

TO AMEND THE FEDERAL SECURITIES LAWS TO SPECIFY THE PERIODS
FOR WHICH FINANCIAL STATEMENTS ARE REQUIRED TO BE PROVIDED
BY AN EMERGING GROWTH COMPANY, AND FOR OTHER PURPOSES

JUNE 5, 2023.—Committed to the Committee of the Whole House on the State of
the Union and ordered to be printed

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

R E P O R T

[To accompany H.R. 2608]

[Including cost estimate of the Congressional Budget Office]

The Committee on Financial Services, to whom was referred the bill (H.R. 2608) to amend the Federal securities laws to specify the periods for which financial statements are required to be provided by an emerging growth company, 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. FINANCIAL STATEMENT REPORTING REQUIREMENTS FOR EMERGING GROWTH COMPANIES.

(a) SECURITIES ACT OF 1933.—Section 7(a)(2) of the Securities Act of 1933 (15 U.S.C. 77g(a)(2)) is amended—

- (1) in subparagraph (A), by striking “and” at the end;
- (2) by redesignating subparagraph (B) as subparagraph (C); and
- (3) by inserting after subparagraph (A) the following:

“(B) need not present acquired company financial statements or information otherwise required under section 210.3-05 or section 210.8-04 of title 17, Code of Federal Regulations, or any successor thereto, for any period prior to the earliest audited period of the emerging growth company presented in connection with its initial public offering and, thereafter, in no event shall an issuer that was an emerging growth company but is no longer an emerging growth company be required to present financial statements of the issuer (or acquired company financial statements or information otherwise required under section 210.3-05 or section 210.8-04 of title 17, Code of Federal Regulations, or any successor thereto) for any period prior to the earliest audited period of the emerging growth company presented in connection with its initial public offering; and”.

(b) SECURITIES EXCHANGE ACT OF 1934.—Section 12(b)(1)(K) of the Securities Exchange Act of 1934 (15 U.S.C. 78l(b)(1)(K)) is amended by striking “firm;” and inserting “firm, provided that the application of an emerging growth company need not present acquired company financial statements or information otherwise re-

quired under section 210.3-05 or section 210.8-04 of title 17, Code of Federal Regulations, or any successor thereto, for any period prior to the earliest audited period of the emerging growth company presented in connection with its application and, thereafter, in no event shall an issuer that was an emerging growth company but is no longer an emerging growth company be required to present financial statements of the issuer (or acquired company financial statements or information otherwise required under section 210.3-05 or section 210.8-04 of title 17, Code of Federal Regulations, or any successor thereto) for any period prior to the earliest audited period of the emerging growth company presented in connection with any application under subsection (b) of this section;”.

PURPOSE AND SUMMARY

Introduced on April 13, 2023, by Representative Patrick McHenry, H.R. 2608, *a bill to amend the Federal securities laws to specify the periods for which financial statements are required to be provided by an emerging growth company, and for other purposes*, would establish that an Emerging Growth Company (EGC), as well as any issuer that went public using EGC disclosure obligations, only needs to provide two years of audited financial statements.

BACKGROUND AND NEED FOR LEGISLATION

In some instances, misconceptions have occurred relating to the JOBS Act of 2012’s accommodation allowing an EGC to provide only two years of audited financial statements in its IPO registration statement. Not for any earlier period. This has occurred occasionally, for example, in the case of acquired company financial statements and for follow-on offerings involving an EGC that lost its EGC status during IPO registration.

This bill updates the EGC financial statement accommodation to clarify that an EGC need not provide financial statements for a period earlier than the two years of audited financial statements required in its IPO registration statement. This update would increase efficiency by ensuring that EGCs can consistently rely on the JOBS Act’s scaled disclosure accommodation by eliminating aberrational results that have sometimes required burdensome and unnecessary financial statement obligations. Absent this clarification, in some scenarios EGC issuers have needed to provide audited financial statements for financial periods preceding the earliest period in their IPO registration statements. This bill would clearly establish that an EGC need not, under any circumstances, provide financial statements for any period preceding the earliest period required to be presented in the IPO registration statement.

HEARING

The Subcommittee on Capital Markets of the Committee on Financial Services held a hearing examining matters relating to H.R. 2608 on March 9, 2023.

COMMITTEE CONSIDERATION

The Committee on Financial Services met in open session on April 26, 2023, and ordered H.R. 2608 to be reported favorably to the House as amended by a recorded vote of 41 ayes to 0 nays (Record vote no. FC–41), 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. McHenry 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. 2608 was ordered reported favorably to the House as amended by a recorded vote of 41 ayes to 0 nays (Record vote no. FC-41), a quorum being present.

Record vote no. FC- 41

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

COMMITTEE OVERSIGHT FINDINGS

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

PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the goal of H.R. 2608 is to establish that an Emerging Growth Company (EGC), as well as any issuer that went public using EGC disclosure obligations, only needs to provide two years of audited financial statements.

