

## ENHANCING MULTI-CLASS SHARE DISCLOSURES ACT

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MAY 30, 2023.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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

### R E P O R T

[To accompany H.R. 2795]

[Including cost estimate of the Congressional Budget Office]

The Committee on Financial Services, to whom was referred the bill (H.R. 2795) to amend the Securities Exchange Act of 1934 to require issuers with a multi-class stock structure to make certain disclosures in any proxy or consent solicitation material, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

#### SECTION 1. SHORT TITLE.

This Act may be cited as the “Enhancing Multi-Class Share Disclosures Act”.

#### SEC. 2. DISCLOSURE RELATING TO MULTI-CLASS SHARE STRUCTURES.

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

##### “(1) DISCLOSURE RELATING TO MULTI-CLASS SHARE STRUCTURES.—

“(1) DISCLOSURE.—The Commission shall, by rule, require each issuer with a multi-class share structure to disclose the information described in paragraph (2) in any proxy or consent solicitation material for an annual meeting of the shareholders of the issuer, or any other filing as the Commission determines appropriate.

“(2) CONTENT.—A disclosure made under paragraph (1) shall include, with respect to each person who is a director, director nominee, or named executive officer of the issuer, or who is the beneficial owner of securities with 5 percent or more of the total combined voting power of all classes of securities entitled to vote in the election of directors—

“(A) the number of shares of all classes of securities entitled to vote in the election of directors beneficially owned by such person, expressed as a percentage of the total number of the outstanding securities of the issuer entitled to vote in the election of directors; and

“(B) the amount of voting power held by such person, expressed as a percentage of the total combined voting power of all classes of the securities of the issuer entitled to vote in the election of directors.

“(3) MULTI-CLASS SHARE STRUCTURE.—In this subsection, the term ‘multi-class share structure’ means a capitalization structure that contains 2 or more classes of securities that have differing amounts of voting rights in the election of directors.”.

#### PURPOSE AND SUMMARY

Introduced on April 24, 2023, by Representative Gregory Meeks, H.R. 2795, the *Enhancing Multi-Class Share Disclosures Act*, would require issuers with a multi-class stock structure to make certain disclosures in any proxy or consent solicitation material.

#### BACKGROUND AND NEED FOR LEGISLATION

Multi-class share structures have existed in the U.S. since the late 1800s. The original intent of these structures was to allow companies, particularly family-run businesses, to maintain voting control without having to own the majority of equity in their company. For example, in 1925, the Dodge Brothers owners had total voting control, while holding only 1.7 percent of equity. But starting in 1926 and ending in 1985, as a result of pushback, certain national securities exchanges limited the number of multi-class shares that were allowed to list on those exchanges.

In the 1980’s, in response to a number of hostile takeovers of companies and the increasing competitiveness of national securities exchanges, limitations on multi-class share structures became more relaxed. The majority of companies that took advantage of the newly-relaxed limitations were media companies such as the Washington Post and New York Times. Media companies viewed multiclass structures as a means to protect journalistic integrity.

In 2018, the SEC’s Investor Advisory Committee approved a recommendation that called for the SEC to require more disclosures from companies with multi-class shares. Currently, the SEC does not require companies to disclose the gap between the equity an individual holds in the company and the number of voting shares they control—although many companies already do this for their shareholders. Requiring disclosures regarding voting power, particularly regarding officers and directors and those who have more than 5 percent voting power, will ensure shareholders receive more uniform information in proxy materials, particularly because companies already are required to disclose ownership information for directors, officers, and shareholders controlling more than 5 percent of equity.

Rather than prohibiting multi-class share structures altogether, this bill represents a thoughtful and balanced approach to enhance transparency without eliminating class structures that encourage founders that may not otherwise go public to do so.

#### HEARING

The Subcommittee on Capital Markets of the Committee on Financial Services held a hearing examining matters relating to H.R. 2795 on April 19, 2023.

