraph (2), by striking “if such busi-*
 20 *ness development company” and all that follows*
 21 *through the end of the paragraph and inserting a pe-*
 22 *riod;*

23 *(2) in paragraph (3)(A)—*

24 *(A) by striking “senior securities represent-*
 25 *ing indebtedness accompanied by”;*

1 (B) by inserting “accompanied by securi-
2 ties,” after “of such company,”; and

3 (C) in clause (ii), by striking “senior”; and
4 (3) in paragraph (3)—

5 (A) in subparagraph (A), by striking “and”
6 at the end;

7 (B) in subparagraph (B), by striking the
8 period at the end of clause (iv) and inserting “;
9 and”; and

10 (C) by inserting immediately after subpara-
11 graph (B) the following new subparagraph:

12 “(C) a business development company may
13 issue warrants, options, or rights to subscribe to,
14 convert to, or purchase voting securities not ac-
15 companied by securities, if—

16 “(i) such warrants, options, or rights
17 satisfy the conditions in clauses (i) and
18 (iii) of subparagraph (A); and

19 “(ii) the proposal to issue such war-
20 rants, options, or rights is authorized by the
21 shareholders or partners of such business de-
22 velopment company, and such issuance is
23 approved by the required majority (as de-
24 fined in section 57(o)) of the directors of or
25 general partners in such company on the

1 basis that such issuance is in the best inter-
 2 ests of the company and its shareholders or
 3 partners.”.

4 **SEC. 307. FILING OF WRITTEN STATEMENTS.**

5 Section 64(b)(1) of the Investment Company Act of
 6 1940 (15 U.S.C. 80a-63(b)(1)) is amended by inserting
 7 “and capital structure” after “portfolio”.

8 **SEC. 308. FACILITATING NATIONAL SECURITIES MARKETS.**

9 Section 18 of the Securities Act of 1933 (15 U.S.C.
 10 77r) is amended to read as follows:

11 **“SEC. 18. EXEMPTION FROM STATE CONTROL OF**
 12 **SECURITIES OFFERINGS.**

13 “(a) *EXEMPTION FROM STATE LAW FOR REGISTERED*
 14 *SECURITIES.—Except with respect to offerings described in*
 15 *subsection (b) and as otherwise specifically provided in this*
 16 *section, no law, rule, regulation, order, or other administra-*
 17 *tive action of any State or Territory of the United States,*
 18 *or the District of Columbia, or any political subdivision*
 19 *thereof—*

20 “(1) requiring, or with respect to, registration or
 21 qualification of securities or securities transactions
 22 shall directly or indirectly apply to an offering sub-
 23 ject to a registration statement filed pursuant to this
 24 title;

1 “(2) shall directly or indirectly prohibit, limit,
 2 or impose conditions upon the use of any offering doc-
 3 ument, including any prospectus contained in a reg-
 4 istration statement that has been filed with the Com-
 5 mission; or

6 “(3) shall directly or indirectly prohibit, limit,
 7 or impose conditions upon the offer or sale of any se-
 8 curity registered with the Commission under this title
 9 based on the merits of such offering or issuer.

10 “(b) *SPECIAL RULES FOR CERTAIN OFFERINGS.*—*Ex-*
 11 *cept with respect to a security of an investment company*
 12 *that is registered under the Investment Company Act of*
 13 *1940, the provisions of subsection (a) shall not apply to—*

14 “(1) an offering—

15 “(A) by an issuer that is a blank check com-
 16 pany, as defined in section 7(b), or a direct par-
 17 ticipation investment program;

18 “(B) of penny stock; or

19 “(C) giving effect to a limited partnership
 20 rollup transaction;

21 “(2) an offering of a security, if a person associ-
 22 ated with the offering is subject to a statutory dis-
 23 qualification, as defined in section 3(a)(39) of the Se-
 24 curities Exchange Act of 1934, or any substantially
 25 equivalent State law; or

1 “(3) an offering of a security that—

2 “(A) is not listed on the New York Stock
3 Exchange, the American Stock Exchange, or the
4 National Market Segment of the National Asso-
5 ciation of Securities Dealers Automated
6 Quotation System Stock Market;

7 “(B) is not listed, authorized for listing, or
8 authorized for trading on a national securities
9 exchange (or tier or segment thereof) that has
10 standards for listing or for trading authorization
11 that the Commission determines, by rule (on its
12 own initiative or on the basis of a petition), are
13 substantially similar to the standards for listing
14 or for trading authorization that are applicable
15 to securities described in subparagraph (A); or

16 “(C) will not be listed or authorized for
17 trading as described in subparagraph (A) or (B)
18 upon completion of the transaction.

