

114TH CONGRESS
2D SESSION

H. R. 1675

IN THE SENATE OF THE UNITED STATES

FEBRUARY 4, 2016

Received; read twice and referred to the Committee on Banking, Housing, and
Urban Affairs

AN ACT

To direct the Securities and Exchange Commission to revise its rules so as to increase the threshold amount for requiring issuers to provide certain disclosures relating to compensatory benefit plans.

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

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

2 (a) SHORT TITLE.—This Act may be cited as the
3 “Capital Markets Improvement Act of 2016”.

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

Sec. 1. Short title; table of contents.

TITLE I—ENCOURAGING EMPLOYEE OWNERSHIP

Sec. 101. Increased threshold for disclosures relating to compensatory benefit plans.

TITLE II—FAIR ACCESS TO INVESTMENT RESEARCH

Sec. 201. Safe harbor for investment fund research.

TITLE III—SMALL BUSINESS MERGERS, ACQUISITIONS, SALES,
AND BROKERAGE SIMPLIFICATION

Sec. 301. Registration exemption for merger and acquisition brokers.

Sec. 302. Effective date.

TITLE IV—SMALL COMPANY DISCLOSURE SIMPLIFICATION

Sec. 401. Exemption from XBRL requirements for emerging growth companies and other smaller companies.

Sec. 402. Analysis by the SEC.

Sec. 403. Report to Congress.

Sec. 404. Definitions.

TITLE V—STREAMLINING EXCESSIVE AND COSTLY REGULATIONS
REVIEW

Sec. 501. Regulatory review.

6 **TITLE I—ENCOURAGING**
7 **EMPLOYEE OWNERSHIP**

8 **SEC. 101. INCREASED THRESHOLD FOR DISCLOSURES RE-**
9 **LATING TO COMPENSATORY BENEFIT PLANS.**

10 Not later than 60 days after the date of the enact-
11 ment of this Act, the Securities and Exchange Commission
12 shall revise section 230.701(e) of title 17, Code of Federal
13 Regulations, so as to increase from \$5,000,000 to

1 \$10,000,000 the aggregate sales price or amount of secu-
2 rities sold during any consecutive 12-month period in ex-
3 cess of which the issuer is required under such section to
4 deliver an additional disclosure to investors. The Commis-
5 sion shall index for inflation such aggregate sales price
6 or amount every 5 years to reflect the change in the Con-
7 sumer Price Index for All Urban Consumers published by
8 the Bureau of Labor Statistics, rounding to the nearest
9 \$1,000,000.

10 **TITLE II—FAIR ACCESS TO** 11 **INVESTMENT RESEARCH**

12 **SEC. 201. SAFE HARBOR FOR INVESTMENT FUND RE-** 13 **SEARCH.**

14 (a) EXPANSION OF SAFE HARBOR.—Not later than
15 the end of the 45-day period beginning on the date of en-
16 actment of this Act, the Securities and Exchange Commis-
17 sion shall propose, and not later than the end of the 120-
18 day period beginning on such date, the Commission shall
19 adopt, upon such terms, conditions, or requirements as the
20 Commission may determine necessary or appropriate in
21 the public interest, for the protection of investors, and for
22 the promotion of capital formation, revisions to section
23 230.139 of title 17, Code of Federal Regulations, to pro-
24 vide that a covered investment fund research report—

1 (1) shall be deemed, for purposes of sections
2 2(a)(10) and 5(c) of the Securities Act of 1933, not
3 to constitute an offer for sale or an offer to sell a
4 security that is the subject of an offering pursuant
5 to a registration statement that the issuer proposes
6 to file, or has filed, or that is effective, even if the
7 broker or dealer is participating or will participate
8 in the registered offering of the covered investment
9 fund’s securities; and

10 (2) shall be deemed to satisfy the conditions of
11 subsection (a)(1) or (a)(2) of section 230.139 of title
12 17, Code of Federal Regulations, or any successor
13 provisions, for purposes of the Commission’s rules
14 and regulations under the Federal securities laws
15 and the rules of any self-regulatory organization.

