

SEC REFORM AND RESTRUCTURING ACT

NOVEMBER 29, 2024.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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

R E P O R T

together with

MINORITY VIEWS

[To accompany H.R. 8339]

The Committee on Financial Services, to whom was referred the bill (H.R. 8339) to make improvements to the securities laws, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

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The amendment is as follows:
Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) **SHORT TITLE.**—This Act may be cited as the “SEC Reform and Restructuring Act”.

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

Sec. 1. Short title; table of contents.

TITLE I—SEC REGULATORY ACCOUNTABILITY

Sec. 101. Consideration by the Securities and Exchange Commission of the costs and benefits of regulations and certain other agency actions of the Commission.

Sec. 102. Accountability provision relating to other regulatory entities.

TITLE II—SEC TRANSPARENCY

Sec. 201. Semiannual testimony to Congress regarding activities of the Securities and Exchange Commission.

TITLE III—SEC CYBERSECURITY

Sec. 301. GAO audit of information technology infrastructure and handling of data.

TITLE IV—REVIEW THE EXPANSION OF GOVERNMENT

Sec. 401. Periodic review of final rules required.

Sec. 402. Consideration of cumulative effect of regulations required.

TITLE V—STREAMLINING PUBLIC COMPANY ACCOUNTING OVERSIGHT

Sec. 501. Transfer of Public Company Accounting Oversight Board to Securities and Exchange Commission.

Sec. 502. Establishment; administrative provisions.

Sec. 503. Registration with the Office.

Sec. 504. Auditing, quality control, standards, and rules.

Sec. 505. Foreign public accounting firms.

Sec. 506. Funding.

Sec. 507. Definitions.

Sec. 508. Technical and conforming amendments.

Sec. 509. Rule of construction with respect to cooperative arrangements.

Sec. 510. Regulations.

Sec. 511. Effective date.

TITLE VI—STUDY REGARDING MAJOR RULES ISSUED BY THE SECURITIES AND EXCHANGE COMMISSION

Sec. 601. GAO study regarding major rules.

TITLE VII—MINIMUM PUBLIC COMMENT PERIOD

Sec. 701. Minimum public comment period.

TITLE I—SEC REGULATORY ACCOUNTABILITY**SEC. 101. CONSIDERATION BY THE SECURITIES AND EXCHANGE COMMISSION OF THE COSTS AND BENEFITS OF REGULATIONS AND CERTAIN OTHER AGENCY ACTIONS OF THE COMMISSION.**

Section 23 of the Securities Exchange Act of 1934 (15 U.S.C. 78w) is amended by adding at the end the following:

“(e) **CONSIDERATION OF COSTS AND BENEFITS.**—

“(1) **CONSIDERATIONS BEFORE PROPOSING A REGULATION.**—Before proposing a regulation, the Commission shall—

“(A) clearly identify the nature and source of the problem that the regulation is designed to address, as well as assess the significance of that problem, to enable assessment of whether any new regulation is warranted; and

“(B) ensure that the regulation would be within the Commission’s jurisdiction and that the Commission has sufficient experience and expertise to regulate the subject matter covered by the regulation.

“(2) **REQUIREMENTS FOR ISSUING A PROPOSED OR FINAL REGULATION.**—

“(A) **IN GENERAL.**—In issuing a proposed or final regulation, the Commission shall—

“(i) clearly identify the market participants who will be impacted by the regulation;

“(ii) utilize the Chief Economist of the Commission to assess the costs and benefits, both qualitative and quantitative, of the regulation, both on the regulation’s own and cumulatively with other existing and proposed regulations;

“(iii) only issue the regulation if the Commission makes a reasoned determination that the benefits of the regulation justify the costs of the regulation;

“(iv) identify and assess available alternatives to the regulation that were considered, including modification of an existing regulation;

“(v) ensure that the regulation is accessible, consistent, written in plain language, and easy to understand; and

“(vi) ensure that the length of the public comment period is commensurate with the complexity of the regulation and the expected public interest in the rulemaking.

“(B) INCLUSION OF INFORMATION IN A PROPOSED OR FINAL REGULATION.—In issuing a proposed or final regulation, the Commission shall include in the regulation—

“(i) the results of the identifications and assessments required under clauses (i) and (ii) of subparagraph (A) with respect to the regulation;

“(ii) an explanation of why the regulation meets the regulatory objectives of the Commission more effectively than other available alternatives, including modification of an existing regulation;

“(iii) a description of how the Commission intends the regulation to interact with existing regulations and proposed regulations; and

“(iv) a justification of the length of the public comment period for the regulation.

“(3) CONSIDERATIONS AND ACTIONS.—

“(A) REQUIRED ACTIONS.—In deciding whether and how to regulate, the Commission shall assess the costs and benefits of available regulatory alternatives, including the alternative of not regulating, and choose the approach that maximizes net benefits. Specifically, the Commission shall—

“(i) consistent with the requirements of section 3(f) (15 U.S.C. 78c(f)), section 2(b) of the Securities Act of 1933 (15 U.S.C. 77b(b)), section 202(c) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(c)), and section 2(c) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(c)), consider whether a rulemaking (both on the regulation’s own and cumulatively with other existing and proposed regulations), in addition to being in the interest of protecting investors, will promote efficiency, competition, and capital formation;

“(ii) evaluate whether, consistent with obtaining regulatory objectives, a regulation (both on the regulation’s own and cumulatively with other existing and proposed regulations) is tailored to impose the least burden on society, including market participants, individuals, businesses of differing sizes, and other entities (including State and local governmental entities), taking into account, to the extent practicable, the cumulative costs of regulations; and

“(iii) evaluate whether a regulation is inconsistent, incompatible, or duplicative of other Federal regulations.

“(B) ADDITIONAL CONSIDERATIONS.—In addition, in making a reasoned determination under paragraph (2)(A)(iii) of the costs and benefits of a regulation, the Commission shall, to the extent that each is relevant to the particular regulation, take into consideration the impact of the regulation on—

“(i) investor choice;

“(ii) market liquidity in the securities markets;

“(iii) small businesses;

“(iv) competition in the marketplace;

“(v) investor access; and

“(vi) the United States’ economic competitiveness.

“(4) POST-ADOPTION IMPACT ASSESSMENT.—

“(A) IN GENERAL.—Whenever the Commission issues a final regulation that is a ‘major rule’ (as defined under section 804 of title 5, United States Code), it shall state, in the regulation, the following:

“(i) The purposes and intended consequences of the regulation.

“(ii) Appropriate post-implementation quantitative and qualitative metrics to measure the economic impact of the regulation and to measure the extent to which the regulation has accomplished the stated purposes.

“(iii) The assessment plan that will be used, consistent with the requirements of subparagraph (B) and under the supervision of the Chief Economist, to assess whether the regulation has achieved the stated purposes.

“(iv) Any unintended or negative consequences that the Commission foresees may result from the regulation.

“(B) REQUIREMENTS OF ASSESSMENT PLAN AND REPORT.—

“(i) REQUIREMENTS OF PLAN.—For each regulation described under subparagraph (A), the Chief Economist shall establish an assessment plan, which shall—

“(I) consider the costs, benefits, and intended and unintended consequences of the regulation;

“(II) specify the data to be collected, the methods for collection and analysis of the data, and a date for completion of the assessment; and

“(III) include an analysis of any jobs added or lost as a result of the regulation, differentiating between public and private sector jobs.

“(ii) TIMING OF ASSESSMENT PLAN REPORT.—A report on each completed assessment plan described under clause (i) shall be submitted by the Chief Economist to the Commission not later than the end of the 4-year period beginning on the date the applicable regulation is issued, unless the Commission, at the request of the Chief Economist, publishes at least 90 days before the end of such period a notice in the Federal Register extending the date and providing specific reasons why an extension is necessary.

“(iii) PUBLIC COMMENT.—Not later than 7 days after the Commission receives an assessment plan report under clause (ii), the Commission shall publish the report in the Federal Register for public comment.

“(5) REGULATION DEFINED.—In this subsection, the term ‘regulation’—

“(A) means an agency statement of general applicability and future effect that is designed to implement, interpret, or prescribe law or policy or to describe the procedure or practice requirements of an agency, including rules, orders of general applicability, interpretive releases, and other statements of general applicability that the agency intends to have the force and effect of law; and

“(B) does not include—

“(i) a regulation issued in accordance with the formal rulemaking provisions of section 556 or 557 of title 5, United States Code;

“(ii) a regulation that is limited to agency organization, management, or personnel matters;

“(iii) a regulation promulgated pursuant to statutory authority that expressly prohibits compliance with this provision; and

“(iv) a regulation that is certified by the agency to be an emergency action, if such certification is published in the Federal Register.”.

SEC. 102. ACCOUNTABILITY PROVISION RELATING TO OTHER REGULATORY ENTITIES.

A rule adopted by the Municipal Securities Rulemaking Board or any national securities association registered under section 15A of the Securities Exchange Act of 1934 (15 U.S.C. 78o-3) shall not take effect unless the Securities and Exchange Commission determines that, in adopting such rule, the Board or association has complied with the requirements of section 23(e) of the Securities Exchange Act of 1934, as added by section 101, in the same manner as is required by the Commission under such section 23(e).

TITLE II—SEC TRANSPARENCY

SEC. 201. SEMIANNUAL TESTIMONY TO CONGRESS REGARDING ACTIVITIES OF THE SECURITIES AND EXCHANGE COMMISSION.

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

“(1) SEMIANNUAL TESTIMONY TO CONGRESS.—The Chairman of the Commission shall, not less than once every 6 months after the date of the enactment of this subsection, testify before the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate on the activities of the Commission. At least once annually, the Commissioners shall join the Chairman with respect to testifying pursuant to the preceding sentence.”.

TITLE III—SEC CYBERSECURITY

SEC. 301. GAO AUDIT OF INFORMATION TECHNOLOGY INFRASTRUCTURE AND HANDLING OF DATA.

The Comptroller General of the United States shall, not later than 1 year after the date of the enactment of this Act—

(1) perform an independent audit of the information technology (IT) infrastructure of the Securities and Exchange Commission and the Commission’s handling of data, including—

- (A) a comparison of the Commission’s IT spending to other Federal financial regulators, including—
 - (i) the total amount spent on IT equipment and services; and
 - (ii) the amount of IT spending in proportion to each regulator’s total spending;
 - (B) examining the quality and effectiveness of the Commission’s IT contracting;
 - (C) determining if the Commission’s data and cybersecurity systems and procedures are sufficient; and
 - (D) examining any recent Commission IT or data events, such as breaches or hacks, that may have compromised the Commission’s IT infrastructure or exposed a vulnerability; and
- (2) provide to the Commission, the Committee on Financial Services of the House of Representatives, and the Committee on Banking, Housing, and Urban Affairs of the Senate a report containing—
- (A) all findings and determinations made in conducting the audit; and
 - (B) recommendations for steps that can be taken to improve the Commission’s IT infrastructure.

TITLE IV—REVIEW THE EXPANSION OF GOVERNMENT

SEC. 401. PERIODIC REVIEW OF FINAL RULES REQUIRED.

Section 4 of the Securities Exchange Act of 1934 (15 U.S.C. 78d), as amended by section 201, is further amended by adding at the end the following:

“(m) PERIODIC REVIEW OF FINAL RULES REQUIRED.—

“(1) IN GENERAL.—With respect to a final rule issued by the Commission, the Commission shall review such rule not later than 5 years after the date on which such final rule is issued, and every 5 years thereafter, to determine if any revision (including a rescission) to the rule is necessary or appropriate—

- “(A) to facilitate capital formation;
- “(B) to maintain fair and orderly markets; and
- “(C) for the protection of investors.

“(2) APPLICATION.—With respect to a final rule issued by the Commission before the date of enactment of this subsection, the first review of such rule required under paragraph (1) shall occur before the end of the 5-year period beginning on the date of enactment of this subsection.

“(3) REPORTS REQUIRED.—The Commission shall—

“(A) not later than 1 year after the date of the enactment of this subsection, submit to Congress and make publicly available a report that includes a plan to carry out the review required under this subsection with respect to the final rules described in paragraphs (1) and (2); and

“(B) not later than 5 years after the date of the enactment of this subsection and not less than once every 5 years thereafter, submit to Congress and make publicly available a report that identifies—

“(i) each final rule the Commission reviewed under this subsection in the preceding 5-year period and an explanation of the Commission’s findings and actions taken or planned to be taken; and

“(ii) each action or review the Commission failed to carry out in the preceding 5-year period under the plan required under subparagraph (A) and an explanation for such failure.”

SEC. 402. CONSIDERATION OF CUMULATIVE EFFECT OF REGULATIONS REQUIRED.

(a) RULES UNDER THE SECURITIES ACT OF 1933.—Section 2(b) of the Securities Act of 1933 (15 U.S.C. 77b(b)) is amended by inserting “, when considered individually or cumulatively with other rules or regulations or other proposed rules or regulations,” before “will promote”.

(b) RULES UNDER THE SECURITIES EXCHANGE ACT OF 1934.—Section 23(a)(2) of the Securities Exchange Act of 1934 (15 U.S.C. 78w(a)(2)) is amended by inserting “, when considered individually or cumulatively with other rules or regulations or other proposed rules or regulations,” after “which would”.

(c) RULES UNDER THE INVESTMENT COMPANY ACT OF 1940.—Section 2(c) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(c)) is amended by inserting “, when considered individually or cumulatively with other rules or regulations or other proposed rules or regulations,” before “will promote”.

(d) RULES UNDER THE INVESTMENT ADVISERS ACT OF 1940.—Section 202(c) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(c)) is amended by inserting “,

when considered individually or cumulatively with other rules or regulations or other proposed rules or regulations,” before “will promote”.

TITLE V—STREAMLINING PUBLIC COMPANY ACCOUNTING OVERSIGHT

SEC. 501. TRANSFER OF PUBLIC COMPANY ACCOUNTING OVERSIGHT BOARD TO SECURITIES AND EXCHANGE COMMISSION.

(a) **GLOBAL AMENDMENTS.**—Except as otherwise provided under this title, title I of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7211 et seq.) is amended—

(1) in the title heading, by striking “**PUBLIC COMPANY ACCOUNTING OVERSIGHT BOARD**” and inserting “**OFFICE OF PUBLIC ACCOUNTING OVERSIGHT**”;

(2) by striking “the Board” each place it appears and inserting “the Office”;

(3) by striking “The Board” each place it appears and inserting “The Office”; and

(4) by striking “the Board’s” each place it appears and inserting “the Office’s”.

(b) **REPEALS.**—Sections 104, 105, and 107 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7214; 15 U.S.C. 7215; 15 U.S.C. 7217) are repealed.

(c) **REFERENCES.**—Beginning on the date that is 2 years after the date of the enactment of this Act, any reference to the Public Company Accounting Oversight Board in any law, regulation, map, document, record, or other paper of the United States shall be deemed to be a reference to the Office of Public Accounting Oversight of the Office of the Chief Accountant of the Securities and Exchange Commission.

(d) **TERMINATION OF EXISTING BOARD.**—The Public Company Accounting Oversight Board shall terminate on the date that is 2 years after the date of the enactment of this Act.

SEC. 502. ESTABLISHMENT; ADMINISTRATIVE PROVISIONS.

(a) **IN GENERAL.**—Section 101 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7211) is amended—

(1) by amending subsection (a) to read as follows:

“(a) **ESTABLISHMENT OF OFFICE.**—There is established in the Office of the Chief Accountant of the Commission an Office of Public Accounting Oversight, to oversee the audit of companies that are subject to the securities laws, and related matters, in order to protect the interests of investors and further the public interest in the preparation of informative, accurate, and independent audit reports.”;

(2) by amending subsection (b) to read as follows:

“(b) **DIRECTOR.**—The Chief Accountant of the Office of the Chief Accountant of the Commission shall serve as the Director of the Office of Public Accounting Oversight.”;

(3) in subsection (c)—

(A) in the heading, by striking “**THE BOARD**” and inserting “**THE OFFICE**”;

(B) by striking “, subject to action by the Commission under section 107, and once a determination is made by the Commission under subsection (d) of this section”;

(C) in paragraph (3), by striking “section 104” and inserting “subsection (e)”;

(D) in paragraph (4), by striking “section 105” and inserting “subsection (f)”;

(E) in paragraph (5)—

(i) by striking “the Board (or the Commission, by rule or order)” and inserting “the Commission”; and

(ii) by inserting “and” after the semicolon;

(F) in paragraph (6)—

(i) by striking “the rules of the Board” and inserting “the rules of the Commission”; and

(ii) by striking “; and” and inserting a period; and

(G) by striking paragraph (7);

(4) in subsection (d)—

(A) by striking “The members of the Board” and inserting “The Chief Accountant of the Office of the Chief Accountant of the Commission”;

(B) by striking “270 days after the date of enactment of this Act” and inserting “1 year after the date of the enactment of the Streamlining Public Company Accounting Oversight Act”; and

(C) by striking the last sentence;

(5) by striking subsections (e), (f), and (g);

(6) by inserting after subsection (d) the following:

“(e) **INSPECTIONS OF REGISTERED PUBLIC ACCOUNTING FIRMS.**—The Office shall conduct a continuing program of inspections to assess the degree of compliance of each registered public accounting firm and associated persons of that firm with this Act, the rules of the Commission, or professional standards, in connection with its performance of audits, issuance of audit reports, and related matters involving issuers.

“(f) **INVESTIGATIONS AND DISCIPLINARY PROCEEDINGS.**—The Commission shall establish, by rule, fair procedures for the investigation and disciplining of registered public accounting firms and associated persons of such firms.”; and

(7) by redesignating subsection (h) as subsection (g).

(b) **PUBLICATION OF RULES.**—The Director of the Office of Public Accounting Oversight shall, promptly after the creation of the Office, cause to be published in the Federal Register all rules that are transferred to the jurisdiction of the Office pursuant to section 2 upon the termination of the Public Company Accounting Oversight Board.

SEC. 503. REGISTRATION WITH THE OFFICE.

Section 102 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7212) is amended—

(1) in the section heading by striking “**THE BOARD**” and inserting “**THE OFFICE**”;

(2) in subsection (b)(2)(H), by striking “the Board or the”; and

(3) in subsection (c)(2), by striking “for purposes of sections 105(d) and 107(c)”.

SEC. 504. AUDITING, QUALITY CONTROL, STANDARDS, AND RULES.

Section 103 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7213) is amended—

(1) in the heading, by striking “**AND INDEPENDENCE STANDARDS**” and inserting “**STANDARDS**”;

(2) in subsection (a)(3)—

(A) in subparagraph (A)(i), by striking “, subject to the terms of section 107.”;

(B) by striking subparagraph (B); and

(C) by redesignating subparagraph (C) as subparagraph (B);

(3) in subsection (c) in the heading of paragraph (2), by striking “**BOARD**” and inserting “**OFFICE**”; and

(4) in subsection (d), by striking “101(h)” and inserting “101(g)”.

SEC. 505. FOREIGN PUBLIC ACCOUNTING FIRMS.

Section 106 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7216) is amended—

(1) in the heading of subsection (a)(2), by striking “**BOARD**” and inserting “**OFFICE**”; and

(2) in subsection (c)—

(A) by striking “and the Board, subject to the approval of the Commission, may.”; and

(B) by striking “(or Board)”.

SEC. 506. FUNDING.

Section 109 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7219) is amended—

(1) by amending subsection (b) to read as follows:

“(b) **ANNUAL BUDGETS.**—

“(1) **STANDARD SETTING BODY.**—The standard setting body referred to in subsection (a) shall establish a budget for each fiscal year, which shall be reviewed and approved according to their respective internal procedures not less than 1 month prior to the commencement of the fiscal year to which the budget pertains.

“(2) **THE OFFICE.**—The Commission shall establish the budget for the Office for each fiscal year.”;

(2) in subsection (c)—

(A) by amending paragraph (1) to read as follows:

“(1) **RECOVERABLE BUDGET EXPENSES.**—

“(A) **STANDARD SETTING BODY.**—The budget of the standard setting body referred to in subsection (a) for each fiscal year shall be payable from annual accounting support fees, in accordance with subsections (d) and (e). Accounting support fees and other receipts of such standard-setting body shall not be considered public monies of the United States.

“(B) **THE OFFICE.**—The budget of the Office (reduced by any registration or annual fees received under section 102(f) for the year preceding the year for which the budget is being computed) for each fiscal year may be payable from annual accounting support fees, in accordance with subsections (d) and (e). Accounting support fees and other receipts of the Office.”;

- (B) in paragraph (2), by striking “shall” and inserting “may”;
- (3) in subsection (d)—
 - (A) in the heading, by striking “THE BOARD” and inserting “THE OFFICE”;
 - (B) in paragraph (1), by striking “The Board shall establish, with the approval of the Commission,” and inserting “The Commission may establish”;
 - (C) in paragraph (2), by striking “shall” and inserting “may”; and
 - (D) by striking paragraph (3);
- (4) in subsection (j)—
 - (A) by striking “either the Board,”; and
 - (B) by striking “, or both,”; and
- (5) by striking subsection (k).

SEC. 507. DEFINITIONS.

Section 110 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7220) is amended—

- (1) by redesignating paragraphs (5) and (6) as paragraphs (6) and (7); and
- (2) by inserting after paragraph (4) the following:

“(5) OFFICE.—The term ‘Office’ means the Office of Public Accounting Oversight of the Office of the Chief Accountant of the Commission.”.

SEC. 508. TECHNICAL AND CONFORMING AMENDMENTS.

(a) DEFINITIONS.—Section 2(a)(9)(C) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7201) is amended by striking “, 101(c), 105, and 107(c) and the rules of the Board and Commission issued thereunder” and inserting “and 101(c) and the rules of the Commission thereunder”.

(b) EXEMPTION AUTHORITY.—Section 201(b) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7231(b)) is amended—

- (1) by striking “The Board may” and inserting “The Commission may”; and
- (2) by striking “in the same manner as for rules of the Board under section 107”.

(c) SELF-REGULATORY ORGANIZATION.—Section 603(y)(3) of the Consumer Credit Protection Act (15 U.S.C. 1681a(y)(3)) is amended by striking “any entity established under title I of the Sarbanes-Oxley Act of 2002,”.

(d) CLERICAL AMENDMENT.—The table of contents in section 1(b) of the Sarbanes-Oxley Act of 2002 is amended—

- (1) by striking the item relating to title I and inserting the following new item:

“TITLE I—OFFICE OF PUBLIC ACCOUNTING OVERSIGHT”;

- (2) in the item relating to section 102, by striking “the Board” and inserting “the Office”;

- (3) in the item relating to section 103, by striking “and independence standards” and inserting “standards,”; and

- (4) by striking the items relating to sections 104, 105, and 107.

SEC. 509. RULE OF CONSTRUCTION WITH RESPECT TO COOPERATIVE ARRANGEMENTS.

Nothing in this title, or the amendments made by this title, shall be construed to invalidate or otherwise affect a cooperative arrangement between the Public Company Accounting Oversight Board and a foreign auditor oversight authority (as defined in section 2(a) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7201(a))) in effect on the date that is 2 years after the date of the enactment of this Act.

SEC. 510. REGULATIONS.

The Securities and Exchange Commission may issue such regulations as may be necessary to carry out this title.

SEC. 511. EFFECTIVE DATE.

The amendments made by this title shall take effect on the date that is 2 years after the date of the enactment of this Act.

TITLE VI—STUDY REGARDING MAJOR RULES ISSUED BY THE SECURITIES AND EXCHANGE COMMISSION

SEC. 601. GAO STUDY REGARDING MAJOR RULES.

Section 4 of the Securities Exchange Act of 1934 (15 U.S.C. 78d), as amended by section 401, is further amended by adding at the end the following:

“(n) GAO STUDY REGARDING MAJOR RULES.—

- “(1) STUDY REQUIRED.—

“(A) IN GENERAL.—Subject to subparagraph (C), not later than 1 year after the date of the enactment of this subsection, and every 3 years thereafter, the Comptroller General of the United States shall carry out a study on each of the major rules issued by the Commission since the last such review.

“(B) ELEMENTS.—The study required under subparagraph (A) shall include, with respect to each major rule described in such subparagraph—

“(i) a cost benefit analysis of such major rule;

“(ii) a comparison between the cost benefit analysis under clause (i) and the cost benefit analysis for the same major rule carried out by the Commission;

“(iii) a comparison between the projected costs of the major rule and the actual costs of the major rule; and

“(iv) an evaluation of whether each major rule—

“(I) facilitates capital formation;

“(II) promotes fair, efficient markets; and

“(III) protects investors.

“(C) SPECIAL RULE.—If a study required under subparagraph (A) would apply to more than 10 major rules, the Comptroller General shall review only the 10 major rules that are the most significant, as determined by the Comptroller General.

“(2) REPORT.—Not later than 1 year after completing a study under paragraph (1), the Comptroller General shall submit to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate a report that includes—

“(A) the results of such study; and

“(B) with respect to any major rule reviewed in such study that has not yet been fully implemented by the Commission, a statement that the Comptroller General is unable to fully analyze the costs of the major rule at the time the report is submitted.

“(3) MAJOR RULE DEFINED.—In this subsection, the term ‘major rule’ has the meaning given the term in section 804 of title 5, United States Code.”.

TITLE VII—MINIMUM PUBLIC COMMENT PERIOD

SEC. 701. MINIMUM PUBLIC COMMENT PERIOD.

Section 4 of the Securities Exchange Act of 1934 (15 U.S.C. 78d), as amended by section 601, is further amended by adding at the end the following:

“(o) MINIMUM PUBLIC COMMENT PERIOD.—

“(1) IN GENERAL.—With respect to a proposed rulemaking for which a public comment period is required under section 553 of title 5, United States Code, the Commission shall provide a public comment period of—

“(A) at least 60 days; or

“(B) if the Commission determines the proposed rule addresses imminent investor harm, at least 30 days.

“(2) CALCULATION OF PERIODS.—For purposes of calculating the number of days in a period under paragraph (1) with respect to a proposed rulemaking—

“(A) a Federal holiday shall not be counted; and

“(B) the period shall begin on the date the proposed rule is published in the Federal Register.”.

PURPOSE AND SUMMARY

Introduced on May 10, 2024, by Representative Ann Wagner, H.R. 8339, the *SEC Reform and Restructuring Act*, would (1) improve the quality of the Securities and Exchange Commission’s (“SEC”) cost-benefit analysis, (2) require the Chairman of the SEC to testify regularly before Congress, and (3) study the SEC’s information technology infrastructure and handling of data. It would also (4) require the SEC to review its regulations every five years to determine if they are necessary or appropriate to carry out the SEC’s three-part mission and (5) transfer the Public Company Accounting Oversight Board (“PCAOB”) into the SEC. Finally, it

would (6) require the Government Accountability Office (“GAO”) to study certain major SEC rules and (7) mandate minimum comment periods of at least 60 days for SEC rules.