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. 2608, a bill to amend the Federal securities laws to specify the periods for which financial statements are required to be provided by an emerging growth company, and for other purposes | | | |
|--|------|---|---------------|
| 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 | |
| Increases on-budget deficits in any of the four consecutive 10-year periods beginning in 2034? | No | Mandate Effects | |
| | | Contains intergovernmental mandate? No | |
| | | Contains private-sector mandate? Yes, Under Threshold | |
| * = between -\$500,000 and \$500,000. | | | |

H.R. 2608 would change the reporting period for financial statements submitted to the Securities and Exchange Commission (SEC) by an emerging growth company (EGC) or former EGC when it acquires another company. The bill would ensure that EGCs and former EGCs submit financial statements for their target companies that cover a reporting period that does not exceed the earliest audited period for the EGC or former EGC, as presented in connection with an initial public offering. Under current law, when reporting to the SEC, acquiring companies (including EGCs) must

submit up to two years of financial statements for their target companies.

Using information about the cost of similar provisions, CBO estimates that it would cost the SEC an insignificant amount to issue rules to implement the bill. However, because the commission is authorized to collect fees each year to offset its annual appropriation, CBO expects that the net effect on discretionary spending over the 2023–2028 period would be negligible, assuming appropriation actions consistent with that authority.

If the SEC increases fees to offset the costs associated with implementing the bill, H.R. 2608 would increase the cost of an existing mandate on private entities required to pay those assessments. CBO estimates that the incremental cost of that mandate would be small and fall below the annual threshold established in the Unfunded Mandates Reform Act (UMRA) for private-sector mandates (\$198 million in 2023, adjusted annually for inflation).

H.R. 2608 contains no intergovernmental mandates as defined in UMRA.

The CBO staff contact for this estimate is David Hughes. The estimate was reviewed by Ann E. Futrell, 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. 2608 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 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

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. Financial statement reporting requirements for Emerging Growth Companies

This section amends the Securities Act of 1933 and the Securities Act of 1934 to state that an Emerging Growth Company (EGC), as well as any issuer that went public using EGC disclosure obligations, does not need to provide financial statements or acquired company financial statements for any period prior to the earliest audited period the EGC provided in connection with its initial public offering (two years of audited financial statements).

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 (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 ACT OF 1933

TITLE I—

* * * * *

INFORMATION REQUIRED IN REGISTRATION STATEMENT

SEC. 7.

(a) INFORMATION REQUIRED IN REGISTRATION STATEMENT.—

(1) IN GENERAL.—The registration statement, when relating to a security other than a security issued by a foreign government, or political subdivision thereof, shall contain the information, and be accompanied by the documents, specified in Schedule A, and when relating to a security issued by a foreign government, or political subdivision thereof, shall contain the information, and be accompanied by the documents, specified in Schedule B; except that the Commission may by rules or regulations provide that any such information or document need not be included in respect of any class of issuers or secu-

rities if it finds that the requirement of such information or document is inapplicable to such class and that disclosure fully adequate for the protection of investors is otherwise required to be included within the registration statement. If any accountant, engineer, or appraiser, or any person whose profession gives authority to a statement made by him, is named as having prepared or certified any part of the registration statement, or is named as having prepared or certified a report or valuation for use in connection with the registration statement, the written consent of such person shall be filed with the registration statement. If any such person is named as having prepared or certified a report or valuation (other than a public official document or statement) which is used in connection with the registration statement, but is not named as having prepared or certified such report or valuation for use in connection with the registration statement, the written consent of such person shall be filed with the registration statement unless the Commission dispenses with such filing as impracticable or as involving undue hardship on the person filing the registration statement. Any such registration statement shall contain such other information, and be accompanied by such other documents, as the Commission may by rules or regulations require as being necessary or appropriate in the public interest or for the protection of investors.

(2) TREATMENT OF EMERGING GROWTH COMPANIES.—An emerging growth company—

(A) need not present more than 2 years of audited financial statements in order for the registration statement of such emerging growth company with respect to an initial public offering of its common equity securities to be effective, and in any other registration statement to be filed with the Commission, an emerging growth company need not present selected financial data in accordance with section 229.301 of title 17, Code of Federal Regulations, for any period prior to the earliest audited period presented in connection with its initial public offering; **[and]**

(B) need not present acquired company financial statements or information otherwise required under section 210.3-05 or section 210.8-04 of title 17, Code of Federal Regulations, or any successor thereto, for any period prior to the earliest audited period of the emerging growth company presented in connection with its initial public offering and, thereafter, in no event shall an issuer that was an emerging growth company but is no longer an emerging growth company be required to present financial statements of the issuer (or acquired company financial statements or information otherwise required under section 210.3-05 or section 210.8-04 of title 17, Code of Federal Regulations, or any successor thereto) for any period prior to the earliest audited period of the emerging growth company presented in connection with its initial public offering; and

[(B)] (C) may not be required to comply with any new or revised financial accounting standard until such date that a company that is not an issuer (as defined under section 2(a) of the Sarbanes-Oxley Act of 2002 (15 U.S.C.

