II

104TH CONGRESS
2D SESSION

H. R. 3005

IN THE SENATE OF THE UNITED STATES

JUNE 20, 1996

Received

AN ACT

To amend the Federal securities laws in order to promote efficiency and capital formation in the financial markets, and to amend the Investment Company Act of 1940 to promote more efficient management of mutual funds, protect investors, and provide more effective and less burdensome regulation.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Securities Amendments of 1996".

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

TITLE I—CAPITAL MARKETS DEREGULATION AND LIBERALIZATION

SEC. 101. SHORT TITLE.

This title may be cited as the ''Capital Markets Deregulation and Liberalization Act of 1996''.

SEC. 102. CREATION OF NATIONAL SECURITIES MARKETS.

(a) SECURITIES ACT OF 1933.—

(1) AMENDMENT.—Section 18 of the Securities Act of 1933 (15 U.S.C. 77r) is amended to read as follows:

''SEC. 18. EXEMPTION FROM STATE REGULATION OF SECURITIES OFFERINGS.

''(a) SCOPE OF EXEMPTION.—Except as otherwise provided in this section, no law, rule, regulation, or order, or other administrative action of any State or Territory of the United States, or the District of Columbia, or any political subdivision thereof—

''(1) requiring, or with respect to, registration or qualification of securities, or registration or qualification of securities transactions, shall directly or indirectly apply to a security that—

''(A) is a covered security; or

''(B) will be a covered security upon completion of the transaction;

"(2) shall directly or indirectly prohibit, limit, or impose conditions upon the use of—

"(A) with respect to a covered security described in subsection (b)(1) or (c)(1)—

"(i) any offering document that is prepared by the issuer; or

"(ii) any offering document that is not prepared by the issuer if such offering document is required to be and is filed with the Commission or any national securities organization registered under section 15A of the Securities Exchange Act of 1934 (15 U.S.C. 78o–3);

"(B) with respect to a covered security described in paragraph (2), (3), or (4) of subsection (b), any offering document; or

"(C) any proxy statement, report to shareholders, or other disclosure document relating to a covered security or the issuer thereof that is required to be and is filed with the Commission or any national securities organization registered under section 15A of the Securities Exchange Act of 1934 (15 U.S.C. 78o–3); or

"(3) shall directly or indirectly prohibit, limit, or impose conditions, based on the merits of such offering or issuer, upon the offer or sale of any security described in paragraph (1).

"(b) COVERED SECURITIES.—For purposes of this section, the following are covered securities:

"(1) EXCLUSIVE FEDERAL REGISTRATION OF NATIONALLY TRADED SECURITIES.—A security is a covered security if such security is—

"(A) listed, or authorized for listing, on the New York Stock Exchange or the American Stock Exchange, or included or qualified for inclusion in the National Market System of the National Association of Securities Dealers Automated Quotation System (or any successor to such entities);

"(B) listed, or authorized for listing, on a national securities exchange (or tier or segment thereof) that has listing standards that the Commission determines by rule (on its own initiative or on the basis of a petition) are substantially similar to the listing standards applicable to securities described in subparagraph (A); or

"(C) is a security of the same issuer that is equal in seniority or senior to a security described in subparagraph (A) or (B).

"(2) Exclusive federal registration of investment companies.—A security is a covered security if such security is a security issued by an investment company that is registered under the Investment Company Act of 1940 (15 U.S.C. 80a et seq.).

"(3) Sales to qualified purchasers.—A security is a covered security with respect to the offer or sale of the security to qualified purchasers, as defined by the Commission by rule. In prescribing such rule, the Commission may define qualified purchaser differently with respect to different categories of securities, consistent with the public interest and the protection of investors.

"(4) Exemption in connection with certain exempt offerings.—A security is a covered security if—

"(A) the offer or sale of such security is exempt from registration under this title pursuant to section 4(1) or 4(3), and—

"(i) the issuer of such security files reports with the Commission pursuant to section 13 or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m, 78o(d)); or "(ii) the issuer is exempt from filing such reports;

"(B) such security is exempt from registration under this title pursuant to section 4(4);

"(C) the offer or sale of such security is exempt from registration under this title pursuant to section 3(a), other than the offer or sale of a security that is exempt from such registration pursuant to paragraph (4) or (11) of such section, except that a municipal security that is exempt from such registration pursuant to paragraph (2) of such section is not a covered security with respect to the offer or sale of such security in the State in which the issuer of such security is located; or

"(D) the offer or sale of such security is exempt from registration under this title pursuant to Commission rule or regulation under section 4(2) of this title.

"(c) CONDITIONALLY COVERED SECURITIES.—

"(1) FEDERALLY REGISTERED OFFERINGS.—Subject to the limitations contained in paragraphs (2) and (3), a security is a covered security if—

"(A) the issuer of such security has (or will have upon conclusion of the transaction) total assets exceeding $10,000,000;

"(B) such security is the subject of a registration statement that is filed with the Commission pursuant to this title; and

"(C) the issuer files with such registration statement audited financial statements for each of the two most recent fiscal years of its operations ending before the filing of the registration statement.