19 “(c) *EXEMPTION FROM STATE LAW FOR TRANS-*
20 *ACTIONS IN SECURITIES WITH QUALIFIED PURCHASERS.—*
21 *Notwithstanding subsection (b), subsection (a) shall apply*
22 *with respect to offers and sales to qualified purchasers, as*
23 *defined by the Commission.*

24 “(d) *PRESERVATION OF FILING REQUIREMENTS.—*

1 “(1) *IN GENERAL.*—Nothing in this section shall
2 *prohibit the securities commission (or any agency or*
3 *office performing like functions) of any State or Ter-*
4 *ritory of the United States, or the District of Colum-*
5 *bia, from requiring the filing of any documents filed*
6 *with the Commission pursuant to this title solely for*
7 *notice purposes, along with a consent to service of*
8 *process and requisite fee, except that no such filing,*
9 *consent, or fee may be required with respect to securi-*
10 *ties, or transactions relating to securities that are of*
11 *the same class, or are senior to such a class, as securi-*
12 *ties described in subsection (b)(3).*

13 “(2) *CONTINUED STATE AUTHORITY.*—Notwith-
14 *standing paragraph (1), a State or Territory of the*
15 *United States, or the District of Columbia may con-*
16 *tinue to collect filing or registration fees with respect*
17 *to securities or securities transactions in amounts de-*
18 *termined pursuant to State law as in effect on the*
19 *day before the date of enactment of the Securities In-*
20 *vestment Promotion Act of 1996, until otherwise spe-*
21 *cifically provided under a State law enacted on or*
22 *after that date of enactment.*

23 “(e) *PRESERVATION OF STATE AUTHORITY.*—Nothing
24 *in this section shall affect the jurisdiction of the securities*
25 *commission (or any agency or office performing like func-*

1 tions) of any State or Territory of the United States, or
 2 the District of Columbia pursuant to the laws of such State
 3 or Territory, with respect to any fraud or broker-dealer con-
 4 duct in connection with securities or securities trans-
 5 actions.”.

6 **SEC. 309. REGULATORY FLEXIBILITY.**

7 (a) *UNDER THE SECURITIES ACT OF 1933.*—Title I
 8 of the Securities Act of 1933 (15 U.S.C. 77a et seq.) is
 9 amended by adding at the end the following new section:

10 **“SEC. 28. GENERAL EXEMPTIVE AUTHORITY.**

11 “The Commission, by rule or regulation, may condi-
 12 tionally or unconditionally exempt any person, security, or
 13 transaction, or any class or classes of persons, securities,
 14 or transactions, from any provision or provisions of this
 15 title or of any rule or regulation issued under this title,
 16 to the extent that such exemption is necessary or appro-
 17 priate in the public interest, and is consistent with the pro-
 18 tection of investors.”.

19 (b) *UNDER THE SECURITIES EXCHANGE ACT OF*
 20 *1934.*—Title I of the Securities Exchange Act of 1934 (15
 21 U.S.C. 78a et seq.) is amended by adding at the end the
 22 following new section:

23 **“SEC. 36. GENERAL EXEMPTIVE AUTHORITY.**

24 “(a) *IN GENERAL.*—Except as provided in subsection
 25 (b), the Commission, by rule, regulation, or order, may con-

1 *ditionally or unconditionally exempt any person, security,*
 2 *or transaction, or any class or classes of persons, securities,*
 3 *or transactions, from any provision or provisions of this*
 4 *title or of any rule or regulation issued under this title,*
 5 *to the extent that such exemption is necessary or appro-*
 6 *priate in the public interest, and is consistent with the pro-*
 7 *tection of investors. The Commission shall, by rule or regu-*
 8 *lation, determine the procedures under which an exemptive*
 9 *order under this section shall be granted and may, in its*
 10 *sole discretion, decline to entertain any application for an*
 11 *order of exemption under this section.*

12 “(b) *LIMITATION.—The Commission may not, under*
 13 *this section, exempt any person, security, or transaction,*
 14 *or any class or classes of persons, securities, or transactions*
 15 *from section 15C or the rules or regulations issued there-*
 16 *under or (for purposes of section 15C and the rules and*
 17 *regulations issued thereunder) from the definitions in para-*
 18 *graphs (42), (43), (44), or (45) of section 3(a).”.*

19 **SEC. 310. ANALYSIS OF ECONOMIC EFFECTS OF REGULA-**
 20 **TION.**

21 “(a) *AUTHORIZATION OF APPROPRIATIONS.—There are*
 22 *authorized to be appropriated to carry out the Economic*
 23 *Analysis Program, including funding for the Office of Eco-*
 24 *nomics Analysis of the Securities and Exchange Commis-*

1 sion, \$6,000,000 for fiscal year 1997, and \$6,000,000 for
2 fiscal year 1998.