7201(a))) is required to comply with such new or revised accounting standard, if such standard applies to companies that are not issuers.

(b)(1) The Commission shall prescribe special rules with respect to registration statements filed by any issuer that is a blank check company. Such rules may, as the Commission determines necessary or appropriate in the public interest or for the protection of investors—

(A) require such issuers to provide timely disclosure, prior to or after such statement becomes effective under section 8, of (i) information regarding the company to be acquired and the specific application of the proceeds of the offering, or (ii) additional information necessary to prevent such statement from being misleading;

(B) place limitations on the use of such proceeds and the distribution of securities by such issuer until the disclosures required under subparagraph (A) have been made; and

(C) provide a right of rescission to shareholders of such securities.

(2) The Commission may, as it determines consistent with the public interest and the protection of investors, by rule or order exempt any issuer or class of issuers from the rules prescribed under paragraph (1).

(3) For purposes of paragraph (1) of this subsection, the term “blank check company” means any development stage company that is issuing a penny stock (within the meaning of section 3(a)(51) of the Securities Exchange Act of 1934) and that—

(A) has no specific business plan or purpose; or

(B) has indicated that its business plan is to merge with an unidentified company or companies.

(c) DISCLOSURE REQUIREMENTS.—

(1) IN GENERAL.—The Commission shall adopt regulations under this subsection requiring each issuer of an asset-backed security to disclose, for each tranche or class of security, information regarding the assets backing that security.

(2) CONTENT OF REGULATIONS.—In adopting regulations under this subsection, the Commission shall—

(A) set standards for the format of the data provided by issuers of an asset-backed security, which shall, to the extent feasible, facilitate comparison of such data across securities in similar types of asset classes; and

(B) require issuers of asset-backed securities, at a minimum, to disclose asset-level or loan-level data, if such data are necessary for investors to independently perform due diligence, including—

(i) data having unique identifiers relating to loan brokers or originators;

(ii) the nature and extent of the compensation of the broker or originator of the assets backing the security; and

(iii) the amount of risk retention by the originator and the securitizer of such assets.

(3) DATA STANDARDS FOR ASSET-BACKED SECURITIES DISCLOSURES.—

(A) REQUIREMENT.—The Commission shall, by rule, adopt data standards for all disclosures required under this subsection.

(B) CONSISTENCY.—The data standards required under subparagraph (A) 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.

(d) REGISTRATION STATEMENT FOR ASSET-BACKED SECURITIES.—Not later than 180 days after the date of enactment of this subsection, the Commission shall issue rules relating to the registration statement required to be filed by any issuer of an asset-backed security (as that term is defined in section 3(a)(77) of the Securities Exchange Act of 1934) that require any issuer of an asset-backed security—

- (1) to perform a review of the assets underlying the asset-backed security; and
- (2) to disclose the nature of the review under paragraph (1).

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SECURITIES EXCHANGE ACT OF 1934

TITLE I—REGULATION OF SECURITIES EXCHANGES

* * * * *

REGISTRATION REQUIREMENTS FOR SECURITIES

SEC. 12. (a) It shall be unlawful for any member, broker, or dealer to effect any transaction in any security (other than an exempted security) on a national securities exchange unless a registration is effective as to such security for such exchange in accordance with the provisions of this title and the rules and regulations thereunder. The provisions of this subsection shall not apply in respect of a security futures product traded on a national securities exchange.

(b) A security may be registered on a national securities exchange by the issuer filing an application with the exchange (and filing with the Commission such duplicate originals thereof as the Commission may require), which application shall contain—

- (1) Such information, in such detail, as to the issuer and any person directly or indirectly controlling or controlled by, or under direct or indirect common control with, the issuer, and any guarantor of the security as to principal or interest or both, as the Commission may by rules and regulations require, as necessary or appropriate in the public interest or for the protection of investors, in respect of the following:

(A) the organization, financial structures, and nature of the business;

(B) the terms, position, rights, and privileges of the different classes of securities outstanding;

(C) the terms on which their securities are to be, and during the preceding three years have been, offered to the public or otherwise;

(D) the directors, officers, and underwriters, and each security holder of record holding more than 10 per centum of any class of any equity security of the issuer (other than an exempted security), their remuneration and their interests in the securities of, and their material contracts with, the issuer and any person directly or indirectly controlling or controlled by, or under direct or indirect common control with, the issuer;

(E) remuneration to others than directors and officers exceeding \$20,000 per annum;

(F) bonus and profit-sharing arrangements;

(G) management and service contracts;

(H) options existing or to be created in respect of their securities;