"(2) LIMITATIONS FOR CERTAIN OFFERINGS.—Notwithstanding paragraph (1), a security is not a covered security if such security is—

"(A) a security of an issuer which is a blank check company (as defined in section 7(b) of this title), a partnership, a limited liability company, or a direct participation investment program;

"(B) a penny stock (as such term is defined in section 3(a)(51) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(51)); or

"(C) a security issued in an offering relating to a rollup transaction (as such term is defined in paragraphs (4) and (5) of section 14(h) of such Act (15 U.S.C. 78n(h)(4), (5)).

"(3) LIMITATIONS BASED ON MISCONDUCT.—Notwithstanding paragraph (1), a security is not a covered security—

"(A) with respect to any State, if the issuer, or a principal officer or principal shareholder thereof—

"(i) is subject to a statutory disqualification, as defined in subparagraph (A), (B), (C), or (D) of section 3(a)(39) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(39));

"(ii) has been convicted within 5 years prior to the offering of any felony under Federal or State law in connection with the offer, purchase, or sale of any security, or any felony under Federal or State law involving fraud or deceit; or

"(iii) is currently named in and subject to any order, judgment, or decree of any court of competent jurisdiction acting pursuant to Federal or State law temporarily or permanently restraining or enjoining such issuer, officer, or shareholder from engaging in or continuing any conduct or practice in connection with a security; or

''(B) with respect to a particular State, if the issuer, or a principal officer or principal shareholder thereof—

''(i) has filed a registration statement which is the subject of a currently effective stop order entered pursuant to that State's securities laws within 5 years prior to the offering;

''(ii) is currently named in and subject to any administrative enforcement order or judgment of that State's securities commission (or any agency or office performing like functions) entered within 5 years prior to the offering, or is currently named in and subject to any other administrative enforcement order or judgment of that State entered within 5 years prior to the offering that finds fraud or deceit; or

''(iii) is currently named in and subject to any administrative enforcement order or judgment of that State which prohibits or denies registration, or revokes the use of any exemption from registration, in connection with the offer, purchase, or sale of securities.

"(4) EXCEPTIONS TO LIMITATIONS.—

(A) DEBT SECURITY EXEMPTION.—The limitations in paragraph (2)(A) shall not apply with respect to the debt securities of any issuer that is a partnership or limited liability company, provided that (i) the issuer is either a registered dealer or an affiliate of such a dealer, (ii) the issuer has, both before and after the offering, capital or equity (each computed in accordance with United States generally accepted accounting principles) of not less than $75,000,000, and (iii) if the issuer is not a registered dealer, such issuer does not use the proceeds of the offering primarily to fund the nonfinancial business of the issuer or any of its affiliates that are not registered dealers.

"(B) MISCONDUCT EXEMPTIONS.—The limitations in paragraph (3)(A) shall not apply if the Commission has exempted the subject person from the application of such paragraph by rule or order, and the limitations in paragraph (3)(B) shall not apply if the securities commission (or any agency or office performing like functions) of the affected State has exempted the subject person from the application of such paragraph by rule or order.

"(C) REASONABLE STEPS.—The provisions of paragraph (3) shall not apply if the issuer has taken reasonable steps to ascertain whether any principal officer or principal shareholder is subject to such paragraph, and such steps do not reveal a person who is subject to such paragraph. An issuer shall be considered to have taken reasonable steps if such issuer or its agent has conducted a search of any centralized data bases that the Commission may designate by rule, and has received an affidavit under oath by each such principal officer or principal shareholder stating that such officer or shareholder is not subject to the provisions of paragraph (3).

"(D) EFFECT OF LIMITATIONS ON REMEDIES.—Notwithstanding paragraph (3), an issuer shall not be subject to a right of rescission under State securities laws solely as a result of the operation of such paragraph.

"(5) NO EFFECT UNDER SUBSECTION (B).—No limitation under this subsection shall affect the treatment of a security that qualifies as a covered security under subsection (b).

"(d) PRESERVATION OF AUTHORITY.—

"(1) FRAUD AUTHORITY.—Consistent with this section, the securities commission (or any agency or office performing like functions) of any State or Territory of the United States, or the District of Columbia, shall retain jurisdiction under the laws of such State, Territory, or District to investigate and bring enforcement actions with respect to fraud or deceit in connection with securities or securities transactions.

"(2) PRESERVATION OF FILING REQUIREMENTS.—

"(A) NOTICE FILINGS PERMITTED.—Nothing contained in this section shall prohibit the securities commission (or any agency or office performing like functions) of any State or Territory of the United States, or the District of Columbia, from requiring the filing of any documents filed with the Commission pursuant to this title solely for notice purposes, together with any required fee.

"(B) PRESERVATION OF FEES.—Until otherwise provided by State law enacted after the date of enactment of the Securities Amendments of 1996, filing or registration fees with respect to securities or securities transactions may continue to be collected in amounts determined pursuant to State law as in effect on the day before such date.