BACKGROUND AND NEED FOR LEGISLATION

H.R. 8339 is a compilation of seven previously introduced bills, including:

H.R. 8239, the *SEC Regulatory Accountability Act*

H.R. 8241, the *SEC Transparency Act*

H.R. 8240, the *SEC Cybersecurity Act*

H.R. 7030, the *Review the Expansion of Government (REG) Act of 2024*

H.R. 8228, the *Streamlining Public Company Accounting Oversight Act*

H.R. 8226, *To require the Comptroller General of the United States to carry out a study regarding major rules issued by the Securities and Exchange Commission*

H.R. 8255, *To establish a minimum public comment period with respect to proposed rules issued by the Securities and Exchange Commission*

Under Chair Gensler, the SEC has embraced a rushed approach to rulemaking, proposing and finalizing rules without a robust cost-benefit analysis or an adequate showing of a data-driven need. Even the courts have found that Chair Gensler’s rushed rule-making approach has, in some cases, violated the guardrails set forth in the Administrative Procedure Act (“APA”). For example, the Fifth Circuit Court of Appeals deemed the SEC’s Share Repurchase Disclosure Modernization rule “arbitrary and capricious” because the SEC conducted an insufficient cost-benefit analysis and failed to demonstrate a real problem that needed to be solved.¹ H.R. 8339 reforms the SEC by strengthening its cost-benefit analysis, increasing accountability and ensuring more transparency to improve regulatory outcomes.

Title I—H.R. 8239, the *SEC Regulatory Accountability Act*, was introduced on May 2, 2024, by Rep. Ann Wagner (R–MO).

Title I would amend the Securities Exchange Act of 1934 (the “Exchange Act”) to improve the quality of the Securities and Exchange Commission’s (the “SEC”) cost-benefit analysis before issuing regulations.

Background

Under Chair Gensler, the SEC has routinely underestimated the costs of its rules, leaving market participants unable to accurately anticipate the costs of new regulatory requirements. In many cases, this failure is caused by the SEC’s decision not to consider the cumulative and overlapping impacts of interrelated rules. For example, the SEC failed to analyze the ways in which its four closely related equity market structure proposals interact with each

¹ *Chamber of Commerce v. SEC* 85 F.4th 760 (5th Cir. 2023).

other.² As a result, the true impact of these reforms on investors, companies, and the markets is unknown.³

Title I improves the SEC’s cost-benefit analysis, requiring the SEC to assess the cumulative impacts of each rulemaking. It also requires the SEC to identify the specific problem it is attempting to solve, provide a reasoned determination that the rule’s benefits justify its costs, assess alternatives, and ensure regulations are accessible and consistent.

Title II—H.R. 8241, the *SEC Transparency Act*, was introduced on May 2, 2024, Rep. Ann Wagner (R–MO).

Title II would require the semi-annual testimony of the Chairman of the SEC before the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate, with testimony on at least one instance to include the testimony of the entire Commission.

Background

Unlike other federal financial regulators, existing law does not require the Chairman of the SEC to testify before Congress. Instead, the Chairman of the Committee on Financial Services and the Chairman of the Senate Committee on Banking, Housing, and Urban Affairs have the discretion to invite the Chairman of the SEC to testify. Unfortunately, this approach is subject to abuse. For example, Chair Gensler avoided testifying before the Committee for almost two years until Republicans returned to the majority. His absence was unacceptable, preventing Congress from properly carrying out its oversight authority over the SEC while Chair Gensler’s aggressive rulemaking agenda was being developed.

Title II requires the SEC Chairman to testify before Congress twice a year. Additionally, Title II increases transparency by requiring minority Commissioners to share their perspective on SEC actions before Congress. This will prevent their voices from being minimized by an overly aggressive SEC majority.

Title III—H.R. 8240, the *SEC Cybersecurity Act*, was introduced on May 2, 2024, by Rep. Ann Wagner (R–MO).

Title III would require the Government Accountability Office (GAO) to conduct a study and report to Congress on the SEC’s information technology (IT) infrastructure and handling of data.

Background

Over the past 20 years, SEC spending has increased by 183 percent.⁴ In the Commission’s most recent budget request for FY 2025,

²Disclosure of Order Execution Information, available at <https://www.sec.gov/rules/proposed/2022/34-96493.pdf>; Regulation NMS: Minimum Pricing Increments, Access Fees, and Transparency of Better Priced Orders, available at <https://www.sec.gov/rules/proposed/2022/34-96494.pdf>; Order Competition Rule, available at <https://www.sec.gov/rules/proposed/2022/34-96495.pdf>; and Regulation Best Execution, available at <https://www.sec.gov/rules/proposed/2022/34-96496.pdf>.

³Comment Letter of Kristen Malinconico (March 31, 2023), available at <https://www.sec.gov/comments/s7-31-22/s73122-20162801-332209.pdf>.

⁴Testimony of David R. Burton before the House Financial Services Committee (March 30, 2024), available at <https://docs.house.gov/meetings/BA/BA16/20240320/116994/HHRG-118-BA16-Wstate-BurtonD-20240320.pdf>.

the SEC requested a 20 percent funding increase.⁵ While the SEC should have the tools it needs to carry out its statutory mandate, it also should ensure funds are spent efficiently and effectively.

There is evidence that the SEC's IT budget is neither being spent efficiently nor effectively. For example, the SEC is spending far more on IT than the government average. According to a report by the Heritage Foundation, the SEC's total IT expenditures in FY2017 were nearly 14 percent of its total spending, compared to a government average of 2.8 percent.⁶

Additionally, recent IT and cybersecurity related events have exposed clear vulnerabilities at the SEC. For example, the recent hack of an official SEC X account resulted in price volatility based on false information.⁷ Other reports indicate that the SEC suffers from serious data access and control issues. In 2023, these issues resulted in the SEC dismissing 42 enforcement cases after the Commission found that its employees were accessing records that should not have been available to them.⁸

The SEC must address its inefficient IT spending and clear cybersecurity related vulnerabilities. Title III provides a good first step, requiring the GAO to identify and report to Congress on IT and cybersecurity related problems at the SEC. The results of this report will inform Congress of the actions the SEC should take to safeguard its IT infrastructure and handling of data.

Title IV—H.R. 7030, the *Review the Expansion of Government (REG) Act of 2024*, was introduced by Rep. Young Kim (R-CA) on January 18, 2024.

Title IV would require the SEC to review final rules every five years to determine if they are necessary or appropriate to carry out the SEC's tripartite mission. Title IV would also amend the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Company Act of 1940, and the Investment Advisers Act of 1940 to require that all rules incorporate the cumulative impact of each rulemaking.

Background

The SEC's statutory mission requires the Commission to: (1) protect investors; (2) maintain fair, orderly and efficient capital markets; and (3) facilitate capital formation.⁹ However, under Chair Gensler, the SEC has largely ignored its mission to facilitate capital formation. Instead, the SEC has implemented radical investor protection measures without demonstrating clear harm or considering market efficiency concerns.

Additionally, the SEC has recently assessed many of its rules in a vacuum, failing to consider how they interact with other proposed and final rules. For example, the recently finalized rules entitled

⁵*Id.*

⁶David R. Burton, Reforming the Securities and Exchange Commission, The Heritage Foundation (Jan. 30, 2019), available at <https://www.heritage.org/sites/default/files/2019-01/BG3378.pdf>.

⁷Paul Kiernan, SEC Blames Hack for Incorrect Post about Bitcoin ETF Approval, Wall Street Journal (Jan 9, 2024), available at <https://www.wsj.com/finance/currencies/sec-chair-denies-bitcoin-etf-has-been-approved-9a326e87>.

⁸Dave Michaels, SEC Drops 42 Enforcement Cases After Employees Accessed Restricted Records, Wall Street Journal (Jun. 2, 2023), available at <https://www.wsj.com/articles/sec-drops-40-enforcement-cases-it-says-were-tainted-by-improper-access-to-restricted-records-4807aa44>.

⁹Securities and Exchange Commission, Mission, available at <https://www.sec.gov/about/mission>.

“Short Position and Short Activity Reporting by Institutional Investment Managers” and “Reporting of Securities Loans” are at odds with each other, imposing requirements that are inherently contradictory. As a result, the SEC must now spend considerable time and resources defending both rules in court.¹⁰

Moreover, despite repeated calls from Congress, the SEC has failed to provide any report or analysis evaluating the *aggregate* effects of its rules on businesses, investors, and the U.S. economy. Even the Department of Justice (“DOJ”) has expressed concerns with this approach. In fact, the DOJ recently conceded that the SEC cannot effectively gauge a rule’s impact without evaluating its cumulative and overlapping effects with other rules.¹¹

Title IV prevents the SEC from neglecting its statutory mission. Instead, it requires the SEC to analyze each final rule every five years to determine whether it remains consistent with the SEC’s statutory mission. Title IV also requires the SEC to consider the cumulative impact of rulemaking. This will allow the SEC, market participants, and other stakeholders to better understand the total cost of a rulemaking.

Title V—H.R. 8228, the *Streamlining Public Company Accounting Oversight Act*, was introduced on May 2, 2024, by Rep. Bill Huizenga (R-MI).

Title V would transfer the Public Company Accounting Oversight Board (“PCAOB”) to the SEC.

Background

The PCAOB is a non-profit corporation Congress established to oversee the audits of public companies. The PCAOB’s responsibilities include: (1) registering public accounting firms; (2) establishing auditing, quality control, ethics, independence, and other standards relating to public company audits; (3) conducting inspections, investigations, and disciplinary proceedings of registered accounting firms; and (4) enforcing compliance with the Sarbanes-Oxley Act of 2002 (“Sarbanes-Oxley”).¹²

Integration of the PCAOB into the SEC presents an opportunity to streamline regulatory processes and enhance oversight. Because the PCAOB’s rulemaking is already subject to mandatory review and approval by the SEC, integrating the PCAOB can eliminate duplications and bureaucratic hurdles. There is also a clear functional overlap between the PCAOB and SEC, notably in areas such as whistleblower protection. For example, the PCAOB’s 2019 Whistleblower Protection Act mirrors the SEC’s program, which raises legitimate questions about the practicality of maintaining two separate systems. Integrating the PCAOB into the SEC would also provide a platform for more robust and accurate cost-benefit analyses, ensuring that regulatory decisions are grounded in a thorough understanding of their economic implications.

¹⁰NAPFM, AIMA, MFA v. SEC, Opening Brief for Petitioners (Mar. 5, 2024), available at <file:///C:/Users/wshannon/Downloads/NAPFM-v-SEC-Opening-Brief-for-Petitioners.pdf>.

¹¹See Comment of the Antitrust Division of the United States Department of Justice (Apr. 11, 2023), available at <https://www.sec.gov/comments/s7-29-22/s72922-20164065-334011.pdf>.

¹²See Securities and Exchange Commission, “Fast Answers: Public Company Accounting Oversight Board (PCAOB),” available at <https://www.sec.gov/fast-answers/answerspcaobhtm.html>.

Title VI—H.R. 8226, *To require the Comptroller General of the United States to carry out a study regarding major rules issued by the Securities and Exchange Commission*, was introduced on May 2, 2024, by Rep. Andrew Garbarino (R-NY).

Title VI would require the GAO to complete a study and report to Congress on certain major rules issued by the SEC.

Background

The U.S. capital markets are the deepest and most liquid in the world. However, they also represent one of the most heavily regulated sectors within the U.S. economy. Each disclosure or regulation adds to the compliance burden borne by both public and private companies. Under Chair Gensler, the SEC has proposed and finalized rules that would transform almost every sector of the market. These rules levy tremendous costs on market participants, making it more difficult for them to do business.

Chair Gensler’s SEC has frequently underestimated the actual costs of its rules. For example, the SEC estimated that its Enhancement and Standardization of Climate-Related Disclosures for Investors rule would increase the costs associated with being a public company by roughly 20 percent. However, the SEC’s analysis failed to quantify indirect costs, such as the costs associated with increased litigation risk.¹³ It also failed to consider the considerable costs companies must incur to determine whether climate-related risks are material and must be disclosed.

In other instances, the SEC has offered extremely broad ranges for compliance costs, failing to provide market participants with a meaningful estimate. For example, in the Investment Company Names rule, the SEC suggests the cost of the rule would be between \$500 million and \$5 billion.¹⁴ Understating cost and the SEC’s inability to quantify cost within a reasonable range is unacceptable.

Title VI provides needed accountability and transparency into the rulemaking process. Specifically, the recurring study on certain major rules allows the public to assess the accuracy of the SEC’s cost-benefit analysis. As a result, Title VI will encourage the SEC to improve the quality of its analyses, particularly prior to finalizing the largest and most impactful final rules that may be subject to third-party review and public scrutiny.

Title VII—H.R. 8255, a bill *to establish a minimum public comment period with respect to proposed rules issued by the Securities and Exchange Commission*, was introduced on May 6, 2024, by Rep. Frank Lucas (R-OK).

Title VII would mandate minimum comment periods of at least 60 days for all SEC-initiated rulemakings, with certain exceptions, calculated from the date each rule is published in the Federal Register.

¹³ Statement of Commissioner Hester M. Peirce, “Green Regs and Spam: Statement on the Enhancement and Standardization of Climate-Related Disclosures for Investors” (Mar. 6, 2024), available at: <https://www.sec.gov/news/statement/peirce-statement-mandatory-climate-risk-disclosures-030624>.

¹⁴ Comment of the Investment Company Institute (Apr. 11, 2023), available at <https://www.ici.org/system/files/2022-08/22-ici-cl-names-rule.pdf>.

Background

Under Chair Gensler’s leadership, the SEC has not only curtailed public comment periods but has also overlapped them with major holidays. This practice limits the quality and quantity of feedback from affected stakeholders. Even the SEC’s own staff has expressed concerns with this practice, especially considering the Commission’s ambitious rulemaking agenda.¹⁵ Committee Republicans agree and have argued that shorter comment periods should be the exception, not the rule, to ensure adequate consideration of the public’s concerns.

Not only do shortened comment periods reduce the quality of feedback that interested stakeholders are able to provide, but there are also strong arguments that they run afoul of the APA’s notice and comment requirements. While Chair Gensler insists that the SEC’s short comment periods have been compliant with applicable law, the APA’s legislative history provides that the minimum statutory notice requirements are not sufficient as to “[matters] of great import, or those where public submission of facts will be either useful to the agency or a protection to the public.”¹⁶ In such cases, rulemakings must “naturally be accorded more elaborate public procedures.”¹⁷

Importantly, the SEC’s inadequate comment periods under Chair Gensler have been a bipartisan and bicameral cause for concern. On December 15, 2021, then-Ranking Member McHenry issued a statement criticizing SEC Chair Gensler for pursuing major rulemakings with inadequate public comment periods.¹⁸ On January 10, 2022, Ranking Member McHenry and former Senator Pat Toomey sent a letter to Chair Gensler raising serious concerns with the impact that short timeframes have on stakeholder input.¹⁹ Senate Democrats have also privately urged Chair Gensler to slow down and allow more time for feedback. A dozen Democrats led by Senator Jon Tester asked Gensler to give the public more time to weigh in on a number of proposed rules.²⁰

Title VII addresses these concerns by establishing minimum comment periods of at least 60 days for all SEC-initiated rulemakings, with certain exceptions. The 60-day period is calculated from the date each rule is published in the Federal Register. Title VII provides the guardrails necessary to ensure compliance with the APA. It also allows adequate time for robust stakeholder feedback, which will improve the quality of SEC rulemaking.

¹⁵See Office of Inspector General Report, “The Inspector General’s Statement on the SEC’s Management and Performance Challenges” (Oct. 13, 2022), *available at* <https://www.sec.gov/files/inspector-general-statement-sec-mgmt-and-perf-challenges-october-2022.pdf>.

¹⁶H.R. Rep. No. 1980, 233, 259, Administrative Procedure Act, Report of the Committee on the Judiciary House of Representatives (May 3, 1946). *See generally* Final Rep. of Attorney General’s Comm. on Admin. Procedure (Jan. 22, 1941).

¹⁷H.R. Rep. No. 1980, 233, 259, Administrative Procedure Act, Report of the Committee on the Judiciary House of Representatives (May 3, 1946). *See generally* Final Rep. of Attorney General’s Comm. on Admin. Procedure (Jan. 22, 1941).

¹⁸See “McHenry Calls Out SEC Chair Gensler for Limiting Public Comment on Rulemakings” (Dec. 15, 2021), *available at* <https://financialservices.house.gov/news/documentsingle.aspx?DocumentID=408223>.

¹⁹See McHenry & Toomey Letter to Chair Gensler (Jan. 10, 2022), *available at* https://financialservices.house.gov/uploadedfiles/2022-01-10_pmc_toomey_letter-gensler_sec_comment_period.pdf.

²⁰See Senate Democrats letter to Chair Gensler, *available at* <https://static.politico.com/04/e6/61483da64abface61f1b8994fc33/senatedemocrats-secchairgensler.pdf>.

RELATED HEARING

Pursuant to clause 3(c)(6) of rule XIII, the following hearing was used to develop H.R. 8339: The Committee on Financial Services held a hearing on March 20, 2024, titled “SEC Overreach: Examining the Need for Reform.”

COMMITTEE CONSIDERATION

The Committee on Financial Services met in open session on May 16, 2014, and ordered H.R. 8339 to be reported favorably as amended to the House by a recorded vote of 27 ayes to 22 nays (Record vote no. FC-150), a quorum being present. Before the question was called to order the bill favorably reported, the Committee adopted an amendment in the nature of a substitute offered by Mrs. Wagner by voice vote.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the order to report legislation and amendments thereto. H.R. 8339 was ordered reported favorably to the House as amended by a recorded vote of 27 ayes to 22 nays (Record vote no. FC-150), a quorum being present.

An amendment offered by Ms. Garcia, no. 8, was not agreed to by a recorded vote of 22 ayes to 27 nays, a quorum being present (Recorded vote no. FC-148).

An amendment offered by Ms. Tlaib, no. 9, was not agreed to by a recorded vote of 22 ayes to 27 nays, a quorum being present (Recorded vote no. FC-149).

An amendment offered by Ms. Beatty, no. 10, was not agreed to by a voice vote, a quorum being present.

Record vote no FC- 150

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. McHenry	X	—	—	Ms Waters	—	X	—
Mr. Hill	X	—	—	Ms Velázquez	—	X	—
Mr. Lucas	X	—	—	Mr. Sherman	—	X	—
Mr. Sessions	X	—	—	Mr. Meeks	—	X	—
Mr. Posey	X	—	—	Mr. Scott	—	X	—
Mr. Luetkenmeyer	X	—	—	Mr. Lynch	—	X	—
Mr. Huelskamp	X	—	—	Mr. Green	—	X	—
Ms Wagner	X	—	—	Mr. Closser	—	—	—
Mr. Barr	X	—	—	Mr. Himes	—	X	—
Mr. Williams (TX)	X	—	—	Mr. Foster	—	X	—
Mr. Berman	—	—	—	Ms Beatty	—	X	—
Mr. Loudermilk	X	—	—	Mr. Vargas	—	X	—
Mr. Mooney	X	—	—	Mr. Gotthammer	—	X	—
Mr. Davidson	X	—	—	Mr. Gonzalez	—	X	—
Mr. Rose	X	—	—	Mr. Castro	—	X	—
Mr. Shal	X	—	—	Ms Pressley	—	X	—
Mr. Trammont	X	—	—	Mr. Horsford	—	X	—
Mr. Norman	X	—	—	Ms Tlaib	—	X	—
Mr. Messer	X	—	—	Mr. Torres	—	X	—
Mr. Fitzgerald	X	—	—	Ms Garcia	—	X	—
Mr. Gerbano	X	—	—	Ms Williams (GA)	—	X	—
Ms Kim	X	—	—	Mr. Nickel	—	X	—
Mr. Donalds	—	—	—	Ms Petersen	—	X	—
Mr. Flood	X	—	—				
Mr. Lawler	X	—	—				
Mr. Nunn	X	—	—				
Ms De La Cruz	X	—	—				
Ms Houchens	X	—	—				
Mr. Ogles	X	—	—				

Record vote no. FC- 123

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. McHenry		X		Ms. Waters	X		
Mr. Hill		X		Mrs. Velazquez	X		
Mr. Lucas	---	X		Mr. Stanton	X	---	---
Mr. Sessions	---	X	---	Mr. Meeks	X	---	---
Mr. Posey		X		Mr. Scott	X		
Mr. Lankford		X		Mr. Lynch	X		
Mr. Huelskamp	---	X	---	Mr. Green	X	---	---
Mrs. Wagner	---	X	---	Mr. Clapper	---	---	---
Mr. Ruff		X		Mr. Himes	X		
Mr. Williams (TX)		X		Mr. Foster	X	---	---
Mr. Broun	---	---	---	Mrs. Beatty	X	---	---
Mr. Loudermilk	---	X	---	Mr. Vargas	X	---	---
Mr. Morey		X		Mr. Gohmert	X		
Mr. Davidson		X		Mr. Gonzalez	X	---	---
Mr. Rose	---	X	---	Mr. Cramer	X	---	---
Mr. Sorensen	---	X	---	Ms. Pressley	X	---	---
Mr. Timmons		X		Mr. Horsford	X		
Mr. Norman	---	X		Ms. Tlaib	X	---	---
Mr. Messer	---	X	---	Mr. Timmons	X	---	---
Mr. Fitzgerald	---	X	---	Ms. Gohmert	X	---	---
Mr. Cartwright		X		Ms. Williams (CA)	X		
Mrs. Kim	---	X		Mr. Nickel	X	---	---
Mr. Duckworth	---	---	---	Ms. Petersen	X	---	---
Mr. Flood	---	X	---				
Mr. Lawler		X					
Mr. Nuzzo	---	X	---				
Ms. De La Cruz	---	X	---				
Mrs. Hironaka	---	X	---				
Mr. O'Rourke		X					

Record vote no. FC- 149

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Melius		X		Ms. Waters	X		
Mr. Hill	---	X	---	Ms. Veldquez	X	---	---
Mr. Lucas	---	X	---	Mr. Sherman	X	---	---
Mr. Sessions	---	X	---	Mr. Weeks	X	---	---
Mr. Jossey		X		Mr. Scott	X		
Mr. Luskensya	---	X	---	Mr. Lynch	X	---	---
Mr. Huizinga	---	X	---	Mr. Grant	X	---	---
Mrs. Wagner	---	X	---	Mr. Cleaver	---	---	---
Mr. Barr		X		Mr. Himes	X		
Mr. Williams (TX)	---	X	---	Mr. Foster	X	---	---
Mr. Eramer	---	---	---	Mrs. Beatty	X	---	---
Mr. Lockmulk		X		Mr. Vargas	X		
Mr. Momey		X		Mr. Gethelman	X		
Mr. Davidson	---	X	---	Mr. Gonzalez	X	---	---
Mr. Rose		X		Mr. Christen	X		
Mr. Skal	---	X	---	Ms. Prevley	X	---	---
Mr. Timmons		X		Mr. Harford	X		
Mr. Norman		X		Mr. Tikh	X	---	---
Mr. Meuser	---	X	---	Mr. Torres	X	---	---
Mr. Fitzgerald	---	X	---	Ms. Girma	X	---	---
Mr. Garburino		X		Ms. Williams (GA)	X		
Mrs. Kim	---	X	---	Mr. Nickel	X	---	---
Mr. Donald	---	---	---	Ms. Peterson	X	---	---
Mr. Hood	---	X	---				
Mr. Lawler		X					
Mr. Niemi	---	X	---				
Ms. De La Cruz	---	X	---				
Mrs. Houshien	---	X	---				
Mr. Oyles		X					

COMMITTEE OVERSIGHT FINDINGS

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

PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the goal of H.R. 8339 is to improve the quality of regulatory outcomes by the SEC by, among other things, strengthening its cost-benefit analysis, ensuring commenters have enough time to provide robust feedback on regulations, and requiring the Chairman of the SEC to regularly testify before Congress.

CONGRESSIONAL BUDGET OFFICE ESTIMATES

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

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

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

FEDERAL MANDATES STATEMENT

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

ADVISORY COMMITTEE STATEMENT

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

APPLICABILITY TO LEGISLATIVE BRANCH

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

EARMARK IDENTIFICATION

With respect to clause 9 of rule XXI of the Rules of the House of Representatives, the Committee has carefully reviewed the provisions of the bill and states that the provisions of the bill do not contain any congressional earmarks, limited tax benefits, or limited tariff benefits within the meaning of the rule.

DUPLICATION OF FEDERAL PROGRAMS

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

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title; table of contents

This section cites H.R. 8339 as the “SEC Reform and Restructuring Act”.

Section 101. Consideration by the Securities and Exchange Commission of the costs and benefits of regulations and certain other agency actions of the Commission

This section amends the Exchange Act, adding section 23(e) which, among other things, requires the Commission, before issuing a regulation, to clearly identify the problem it is attempting to address and ensure the regulation is within the Commission’s jurisdiction. When issuing a proposed or final regulation, this section also requires, among other things, that the Commission use the Chief Economist to assess the quantitative and qualitative costs of the regulation—both on its own and cumulatively with other existing and proposed regulations—and identify and assess available alternatives. In addition, among other things, this section requires the Commission to create an assessment plan when issuing a final regulation that is considered a “major rule” under section 804 of title 5 of the United States Code.

Section 102. Sense of Congress relating to other regulatory entities

This section provides a sense of Congress that the Public Company Accounting Oversight Board (PCAOB) should follow the requirements set forth in Exchange Act section 23(e) as described in section 101 of H.R. 8339.

Section 103. Accountability provision relating to other regulatory entities

This section provides that rules adopted by the Municipal Securities Rulemaking Board or any national securities association registered under section 15A of the Securities Exchange Act of 1934 will not take effect unless the SEC determines that they have complied with the requirements set forth in Exchange Act section 23(e) as described in section 101 of H.R. 8339.

Section 201. Semiannual testimony to Congress regarding activities of the Securities and Exchange Commission

This section requires the Chairman of the SEC to, not less than once every six months after the date of enactment, to testify before the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate on the activities of the Commission. This section also requires all of the Commissioners to, at least once annually, join the Chairman in testifying before Congress.

Section 301. GAO audit of information technology infrastructure and handling of data

This section requires the GAO to, not later than one year after the date of enactment, perform an independent audit of the SEC's information technology infrastructure and handling of data. The study will include, among other things, a comparison of the SEC's information technology spending to other Federal financial regulators, an examination of the quality and effectiveness of the SEC's information technology contracting, a determination regarding the sufficiency of the SEC's data and cybersecurity systems, and an examination of information technology or data events (such as breaches or hacks) that may have compromised the SEC's information technology infrastructure or exposed a vulnerability. It also requires the GAO to provide a report to the Commission and Congress, including the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate, of its findings and recommendations for steps for improvement.

Section 401. Periodic review of final rules required

This section requires the Commission to review each of its rules not later than five years after they are finalized, and every five years thereafter, to determine if any revisions (including recession) are necessary to comport with the SEC's three-part mission. It also requires the Commission to, not later than one year after the date of enactment, to submit to Congress and publish its plan to review each rule. Additionally, not later than five years after the date of enactment, and every five years thereafter, this section requires the SEC to submit to Congress and publish its findings and actions to be taken in connection with its review. If the Commission fails to review any rule in accordance with its plan, this section requires the Commission to explain why that failure occurred.

