

107TH CONGRESS  
1ST SESSION

# H. R. 3590

To require operators of electronic marketplaces to disclose the ownership and financial arrangements of such marketplaces to market participants, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

DECEMBER 20, 2001

Mrs. MALONEY of New York introduced the following bill; which was referred to the Committee on Energy and Commerce

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## A BILL

To require operators of electronic marketplaces to disclose the ownership and financial arrangements of such marketplaces to market participants, and for other purposes.

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

3       **SECTION 1. SHORT TITLE; FINDINGS.**

4       (a) SHORT TITLE.—This Act may be cited as the  
5       “Electronic Marketplace Ownership Disclosure Act”.

6       (b) FINDINGS.—The Congress finds the following:

7               (1) The phenomenal economic expansion that  
8       our nation experienced during the last decade was

1        fueled by advances in information technology and  
2        the development of the Internet.

3            (2) Today, consumers and businesses routinely  
4        participate in new online marketplaces.

5            (3) Certain Internet exchanges purporting to  
6        provide neutral marketplaces for the exchange of  
7        goods and services are actually owned by market-  
8        place operators with interests in the transactions  
9        taking place on the exchanges.

10           (4) Certain Internet exchanges have made busi-  
11        ness arrangements with sellers without disclosing the  
12        existence of those arrangements to the consumers.

13           (5) Additional consumer protections are needed  
14        to increase public confidence in the Internet.

15   **SEC. 2. DEFINITIONS.**

16        As used in this Act:

17            (1) ELECTRONIC MARKETPLACE.—

18                (A) IN GENERAL.—The term “electronic  
19        marketplace” means an enterprise that—

20                    (i) is organized to bring together by  
21                    electronic means, on both sides of a trans-  
22                    action, the offers, bids, or orders of mul-  
23                    tiple participants;

1 (ii) is accessible to participants from  
2 the general public, and is not restricted to  
3 licensed or qualified specialists;

4 (iii) lists products and services of such  
5 participants, or provides links or connec-  
6 tions by which access to such lists may be  
7 obtained; and

8 (iv) is operated as a business and col-  
9 lects compensation from any of such par-  
10 ticipants as a condition of participation.

11 (B) EXCLUSIONS.—Such term does not  
12 include—

13 (i) any securities exchange or national  
14 securities association registered under the  
15 Securities Exchange Act of 1934;

16 (ii) any contract market or derivative  
17 transaction execution facility registered  
18 under the Commodity Exchange Act;

19 (iii) any marketplace that is operated  
20 for the conduct of retail transactions by a  
21 single vendor, even if that vendor sells or  
22 offers the products or services of multiple  
23 providers of such products or services; or

24 (iv) any marketplace on which the  
25 total annual volume of transactions is less

1           than \$10,000,000, or such other market-  
2           places as may be excluded from such term  
3           by the regulations prescribed under section  
4           3 on the basis of such factors as minimum  
5           transaction volume or size, minimum num-  
6           ber of transactions, or minimum number of  
7           market participants over a designated pe-  
8           riod of time, or other relevant factors.

9           (C) OPEN TO PUBLIC.—A marketplace  
10          shall not be considered to be restricted to li-  
11          censed or qualified specialists under subpara-  
12          graph (A)(ii) merely because such marketplace  
13          requires participants from the general public to  
14          register and to disclose identifying or financial  
15          information prior to participating.

16          (2) COMMISSION.—The term “Commission”  
17          means the Federal Trade Commission.

18          (3) AFFILIATE.—The term “affiliate” means  
19          any company that directly or indirectly controls, is  
20          controlled by, or is under common control with an-  
21          other company.

22   **SEC. 3. ELECTRONIC MARKETPLACE DISCLOSURE REGULA-**  
23                                   **TIONS.**

24          (a) DISCLOSURE REQUIRED.—The Commission shall  
25          prescribe rules in accordance with this section to prohibit

1 unfair and deceptive acts and practices in the operation  
2 of an electronic marketplace by requiring the operator of  
3 such market to disclose the following:

4 (1) OWNERSHIP DISCLOSURES.—The operator  
5 of an electronic marketplace shall disclose—

6 (A) the identity of any affiliate of such  
7 marketplace; and

8 (B) contact information, or a website link,  
9 from which a marketplace participant may ob-  
10 tain additional information about such affili-  
11 ates.

12 (2) DISCLOSURE OF FINANCIAL ARRANGE-  
13 MENTS BUSINESS ARRANGEMENTS WITH MARKET  
14 PARTICIPANTS.—The operator of an electronic mar-  
15 ketplace shall disclose—

16 (A) the usual or customary financial ar-  
17 rangements under which the largest portion of  
18 marketplace participants are permitted to par-  
19 ticipate;

20 (B) any unusual or special financial ar-  
21 rangements under which a smaller number of  
22 marketplace participants are accorded special  
23 privileges or other benefits in their marketplace  
24 participation; and

1 (C) the identity of any persons or entities  
2 with which the operator has an arrangement  
3 described in subparagraph (B).

4 (b) CLEAR AND CONSPICUOUS DISCLOSURE.—

5 (1) REQUIRED DISCLOSURES.—The regulation  
6 prescribed under this section shall require that the  
7 disclosures required by subsection (a)—

8 (A) be clear and conspicuous to electronic  
9 marketplace participants;

10 (B) to the extent possible, be stated in  
11 simple and uncomplicated terms; and

12 (C) be readily accessible to the public  
13 through the Internet.

14 (2) EXEMPTIONS AND LIMITATIONS ON DISCLO-  
15 SURES.—The regulations prescribed under this  
16 section—

17 (A) shall require that the disclosures be  
18 updated at least quarterly; and

19 (B) shall not require the posting or disclo-  
20 sure of the actual contracts with market partici-  
21 pants.

22 (c) REGULATORY AUTHORITY.—

23 (1) RULEMAKING.—The Commission shall pre-  
24 scribe such regulations as may be necessary to carry  
25 out the purposes of this Act.

1           (2) PROCEDURES AND DEADLINE.—Such regu-  
2       lations shall be prescribed in accordance with appli-  
3       cable requirements of title 5, United States Code,  
4       and shall be issued in final form not later than 6  
5       months after the date of the enactment of this Act.

6 **SEC. 4. ENFORCEMENT.**

7       This Act and the regulations prescribed thereunder  
8       shall be enforced by Commission under the Federal Trade  
9       Commission Act.

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