3 (b) ANALYSIS OF ECONOMIC EFFECTS OF REGULA-
4 TION.—

5 (1) IN GENERAL.—The Chief Economist of the
6 Commission shall prepare a report on each proposed
7 regulation of the Commission. Such report shall be
8 provided to each Commissioner and shall be published
9 in the Federal Register before any such regulation of
10 the Commission may become effective.

11 (2) REPORT CONTENTS.—The report required by
12 this subsection shall include—

13 (A) an analysis of the likely effects of the
14 proposed regulation on the economy of the Unit-
15 ed States, and particularly upon the securities
16 markets and the participants in those markets;
17 and

18 (B) the estimated impact of the proposed
19 regulation upon economic and market behavior,
20 including any impact on market liquidity, the
21 costs of investment, and the financial risks of in-
22 vestment.

23 **SEC. 311. PRIVATIZATION OF EDGAR.**

24 Not later than 180 days after the date of enactment
25 of this Act, the Commission shall submit to the Congress

1 *a report on the Electronic Data Gathering Analysis and*
 2 *Retrieval System consisting of the Commission's plan for*
 3 *promoting competition and innovation of the system*
 4 *through privatization of all or any part of the system. Such*
 5 *plan shall include such recommendations for action as may*
 6 *be necessary to implement the plan.*

7 **SEC. 312. IMPROVING COORDINATION OF SUPERVISION.**

8 *Section 17 of the Securities Exchange Act of 1934 (15*
 9 *U.S.C. 78q) is amended by adding at the end the following*
 10 *new subsection:*

11 *“(i) COORDINATION OF EXAMINING AUTHORITIES.—*

12 *“(1) OBJECTIVE.—The Commission and the ex-*
 13 *amining authorities shall promote effective and effi-*
 14 *cient oversight of the activities of brokers and dealers,*
 15 *avoiding redundancy, while maintaining the highest*
 16 *level of examination and oversight quality.*

17 *“(2) ELIMINATION OF DUPLICATION.—The Com-*
 18 *mission and the examining authorities, through co-*
 19 *operation and coordination of examination and over-*
 20 *sight activities, shall eliminate any unnecessary and*
 21 *burdensome duplication in the examination process.*

22 *“(3) COORDINATION OF EXAMINATIONS.—The*
 23 *Commission and the examining authorities shall*
 24 *share such information, including reports of examina-*
 25 *tions, customer complaint information, and other*

1 *nonpublic regulatory information, as appropriate to*
2 *foster a coordinated approach to regulatory oversight*
3 *of brokers and dealers that are subject to examination*
4 *by more than one examining authority.*

5 “(4) *EXAMINATIONS FOR CAUSE.*—*At any time,*
6 *any examining authority may conduct an examina-*
7 *tion for cause of any broker or dealer subject to its*
8 *jurisdiction.*

9 “(5) *CONFIDENTIALITY.*—

10 “(A) *IN GENERAL.*—*The provisions of sec-*
11 *tion 24 shall apply to the sharing of information*
12 *in accordance with this subsection. The Commis-*
13 *sion shall take appropriate action under section*
14 *24(c) to assure that such information is not in-*
15 *appropriately disclosed.*

16 “(B) *APPROPRIATE DISCLOSURE NOT PRO-*
17 *HIBITED.*—*Nothing in this paragraph shall au-*
18 *thorize the Commission or any examining au-*
19 *thority to withhold information from the Con-*
20 *gress, or prevent the Commission or any examin-*
21 *ing authority from complying with a request for*
22 *information from any other Federal department*
23 *or agency requesting the information for pur-*
24 *poses within the scope of its jurisdiction, or com-*
25 *plying with an order of a court of the United*