Section 402. Consideration of cumulative effect of regulations required

This section requires the SEC to consider the effects of each regulation cumulatively with other final or proposed rules or regulations.

Section 501. Transfer of Public Company Accounting Oversight Board to Securities and Exchange Commission

This section replaces the PCAOB with the Office of Public Accounting Oversight. In particular, this section states (among other things) that, two years after enactment of H.R. 8339, the PCAOB will terminate and any reference to the PCAOB will be considered

a reference to the Office of Public Accounting Oversight of the Office of the Chief Accountant of the Securities and Exchange Commission.

Section 502. Establishment; administrative provisions

Among other things, this section establishes the Office of Public Accounting Oversight (the “Office”) and places it within the Office of the Chief Accountant of the Commission to oversee the audit of companies that are subject to the securities laws. This section also specifies that the Chief Accountant of the Office of the Chief Accountant of the Commission will serve as the Director of the Office, and states that the Office will conduct a continuing program of inspections to assess the degree of compliance of each registered public accounting firm in connection with its performance of audits, issuance of audit reports, and related matters involving issuers.

Section 503. Registration with the Office

This section amends Section 102 of the Sarbanes-Oxley Act of 2002 by, among other things, removing reference to “Board” (in reference to the PCAOB) and replacing reference to the Board with reference to the “Office”.

Section 504. Auditing, quality control, standards, and rules

This section amends Section 103 of the Sarbanes-Oxley Act of 2002 by, among other things, replacing reference to “Board” (in reference to the PCAOB) with reference to the “Office”.

Section 505. Foreign public accounting firms

This section amends Section 106 of the Sarbanes-Oxley Act of 2002 by, among other things, removing references to the “Board” (in reference to the PCAOB) and replacing reference to “Board” with reference to the “Office”.

Section 506. Funding

This section describes the funding mechanism and budgetary requirements for the Office of Public Accounting Oversight. For example, this section states, among other things, that the budget of the Office of Public Accounting Oversight will be payable from annual accounting support fees.

Section 507. Definitions

This section amends Section 110 of the Sarbanes-Oxley Act of 2002, creating paragraph (5) which defines the term “Office” to mean the Office of the Public Accounting Oversight of the Office of the Chief Accountant of the Commission.

Section 508. Technical and conforming amendments

This section provides technical and conforming amendments that, among other things, change certain statutory references from “the Board” (in reference to the PCAOB) to “the Office”.

Section 509. Rule of construction with respect to cooperative arrangements

This section provides a rule of construction stating that nothing in Title V of H.R. 8339, or the amendments made thereunder, will

be construed to invalidate or otherwise affect a cooperative agreement between the PCAOB and a foreign auditor oversight authority that is in effect two years after the enactment of H.R. 8339.

Section 510. Regulations

This section states that the SEC may issue regulations that may be necessary to carry out Title V of H.R. 8339.

Section 511. Effective date

This section states that the amendments made by Title V of H.R. 8339 shall take effect two years after the date of enactment.

Section 601. GAO study regarding major rules

This section requires the GAO to carry out a study and provide a report to Congress on certain major SEC rules. The study and report should include a cost benefit analysis performed by the GAO, a comparison of the GAO's cost benefit analysis to the SEC's cost benefit analysis, and a comparison between the projected and actual costs of the rule. The study and report will also evaluate whether the applicable rule carries out the SEC's three-part mandate. The first study will be carried out no later than one year after enactment and every three years thereafter. Not later than one year after each study is completed, the GAO will submit its report to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate.

Section 701. Minimum public comment period

This section requires the Commission to provide a public comment period of at least 60 days (excluding Federal holidays), calculated from the date the proposed rule is published in the Federal Register. If the Commission determines that the proposed rule would address imminent investor harm, this section also requires the Commission to provide a minimum comment period of at least 30 days (excluding Federal holidays), calculated from the date the proposed rule is published in the Federal Register.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

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

SECURITIES EXCHANGE ACT OF 1934

TITLE I—REGULATION OF SECURITIES EXCHANGES

* * * * *

SECURITIES AND EXCHANGE COMMISSION

SEC. 4. (a) There is hereby established a Securities and Exchange Commission (hereinafter referred to as the "Commission") to be composed of five commissioners to be appointed by the President by

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

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

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

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

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

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

subsection may exceed per diem amounts established in official travel regulations, but the Commission may include in its regulations under this subsection a limitation on such amounts.

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

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

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

(g) OFFICE OF THE INVESTOR ADVOCATE.—

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

(2) INVESTOR ADVOCATE.—

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

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

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

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

- (i) during the 2-year period ending on the date of appointment as Investor Advocate; or
- (ii) during the 5-year period beginning on the date on which the person ceases to serve as the Investor Advocate.

(3) STAFF OF OFFICE.—The Investor Advocate, after consultation with the Chairman of the Commission, may retain or employ independent counsel, research staff, and service staff, as

the Investor Advocate deems necessary to carry out the functions, powers, and duties of the Office.

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

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

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

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

(D) analyze the potential impact on investors of—

(i) proposed regulations of the Commission; and

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

(E) to the extent practicable, propose to the Commission changes in the regulations or orders of the Commission and to Congress any legislative, administrative, or personnel changes that may be appropriate to mitigate problems identified under this paragraph and to promote the interests of investors.

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

(6) ANNUAL REPORTS.—

(A) REPORT ON OBJECTIVES.—

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

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

(B) REPORT ON ACTIVITIES.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(8) OMBUDSMAN.—

(A) APPOINTMENT.—Not later than 180 days after the date on which the first Investor Advocate is appointed under paragraph (2)(A)(i), the Investor Advocate shall appoint an Ombudsman, who shall report directly to the Investor Advocate.

(B) DUTIES.—The Ombudsman appointed under subparagraph (A) shall—

(i) act as a liaison between the Commission and any retail investor in resolving problems that retail investors may have with the Commission or with self-regulatory organizations;

(ii) review and make recommendations regarding policies and procedures to encourage persons to present questions to the Investor Advocate regarding compliance with the securities laws; and

(iii) establish safeguards to maintain the confidentiality of communications between the persons described in clause (ii) and the Ombudsman.

(C) LIMITATION.—In carrying out the duties of the Ombudsman under subparagraph (B), the Ombudsman shall utilize personnel of the Commission to the extent practicable. Nothing in this paragraph shall be construed as

replacing, altering, or diminishing the activities of any ombudsman or similar office of any other agency.

(D) REPORT.—The Ombudsman shall submit a semi-annual report to the Investor Advocate that describes the activities and evaluates the effectiveness of the Ombudsman during the preceding year. The Investor Advocate shall include the reports required under this section in the reports required to be submitted by the Inspector Advocate under paragraph (6).

(h) EXAMINERS.—

(1) DIVISION OF TRADING AND MARKETS.—The Division of Trading and Markets of the Commission, or any successor organizational unit, shall have a staff of examiners who shall—

(A) perform compliance inspections and examinations of entities under the jurisdiction of that Division; and

(B) report to the Director of that Division.

(2) DIVISION OF INVESTMENT MANAGEMENT.—The Division of Investment Management of the Commission, or any successor organizational unit, shall have a staff of examiners who shall—

(A) perform compliance inspections and examinations of entities under the jurisdiction of that Division; and

(B) report to the Director of that Division.

(i) SECURITIES AND EXCHANGE COMMISSION RESERVE FUND.—

(1) RESERVE FUND ESTABLISHED.—There is established in the Treasury of the United States a separate fund, to be known as the “Securities and Exchange Commission Reserve Fund” (referred to in this subsection as the “Reserve Fund”).

(2) RESERVE FUND AMOUNTS.—

(A) IN GENERAL.—Except as provided in subparagraph (B), any registration fees collected by the Commission under section 6(b) of the Securities Act of 1933 (15 U.S.C. 77f(b)) or section 24(f) of the Investment Company Act of 1940 (15 U.S.C. 80a-24(f)) shall be deposited into the Reserve Fund.

(B) LIMITATIONS.—For any 1 fiscal year—

(i) the amount deposited in the Fund may not exceed \$50,000,000; and

(ii) the balance in the Fund may not exceed \$100,000,000.

(C) EXCESS FEES.—Any amounts in excess of the limitations described in subparagraph (B) that the Commission collects from registration fees under section 6(b) of the Securities Act of 1933 (15 U.S.C. 77f(b)) or section 24(f) of the Investment Company Act of 1940 (15 U.S.C. 80a-24(f)) shall be deposited in the General Fund of the Treasury of the United States and shall not be available for obligation by the Commission.

(3) USE OF AMOUNTS IN RESERVE FUND.—The Commission may obligate amounts in the Reserve Fund, not to exceed a total of \$100,000,000 in any 1 fiscal year, as the Commission determines is necessary to carry out the functions of the Commission. Any amounts in the reserve fund shall remain available until expended. Not later than 10 days after the date on which the Commission obligates amounts under this para-

graph, the Commission shall notify Congress of the date, amount, and purpose of the obligation.

(4) RULE OF CONSTRUCTION.—Amounts collected and deposited in the Reserve Fund shall not be construed to be Government funds or appropriated monies and shall not be subject to apportionment for the purpose of chapter 15 of title 31, United States Code, or under any other authority.

(j) OFFICE OF THE ADVOCATE FOR SMALL BUSINESS CAPITAL FORMATION.—

(1) OFFICE ESTABLISHED.—There is established within the Commission the Office of the Advocate for Small Business Capital Formation (hereafter in this subsection referred to as the “Office”).

(2) ADVOCATE FOR SMALL BUSINESS CAPITAL FORMATION.—

(A) IN GENERAL.—The head of the Office shall be the Advocate for Small Business Capital Formation, who shall—

(i) report directly to the Commission; and

(ii) be appointed by the Commission, from among individuals having experience in advocating for the interests of small businesses and encouraging small business capital formation.

(B) COMPENSATION.—The annual rate of pay for the Advocate for Small Business Capital Formation shall be equal to the highest rate of annual pay for other senior executives who report directly to the Commission.

(C) NO CURRENT EMPLOYEE OF THE COMMISSION.—An individual may not be appointed as the Advocate for Small Business Capital Formation if the individual is currently employed by the Commission.

(3) STAFF OF OFFICE.—The Advocate for Small Business Capital Formation, after consultation with the Commission, may retain or employ independent counsel, research staff, and service staff, as the Advocate for Small Business Capital Formation determines to be necessary to carry out the functions of the Office.

(4) FUNCTIONS OF THE ADVOCATE FOR SMALL BUSINESS CAPITAL FORMATION.—The Advocate for Small Business Capital Formation shall—

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

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

(C) identify problems that small businesses have with securing access to capital, including any unique challenges to minority-owned small businesses, women-owned small businesses, and small businesses affected by hurricanes or other natural disasters;

(D) analyze the potential impact on small businesses and small business investors of—

- (i) proposed regulations of the Commission that are likely to have a significant economic impact on small businesses and small business capital formation; and
- (ii) proposed rules that are likely to have a significant economic impact on small businesses and small business capital formation of self-regulatory organizations registered under this title;

(E) conduct outreach to small businesses and small business investors, including through regional roundtables, in order to solicit views on relevant capital formation issues;

(F) to the extent practicable, propose to the Commission changes in the regulations or orders of the Commission and to Congress any legislative, administrative, or personnel changes that may be appropriate to mitigate problems identified under this paragraph and to promote the interests of small businesses and small business investors;

(G) consult with the Investor Advocate on proposed recommendations made under subparagraph (F); and

(H) advise the Investor Advocate on issues related to small businesses and small business investors.

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

(6) ANNUAL REPORT ON ACTIVITIES.—

(A) IN GENERAL.—Not later than December 31 of each year after 2015, the Advocate for Small Business Capital Formation shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report on the activities of the Advocate for Small Business Capital Formation during the immediately preceding fiscal year.

(B) CONTENTS.—Each report required under subparagraph (A) shall include—

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

(ii) information on steps that the Advocate for Small Business Capital Formation has taken during the reporting period to improve small business services and the responsiveness of the Commission and self-regulatory organizations to small business and small business investor concerns;

(iii) a summary of the most serious issues encountered by small businesses and small business investors, including any unique issues encountered by minority-owned small businesses, women-owned small businesses, and small businesses affected by hurricanes or other natural disasters and their investors, during the reporting period;

(iv) an inventory of the items summarized under clause (iii) (including items summarized under such clause for any prior reporting period on which no action has been taken or that have not been resolved to

the satisfaction of the Advocate for Small Business Capital Formation as of the beginning of the reporting period covered by the report) that includes—

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

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

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

(v) recommendations for such changes to the regulations, guidance and orders of the Commission and such legislative actions as may be appropriate to resolve problems with the Commission and self-regulatory organizations encountered by small businesses and small business investors and to encourage small business capital formation; and

(vi) any other information, as determined appropriate by the Advocate for Small Business Capital Formation.

(C) CONFIDENTIALITY.—No report required by subparagraph (A) may contain confidential information.

(D) INDEPENDENCE.—Each report required under subparagraph (A) shall be provided directly to the committees of Congress listed in such subparagraph without any prior review or comment from the Commission, any commissioner, any other officer or employee of the Commission, or the Office of Management and Budget.

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

(8) GOVERNMENT-BUSINESS FORUM ON SMALL BUSINESS CAPITAL FORMATION.—The Advocate for Small Business Capital Formation shall be responsible for planning, organizing, and executing the annual Government-Business Forum on Small Business Capital Formation described in section 503 of the Small Business Investment Incentive Act of 1980 (15 U.S.C. 80c-1).

(9) RULE OF CONSTRUCTION.—Nothing in this subsection may be construed as replacing or reducing the responsibilities of the Investor Advocate with respect to small business investors.

(k) OPEN DATA PUBLICATION.—All public data assets published by the Commission under the securities laws and the Dodd-Frank Wall Street Reform and Consumer Protection Act (Public Law 111-203; 124 Stat. 1376) shall be—

(1) made available as an open Government data asset (as defined in section 3502 of title 44, United States Code);

(2) freely available for download;

(3) rendered in a human-readable format; and

(4) accessible via application programming interface where appropriate.

(l) *SEMIANNUAL TESTIMONY TO CONGRESS.*—The Chairman of the Commission shall, not less than once every 6 months after the date of the enactment of this subsection, testify before the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate on the activities of the Commission. At least once annually, the Commissioners shall join the Chairman with respect to testifying pursuant to the preceding sentence.

(m) *PERIODIC REVIEW OF FINAL RULES REQUIRED.*—

(1) *IN GENERAL.*—With respect to a final rule issued by the Commission, the Commission shall review such rule not later than 5 years after the date on which such final rule is issued, and every 5 years thereafter, to determine if any revision (including a rescission) to the rule is necessary or appropriate—

(A) to facilitate capital formation;

(B) to maintain fair and orderly markets; and

(C) for the protection of investors.

(2) *APPLICATION.*—With respect to a final rule issued by the Commission before the date of enactment of this subsection, the first review of such rule required under paragraph (1) shall occur before the end of the 5-year period beginning on the date of enactment of this subsection.

(3) *REPORTS REQUIRED.*—The Commission shall—

(A) not later than 1 year after the date of the enactment of this subsection, submit to Congress and make publicly available a report that includes a plan to carry out the review required under this subsection with respect to the final rules described in paragraphs (1) and (2); and

(B) not later than 5 years after the date of the enactment of this subsection and not less than once every 5 years thereafter, submit to Congress and make publicly available a report that identifies—

(i) each final rule the Commission reviewed under this subsection in the preceding 5-year period and an explanation of the Commission's findings and actions taken or planned to be taken; and

(ii) each action or review the Commission failed to carry out in the preceding 5-year period under the plan required under subparagraph (A) and an explanation for such failure.

(n) *GAO STUDY REGARDING MAJOR RULES.*—

(1) *STUDY REQUIRED.*—

(A) *IN GENERAL.*—Subject to subparagraph (C), not later than 1 year after the date of the enactment of this subsection, and every 3 years thereafter, the Comptroller General of the United States shall carry out a study on each of the major rules issued by the Commission since the last such review.

(B) *ELEMENTS.*—The study required under subparagraph (A) shall include, with respect to each major rule described in such subparagraph—

(i) a cost benefit analysis of such major rule;

(ii) a comparison between the cost benefit analysis under clause (i) and the cost benefit analysis for the same major rule carried out by the Commission;

- (iii) a comparison between the projected costs of the major rule and the actual costs of the major rule; and
- (iv) an evaluation of whether each major rule—
 - (I) facilitates capital formation;
 - (II) promotes fair, efficient markets; and
 - (III) protects investors.

(C) *SPECIAL RULE.*—If a study required under subparagraph (A) would apply to more than 10 major rules, the Comptroller General shall review only the 10 major rules that are the most significant, as determined by the Comptroller General.

(2) *REPORT.*—Not later than 1 year after completing a study under paragraph (1), the Comptroller General shall submit to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate a report that includes—

- (A) the results of such study; and
- (B) with respect to any major rule reviewed in such study that has not yet been fully implemented by the Commission, a statement that the Comptroller General is unable to fully analyze the costs of the major rule at the time the report is submitted.

(3) *MAJOR RULE DEFINED.*—In this subsection, the term “major rule” has the meaning given the term in section 804 of title 5, United States Code.

(o) *MINIMUM PUBLIC COMMENT PERIOD.*—

(1) *IN GENERAL.*—With respect to a proposed rulemaking for which a public comment period is required under section 553 of title 5, United States Code, the Commission shall provide a public comment period of—

- (A) at least 60 days; or
- (B) if the Commission determines the proposed rule addresses imminent investor harm, at least 30 days.

(2) *CALCULATION OF PERIODS.*—For purposes of calculating the number of days in a period under paragraph (1) with respect to a proposed rulemaking—

- (A) a Federal holiday shall not be counted; and
- (B) the period shall begin on the date the proposed rule is published in the Federal Register.

* * * * *

RULES, REGULATIONS, AND ORDERS; ANNUAL REPORTS

SEC. 23. (a)(1) The Commission, the Board of Governors of the Federal Reserve System, and the other agencies enumerated in section 3(a)(34) of this title shall each have power to make such rules and regulations as may be necessary or appropriate to implement the provisions of this title for which they are responsible or for the execution of the functions vested in them by this title, and may for such purposes classify persons, securities, transactions, statements, applications, reports, and other matters within their respective jurisdictions, and prescribe greater, lesser, or different requirements for different classes thereof. No provision of this title imposing any liability shall apply to any act done or omitted in good faith in conformity with a rule, regulation, or order of the Commission, the

Board of Governors of the Federal Reserve System, other agency enumerated in section 3(a)(34) of this title, or any self-regulatory organization, notwithstanding that such rule, regulation, or order may thereafter be amended or rescinded or determined by judicial or other authority to be invalid for any reason.

(2) The Commission and the Secretary of the Treasury, in making rules and regulations pursuant to any provisions of this title, shall consider among other matters the impact any such rule or regulation would have on competition. The Commission and the Secretary of the Treasury shall not adopt any such rule or regulation which would, *when considered individually or cumulatively with other rules or regulations or other proposed rules or regulations*, impose a burden on competition not necessary or appropriate in furtherance of the purposes of this title. The Commission and the Secretary of the Treasury shall include in the statement of basis and purpose incorporated in any rule or regulation adopted under this title, the reasons for the Commission's or the Secretary's determination that any burden on competition imposed by such rule or regulation is necessary or appropriate in furtherance of the purposes of this title.

(3) The Commission and the Secretary, in making rules and regulations pursuant to any provision of this title, considering any application for registration in accordance with section 19(a) of this title, or reviewing any proposed rule change of a self-regulatory organization in accordance with section 19(b) of this title, shall keep in a public file and make available for copying all written statements filed with the Commission and the Secretary and all written communications between the Commission or the Secretary and any person relating to the proposed rule, regulation, application, or proposed rule change: *Provided, however*, That the Commission and the Secretary shall not be required to keep in a public file or make available for copying any such statement or communication which it may withhold from the public in accordance with the provisions of section 552 of title 5, United States Code.

(b)(1) The Commission, the Board of Governors of the Federal Reserve System, and the other agencies enumerated in section 3(a)(34) of this title shall each make an annual report to the Congress on its work for the preceding year, and shall include in each such report whatever information, data, and recommendations for further legislation it considers advisable with regard to matters within its respective jurisdiction under this title.

(2) The appropriate regulatory agency for a self-regulatory organization shall include in its annual report to the Congress for each fiscal year, a summary of its oversight activities under this title with respect to such self-regulatory organization, including a description of any examination conducted as part of such activities of any organization, any material recommendation presented as part of such activities to such organization for changes in its organization or rules, and any such action by such organization in response to any such recommendation.

(3) The appropriate regulatory agency for any class of municipal securities dealers shall include in its annual report to the Congress for each fiscal year a summary of its regulatory activities pursuant to this title with respect to such municipal securities dealers, in-

cluding the nature of and reason for any sanction imposed pursuant to this title against any such municipal securities dealer.

(4) The Commission shall also include in its annual report to the Congress for each fiscal year—

(A) a summary of the Commission's oversight activities with respect to self-regulatory organizations for which it is not the appropriate regulatory agency, including a description of any examination of any such organization, any material recommendation presented to any such organization for changes in its organization or rules, and any action by any such organization in response to any such recommendations;

(B) a statement and analysis of the expenses and operations of each self-regulatory organization in connection with the performance of its responsibilities under this title, for which purpose data pertaining to such expenses and operations shall be made available by such organization to the Commission at its request;

(C) the steps the Commission has taken and the progress it has made toward ending the physical movement of the securities certificate in connection with the settlement of securities transactions, and its recommendations, if any, for legislation to eliminate the securities certificate;

(D) the number of requests for exemptions from provisions of this title received, the number granted, and the basis upon which any such exemption was granted;

(E) a summary of the Commission's regulatory activities with respect to municipal securities dealers for which it is not the appropriate regulatory agency, including the nature of, and reason for, any sanction imposed in proceedings against such municipal securities dealers;

(F) a statement of the time elapsed between the filing of reports pursuant to section 13(f) of this title and the public availability of the information contained therein, the costs involved in the Commission's processing of such reports and tabulating such information, the manner in which the Commission uses such information, and the steps the Commission has taken and the progress it has made toward requiring such reports to be filed and such information to be made available to the public in machine language;

(G) information concerning (i) the effects its rules and regulations are having on the viability of small brokers and dealers; (ii) its attempts to reduce any unnecessary reporting burden on such brokers and dealers; and (iii) its efforts to help to assure the continued participation of small brokers and dealers in the United States securities markets;

(H) a statement detailing its administration of the Freedom of Information Act, section 552 of title 5, United States Code, including a copy of the report filed pursuant to subsection (d) of such section; and

(I) the steps that have been taken and the progress that has been made in promoting the timely public dissemination and availability for analytical purposes (on a fair, reasonable, and nondiscriminatory basis) of information concerning government securities transactions and quotations, and its recommendations, if any, for legislation to assure timely dissemination of

(i) information on transactions in regularly traded government securities sufficient to permit the determination of the prevailing market price for such securities, and (ii) reports of the highest published bids and lowest published offers for government securities (including the size at which persons are willing to trade with respect to such bids and offers).

(c) The Commission, by rule, shall prescribe the procedure applicable to every case pursuant to this title of adjudication (as defined in section 551 of title 5, United States Code) not required to be determined on the record after notice and opportunity for hearing. Such rules shall, as a minimum, provide that prompt notice shall be given of any adverse action or final disposition and that such notice and the entry of any order shall be accompanied by a statement of written reasons.

(d) CEASE-AND-DESIST PROCEDURES.—Within 1 year after the date of enactment of this subsection, the Commission shall establish regulations providing for the expeditious conduct of hearings and rendering of decisions under section 21C of this title, section 8A of the Securities Act of 1933, section 9(f) of the Investment Company Act of 1940, and section 203(k) of the Investment Advisers Act of 1940.

(e) CONSIDERATION OF COSTS AND BENEFITS.—

(1) CONSIDERATIONS BEFORE PROPOSING A REGULATION.—Before proposing a regulation, the Commission shall—

(A) clearly identify the nature and source of the problem that the regulation is designed to address, as well as assess the significance of that problem, to enable assessment of whether any new regulation is warranted; and

(B) ensure that the regulation would be within the Commission's jurisdiction and that the Commission has sufficient experience and expertise to regulate the subject matter covered by the regulation.

(2) REQUIREMENTS FOR ISSUING A PROPOSED OR FINAL REGULATION.—

(A) IN GENERAL.—In issuing a proposed or final regulation, the Commission shall—

(i) clearly identify the market participants who will be impacted by the regulation;

(ii) utilize the Chief Economist of the Commission to assess the costs and benefits, both qualitative and quantitative, of the regulation, both on the regulation's own and cumulatively with other existing and proposed regulations;

(iii) only issue the regulation if the Commission makes a reasoned determination that the benefits of the regulation justify the costs of the regulation;

(iv) identify and assess available alternatives to the regulation that were considered, including modification of an existing regulation;

(v) ensure that the regulation is accessible, consistent, written in plain language, and easy to understand; and

(vi) ensure that the length of the public comment period is commensurate with the complexity of the regu-

lation and the expected public interest in the rule-making.

(B) *INCLUSION OF INFORMATION IN A PROPOSED OR FINAL REGULATION.*—In issuing a proposed or final regulation, the Commission shall include in the regulation—

(i) the results of the identifications and assessments required under clauses (i) and (ii) of subparagraph (A) with respect to the regulation;

(ii) an explanation of why the regulation meets the regulatory objectives of the Commission more effectively than other available alternatives, including modification of an existing regulation;

(iii) a description of how the Commission intends the regulation to interact with existing regulations and proposed regulations; and

(iv) a justification of the length of the public comment period for the regulation.

(3) *CONSIDERATIONS AND ACTIONS.*—

(A) *REQUIRED ACTIONS.*—In deciding whether and how to regulate, the Commission shall assess the costs and benefits of available regulatory alternatives, including the alternative of not regulating, and choose the approach that maximizes net benefits. Specifically, the Commission shall—

(i) consistent with the requirements of section 3(f) (15 U.S.C. 78c(f)), section 2(b) of the Securities Act of 1933 (15 U.S.C. 77b(b)), section 202(c) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-2(c)), and section 2(c) of the Investment Company Act of 1940 (15 U.S.C. 80a-2(c)), consider whether a rulemaking (both on the regulation's own and cumulatively with other existing and proposed regulations), in addition to being in the interest of protecting investors, will promote efficiency, competition, and capital formation;

(ii) evaluate whether, consistent with obtaining regulatory objectives, a regulation (both on the regulation's own and cumulatively with other existing and proposed regulations) is tailored to impose the least burden on society, including market participants, individuals, businesses of differing sizes, and other entities (including State and local governmental entities), taking into account, to the extent practicable, the cumulative costs of regulations; and

(iii) evaluate whether a regulation is inconsistent, incompatible, or duplicative of other Federal regulations.

(B) *ADDITIONAL CONSIDERATIONS.*—In addition, in making a reasoned determination under paragraph (2)(A)(iii) of the costs and benefits of a regulation, the Commission shall, to the extent that each is relevant to the particular regulation, take into consideration the impact of the regulation on—

(i) investor choice;

(ii) market liquidity in the securities markets;

(iii) small businesses;

(iv) competition in the marketplace;

(v) investor access; and

(vi) the United States' economic competitiveness.