"(C) FEES NOT PERMITTED ON LISTED SECURITIES.—Notwithstanding subparagraphs (A) and (B), no filing or fee may be required with respect to any security that is a covered security pursuant to subsection (b)(1) of this section, or will be such a covered security upon completion of the transaction, or is a security of the same issuer that is equal in seniority or senior to a security that is a covered security pursuant to such subsection.

"(3) ENFORCEMENT OF REQUIREMENTS.—Nothing in this section shall prohibit the securities commission (or any agency or office performing like functions) of any State or Territory of the United States, or the District of Columbia, from suspending the offer or sale of securities within such State, Territory, or District as a result of the failure to submit any filing or fee required under law and permitted under this section.

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

"(1) PRINCIPAL OFFICER.—The term 'principal officer' means a director, chief executive officer, or chief financial officer of an issuer, or any other officer performing like functions.

"(2) PRINCIPAL SHAREHOLDER.—The term 'principal shareholder' means any person who is directly or indirectly the beneficial owner of more than 20 percent of any class of equity security of an issuer. When two or more persons act as a partnership, limited partnership, syndicate, or other group for the purpose of acquiring, holding, or disposing of securities of an issuer, such syndicate or group shall be deemed a 'person' for purposes of this paragraph. In determining, for purposes of this paragraph, any percentage of a class of any security, such class shall be deemed to consist of the amount of the outstanding securities of such class, exclusive of any securities of such class held by or for the account of the issuer or a subsidiary of the issuer.

"(3) OFFERING DOCUMENT.—The term 'offering document' has the meaning given the term 'prospectus' by section 2(10), but without regard to the provisions of clauses (a) and (b) of such section, except that, with respect to a security described in subsection (b)(2) of this section, such term also includes a communication that is not deemed to offer such a security pursuant to a rule of the Commission.

"(4) PREPARED BY THE ISSUER.—Within 6 months after the date of enactment of the Securities Amendments of 1996, the Commission shall, by rule, define the term 'prepared by the issuer' for purposes of this section.".

(2) STUDY OF UNIFORMITY.—The Securities Exchange Commission shall conduct a study after consultation with States, issuers, brokers, and dealers on the extent to which uniformity of State regulatory requirements for securities or securities transactions has been achieved for securities that are not covered securities (within the meaning of section 18 of the Securities Act of 1933 as amended by paragraph (1) of this subsection). Such study shall specifically focus on the impact of such uniformity or lack thereof on the cost of capital, innovation and technological development in securities markets, and duplicative regulation with respect to securities issuers (including small business), brokers, and dealers

and the effect on investor protection. The Commission shall submit to the Congress a report on the results of such study within one year after the date of enactment of this Act.

(b) BROKER/DEALER REGULATION.—

(1) AMENDMENT.—Section 15 of the Securities Exchange Act of 1934 (15 U.S.C. 78o) is amended by adding at the end the following new subsection:

"(h) LIMITATIONS ON STATE LAW.—

"(1) CAPITAL, MARGIN, BOOKS AND RECORDS, BONDING, AND REPORTS.—No law, rule, regulation, or order, or other administrative action of any State or political subdivision thereof shall establish capital, custody, margin, financial responsibility, making and keeping records, bonding, or financial or operational reporting requirements for brokers, dealers, municipal securities dealers, government securities brokers, or government securities dealers that differ from, or are in addition to, the requirements in those areas established under this title. The Commission shall consult periodically the securities commissions (or any agency or office performing like functions) of the States concerning the adequacy of such requirements as established under this title.

"(2) EXEMPTION TO PERMIT SERVICE TO CUSTOMERS.—No law, rule, regulation, or order, or other administrative action of any State or political subdivision thereof shall require an associated person to register with such State prior to effecting a transaction described in paragraph (3) for a customer in such State if—

"(A) such transaction is effected on behalf of a customer that, for 30 days prior to the day of the transaction, maintains an account with the broker or dealer;

"(B) such associated person is not ineligible to register with such State for any reason other than such a transaction;

"(C) such associated person is registered with a registered securities association and at least one State; and

"(D) the broker or dealer with which such person is associated is registered with such State.

"(3) DESCRIBED TRANSACTIONS.—A transaction is described in this paragraph if—

"(A) such transaction is effected by an associated person (i) to which the customer was assigned for 14 days prior to the day of the transaction, and (ii) who is registered with a State in which the customer was a resident or was present for at least 30 consecutive days during the one-year period prior to the transaction; except that, if the customer is present in another State for 30 or more consecutive days or has permanently changed his or her residence to another State, such transaction is not described in this subparagraph unless the associated person files with such State an application for registration within 10 calendar days of the later of the date of the transaction or the date of the discovery of the presence of the customer in the State for 30 or more consecutive days or the change in the customer's residence;

"(B) the transaction is effected within the period beginning on the date on which such associated person files with the State in which the transaction is effected an application for registration and ending on the earlier of (i) 60 days after the date the application is filed, or (ii) the time at which such State notifies the associated person that it has denied the application for registration or has stayed the pendency of the application for cause; or

"(C) the transaction is one of 10 or fewer transactions in a calendar year (excluding any transactions described in subparagraph (A) or (B)) which the associated person effects in the States in which the associated person is not registered.