1 *States in an action brought by the United States*
 2 *or the Commission.*

3 “(6) *DEFINITION.*—*For purposes of this sub-*
 4 *section, the term ‘examining authority’ means the*
 5 *self-regulatory organizations registered with the Com-*
 6 *mission under this title (other than registered clearing*
 7 *agencies) with the authority to examine, inspect, and*
 8 *otherwise oversee the activities of a registered broker*
 9 *or dealer.’”.*

10 ***SEC. 313. INCREASED ACCESS TO FOREIGN BUSINESS IN-***
 11 ***FORMATION.***

12 *(a) THE SECURITIES ACT OF 1993.*—*Section 2(3) of*
 13 *the Securities Act of 1933 (15 U.S.C. 77b(3)) is amended*
 14 *in the third sentence—*

15 *(1) by striking “not include preliminary” and*
 16 *inserting “not include (A) preliminary”; and*

17 *(2) by inserting before the period “; or (B) solely*
 18 *for purposes of section 5, press conferences held out-*
 19 *side of the United States, public meetings with issuer*
 20 *representatives conducted outside of the United States,*
 21 *or press related materials released outside of the Unit-*
 22 *ed States in which an offshore offering is discussed,*
 23 *irrespective of whether journalists from the United*
 24 *States or journalists for publications (including on-*
 25 *line services) with circulation in the United States at-*

1 *tend such press conferences or meetings or receive such*
2 *press related materials.”.*

3 *(b) THE SECURITIES EXCHANGE ACT OF 1934.—Sec-*
4 *tion 14 of the Securities Exchange Act of 1934 (15 U.S.C.*
5 *78n) is amended by adding at the end the following new*
6 *subsection:*

7 *“(i) TREATMENT OF PRESS RELATED MATERIALS.—*

8 *“(1) IN GENERAL.—Any person making a tender*
9 *offer for, or a request or invitation for tenders of, the*
10 *securities of a foreign issuer may grant journalists*
11 *from the United States or journalists for publications*
12 *(including on-line services) with circulation in the*
13 *United States access to press conferences occurring*
14 *outside of the United States, meetings with its rep-*
15 *resentatives conducted outside of the United States, or*
16 *press related materials released outside of the United*
17 *States in which an offshore tender offer is discussed,*
18 *without being deemed to have used the jurisdictional*
19 *means specified in subsection (d)(1) or becoming sub-*
20 *ject to any regulations promulgated by the Commis-*
21 *sion, pursuant to subsection (e) of this section or sec-*
22 *tion 13(e), or otherwise, that relate to tender offers or*
23 *requests or invitations for tenders.*

1 “(2) *DEFINITION.*—For purposes of this sub-
 2 section, the term ‘foreign issuer’ means any corpora-
 3 tion or other organization—

4 “(A) that is incorporated or organized
 5 under the laws of any foreign country; or

6 “(B) the principal place of business of
 7 which is located in a foreign country.”.

8 **SEC. 314. SHORT-FORM REGISTRATION.**

9 (a) *IN GENERAL.*—Not later than 180 days after the
 10 date of enactment of this Act, the Commission shall amend
 11 Form S-3 (17 C.F.R. 239.13, relating to registration under
 12 the Securities Act of 1933, of securities of certain issuers
 13 offered pursuant to certain types of transactions) to allow
 14 such form, or its equivalent, to be used for primary offerings
 15 by a registrant if—

16 (1) the outstanding stock of the registrant held
 17 by nonaffiliates of the registrant has an adequate ag-
 18 gregate market value, as determined by the Commis-
 19 sion; and

20 (2) such registrant otherwise meets the eligibility
 21 requirements for registration using such form, or its
 22 equivalent.

23 (b) *ADJUSTMENTS.*—Any adjustment to the adequate
 24 aggregate market value threshold referred to in subsection
 25 (a)(1) by the Commission following the date of enactment

1 *of this Act shall apply equally to voting and nonvoting com-*
 2 *mon shares and such other securities as the Commission*
 3 *shall establish.*

4 (c) *DEFINITION.*—*For purposes of this section, the*
 5 *term “stock” includes voting and nonvoting common shares,*
 6 *and such other securities as the Commission shall establish.*

7 **SEC. 315. CHURCH EMPLOYEE PENSION PLANS.**

8 (a) *AMENDMENT TO THE INVESTMENT COMPANY ACT*
 9 *OF 1940.*—*Section 3(c) of the Investment Company Act of*
 10 *1940 (15 U.S.C. 80a–3(c)) is amended by adding at the*
 11 *end the following new paragraph:*