(4) POST-ADOPTION IMPACT ASSESSMENT.—

(A) IN GENERAL.—Whenever the Commission issues a final regulation that is a “major rule” (as defined under section 804 of title 5, United States Code), it shall state, in the regulation, the following:

(i) The purposes and intended consequences of the regulation.

(ii) Appropriate post-implementation quantitative and qualitative metrics to measure the economic impact of the regulation and to measure the extent to which the regulation has accomplished the stated purposes.

(iii) The assessment plan that will be used, consistent with the requirements of subparagraph (B) and under the supervision of the Chief Economist, to assess whether the regulation has achieved the stated purposes.

(iv) Any unintended or negative consequences that the Commission foresees may result from the regulation.

(B) REQUIREMENTS OF ASSESSMENT PLAN AND REPORT.—

(i) REQUIREMENTS OF PLAN.—For each regulation described under subparagraph (A), the Chief Economist shall establish an assessment plan, which shall—

(I) consider the costs, benefits, and intended and unintended consequences of the regulation;

(II) specify the data to be collected, the methods for collection and analysis of the data, and a date for completion of the assessment; and

(III) include an analysis of any jobs added or lost as a result of the regulation, differentiating between public and private sector jobs.

(ii) TIMING OF ASSESSMENT PLAN REPORT.—A report on each completed assessment plan described under clause (i) shall be submitted by the Chief Economist to the Commission not later than the end of the 4-year period beginning on the date the applicable regulation is issued, unless the Commission, at the request of the Chief Economist, publishes at least 90 days before the end of such period a notice in the Federal Register extending the date and providing specific reasons why an extension is necessary.

(iii) PUBLIC COMMENT.—Not later than 7 days after the Commission receives an assessment plan report under clause (ii), the Commission shall publish the report in the Federal Register for public comment.

(5) REGULATION DEFINED.—In this subsection, the term “regulation”—

(A) means an agency statement of general applicability and future effect that is designed to implement, interpret, or prescribe law or policy or to describe the procedure or practice requirements of an agency, including rules, orders of general applicability, interpretive releases, and other

statements of general applicability that the agency intends to have the force and effect of law; and

(B) does not include—

(i) a regulation issued in accordance with the formal rulemaking provisions of section 556 or 557 of title 5, United States Code;

(ii) a regulation that is limited to agency organization, management, or personnel matters;

(iii) a regulation promulgated pursuant to statutory authority that expressly prohibits compliance with this provision; and

(iv) a regulation that is certified by the agency to be an emergency action, if such certification is published in the Federal Register.

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SECURITIES ACT OF 1933

TITLE I—

* * * * *

DEFINITIONS

SEC. 2. (a) DEFINITIONS.—When used in this title, unless the context otherwise requires—

(1) The term “security” means any note, stock, treasury stock, security future, security-based swap, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, certificate of deposit for a security, fractional undivided interest in oil, gas, or other mineral rights, any put, call, straddle, option, or privilege on any security, certificate of deposit, or group or index of securities (including any interest therein or based on the value thereof), or any put, call, straddle, option, or privilege entered into on a national securities exchange relating to foreign currency, or, in general, any interest or instrument commonly known as a “security”, or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing.

(2) The term “person” means an individual, a corporation, a partnership, an association, a joint-stock company, a trust, any unincorporated organization, or a government or political subdivision thereof. As used in this paragraph the term “trust” shall include only a trust where the interest or interests of the beneficiary or beneficiaries are evidenced by a security.

(3) The term “sale” or “sell” shall include every contract of sale or disposition of a security or interest in a security, for value. The term “offer to sell”, “offer for sale”, or “offer” shall include every attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security, for value. The terms defined in this paragraph and the term “offer to

buy” as used in subsection (c) of section 5 shall not include preliminary negotiations or agreements between an issuer (or any person directly or indirectly controlling or controlled by an issuer, or under direct or indirect common control with an issuer) and any underwriter or among underwriters who are or are to be in privity of contract with an issuer (or any person directly or indirectly controlling or controlled by an issuer, or under direct or indirect common control with an issuer). Any security given or delivered with, or as a bonus on account of, any purchase of securities or any other thing, shall be conclusively presumed to constitute a part of the subject of such purchase and to have been offered and sold for value. The issue or transfer of a right or privilege, when originally issued or transferred with a security, giving the holder of such security the right to convert such security into another security of the same issuer or of another person, or giving a right to subscribe to another security of the same issuer or of another person, which right cannot be exercised until some future date, shall not be deemed to be an offer or sale of such other security; but the issue or transfer of such other security upon the exercise of such right of conversion or subscription shall be deemed a sale of such other security. Any offer or sale of a security futures product by or on behalf of the issuer of the securities underlying the security futures product, an affiliate of the issuer, or an underwriter, shall constitute a contract for sale of, sale of, offer for sale, or offer to sell the underlying securities. Any offer or sale of a security-based swap by or on behalf of the issuer of the securities upon which such security-based swap is based or is referenced, an affiliate of the issuer, or an underwriter, shall constitute a contract for sale of, sale of, offer for sale, or offer to sell such securities. The publication or distribution by a broker or dealer of a research report about an emerging growth company that is the subject of a proposed public offering of the common equity securities of such emerging growth company pursuant to a registration statement that the issuer proposes to file, or has filed, or that is effective shall be deemed for purposes of paragraph (10) of this subsection and section 5(c) not to constitute an offer for sale or offer to sell a security, even if the broker or dealer is participating or will participate in the registered offering of the securities of the issuer. As used in this paragraph, the term “research report” means a written, electronic, or oral communication that includes information, opinions, or recommendations with respect to securities of an issuer or an analysis of a security or an issuer, whether or not it provides information reasonably sufficient upon which to base an investment decision.

(4) The term “issuer” means every person who issues or proposes to issue any security; except that with respect to certificates of deposit, voting-trust certificates, or collateral-trust certificates, or with respect to certificates of interest or shares in an unincorporated investment trust not having a board of directors (or persons performing similar functions) or of the fixed, restricted management, or unit type, the term “issuer” means the person or persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions

of the trust or other agreement or instrument under which such securities are issued; except that in the case of an unincorporated association which provides by its articles for limited liability of any or all of its members, or in the case of a trust, committee, or other legal entity, the trustees or members thereof shall not be individually liable as issuers of any security issued by the association, trust, committee, or other legal entity; except that with respect to equipment-trust certificates or like securities, the term "issuer" means the person by whom the equipment or property is or is to be used; and except that with respect to fractional undivided interests in oil, gas, or other mineral rights, the term "issuer" means the owner of any such right or of any interest in such right (whether whole or fractional) who creates fractional interests therein for the purpose of public offering.

(5) The term "Commission" means the Securities and Exchange Commission.

(6) The term "Territory" means Puerto Rico, the Virgin Islands, and the insular possessions of the United States.

(7) The term "interstate commerce" means trade or commerce in securities or any transportation or communication relating thereto among the several States or between the District of Columbia or any Territory of the United States and any State or other Territory, or between any foreign country and any State, Territory, or the District of Columbia, or within the District of Columbia.

(8) The term "registration statement" means the statement provided for in section 6, and includes any amendment thereto and any report, document, or memorandum filed as part of such statement or incorporated therein by reference.

(9) The term "write" or "written" shall include printed, lithographed, or any means of graphic communication.

(10) The term "prospectus" means any prospectus, notice, circular, advertisement, letter, or communication, written or by radio or television, which offers any security for sale or confirms the sale of any security; except that (a) a communication sent or given after the effective date of the registration statement (other than a prospectus permitted under subsection (b) of section 10) shall not be deemed a prospectus if it is proved that prior to or at the same time with such communication a written prospectus meeting the requirements of subsection (a) of section 10 at the time of such communication was sent or given to the person to whom the communication was made, and (b) a notice, circular, advertisement, letter, or communication in respect of a security shall not be deemed to be a prospectus if it states from whom a written prospectus meeting the requirements of section 10 may be obtained and, in addition, does no more than identify the security, state the price thereof, state by whom orders will be executed, and contain such other information as the Commission, by rules or regulations deemed necessary or appropriate in the public interest and for the protection of investors, and subject to such terms and conditions as may be prescribed therein, may permit.

(11) The term "underwriter" means any person who has purchased from an issuer with a view to, or offers or sells for an

issuer in connection with, the distribution of any security, or participates or has a direct or indirect participation in any such undertaking, or participates or has a participation in the direct or indirect underwriting of any such undertaking; but such term shall not include a person whose interest is limited to a commission from an underwriter or dealer not in excess of the usual and customary distributors' or sellers' commission. As used in this paragraph the term "issuer" shall include, in addition to an issuer, any person directly or indirectly controlling or controlled by the issuer, or any person under direct or indirect common control with the issuer.

(12) The term "dealer" means any person who engages either for all or part of his time, directly or indirectly, as agent, broker, or principal, in the business of offering, buying, selling, or otherwise dealing or trading in securities issued by another person.

(13) The term "insurance company" means a company which is organized as an insurance company, whose primary and predominant business activity is the writing of insurance or the reinsuring of risks underwritten by insurance companies, and which is subject to supervision by the insurance commissioner, or a similar official or agency, of a State or territory or the District of Columbia; or any receiver or similar official or any liquidating agent for such company, in his capacity as such.

(14) The term "separate account" means an account established and maintained by an insurance company pursuant to the laws of any State or territory of the United States, the District of Columbia, or of Canada or any province thereof, under which income, gains and losses, whether or not realized, from assets allocated to such account, are, in accordance with the applicable contract, credited to or charged against such account without regard to other income, gains, or losses of the insurance company.

(15) The term "accredited investor" shall mean—

(i) a bank as defined in section 3(a)(2) whether acting in its individual or fiduciary capacity; an insurance company as defined in paragraph (13) of this subsection; an investment company registered under the Investment Company Act of 1940 or a business development company as defined in section 2(a)(48) of that Act; a Small Business Investment Company licensed by the Small Business Administration; or an employee benefit plan, including an individual retirement account, which is subject to the provisions of the Employee Retirement Income Security Act of 1974, if the investment decision is made by a plan fiduciary, as defined in section 3(21) of such Act, which is either a bank, insurance company, or registered investment adviser; or

(ii) any person who, on the basis of such factors as financial sophistication, net worth, knowledge, and experience in financial matters, or amount of assets under management qualifies as an accredited investor under rules and regulations which the Commission shall prescribe.

(16) The terms “security future”, “narrow-based security index”, and “security futures product” have the same meanings as provided in section 3(a)(55) of the Securities Exchange Act of 1934.

(17) The terms “swap” and “security-based swap” have the same meanings as in section 1a of the Commodity Exchange Act (7 U.S.C. 1a).

(18) The terms “purchase” or “sale” of a security-based swap shall be deemed to mean the execution, termination (prior to its scheduled maturity date), assignment, exchange, or similar transfer or conveyance of, or extinguishing of rights or obligations under, a security-based swap, as the context may require.

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

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

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

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

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

(b) CONSIDERATION OF PROMOTION OF EFFICIENCY, COMPETITION, AND CAPITAL FORMATION.—Whenever pursuant to this title the Commission is engaged in rulemaking and is required to consider or determine whether an action is necessary or appropriate in the public interest, the Commission shall also consider, in addition to the protection of investors, whether the action, *when considered individually or cumulatively with other rules or regulations or other proposed rules or regulations*, will promote efficiency, competition, and capital formation.

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INVESTMENT COMPANY ACT OF 1940

TITLE I—INVESTMENT COMPANIES

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GENERAL DEFINITIONS

SEC. 2. (a) When used in this title, unless the context otherwise requires—

(1) “Advisory board” means a board, whether elected or appointed, which is distinct from the board of directors or board of trustees, of an investment company, and which is composed solely of persons who do not serve such company in any other capacity, whether or not the functions of such board are such as to render its members “directors” within the definition of that term, which board has advisory functions as to investments but has no power to determine that any security or other investment shall be purchased or sold by such company.

(2) “Affiliated company” means a company which is an affiliated person.

(3) “Affiliated person” of another person means (A) any person directly or indirectly owning, controlling, or holding with power to vote, 5 per centum or more of the outstanding voting securities of such other person; (B) any person 5 per centum or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by such other person; (C) any person directly or indirectly controlling, controlled by, or under common control with, such other person; (D) any officer, director, partner, copartner, or employee of such other person; (E) if such other person is an investment company, any investment adviser thereof or any member of an advisory board thereof; and (F) if such other person is an unincorporated investment company not having a board of directors, the depositor thereof.

(4) “Assignment” includes any direct or indirect transfer or hypothecation of a contract or chose in action by the assignor, or of a controlling block of the assignor’s outstanding voting securities by a security holder of the assignor; but does not include an assignment of partnership interests incidental to the death or withdrawal of a minority of the members of the partnership having only a minority interest in the partnership business or to the admission to the partnership of one or more members who, after such admission, shall be only a minority of the members and shall have only a minority interest in the business.

(5) “Bank” means (A) a depository institution (as defined in section 3 of the Federal Deposit Insurance Act) or a branch or agency of a foreign bank (as such terms are defined in section 1(b) of the International Banking Act of 1978), (B) a member bank of the Federal Reserve System, (C) any other banking institution or trust company, whether incorporated or not, doing business under the laws of any State or of the United States, a substantial portion of the business of which consists of receiving deposits or exercising fiduciary powers similar to those permitted to national banks under the authority of the Comp-

troller of the Currency, and which is supervised and examined by State or Federal authority having supervision over banks, and which is not operated for the purpose of evading the provisions of this title, and (D) a receiver, conservator, or other liquidating agent of any institution or firm included in clause (A), (B), or (C) of this paragraph.

(6) The term "broker" has the same meaning as given in section 3 of the Securities Exchange Act of 1934, except that such term does not include any person solely by reason of the fact that such person is an underwriter for one or more investment companies.

(7) "Commission" means the Securities and Exchange Commission.

(8) "Company" means a corporation, a partnership, an association, a joint-stock company, a trust, a fund, or any organized group of persons whether incorporated or not; or any receiver, trustee in a case under title 11 of the United States Code or similar official or any liquidating agent for any of the foregoing, in his capacity as such.

(9) "Control" means the power to exercise a controlling influence over the management or policies of a company, unless such power is solely the result of an official position with such company.

Any person who owns beneficially, either directly or through one or more controlled companies, more than 25 per centum of the voting securities of a company shall be presumed to control such company. Any person who does not so own more than 25 per centum of the voting securities of any company shall be presumed not to control such company. A natural person shall be presumed not to be a controlled person within the meaning of this title. Any such presumption may be rebutted by evidence, but except as hereinafter provided, shall continue until a determination to the contrary made by the Commission by order either on its own motion or on application by an interested person. If an application filed hereunder is not granted or denied by the Commission within sixty days after filing thereof, the determination sought by the application shall be deemed to have been temporarily granted pending final determination of the Commission thereon. The Commission, upon its own motion or upon application, may by order revoke or modify any order issued under this paragraph whenever it shall find that the determination embraced in such original order is no longer consistent with the facts.

(10) "Convicted" includes a verdict, judgment, or plea of guilty, or a finding of guilt on a plea of nolo contendere, if such verdict, judgment, plea, or finding has not been reversed, set aside, or withdrawn, whether or not sentence has been imposed.

(11) The term "dealer" has the same meaning as given in the Securities Exchange Act of 1934, but does not include an insurance company or investment company.

(12) "Director" means any director of a corporation or any person performing similar functions with respect to any organization, whether incorporated or unincorporated, including any

natural person who is a member of a board of trustees of a management company created as a common-law trust.

(13) “Employees’ securities company” means any investment company or similar issuer all of the outstanding securities of which (other than short-term paper) are beneficially owned (A) by the employees or persons on retainer of a single employer or of two or more employers each of which is an affiliated company of the other, (B) by former employees of such employer or employers, (C) by members of the immediate family of such employees, persons on retainer, or former employees, (D) by any two or more of the foregoing classes of persons, or (E) by such employer or employers together with any one or more of the foregoing classes of persons.

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

(15) “Face-amount certificate” means any certificate, investment contract, or other security which represents an obligation on the part of its issuer to pay a stated or determinable sum or sums at a fixed or determinable date or dates more than twenty-four months after the date of issuance, in consideration of the payment of periodic installments of a stated or determinable amount (which security shall be known as a face-amount certificate of the “installment type”); or any security which represents a similar obligation on the part of a face-amount certificate company, the consideration for which is the payment of a single lump sum (which security shall be known as a “fully paid” face-amount certificate).

(16) “Government security” means any security issued or guaranteed as to principal or interest by the United States, or by a person controlled or supervised by and acting as an instrumentality of the Government of the United States pursuant to authority granted by the Congress of the United States; or any certificate of deposit for any of the foregoing.

(17) “Insurance company” means a company which is organized as an insurance company, whose primary and predominant business activity is the writing of insurance or the reinsuring of risks underwritten by insurance companies, and which is subject to supervision by the insurance commissioner or a similar official or agency of a State; or any receiver or similar official or any liquidating agent for such a company, in his capacity as such.

(18) “Interstate commerce” means trade, commerce, transportation, or communication among the several States, or between any foreign country and any State, or between any State and any place or ship outside thereof.

(19) “Interested person” of another person means—

- (A) when used with respect to an investment company—
 - (i) any affiliated person of such company,

(ii) any member of the immediate family of any natural person who is an affiliated person of such company,

(iii) any interested person of any investment adviser of or principal underwriter for such company,

(iv) any person or partner or employee of any person who at any time since the beginning of the last two completed fiscal years of such company has acted as legal counsel for such company,

(v) any person or any affiliated person of a person (other than a registered investment company) that, at any time during the 6-month period preceding the date of the determination of whether that person or affiliated person is an interested person, has executed any portfolio transactions for, engaged in any principal transactions with, or distributed shares for—

(I) the investment company;

(II) any other investment company having the same investment adviser as such investment company or holding itself out to investors as a related company for purposes of investment or investor services; or

(III) any account over which the investment company's investment adviser has brokerage placement discretion,

(vi) any person or any affiliated person of a person (other than a registered investment company) that, at any time during the 6-month period preceding the date of the determination of whether that person or affiliated person is an interested person, has loaned money or other property to—

(I) the investment company;

(II) any other investment company having the same investment adviser as such investment company or holding itself out to investors as a related company for purposes of investment or investor services; or

(III) any account for which the investment company's investment adviser has borrowing authority, and

(vii) any natural person whom the Commission by order shall have determined to be an interested person by reason of having had, at any time since the beginning of the last two completed fiscal years of such company, a material business or professional relationship with such company or with the principal executive officer of such company or with any other investment company having the same investment adviser or principal underwriter or with the principal executive officer of such other investment company:

Provided, That no person shall be deemed to be an interested person of an investment company solely by reason of (aa) his being a member of its board of directors or advisory board or an owner of its securities, or (bb) his mem-

bership in the immediate family of any person specified in clause (aa) of this proviso; and

(B) when used with respect to an investment adviser or principal underwriter for any investment company—

(i) any affiliated person of such investment adviser or principal underwriter,

(ii) any member of the immediate family of any natural person who is an affiliated person of such investment adviser or principal underwriter,

(iii) any person who knowingly has any direct or indirect beneficial interest in, or who is designated as trustee, executor, or guardian of any legal interest in, any security issued either by such investment adviser or principal underwriter or by a controlling person of such investment adviser or principal underwriter,

(iv) any person or partner or employee of any person who at any time since the beginning of the last two completed fiscal years of such investment company has acted as legal counsel for such investment adviser or principal underwriter,

(v) any person or any affiliated person of a person (other than a registered investment company) that, at any time during the 6-month period preceding the date of the determination of whether that person or affiliated person is an interested person, has executed any portfolio transactions for, engaged in any principal transactions with, or distributed shares for—

(I) any investment company for which the investment adviser or principal underwriter serves as such;

(II) any investment company holding itself out to investors, for purposes of investment or investor services, as a company related to any investment company for which the investment adviser or principal underwriter serves as such; or

(III) any account over which the investment adviser has brokerage placement discretion,

(vi) any person or any affiliated person of a person (other than a registered investment company) that, at any time during the 6-month period preceding the date of the determination of whether that person or affiliated person is an interested person, has loaned money or other property to—

(I) any investment company for which the investment adviser or principal underwriter serves as such;

(II) any investment company holding itself out to investors, for purposes of investment or investor services, as a company related to any investment company for which the investment adviser or principal underwriter serves as such; or

(III) any account for which the investment adviser has borrowing authority, and

(vii) any natural person whom the Commission by order shall have determined to be an interested person

by reason of having had at any time since the beginning of the last two completed fiscal years of such investment company a material business or professional relationship with such investment adviser or principal underwriter or with the principal executive officer or any controlling person of such investment adviser or principal underwriter.

For the purposes of this paragraph (19), "member of the immediate family" means any parent, spouse of a parent, child, spouse of a child, spouse, brother, or sister, and includes step and adoptive relationships. The Commission may modify or revoke any order issued under clause (vii) of subparagraph (A) or (B) of this paragraph whenever it finds that such order is no longer consistent with the facts. No order issued pursuant to clause (vii) of subparagraph (A) or (B) of this paragraph shall become effective until at least sixty days after the entry thereof, and no such order shall affect the status of any person for the purposes of this title or for any other purpose for any period prior to the effective date of such order.

(20) "Investment adviser" of an investment company means (A) any person (other than a bona fide officer, director, trustee, member of an advisory board, or employee of such company, as such) who pursuant to contract with such company regularly furnishes advice to such company with respect to the desirability of investing in, purchasing or selling securities or other property, or is empowered to determine what securities or other property shall be purchased or sold by such company, and (B) any other person who pursuant to contract with a person described in clause (A) regularly performs substantially all of the duties undertaken by such person described in clause (A); but does not include (i) a person whose advice is furnished solely through uniform publications distributed to subscribers thereto, (ii) a person who furnishes only statistical and other factual information, advice regarding economic factors and trends, or advice as to occasional transactions in specific securities, but without generally furnishing advice or making recommendations regarding the purchase or sale of securities, (iii) a company furnishing such services at cost to one or more investment companies, insurance companies, or other financial institutions, (iv) any person the character and amount of whose compensation for such services must be approved by a court, or (v) such other persons as the Commission may by rules and regulations or order determine not to be within the intent of this definition.

(21) "Investment banker" means any person engaged in the business of underwriting securities issued by other persons, but does not include an investment company, any person who acts as an underwriter in isolated transactions but not as a part of a regular business, or any person solely by reason of the fact that such person is an underwriter for one or more investment companies.

(22) "Issuer" means every person who issues or proposes to issue any security, or has outstanding any security which it has issued.

(23) "Lend" includes a purchase coupled with an agreement by the vendor to repurchase; "borrow" includes a sale coupled with a similar agreement.

(24) "Majority-owned subsidiary" of a person means a company 50 per centum or more of the outstanding voting securities of which are owned by such person, or by a company which, within the meaning of this paragraph, is a majority-owned subsidiary of such person.

(25) "Means or instrumentality of interstate commerce" includes any facility of a national securities exchange.

(26) "National securities exchange" means an exchange registered under section 6 of the Securities Exchange Act of 1934.

(27) "Periodic payment plan certificate" means (A) any certificate, investment contract, or other security providing for a series of periodic payments by the holder, and representing an undivided interest in certain specified securities or in a unit or fund of securities purchased wholly or partly with the proceeds of such payments, and (B) any security the issuer of which is also issuing securities of the character described in clause (A) and the holder of which has substantially the same rights and privileges as those which holders of securities of the character described in clause (A) have upon completing the periodic payments for which such securities provide.

(28) "Person" means a natural person or a company.

(29) "Principal underwriter" of or for any investment company other than a closed-end company, or of any security issued by such a company, means any underwriter who as principal purchases from such company, or pursuant to contract has the right (whether absolute or conditional) from time to time to purchase from such company, any such security for distribution, or who as agent for such company sells or has the right to sell any such security to a dealer or to the public or both, but does not include a dealer who purchases from such company through a principal underwriter acting as agent for such company. "Principal underwriter" of or for a closed-end company or any issuer which is not an investment company, or of any security issued by such a company or issuer, means any underwriter who, in connection with a primary distribution of securities, (A) is in privity of contract with the issuer or an affiliated person of the issuer; (B) acting alone or in concert with one or more other persons, initiates or directs the formation of an underwriting syndicate; or (C) is allowed a rate of gross commission, spread, or other profit greater than the rate allowed another underwriter participating in the distribution.

(30) "Promoter" of a company or a proposed company means a person who, acting alone or in concert with other persons, is initiating or directing, or has within one year initiated or directed, the organization of such company.

(31) "Prospectus", as used in section 22, means a written prospectus intended to meet the requirements of section 10(a) of the Securities Act of 1933 and currently in use. As used elsewhere, "prospectus" means a prospectus as defined in the Securities Act of 1933.

(32) "Redeemable security" means any security, other than short-term paper, under the terms of which the holder, upon

its presentation to the issuer or to a person designated by the issuer, is entitled (whether absolutely or only out of surplus) to receive approximately his proportionate share of the issuer's current net assets, or the cash equivalent thereof.

(33) "Reorganization" means (A) a reorganization under the supervision of a court of competent jurisdiction; (B) a merger or consolidation; (C) a sale of 75 per centum or more in value of the assets of a company; (D) a restatement of the capital of a company, or an exchange of securities issued by a company for any of its own outstanding securities; (E) a voluntary dissolution or liquidation of a company; (F) a recapitalization or other procedure or transaction which has for its purpose the alteration, modification, or elimination of any of the rights, preferences, or privileges of any class of securities issued by a company, as provided in its charter or other instrument creating or defining such rights, preferences, and privileges; (G) an exchange of securities issued by a company for outstanding securities issued by another company or companies, preliminary to and for the purpose of effecting or consummating any of the foregoing; or (H) any exchange of securities by a company which is not an investment company for securities issued by a registered investment company.

(34) "Sale", "sell", "offer to sell", or "offer for sale" includes every contract of sale or disposition of, attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security, for value. Any security given or delivered with, or as a bonus on account of, any purchase of securities or any other thing, shall be conclusively presumed to constitute a part of the subject of such purchase and to have been sold for value.

(35) "Sales load" means the difference between the price of a security to the public and that portion of the proceeds from its sale which is received and invested or held for investment by the issuer (or in the case of a unit investment trust, by the depositor or trustee), less any portion of such difference deducted for trustee's or custodian's fee, insurance premiums, issue taxes, or administrative expenses or fees which are not properly chargeable to sales or promotional activities. In the case of a periodic payment plan certificate, "sales load" includes the sales load on any investment company securities in which the payments made on such certificate are invested, as well as the sales load on the certificate itself.

(36) "Security" means any note, stock, treasury stock, security future, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, certificate of deposit for a security, fractional undivided interest in oil, gas, or other mineral rights, any put, call, straddle, option, or privilege on any security (including a certificate of deposit) or on any group or index of securities (including any interest therein or based on the value thereof), or any put, call, straddle, option, or privilege entered into on a national securities exchange relating to foreign currency, or, in general, any interest or instrument commonly known as a "security", or any certificate of interest or participation in, tem-

porary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing.