(I) material contracts, not made in the ordinary course of business, which are to be executed in whole or in part at or after the filing of the application or which were made not more than two years before such filing, and every material patent or contract for a material patent right shall be deemed a material contract;

(J) balance sheets for not more than the three preceding fiscal years, certified if required by the rules and regulations of the Commission by a registered public accounting firm;

(K) profit and loss statements for not more than the three preceding fiscal years, certified if required by the rules and regulations of the Commission by a registered public accounting ~~firm;~~ *firm, provided that the application of an emerging growth company need not present acquired company financial statements or information otherwise required under section 210.3-05 or section 210.8-04 of title 17, Code of Federal Regulations, or any successor thereto, for any period prior to the earliest audited period of the emerging growth company presented in connection with its application and, thereafter, in no event shall an issuer that was an emerging growth company but is no longer an emerging growth company be required to present financial statements of the issuer (or acquired company financial statements or information otherwise required under section 210.3-05 or section 210.8-04 of title 17, Code of Federal Regulations, or any successor thereto) for any period prior to the earliest audited period of the emerging growth company presented in connection with any application under subsection (b) of this section;* and

(L) any further financial statements which the Commission may deem necessary or appropriate for the protection of investors.

(2) Such copies of articles of incorporation, bylaws, trust indentures, or corresponding documents by whatever name known, underwriting arrangements, and other similar documents of, and voting trust agreements with respect to, the issuer and any person directly or indirectly controlling or con-

trolled by, or under direct or indirect common control with, the issuer as the Commission may require as necessary or appropriate for the proper protection of investors and to insure fair dealing in the security.

(3) Such copies of material contracts, referred to in paragraph (1)(I) above, as the Commission may require as necessary or appropriate for the proper protection of investors and to insure fair dealing in the security.

(c) If in the judgment of the Commission any information required under subsection (b) of this section is inapplicable to any specified class or classes of issuers, the Commission shall require in lieu thereof the submission of such other information of comparable character as it may deem applicable to such class of issuers.

(d) If the exchange authorities certify to the Commission that the security has been approved by the exchange for listing and registration, the registration shall become effective thirty days after the receipt of such certification by the Commission or within such shorter period of time as the Commission may determine. A security registered with a national securities exchange may be withdrawn or stricken from listing and registration in accordance with the rules of the exchange and, upon such terms as the Commission may deem necessary to impose for the protection of investors, upon application by the issuer or the exchange to the Commission; whereupon the issuer shall be relieved from further compliance with the provisions of this section and section 13 of this title and any rules or regulations under such sections as to the securities so withdrawn or stricken. An unissued security may be registered only 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.

(e) Notwithstanding the foregoing provisions of this section, the Commission may by such rules and regulations as it deems necessary or appropriate in the public interest or for the protection of investors permit securities listed on any exchange at the time the registration of such exchange as a national securities exchange becomes effective, to be registered for a period ending not later than July 1, 1935, without complying with the provisions of this section.

(f)(1)(A) Notwithstanding the preceding subsections of this section, any national securities exchange, in accordance with the requirements of this subsection and the rules hereunder, may extend unlisted trading privileges to—

(i) any security that is listed and registered on a national securities exchange, subject to subparagraph (B); and

(ii) any security that is otherwise registered pursuant to this section, or that would be required to be so registered except for the exemption from registration provided in subparagraph (B) or (G) of subsection (g)(2), subject to subparagraph (E) of this paragraph.

(B) A national securities exchange may not extend unlisted trading privileges to a security described in subparagraph (A)(i) during such interval, if any, after the commencement of an initial public offering of such security, as is or may be required pursuant to subparagraph (C).

(C) Not later than 180 days after the date of enactment of the Unlisted Trading Privileges Act of 1994, the Commission shall prescribe, by rule or regulation, the duration of the interval referred to in subparagraph (B), if any, as the Commission determines to be necessary or appropriate for the maintenance of fair and orderly markets, the protection of investors and the public interest, or otherwise in furtherance of the purposes of this title. Until the earlier of the effective date of such rule or regulation or 240 days after such date of enactment, such interval shall begin at the opening of trading on the day on which such security commences trading on the national securities exchange with which such security is registered and end at the conclusion of the next day of trading.

(D) The Commission may prescribe, by rule or regulation such additional procedures or requirements for extending unlisted trading privileges to any security as the Commission deems necessary or appropriate for the maintenance of fair and orderly markets, the protection of investors and the public interest, or otherwise in furtherance of the purposes of this title.