12 “(14) *Any church plan described in section*
 13 *414(e) of the Internal Revenue Code of 1986, if, under*
 14 *any such plan, no part of the assets may be used for,*
 15 *or diverted to, purposes other than the exclusive bene-*
 16 *fit of plan participants or beneficiaries, or any com-*
 17 *pany or account that is—*

18 “(A) *established by a person that is eligible*
 19 *to establish and maintain such a plan under sec-*
 20 *tion 414(e) of the Internal Revenue Code of 1986;*
 21 *and*

22 “(B) *substantially all of the activities of*
 23 *which consist of—*

24 “(i) *managing or holding assets con-*
 25 *tributed to such church plans or other assets*

1 *which are permitted to be commingled with*
 2 *the assets of church plans under the Inter-*
 3 *nal Revenue Code of 1986; or*
 4 “(ii) administering or providing bene-
 5 fits pursuant to church plans.”.

6 (b) *AMENDMENT TO THE SECURITIES ACT OF 1933.—*
 7 *Section 3(a) of the Securities Act of 1933 (15 U.S.C. 77c(a))*
 8 *is amended by adding at the end the following new para-*
 9 *graph:*

10 “(13) Any security issued by or any interest or
 11 participation in any church plan, company or ac-
 12 count that is excluded from the definition of an in-
 13 vestment company under section 3(c)(14) of the In-
 14 vestment Company Act of 1940.”.

15 (c) *AMENDMENTS TO THE SECURITIES EXCHANGE ACT*
 16 *OF 1934.—*

17 (1) *EXEMPTED SECURITIES.—Section*
 18 *3(a)(12)(A) of the Securities Exchange Act of 1934*
 19 *(15 U.S.C. 78c(a)(12)(A)) is amended—*

20 (A) in clause (v), by striking “and” at the
 21 end;

22 (B) by redesignating clause (vi) as clause
 23 (vii); and

24 (C) by inserting after clause (v) the follow-
 25 ing new clause:

1 “(vi) solely for purposes of sections 12,
 2 13, 14, and 16 of this title, any security is-
 3 sued by or any interest or participation in
 4 any church plan, company, or account that
 5 is excluded from the definition of an invest-
 6 ment company under section 3(c)(14) of the
 7 Investment Company Act of 1940; and”.

8 (2) *EXEMPTION FROM BROKER-DEALER PROVI-*
 9 *SIONS.*—Section 3 of the Securities Exchange Act of
 10 1934 (15 U.S.C. 78c) is amended by adding at the
 11 end the following new subsection:

12 “(f) *CHURCH PLANS.*—No church plan described in
 13 section 414(e) of the Internal Revenue Code of 1986, no per-
 14 son or entity eligible to establish and maintain such a plan
 15 under the Internal Revenue Code of 1986, no company or
 16 account that is excluded from the definition of an invest-
 17 ment company under section 3(c)(14) of the Investment
 18 Company Act of 1940, and no trustee, director, officer or
 19 employee of or volunteer for such plan, company, account
 20 person, or entity, acting within the scope of that person’s
 21 employment or activities with respect to such plan, shall
 22 be deemed to be a ‘broker’, ‘dealer’, ‘municipal securities
 23 broker’, ‘municipal securities dealer’, ‘government securities
 24 broker’, ‘government securities dealer’, ‘clearing agency’, or
 25 ‘transfer agent’ for purposes of this title—

1 “(1) solely because such plan, company, person,
 2 or entity buys, holds, sells, trades in, or transfers se-
 3 curities or acts as an intermediary in making pay-
 4 ments in connection with transactions in securities
 5 for its own account in its capacity as trustee or ad-
 6 ministrator of, or otherwise on behalf of, or for the ac-
 7 count of, any church plan, company, or account that
 8 is excluded from the definition of an investment com-
 9 pany under section 3(c)(14) of the Investment Com-
 10 pany Act of 1940; and

11 “(2) if no such person or entity receives a com-
 12 mission or other transaction-related sales compensa-
 13 tion in connection with any activities conducted in
 14 reliance on the exemption provided by this sub-
 15 section.”.