(37) "Separate account" means an account established and maintained by an insurance company pursuant to the laws of any State or territory of the United States, or of Canada or any province thereof, under which income, gains and losses, whether or not realized, from assets allocated to such account, are, in accordance with the applicable contract, credited to or charged against such account without regard to other income, gains, or losses of the insurance company.

(38) "Short-term paper" means any note, draft, bill of exchange, or banker's acceptance payable on demand or having a maturity at the time of issuance of not exceeding nine months, exclusive of days of grace, or any renewal thereof payable on demand or having a maturity likewise limited; and such other classes of securities, of a commercial rather than an investment character, as the Commission may designate by rules and regulations.

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

(40) "Underwriter" means any person who has purchased from an issuer with a view to, or sells for an issuer in connection with, the distribution of any security, or participates or has a direct or indirect participation in any such undertaking, or participates or has a participation in the direct or indirect underwriting of any such undertaking; but such term shall not include a person whose interest is limited to a commission from an underwriter or dealer not in excess of the usual and customary distributor's or seller's commission. As used in this paragraph the term "issuer" shall include, in addition to an issuer, any person directly or indirectly controlling or controlled by the issuer, or any person under direct or indirect common control with the issuer. When the distribution of the securities in respect of which any person is an underwriter is completed such person shall cease to be an underwriter in respect of such securities or the issuer thereof.

(41) "Value", with respect to assets of registered investment companies, except as provided in subsection (b) of section 28 of this title, means—

(A) as used in sections 3, 5, and 12 of this title, (i) with respect to securities owned at the end of the last preceding fiscal quarter for which market quotations are readily available, the market value at the end of such quarter; (ii) with respect to other securities and assets owned at the end of the last preceding fiscal quarter, fair value at the end of such quarter, as determined in good faith by the board of directors; and (iii) with respect to securities and other assets acquired after the end of the last preceding fiscal quarter, the cost thereof; and

(B) as used elsewhere in this title, (i) with respect to securities for which market quotations are readily available, the market value of such securities; and (ii) with respect

to other securities and assets, fair value as determined in good faith by the board of directors; in each case as of such time or times as determined pursuant to this title, and the rules and regulations issued by the Commission hereunder. Notwithstanding the fact that market quotations for securities issued by controlled companies are available, the board of directors may in good faith determine the value of such securities: *Provided*, That the value so determined is not in excess of the higher of market value or asset value of such securities in the case of majority-owned subsidiaries, and is not in excess of market value in the case of other controlled companies.

For purposes of the valuation of those assets of a registered diversified company which are not subject to the limitations provided for in section 5(b)(1), the Commission may, by rules and regulations or orders, permit any security to be carried at cost, if it shall determine that such procedure is consistent with the general intent and purposes of this title. For purposes of sections 5 and 12, in lieu of values determined as provided in clause (A) above, the Commission shall by rules and regulations permit valuation of securities at cost or other basis in cases where it may be more convenient for such company to make its computations on such basis by reason of the necessity or desirability of complying with the provisions of any United States revenue laws or rules and regulations issued thereunder, or the laws or the rules and regulations issued thereunder of any State in which the securities of such company may be qualified for sale.

The foregoing definition shall not derogate from the authority of the Commission with respect to the reports, information, and documents to be filed with the Commission by any registered company, or with respect to the accounting policies and principles to be following by any such company, as provided in sections 8, 30, and 31.

(42) "Voting security" means any security presently entitling the owner or holder thereof to vote for the election of directors of a company. A specified percentage of the outstanding voting securities of a company means such amount of its outstanding voting securities as entitles the holder or holders thereof to cast said specified percentage of the aggregate votes which the holders of all the outstanding voting securities of such company are entitled to cast. The vote of a majority of the outstanding voting securities of a company means the vote, at the annual or a special meeting of the security holders of such company duly called, (A) of 67 per centum or more of the voting securities present at such meeting, if the holders of more than 50 per centum of the outstanding voting securities of such company are present or represented by proxy; or (B) of more than 50 per centum of the outstanding voting securities of such company, whichever is the less.

(43) "Wholly-owned subsidiary" of a person means a company 95 per centum or more of the outstanding voting securities of which are owned by such person, or by a company which, within the meaning of this paragraph, is a wholly-owned subsidiary of such person.

(44) “Securities Act of 1933”, “Securities Exchange Act of 1934”, and “Trust Indenture Act of 1939” means those Acts, respectively, as heretofore or hereafter amended.

(45) “Savings and loan association” means a savings and loan association, building and loan association, cooperative bank, homestead association, or similar institution, which is supervised and examined by State or Federal authority having supervision over any such institution, and a receiver, conservator, or other liquidating agent of any such institution.

(46) “Eligible portfolio company” means any issuer which—

(A) is organized under the laws of, and has its principal place of business in, any State or States;

(B) is neither an investment company as defined in section 3 (other than a small business investment company which is licensed by the Small Business Administration to operate under the Small Business Investment Act of 1958 and which is a wholly-owned subsidiary of the business development company) nor a company which would be an investment company except for the exclusion from the definition of investment company in section 3(c); and

(C) satisfies one of the following:

(i) it does not have any class of securities with respect to which a member of a national securities exchange, broker, or dealer may extend or maintain credit to or for a customer pursuant to rules or regulations adopted by the Board of Governors of the Federal Reserve System under section 7 of the Securities Exchange Act of 1934;

(ii) it is controlled by a business development company, either alone or as part of a group acting together, and such business development company in fact exercises a controlling influence over the management or policies of such eligible portfolio company and, as a result of such control, has an affiliated person who is a director of such eligible portfolio company;

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

(iv) it meets such other criteria as the Commission may, by rule, establish as consistent with the public interest, the protection of investors, and the purposes fairly intended by the policy and provisions of this title.

(47) “Making available significant managerial assistance” by a business development company means—

(A) any arrangement whereby a business development company, through its directors, officers, employees, or general partners, offers to provide, and, if accepted, does so provide, significant guidance and counsel concerning the management, operations, or business objectives and policies of a portfolio company;

(B) the exercise by a business development company of a controlling influence over the management or policies of a portfolio company by the business development company acting individually or as part of a group acting together which controls such portfolio company; or

(C) with respect to a small business investment company licensed by the Small Business Administration to operate under the Small Business Investment Act of 1958, the making of loans to a portfolio company.

For purposes of subparagraph (A), the requirement that a business development company make available significant managerial assistance shall be deemed to be satisfied with respect to any particular portfolio company where the business development company purchases securities of such portfolio company in conjunction with one or more other persons acting together, and at least one of the persons in the group makes available significant managerial assistance to such portfolio company, except that such requirement will not be deemed to be satisfied if the business development company, in all cases, makes available significant managerial assistance solely in the manner described in this sentence.

(48) “Business development company” means any closed-end company which—

(A) is organized under the laws of, and has its principal place of business in, any State or States;

(B) is operated for the purpose of making investments in securities described in paragraphs (1) through (3) of section 55(a), and makes available significant managerial assistance with respect to the issuers of such securities, provided that a business development company must make available significant managerial assistance only with respect to the companies which are treated by such business development company as satisfying the 70 per centum of the value of its total assets condition of section 55; and provided further that a business development company need not make available significant managerial assistance with respect to any company described in paragraph (46)(C)(iii), or with respect to any other company that meets such criteria as the Commission may by rule, regulation, or order permit, as consistent with the public interest, the protection of investors, and the purposes of this title; and

(C) has elected pursuant to section 54(a) to be subject to the provisions of sections 55 through 65.

(49) “Foreign securities authority” means any foreign government or any governmental body or regulatory organization empowered by a foreign government to administer or enforce its laws as they relate to securities matters.

(50) “Foreign financial regulatory authority” means any (A) foreign securities authority, (B) other governmental body or foreign equivalent of a self-regulatory organization empowered by a foreign government to administer or enforce its laws relating to the regulation of fiduciaries, trusts, commercial lending, insurance, trading in contracts of sale of a commodity for future delivery, or other instruments traded on or subject to the

rules of a contract market, board of trade or foreign equivalent, or other financial activities, or (C) membership organization a function of which is to regulate the participation of its members in activities listed above.

(51)(A) “Qualified purchaser” means—

(i) any natural person (including any person who holds a joint, community property, or other similar shared ownership interest in an issuer that is excepted under section 3(c)(7) with that person’s qualified purchaser spouse) who owns not less than \$5,000,000 in investments, as defined by the Commission;

(ii) any company that owns not less than \$5,000,000 in investments and that is owned directly or indirectly by or for 2 or more natural persons who are related as siblings or spouse (including former spouses), or direct lineal descendants by birth or adoption, spouses of such persons, the estates of such persons, or foundations, charitable organizations, or trusts established by or for the benefit of such persons;

(iii) any trust that is not covered by clause (ii) and that was not formed for the specific purpose of acquiring the securities offered, as to which the trustee or other person authorized to make decisions with respect to the trust, and each settlor or other person who has contributed assets to the trust, is a person described in clause (i), (ii), or (iv); or

(iv) any person, acting for its own account or the accounts of other qualified purchasers, who in the aggregate owns and invests on a discretionary basis, not less than \$25,000,000 in investments.

(B) The Commission may adopt such rules and regulations applicable to the persons and trusts specified in clauses (i) through (iv) of subparagraph (A) as it determines are necessary or appropriate in the public interest or for the protection of investors.

(C) The term “qualified purchaser” does not include a company that, but for the exceptions provided for in paragraph (1) or (7) of section 3(c), would be an investment company (hereafter in this paragraph referred to as an “excepted investment company”), unless all beneficial owners of its outstanding securities (other than short-term paper), determined in accordance with section 3(c)(1)(A), that acquired such securities on or before April 30, 1996 (hereafter in this paragraph referred to as “pre-amendment beneficial owners”), and all pre-amendment beneficial owners of the outstanding securities (other than short-term paper) of any excepted investment company that, directly or indirectly, owns any outstanding securities of such excepted investment company, have consented to its treatment as a qualified purchaser. Unanimous consent of all trustees, directors, or general partners of a company or trust referred to in clause (ii) or (iii) of subparagraph (A) shall constitute consent for purposes of this subparagraph.

(52) The terms “security future” and “narrow-based security index” have the same meanings as provided in section 3(a)(55) of the Securities Exchange Act of 1934.

(53) The term “credit rating agency” has the same meaning as in section 3 of the Securities Exchange Act of 1934.

(54) The terms “commodity pool”, “commodity pool operator”, “commodity trading advisor”, “major swap participant”, “swap”, “swap dealer”, and “swap execution facility” have the same meanings as in section 1a of the Commodity Exchange Act (7 U.S.C. 1a).”.

(b) No provision in this title shall apply to, or be deemed to include, the United States, a State, or any political subdivision of a State, or any agency, authority, or instrumentality of any one or more of the foregoing, or any corporation which is wholly owned directly or indirectly by any one or more of the foregoing, or any officer, agent, or employee of any of the foregoing acting as such in the course of his official duty, unless such provision makes specific reference thereto.

(c) CONSIDERATION OF PROMOTION OF EFFICIENCY, COMPETITION, AND CAPITAL FORMATION.—Whenever pursuant to this title the Commission is engaged in rulemaking and is required to consider or determine whether an action is consistent with the public interest, the Commission shall also consider, in addition to the protection of investors, whether the action, *when considered individually or cumulatively with other rules or regulations or other proposed rules or regulations*, will promote efficiency, competition, and capital formation.

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INVESTMENT ADVISERS ACT OF 1940

TITLE II—INVESTMENT ADVISERS

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DEFINITIONS

SEC. 202. (a) When used in this title, unless the context otherwise requires, the following definitions shall apply:

(1) “Assignment” includes any direct or indirect transfer or hypothecation of an investment advisory contract by the assignor or of a controlling block of the assignor’s outstanding voting securities by a security holder of the assignor; but if the investment adviser is a partnership, no assignment of an investment advisory contract shall be deemed to result from the death or withdrawal of a minority of the members of the investment adviser having only a minority interest in the business of the investment adviser, or from the admission to the investment adviser of one or more members who, after such admission, shall be only a minority of the members and shall have only a minority interest in the business.

(2) “Bank” means (A) a banking institution organized under the laws of the United States or a Federal savings association, as defined in section 2(5) of the Home Owners’ Loan Act, (B) a member bank of the Federal Reserve System, (C) any other banking institution, savings association, as defined in section 2(4) of the Home Owners’ Loan Act, or trust company, whether incorporated or not, doing business under the laws of any State

or of the United States, a substantial portion of the business of which consists of receiving deposits or exercising fiduciary powers similar to those permitted to national banks under the authority of the Comptroller of the Currency, and which is supervised and examined by State or Federal authority having supervision over banks or savings associations, and which is not operated for the purpose of evading the provisions of this title, and (D) a receiver, conservator, or other liquidating agent of any institution or firm included in clauses (A), (B), or (C) of this paragraph.

(3) The term “broker” has the same meaning as given in section 3 of the Securities Exchange Act of 1934.

(4) “Commission” means the Securities and Exchange Commission.

(5) “Company” means a corporation, a partnership, an association, a joint-stock company, a trust, or any organized group of persons, whether incorporated or not; or any receiver, trustee in a case under title 11 of the United States Code, or similar official, or any liquidating agent for any of the foregoing, in his capacity as such.

(6) “Convicted” includes a verdict, judgment, or plea of guilty, or a finding of guilt on a plea of nolo contendere, if such verdict, judgment, plea, or finding has not been reversed, set aside, or withdrawn, whether or not sentence has been imposed.

(7) The term “dealer” has the same meaning as given in section 3 of the Securities Exchange Act of 1934, but does not include an insurance company or investment company.

(8) “Director” means any director of a corporation or any person performing similar functions, with respect to any organization, whether incorporated or unincorporated.

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

(10) “Interstate commerce” means trade, commerce, transportation, or communication among the several States, or between any foreign country and any State, or between any State and any place or ship outside thereof.

(11) “Investment adviser” means any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as part of a regular business, issues or promulgates analyses or reports concerning securities; but does not include (A) a bank, or any bank holding company as defined in the Bank Holding Company Act of 1956, which is not an investment company, except that the term “investment adviser” includes any bank or bank holding company to the extent that such bank or bank holding company serves or acts as an investment adviser to a reg-

istered investment company, but if, in the case of a bank, such services or actions are performed through a separately identifiable department or division, the department or division, and not the bank itself, shall be deemed to be the investment adviser; (B) any lawyer, accountant, engineer, or teacher whose performance of such services is solely incidental to the practice of his profession; (C) any broker or dealer whose performance of such services is solely incidental to the conduct of his business as a broker or dealer and who receives no special compensation therefor; (D) the publisher of any bona fide newspaper, news magazine or business or financial publication of general and regular circulation; (E) any person whose advice, analyses, or reports relate to no securities other than securities which are direct obligations of or obligations guaranteed as to principal or interest by the United States, or securities issued or guaranteed by corporations in which the United States has a direct or indirect interest which shall have been designated by the Secretary of the Treasury, pursuant to section 3(a)(12) of the Securities Exchange Act of 1934, as exempted securities for the purposes of that Act; (F) any nationally recognized statistical rating organization, as that term is defined in section 3(a)(62) of the Securities Exchange Act of 1934, unless such organization engages in issuing recommendations as to purchasing, selling, or holding securities or in managing assets, consisting in whole or in part of securities, on behalf of others;; (G) any family office, as defined by rule, regulation, or order of the Commission, in accordance with the purposes of this title; or (H) such other persons not within the intent of this paragraph, as the Commission may designate by rules and regulations or order.

(12) "Investment company", affiliated person, and "insurance company" have the same meanings as in the Investment Company Act of 1940. "Control" means the power to exercise a controlling influence over the management or policies of a company, unless such power is solely the result of an official position with such company.

(13) "Investment supervisory services" means the giving of continuous advice as to the investment of funds on the basis of the individual needs of each client.

(14) "Means or instrumentality of interstate commerce" includes any facility of a national securities exchange.

(15) "National securities exchange" means an exchange registered under section 6 of the Securities Exchange Act of 1934.

(16) "Person" means a natural person or a company.

(17) The term "person associated with an investment adviser" means any partner, officer, or director of such investment adviser (or any person performing similar functions), or any person directly or indirectly controlling or controlled by such investment adviser, including any employee of such investment adviser, except that for the purposes of section 203 of this title (other than subsection (f) thereof), persons associated with an investment adviser whose functions are clerical or ministerial shall not be included in the meaning of such term. The Commission may by rules and regulations classify, for the

purposes of any portion or portions of this title, persons, including employees controlled by an investment adviser.

(18) "Security" means any note, stock, treasury stock, security future, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, certificate of deposit for a security, fractional undivided interest in oil, gas, or other mineral rights, any put, call, straddle, option, or privilege on any security (including a certificate of deposit) or on any group or index of securities (including any interest therein or based on the value thereof), or any put, call, straddle, option, or privilege entered into on a national securities exchange relating to foreign currency, or, in general, any interest or instrument commonly known as a "security", or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guaranty of, or warrant or right to subscribe to or purchase any of the foregoing.

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

(20) "Underwriter" means any person who has purchased from an issuer with a view to, or sells for an issuer in connection with, the distribution of any security, or participates or has a direct or indirect participation in any such undertaking, or participates or has a participation in the direct or indirect underwriting of any such undertaking; but such term shall not include a person whose interest is limited to a commission from an underwriter or dealer not in excess of the usual and customary distributor's or seller's commission. As used in this paragraph the term "issuer" shall include in addition to an issuer, any person directly or indirectly controlling or controlled by the issuer, or any person under direct or indirect common control with the issuer.

(21) "Securities Act of 1933", "Securities Exchange Act of 1934", and "Trust Indenture Act of 1939", mean those Acts, respectively, as heretofore or hereafter amended.

(22) "Business development company" means any company which is a business development company as defined in section 2(a)(48) of title I of this Act and which complies with section 55 of title I of this Act, except that—

(A) the 70 per centum of the value of the total assets condition referred to in sections 2(a)(48) and 55 of title I of this Act shall be 60 per centum for purposes of determining compliance therewith;

(B) such company need not be a closed-end company and need not elect to be subject to the provisions of sections 55 through 65 of title I of this Act; and

(C) the securities which may be purchased pursuant to section 55(a) of title I of this Act may be purchased from any person.

For purposes of this paragraph, all terms in sections 2(a)(48) and 55 of title I of this Act shall have the same meaning set forth in such title as if such company were a registered closed-

end investment company, except that the value of the assets of a business development company which is not subject to the provisions of sections 55 through 65 of title I of this Act shall be determined as of the date of the most recent financial statements which it furnished to all holders of its securities, and shall be determined no less frequently than annually.

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

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

(25) "Supervised person" means any partner, officer, director (or other person occupying a similar status or performing similar functions), or employee of an investment adviser, or other person who provides investment advice on behalf of the investment adviser and is subject to the supervision and control of the investment adviser.

(26) The term "separately identifiable department or division" of a bank means a unit—

(A) that is under the direct supervision of an officer or officers designated by the board of directors of the bank as responsible for the day-to-day conduct of the bank's investment adviser activities for one or more investment companies, including the supervision of all bank employees engaged in the performance of such activities; and

(B) for which all of the records relating to its investment adviser activities are separately maintained in or extractable from such unit's own facilities or the facilities of the bank, and such records are so maintained or otherwise accessible as to permit independent examination and enforcement by the Commission of this Act or the Investment Company Act of 1940 and rules and regulations promulgated under this Act or the Investment Company Act of 1940.

(27) The terms "security future" and "narrow-based security index" have the same meanings as provided in section 3(a)(55) of the Securities Exchange Act of 1934.

(28) The term "credit rating agency" has the same meaning as in section 3 of the Securities Exchange Act of 1934.

(29) The term "private fund" means an issuer that would be an investment company, as defined in section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a-3), but for section 3(c)(1) or 3(c)(7) of that Act.

(30) The term "foreign private adviser" means any investment adviser who—

(A) has no place of business in the United States;

(B) has, in total, fewer than 15 clients and investors in the United States in private funds advised by the investment adviser;

(C) has aggregate assets under management attributable to clients in the United States and investors in the United States in private funds advised by the investment adviser of less than \$25,000,000, or such higher amount as the Commission may, by rule, deem appropriate in accordance with the purposes of this title; and

(D) neither—

(i) holds itself out generally to the public in the United States as an investment adviser; nor

(ii) acts as—

(I) an investment adviser to any investment company registered under the Investment Company Act of 1940; or

(II) a company that has elected to be a business development company pursuant to section 54 of the Investment Company Act of 1940 (15 U.S.C. 80a-53), and has not withdrawn its election.

(29) The terms “commodity pool”, “commodity pool operator”, “commodity trading advisor”, “major swap participant”, “swap”, “swap dealer”, and “swap execution facility” have the same meanings as in section 1a of the Commodity Exchange Act (7 U.S.C. 1a).

(b) No provision in this title shall apply to, or be deemed to include, the United States, a State, or any political subdivision of a State, or any agency, authority, or instrumentality of any one or more of the foregoing, or any corporation which is wholly owned directly or indirectly by any one or more of the foregoing, or any officer, agent, or employee of any of the foregoing acting as such in the course of his official duty, unless such provision makes specific reference thereto.

(c) CONSIDERATION OF PROMOTION OF EFFICIENCY, COMPETITION, AND CAPITAL FORMATION.—Whenever pursuant to this title the Commission is engaged in rulemaking and is required to consider or determine whether an action is necessary or appropriate in the public interest, the Commission shall also consider, in addition to the protection of investors, whether the action, *when considered individually or cumulatively with other rules or regulations or other proposed rules or regulations*, will promote efficiency, competition, and capital formation.

* * * * *

SARBANES-OXLEY ACT OF 2002

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the “Sarbanes-Oxley Act of 2002”.

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

Sec. 1. Short title; table of contents.

* * * * *

[TITLE I—PUBLIC COMPANY ACCOUNTING OVERSIGHT BOARD]

TITLE I—OFFICE OF PUBLIC ACCOUNTING OVERSIGHT

Sec. 101. Establishment; administrative provisions.

* * * * *

Sec. 102. Registration with **[the Board]** *the Office*.

Sec. 103. Auditing, quality control, **[and independence standards]** *standards*, and rules.

[Sec. 104. Inspections of registered public accounting firms.

[Sec. 105. Investigations and disciplinary proceedings.]

* * * * *

[Sec. 107. Commission oversight of the Board.]

* * * * *

SEC. 2. DEFINITIONS.

(a) **IN GENERAL.**—Except as otherwise specifically provided in this Act, in this Act, the following definitions shall apply:

(1) **APPROPRIATE STATE REGULATORY AUTHORITY.**—The term “appropriate State regulatory authority” means the State agency or other authority responsible for the licensure or other regulation of the practice of accounting in the State or States having jurisdiction over a registered public accounting firm or associated person thereof, with respect to the matter in question.

(2) **AUDIT.**—The term “audit” means an examination of the financial statements of any issuer by an independent public accounting firm in accordance with the rules of the Board or the Commission (or, for the period preceding the adoption of applicable rules of the Board under section 103, in accordance with then-applicable generally accepted auditing and related standards for such purposes), for the purpose of expressing an opinion on such statements.

(3) **AUDIT COMMITTEE.**—The term “audit committee” means—

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

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

(4) **AUDIT REPORT.**—The term “audit report” means a document or other record—

(A) prepared following an audit performed for purposes of compliance by an issuer with the requirements of the securities laws; and

(B) in which a public accounting firm either—

(i) sets forth the opinion of that firm regarding a financial statement, report, or other document; or

(ii) asserts that no such opinion can be expressed.

(5) **BOARD.**—The term “Board” means the Public Company Accounting Oversight Board established under section 101.

(6) **COMMISSION.**—The term “Commission” means the Securities and Exchange Commission.

(7) **ISSUER.**—The term “issuer” means an issuer (as defined in section 3 of the Securities Exchange Act of 1934 (15 U.S.C.

78c)), the securities of which are registered under section 12 of that Act (15 U.S.C. 78l), or that is required to file reports under section 15(d) (15 U.S.C. 78o(d)), or that files or has filed a registration statement that has not yet become effective under the Securities Act of 1933 (15 U.S.C. 77a et seq.), and that it has not withdrawn.

(8) NON-AUDIT SERVICES.—The term “non-audit services” means any professional services provided to an issuer by a registered public accounting firm, other than those provided to an issuer in connection with an audit or a review of the financial statements of an issuer.

(9) PERSON ASSOCIATED WITH A PUBLIC ACCOUNTING FIRM.—

(A) IN GENERAL.—The terms “person associated with a public accounting firm” (or with a “registered public accounting firm”) and “associated person of a public accounting firm” (or of a “registered public accounting firm”) mean any individual proprietor, partner, shareholder, principal, accountant, or other professional employee of a public accounting firm, or any other independent contractor or entity that, in connection with the preparation or issuance of any audit report—

(i) shares in the profits of, or receives compensation in any other form from, that firm; or

(ii) participates as agent or otherwise on behalf of such accounting firm in any activity of that firm.

(B) EXEMPTION AUTHORITY.—The Board may, by rule, exempt persons engaged only in ministerial tasks from the definition in subparagraph (A), to the extent that the Board determines that any such exemption is consistent with the purposes of this Act, the public interest, or the protection of investors.

(C) INVESTIGATIVE AND ENFORCEMENT AUTHORITY.—For purposes of sections 3(c) [1, 101(c), 105, and 107(c) and the rules of the Board and Commission issued thereunder] and 101(c) and the rules of the Commission thereunder, except to the extent specifically excepted by such rules, the terms defined in subparagraph (A) shall include any person associated, seeking to become associated, or formerly associated with a public accounting firm, except that—

(i) the authority to conduct an investigation of such person under section 105(b) shall apply only with respect to any act or practice, or omission to act, by the person while such person was associated or seeking to become associated with a registered public accounting firm; and

(ii) the authority to commence a disciplinary proceeding under section 105(c)(1), or impose sanctions under section 105(c)(4), against such person shall apply only with respect to—

(I) conduct occurring while such person was associated or seeking to become associated with a registered public accounting firm; or

(II) non-cooperation, as described in section 105(b)(3), with respect to a demand in a Board investigation for testimony, documents, or other in-

formation relating to a period when such person was associated or seeking to become associated with a registered public accounting firm.

(10) **PROFESSIONAL STANDARDS.**—The term “professional standards” means—

(A) accounting principles that are—

(i) established by the standard setting body described in section 19(b) of the Securities Act of 1933, as amended by this Act, or prescribed by the Commission under section 19(a) of that Act (15 U.S.C. 17a(s)) or section 13(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78a(m)); and

(ii) relevant to audit reports for particular issuers, or dealt with in the quality control system of a particular registered public accounting firm; and

(B) auditing standards, standards for attestation engagements, quality control policies and procedures, ethical and competency standards, and independence standards (including rules implementing title II) that the Board or the Commission determines—

(i) relate to the preparation or issuance of audit reports for issuers; and

(ii) are established or adopted by the Board under section 103(a), or are promulgated as rules of the Commission.