(E) No extension of unlisted trading privileges to securities described in subparagraph (A)(ii) may occur except pursuant to a rule, regulation, or order of the Commission approving such extension or extensions. In promulgating such rule or regulation or in issuing such order, the Commission—

(i) shall find that such extension or extensions of unlisted trading privileges is consistent with the maintenance of fair and orderly markets, the protection of investors and the public interest, and otherwise in furtherance of the purposes of this title;

(ii) shall take account of the public trading activity in such securities, the character of such trading, the impact of such extension on the existing markets for such securities, and the desirability of removing impediments to and the progress that has been made toward the development of a national market system; and

(iii) shall not permit a national securities exchange to extend unlisted trading privileges to such securities if any rule of such national securities exchange would unreasonably impair the ability of a dealer to solicit or effect transactions in such securities for its own account, or would unreasonably restrict competition among dealers in such securities or between such dealers acting in the capacity of market makers who are specialists and such dealers who are not specialists.

(F) An exchange may continue to extend unlisted trading privileges in accordance with this paragraph only if the exchange and the subject security continue to satisfy the requirements for eligibility under this paragraph, including any rules and regulations issued by the Commission pursuant to this paragraph, except that unlisted trading privileges may continue with regard to securities which had been admitted on such exchange prior to July 1, 1964, notwithstanding the failure to satisfy such requirements. If unlisted trading privileges in a security are discontinued pursuant to this subparagraph, the exchange shall cease trading in that security, unless the exchange and the subject security thereafter satisfy the requirements of this paragraph and the rules issued hereunder.

(G) For purposes of this paragraph—

- (i) a security is the subject of an initial public offering if—
 - (I) the offering of the subject security is registered under the Securities Act of 1933; and
 - (II) the issuer of the security, immediately prior to filing the registration statement with respect to the offering, was not subject to the reporting requirements of section 13 or 15(d) of this title; and
 - (ii) an initial public offering of such security commences at the opening of trading on the day on which such security commences trading on the national securities exchange with which such security is registered.
- (2)(A) At any time within 60 days of commencement of trading on an exchange of a security pursuant to unlisted trading privileges, the Commission may summarily suspend such unlisted trading privileges on the exchange. Such suspension shall not be reviewable under section 25 of this title and shall not be deemed to be a final agency action for purposes of section 704 of title 5, United States Code. Upon such suspension—
- (i) the exchange shall cease trading in the security by the close of business on the date of such suspension, or at such time as the Commission may prescribe by rule or order for the maintenance of fair and orderly markets, the protection of investors and the public interest, or otherwise in furtherance of the purposes of this title; and
 - (ii) if the exchange seeks to extend unlisted trading privileges to the security, the exchange shall file an application to reinstate its ability to do so with the Commission pursuant to such procedures as the Commission may prescribe by rule or order for the maintenance of fair and orderly markets, the protection of investors and the public interest, or otherwise in furtherance of the purposes of this title.
- (B) A suspension under subparagraph (A) shall remain in effect until the Commission, by order, grants approval of an application to reinstate, as described in subparagraph (A)(ii).
- (C) A suspension under subparagraph (A) shall not affect the validity or force of an extension of unlisted trading privileges in effect prior to such suspension.
- (D) The Commission shall not approve an application by a national securities exchange to reinstate its ability to extend unlisted trading privileges to a security unless the Commission finds, after notice and opportunity for hearing, that the extension of unlisted trading privileges pursuant to such application is consistent with the maintenance of fair and orderly markets, the protection of investors and the public interest, and otherwise in furtherance of the purposes of this title. If the application is made to reinstate unlisted trading privileges to a security described in paragraph (1)(A)(ii), the Commission—
- (i) shall take account of the public trading activity in such security, the character of such trading, the impact of such extension on the existing markets for such a security, and the desirability of removing impediments to and the progress that has been made toward the development of a national market system; and
 - (ii) shall not grant any such application if any rule of the national securities exchange making application under this sub-

section would unreasonably impair the ability of a dealer to solicit or effect transactions in such security for its own account, or would unreasonably restrict competition among dealers in such security or between such dealers acting in the capacity of marketmakers who are specialists and such dealers who are not specialists.

(3) Notwithstanding paragraph (2), the Commission shall by rules and regulations suspend unlisted trading privileges in whole or in part for any or all classes of securities for a period not exceeding twelve months, if it deems such suspension necessary or appropriate in the public interest or for the protection of investors or to prevent evasion of the purposes of this title.

(4) On the application of the issuer of any security for which unlisted trading privileges on any exchange have been continued or extended pursuant to this subsection, or of any broker or dealer who makes or creates a market for such security, or of any other person having a bona fide interest in the question of termination or suspension of such unlisted trading privileges, or on its own motion, the Commission shall by order terminate, or suspend for a period not exceeding twelve months, such unlisted trading privileges for such security if the Commission finds, after appropriate notice and opportunity for hearing, that such termination or suspension is necessary or appropriate in the public interest or for the protection of investors.

(5) In any proceeding under this subsection in which appropriate notice and opportunity for hearing are required, notice of not less than ten days to the applicant in such proceeding, to the issuer of the security involved, to the exchange which is seeking to continue or extend or has continued or extended unlisted trading privileges for such security, and to the exchange, if any, on which such security is listed and registered, shall be deemed adequate notice, and any broker or dealer who makes or creates a market for such security, and any other person having a bona fide interest in such proceeding, shall upon application be entitled to be heard.