16 (d) AMENDMENT TO THE INVESTMENT ADVISERS ACT
 17 OF 1940.—Section 203(b) of the Investment Advisers Act
 18 of 1940 (15 U.S.C. 80b–3(b)) is amended—

19 (1) in paragraph (3), by striking “or” at the
 20 end;

21 (2) in paragraph (4), by striking the period at
 22 the end and inserting “; or”; and

23 (3) by adding at the end the following new para-
 24 graph:

1 “(5) any plan described in section 414(e) of the
 2 *Internal Revenue Code of 1986, any person or entity*
 3 *eligible to establish and maintain such a plan under*
 4 *the Internal Revenue Code of 1986, or any trustee, di-*
 5 *rector, officer, or employee of or volunteer for any*
 6 *such plan or person, if such person or entity provides*
 7 *investment advice exclusively to any plan, person, or*
 8 *entity or any company, account, or fund that is ex-*
 9 *cluded from the definition of an investment company*
 10 *under section 3(c)(14) of the Investment Company*
 11 *Act of 1940.”.*

12 (e) *AMENDMENT TO THE TRUST INDENTURE ACT OF*
 13 1939.—*Section 304(a)(4)(A) of the Trust Indenture Act of*
 14 1939 (15 U.S.C. 77ddd(4)(A)) *is amended by striking “or*
 15 *(11)” and inserting “(11), or (14)”.*

16 (f) *PROTECTION OF CHURCH EMPLOYEE BENEFIT*
 17 *PLANS UNDER STATE LAW.—*

18 (1) *REGISTRATION REQUIREMENTS.—Any secu-*
 19 *rity issued by or any interest or participation in any*
 20 *church plan, company, or account that is excluded*
 21 *from the definition of an investment company under*
 22 *section 3(c)(14) of the Investment Company Act of*
 23 1940, *as added by subsection (a) of this section, and*
 24 *any offer, sale, or purchase thereof, shall be exempt*

1 *from any law of a State that requires registration or*
2 *qualification of securities.*

3 (2) *TREATMENT OF CHURCH PLANS.—No church*
4 *plan described in section 414(e) of the Internal Reve-*
5 *nue Code of 1986, no person or entity eligible to es-*
6 *tablish and maintain such a plan under the Internal*
7 *Revenue Code of 1986, no company or account that*
8 *is excluded from the definition of an investment com-*
9 *pany under section 3(c)(14) of the Investment Com-*
10 *pany Act of 1940, as added by subsection (a) of this*
11 *section, and no trustee, director, officer, or employee*
12 *of or volunteer for any such plan, person, entity, com-*
13 *pany, or account shall be required to qualify, register,*
14 *or be subject to regulation as an investment company*
15 *or as a broker, dealer, investment adviser, or agent*
16 *under the laws of any State solely because such plan,*
17 *person, entity, company, or account buys, holds, sells,*
18 *or trades in securities for its own account or in its*
19 *capacity as a trustee or administrator of or otherwise*
20 *on behalf of, or for the account of, or provides invest-*
21 *ment advice to, for, or on behalf of, any such plan,*
22 *person, or entity or any company or account that is*
23 *excluded from the definition of an investment com-*
24 *pany under section 3(c)(14) of the Investment Com-*

1 pany Act of 1940, as added by subsection (a) of this
2 section.

3 (g) *AMENDMENT TO THE INVESTMENT COMPANY ACT*
4 *OF 1940.*—Section 30 of the Investment Company Act of
5 1940 (15 U.S.C. 80a–29) is amended by adding at the end
6 the following new subsections:

7 “(g) *DISCLOSURE TO CHURCH PLAN PARTICIPANTS.*—
8 A person that maintains a church plan that is excluded
9 from the definition of an investment company solely by rea-
10 son of section 3(c)(14) shall provide disclosure to plan par-
11 ticipants, in writing, and not less frequently than annually,
12 and for new participants joining such a plan after May
13 31, 1996, prior to joining such plan, that—

14 “(1) the plan, or any company or account main-
15 tained to manage or hold plan assets and interests in
16 such plan, company, or account, are not subject to
17 registration, regulation, or reporting under this title,
18 the Securities Act of 1933, the Securities Exchange
19 Act of 1934, or State securities laws; and

20 “(2) plan participants and beneficiaries therefore
21 will not be afforded the protections of those provisions.

22 “(h) *NOTICE TO COMMISSION.*—The Commission may
23 issue rules and regulations to require any person that
24 maintains a church plan that is excluded from the defini-
25 tion of an investment company solely by reason of section

1 3(c)(14) to file a notice with the Commission containing
 2 such information and in such form as the Commission may
 3 prescribe as necessary or appropriate in the public interest
 4 or consistent with the protection of investors.”.