(11) **PUBLIC ACCOUNTING FIRM.**—The term “public accounting firm” means—

(A) a proprietorship, partnership, incorporated association, corporation, limited liability company, limited liability partnership, or other legal entity that is engaged in the practice of public accounting or preparing or issuing audit reports; and

(B) to the extent so designated by the rules of the Board, any associated person of any entity described in subparagraph (A).

(12) **REGISTERED PUBLIC ACCOUNTING FIRM.**—The term “registered public accounting firm” means a public accounting firm registered with the Board in accordance with this Act.

(13) **RULES OF THE BOARD.**—The term “rules of the Board” means the bylaws and rules of the Board (as submitted to, and approved, modified, or amended by the Commission, in accordance with section 107), and those stated policies, practices, and interpretations of the Board that the Commission, by rule, may deem to be rules of the Board, as necessary or appropriate in the public interest or for the protection of investors.

(14) **SECURITY.**—The term “security” has the same meaning as in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)).

(15) **SECURITIES LAWS.**—The term “securities laws” means the provisions of law referred to in section 3(a)(47) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(47)), as amended by this Act, and includes the rules, regulations, and orders issued by the Commission thereunder.

(16) **STATE.**—The term “State” means any State of the United States, the District of Columbia, Puerto Rico, the Virgin

Islands, or any other territory or possession of the United States.

(17) FOREIGN AUDITOR OVERSIGHT AUTHORITY.—The term “foreign auditor oversight authority” means any governmental body or other entity empowered by a foreign government to conduct inspections of public accounting firms or otherwise to administer or enforce laws related to the regulation of public accounting firms.

(b) CONFORMING AMENDMENT.—

* * * * *

TITLE I— [PUBLIC COMPANY ACCOUNTING OVERSIGHT BOARD] OFFICE OF PUBLIC ACCOUNTING OVERSIGHT

SEC. 101. ESTABLISHMENT; ADMINISTRATIVE PROVISIONS.

[(a) ESTABLISHMENT OF BOARD.—There is established the Public Company Accounting Oversight Board, to oversee the audit of companies that are subject to the securities laws, and related matters, in order to protect the interests of investors and further the public interest in the preparation of informative, accurate, and independent audit reports. The Board shall be a body corporate, operate as a nonprofit corporation, and have succession until dissolved by an Act of Congress.]

[(b) STATUS.—The Board shall not be an agency or establishment of the United States Government, and, except as otherwise provided in this Act, shall be subject to, and have all the powers conferred upon a nonprofit corporation by, the District of Columbia Nonprofit Corporation Act. No member or person employed by, or agent for, the Board shall be deemed to be an officer or employee of or agent for the Federal Government by reason of such service.]

(a) *ESTABLISHMENT OF OFFICE.*—*There is established in the Office of the Chief Accountant of the Commission an Office of Public Accounting Oversight, to oversee the audit of companies that are subject to the securities laws, and related matters, in order to protect the interests of investors and further the public interest in the preparation of informative, accurate, and independent audit reports.*

(b) *DIRECTOR.*—*The Chief Accountant of the Office of the Chief Accountant of the Commission shall serve as the Director of the Office of Public Accounting Oversight.*

(c) DUTIES OF [THE BOARD] *THE OFFICE.*—[The Board] *The Office shall* [, subject to action by the Commission under section 107, and once a determination is made by the Commission under subsection (d) of this section]—

(1) register public accounting firms that prepare audit reports for issuers, brokers, and dealers, in accordance with section 102;

(2) establish or adopt, or both, by rule, auditing, quality control, ethics, independence, and other standards relating to the preparation of audit reports for issuers, brokers, and dealers, in accordance with section 103;

(3) conduct inspections of registered public accounting firms, in accordance with **[section 104]** *subsection (e)* and the rules of **[the Board]** *the Office*;

(4) conduct investigations and disciplinary proceedings concerning, and impose appropriate sanctions where justified upon, registered public accounting firms and associated persons of such firms, in accordance with **[section 105]** *subsection (f)*;

(5) perform such other duties or functions as **[the Board (or the Commission, by rule or order)]** *the Commission* determines are necessary or appropriate to promote high professional standards among, and improve the quality of audit services offered by, registered public accounting firms and associated persons thereof, or otherwise to carry out this Act, in order to protect investors, or to further the public interest; *and*

(6) enforce compliance with this Act, **[the rules of the Board]** *the rules of the Commission*, professional standards, and the securities laws relating to the preparation and issuance of audit reports and the obligations and liabilities of accountants with respect thereto, by registered public accounting firms and associated persons thereof; **[; and]**.

[(7) set the budget and manage the operations of the Board and the staff of the Board.**]**

(d) COMMISSION DETERMINATION.—**[**The members of the Board] *The Chief Accountant of the Office of the Chief Accountant of the Commission* shall take such action (including hiring of staff, proposal of rules, and adoption of initial and transitional auditing and other professional standards) as may be necessary or appropriate to enable the Commission to determine, not later than **[270 days after the date of enactment of this Act]** *1 year after the date of the enactment of the Streamlining Public Company Accounting Oversight Act*, that **[the Board]** *the Office* is so organized and has the capacity to carry out the requirements of this title, and to enforce compliance with this title by registered public accounting firms and associated persons thereof. **[**The Commission shall be responsible, prior to the appointment of the Board, for the planning for the establishment and administrative transition to the Board's operation.**]**

[(e) BOARD MEMBERSHIP.—

[(1) COMPOSITION.—The Board shall have 5 members, appointed from among prominent individuals of integrity and reputation who have a demonstrated commitment to the interests of investors and the public, and an understanding of the responsibilities for and nature of the financial disclosures required of issuers, brokers, and dealers under the securities laws and the obligations of accountants with respect to the preparation and issuance of audit reports with respect to such disclosures.

[(2) LIMITATION.—Two members, and only 2 members, of the Board shall be or have been certified public accountants pursuant to the laws of 1 or more States, provided that, if 1 of those 2 members is the chairperson, he or she may not have been a practicing certified public accountant for at least 5 years prior to his or her appointment to the Board.

[(3) FULL-TIME INDEPENDENT SERVICE.—Each member of the Board shall serve on a full-time basis, and may not, concurrent with service on the Board, be employed by any other person or engage in any other professional or business activity. No member of the Board may share in any of the profits of, or receive payments from, a public accounting firm (or any other person, as determined by rule of the Commission), other than fixed continuing payments, subject to such conditions as the Commission may impose, under standard arrangements for the retirement of members of public accounting firms.

[(4) APPOINTMENT OF BOARD MEMBERS.—

[(A) INITIAL BOARD.—Not later than 90 days after the date of enactment of this Act, the Commission, after consultation with the Chairman of the Board of Governors of the Federal Reserve System and the Secretary of the Treasury, shall appoint the chairperson and other initial members of the Board, and shall designate a term of service for each.

[(B) VACANCIES.—A vacancy on the Board shall not affect the powers of the Board, but shall be filled in the same manner as provided for appointments under this section.

[(5) TERM OF SERVICE.—

[(A) IN GENERAL.—The term of service of each Board member shall be 5 years, and until a successor is appointed, except that—

[(i) the terms of office of the initial Board members (other than the chairperson) shall expire in annual increments, 1 on each of the first 4 anniversaries of the initial date of appointment; and

[(ii) any Board member appointed to fill a vacancy occurring before the expiration of the term for which the predecessor was appointed shall be appointed only for the remainder of that term.

[(B) TERM LIMITATION.—No person may serve as a member of the Board, or as chairperson of the Board, for more than 2 terms, whether or not such terms of service are consecutive.

[(6) REMOVAL FROM OFFICE.—A member of the Board may be removed by the Commission from office, in accordance with section 107(d)(3), for good cause shown before the expiration of the term of that member.

[(f) POWERS OF THE BOARD.—In addition to any authority granted to the Board otherwise in this Act, the Board shall have the power, subject to section 107—

[(1) to sue and be sued, complain and defend, in its corporate name and through its own counsel, with the approval of the Commission, in any Federal, State, or other court;

[(2) to conduct its operations and maintain offices, and to exercise all other rights and powers authorized by this Act, in any State, without regard to any qualification, licensing, or other provision of law in effect in such State (or a political subdivision thereof);

[(3) to lease, purchase, accept gifts or donations of or otherwise acquire, improve, use, sell, exchange, or convey, all of or an interest in any property, wherever situated;

[(4) to appoint such employees, accountants, attorneys, and other agents as may be necessary or appropriate, and to determine their qualifications, define their duties, and fix their salaries or other compensation (at a level that is comparable to private sector self-regulatory, accounting, technical, supervisory, or other staff or management positions);

[(5) to allocate, assess, and collect accounting support fees established pursuant to section 109, for the Board, and other fees and charges imposed under this title; and

[(6) to enter into contracts, execute instruments, incur liabilities, and do any and all other acts and things necessary, appropriate, or incidental to the conduct of its operations and the exercise of its obligations, rights, and powers imposed or granted by this title.

[(g) RULES OF THE BOARD.—The rules of the Board shall, subject to the approval of the Commission—

[(1) provide for the operation and administration of the Board, the exercise of its authority, and the performance of its responsibilities under this Act;

[(2) permit, as the Board determines necessary or appropriate, delegation by the Board of any of its functions to an individual member or employee of the Board, or to a division of the Board, including functions with respect to hearing, determining, ordering, certifying, reporting, or otherwise acting as to any matter, except that—

[(A) the Board shall retain a discretionary right to review any action pursuant to any such delegated function, upon its own motion;

[(B) a person shall be entitled to a review by the Board with respect to any matter so delegated, and the decision of the Board upon such review shall be deemed to be the action of the Board for all purposes (including appeal or review thereof); and

[(C) if the right to exercise a review described in subparagraph (A) is declined, or if no such review is sought within the time stated in the rules of the Board, then the action taken by the holder of such delegation shall for all purposes, including appeal or review thereof, be deemed to be the action of the Board;

[(3) establish ethics rules and standards of conduct for Board members and staff, including a bar on practice before the Board (and the Commission, with respect to Board-related matters) of 1 year for former members of the Board, and appropriate periods (not to exceed 1 year) for former staff of the Board; and

[(4) provide as otherwise required by this Act.]

(e) *INSPECTIONS OF REGISTERED PUBLIC ACCOUNTING FIRMS.—The Office shall conduct a continuing program of inspections to assess the degree of compliance of each registered public accounting firm and associated persons of that firm with this Act, the rules of the Commission, or professional standards, in connection with its*

performance of audits, issuance of audit reports, and related matters involving issuers.

(f) *INVESTIGATIONS AND DISCIPLINARY PROCEEDINGS.*—*The Commission shall establish, by rule, fair procedures for the investigation and disciplining of registered public accounting firms and associated persons of such firms.*

[(h)] (g) ANNUAL REPORT TO THE COMMISSION.—**[The Board] The Office** shall submit an annual report (including its audited financial statements) to the Commission, and the Commission shall transmit a copy of that report to the Committee on Banking, Housing, and Urban Affairs of the Senate, and the Committee on Financial Services of the House of Representatives, not later than 30 days after the date of receipt of that report by the Commission.

SEC. 102. REGISTRATION WITH [THE BOARD] THE OFFICE.

(a) **MANDATORY REGISTRATION.**—It shall be unlawful for any person that is not a registered public accounting firm to prepare or issue, or to participate in the preparation or issuance of, any audit report with respect to any issuer, broker, or dealer.

(b) **APPLICATIONS FOR REGISTRATION.**—

(1) **FORM OF APPLICATION.**—A public accounting firm shall use such form as **[the Board] the Office** may prescribe, by rule, to apply for registration under this section.

(2) **CONTENTS OF APPLICATIONS.**—Each public accounting firm shall submit, as part of its application for registration, in such detail as **[the Board] the Office** shall specify—

(A) the names of all issuers, brokers, and dealers for which the firm prepared or issued audit reports during the immediately preceding calendar year, and for which the firm expects to prepare or issue audit reports during the current calendar year;

(B) the annual fees received by the firm from each such issuer, broker, or dealer for audit services, other accounting services, and non-audit services, respectively;

(C) such other current financial information for the most recently completed fiscal year of the firm as **[the Board] the Office** may reasonably request;

(D) a statement of the quality control policies of the firm for its accounting and auditing practices;

(E) a list of all accountants associated with the firm who participate in or contribute to the preparation of audit reports, stating the license or certification number of each such person, as well as the State license numbers of the firm itself;

(F) information relating to criminal, civil, or administrative actions or disciplinary proceedings pending against the firm or any associated person of the firm in connection with any audit report;

(G) copies of any periodic or annual disclosure filed by an issuer, broker, or dealer with the Commission during the immediately preceding calendar year which discloses accounting disagreements between such issuer, broker, or dealer and the firm in connection with an audit report furnished or prepared by the firm for such issuer, broker, or dealer; and

(H) such other information as the rules of **[the Board or the]** Commission shall specify as necessary or appropriate in the public interest or for the protection of investors.

(3) CONSENTS.—Each application for registration under this subsection shall include—

(A) a consent executed by the public accounting firm to cooperation in and compliance with any request for testimony or the production of documents made by **[the Board]** *the Office* in the furtherance of its authority and responsibilities under this title (and an agreement to secure and enforce similar consents from each of the associated persons of the public accounting firm as a condition of their continued employment by or other association with such firm); and

(B) a statement that such firm understands and agrees that cooperation and compliance, as described in the consent required by subparagraph (A), and the securing and enforcement of such consents from its associated persons, in accordance with the rules of **[the Board]** *the Office*, shall be a condition to the continuing effectiveness of the registration of the firm with **[the Board]** *the Office*.

(c) ACTION ON APPLICATIONS.—

(1) TIMING.—**[The Board]** *The Office* shall approve a completed application for registration not later than 45 days after the date of receipt of the application, in accordance with the rules of **[the Board]** *the Office*, unless **[the Board]** *the Office*, prior to such date, issues a written notice of disapproval to, or requests more information from, the prospective registrant.

(2) TREATMENT.—A written notice of disapproval of a completed application under paragraph (1) for registration shall be treated as a disciplinary sanction **[for purposes of sections 105(d) and 107(c)]**.

(d) PERIODIC REPORTS.—Each registered public accounting firm shall submit an annual report to **[the Board]** *the Office*, and may be required to report more frequently, as necessary to update the information contained in its application for registration under this section, and to provide to **[the Board]** *the Office* such additional information as **[the Board]** *the Office* or the Commission may specify, in accordance with subsection (b)(2).

(e) PUBLIC AVAILABILITY.—Registration applications and annual reports required by this subsection, or such portions of such applications or reports as may be designated under rules of **[the Board]** *the Office*, shall be made available for public inspection, subject to rules of **[the Board]** *the Office* or the Commission, and to applicable laws relating to the confidentiality of proprietary, personal, or other information contained in such applications or reports, provided that, in all events, **[the Board]** *the Office* shall protect from public disclosure information reasonably identified by the subject accounting firm as proprietary information.

(f) REGISTRATION AND ANNUAL FEES.—**[The Board]** *The Office* shall assess and collect a registration fee and an annual fee from each registered public accounting firm, in amounts that are sufficient to recover the costs of processing and reviewing applications and annual reports.

SEC. 103. AUDITING, QUALITY CONTROL, [AND INDEPENDENCE STANDARDS] STANDARDS, AND RULES.

(a) AUDITING, QUALITY CONTROL, AND ETHICS STANDARDS.—

(1) IN GENERAL.—**[The Board]** *The Office* shall, by rule, establish, including, to the extent it determines appropriate, through adoption of standards proposed by 1 or more professional groups of accountants designated pursuant to paragraph (3)(A) or advisory groups convened pursuant to paragraph (4), and amend or otherwise modify or alter, such auditing and related attestation standards, such quality control standards, such ethics standards, and such independence standards to be used by registered public accounting firms in the preparation and issuance of audit reports, as required by this Act or the rules of the Commission, or as may be necessary or appropriate in the public interest or for the protection of investors.

(2) RULE REQUIREMENTS.—In carrying out paragraph (1), **[the Board]** *the Office*—

(A) shall include in the auditing standards that it adopts, requirements that each registered public accounting firm shall—

(i) prepare, and maintain for a period of not less than 7 years, audit work papers, and other information related to any audit report, in sufficient detail to support the conclusions reached in such report;

(ii) provide a concurring or second partner review and approval of such audit report (and other related information), and concurring approval in its issuance, by a qualified person (as prescribed by **[the Board]** *the Office*) associated with the public accounting firm, other than the person in charge of the audit, or by an independent reviewer (as prescribed by **[the Board]** *the Office*); and

(iii) in each audit report for an issuer, describe the scope of the auditor's testing of the internal control structure and procedures of the issuer, required by section 404(b), and present (in such report or in a separate report)—

(I) the findings of the auditor from such testing;

(II) an evaluation of whether such internal control structure and procedures—

(aa) include maintenance of records that in reasonable detail accurately and fairly reflect the transactions and dispositions of the assets of the issuer;

(bb) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the issuer are being made only in accordance with authorizations of management and directors of the issuer; and

(III) a description, at a minimum, of material weaknesses in such internal controls, and of any

material noncompliance found on the basis of such testing.

(B) shall include, in the quality control standards that it adopts with respect to the issuance of audit reports, requirements for every registered public accounting firm relating to—

- (i) monitoring of professional ethics and independence from issuers, brokers, and dealers on behalf of which the firm issues audit reports;
- (ii) consultation within such firm on accounting and auditing questions;
- (iii) supervision of audit work;
- (iv) hiring, professional development, and advancement of personnel;
- (v) the acceptance and continuation of engagements;
- (vi) internal inspection; and
- (vii) such other requirements as **the Board** *the Office* may prescribe, subject to subsection (a)(1).

(3) AUTHORITY TO ADOPT OTHER STANDARDS.—

(A) IN GENERAL.—In carrying out this subsection, **the Board** *the Office*—

(i) may adopt as its rules, subject to the terms of section 107, any portion of any statement of auditing standards or other professional standards that **the Board** *the Office* determines satisfy the requirements of paragraph (1), and that were proposed by 1 or more professional groups of accountants that shall be designated or recognized by **the Board** *the Office*, by rule, for such purpose, pursuant to this paragraph or 1 or more advisory groups convened pursuant to paragraph (4); and

(ii) notwithstanding clause (i), shall retain full authority to modify, supplement, revise, or subsequently amend, modify, or repeal, in whole or in part, any portion of any statement described in clause (i).

[(B) INITIAL AND TRANSITIONAL STANDARDS.—The Board shall adopt standards described in subparagraph (A)(i) as initial or transitional standards, to the extent the Board determines necessary, prior to a determination of the Commission under section 101(d), and such standards shall be separately approved by the Commission at the time of that determination, without regard to the procedures required by section 107 that otherwise would apply to the approval of rules of the Board.]

[(C) (B) TRANSITION PERIOD FOR EMERGING GROWTH COMPANIES.—Any rules of the Board the Office requiring mandatory audit firm rotation or a supplement to the auditor's report in which the auditor would be required to provide additional information about the audit and the financial statements of the issuer (auditor discussion and analysis) shall not apply to an audit of an emerging growth company, as defined in section 3 of the Securities Exchange Act of 1934. Any additional rules adopted by the Board the Office after the date of enactment of this subparagraph shall not apply to an audit of any emerging

growth company, unless the Commission determines that the application of such additional requirements is necessary or appropriate in the public interest, after considering the protection of investors and whether the action will promote efficiency, competition, and capital formation.

(4) **ADVISORY GROUPS.**—**[The Board]** *The Office* shall convene, or authorize its staff to convene, such expert advisory groups as may be appropriate, which may include practicing accountants and other experts, as well as representatives of other interested groups, subject to such rules as **[the Board]** *the Office* may prescribe to prevent conflicts of interest, to make recommendations concerning the content (including proposed drafts) of auditing, quality control, ethics, independence, or other standards required to be established under this section.

(b) **INDEPENDENCE STANDARDS AND RULES.**—**[The Board]** *The Office* shall establish such rules as may be necessary or appropriate in the public interest or for the protection of investors, to implement, or as authorized under, title II of this Act.

(c) **COOPERATION WITH DESIGNATED PROFESSIONAL GROUPS OF ACCOUNTANTS AND ADVISORY GROUPS.**—

(1) **IN GENERAL.**—**[The Board]** *The Office* shall cooperate on an ongoing basis with professional groups of accountants designated under subsection (a)(3)(A) and advisory groups convened under subsection (a)(4) in the examination of the need for changes in any standards subject to its authority under subsection (a), recommend issues for inclusion on the agendas of such designated professional groups of accountants or advisory groups, and take such other steps as it deems appropriate to increase the effectiveness of the standard setting process.

(2) **[BOARD] OFFICE RESPONSES.**—**[The Board]** *The Office* shall respond in a timely fashion to requests from designated professional groups of accountants and advisory groups referred to in paragraph (1) for any changes in standards over which **[the Board]** *the Office* has authority.

(d) **EVALUATION OF STANDARD SETTING PROCESS.**—**[The Board]** *The Office* shall include in the annual report required by section **[101(h)] 101(g)** the results of its standard setting responsibilities during the period to which the report relates, including a discussion of the work of **[the Board]** *the Office* with any designated professional groups of accountants and advisory groups described in paragraphs (3)(A) and (4) of subsection (a), and its pending issues agenda for future standard setting projects.

[SEC. 104. INSPECTIONS OF REGISTERED PUBLIC ACCOUNTING FIRMS.

[(a) IN GENERAL.—

[(1) INSPECTIONS GENERALLY.—The Board shall conduct a continuing program of inspections to assess the degree of compliance of each registered public accounting firm and associated persons of that firm with this Act, the rules of the Board, the rules of the Commission, or professional standards, in connection with its performance of audits, issuance of audit reports, and related matters involving issuers.

[(2) INSPECTIONS OF AUDIT REPORTS FOR BROKERS AND DEALERS.—

[(A) The Board may, by rule, conduct and require a program of inspection in accordance with paragraph (1), on a basis to be determined by the Board, of registered public accounting firms that provide one or more audit reports for a broker or dealer. The Board, in establishing such a program, may allow for differentiation among classes of brokers and dealers, as appropriate.

[(B) If the Board determines to establish a program of inspection pursuant to subparagraph (A), the Board shall consider in establishing any inspection schedules whether differing schedules would be appropriate with respect to registered public accounting firms that issue audit reports only for one or more brokers or dealers that do not receive, handle, or hold customer securities or cash or are not a member of the Securities Investor Protection Corporation.

[(C) Any rules of the Board pursuant to this paragraph shall be subject to prior approval by the Commission pursuant to section 107(b) before the rules become effective, including an opportunity for public notice and comment.

[(D) Notwithstanding anything to the contrary in section 102 of this Act, a public accounting firm shall not be required to register with the Board if the public accounting firm is exempt from the inspection program which may be established by the Board under subparagraph (A).

[(b) INSPECTION FREQUENCY.—

[(1) IN GENERAL.—Subject to paragraph (2), inspections required by this section shall be conducted—

[(A) annually with respect to each registered public accounting firm that regularly provides audit reports for more than 100 issuers; and

[(B) not less frequently than once every 3 years with respect to each registered public accounting firm that regularly provides audit reports for 100 or fewer issuers.

[(2) ADJUSTMENTS TO SCHEDULES.—The Board may, by rule, adjust the inspection schedules set under paragraph (1) if the Board finds that different inspection schedules are consistent with the purposes of this Act, the public interest, and the protection of investors. The Board may conduct special inspections at the request of the Commission or upon its own motion.

[(c) PROCEDURES.—The Board shall, in each inspection under this section, and in accordance with its rules for such inspections—

[(1) identify any act or practice or omission to act by the registered public accounting firm, or by any associated person thereof, revealed by such inspection that may be in violation of this Act, the rules of the Board, the rules of the Commission, the firm's own quality control policies, or professional standards;

[(2) report any such act, practice, or omission, if appropriate, to the Commission and each appropriate State regulatory authority; and

[(3) begin a formal investigation or take disciplinary action, if appropriate, with respect to any such violation, in accordance with this Act and the rules of the Board.

[(d) CONDUCT OF INSPECTIONS.—In conducting an inspection of a registered public accounting firm under this section, the Board shall—

[(1) inspect and review selected audit and review engagements of the firm (which may include audit engagements that are the subject of ongoing litigation or other controversy between the firm and 1 or more third parties), performed at various offices and by various associated persons of the firm, as selected by the Board;

[(2) evaluate the sufficiency of the quality control system of the firm, and the manner of the documentation and communication of that system by the firm; and

[(3) perform such other testing of the audit, supervisory, and quality control procedures of the firm as are necessary or appropriate in light of the purpose of the inspection and the responsibilities of the Board.

[(e) RECORD RETENTION.—The rules of the Board may require the retention by registered public accounting firms for inspection purposes of records whose retention is not otherwise required by section 103 or the rules issued thereunder.

[(f) PROCEDURES FOR REVIEW.—The rules of the Board shall provide a procedure for the review of and response to a draft inspection report by the registered public accounting firm under inspection. The Board shall take such action with respect to such response as it considers appropriate (including revising the draft report or continuing or supplementing its inspection activities before issuing a final report), but the text of any such response, appropriately redacted to protect information reasonably identified by the accounting firm as confidential, shall be attached to and made part of the inspection report.

[(g) REPORT.—A written report of the findings of the Board for each inspection under this section, subject to subsection (h), shall be—

[(1) transmitted, in appropriate detail, to the Commission and each appropriate State regulatory authority, accompanied by any letter or comments by the Board or the inspector, and any letter of response from the registered public accounting firm; and

[(2) made available in appropriate detail to the public (subject to section 105(b)(5)(A), and to the protection of such confidential and proprietary information as the Board may determine to be appropriate, or as may be required by law), except that no portions of the inspection report that deal with criticisms of or potential defects in the quality control systems of the firm under inspection shall be made public if those criticisms or defects are addressed by the firm, to the satisfaction of the Board, not later than 12 months after the date of the inspection report.

[(h) INTERIM COMMISSION REVIEW.—

[(1) REVIEWABLE MATTERS.—A registered public accounting firm may seek review by the Commission, pursuant to such rules as the Commission shall promulgate, if the firm—

[(A) has provided the Board with a response, pursuant to rules issued by the Board under subsection (f), to the substance of particular items in a draft inspection report,

and disagrees with the assessments contained in any final report prepared by the Board following such response; or

[(B) disagrees with the determination of the Board that criticisms or defects identified in an inspection report have not been addressed to the satisfaction of the Board within 12 months of the date of the inspection report, for purposes of subsection (g)(2).

[(2) TREATMENT OF REVIEW.—Any decision of the Commission with respect to a review under paragraph (1) shall not be reviewable under section 25 of the Securities Exchange Act of 1934 (15 U.S.C. 78y), or deemed to be “final agency action” for purposes of section 704 of title 5, United States Code.

[(3) TIMING.—Review under paragraph (1) may be sought during the 30-day period following the date of the event giving rise to the review under subparagraph (A) or (B) of paragraph (1).