(6) Any security for which unlisted trading privileges are continued or extended pursuant to this subsection shall be deemed to be registered on a national securities exchange within the meaning of this title. The powers and duties of the Commission under this title shall be applicable to the rules of an exchange in respect to any such security. The Commission may, by such rules and regulations as it deems necessary or appropriate in the public interest or for the protection of investors, either unconditionally or upon specified terms and conditions, or for stated periods, exempt such securities from the operation of any provision of section 13, 14, or 16 of this title.

(g)(1) Every issuer which is engaged in interstate commerce, or in a business affecting interstate commerce, or whose securities are traded by use of the mails or any means or instrumentality of interstate commerce shall—

(A) within 120 days after the last day of its first fiscal year ended on which the issuer has total assets exceeding \$10,000,000 and a class of equity security (other than an exempted security) held of record by either—

(i) 2,000 persons, or

(ii) 500 persons who are not accredited investors (as such term is defined by the Commission), and

(B) in the case of an issuer that is a bank, a savings and loan holding company (as defined in section 10 of the Home Owners' Loan Act), or a bank holding company, as such term is defined in section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841), not later than 120 days after the last day of its first fiscal year ended after the effective date of this subsection, on which the issuer has total assets exceeding \$10,000,000 and a class of equity security (other than an exempted security) held of record by 2,000 or more persons, register such security by filing with the Commission a registration statement (and such copies thereof as the Commission may require) with respect to such security containing such information and documents as the Commission may specify comparable to that which is required in an application to register a security pursuant to subsection (b) of this section. Each such registration statement shall become effective sixty days after filing with the Commission or within such shorter period as the Commission may direct. Until such registration statement becomes effective it shall not be deemed filed for the purposes of section 18 of this title. Any issuer may register any class of equity security not required to be registered by filing a registration statement pursuant to the provisions of this paragraph. The Commission is authorized to extend the date upon which any issuer or class of issuers is required to register a security pursuant to the provisions of this paragraph.

(2) The provisions of this subsection shall not apply in respect of—

(A) any security listed and registered on a national securities exchange.

(B) any security issued by an investment company registered pursuant to section 8 of the Investment Company Act of 1940.

(C) any security, other than permanent stock, guaranty stock, permanent reserve stock, or any similar certificate evidencing nonwithdrawable capital, issued by 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.

(D) any security of an issuer organized and operated exclusively for religious, educational, benevolent, fraternal, charitable, or reformatory purposes and not for pecuniary profit, and no part of the net earnings of which inures to the benefit of any private shareholder or individual; or any security of a fund that is excluded from the definition of an investment company under section 3(c)(10)(B) of the Investment Company Act of 1940.

(E) any security of an issuer which is a "cooperative association" as defined in the Agricultural Marketing Act, approved June 15, 1929, as amended, or a federation of such cooperative associations, if such federation possesses no greater powers or purposes than cooperative associations so defined.

(F) any security issued by a mutual or cooperative organization which supplies a commodity or service primarily for the benefit of its members and operates not for pecuniary profit,

but only if the security is part of a class issuable only to persons who purchase commodities or services from the issuer, the security is transferable only to a successor in interest or occupancy of premises serviced or to be served by the issuer, and no dividends are payable to the holder of the security.

(G) any security issued by an insurance company if all of the following conditions are met:

(i) Such insurance company is required to and does file an annual statement with the Commissioner of Insurance (or other officer or agency performing a similar function) of its domiciliary State, and such annual statement conforms to that prescribed by the National Association of Insurance Commissioners or in the determination of such State commissioner, officer or agency substantially conforms to that so prescribed.

(ii) Such insurance company is subject to regulation by its domiciliary State of proxies, consents, or authorizations in respect of securities issued by such company and such regulation conforms to that prescribed by the National Association of Insurance Commissioners.

(iii) After July 1, 1966, the purchase and sales of securities issued by such insurance company by beneficial owners, directors, or officers of such company are subject to regulation (including reporting) by its domiciliary State substantially in the manner provided in section 16 of this title.

(H) any interest or participation in any collective trust funds maintained by a bank or in a separate account maintained by an insurance company which interest or participation is issued in connection with (i) a stock-bonus, pension, or profit-sharing plan which meets the requirements for qualification under section 401 of the Internal Revenue Code of 1954, (ii) an annuity plan which meets the requirements for deduction of the employer's contribution under section 404(a)(2) of such Code, or (iii) a church plan, company, or account that is excluded from the definition of an investment company under section 3(c)(14) of the Investment Company Act of 1940.

(3) The Commission may by rules or regulations or, on its own motion, after notice and opportunity for hearing, by order, exempt from this subsection any security of a foreign issuer, including any certificate of deposit for such a security, if the Commission finds that such exemption is in the public interest and is consistent with the protection of investors.