5 **SEC. 316. PROMOTING GLOBAL PREMINENCE OF AMER-**
 6 **ICAN SECURITIES MARKETS.**

7 *It is the sense of the Congress that—*

8 *(1) the United States and foreign securities mar-*
 9 *kets are increasingly becoming international*
 10 *securities markets, as issuers and investors seek the*
 11 *benefits of new capital and secondary market oppor-*
 12 *tunities without regard to national borders;*

13 *(2) as issuers seek to raise capital across*
 14 *national borders, they confront differing accounting*
 15 *requirements in the various regulatory jurisdictions;*

16 *(3) the establishment of a high-quality com-*
 17 *prehensive set of generally accepted international ac-*
 18 *counting standards in cross-border securities offerings*
 19 *would greatly facilitate international financing ac-*
 20 *tivities and, most significantly, would enhance the*
 21 *ability of foreign corporations to access and list in*
 22 *United States markets;*

23 *(4) in addition to the efforts made before the date*
 24 *of enactment of this Act by the Commission to re-*
 25 *spond to the growing internationalization of securities*

1 *markets, the Commission should enhance its vigorous*
 2 *support for the development of high-quality inter-*
 3 *national accounting standards as soon as practicable;*
 4 *and*

5 *(5) the Commission, in view of its clear author-*
 6 *ity under law to facilitate the access of foreign cor-*
 7 *porations to list their securities in United States*
 8 *markets, should report to the Congress, not later than*
 9 *1 year after the date of enactment of this Act, on*
 10 *progress in the development of international account-*
 11 *ing standards and the outlook for successful comple-*
 12 *tion of a set of international standards that would be*
 13 *acceptable to the Commission for offerings and list-*
 14 *ings by foreign corporations in United States mar-*
 15 *kets.*

16 **SEC. 317. BROKER-DEALER EXEMPTION FROM STATE LAW**
 17 **FOR CERTAIN DE MINIMIS TRANSACTIONS.**

18 *(a) IN GENERAL.—Section 15 of the Securities Ex-*
 19 *change Act of 1934 (15 U.S.C. 78o) is amended by adding*
 20 *at the end the following new subsection:*

21 *“(h) EXEMPTION FROM STATE LAW FOR CERTAIN DE*
 22 *MINIMIS TRANSACTIONS.—*

23 *“(1) IN GENERAL.—No law, rule, regulation, or*
 24 *order, or other administrative action of any State or*
 25 *political subdivision thereof may prohibit an associ-*

1 *ated person of a broker or dealer from affecting a*
 2 *transaction described in paragraph (2) for a customer*
 3 *in such State if—*

4 *“(A) such associated person is not ineligible*
 5 *to register with such State for any reason other*
 6 *than such a transaction;*

7 *“(B) such associated person is registered*
 8 *with a registered securities association and at*
 9 *least one State; and*

10 *“(C) the broker or dealer with which such*
 11 *person is associated is registered with such State.*

12 *“(2) DESCRIBED TRANSACTIONS.—*

13 *“(A) IN GENERAL.—A transaction is de-*
 14 *scribed in this paragraph if—*

15 *“(i) such transaction is effected—*

16 *“(I) on behalf of a customer that,*
 17 *for 30 days prior to the day of the*
 18 *transaction, maintained an account*
 19 *with the broker or dealer; and*

20 *“(II) by an associated person of*
 21 *the broker or dealer—*

22 *“(aa) to which the customer*
 23 *was assigned for 14 days prior to*
 24 *the day of the transaction; and*

1 “(bb) *who is registered with*
2 *a State in which the customer was*
3 *a resident or was present for at*
4 *least 30 consecutive days during*
5 *the one-year period prior to the*
6 *day of the transaction;*

7 “(ii) *the transaction is effected—*

8 “(I) *on behalf of a customer that,*
9 *for 30 days prior to the day of the*
10 *transaction, maintains an account*
11 *with the broker or dealer; and*

12 “(II) *within the period beginning*
13 *on the date on which such associated*
14 *person files an application for registra-*
15 *tion with the State in which the trans-*
16 *action is effected and ending on the*
17 *earlier of—*

18 “(aa) *60 days after the date*
19 *on which the application is filed;*
20 *or*

21 “(bb) *the date on which such*
22 *State notifies the associated per-*
23 *son that it has denied the applica-*
24 *tion for registration or has stayed*

1 the pendency of the application
2 for cause.