[(i) DISCLOSURE REGARDING FOREIGN JURISDICTIONS THAT PREVENT INSPECTIONS.—

[(1) DEFINITIONS.—In this subsection—

[(A) the term “covered issuer” means an issuer that is required to file reports under section 13 or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m, 78o(d)); and

[(B) the term “non-inspection year” means, with respect to a covered issuer, a year—

[(i) during which the Commission identifies the covered issuer under paragraph (2)(A) with respect to every report described in subparagraph (A) filed by the covered issuer during that year; and

[(ii) that begins after the date of enactment of this subsection.

[(2) DISCLOSURE TO COMMISSION.—The Commission shall—

[(A) identify each covered issuer that, with respect to the preparation of the audit report on the financial statement of the covered issuer that is included in a report described in paragraph (1)(A) filed by the covered issuer, retains a registered public accounting firm that has a branch or office that—

[(i) is located in a foreign jurisdiction; and

[(ii) the Board is unable to inspect or investigate completely because of a position taken by an authority in a foreign jurisdiction, as determined by the Board; and

[(B) require each covered issuer identified under subparagraph (A) to, in accordance with the rules issued by the Commission under paragraph (4), submit to the Commission documentation that establishes that the covered issuer is not owned or controlled by a governmental entity in the foreign jurisdiction described in subparagraph (A)(i).

[(3) TRADING PROHIBITION AFTER 2 YEARS OF NON-INSPECTIONS.—

[(A) IN GENERAL.—If the Commission determines that a covered issuer has 2 consecutive non-inspection years, the Commission shall prohibit the securities of the covered issuer from being traded—

[(i) on a national securities exchange; or

[(i) through any other method that is within the jurisdiction of the Commission to regulate, including through the method of trading that is commonly referred to as the “over-the-counter” trading of securities.

[(B) REMOVAL OF INITIAL PROHIBITION.—If, after the Commission imposes a prohibition on a covered issuer under subparagraph (A), the covered issuer certifies to the Commission that the covered issuer has retained a registered public accounting firm that the Board has inspected under this section to the satisfaction of the Commission, the Commission shall end that prohibition.

[(C) RECURRENCE OF NON-INSPECTION YEARS.—If, after the Commission ends a prohibition under subparagraph (B) or (D) with respect to a covered issuer, the Commission determines that the covered issuer has a non-inspection year, the Commission shall prohibit the securities of the covered issuer from being traded—

[(i) on a national securities exchange; or

[(ii) through any other method that is within the jurisdiction of the Commission to regulate, including through the method of trading that is commonly referred to as the “over-the-counter” trading of securities.

[(D) REMOVAL OF SUBSEQUENT PROHIBITION.—If, after the end of the 5-year period beginning on the date on which the Commission imposes a prohibition on a covered issuer under subparagraph (C), the covered issuer certifies to the Commission that the covered issuer will retain a registered public accounting firm that the Board is able to inspect under this section, the Commission shall end that prohibition.

[(4) RULES.—Not later than 90 days after the date of enactment of this subsection, the Commission shall issue rules that establish the manner and form in which a covered issuer shall make a submission required under paragraph (2)(B).

[SEC. 105. INVESTIGATIONS AND DISCIPLINARY PROCEEDINGS.

[(a) IN GENERAL.—The Board shall establish, by rule, subject to the requirements of this section, fair procedures for the investigation and disciplining of registered public accounting firms and associated persons of such firms.

[(b) INVESTIGATIONS.—

[(1) AUTHORITY.—In accordance with the rules of the Board, the Board may conduct an investigation of any act or practice, or omission to act, by a registered public accounting firm, any associated person of such firm, or both, that may violate any provision of this Act, the rules of the Board, the provisions of the securities laws relating to the preparation and issuance of audit reports and the obligations and liabilities of accountants with respect thereto, including the rules of the Commission issued under this Act, or professional standards, regardless of how the act, practice, or omission is brought to the attention of the Board.

[(2) TESTIMONY AND DOCUMENT PRODUCTION.—In addition to such other actions as the Board determines to be necessary or appropriate, the rules of the Board may—

[(A) require the testimony of the firm or of any person associated with a registered public accounting firm, with respect to any matter that the Board considers relevant or material to an investigation;

[(B) require the production of audit work papers and any other document or information in the possession of a registered public accounting firm or any associated person thereof, wherever domiciled, that the Board considers relevant or material to the investigation, and may inspect the books and records of such firm or associated person to verify the accuracy of any documents or information supplied;

[(C) request the testimony of, and production of any document in the possession of, any other person, including any client of a registered public accounting firm that the Board considers relevant or material to an investigation under this section, with appropriate notice, subject to the needs of the investigation, as permitted under the rules of the Board; and

[(D) provide for procedures to seek issuance by the Commission, in a manner established by the Commission, of a subpoena to require the testimony of, and production of any document in the possession of, any person, including any client of a registered public accounting firm, that the Board considers relevant or material to an investigation under this section.

[(3) NONCOOPERATION WITH INVESTIGATIONS.—

[(A) IN GENERAL.—If a registered public accounting firm or any associated person thereof refuses to testify, produce documents, or otherwise cooperate with the Board in connection with an investigation under this section, the Board may—

[(i) suspend or bar such person from being associated with a registered public accounting firm, or require the registered public accounting firm to end such association;

[(ii) suspend or revoke the registration of the public accounting firm; and

[(iii) invoke such other lesser sanctions as the Board considers appropriate, and as specified by rule of the Board.

[(B) PROCEDURE.—Any action taken by the Board under this paragraph shall be subject to the terms of section 107(c).

[(4) COORDINATION AND REFERRAL OF INVESTIGATIONS.—

[(A) COORDINATION.—The Board shall notify the Commission of any pending Board investigation involving a potential violation of the securities laws, and thereafter coordinate its work with the work of the Commission's Division of Enforcement, as necessary to protect an ongoing Commission investigation.

[(B) REFERRAL.—The Board may refer an investigation under this section—

[(i) to the Commission;

[(ii) to a self-regulatory organization, in the case of an investigation that concerns an audit report for a broker or dealer that is under the jurisdiction of such self-regulatory organization;

[(iii) to any other Federal functional regulator (as defined in section 509 of the Gramm-Leach-Bliley Act (15 U.S.C. 6809)), in the case of an investigation that concerns an audit report for an institution that is subject to the jurisdiction of such regulator; and

[(iv) at the direction of the Commission, to—

[(I) the Attorney General of the United States;

[(II) the attorney general of 1 or more States;

and

[(III) the appropriate State regulatory authority.

[(5) USE OF DOCUMENTS.—

[(A) CONFIDENTIALITY.—Except as provided in subparagraphs (B) and (C), all documents and information prepared or received by or specifically for the Board, and deliberations of the Board and its employees and agents, in connection with an inspection under section 104 or with an investigation under this section, shall be confidential and privileged as an evidentiary matter (and shall not be subject to civil discovery or other legal process) in any proceeding in any Federal or State court or administrative agency, and shall be exempt from disclosure, in the hands of an agency or establishment of the Federal Government, under the Freedom of Information Act (5 U.S.C. 552a), or otherwise, unless and until presented in connection with a public proceeding or released in accordance with subsection (c).

[(B) AVAILABILITY TO GOVERNMENT AGENCIES.—Without the loss of its status as confidential and privileged in the hands of the Board, all information referred to in subparagraph (A) may—

[(i) be made available to the Commission; and

[(ii) in the discretion of the Board, when determined by the Board to be necessary to accomplish the purposes of this Act or to protect investors, be made available to—

[(I) the Attorney General of the United States;

[(II) the appropriate Federal functional regulator (as defined in section 509 of the Gramm-Leach-Bliley Act (15 U.S.C. 6809)), other than the Commission, and the Director of the Federal Housing Finance Agency, with respect to an audit report for an institution subject to the jurisdiction of such regulator;

[(III) State attorneys general in connection with any criminal investigation;

[(IV) any appropriate State regulatory authority; and

[(V) a self-regulatory organization, with respect to an audit report for a broker or dealer that is under the jurisdiction of such self-regulatory organization, each of which shall maintain such information as confidential and privileged.

[(C) AVAILABILITY TO FOREIGN OVERSIGHT AUTHORITIES.—Without the loss of its status as confidential and privileged in the hands of the Board, all information referred to in subparagraph (A) that relates to a public accounting firm that a foreign government has empowered a foreign auditor oversight authority to inspect or otherwise enforce laws with respect to, may, at the discretion of the Board, be made available to the foreign auditor oversight authority, if—

[(i) the Board finds that it is necessary to accomplish the purposes of this Act or to protect investors;

[(ii) the foreign auditor oversight authority provides—

[(I) such assurances of confidentiality as the Board may request;

[(II) a description of the applicable information systems and controls of the foreign auditor oversight authority; and

[(III) a description of the laws and regulations of the foreign government of the foreign auditor oversight authority that are relevant to information access; and

[(iii) the Board determines that it is appropriate to share such information.

[(6) IMMUNITY.—Any employee of the Board engaged in carrying out an investigation under this Act shall be immune from any civil liability arising out of such investigation in the same manner and to the same extent as an employee of the Federal Government in similar circumstances.

[(c) DISCIPLINARY PROCEDURES.—

[(1) NOTIFICATION; RECORDKEEPING.—The rules of the Board shall provide that in any proceeding by the Board to determine whether a registered public accounting firm, or an associated person thereof, should be disciplined, the Board shall—

[(A) bring specific charges with respect to the firm or associated person;

[(B) notify such firm or associated person of, and provide to the firm or associated person an opportunity to defend against, such charges; and

[(C) keep a record of the proceedings.

[(2) PUBLIC HEARINGS.—Hearings under this section shall not be public, unless otherwise ordered by the Board for good cause shown, with the consent of the parties to such hearing.

[(3) SUPPORTING STATEMENT.—A determination by the Board to impose a sanction under this subsection shall be supported by a statement setting forth—

[(A) each act or practice in which the registered public accounting firm, or associated person, has engaged (or

omitted to engage), or that forms a basis for all or a part of such sanction;

[(B) the specific provision of this Act, the securities laws, the rules of the Board, or professional standards which the Board determines has been violated; and

[(C) the sanction imposed, including a justification for that sanction.

[(4) SANCTIONS.—If the Board finds, based on all of the facts and circumstances, that a registered public accounting firm or associated person thereof has engaged in any act or practice, or omitted to act, in violation of this Act, the rules of the Board, the provisions of the securities laws relating to the preparation and issuance of audit reports and the obligations and liabilities of accountants with respect thereto, including the rules of the Commission issued under this Act, or professional standards, the Board may impose such disciplinary or remedial sanctions as it determines appropriate, subject to applicable limitations under paragraph (5), including—

[(A) temporary suspension or permanent revocation of registration under this title;

[(B) temporary or permanent suspension or bar of a person from further association with any registered public accounting firm;

[(C) temporary or permanent limitation on the activities, functions, or operations of such firm or person (other than in connection with required additional professional education or training);

[(D) a civil money penalty for each such violation, in an amount equal to—

[(i) not more than \$100,000 for a natural person or \$2,000,000 for any other person; and

[(ii) in any case to which paragraph (5) applies, not more than \$750,000 for a natural person or \$15,000,000 for any other person;

[(E) censure;

[(F) required additional professional education or training; or

[(G) any other appropriate sanction provided for in the rules of the Board.

[(5) INTENTIONAL OR OTHER KNOWING CONDUCT.—The sanctions and penalties described in subparagraphs (A) through (C) and (D)(ii) of paragraph (4) shall only apply to—

[(A) intentional or knowing conduct, including reckless conduct, that results in violation of the applicable statutory, regulatory, or professional standard; or

[(B) repeated instances of negligent conduct, each resulting in a violation of the applicable statutory, regulatory, or professional standard.

[(6) FAILURE TO SUPERVISE.—

[(A) IN GENERAL.—The Board may impose sanctions under this section on a registered accounting firm or upon any person who is, or at the time of the alleged failure reasonably to supervise was, a supervisory person of such firm, if the Board finds that—

[(i) the firm has failed reasonably to supervise an associated person, either as required by the rules of the Board relating to auditing or quality control standards, or otherwise, with a view to preventing violations of this Act, the rules of the Board, the provisions of the securities laws relating to the preparation and issuance of audit reports and the obligations and liabilities of accountants with respect thereto, including the rules of the Commission under this Act, or professional standards; and

[(ii) such associated person commits a violation of this Act, or any of such rules, laws, or standards.

[(B) RULE OF CONSTRUCTION.—No current or former supervisory person of a registered public accounting firm shall be deemed to have failed reasonably to supervise any associated person for purposes of subparagraph (A), if—

[(i) there have been established in and for that firm procedures, and a system for applying such procedures, that comply with applicable rules of the Board and that would reasonably be expected to prevent and detect any such violation by such associated person; and

[(ii) such person has reasonably discharged the duties and obligations incumbent upon that person by reason of such procedures and system, and had no reasonable cause to believe that such procedures and system were not being complied with.

[(7) EFFECT OF SUSPENSION.—

[(A) ASSOCIATION WITH A PUBLIC ACCOUNTING FIRM.—It shall be unlawful for any person that is suspended or barred from being associated with a registered public accounting firm under this subsection willfully to become or remain associated with any registered public accounting firm, or for any registered public accounting firm that knew, or, in the exercise of reasonable care should have known, of the suspension or bar, to permit such an association, without the consent of the Board or the Commission.

[(B) ASSOCIATION WITH AN ISSUER, BROKER, OR DEALER.—It shall be unlawful for any person that is suspended or barred from being associated with a registered public accounting firm under this subsection willfully to become or remain associated with any issuer, broker, or dealer in an accountancy or a financial management capacity, and for any issuer, broker, or dealer that knew, or in the exercise of reasonable care should have known, of such suspension or bar, to permit such an association, without the consent of the Board or the Commission.

[(d) REPORTING OF SANCTIONS.—

[(1) RECIPIENTS.—If the Board imposes a disciplinary sanction, in accordance with this section, the Board shall report the sanction to—

[(A) the Commission;

[(B) any appropriate State regulatory authority or any foreign accountancy licensing board with which such firm or person is licensed or certified; and

[(C) the public (once any stay on the imposition of such sanction has been lifted).

[(2) CONTENTS.—The information reported under paragraph (1) shall include—

[(A) the name of the sanctioned person;

[(B) a description of the sanction and the basis for its imposition; and

[(C) such other information as the Board deems appropriate.

[(e) STAY OF SANCTIONS.—

[(1) IN GENERAL.—Application to the Commission for review, or the institution by the Commission of review, of any disciplinary action of the Board shall operate as a stay of any such disciplinary action, unless and until the Commission orders (summarily or after notice and opportunity for hearing on the question of a stay, which hearing may consist solely of the submission of affidavits or presentation of oral arguments) that no such stay shall continue to operate.

[(2) EXPEDITED PROCEDURES.—The Commission shall establish for appropriate cases an expedited procedure for consideration and determination of the question of the duration of a stay pending review of any disciplinary action of the Board under this subsection.]

SEC. 106. FOREIGN PUBLIC ACCOUNTING FIRMS.

(a) APPLICABILITY TO CERTAIN FOREIGN FIRMS.—

(1) IN GENERAL.—Any foreign public accounting firm that prepares or furnishes an audit report with respect to any issuer, broker, or dealer, shall be subject to this Act and the rules of [the Board] *the Office* and the Commission issued under this Act, in the same manner and to the same extent as a public accounting firm that is organized and operates under the laws of the United States or any State, except that registration pursuant to section 102 shall not by itself provide a basis for subjecting such a foreign public accounting firm to the jurisdiction of the Federal or State courts, other than with respect to controversies between such firms and [the Board] *the Office*.

(2) [BOARD] OFFICE AUTHORITY.—[The Board] *The Office* may, by rule, determine that a foreign public accounting firm (or a class of such firms) that does not issue audit reports nonetheless plays such a substantial role in the preparation and furnishing of such reports for particular issuers, brokers, or dealers, that it is necessary or appropriate, in light of the purposes of this Act and in the public interest or for the protection of investors, that such firm (or class of firms) should be treated as a public accounting firm (or firms) for purposes of registration under, and oversight by [the Board] *the Office* in accordance with, this title.

(b) PRODUCTION OF DOCUMENTS.—

(1) PRODUCTION BY FOREIGN FIRMS.—If a foreign public accounting firm performs material services upon which a registered public accounting firm relies in the conduct of an audit

or interim review, issues an audit report, performs audit work, or conducts interim reviews, the foreign public accounting firm shall—

(A) produce the audit work papers of the foreign public accounting firm and all other documents of the firm related to any such audit work or interim review to the Commission or **the Board** *the Office*, upon request of the Commission or **the Board** *the Office*; and

(B) be subject to the jurisdiction of the courts of the United States for purposes of enforcement of any request for such documents.

(2) OTHER PRODUCTION.—Any registered public accounting firm that relies, in whole or in part, on the work of a foreign public accounting firm in issuing an audit report, performing audit work, or conducting an interim review, shall—

(A) produce the audit work papers of the foreign public accounting firm and all other documents related to any such work in response to a request for production by the Commission or **the Board** *the Office*; and

(B) secure the agreement of any foreign public accounting firm to such production, as a condition of the reliance by the registered public accounting firm on the work of that foreign public accounting firm.

(c) EXEMPTION AUTHORITY.—The Commission, **and the Board**, subject to the approval of the Commission, **may,** by rule, regulation, or order, and as the Commission **[(or Board)]** determines necessary or appropriate in the public interest or for the protection of investors, either unconditionally or upon specified terms and conditions exempt any foreign public accounting firm, or any class of such firms, from any provision of this Act or the rules of **the Board** *the Office* or the Commission issued under this Act.

(d) SERVICE OF REQUESTS OR PROCESS.—

(1) IN GENERAL.—Any foreign public accounting firm that performs work for a domestic registered public accounting firm shall furnish to the domestic registered public accounting firm a written irrevocable consent and power of attorney that designates the domestic registered public accounting firm as an agent upon whom may be served any request by the Commission or **the Board** *the Office* under this section or upon whom may be served any process, pleadings, or other papers in any action brought to enforce this section.

(2) SPECIFIC AUDIT WORK.—Any foreign public accounting firm that performs material services upon which a registered public accounting firm relies in the conduct of an audit or interim review, issues an audit report, performs audit work, or performs interim reviews, shall designate to the Commission or **the Board** *the Office* an agent in the United States upon whom may be served any request by the Commission or **the Board** *the Office* under this section or upon whom may be served any process, pleading, or other papers in any action brought to enforce this section.

(e) SANCTIONS.—A willful refusal to comply, in whole in or in part, with any request by the Commission or **the Board** *the Office* under this section, shall be deemed a violation of this Act.

(f) OTHER MEANS OF SATISFYING PRODUCTION OBLIGATIONS.—Notwithstanding any other provisions of this section, the staff of the Commission or [the Board] *the Office* may allow a foreign public accounting firm that is subject to this section to meet production obligations under this section through alternate means, such as through foreign counterparts of the Commission or [the Board] *the Office*.

(g) DEFINITION.—In this section, the term “foreign public accounting firm” means a public accounting firm that is organized and operates under the laws of a foreign government or political subdivision thereof.

ISEC. 107. COMMISSION OVERSIGHT OF THE BOARD.

[(a) GENERAL OVERSIGHT RESPONSIBILITY.—The Commission shall have oversight and enforcement authority over the Board, as provided in this Act. The provisions of section 17(a)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78q(a)(1)), and of section 17(b)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78q(b)(1)) shall apply to the Board as fully as if the Board were a “registered securities association” for purposes of those sections 17(a)(1) and 17(b)(1).

[(b) RULES OF THE BOARD.—

[(1) DEFINITION.—In this section, the term “proposed rule” means any proposed rule of the Board, and any modification of any such rule.

[(2) PRIOR APPROVAL REQUIRED.—No rule of the Board shall become effective without prior approval of the Commission in accordance with this section, other than as provided in section 103(a)(3)(B) with respect to initial or transitional standards.

[(3) APPROVAL CRITERIA.—The Commission shall approve a proposed rule, if it finds that the rule is consistent with the requirements of this Act and the securities laws, or is necessary or appropriate in the public interest or for the protection of investors.

[(4) PROPOSED RULE PROCEDURES.—The provisions of paragraphs (1) through (3) of section 19(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78s(b)) shall govern the proposed rules of the Board, as fully as if the Board were a “registered securities association” for purposes of that section 19(b), except that, for purposes of this paragraph—

[(A) the phrase “consistent with the requirements of this title and the rules and regulations thereunder applicable to such organization” in section 19(b)(2) of that Act shall be deemed to read “consistent with the requirements of title I of the Sarbanes-Oxley Act of 2002, and the rules and regulations issued thereunder applicable to such organization, or as necessary or appropriate in the public interest or for the protection of investors”; and

[(B) the phrase “otherwise in furtherance of the purposes of this title” in section 19(b)(3)(C) of that Act shall be deemed to read “otherwise in furtherance of the purposes of title I of the Sarbanes-Oxley Act of 2002”.

[(5) COMMISSION AUTHORITY TO AMEND RULES OF THE BOARD.—The provisions of section 19(c) of the Securities Exchange Act of 1934 (15 U.S.C. 78s(c)) shall govern the abrogation, deletion, or addition to portions of the rules of the Board

by the Commission as fully as if the Board were a “registered securities association” for purposes of that section 19(c), except that the phrase “to conform its rules to the requirements of this title and the rules and regulations thereunder applicable to such organization, or otherwise in furtherance of the purposes of this title” in section 19(c) of that Act shall, for purposes of this paragraph, be deemed to read “to assure the fair administration of the Public Company Accounting Oversight Board, conform the rules promulgated by that Board to the requirements of title I of the Sarbanes-Oxley Act of 2002, or otherwise further the purposes of that Act, the securities laws, and the rules and regulations thereunder applicable to that Board”.

[(c) COMMISSION REVIEW OF DISCIPLINARY ACTION TAKEN BY THE BOARD.—

[(1) NOTICE OF SANCTION.—The Board shall promptly file notice with the Commission of any final sanction on any registered public accounting firm or on any associated person thereof, in such form and containing such information as the Commission, by rule, may prescribe.

[(2) REVIEW OF SANCTIONS.—The provisions of sections 19(d)(2) and 19(e)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78s (d)(2) and (e)(1)) shall govern the review by the Commission of final disciplinary sanctions imposed by the Board (including sanctions imposed under section 105(b)(3) of this Act for noncooperation in an investigation of the Board), as fully as if the Board were a self-regulatory organization and the Commission were the appropriate regulatory agency for such organization for purposes of those sections 19(d)(2) and 19(e)(1), except that, for purposes of this paragraph—

[(A) section 105(e) of this Act (rather than that section 19(d)(2)) shall govern the extent to which application for, or institution by the Commission on its own motion of, review of any disciplinary action of the Board operates as a stay of such action;

[(B) references in that section 19(e)(1) to “members” of such an organization shall be deemed to be references to registered public accounting firms;

[(C) the phrase “consistent with the purposes of this title” in that section 19(e)(1) shall be deemed to read “consistent with the purposes of this title and title I of the Sarbanes-Oxley Act of 2002”;

[(D) references to rules of the Municipal Securities Rule-making Board in that section 19(e)(1) shall not apply; and

[(E) the reference to section 19(e)(2) of the Securities Exchange Act of 1934 shall refer instead to section 107(c)(3) of this Act.

[(3) COMMISSION MODIFICATION AUTHORITY.—The Commission may enhance, modify, cancel, reduce, or require the remission of a sanction imposed by the Board upon a registered public accounting firm or associated person thereof, if the Commission, having due regard for the public interest and the protection of investors, finds, after a proceeding in accordance with this subsection, that the sanction—

[(A) is not necessary or appropriate in furtherance of this Act or the securities laws; or

[(B) is excessive, oppressive, inadequate, or otherwise not appropriate to the finding or the basis on which the sanction was imposed.

[(d) CENSURE OF THE BOARD; OTHER SANCTIONS.—

[(1) RESCISSION OF BOARD AUTHORITY.—The Commission, by rule, consistent with the public interest, the protection of investors, and the other purposes of this Act and the securities laws, may relieve the Board of any responsibility to enforce compliance with any provision of this Act, the securities laws, the rules of the Board, or professional standards.

[(2) CENSURE OF THE BOARD; LIMITATIONS.—The Commission may, by order, as it determines necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this Act or the securities laws, censure or impose limitations upon the activities, functions, and operations of the Board, if the Commission finds, on the record, after notice and opportunity for a hearing, that the Board—

[(A) has violated or is unable to comply with any provision of this Act, the rules of the Board, or the securities laws; or

[(B) without reasonable justification or excuse, has failed to enforce compliance with any such provision or rule, or any professional standard by a registered public accounting firm or an associated person thereof.

[(3) CENSURE OF BOARD MEMBERS; REMOVAL FROM OFFICE.—The Commission may, as necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this Act or the securities laws, remove from office or censure any person who is, or at the time of the alleged misconduct was, a member of the Board, if the Commission finds, on the record, after notice and opportunity for a hearing, that such member—

[(A) has willfully violated any provision of this Act, the rules of the Board, or the securities laws;

[(B) has willfully abused the authority of that member; or

[(C) without reasonable justification or excuse, has failed to enforce compliance with any such provision or rule, or any professional standard by any registered public accounting firm or any associated person thereof.]

* * * * *

SEC. 109. FUNDING.

(a) IN GENERAL.—[The Board] *The Office*, and the standard setting body designated pursuant to section 19(b) of the Securities Act of 1933, as amended by section 108, shall be funded as provided in this section.

[(b) ANNUAL BUDGETS.—The Board and the standard setting body referred to in subsection (a) shall each establish a budget for each fiscal year, which shall be reviewed and approved according to their respective internal procedures not less than 1 month prior to the commencement of the fiscal year to which the budget per-

tains (or at the beginning of the Board's first fiscal year, which may be a short fiscal year). The budget of the Board shall be subject to approval by the Commission. The budget for the first fiscal year of the Board shall be prepared and approved promptly following the appointment of the initial five Board members, to permit action by the Board of the organizational tasks contemplated by section 101(d).】

(b) ANNUAL BUDGETS.—

(1) STANDARD SETTING BODY.—*The standard setting body referred to in subsection (a) shall establish a budget for each fiscal year, which shall be reviewed and approved according to their respective internal procedures not less than 1 month prior to the commencement of the fiscal year to which the budget pertains.*

(2) THE OFFICE.—*The Commission shall establish the budget for the Office for each fiscal year.*

(c) SOURCES AND USES OF FUNDS.—

【(1) RECOVERABLE BUDGET EXPENSES.—The budget of the Board (reduced by any registration or annual fees received under section 102(e) for the year preceding the year for which the budget is being computed), and all of the budget of the standard setting body referred to in subsection (a), for each fiscal year of each of those 2 entities, shall be payable from annual accounting support fees, in accordance with subsections (d) and (e). Accounting support fees and other receipts of the Board and of such standard-setting body shall not be considered public monies of the United States.】

(1) RECOVERABLE BUDGET EXPENSES.—

(A) STANDARD SETTING BODY.—*The budget of the standard setting body referred to in subsection (a) for each fiscal year shall be payable from annual accounting support fees, in accordance with subsections (d) and (e). Accounting support fees and other receipts of such standard-setting body shall not be considered public monies of the United States.*

(B) THE OFFICE.—*The budget of the Office (reduced by any registration or annual fees received under section 102(f) for the year preceding the year for which the budget is being computed) for each fiscal year may be payable from annual accounting support fees, in accordance with subsections (d) and (e). Accounting support fees and other receipts of the Office.*

(2) FUNDS GENERATED FROM THE COLLECTION OF MONETARY PENALTIES.—Subject to the availability in advance in an appropriations Act, and notwithstanding subsection (j), all funds collected by 【the Board】 *the Office* as a result of the assessment of monetary penalties 【shall】 *may* be used to fund a merit scholarship program for undergraduate and graduate students enrolled in accredited accounting degree programs, which program is to be administered by 【the Board】 *the Office* or by an entity or agent identified by 【the Board】 *the Office*.

