

117TH CONGRESS  
2D SESSION

# H. R. 8462

To require the Securities and Exchange Commission, when developing rules and regulations about disclosures to retail investors, to conduct investor testing, including a survey and interviews of retail investors, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

JULY 21, 2022

Mr. CASTEN introduced the following bill; which was referred to the  
Committee on Financial Services

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## A BILL

To require the Securities and Exchange Commission, when developing rules and regulations about disclosures to retail investors, to conduct investor testing, including a survey and interviews of retail investors, 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.**

4 This Act may be cited as the “SEC Disclosure Effec-  
5 tiveness Testing Act”.

1 **SEC. 2. DISCLOSURE TESTING.**

2 (a) IN GENERAL.—Section 23(a) of the Securities  
3 Exchange Act of 1934 (15 U.S.C. 78w(a)) is amended by  
4 adding at the end the following:

5 “(4) INVESTOR TESTING.—

6 “(A) IN GENERAL.—The Commission shall en-  
7 gage in investor testing prior to issuing any rule or  
8 regulation which designates documents or informa-  
9 tion to be disclosed under the securities laws, if such  
10 documents or information are required to be deliv-  
11 ered to, and are intended or substantially likely to  
12 be materially relied upon by, a retail investor  
13 when—

14 “(i) selecting a broker-dealer or investment  
15 adviser, evaluating their services and fees, or  
16 materially altering a brokerage or advisory rela-  
17 tionship;

18 “(ii) assessing a securities recommendation  
19 or investment advice provided by a broker-deal-  
20 er or investment adviser;

21 “(iii) making a decision to purchase or sell  
22 a security; or

23 “(iv) such other circumstances as the Com-  
24 mission may, with input from the Investor Ad-  
25 vocate, determine appropriate for the protection  
26 of retail investors.

1           “(B) EXEMPTION FOR CERTAIN DISCLO-  
2           SURES.—This section shall not apply to—

3           “(i) disclosures made pursuant to Regula-  
4           tions S–K and S–X (including Industry  
5           Guides), Regulation 14A, Form N–PX, Form  
6           10–K, Form 10–Q, Form 8–K, Form SD,  
7           Form N–PORT, Form PF, Regulation SBSR,  
8           disclosures mandated by or jointly with the  
9           Board of Governors of the Federal Reserve Sys-  
10          tem or the Financial Stability Oversight Coun-  
11          cil, or successors thereto; or

12          “(ii) any other documents or information  
13          that the Commission, with input from the In-  
14          vestor Advocate, determines are outside the in-  
15          tended scope and purposes of this Act.

16          “(C) COMMISSION AUTHORITY TO CONDUCT AD-  
17          DITIONAL TESTING.—This section shall not be con-  
18          strued to limit the Commission’s ability to conduct  
19          any investor testing on any other documents or in-  
20          formation not subject to this section 23(a), provided  
21          that any such investor testing shall not be subject to  
22          the requirements of this section 23(a).

23          “(D) CONTENTS.—Investor testing conducted  
24          pursuant to subparagraph (A) shall include the fol-  
25          lowing:

1           “(i) Qualitative testing in the form of one-  
2           on-one cognitive interviews of retail investors  
3           about documents or information, or samples of  
4           such documents or information, to be provided.

5           “(ii) Such other forms of testing that the  
6           Commission, with input from the Investor Ad-  
7           vocate, deems appropriate for evaluating the ef-  
8           fectiveness of retail disclosures.

9           “(iii) Analysis and publication in the Fed-  
10          eral Register of the results of the testing.

11          “(iv) An opportunity for the public to com-  
12          ment on such results published in the Federal  
13          Register.

14          “(v) A consideration of unique challenges  
15          faced by retail investors age 65 or older.

16          “(E) SUBSTANTIVE CHANGES.—If the Commis-  
17          sion, in the period between engaging in investor test-  
18          ing and publishing a final rule, makes substantive  
19          changes to such rule that the Commission deter-  
20          mines would have a significant impact on retail in-  
21          vestors, and such changes were not already investor  
22          tested, the Commission shall again engage in inves-  
23          tor testing related to such changes.

24          “(F) PUBLIC AVAILABILITY OF RETAIL TEST-  
25          ING RESULTS.—The Commission shall make the

1 data and results of any investor testing performed  
2 pursuant to this paragraph available to the public.

3 “(G) RULES OF CONSTRUCTION.—

4 “(i) The determination that some or all of  
5 a document or information is deemed to be sub-  
6 ject to this paragraph shall not forestall the de-  
7 termination that such document or information  
8 may also be used or relied upon by the public,  
9 market participants other than retail investors,  
10 or government agencies.

11 “(ii) The Commission may, in consultation  
12 with the Investor Advocate, determine which, if  
13 any, components of such document or informa-  
14 tion are substantially likely to be relied on by  
15 retail investors for the purposes outlined in  
16 paragraph (4)(A) above and focus testing under  
17 this paragraph on those components of the dis-  
18 closure.