3 “(B) RULES OF CONSTRUCTION.—For pur-
4 poses of subparagraph (A)(i)(II)—

5 “(i) each of up to 3 associated persons
6 of a broker or dealer who are designated to
7 effect transactions during the absence or un-
8 availability of the principal associated per-
9 son for a customer may be treated as an as-
10 sociated person to which such customer is
11 assigned; and

12 “(ii) if the customer is present in an-
13 other State for 30 or more consecutive days
14 or has permanently changed his or her resi-
15 dence to another State, a transaction is not
16 described in this paragraph, unless the asso-
17 ciation person of the broker or dealer files
18 an application for registration with such
19 State not later than 10 business days after
20 the later of the date of the transaction, or
21 the date of the discovery of the presence of
22 the customer in the other State for 30 or
23 more consecutive days or the change in the
24 customer’s residence.”.

1 (b) *TECHNICAL AMENDMENT.*—Section 28(a) of the Se-
 2 curities Exchange Act of 1934 (15 U.S.C. 78bb(a)) is
 3 amended by striking “Nothing” and inserting “Except as
 4 otherwise specifically provided in this title, nothing”.

5 **SEC. 318. STUDIES AND REPORTS.**

6 (a) *IMPACT OF TECHNOLOGICAL ADVANCES.*—

7 (1) *STUDY.*—

8 (A) *IN GENERAL.*—The Commission shall
 9 conduct a study of—

10 (i) the impact of technological ad-
 11 vances and the use of on-line information
 12 systems on the securities markets;

13 (ii) how such technologies have changed
 14 the way in which the securities markets op-
 15 erate; and

16 (iii) any steps taken by the Commis-
 17 sion to address such changes.

18 (B) *CONSIDERATIONS.*—In conducting the
 19 study under subparagraph (A), the Commission
 20 shall consider how the Commission has adapted
 21 its enforcement policies and practices in response
 22 to technological developments with regard to—

23 (i) disclosure, prospectus delivery, and
 24 other customer protection regulations;

1 (ii) intermediaries and exchanges in
2 the domestic and international financial
3 services industry;

4 (iii) reporting by issuers, including
5 communications with holders of securities;

6 (iv) the relationship of the Commission
7 with other national regulatory authorities
8 and organizations to improve coordination
9 and cooperation; and

10 (v) the relationship of the Commission
11 with State regulatory authorities and orga-
12 nizations to improve coordination and co-
13 operation.

14 (2) *REPORT.*—Not later than 1 year after the
15 date of enactment of this Act, the Commission shall
16 submit a report to the Congress on the results of the
17 study conducted under paragraph (1).

18 (b) *SHAREHOLDER PROPOSALS.*—

19 (1) *STUDY.*—The Commission shall conduct a
20 study of—

21 (A) whether shareholder access to proxy
22 statements pursuant to section 14 of the Securi-
23 ties Exchange Act of 1934 has been impaired by
24 recent statutory, judicial, or regulatory changes;
25 and

1 (B) the ability of shareholders to have pro-
2 posals relating to corporate practices and social
3 issues included as part of proxy statements.

4 (2) *REPORT.*—Not later than 1 year after the
5 date of enactment of this Act, the Commission shall
6 submit a report to the Congress on the results of the
7 study conducted under paragraph (1), together with
8 any recommendations for regulatory or legislative
9 changes that it considers necessary to improve share-
10 holder access to proxy statements.

11 (c) *PREFERENCING.*—

12 (1) *STUDY.*—The Commission shall conduct a
13 study of the impact on investors and the national
14 market system of the practice known as
15 “preferencing” on one or more registered securities ex-
16 changes, including consideration of—

17 (A) how preferencing impacts—

18 (i) the execution prices received by re-
19 tail securities customers whose orders are
20 preferred; and

21 (ii) the ability of retail securities cus-
22 tomers in all markets to obtain executions
23 of their limit orders in preferred securi-
24 ties; and

1 (B) the costs of preferencing to such cus-
2 tomers.

3 (2) *REPORT.*—Not later than 6 months after the
4 date of enactment of this Act, the Commission shall
5 submit a report to the Congress on the results of the
6 study conducted under paragraph (1).

7 (3) *DEFINITION.*—For purposes of this sub-
8 section, the term “preferencing” refers to the practice
9 of a broker acting as a dealer on a national securities
10 exchange, directing the orders of customers to buy or
11 sell securities to itself for execution under rules that
12 permit the broker to take priority in execution over
13 same-priced orders or quotations entered prior in
14 time.

Attest:

Secretary.

104TH CONGRESS
2D SESSION

H. R. 3005

AMENDMENT

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