## COMMITTEE CONSIDERATION

The Committee on Financial Services met in open session on April 26, 2023, and ordered H.R. 2795 to be reported favorably to the House as amended by a recorded vote of 48 ayes to 1 nay (Record vote no. FC-43), a quorum being present. Before the question was called to order the bill favorably reported, the Committee adopted an amendment in the nature of a substitute offered by Mr. Meeks by voice vote.

## COMMITTEE VOTES

Clause 2(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. 2795 was ordered reported favorably to the House as amended by a recorded vote of 48 ayes to 1 nay (Record vote no. FC-43), a quorum being present.

## Record vote no. FC- 43

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

### COMMITTEE OVERSIGHT FINDINGS

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

### PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the goal of H.R. 2795 is to require issuers with a multi-class stock structure to make certain disclosures in any proxy or consent solicitation material.

### NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee adopts as its own the estimate of new budget authority, entitlement authority, or tax expenditures or revenues contained in the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1973.

### CONGRESSIONAL BUDGET OFFICE ESTIMATES

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

H.R. 2795, Enhancing Multi-Class Share Disclosures Act				
As ordered reported by the House Committee on Financial Services on April 26, 2023				
By Fiscal Year, Millions of Dollars				
	2023	2023-2028	2023-2033	
Direct Spending (Outlays)	0	0	0	
Revenues	0	0	0	
Increase or Decrease (-) in the Deficit	0	0	0	
Spending Subject to Appropriation (Outlays)	*	*	not estimated	
Increases net direct spending in any of the four consecutive 10-year periods beginning in 2034?	No	Statutory pay-as-you-go procedures apply? No		
		Mandate Effects		
Increases on-budget deficits in any of the four consecutive 10-year periods beginning in 2034?	No	Contains intergovernmental mandate? No		
		Contains private-sector mandate? Yes, Under Threshold		
* = between -\$500,000 and \$500,000.				

H.R. 2795 would direct the Securities and Exchange Commission (SEC) to issue rules requiring securities issuers with multi-class stock structures to disclose to shareholders information on the shares of all classes of securities owned by and the voting power of certain individuals. A multi-class stock structure is one in which a company offers two or more classes of securities that have different voting rights in an election of directors.

Using information about the cost of similar rulemakings, CBO estimates that implementing H.R. 2795 would cost \$1 million over the 2023–2024 period. CBO expects the commission would need three employees, at an average annual cost of \$300,000 per employee, to issue rules over one year. However, because the SEC is authorized to collect fees each year to offset its annual appropriation, CBO expects that the net effect on discretionary spending over the 2023–2024 period would be negligible, assuming appropriation actions consistent with that authority.

If the SEC increased fees to offset the costs for rulemaking as required by the bill, H.R. 2795 would increase the cost of an existing mandate as defined in the Unfunded Mandates Reform Act (UMRA) on private entities required to pay those fees. CBO estimates that the incremental cost of the mandate would be small and would fall well below the annual threshold for private-sector mandates established in UMRA (\$198 million in 2023, adjusted annually for inflation). The bill would not impose any intergovernmental mandates.

The CBO staff contacts for this estimate are David Hughes (for federal costs) and Andrew Laughlin (for mandates). The estimate was reviewed by Emily Stem, Senior Adviser for Budget Analysis.

PHILLIP L. SWAGEL,  
*Director, Congressional Budget Office.*

#### FEDERAL MANDATES STATEMENT

This information is provided in accordance with section 423 of the Unfunded Mandates Reform Act of 1995.

Per the estimate from CBO, H.R. 2795 could increase the cost of an existing mandate on private entities if the SEC increased costs to implement the bill. However, this increase would still fall below the annual threshold for private-sector mandates as defined in the Unfunded Mandates Reform Act. The Committee has determined that the bill does not impose a Federal intergovernmental mandate on State, local, or tribal governments.

#### 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 with the meaning of the 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

In compliance with 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*

This section cites H.R. 2795 as the “Enhancing Multi-Class Share Disclosures Act.”