16 (b) IMPLEMENTATION OF SAFE HARBOR.—In imple-
17 menting the safe harbor pursuant to subsection (a), the
18 Commission shall—

19 (1) not, in the case of a covered investment
20 fund with a class of securities in substantially con-
21 tinuous distribution, condition the safe harbor on
22 whether the broker’s or dealer’s publication or dis-
23 tribution of a covered investment fund research re-
24 port constitutes such broker’s or dealer’s initiation

1 or reinitiation of research coverage on such covered
2 investment fund or its securities;

3 (2) not—

4 (A) require the covered investment fund to
5 have been registered as an investment company
6 under the Investment Company Act of 1940 or
7 subject to the reporting requirements of section
8 13 or 15(d) of the Securities Exchange Act of
9 1934 for any period exceeding twelve months;

10 or

11 (B) impose a minimum float provision ex-
12 ceeding that referenced in subsection
13 (a)(1)(i)(A)(1)(i) of section 230.139 of title 17,
14 Code of Federal Regulations;

15 (3) provide that a self-regulatory organization
16 may not maintain or enforce any rule that would—

17 (A) condition the ability of a member to
18 publish or distribute a covered investment fund
19 research report on whether the member is also
20 participating in a registered offering or other
21 distribution of any securities of such covered in-
22 vestment fund;

23 (B) condition the ability of a member to
24 participate in a registered offering or other dis-
25 tribution of securities of a covered investment

1 fund on whether the member has published or
2 distributed a covered investment fund research
3 report about such covered investment fund or
4 its securities; or

5 (C) require the filing of a covered invest-
6 ment fund research report with such self-regu-
7 latory organization; and

8 (4) provide that a covered investment fund re-
9 search report shall not be subject to sections 24(b)
10 or 34(b) of the Investment Company Act of 1940 or
11 the rules and regulations thereunder.

12 (c) RULES OF CONSTRUCTION.—Nothing in this sec-
13 tion shall be construed as in any way limiting—

14 (1) the applicability of the antifraud provisions
15 of the Federal securities laws; or

16 (2) the authority of any self-regulatory organi-
17 zation to examine or supervise a member's practices
18 in connection with such member's publication or dis-
19 tribution of a covered investment fund research re-
20 port for compliance with otherwise applicable provi-
21 sions of the Federal securities laws or self-regulatory
22 organization rules.

23 (d) INTERIM EFFECTIVENESS OF SAFE HARBOR.—
24 From and after the 120-day period beginning on the date
25 of enactment of this Act, if the Commission has not met

1 its obligations pursuant to subsection (a) to adopt revi-
2 sions to section 230.139 of title 17, Code of Federal Regu-
3 lations, and until such time as the Commission has done
4 so, a covered investment fund research report published
5 or distributed by a broker or dealer after such date shall
6 be deemed to meet the requirements of section 230.139
7 of title 17, Code of Federal Regulations, and to satisfy
8 the conditions of subsection (a)(1) or (a)(2) thereof for
9 purposes of the Commission’s rules and regulations under
10 the Federal securities laws and the rules of any self-regu-
11 latory organization, as if revised and implemented in ac-
12 cordance with subsections (a) and (b).

13 (e) DEFINITIONS.—For purposes of this section:

14 (1) COVERED INVESTMENT FUND RESEARCH
15 REPORT.—The term “covered investment fund re-
16 search report” means a research report published or
17 distributed by a broker or dealer about a covered in-
18 vestment fund or any of its securities.

19 (2) COVERED INVESTMENT FUND.—The term
20 “covered investment fund” means—

21 (A) an investment company registered
22 under, or that has filed an election to be treated
23 as a business development company under, the
24 Investment Company Act of 1940 and that has
25 filed a registration statement under the Securi-

ties Act of 1933 for the public offering of a class of its securities, which registration statement has been declared effective by the Commission; and

(B) a trust or other person—

(i) that has a class of securities listed for trading on a national securities exchange;

(ii) the assets of which consist primarily of commodities, currencies, or derivative instruments that reference commodities or currencies, or interests in the foregoing; and

(iii) that allows its securities to be purchased or redeemed, subject to conditions or limitations, for a ratable share of its assets.

(3) RESEARCH REPORT.—The term “research report” has the meaning given to that term under section 2(a)(3) of the Securities Act of 1933, except that such term shall not include an oral communication.

(4) SELF-REGULATORY ORGANIZATION.—The term “self-regulatory organization” has the meaning

1 given to that term under section 3(a)(26) of the Se-
 2 curities Exchange Act of 1934.

3 **TITLE III—SMALL BUSINESS**
 4 **MERGERS, ACQUISITIONS,**
 5 **SALES, AND BROKERAGE SIM-**
 6 **PLIFICATION**

7 **SEC. 301. REGISTRATION EXEMPTION FOR MERGER AND**
 8 **ACQUISITION BROKERS.**

9 Section 15(b) of the Securities Exchange Act of 1934
 10 (15 U.S.C. 78o(b)) is amended by adding at the end the
 11 following:

12 “(13) REGISTRATION EXEMPTION FOR MERGER
 13 AND ACQUISITION BROKERS.—

14 “(A) IN GENERAL.—Except as provided in
 15 subparagraph (B), an M&A broker shall be ex-
 16 empt from registration under this section.