"(4) ALTERNATE ASSOCIATED PERSONS.—For purposes of paragraph (3)(A)(ii), each of up to 3 associated persons who are designated to effect transactions during the absence or unavailability of the principal associated person for a customer may be treated as an associated person to which such customer is assigned for purposes of such paragraph.".

(2) STUDY.—Within 6 months after the date of enactment of this Act, the Commission, after consultation with registered securities associations, national securities exchanges, and States, shall conduct a study of—

(A) the impact of disparate State licensing requirements on associated persons of registered brokers or dealers; and

(B) methods for States to attain uniform licensing requirements for such persons.

(3) REPORT.—Within one year after the date of enactment of this Act, the Commission shall submit

to the Congress a report on the study conducted under paragraph (2). Such report shall include recommendations concerning appropriate methods described in paragraph (2)(B), including any necessary legislative changes to implement such recommendations.

(4) TECHNICAL AMENDMENT.—Section 28(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78bb(a)) is amended by striking ''Nothing'' and inserting ''Except as otherwise specifically provided elsewhere in this title, nothing''.

SEC. 103. MARGIN REQUIREMENTS.

(a) MARGIN REQUIREMENTS.—

(1) EXTENSIONS OF CREDIT BY BROKER-DEALERS.—Section 7(c) of the Securities Exchange Act of 1934 (15 U.S.C. 78g(c)) is amended to read as follows:

''(c) UNLAWFUL CREDIT EXTENSION TO CUSTOMERS.—

''(1) PROHIBITION.—It shall be unlawful for any member of a national securities exchange or any broker or dealer, directly or indirectly, to extend or maintain credit or arrange for the extension or maintenance of credit to or for any customer—

''(A) on any security (other than an exempted security), in contravention of the rules and regulations which the Board of Governors of the Federal Reserve System shall prescribe under subsections (a) and (b) of this section;

''(B) without collateral or on any collateral other than securities, except in accordance with such rules and regulations as the Board of Governors of the Federal Reserve System may prescribe—

''(i) to permit under specified conditions and for a limited period any such member, broker, or dealer to maintain a credit initially extended in conformity with the rules and regulations of the Board of governors of the Federal Reserve System; and

''(ii) to permit the extension or maintenance of credit in cases where the extension or maintenance of credit is not for the purpose of purchasing or carrying securities or of evading or circumventing the provisions of subparagraph (A) of this paragraph.

"(2) EXCEPTION.—This subsection and the rules and regulations thereunder shall not apply to any credit extended, maintained, or arranged by a member of a national securities exchange or a broker or dealer to or for a member of a national securities exchange or a registered broker or dealer—

"(A) a substantial portion of whose business consists of transactions with persons other than brokers or dealers; or

"(B) to finance its activities as a market maker or an underwriter;

except that the Board of Governors of the Federal Reserve System may impose such rules and regulations, in whole or in part, on any credit otherwise exempted by this paragraph if it determines that such action is necessary or appropriate in the public interest or for the protection of investors.".

(2) EXTENSIONS OF CREDIT BY OTHER LENDERS.—Section 7(d) of the Securities Exchange Act of 1934 (78 U.S.C. 78g(d)) is amended to read as follows:

"(d) UNLAWFUL CREDIT EXTENSION IN VIOLATION OF RULES AND REGULATIONS; EXCEPTION TO APPLICATION OF RULES, ETC.—

"(1) PROHIBITION.—It shall be unlawful for any person not subject to subsection (c) of this section to extend or maintain credit or to arrange for the extension or maintenance of credit for the purpose of purchasing or carrying any security, in contravention of such rules and regulations as the Board of Governors of the Federal Reserve System shall prescribe to prevent the excessive use of credit for the purchasing or carrying of or trading in securities in circumvention of the other provisions of this section. Such rules and regulations may impose upon all loans made for the purpose of purchasing or carrying securities limitations similar to those imposed upon members, brokers, or dealers by subsection (c) of this section and the rules and regulations thereunder.

"(2) EXCEPTIONS.—This subsection and the rules and regulations thereunder shall not apply to any credit extended, maintained, or arranged—

"(A) by a person not in the ordinary course of business;

"(B) on an exempted security;

"(C) to or for a member of a national securities exchange or a registered broker or dealer—

"(i) a substantial portion of whose business consists of transactions with persons other than brokers or dealers; or

"(ii) to finance its activities as a market maker or an underwriter;

"(D) by a bank on a security other than an equity security; or

"(E) as the Board of Governors of the Federal Reserve System shall, by such rules, regulations, or orders as it may deem necessary or appropriate in the public interest or for the protection of investors, exempt, either unconditionally or upon specified terms and conditions or for stated periods, from the operation of this subsection and the rules and regulations thereunder;

except that the Board of Governors of the Federal Reserve System may impose such rules and regulations, in whole or in part, on any credit otherwise exempted by subparagraph (C) of this paragraph if it determines that such action is necessary or appropriate in the public interest or for the protection of investors.".