### *Section 2. Disclosure relating to multi-class share structures*

This section amends Section 14 of the Securities Exchange Act of 1934 by mandating certain disclosures by issuers of multi-class share structures. Specifically, this section requires the U.S. Securities and Exchange Commission (SEC) to require, by rule, issuers to make certain disclosures in any proxy or consent solicitation material with respect to each person who is a director or executive officer of the issuer or who holds five percent or more of the total combined voting power of all classes of stock entitled to vote in the election of directors.

## 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 below, as prepared by the Office of Legislative Counsel.

## 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 (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

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#### PROXIES

SEC. 14. (a)(1) It shall be unlawful for any person, by the use of the mails or by any means or instrumentality of interstate commerce or of any facility of a national securities exchange or otherwise, in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors, to solicit or to permit the use of his name to solicit any proxy or consent or authorization in

respect of any security (other than an exempted security) registered pursuant to section 12 of this title.

(2) The rules and regulations prescribed by the Commission under paragraph (1) may include—

(A) a requirement that a solicitation of proxy, consent, or authorization by (or on behalf of) an issuer include a nominee submitted by a shareholder to serve on the board of directors of the issuer; and

(B) a requirement that an issuer follow a certain procedure in relation to a solicitation described in subparagraph (A).

(b)(1) It shall be unlawful for any member of a national securities exchange, or any broker or dealer registered under this title, or any bank, association, or other entity that exercises fiduciary powers, in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors, to give, or to refrain from giving a proxy, consent, authorization, or information statement in respect of any security registered pursuant to section 12 of this title, or any security issued by an investment company registered under the Investment Company Act of 1940, and carried for the account of a customer.

(2) With respect to banks, the rules and regulations prescribed by the Commission under paragraph (1) shall not require the disclosure of the names of beneficial owners of securities in an account held by the bank on the date of enactment of this paragraph unless the beneficial owner consents to the disclosure. The provisions of this paragraph shall not apply in the case of a bank which the Commission finds has not made a good faith effort to obtain such consent from such beneficial owners.

(c) Unless proxies, consents, or authorizations in respect of a security registered pursuant to section 12 of this title, or a security issued by an investment company registered under the Investment Company Act of 1940, are solicited by or on behalf of the management of the issuer from the holders of record of such security in accordance with the rules and regulations prescribed under subsection (a) of this section, prior to any annual or other meeting of the holders of such security, such issuer shall, in accordance with rules and regulations prescribed by the Commission, file with the Commission and transmit to all holders of record of such security information substantially equivalent to the information which would be required to be transmitted if a solicitation were made, but no information shall be required to be filed or transmitted pursuant to this subsection before July 1, 1964.

(d)(1) It shall be unlawful for any person, directly or indirectly, by use of the mails or by any means or instrumentality of interstate commerce or of any facility of a national securities exchange or otherwise, to make a tender offer for, or a request or invitation for tenders of, any class of any equity security which is registered pursuant to section 12 of this title, or any equity security of an insurance company which would have been required to be so registered except for the exemption contained in section 12(g)(2)(G) of this title, or any equity security issued by a closed-end investment company registered under the Investment Company Act of 1940, if, after consummation thereof, such person would, directly or indirectly, be the beneficial owner of more than 5 per centum of such



class, unless at the time copies of the offer or request or invitation are first published or sent or given to security holders such person has filed with the Commission a statement containing such of the information specified in section 13(d) of this title, and such additional information as the Commission may by rules and regulations prescribe as necessary or appropriate in the public interest or for the protection of investors. All requests or invitations for tenders or advertisements making a tender offer or requesting or inviting tenders, of such a security shall be filed as a part of such statement and shall contain such of the information contained in such statement as the Commission may by rules and regulations prescribe. Copies of any additional material soliciting or requesting such tender offers subsequent to the initial solicitation or request shall contain such information as the Commission may by rules and regulations prescribe as necessary or appropriate in the public interest or for the protection of investors, and shall be filed with the Commission not later than the time copies of such material are first published or sent or given to security holders. Copies of all statements, in the form in which such material is furnished to security holders and the Commission, shall be sent to the issuer not later than the date such material is first published or sent or given to any security holders.