17 “(B) EXCLUDED ACTIVITIES.—An M&A
 18 broker is not exempt from registration under
 19 this paragraph if such broker does any of the
 20 following:

21 “(i) Directly or indirectly, in connec-
 22 tion with the transfer of ownership of an
 23 eligible privately held company, receives,
 24 holds, transmits, or has custody of the

1 funds or securities to be exchanged by the
2 parties to the transaction.

3 “(ii) Engages on behalf of an issuer in
4 a public offering of any class of securities
5 that is registered, or is required to be reg-
6 istered, with the Commission under section
7 12 or with respect to which the issuer files,
8 or is required to file, periodic information,
9 documents, and reports under subsection
10 (d).

11 “(iii) Engages on behalf of any party
12 in a transaction involving a public shell
13 company.

14 “(C) DISQUALIFICATIONS.—An M&A
15 broker is not exempt from registration under
16 this paragraph if such broker is subject to—

17 “(i) suspension or revocation of reg-
18 istration under paragraph (4);

19 “(ii) a statutory disqualification de-
20 scribed in section 3(a)(39);

21 “(iii) a disqualification under the
22 rules adopted by the Commission under
23 section 926 of the Investor Protection and
24 Securities Reform Act of 2010 (15 U.S.C.
25 77d note); or

1 “(iv) a final order described in para-
2 graph (4)(H).

3 “(D) RULE OF CONSTRUCTION.—Nothing
4 in this paragraph shall be construed to limit
5 any other authority of the Commission to ex-
6 empt any person, or any class of persons, from
7 any provision of this title, or from any provision
8 of any rule or regulation thereunder.

9 “(E) DEFINITIONS.—In this paragraph:

10 “(i) CONTROL.—The term ‘control’
11 means the power, directly or indirectly, to
12 direct the management or policies of a
13 company, whether through ownership of
14 securities, by contract, or otherwise. There
15 is a presumption of control for any person
16 who—

17 “(I) is a director, general part-
18 ner, member or manager of a limited
19 liability company, or officer exercising
20 executive responsibility (or has similar
21 status or functions);

22 “(II) has the right to vote 20
23 percent or more of a class of voting
24 securities or the power to sell or direct

1 the sale of 20 percent or more of a
2 class of voting securities; or

3 “(III) in the case of a partner-
4 ship or limited liability company, has
5 the right to receive upon dissolution,
6 or has contributed, 20 percent or
7 more of the capital.

8 “(ii) ELIGIBLE PRIVATELY HELD
9 COMPANY.—The term ‘eligible privately
10 held company’ means a privately held com-
11 pany that meets both of the following con-
12 ditions:

13 “(I) The company does not have
14 any class of securities registered, or
15 required to be registered, with the
16 Commission under section 12 or with
17 respect to which the company files, or
18 is required to file, periodic informa-
19 tion, documents, and reports under
20 subsection (d).

21 “(II) In the fiscal year ending
22 immediately before the fiscal year in
23 which the services of the M&A broker
24 are initially engaged with respect to
25 the securities transaction, the com-

pany meets either or both of the following conditions (determined in accordance with the historical financial accounting records of the company):

“(aa) The earnings of the company before interest, taxes, depreciation, and amortization are less than \$25,000,000.

“(bb) The gross revenues of the company are less than \$250,000,000.

“(iii) M&A BROKER.—The term ‘M&A broker’ means a broker, and any person associated with a broker, engaged in the business of effecting securities transactions solely in connection with the transfer of ownership of an eligible privately held company, regardless of whether the broker acts on behalf of a seller or buyer, through the purchase, sale, exchange, issuance, repurchase, or redemption of, or a business combination involving, securities or assets of the eligible privately held company, if the broker reasonably believes that—

1 “(I) upon consummation of the
2 transaction, any person acquiring se-
3 curities or assets of the eligible pri-
4 vately held company, acting alone or
5 in concert, will control and, directly or
6 indirectly, will be active in the man-
7 agement of the eligible privately held
8 company or the business conducted
9 with the assets of the eligible privately
10 held company; and

11 “(II) if any person is offered se-
12 curities in exchange for securities or
13 assets of the eligible privately held
14 company, such person will, prior to
15 becoming legally bound to consum-
16 mate the transaction, receive or have
17 reasonable access to the most recent
18 fiscal year-end financial statements of
19 the issuer of the securities as custom-
20 arily prepared by the management of
21 the issuer in the normal course of op-
22 erations and, if the financial state-
23 ments of the issuer are audited, re-
24 viewed, or compiled, any related state-
25 ment by the independent accountant,

1 a balance sheet dated not more than
2 120 days before the date of the offer,
3 and information pertaining to the
4 management, business, results of op-
5 erations for the period covered by the
6 foregoing financial statements, and
7 material loss contingencies of the
8 issuer.