(d) ANNUAL ACCOUNTING SUPPORT FEE FOR 【THE BOARD】 *THE OFFICE*.—

(1) ESTABLISHMENT OF FEE.—【The Board shall establish, with the approval of the Commission,】 *The Commission may establish* a reasonable annual accounting support fee (or a for-

mula for the computation thereof), as may be necessary or appropriate to establish and maintain **the Board** *the Office*. Such fee may also cover costs incurred in **the Board's** *the Office's* first fiscal year (which may be a short fiscal year), or may be levied separately with respect to such short fiscal year.

(2) ASSESSMENTS.—The rules of **the Board** *the Office* under paragraph (1) **shall** *may* provide for the equitable allocation, assessment, and collection by **the Board** *the Office* (or an agent appointed by **the Board** *the Office*) of the fee established under paragraph (1), among issuers, in accordance with subsection (g), and among brokers and dealers, in accordance with subsection (h), and allowing for differentiation among classes of issuers, brokers and dealers, as appropriate.

[(3) BROKERS AND DEALERS.—The Board shall begin the allocation, assessment, and collection of fees under paragraph (2) with respect to brokers and dealers with the payment of support fees to fund the first full fiscal year beginning after the date of enactment of the Investor Protection and Securities Reform Act of 2010.]

(e) ANNUAL ACCOUNTING SUPPORT FEE FOR STANDARD SETTING BODY.—The annual accounting support fee for the standard setting body referred to in subsection (a)—

(1) shall be allocated in accordance with subsection (g), and assessed and collected against each issuer, on behalf of the standard setting body, by 1 or more appropriate designated collection agents, as may be necessary or appropriate to pay for the budget and provide for the expenses of that standard setting body, and to provide for an independent, stable source of funding for such body, subject to review by the Commission; and

(2) may differentiate among different classes of issuers.

(f) LIMITATION ON FEE.—The amount of fees collected under this section for a fiscal year on behalf of **the Board** *the Office* or the standards setting body, as the case may be, shall not exceed the recoverable budget expenses of **the Board** *the Office* or body, respectively (which may include operating, capital, and accrued items), referred to in subsection (c)(1).

(g) ALLOCATION OF ACCOUNTING SUPPORT FEES AMONG ISSUERS.—Any amount due from issuers (or a particular class of issuers) under this section to fund the budget of **the Board** *the Office* or the standard setting body referred to in subsection (a) shall be allocated among and payable by each issuer (or each issuer in a particular class, as applicable) in an amount equal to the total of such amount, multiplied by a fraction—

(1) the numerator of which is the average monthly equity market capitalization of the issuer for the 12-month period immediately preceding the beginning of the fiscal year to which such budget relates; and

(2) the denominator of which is the average monthly equity market capitalization of all such issuers for such 12-month period.

(h) ALLOCATION OF ACCOUNTING SUPPORT FEES AMONG BROKERS AND DEALERS.—

(1) OBLIGATION TO PAY.—Each broker or dealer shall pay to **the Board** *the Office* the annual accounting support fee allocated to such broker or dealer under this section.

(2) ALLOCATION.—Any amount due from a broker or dealer (or from a particular class of brokers and dealers) under this section shall be allocated among brokers and dealers and payable by the broker or dealer (or the brokers and dealers in the particular class, as applicable).

(3) PROPORTIONALITY.—The amount due from a broker or dealer shall be in proportion to the net capital of the broker or dealer (before or after any adjustments), compared to the total net capital of all brokers and dealers (before or after any adjustments), in accordance with rules issued by **the Board** *the Office*.

(i) CONFORMING AMENDMENTS.—Section 13(b)(2) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(b)(2)) is amended—

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

(2) in subparagraph (B), by striking the period at the end and inserting the following: “; and

“(C) notwithstanding any other provision of law, pay the allocable share of such issuer of a reasonable annual accounting support fee or fees, determined in accordance with section 109 of the Sarbanes-Oxley Act of 2002.”

(j) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to render **either the Board,** the standard setting body referred to in subsection (a)**,** or both, **subject to procedures in Congress to authorize or appropriate public funds, or to prevent such organization from utilizing additional sources of revenue for its activities, such as earnings from publication sales, provided that each additional source of revenue shall not jeopardize, in the judgment of the Commission, the actual and perceived independence of such organization.**

[(k) START-UP EXPENSES OF THE BOARD.—From the unexpended balances of the appropriations to the Commission for fiscal year 2003, the Secretary of the Treasury is authorized to advance to the Board not to exceed the amount necessary to cover the expenses of the Board during its first fiscal year (which may be a short fiscal year).]

SEC. 110. DEFINITIONS.

For the purposes of this title, the following definitions shall apply:

(1) AUDIT.—The term “audit” means an examination of the financial statements, reports, documents, procedures, controls, or notices of any issuer, broker, or dealer by an independent public accounting firm in accordance with the rules of **the Board** *the Office* or the Commission, for the purpose of expressing an opinion on the financial statements or providing an audit report.

(2) AUDIT REPORT.—The term “audit report” means a document, report, notice, or other record—

(A) prepared following an audit performed for purposes of compliance by an issuer, broker, or dealer with the requirements of the securities laws; and

(B) in which a public accounting firm either—

(i) sets forth the opinion of that firm regarding a financial statement, report, notice, or other document, procedures, or controls; or

(ii) asserts that no such opinion can be expressed.

(3) **BROKER.**—The term “broker” means a broker (as such term is defined in section 3(a)(4) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(4))) that is required to file a balance sheet, income statement, or other financial statement under section 17(e)(1)(A) of such Act (15 U.S.C. 78q(e)(1)(A)), where such balance sheet, income statement, or financial statement is required to be certified by a registered public accounting firm.

(4) **DEALER.**—The term “dealer” means a dealer (as such term is defined in section 3(a)(5) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(5))) that is required to file a balance sheet, income statement, or other financial statement under section 17(e)(1)(A) of such Act (15 U.S.C. 78q(e)(1)(A)), where such balance sheet, income statement, or financial statement is required to be certified by a registered public accounting firm.

(5) **OFFICE.**—*The term “Office” means the Office of Public Accounting Oversight of the Office of the Chief Accountant of the Commission.*

[(5)] (6) **PROFESSIONAL STANDARDS.**—The term “professional standards” means—

(A) accounting principles that are—

(i) established by the standard setting body described in section 19(b) of the Securities Act of 1933, as amended by this Act, or prescribed by the Commission under section 19(a) of that Act (15 U.S.C. 17a(s)) or section 13(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78a(m)); and

(ii) relevant to audit reports for particular issuers, brokers, or dealers, or dealt with in the quality control system of a particular registered public accounting firm; and

(B) auditing standards, standards for attestation engagements, quality control policies and procedures, ethical and competency standards, and independence standards (including rules implementing title II) that [the Board] *the Office* or the Commission determines—

(i) relate to the preparation or issuance of audit reports for issuers, brokers, or dealers; and

(ii) are established or adopted by [the Board] *the Office* under section 103(a), or are promulgated as rules of the Commission.

[(6)] (7) **SELF-REGULATORY ORGANIZATION.**—The term “self-regulatory organization” has the same meaning as in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)).

TITLE II—AUDITOR INDEPENDENCE

SEC. 201. SERVICES OUTSIDE THE SCOPE OF PRACTICE OF AUDITORS.

(a) [Omitted—Amends other Act]

(b) EXEMPTION AUTHORITY.—[The Board may] *The Commission may*, on a case by case basis, exempt any person, issuer, public accounting firm, or transaction from the prohibition on the provision of services under section 10A(g) of the Securities Exchange Act of 1934 (as added by this section), to the extent that such exemption is necessary or appropriate in the public interest and is consistent with the protection of investors, and subject to review by the Commission [in the same manner as for rules of the Board under section 107].

* * * * *

CONSUMER CREDIT PROTECTION ACT

* * * * *

TITLE VI—CONSUMER CREDIT REPORTING

* * * * *

§ 603. Definitions and rules of construction

(a) Definitions and rules of construction set forth in this section are applicable for the purposes of this title.

(b) The term “person” means any individual, partnership, corporation, trust, estate, cooperative, association, government or governmental subdivision or agency, or other entity.

(c) The term “consumer” means an individual.

(d) CONSUMER REPORT.—

(1) IN GENERAL.—The term “consumer report” means any written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer’s credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer’s eligibility for—

- (A) credit or insurance to be used primarily for personal, family, or household purposes;
- (B) employment purposes; or
- (C) any other purpose authorized under section 604.

(2) EXCLUSIONS.—Except as provided in paragraph (3), the term “consumer report” does not include—

- (A) subject to section 624, any—
 - (i) report containing information solely as to transactions or experiences between the consumer and the person making the report;
 - (ii) communication of that information among persons related by common ownership or affiliated by corporate control; or
 - (iii) communication of other information among persons related by common ownership or affiliated by corporate control, if it is clearly and conspicuously disclosed to the consumer that the information may be communicated among such persons and the consumer is given the opportunity, before the time that the in-

formation is initially communicated, to direct that such information not be communicated among such persons;

(B) any authorization or approval of a specific extension of credit directly or indirectly by the issuer of a credit card or similar device;

(C) any report in which a person who has been requested by a third party to make a specific extension of credit directly or indirectly to a consumer conveys his or her decision with respect to such request, if the third party advises the consumer of the name and address of the person to whom the request was made, and such person makes the disclosures to the consumer required under section 615; or

(D) a communication described in subsection (o) or (x).

(3) RESTRICTION ON SHARING OF MEDICAL INFORMATION.—Except for information or any communication of information disclosed as provided in section 604(g)(3), the exclusions in paragraph (2) shall not apply with respect to information disclosed to any person related by common ownership or affiliated by corporate control, if the information is—

(A) medical information;

(B) an individualized list or description based on the payment transactions of the consumer for medical products or services; or

(C) an aggregate list of identified consumers based on payment transactions for medical products or services.

(e) The term “investigative consumer report” means a consumer report or portion thereof in which information on a consumer’s character, general reputation, personal characteristics, or mode of living is obtained through personal interviews with neighbors, friends, or associates of the consumer reported on or with others with whom he is acquainted or who may have knowledge concerning any such items of information. However, such information shall not include specific factual information on a consumer’s credit record obtained directly from a creditor of the consumer or from a consumer reporting agency when such information was obtained directly from a creditor of the consumer or from the consumer.

(f) The term “consumer reporting agency” means any person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports.

(g) The term “file”, when used in connection with information on any consumer, means all of the information on that consumer recorded and retained by a consumer reporting agency regardless of how the information is stored.

(h) The term “employment purposes” when used in connection with a consumer report means a report used for the purpose of evaluating a consumer for employment, promotion, reassignment or retention as an employee.

(i) MEDICAL INFORMATION.—The term “medical information”—

(1) means information or data, whether oral or recorded, in any form or medium, created by or derived from a health care provider or the consumer, that relates to—

- (A) the past, present, or future physical, mental, or behavioral health or condition of an individual;
- (B) the provision of health care to an individual; or
- (C) the payment for the provision of health care to an individual.

(2) does not include the age or gender of a consumer, demographic information about the consumer, including a consumer's residence address or e-mail address, or any other information about a consumer that does not relate to the physical, mental, or behavioral health or condition of a consumer, including the existence or value of any insurance policy.

(j) DEFINITIONS RELATING TO CHILD SUPPORT OBLIGATIONS.—

(1) OVERDUE SUPPORT.—The term “overdue support” has the meaning given to such term in section 466(e) of the Social Security Act.

(2) STATE OR LOCAL CHILD SUPPORT ENFORCEMENT AGENCY.—The term “State or local child support enforcement agency” means a State or local agency which administers a State or local program for establishing and enforcing child support obligations.

(k) ADVERSE ACTION.—

(1) ACTIONS INCLUDED.—The term “adverse action”—

- (A) has the same meaning as in section 701(d)(6) of the Equal Credit Opportunity Act; and
- (B) means—

- (i) a denial or cancellation of, an increase in any charge for, or a reduction or other adverse or unfavorable change in the terms of coverage or amount of, any insurance, existing or applied for, in connection with the underwriting of insurance;

- (ii) a denial of employment or any other decision for employment purposes that adversely affects any current or prospective employee;

- (iii) a denial or cancellation of, an increase in any charge for, or any other adverse or unfavorable change in the terms of, any license or benefit described in section 604(a)(3)(D); and

- (iv) an action taken or determination that is—

- (I) made in connection with an application that was made by, or a transaction that was initiated by, any consumer, or in connection with a review of an account under section 604(a)(3)(F)(ii); and

- (II) adverse to the interests of the consumer.

(2) APPLICABLE FINDINGS, DECISIONS, COMMENTARY, AND ORDERS.—For purposes of any determination of whether an action is an adverse action under paragraph (1)(A), all appropriate final findings, decisions, commentary, and orders issued under section 701(d)(6) of the Equal Credit Opportunity Act by the Bureau or any court shall apply.

(l) FIRM OFFER OF CREDIT OR INSURANCE.—The term “firm offer of credit or insurance” means any offer of credit or insurance to a consumer that will be honored if the consumer is determined,

based on information in a consumer report on the consumer, to meet the specific criteria used to select the consumer for the offer, except that the offer may be further conditioned on one or more of the following:

(1) The consumer being determined, based on information in the consumer's application for the credit or insurance, to meet specific criteria bearing on credit worthiness or insurability, as applicable, that are established—

(A) before selection of the consumer for the offer; and

(B) for the purpose of determining whether to extend credit or insurance pursuant to the offer.

(2) Verification—

(A) that the consumer continues to meet the specific criteria used to select the consumer for the offer, by using information in the consumer's application for the credit or insurance, or other information bearing on the credit worthiness or insurability of the consumer; or

(B) of the information in the consumer's application for the credit or insurance, to determine that the consumer meets the specific criteria bearing on credit worthiness or insurability.

(3) The consumer furnishing any collateral that is a requirement for the extension of the credit or insurance that was—

(A) established before selection of the consumer for the offer of credit or insurance; and

(B) disclosed to the consumer in the offer of credit or insurance.

(m) CREDIT OR INSURANCE TRANSACTION THAT IS NOT INITIATED BY THE CONSUMER.—The term “credit or insurance transaction that is not initiated by the consumer” does not include the use of a consumer report by a person with which the consumer has an account or insurance policy, for purposes of—

(1) reviewing the account or insurance policy; or

(2) collecting the account.

(n) STATE.—The term “State” means any State, the Commonwealth of Puerto Rico, the District of Columbia, and any territory or possession of the United States.

(o) EXCLUDED COMMUNICATIONS.—A communication is described in this subsection if it is a communication—

(1) that, but for subsection (d)(2)(D), would be an investigative consumer report;

(2) that is made to a prospective employer for the purpose of—

(A) procuring an employee for the employer; or

(B) procuring an opportunity for a natural person to work for the employer;

(3) that is made by a person who regularly performs such procurement;

(4) that is not used by any person for any purpose other than a purpose described in subparagraph (A) or (B) of paragraph (2); and

(5) with respect to which—

(A) the consumer who is the subject of the communication—

(i) consents orally or in writing to the nature and scope of the communication, before the collection of any information for the purpose of making the communication;

(ii) consents orally or in writing to the making of the communication to a prospective employer, before the making of the communication; and

(iii) in the case of consent under clause (i) or (ii) given orally, is provided written confirmation of that consent by the person making the communication, not later than 3 business days after the receipt of the consent by that person;

(B) the person who makes the communication does not, for the purpose of making the communication, make any inquiry that if made by a prospective employer of the consumer who is the subject of the communication would violate any applicable Federal or State equal employment opportunity law or regulation; and

(C) the person who makes the communication—

(i) discloses in writing to the consumer who is the subject of the communication, not later than 5 business days after receiving any request from the consumer for such disclosure, the nature and substance of all information in the consumer's file at the time of the request, except that the sources of any information that is acquired solely for use in making the communication and is actually used for no other purpose, need not be disclosed other than under appropriate discovery procedures in any court of competent jurisdiction in which an action is brought; and

(ii) notifies the consumer who is the subject of the communication, in writing, of the consumer's right to request the information described in clause (i).

(p) CONSUMER REPORTING AGENCY THAT COMPILES AND MAINTAINS FILES ON CONSUMERS ON A NATIONWIDE BASIS.—The term “consumer reporting agency that compiles and maintains files on consumers on a nationwide basis” means a consumer reporting agency that regularly engages in the practice of assembling or evaluating, and maintaining, for the purpose of furnishing consumer reports to third parties bearing on a consumer's credit worthiness, credit standing, or credit capacity, each of the following regarding consumers residing nationwide:

(1) Public record information.

(2) Credit account information from persons who furnish that information regularly and in the ordinary course of business.

(q) DEFINITIONS RELATING TO FRAUD ALERTS.—

(1) ACTIVE DUTY MILITARY CONSUMER.—The term “active duty military consumer” means a consumer in military service who—

(A) is on active duty (as defined in section 101(d)(1) of title 10, United States Code) or is a reservist performing duty under a call or order to active duty under a provision of law referred to in section 101(a)(13) of title 10, United States Code; and

- (B) is assigned to service away from the usual duty station of the consumer.
- (2) FRAUD ALERT; ACTIVE DUTY ALERT.—The terms “fraud alert” and “active duty alert” mean a statement in the file of a consumer that—
- (A) notifies all prospective users of a consumer report relating to the consumer that the consumer may be a victim of fraud, including identity theft, or is an active duty military consumer, as applicable; and
- (B) is presented in a manner that facilitates a clear and conspicuous view of the statement described in subparagraph (A) by any person requesting such consumer report.
- (3) IDENTITY THEFT.—The term “identity theft” means a fraud committed using the identifying information of another person, subject to such further definition as the Bureau may prescribe, by regulation.
- (4) IDENTITY THEFT REPORT.—The term “identity theft report” has the meaning given that term by rule of the Bureau, and means, at a minimum, a report—
- (A) that alleges an identity theft;
- (B) that is a copy of an official, valid report filed by a consumer with an appropriate Federal, State, or local law enforcement agency, including the United States Postal Inspection Service, or such other government agency deemed appropriate by the Bureau; and
- (C) the filing of which subjects the person filing the report to criminal penalties relating to the filing of false information if, in fact, the information in the report is false.
- (5) NEW CREDIT PLAN.—The term “new credit plan” means a new account under an open end credit plan (as defined in section 103(i) of the Truth in Lending Act) or a new credit transaction not under an open end credit plan.
- (r) CREDIT AND DEBIT RELATED TERMS—
- (1) CARD ISSUER.—The term “card issuer” means—
- (A) a credit card issuer, in the case of a credit card; and
- (B) a debit card issuer, in the case of a debit card.
- (2) CREDIT CARD.—The term “credit card” has the same meaning as in section 103 of the Truth in Lending Act.
- (3) DEBIT CARD.—The term “debit card” means any card issued by a financial institution to a consumer for use in initiating an electronic fund transfer from the account of the consumer at such financial institution, for the purpose of transferring money between accounts or obtaining money, property, labor, or services.
- (4) ACCOUNT AND ELECTRONIC FUND TRANSFER.—The terms “account” and “electronic fund transfer” have the same meanings as in section 903 of the Electronic Fund Transfer Act.
- (5) CREDIT AND CREDITOR.—The terms “credit” and “creditor” have the same meanings as in section 702 of the Equal Credit Opportunity Act.
- (s) FEDERAL BANKING AGENCY.—The term “Federal banking agency” has the same meaning as in section 3 of the Federal Deposit Insurance Act.
- (t) FINANCIAL INSTITUTION.—The term “financial institution” means a State or National bank, a State or Federal savings and

loan association, a mutual savings bank, a State or Federal credit union, or any other person that, directly or indirectly, holds a transaction account (as defined in section 19(b) of the Federal Reserve Act) belonging to a consumer.

(u) RESELLER.—The term “reseller” means a consumer reporting agency that—

(1) assembles and merges information contained in the database of another consumer reporting agency or multiple consumer reporting agencies concerning any consumer for purposes of furnishing such information to any third party, to the extent of such activities; and

(2) does not maintain a database of the assembled or merged information from which new consumer reports are produced.

(v) COMMISSION.—The term “Commission” means the Bureau.

(w) The term “Bureau” means the Bureau of Consumer Financial Protection.

(x) NATIONWIDE SPECIALTY CONSUMER REPORTING AGENCY.—The term “nationwide specialty consumer reporting agency” means a consumer reporting agency that compiles and maintains files on consumers on a nationwide basis relating to—

(1) medical records or payments;

(2) residential or tenant history;

(3) check writing history;

(4) employment history; or

(5) insurance claims.

(y) EXCLUSION OF CERTAIN COMMUNICATIONS FOR EMPLOYEE INVESTIGATIONS.—

(1) COMMUNICATIONS DESCRIBED IN THIS SUBSECTION.—A communication is described in this subsection if—

(A) but for subsection (d)(2)(D), the communication would be a consumer report;

(B) the communication is made to an employer in connection with an investigation of—

(i) suspected misconduct relating to employment; or

(ii) compliance with Federal, State, or local laws and regulations, the rules of a self-regulatory organization, or any preexisting written policies of the employer;

(C) the communication is not made for the purpose of investigating a consumer’s credit worthiness, credit standing, or credit capacity; and

(D) the communication is not provided to any person except—

(i) to the employer or an agent of the employer;

(ii) to any Federal or State officer, agency, or department, or any officer, agency, or department of a unit of general local government;

(iii) to any self-regulatory organization with regulatory authority over the activities of the employer or employee;

(iv) as otherwise required by law; or

(v) pursuant to section 608.

(2) SUBSEQUENT DISCLOSURE.—After taking any adverse action based in whole or in part on a communication described in paragraph (1), the employer shall disclose to the consumer a summary containing the nature and substance of the commu-

nication upon which the adverse action is based, except that the sources of information acquired solely for use in preparing what would be but for subsection (d)(2)(D) an investigative consumer report need not be disclosed.

(3) SELF-REGULATORY ORGANIZATION DEFINED.—For purposes of this subsection, the term “self-regulatory organization” includes any self-regulatory organization (as defined in section 3(a)(26) of the Securities Exchange Act of 1934), [any entity established under title I of the Sarbanes-Oxley Act of 2002,] any board of trade designated by the Commodity Futures Trading Commission, and any futures association registered with such Commission.

(z) VETERAN.—The term “veteran” has the meaning given the term in section 101 of title 38, United States Code.

(aa) VETERAN’S MEDICAL DEBT.—The term “veteran’s medical debt”—

(1) means a medical collection debt of a veteran owed to a non-Department of Veterans Affairs health care provider that was submitted to the Department for payment for health care authorized by the Department of Veterans Affairs; and

(2) includes medical collection debt that the Department of Veterans Affairs has wrongfully charged a veteran.

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MINORITY VIEWS

H.R. 8339 is a bill that will result in significant investor and market participant harm by decreasing the ability of the U.S. Securities and Exchange Commission (the “SEC”) from overseeing and policing our capital markets. Among other things, the bill will make it harder for the SEC to issue clarifying staff guidance that helps businesses comply with Commission rules and federal securities laws; it will require the SEC and the GAO (“Government Accountability Office”) to waste precious time and resources re-reviewing already finalized rules; and it politicizes the creation and oversight of accounting standards by eliminating the independent Public Company Accounting Oversight Board (“PCAOB”) and placing it under the SEC’s direct control.

By adding Administrative Procedures Act (“APA”)-type requirements to the issuance of informal staff guidance, the first title of this bill makes it harder for SEC staff to quickly provide guidance that help market participants comply with SEC rules. Further, it gives the SEC’s Chief Economist enormous power, for example, in examining the costs and benefits of a particular staff guidance, producing a required assessment plan, and authority to determine when such a plan may be delayed. This is ironic considering the premise of the bill is that SEC staff should not have so much authority to issue staff level guidance; and yet, this bill would grant a member of SEC staff with unprecedented power to override the SEC Chair in certain instances. Moreover, the result of giving the Chief Economist this kind of authority will likely lead SEC Chairs to choose (even more) economists who will do their particular bidding, rather than objectively evaluate the economics of SEC rules, politicizing this role at the SEC. Additionally, the title is unduly prescriptive: while it requires that the Commission identify a “problem” that the staff guidance is meant to address, not every staff guidance addresses a problem; some allow market participants to simply better comply with a statute, for example. Similar to the first title, title six of the bill would duplicate the work of SEC’s Division of Economic and Risk Analysis (“DERA”), which is already mandated to—and performs—comprehensive cost-benefit analysis for every rulemaking.

The fourth title of H.R. 8339 would require the SEC to waste precious time re-reviewing already finalized rules, which the Commission and SEC staff already spend a significant amount of resources developing, often over the course of several years. To our knowledge, no other agency is subject to a similar requirement. By diverting attention to rules that have already been promulgated, this title is intended to thwart the agency’s ability to protect investors against developing problems in the markets. Additionally, the title invites uncertainty for market participants on how to remain in compliance with rules that are constantly in flux.

Title V of H.R. 8339 interferes with the original purpose of the PCAOB—in the wake of the Enron accounting scandal to monitor the audits of publicly traded companies and provide more stringent oversight over the auditing of accounting firm practices—by making auditing less stringent, increasing investor harm by making it easier for companies to cook their books, and making the PCAOB more politicized.

Finally, title VII of this bill hampers SEC processes for relatively simple rules by forcing a mandatory 60-day notice and comment period. The SEC, like other government agencies, is already subject to the APA notice and comment requirements. There is no basis for singling out the SEC for heightened requirements above and beyond what the APA requires. Furthermore, the SEC often already provides 60 days or more for public comment on its regulations, particularly those that are more complex.

This bill is opposed by several prominent investor-centric organizations, including Americans for Financial Reform and Public Citizen.

For these reasons, we oppose H.R. 8339.

Sincerely,

MAXINE WATERS,

Ranking Member.

NYDIA M. VELÁZQUEZ,

STEPHEN F. LYNCH,

EMANUEL CLEAVER, II,

BRAD SHERMAN,

AL GREEN,

Ranking Member, Subcommittee on Oversight and Investigations.

JIM HIMES,

BILL FOSTER,

JUAN VARGAS,

AYANNA PRESSLEY,

SYLVIA R. GARCIA,

JOYCE BEATTY,

SEAN CASTEN,

RASHIDA TLAIB,

NIKEMA WILLIAMS,

Members of Congress.

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