(2) When two or more persons act as a partnership, limited partnership, syndicate, or other group for the purpose of acquiring, holding, or disposing of securities of an issuer, such syndicate or group shall be deemed a "person" for purposes of this subsection.

(3) In determining, for purposes of this subsection, any percentage of a class of any security, such class shall be deemed to consist of the amount of the outstanding securities of such class, exclusive of any securities of such class held by or for the account of the issuer or a subsidiary of the issuer.

(4) Any solicitation or recommendation to the holders of such a security to accept or reject a tender offer or request or invitation for tenders shall be made in accordance with such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.

(5) Securities deposited pursuant to a tender offer or request or invitation for tenders may be withdrawn by or on behalf of the depositor at any time until the expiration of seven days after the time definitive copies of the offer or request or invitation are first published or sent or given to security holders, and at any time after sixty days from the date of the original tender offer or request or invitation, except as the Commission may otherwise prescribe by rules, regulations, or order as necessary or appropriate in the public interest or for the protection of investors.

(6) Where any person makes a tender offer, or request or invitation for tenders, for less than all the outstanding equity securities of a class, and where a greater number of securities is deposited pursuant thereto within ten days after copies of the offer or request or invitation are first published or sent or given to security holders than such person is bound or willing to take up and pay for, the securities taken up shall be taken up as nearly as may be pro rata, disregarding fractions, according to the number of securities deposited by each depositor. The provisions of this subsection shall also apply to securities deposited within ten days after notice of an in-

crease in the consideration offered to security holders, as described in paragraph (7), is first published or sent or given to security holders.

(7) Where any person varies the terms of a tender offer or request or invitation for tenders before the expiration thereof by increasing the consideration offered to holders of such securities, such person shall pay the increased consideration to each security holder whose securities are taken up and paid for pursuant to the tender offer or request or invitation for tenders whether or not such securities have been taken up by such person before the variation of the tender offer or request or invitation.

(8) The provisions of this subsection shall not apply to any offer for, or request or invitation for tenders of, any security—

(A) if the acquisition of such security, together with all other acquisitions by the same person of securities of the same class during the preceding twelve months, would not exceed 2 per centum of that class;

(B) by the issuer of such security; or

(C) which the Commission, by rules or regulations or by order, shall exempt from the provisions of this subsection as not entered into for the purpose of, and not having the effect of, changing or influencing the control of the issuer or otherwise as not comprehended within the purposes of this subsection.

(e) It shall be unlawful for any person to make any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading, or to engage in any fraudulent, deceptive, or manipulative acts or practices, in connection with any tender offer or request or invitation for tenders, or any solicitation of security holders in opposition to or in favor of any such offer, request, or invitation. The Commission shall, for the purposes of this subsection, by rules and regulations define, and prescribe means reasonably designed to prevent, such acts and practices as are fraudulent, deceptive, or manipulative.

(f) If, pursuant to any arrangement or understanding with the person or persons acquiring securities in a transaction subject to subsection (d) of this section or subsection (d) of section 13 of this title, any persons are to be elected or designated as directors of the issuer, otherwise than at a meeting of security holders, and the persons so elected or designated will constitute a majority of the directors of the issuer, then, prior to the time any such person takes office as a director, and in accordance with rules and regulations prescribed by the Commission, the issuer shall file with the Commission, and transmit to all holders of record of securities of the issuer who would be entitled to vote at a meeting for election of directors, information substantially equivalent to the information which would be required by subsection (a) or (c) of this section to be transmitted if such person or persons were nominees for election as directors at a meeting of such security holders.