9 “(iv) PUBLIC SHELL COMPANY.—The
10 term ‘public shell company’ is a company
11 that at the time of a transaction with an
12 eligible privately held company—

13 “(I) has any class of securities
14 registered, or required to be reg-
15 istered, with the Commission under
16 section 12 or that is required to file
17 reports pursuant to subsection (d);

18 “(II) has no or nominal oper-
19 ations; and

20 “(III) has—

21 “(aa) no or nominal assets;

22 “(bb) assets consisting solely
23 of cash and cash equivalents; or

24 “(cc) assets consisting of
25 any amount of cash and cash

1 equivalents and nominal other as-
2 sets.

3 “(F) INFLATION ADJUSTMENT.—

4 “(i) IN GENERAL.—On the date that
5 is 5 years after the date of the enactment
6 of the Small Business Mergers, Acquisi-
7 tions, Sales, and Brokerage Simplification
8 Act of 2015, and every 5 years thereafter,
9 each dollar amount in subparagraph
10 (E)(ii)(II) shall be adjusted by—

11 “(I) dividing the annual value of
12 the Employment Cost Index For
13 Wages and Salaries, Private Industry
14 Workers (or any successor index), as
15 published by the Bureau of Labor
16 Statistics, for the calendar year pre-
17 ceding the calendar year in which the
18 adjustment is being made by the an-
19 nual value of such index (or suc-
20 cessor) for the calendar year ending
21 December 31, 2012; and

22 “(II) multiplying such dollar
23 amount by the quotient obtained
24 under subclause (I).

1 “(ii) ROUNDING.—Each dollar
2 amount determined under clause (i) shall
3 be rounded to the nearest multiple of
4 \$100,000.”.

5 **SEC. 302. EFFECTIVE DATE.**

6 This title and any amendment made by this title shall
7 take effect on the date that is 90 days after the date of
8 the enactment of this Act.

9 **TITLE IV—SMALL COMPANY**
10 **DISCLOSURE SIMPLIFICATION**

11 **SEC. 401. EXEMPTION FROM XBRL REQUIREMENTS FOR**
12 **EMERGING GROWTH COMPANIES AND OTHER**
13 **SMALLER COMPANIES.**

14 (a) EXEMPTION FOR EMERGING GROWTH COMPA-
15 NIES.—Emerging growth companies are exempted from
16 the requirements to use Extensible Business Reporting
17 Language (XBRL) for financial statements and other
18 periodic reporting required to be filed with the Commis-
19 sion under the securities laws. Such companies may elect
20 to use XBRL for such reporting.

21 (b) EXEMPTION FOR OTHER SMALLER COMPA-
22 NIES.—Issuers with total annual gross revenues of less
23 than \$250,000,000 are exempt from the requirements to
24 use XBRL for financial statements and other periodic re-
25 porting required to be filed with the Commission under

1 the securities laws. Such issuers may elect to use XBRL
2 for such reporting. An exemption under this subsection
3 shall continue in effect until—

4 (1) the date that is 5 years after the date of en-
5 actment of this Act; or

6 (2) the date that is 2 years after a determina-
7 tion by the Commission, by order after conducting
8 the analysis required by section 402, that the bene-
9 fits of such requirements to such issuers outweigh
10 the costs, but no earlier than three years after en-
11 actment of this Act.

12 (c) MODIFICATIONS TO REGULATIONS.—Not later
13 than 60 days after the date of enactment of this Act, the
14 Commission shall revise its regulations under parts 229,
15 230, 232, 239, 240, and 249 of title 17, Code of Federal
16 Regulations, to reflect the exemptions set forth in sub-
17 sections (a) and (b).