(4) Registration of any class of security pursuant to this subsection shall be terminated ninety days, or such shorter period as the Commission may determine, after the issuer files a certification with the Commission that the number of holders of record of such class of security is reduced to less than 300 persons, or, in the case of a bank, a savings and loan holding company (as defined in section 10 of the Home Owners' Loan Act), or a bank holding company, as such term is defined in section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841), 1,200 persons persons. The Commission shall after notice and opportunity for hearing deny termination of registration if it finds that the certification is untrue.

Termination of registration shall be deferred pending final determination on the question of denial.

(5) For the purposes of this subsection the term “class” shall include all securities of an issuer which are of substantially similar character and the holders of which enjoy substantially similar rights and privileges. The Commission may for the purpose of this subsection define by rules and regulations the terms “total assets” and “held of record” as it deems necessary or appropriate in the public interest or for the protection of investors in order to prevent circumvention of the provisions of this subsection. For purposes of this subsection, a security futures product shall not be considered a class of equity security of the issuer of the securities underlying the security futures product. For purposes of determining whether an issuer is required to register a security with the Commission pursuant to paragraph (1), the definition of “held of record” shall not include securities held by persons who received the securities pursuant to an employee compensation plan in transactions exempted from the registration requirements of section 5 of the Securities Act of 1933.

(6) EXCLUSION FOR PERSONS HOLDING CERTAIN SECURITIES.—
The Commission shall, by rule, exempt, conditionally or unconditionally, securities acquired pursuant to an offering made under section 4(6) of the Securities Act of 1933 from the provisions of this subsection.

(h) The Commission may by rules and regulations, or upon application of an interested person, by order, after notice and opportunity for hearing, exempt in whole or in part any issuer or class of issuers from the provisions of subsection (g) of this section or from section 13, 14, or 15(d) or may exempt from section 16 any officer, director, or beneficial owner of securities of any issuer, any security of which is required to be registered pursuant to subsection (g) hereof, upon such terms and conditions and for such period as it deems necessary or appropriate, if the Commission finds, by reason of the number of public investors, amount of trading interest in the securities, the nature and extent of the activities of the issuer, income or assets of the issuer, or otherwise, that such action is not inconsistent with the public interest or the protection of investors. The Commission may, for the purposes of any of the above-mentioned sections or subsections of this title, classify issuers and prescribe requirements appropriate for each such class.

(i) In respect of any securities issued by banks and savings associations the deposits of which are insured in accordance with the Federal Deposit Insurance Act, the powers, functions, and duties vested in the Commission to administer and enforce sections 10A(m), 12, 13, 14(a), 14(c), 14(d), 14(f), and 16 of this Act, and sections 302, 303, 304, 306, 401(b), 404, 406, and 407 of the Sarbanes-Oxley Act of 2002, (1) with respect to national banks and Federal savings associations, the accounts of which are insured by the Federal Deposit Insurance Corporation are vested in the Comptroller of the Currency, (2) with respect to all other member banks of the Federal Reserve System are vested in the Board of Governors of the Federal Reserve System, and (3) with respect to all other insured banks and State savings associations, the accounts of which are insured by the Federal Deposit Insurance Corporation, are vested in the Federal Deposit Insurance Corporation. The Comp-

troller of the Currency, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation shall have the power to make such rules and regulations as may be necessary for the execution of the functions vested in them as provided in this subsection. In carrying out their responsibilities under this subsection, the agencies named in the first sentence of this subsection shall issue substantially similar regulations to regulations and rules issued by the Commission under sections 10A(m), 12, 13, 14(a), 14(c), 14(d), 14(f) and 16 of this Act, and sections 302, 303, 304, 306, 401(b), 404, 406, and 407 of the Sarbanes-Oxley Act of 2002, unless they find that implementation of substantially similar regulations with respect to insured banks and insured institutions are not necessary or appropriate in the public interest or for protection of investors, and publish such findings, and the detailed reasons therefor, in the Federal Register. Such regulations of the above-named agencies, or the reasons for failure to publish such substantially similar regulations to those of the Commission, shall be published in the Federal Register within 120 days of the date of enactment of this subsection, and, thereafter, within 60 days of any changes made by the Commission in its relevant regulations and rules.

(j) The Commission is authorized, by order, as it deems necessary or appropriate for the protection of investors to deny, to suspend the effective date of, to suspend for a period not exceeding twelve months, or to revoke the registration of a security, if the Commission finds, on the record after notice and opportunity for hearing, that the issuer of such security has failed to comply with any provision of this title or the rules and regulations thereunder. No member of a national securities exchange, broker, or dealer shall make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce the purchase or sale of, any security the registration of which has been and is suspended or revoked pursuant to the preceding sentence.