(g)(1)(A) At the time of filing such preliminary proxy solicitation material as the Commission may require by rule pursuant to subsection (a) of this section that concerns an acquisition, merger, consolidation, or proposed sale or other disposition of substantially all

the assets of a company, the person making such filing, other than a company registered under the Investment Company Act of 1940, shall pay to the Commission the following fees:

(i) for preliminary proxy solicitation material involving an acquisition, merger, or consolidation, if there is a proposed payment of cash or transfer of securities or property to shareholders, a fee at a rate that, subject to paragraph (4), is equal to \$92 per \$1,000,000 of such proposed payment, or of the value of such securities or other property proposed to be transferred; and

(ii) for preliminary proxy solicitation material involving a proposed sale or other disposition of substantially all of the assets of a company, a fee at a rate that, subject to paragraph (4), is equal to \$92 per \$1,000,000 of the cash or of the value of any securities or other property proposed to be received upon such sale or disposition.

(B) The fee imposed under subparagraph (A) shall be reduced with respect to securities in an amount equal to any fee paid to the Commission with respect to such securities in connection with the proposed transaction under section 6(b) of the Securities Act of 1933 (15 U.S.C. 77f(b)), or the fee paid under that section shall be reduced in an amount equal to the fee paid to the Commission in connection with such transaction under this subsection. Where two or more companies involved in an acquisition, merger, consolidation, sale, or other disposition of substantially all the assets of a company must file such proxy material with the Commission, each shall pay a proportionate share of such fee.

(2) At the time of filing such preliminary information statement as the Commission may require by rule pursuant to subsection (c) of this section, the issuer shall pay to the Commission the same fee as required for preliminary proxy solicitation material under paragraph (1) of this subsection.

(3) At the time of filing such statement as the Commission may require by rule pursuant to subsection (d)(1) of this section, the person making the filing shall pay to the Commission a fee at a rate that, subject to paragraph (4), is equal to \$92 per \$1,000,000 of the aggregate amount of cash or of the value of securities or other property proposed to be offered. The fee shall be reduced with respect to securities in an amount equal to any fee paid with respect to such securities in connection with the proposed transaction under section 6(b) of the Securities Act of 1933 (15 U.S.C. 77f(b)), or the fee paid under that section shall be reduced in an amount equal to the fee paid to the Commission in connection with such transaction under this subsection.

(4) ANNUAL ADJUSTMENT.—For each fiscal year, the Commission shall by order adjust the rate required by paragraphs (1) and (3) for such fiscal year to a rate that is equal to the rate (expressed in dollars per million) that is applicable under section 6(b) of the Securities Act of 1933 (15 U.S.C. 77f(b)) for such fiscal year.

(5) FEE COLLECTION.—Fees collected pursuant to this subsection for fiscal year 2012 and each fiscal year thereafter shall be deposited and credited as general revenue of the Treasury and shall not be available for obligation.

(6) REVIEW; EFFECTIVE DATE; PUBLICATION.—In exercising its authority under this subsection, the Commission shall not be required to comply with the provisions of section 553 of title 5, United States Code. An adjusted rate prescribed under paragraph (4) shall be published and take effect in accordance with section 6(b) of the Securities Act of 1933 (15 U.S.C. 77f(b)).

(7) PRO RATA APPLICATION.—The rates per \$1,000,000 required by this subsection shall be applied pro rata to amounts and balances of less than \$1,000,000.

(8) Notwithstanding any other provision of law, the Commission may impose fees, charges, or prices for matters not involving any acquisition, merger, consolidation, sale, or other disposition of assets described in this subsection, as authorized by section 9701 of title 31, United States Code, or otherwise.