(b) BORROWING BY MEMBERS, BROKERS, AND DEALERS.—Section 8 of the Securities Exchange Act of 1934 (15 U.S.C. 78h) is amended—

(1) by striking subsection (a), and

(2) by redesignating subsections (b) and (c) as subsections (a) and (b), respectively.

SEC. 104. PROSPECTUS DELIVERY.

(a) REPORT ON ELECTRONIC DELIVERY.—Within six months after the date of enactment of this Act, the Commission shall report to Congress on the steps the Commission has taken, or anticipates taking, to facilitate the electronic delivery of prospectuses to institutional and other investors.

(b) REPORT ON ADVISORY COMMITTEE RECOMMENDATIONS.—Within one year after the date of enactment of this Act, the Commission shall report to Congress on the Commission's views on the recommendations of the Advisory Committee on Capital Formation, including any actions taken to implement the recommendations of the Advisory Committee.

SEC. 105. EXEMPTIVE AUTHORITY.

(a) GENERAL EXEMPTIVE AUTHORITY UNDER THE SECURITIES ACT OF 1933.—Title I of the Securities Act of 1933 (15 U.S.C. 77a et seq.) is amended by adding at the end the following new section:

"SEC. 28. GENERAL EXEMPTIVE AUTHORITY.

"The Commission, by rules and regulations, may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision or provisions of this title or of any rule or regulation thereunder, to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors.".

(b) GENERAL EXEMPTIVE AUTHORITY UNDER THE SECURITIES EXCHANGE ACT OF 1934.—Title I of the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by adding at the end the following new section:

"SEC. 36. GENERAL EXEMPTIVE AUTHORITY.

"(a) AUTHORITY.—Except as provided in subsection (b) but notwithstanding any other provision of this title, the Commission, by rule, regulation, or order, may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision or provisions of this title or of any rule or regulation thereunder, to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors. The Commission shall by rules and regulations determine the procedures under which an exemptive order under this section shall be granted and may, in its sole discretion, decline to entertain any application for an order of exemption under this section.

"(b) LIMITATION.—The Commission shall not exercise authority under this section to exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from section 15C of this title or the rules or regulations thereunder, or (for purposes of such section 15C or such rules or regulations) from the definitions in paragraphs (42) through (45) of section 3(a) of this title.".

SEC. 106. PROMOTION OF EFFICIENCY, COMPETITION, AND CAPITAL FORMATION.

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

(1) by inserting "(a) DEFINITIONS.—" after "SEC. 2."; and

(2) by adding at the end the following new subsection:

"(b) CONSIDERATION OF PROMOTION OF EFFICIENCY, COMPETITION, AND CAPITAL FORMATION.—Whenever pursuant to this title the Commission is engaged in rulemaking and is required to consider or determine whether an action is necessary or appropriate in the public interest, the Commission shall also consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.''.

(b) SECURITIES EXCHANGE ACT of 1934.—Section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c) is amended by adding at the end the following new subsection:

``(f) CONSIDERATION OF PROMOTION OF EFFICIENCY, COMPETITION, AND CAPITAL FORMATION.—Whenever pursuant to this title the Commission is engaged in rulemaking, or in the review of a rule of a self-regulatory organization, and is required to consider or determine whether an action is necessary or appropriate in the public interest, the Commission shall also consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.''.

(c) INVESTMENT COMPANY ACT of 1940.—Section 2 of the Investment Company Act of 1940 (15 U.S.C. 80a–2) is amended by adding at the end the following new subsection:

``(c) CONSIDERATION OF PROMOTION OF EFFICIENCY, COMPETITION, AND CAPITAL FORMATION.—Whenever pursuant to this title the Commission is engaged in rulemaking and is required to consider or determine whether an action is consistent with the public interest, the Commission shall also consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.''.

SEC. 107. PRIVATIZATION OF EDGAR.

(a) EXAMINATION.—The Securities and Exchange Commission shall examine proposals for the privatization of the EDGAR system. Such examination shall promote competition in the automation and rapid collection and dissemination of information required to be disclosed. Such examination shall include proposals that maintain free public access to data filings in the EDGAR system.

(b) REVIEW AND REPORT.—Within 180 days after the date of enactment of this Act, the Commission shall submit to the Congress a report on the examination under subsection (a). Such report shall include such recommendations for such legislative action as may be necessary to implement the proposal that the Commission determines most effectively achieves the objectives described in subsection (a).

SEC. 108. COORDINATION OF EXAMINING AUTHORITIES.

(a) AMENDMENTS.—Section 17 of the Securities Exchange Act of 1934 (15 U.S.C. 78q) is amended by adding at the end the following new subsection:

''(i) COORDINATION OF EXAMINING AUTHORITIES.—

"(1) ELIMINATION OF DUPLICATION.—The Commission and the examining authorities, through cooperation and coordination of examination and oversight as required by this subsection, shall eliminate any unnecessary and burdensome duplication in the examination process.