18 **SEC. 402. ANALYSIS BY THE SEC.**

19 The Commission shall conduct an analysis of the
20 costs and benefits to issuers described in section 401(b)
21 of the requirements to use XBRL for financial statements
22 and other periodic reporting required to be filed with the
23 Commission under the securities laws. Such analysis shall
24 include an assessment of—

1 (1) how such costs and benefits may differ from
2 the costs and benefits identified by the Commission
3 in the order relating to interactive data to improve
4 financial reporting (dated January 30, 2009; 74
5 Fed. Reg. 6776) because of the size of such issuers;

6 (2) the effects on efficiency, competition, capital
7 formation, and financing and on analyst coverage of
8 such issuers (including any such effects resulting
9 from use of XBRL by investors);

10 (3) the costs to such issuers of—

11 (A) submitting data to the Commission in
12 XBRL;

13 (B) posting data on the website of the
14 issuer in XBRL;

15 (C) software necessary to prepare, submit,
16 or post data in XBRL; and

17 (D) any additional consulting services or
18 filing agent services;

19 (4) the benefits to the Commission in terms of
20 improved ability to monitor securities markets, as-
21 sess the potential outcomes of regulatory alter-
22 natives, and enhance investor participation in cor-
23 porate governance and promote capital formation;
24 and

1 (5) the effectiveness of standards in the United
2 States for interactive filing data relative to the
3 standards of international counterparts.

4 **SEC. 403. REPORT TO CONGRESS.**

5 Not later than 1 year after the date of enactment
6 of this Act, the Commission shall provide the Committee
7 on Financial Services of the House of Representatives and
8 the Committee on Banking, Housing, and Urban Affairs
9 of the Senate a report regarding—

10 (1) the progress in implementing XBRL report-
11 ing within the Commission;

12 (2) the use of XBRL data by Commission offi-
13 cials;

14 (3) the use of XBRL data by investors;

15 (4) the results of the analysis required by sec-
16 tion 402; and

17 (5) any additional information the Commission
18 considers relevant for increasing transparency, de-
19 creasing costs, and increasing efficiency of regu-
20 latory filings with the Commission.

21 **SEC. 404. DEFINITIONS.**

22 As used in this title, the terms “Commission”,
23 “emerging growth company”, “issuer”, and “securities
24 laws” have the meanings given such terms in section 3
25 of the Securities Exchange Act of 1934 (15 U.S.C. 78c).

1 **TITLE V—STREAMLINING EXCES-**
2 **SIVE AND COSTLY REGULA-**
3 **TIONS REVIEW**

4 **SEC. 501. REGULATORY REVIEW.**

5 (a) REVIEW AND ACTION.—Not later than 5 years
6 after the date of enactment of this Act, and at least once
7 within each 10-year period thereafter, the Securities and
8 Exchange Commission shall—

9 (1) review each significant regulation issued by
10 the Commission;

11 (2) determine by Commission vote whether each
12 such regulation—

13 (A) is outmoded, ineffective, insufficient,
14 or excessively burdensome; or

15 (B) is no longer necessary in the public in-
16 terest or consistent with the Commission's man-
17 date to protect investors, maintain fair, orderly,
18 and efficient markets, and facilitate capital for-
19 mation;

20 (3) provide notice and solicit public comment as
21 to whether a regulation described in subparagraph
22 (A) or (B) of paragraph (2) (as determined by Com-
23 mission vote pursuant to such paragraph) should be
24 amended to improve or modernize such regulation so

1 that such regulation is in the public interest, or
2 whether such regulation should be repealed; and

3 (4) amend or repeal any regulation described in
4 subparagraph (A) or (B) of paragraph (2), as deter-
5 mined by Commission vote pursuant to such para-
6 graph.

7 (b) DEFINITION.—As used in this section and for
8 purposes of the review required by subsection (a) the term
9 “significant regulation” has the meaning given the term
10 “major rule” in section 804(2) of title 5, United States
11 Code.

12 (c) REPORT TO CONGRESS.—Not later than 45 days
13 after any final Commission vote described in subsection
14 (a)(2), the Commission shall transmit a report to the
15 Committee on Financial Services of the House of Rep-
16 resentatives and the Committee on Banking, Housing, and
17 Urban Affairs of the Senate describing the Commission’s
18 review under subsection (a), its vote or votes, and the ac-
19 tions taken pursuant to paragraph (3) of such subsection.
20 If the Commission determines that legislation is necessary
21 to amend or repeal any regulation described in subpara-
22 graph (A) or (B) of subsection (a)(2), the Commission
23 shall include in the report recommendations for such legis-
24 lation.

- 1 (d) NOT SUBJECT TO JUDICIAL REVIEW.—Any vote
2 by the Commission made pursuant to subsection (a)(2)
3 shall be final and not subject to judicial review.

Passed the House of Representatives February 3,
2016.

Attest:

KAREN L. HAAS,
Clerk.