(h) PROXY SOLICITATIONS AND TENDER OFFERS IN CONNECTION WITH LIMITED PARTNERSHIP ROLLUP TRANSACTIONS.—

(1) PROXY RULES TO CONTAIN SPECIAL PROVISIONS.—It shall be unlawful for any person to solicit any proxy, consent, or authorization concerning a limited partnership rollup transaction, or to make any tender offer in furtherance of a limited partnership rollup transaction, unless such transaction is conducted in accordance with rules prescribed by the Commission under subsections (a) and (d) as required by this subsection. Such rules shall—

(A) permit any holder of a security that is the subject of the proposed limited partnership rollup transaction to engage in preliminary communications for the purpose of determining whether to solicit proxies, consents, or authorizations in opposition to the proposed limited partnership rollup transaction, without regard to whether any such communication would otherwise be considered a solicitation of proxies, and without being required to file soliciting material with the Commission prior to making that determination, except that—

(i) nothing in this subparagraph shall be construed to limit the application of any provision of this title prohibiting, or reasonably designed to prevent, fraudulent, deceptive, or manipulative acts or practices under this title; and

(ii) any holder of not less than 5 percent of the outstanding securities that are the subject of the proposed limited partnership rollup transaction who engages in the business of buying and selling limited partnership interests in the secondary market shall be required to disclose such ownership interests and any potential conflicts of interests in such preliminary communications;

(B) require the issuer to provide to holders of the securities that are the subject of the limited partnership rollup transaction such list of the holders of the issuer's securities as the Commission may determine in such form and subject to such terms and conditions as the Commission may specify;

(C) prohibit compensating any person soliciting proxies, consents, or authorizations directly from security holders concerning such a limited partnership rollup transaction—

- (i) on the basis of whether the solicited proxy, consent, or authorization either approves or disapproves the proposed limited partnership rollup transaction; or
- (ii) contingent on the approval, disapproval, or completion of the limited partnership rollup transaction;

(D) set forth disclosure requirements for soliciting material distributed in connection with a limited partnership rollup transaction, including requirements for clear, concise, and comprehensible disclosure with respect to—

- (i) any changes in the business plan, voting rights, form of ownership interest, or the compensation of the general partner in the proposed limited partnership rollup transaction from each of the original limited partnerships;

- (ii) the conflicts of interest, if any, of the general partner;

- (iii) whether it is expected that there will be a significant difference between the exchange values of the limited partnerships and the trading price of the securities to be issued in the limited partnership rollup transaction;

- (iv) the valuation of the limited partnerships and the method used to determine the value of the interests of the limited partners to be exchanged for the securities in the limited partnership rollup transaction;

- (v) the differing risks and effects of the limited partnership rollup transaction for investors in different limited partnerships proposed to be included, and the risks and effects of completing the limited partnership rollup transaction with less than all limited partnerships;

- (vi) the statement by the general partner required under subparagraph (E);

- (vii) such other matters deemed necessary or appropriate by the Commission;

(E) require a statement by the general partner as to whether the proposed limited partnership rollup transaction is fair or unfair to investors in each limited partnership, a discussion of the basis for that conclusion, and an evaluation and a description by the general partner of alternatives to the limited partnership rollup transaction, such as liquidation;

(F) provide that, if the general partner or sponsor has obtained any opinion (other than an opinion of counsel), appraisal, or report that is prepared by an outside party and that is materially related to the limited partnership rollup transaction, such soliciting materials shall contain or be accompanied by clear, concise, and comprehensible disclosure with respect to—

- (i) the analysis of the transaction, scope of review, preparation of the opinion, and basis for and methods

of arriving at conclusions, and any representations and undertakings with respect thereto;

(ii) the identity and qualifications of the person who prepared the opinion, the method of selection of such person, and any material past, existing, or contemplated relationships between the person or any of its affiliates and the general partner, sponsor, successor, or any other affiliate;

(iii) any compensation of the preparer of such opinion, appraisal, or report that is contingent on the transaction's approval or completion; and

(iv) any limitations imposed by the issuer on the access afforded to such preparer to the issuer's personnel, premises, and relevant books and records;