(k) TRADING SUSPENSIONS; EMERGENCY AUTHORITY.—

(1) TRADING SUSPENSIONS.—If in its opinion the public interest and the protection of investors so require, the Commission is authorized by order—

(A) summarily to suspend trading in any security (other than an exempted security) for a period not exceeding 10 business days, and

(B) summarily to suspend all trading on any national securities exchange or otherwise, in securities other than exempted securities, for a period not exceeding 90 calendar days.

The action described in subparagraph (B) shall not take effect unless the Commission notifies the President of its decision and the President notifies the Commission that the President does not disapprove of such decision. If the actions described in subparagraph (A) or (B) involve a security futures product, the Commission shall consult with and consider the views of the Commodity Futures Trading Commission.

(2) EMERGENCY ORDERS.—

(A) IN GENERAL.—The Commission, in an emergency, may by order summarily take such action to alter, supplement, suspend, or impose requirements or restrictions with

respect to any matter or action subject to regulation by the Commission or a self-regulatory organization under the securities laws, as the Commission determines is necessary in the public interest and for the protection of investors—

- (i) to maintain or restore fair and orderly securities markets (other than markets in exempted securities);
- (ii) to ensure prompt, accurate, and safe clearance and settlement of transactions in securities (other than exempted securities); or
- (iii) to reduce, eliminate, or prevent the substantial disruption by the emergency of—

- (I) securities markets (other than markets in exempted securities), investment companies, or any other significant portion or segment of such markets; or

- (II) the transmission or processing of securities transactions (other than transactions in exempted securities).

(B) EFFECTIVE PERIOD.—An order of the Commission under this paragraph shall continue in effect for the period specified by the Commission, and may be extended. Except as provided in subparagraph (C), an order of the Commission under this paragraph may not continue in effect for more than 10 business days, including extensions.

(C) EXTENSION.—An order of the Commission under this paragraph may be extended to continue in effect for more than 10 business days if, at the time of the extension, the Commission finds that the emergency still exists and determines that the continuation of the order beyond 10 business days is necessary in the public interest and for the protection of investors to attain an objective described in clause (i), (ii), or (iii) of subparagraph (A). In no event shall an order of the Commission under this paragraph continue in effect for more than 30 calendar days.

(D) SECURITY FUTURES.—If the actions described in subparagraph (A) involve a security futures product, the Commission shall consult with and consider the views of the Commodity Futures Trading Commission.

(E) EXEMPTION.—In exercising its authority under this paragraph, the Commission shall not be required to comply with the provisions of—

- (i) section 19(c); or
- (ii) section 553 of title 5, United States Code.

(3) TERMINATION OF EMERGENCY ACTIONS BY PRESIDENT.—The President may direct that action taken by the Commission under paragraph (1)(B) or paragraph (2) of this subsection shall not continue in effect.

(4) COMPLIANCE WITH ORDERS.—No member of a national securities exchange, broker, or dealer shall make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce the purchase or sale of, any security in contravention of an order of the Commission under this subsection unless such order has been stayed, modified, or set aside as provided in paragraph (5) of this sub-

section or has ceased to be effective upon direction of the President as provided in paragraph (3).

(5) LIMITATIONS ON REVIEW OF ORDERS.—An order of the Commission pursuant to this subsection shall be subject to review only as provided in section 25(a) of this title. Review shall be based on an examination of all the information before the Commission at the time such order was issued. The reviewing court shall not enter a stay, writ of mandamus, or similar relief unless the court finds, after notice and hearing before a panel of the court, that the Commission's action is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

(6) CONSULTATION.—Prior to taking any action described in paragraph (1)(B), the Commission shall consult with and consider the views of the Secretary of the Treasury, the Board of Governors of the Federal Reserve System, and the Commodity Futures Trading Commission, unless such consultation is impracticable in light of the emergency.

(7) DEFINITION.—For purposes of this subsection, the term “emergency” means—

(A) a major market disturbance characterized by or constituting—

(i) sudden and excessive fluctuations of securities prices generally, or a substantial threat thereof, that threaten fair and orderly markets; or

(ii) a substantial disruption of the safe or efficient operation of the national system for clearance and settlement of transactions in securities, or a substantial threat thereof; or

(B) a major disturbance that substantially disrupts, or threatens to substantially disrupt—

(i) the functioning of securities markets, investment companies, or any other significant portion or segment of the securities markets; or

(ii) the transmission or processing of securities transactions.

(1) It shall be unlawful for an issuer, any class of whose securities is registered pursuant to this section or would be required to be so registered except for the exemption from registration provided by subsection (g)(2)(B) or (g)(2)(G) of this section, by the use of any means or instrumentality of interstate commerce, or of the mails, to issue, either originally or upon transfer, any of such securities in a form or with a format which contravenes such rules and regulations as the Commission may prescribe as necessary or appropriate for the prompt and accurate clearance and settlement of transactions in securities. The provisions of this subsection shall not apply to variable annuity contracts or variable life policies issued by an insurance company or its separate accounts.

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