19 “(iii) Notwithstanding clause (ii) above,  
20 where any information subject to testing under  
21 this paragraph may be used or relied upon by  
22 the public, market participants other than retail  
23 investors, or government agencies, the results of  
24 testing made pursuant to this paragraph shall  
25 not provide grounds for reducing or eliminating

1 (including any undermining of reliability of and  
2 accountability for) the information that existing  
3 or proposed regulation requires or would re-  
4 quire be made available to the public, market  
5 participants other than retail investors, and  
6 government agencies, whether or not such infor-  
7 mation is delivered to retail investors.

8 “(H) RETAIL INVESTOR DEFINED.—For the  
9 purposes of this paragraph, the term ‘retail investor’  
10 means any investor that is not an institutional inves-  
11 tor.”.

12 (b) PARTICIPATION OF INVESTOR ADVOCATE.—Sec-  
13 tion 4(g) of the Securities Exchange Act of 1934 (15  
14 U.S.C. 78d(g)) is amended—

15 (1) in paragraph (4)—

16 (A) in subparagraph (D)(ii), by striking  
17 “and” at the end;

18 (B) by redesignating subparagraph (E) as  
19 subparagraph (F); and

20 (C) by inserting after subparagraph (D)  
21 the following:

22 “(E) engage in investor testing—

23 “(i) to carry out the functions of the  
24 Office; and

1                   “(ii) pursuant to section 23(a)(4), as  
2                   appropriate; and”;

3                   (2) by adding at the end the following:

4                   “(9) PUBLICATION OF DATA AND RESULTS OF  
5                   INVESTOR TESTING.—With respect to any investor  
6                   testing carried out by the Investor Advocate pursu-  
7                   ant to paragraph (4)(E), the Investor Advocate may  
8                   make the data and results of such investor testing  
9                   available to the public, without further review or ed-  
10                  iting by the Commission.

11                  “(10) PERSONNEL.—If the Investor Advocate  
12                  decides, within its sole discretion, to conduct testing  
13                  under this section, the Investor Advocate may do so  
14                  and the Commission shall provide the Office of the  
15                  Investor Advocate with sufficient personnel and  
16                  funding necessary to carry out such testing. Such  
17                  testing may qualify as the testing covered by this  
18                  section, provided that all requirements of the section  
19                  are met.”.

20                  (c) PRIOR RULES.—

21                  (1) IN GENERAL.—For any final rule or regula-  
22                  tion issued by the Securities and Exchange Commis-  
23                  sion (in this subsection referred to as the “Commis-  
24                  sion”) before the date of the enactment of this Act  
25                  that would be subject to investor testing under sec-

1       tion 23(a)(4) of the Securities Exchange Act of  
2       1934, had such rule been issued on or after the date  
3       of enactment of this Act, the Commission shall per-  
4       form investor testing with respect to such rule or  
5       regulation that includes the contents described in  
6       such section 23(a)(4).

7               (2) SCHEDULE.—The Commission shall, not  
8       later than 6 months after the date of the enactment  
9       of this Act, with input from the Investor Advocate,  
10      establish a schedule for completing any investor test-  
11      ing required under paragraph (1) that prioritizes  
12      testing of any final rules and regulations that des-  
13      ignate documents or information central to retail in-  
14      vestor decision making, and in particular prioritize  
15      the testing of documents or information required to  
16      be delivered to retail investors in the form of sum-  
17      mary documents or summary sections of documents  
18      including for the purpose of determining whether  
19      and how such summary documents can achieve the  
20      goals of informed investor decision-making in the  
21      circumstances set forth in section 23(a)(4) of the  
22      Securities Exchange Act of 1934 while maintaining  
23      full accessibility by retail investors, the public, other  
24      market participants, and government regulators to  
25      the full range of documents and information that



1 they may utilize or rely on, whether or not such doc-  
2 uments or information are required to be delivered  
3 to retail investors.

4 (3) REPORT.—The Commission shall, with  
5 input from the Investor Advocate, issue a report to  
6 Congress each year containing the following:

7 (A) The status of any investor testing re-  
8 quired under paragraph (1) initiated within the  
9 last year or otherwise ongoing.

10 (B) The results of any investor testing  
11 completed under paragraph (1) within the last  
12 year.

13 (C) Any priorities the Commission has,  
14 based on results of investor testing required by  
15 paragraph (1), for—

16 (i) revising any proposed or final rule  
17 or regulation based on the results of test-  
18 ing;

19 (ii) initiating any rulemaking or ac-  
20 tions arising from the results of the test-  
21 ing; and

22 (iii) the Investor Advocate's views on  
23 the above priorities and any such other

1 matters arising from the testing or results  
2 of testing.

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