(G) provide that, if the general partner or sponsor has obtained any opinion, appraisal, or report as described in subparagraph (F) from any person whose compensation is contingent on the transaction's approval or completion or who has not been given access by the issuer to its personnel and premises and relevant books and records, the general partner or sponsor shall state the reasons therefor;

(H) provide that, if the general partner or sponsor has not obtained any opinion on the fairness of the proposed limited partnership rollup transaction to investors in each of the affected partnerships, such soliciting materials shall contain or be accompanied by a statement of such partner's or sponsor's reasons for concluding that such an opinion is not necessary in order to permit the limited partners to make an informed decision on the proposed transaction;

(I) require that the soliciting material include a clear, concise, and comprehensible summary of the limited partnership rollup transaction (including a summary of the matters referred to in clauses (i) through (vii) of subparagraph (D) and a summary of the matter referred to in subparagraphs (F), (G), and (H)), with the risks of the limited partnership rollup transaction set forth prominently in the fore part thereof;

(J) provide that any solicitation or offering period with respect to any proxy solicitation, tender offer, or information statement in a limited partnership rollup transaction shall be for not less than the lesser of 60 calendar days or the maximum number of days permitted under applicable State law; and

(K) contain such other provisions as the Commission determines to be necessary or appropriate for the protection of investors in limited partnership rollup transactions.

(2) EXEMPTIONS.—The Commission may, consistent with the public interest, the protection of investors, and the purposes of this title, exempt by rule or order any security or class of securities, any transaction or class of transactions, or any person or class of persons, in whole or in part, conditionally or unconditionally, from the requirements imposed pursuant to paragraph (1) or from the definition contained in paragraph (4).

(3) EFFECT ON COMMISSION AUTHORITY.—Nothing in this subsection limits the authority of the Commission under sub-

section (a) or (d) or any other provision of this title or precludes the Commission from imposing, under subsection (a) or (d) or any other provision of this title, a remedy or procedure required to be imposed under this subsection.

(4) DEFINITION OF LIMITED PARTNERSHIP ROLLUP TRANSACTION.—Except as provided in paragraph (5), as used in this subsection, the term “limited partnership rollup transaction” means a transaction involving the combination or reorganization of one or more limited partnerships, directly or indirectly, in which—

(A) some or all of the investors in any of such limited partnerships will receive new securities, or securities in another entity, that will be reported under a transaction reporting plan declared effective before the date of enactment of this subsection by the Commission under section 11A;

(B) any of the investors’ limited partnership securities are not, as of the date of filing, reported under a transaction reporting plan declared effective before the date of enactment of this subsection by the Commission under section 11A;

(C) investors in any of the limited partnerships involved in the transaction are subject to a significant adverse change with respect to voting rights, the term of existence of the entity, management compensation, or investment objectives; and

(D) any of such investors are not provided an option to receive or retain a security under substantially the same terms and conditions as the original issue.

(5) EXCLUSIONS FROM DEFINITION.—Notwithstanding paragraph (4), the term “limited partnership rollup transaction” does not include—

(A) a transaction that involves only a limited partnership or partnerships having an operating policy or practice of retaining cash available for distribution and reinvesting proceeds from the sale, financing, or refinancing of assets in accordance with such criteria as the Commission determines appropriate;

(B) a transaction involving only limited partnerships wherein the interests of the limited partners are repurchased, recalled, or exchanged in accordance with the terms of the preexisting limited partnership agreements for securities in an operating company specifically identified at the time of the formation of the original limited partnership;

(C) a transaction in which the securities to be issued or exchanged are not required to be and are not registered under the Securities Act of 1933;

(D) a transaction that involves only issuers that are not required to register or report under section 12, both before and after the transaction;

(E) a transaction, except as the Commission may otherwise provide by rule for the protection of investors, involving the combination or reorganization of one or more lim-

ited partnerships in which a non-affiliated party succeeds to the interests of a general partner or sponsor, if—

(i) such action is approved by not less than  $66\frac{2}{3}$  percent of the outstanding units of each of the participating limited partnerships; and