"(2) PLANNING CONFERENCES.—

"(A) The Commission and the examining authorities shall meet at least annually for a national general planning conference to discuss coordination of examination schedules and priorities and other areas of interest relevant to examination coordination and cooperation.

"(B) Within each geographic region designated by the Commission, the Commission and the relevant examining authorities shall meet at least annually for a regional planning conference to discuss examination schedules and priorities and other areas of related interest, and to encourage information-sharing and to avoid unnecessary duplication of examinations.

"(3) COORDINATION TRACKING SYSTEM FOR BROKER-DEALER EXAMINATIONS.—

"(A) The Commission and the examining authorities shall prepare, on a periodic basis in a uniform computerized format, information on registered broker and dealer examinations and shall submit such information to the Commission.

"(B) The Commission shall maintain a computerized database of consolidated examination information to be used for examination planning and scheduling and for monitoring coordination of registered broker and dealer examinations under this section.

"(4) COORDINATION OF EXAMINATIONS.—

"(A) The examining authorities shall share among themselves such information, including reports of examinations, customer complaint information, and other non-public regulatory information, as appropriate to foster a coordinated approach to regulatory oversight of registered brokers and dealers subject to examination by more than one examining authority.

"(B) To the extent practicable, the examining authorities shall assure that each registered broker and dealer subject to examination by more than one examining authority that requests a coordinated examination shall have all requested aspects of the examination conducted simultaneously and without duplication of the areas covered. The examining authorities shall also prepare an advance schedule of all such coordinated examinations.

“(5) PROHIBITED NON-COORDINATED EXAMINATIONS.—Any examining authority that does not participate in a coordinated examination pursuant to paragraph (4) of this subsection shall not conduct a routine examination other than a coordinated examination of that broker or dealer within 9 months of the conclusion of a scheduled coordinated examination.

“(6) EXAMINATIONS FOR CAUSE.—At any time, any examining authority may conduct an examination for cause of any broker or dealer subject to its jurisdiction.

“(7) BROKER-DEALER EXAMINATION EVALUATION PANEL.—The Commission shall establish an examination evaluation panel composed of representatives of registered brokers and dealers that are members of more than one self-regulatory organization that conducts routine examinations. Prior to each national general planning conference required by paragraph (2)(A) of this subsection, the Commission shall convene the examination evaluation panel to review consolidated and statistical information on the coordination of examinations and information on examinations that are not coordinated, including the findings of Commission examiners on the effectiveness of the examining authorities in achieving coordinated examinations. The Commission shall present any findings and recommendations of the examination evaluation panel to the next meeting of the national general planning conference, and shall report back to the examination evaluation panel on the actions taken by the examining authorities regarding those findings and recommendations. The examination evaluation panel shall not be subject to the Federal Advisory Committee Act (5 U.S.C. App.).

"(8) REPORT TO CONGRESS.—Within one year after the date of enactment of this Act, the Commission shall report to the Congress on the progress it and the examining authorities have made in reducing duplication and improving coordination in registered broker and dealer examinations, and on the activities of the examination evaluation panel. Such report shall also indicate whether the Commission has identified additional redundancies that have failed to be addressed in the coordination of examining authorities, or any recommendations of the examination evaluation panel established under paragraph (7) of this subsection that have not been addressed by the examining authorities or the Commission.''.

(b) DEFINITION.—Section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78e) is amended by adding at the end the following paragraph:

''(54) The term 'examining authority' means any self-regulatory organization registered with the Commission under this title (other than registered clearing agencies) with the authority to examine, inspect, and otherwise oversee the activities of a registered broker or dealer.''.

SEC. 109. FOREIGN PRESS CONFERENCES.

No later than one year after the date of enactment of this Act, the Commission shall adopt rules under the Securities Act of 1933 concerning the status under the registration provisions of the Securities Act of 1933 of foreign press conferences and foreign press releases by persons engaged in the offer and sale of securities.

SEC. 110. REPORT ON TRUST INDENTURE ACT OF 1939.

Within 6 months after the date of enactment of this Act, the Securities and Exchange Commission shall submit to the Congress a report on the benefits of, the continuing need for, and, if necessary, options for the modification or elimination of, the Trust Indenture Act of 1939 (15 U.S.C. 77aaa et seq.).

TITLE II—INVESTMENT COMPANY ACT AMENDMENTS

SEC. 201. SHORT TITLE.

This title may be cited as the ''Investment Company Act Amendments of 1996''.

SEC. 202. FUNDS OF FUNDS.