(ii) as a result of the transaction, the existing general partners will receive only compensation to which they are entitled as expressly provided for in the pre-existing limited partnership agreements; or

(F) a transaction, except as the Commission may otherwise provide by rule for the protection of investors, in which the securities offered to investors are securities of another entity that are reported under a transaction reporting plan declared effective before the date of enactment of this subsection by the Commission under section 11A, if—

(i) such other entity was formed, and such class of securities was reported and regularly traded, not less than 12 months before the date on which soliciting material is mailed to investors; and

(ii) the securities of that entity issued to investors in the transaction do not exceed 20 percent of the total outstanding securities of the entity, exclusive of any securities of such class held by or for the account of the entity or a subsidiary of the entity.

(i) **DISCLOSURE OF PAY VERSUS PERFORMANCE.**—The Commission shall, by rule, require each issuer to disclose in any proxy or consent solicitation material for an annual meeting of the shareholders of the issuer a clear description of any compensation required to be disclosed by the issuer under section 229.402 of title 17, Code of Federal Regulations (or any successor thereto), including, for any issuer other than an emerging growth company, information that shows the relationship between executive compensation actually paid and the financial performance of the issuer, taking into account any change in the value of the shares of stock and dividends of the issuer and any distributions. The disclosure under this subsection may include a graphic representation of the information required to be disclosed.

(j) **DISCLOSURE OF HEDGING BY EMPLOYEES AND DIRECTORS.**—The Commission shall, by rule, require each issuer to disclose in any proxy or consent solicitation material for an annual meeting of the shareholders of the issuer whether any employee or member of the board of directors of the issuer, or any designee of such employee or member, is permitted to purchase financial instruments (including prepaid variable forward contracts, equity swaps, collars, and exchange funds) that are designed to hedge or offset any decrease in the market value of equity securities—

(1) granted to the employee or member of the board of directors by the issuer as part of the compensation of the employee or member of the board of directors; or

(2) held, directly or indirectly, by the employee or member of the board of directors.

(k) **DATA STANDARDS FOR PROXY AND CONSENT SOLICITATION MATERIALS.**—



(1) REQUIREMENT.—The Commission shall, by rule, adopt data standards for all information contained in any proxy or consent solicitation material prepared by an issuer for an annual meeting of the shareholders of the issuer, except that the Commission may exempt exhibits, signatures, and certifications from those data standards.

(2) CONSISTENCY.—The data standards required under paragraph (1) shall incorporate, and ensure compatibility with (to the extent feasible), all applicable data standards established in the rules promulgated under section 124 of the Financial Stability Act of 2010, including, to the extent practicable, by having the characteristics described in clauses (i) through (vi) of subsection (c)(1)(B) of such section 124.

(l) DISCLOSURE RELATING TO MULTI-CLASS SHARE STRUCTURES.—

(1) DISCLOSURE.—*The Commission shall, by rule, require each issuer with a multi-class share structure to disclose the information described in paragraph (2) in any proxy or consent solicitation material for an annual meeting of the shareholders of the issuer, or any other filing as the Commission determines appropriate.*

(2) CONTENT.—*A disclosure made under paragraph (1) shall include, with respect to each person who is a director, director nominee, or named executive officer of the issuer, or who is the beneficial owner of securities with 5 percent or more of the total combined voting power of all classes of securities entitled to vote in the election of directors—*

*(A) the number of shares of all classes of securities entitled to vote in the election of directors beneficially owned by such person, expressed as a percentage of the total number of the outstanding securities of the issuer entitled to vote in the election of directors; and*

*(B) the amount of voting power held by such person, expressed as a percentage of the total combined voting power of all classes of the securities of the issuer entitled to vote in the election of directors.*

(3) MULTI-CLASS SHARE STRUCTURE.—*In this subsection, the term “multi-class share structure” means a capitalization structure that contains 2 or more classes of securities that have differing amounts of voting rights in the election of directors.*

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