Section 12(d)(1) of the Investment Company Act of 1940 (15 U.S.C. 80a–12(d)(1)) is amended—

(1) in subparagraph (E)(iii)—

(A) by striking ''in the event such investment company is not a registered investment company,''; and

(B) by inserting ''in the event such investment company is not a registered investment company'' after ''(bb)'';

(2) by redesignating existing subparagraphs (G) and (H) as subparagraphs (H) and (I), respectively;

(3) by inserting after subparagraph (F) the following new subparagraph:

''(G) The provisions of this paragraph (1) shall not apply to securities of a registered open-end company (the 'acquired company') purchased or otherwise acquired by a registered open-end company (the ‘acquiring company’) if—

‘‘(i) the acquired company and the acquiring company are part of the same group of investment companies;

‘‘(ii) the securities of the acquired company, securities of other registered open-end companies that are part of the same group of investment companies, Government securities, and short-term paper are the only investments held by the acquiring company;

‘‘(iii)(I) the acquiring company does not pay and is not assessed any charges or fees for distribution-related activities with respect to securities of the acquired company unless the acquiring company does not charge a sales load or other fees or charges for distribution-related activities; or

‘‘(II) any sales loads and other distribution-related fees charged with respect to securities of the acquiring company, when aggregated with any sales load and distribution-related fees paid by the acquiring company with respect to securities of the acquired company, are not excessive under rules adopted pursuant to either section 22(b) or section 22(c) of this title by a securities association registered under section 15A of the Securities Exchange Act of 1934 or the Commission;

"(iv) the acquired company shall have a fundamental policy that prohibits it from acquiring any securities of registered open-end companies in reliance on this subparagraph or subparagraph (F) of this subsection; and

"(v) such acquisition is not in contravention of such rules and regulations as the Commission may from time to time prescribe with respect to acquisitions in accordance with this subparagraph as necessary and appropriate for the protection of investors.

For purposes of this subparagraph, a 'group of investment companies' shall mean any two or more registered investment companies that hold themselves out to investors as related companies for purposes of investment and investor services."; and

(4) adding at the end the following new subparagraph:

"(J) The Commission, by rules and regulations upon its own motion or by order upon application, may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions from any provisions of this subsection, if and to the extent such exemption is consistent with the public interest and the protection of investors.''.

SEC. 203. REGISTRATION OF SECURITIES.

(a) AMENDMENTS TO REGISTRATION STATEMENTS.—Section 24(e) of the Investment Company Act of 1940 (15 U.S.C. 80a–24(e)) is amended—

(1) by striking paragraphs (1) and (2);

(2) by redesignating paragraph (3) as subsection (e); and

(3) in subsection (e) (as so redesignated) by striking ''pursuant to this subsection or otherwise''.

(b) REGISTRATION OF INDEFINITE AMOUNT OF SECURITIES.—Section 24(f) of the Investment Company Act of 1940 (15 U.S.C. 80a–24(f)) is amended to read as follows:

''(f) REGISTRATION OF INDEFINITE AMOUNT OF SECURITIES.—

''(1) INDEFINITE REGISTRATION OF SECURITIES.—Upon the effectiveness of its registration statement under the Securities Act of 1933, a face-amount certificate company, open-end management company, or unit investment trust shall be deemed to have registered an indefinite amount of securities.

''(2) PAYMENT OF REGISTRATION FEES.—Within 90 days after the end of the company's fiscal year, the company shall pay a registration fee to the Commission, calculated in the manner specified in section 6(b) of the Securities Act of 1933, based on the aggregate sales price for which its securities (including, for this purpose, all securities issued pursuant to a dividend reinvestment plan) were sold pursuant to a registration of an indefinite amount of securities under this subsection during the company's previous fiscal year reduced by—

"(A) the aggregate redemption or repurchase price of the securities of the company during that year, and

"(B) the aggregate redemption or repurchase price of the securities of the company during any prior fiscal year ending not more than 1 year before the date of enactment of the Investment Company Act Amendments of 1996 that were not used previously by the company to reduce fees payable under this section.

"(3) INTEREST DUE ON LATE PAYMENT.—A company paying the fee or any portion thereof more than 90 days after the end of the company's fiscal year shall pay to the Commission interest on unpaid amounts, compounded daily, at the underpayment rate established by the Secretary of the Treasury pursuant to section 3717(a) of title 31, United States Code. The payment of interest pursuant to the requirement of this paragraph shall not preclude the Commission from bringing an action to enforce the requirements of paragraph (2) of this subsection.

"(4) RULEMAKING AUTHORITY.—The Commission may adopt rules and regulations to implement the provisions of this subsection.".

(c) EFFECTIVE DATE.—The amendments made by this section shall be effective 6 months after the date of enactment of this Act or on such earlier date as the Commission may specify by rule.

SEC. 204. INVESTMENT COMPANY ADVERTISING PROSPECTUS.

Section 24 of the Investment Company Act of 1940 (15 U.S.C. 80a–24) is amended by adding at the end the following new subsection:

"(g) In addition to the prospectuses permitted or required in section 10 of the Securities Act of 1933, the Commission shall permit, by rules or regulations deemed necessary or appropriate in the public interest or for the protection of investors, the use of a prospectus for the purposes of section 5(b)(1) of such Act with respect to securities issued by a registered investment company. Such a prospectus, which may include information the substance of which is not included in the prospectus specified in section 10(a) of the Securities Act of 1933, shall be deemed to be permitted by section 10(b) of such Act.''.

SEC. 205. VARIABLE INSURANCE CONTRACTS.

(a) UNIT INVESTMENT TRUST TREATMENT.—Section 26 of the Investment Company Act of 1940 (15 U.S.C. 80a–26) is amended by adding at the end the following new subsection:

''(e)(1) Subsection (a) shall not apply to any registered separate account funding variable insurance contracts, or to the sponsoring insurance company and principal underwriter of such account.

''(2) It shall be unlawful for any registered separate account funding variable insurance contracts, or for the sponsoring insurance company of such account, to sell any such contract, unless—

''(A) the fees and charges deducted under the contract in the aggregate are reasonable in relation to the services rendered, the expenses expected to be incurred, and the risks assumed by the insurance company, and the insurance company so represents in the registration statement for the contract; and

''(B) the insurance company (i) complies with all other applicable provisions of this section as if it were a trustee or custodian of the registered separate account; (ii) files with the insurance regulatory authority of a State an annual statement of its financial condition, which most recent statement indicates that it has a combined capital and surplus, if a stock company, or an unassigned surplus, if a mutual company, of not less than $1,000,000, or such other amount as the Commission may from time to time prescribe by rule as necessary or appropriate in the public interest or for the protection of investors; and (iii) together with its registered separate accounts, is supervised and examined periodically by the insurance authority of such State.

''(3) The Commission may adopt such rules and regulations under paragraph (2)(A) as it determines are necessary or appropriate in the public interest or for the protection of investors. For the purposes of such paragraph, the fees and charges deducted under the contract shall include all fees and charges imposed for any purpose and in any manner.''.

(b) PERIODIC PAYMENT PLAN TREATMENT.—Section 27 of such Act (15 U.S.C. 80a–27) is amended by adding at the end the following new subsection:

''(i)(1) This section shall not apply to any registered separate account funding variable insurance contracts, or to the sponsoring insurance company and principal underwriter of such account, except as provided in paragraph (2).

"(2) It shall be unlawful for any registered separate account funding variable insurance contracts, or for the sponsoring insurance company of such account, to sell any such contract unless (A) such contract is a redeemable security, and (B) the insurance company complies with section 26(e) and any rules or regulations adopted by the Commission thereunder.".

SEC. 206. REPORTS TO THE COMMISSION AND SHAREHOLDERS.

Section 30 of the Investment Company Act of 1940 (15 U.S.C. 80a–29) is amended—

(1) by striking paragraph (1) of subsection (b) and inserting the following:

"(1) such information, documents, and reports (other than financial statements), as the Commission may require to keep reasonably current the information and documents contained in the registration statement of such company filed under this title; and";

(2) by redesignating subsections (c), (d), (e), and (f) as subsections (d), (e), (g), and (h), respectively;

(3) by inserting after subsection (b) the following new subsection:

"(c) In exercising its authority under subsection (b)(1) to require the filing of information, documents, and reports on a basis more frequently than semi-annually, the Commission shall take such steps as it deems necessary or appropriate, consistent with the public interest and the protection of investors, to avoid unnecessary reporting by, and minimize the compliance burdens on, registered investment companies and their affiliated persons. Such steps shall include considering and requesting public comment on—

"(1) feasible alternatives that minimize the reporting burdens on registered investment companies; and

"(2) the utility of such information, documents, and reports to the Commission in relation to the costs to registered investment companies and their affiliated persons of providing such information, documents, and reports.";

(4) by inserting after subsection (e) (as redesignated by paragraph (2) of this section) the following new subsection:

"(f) The Commission may by rule require that semi-annual reports containing the information set forth in subsection (e) include such other information as the Commission deems necessary or appropriate in the public interest or for the protection of investors. In exercising its authority under this subsection, the Commission shall take such steps as it deems necessary or appropriate, consistent with the public interest and the protection of investors, to avoid unnecessary reporting by, and minimize the compliance burdens on, registered investment companies and their affiliated persons. Such steps shall include considering and requesting public comment on—

''(1) feasible alternatives that minimize the reporting burdens on registered investment companies; and

''(2) the utility of such information to shareholders in relation to the costs to registered investment companies and their affiliated persons of providing such information to shareholders.''; and

(5) in subsection (g) (as so redesignated) by striking ''subsections (a) and (d)'' and inserting ''subsections (a) and (e)''.

SEC. 207. BOOKS, RECORDS AND INSPECTIONS.

Section 31 of the Investment Company Act of 1940 (15 U.S.C. 80a–30) is amended—

(1) by striking subsections (a) and (b) and inserting the following:

''(a) Every registered investment company, and every underwriter, broker, dealer, or investment adviser that is a majority-owned subsidiary of such a company, shall maintain and preserve such records (as defined in section 3(a)(37) of the Securities Exchange Act of 1934) for such period or periods as the Commission, by rules and regulations, may prescribe as necessary or appropriate in the public interest or for the protection of investors. Every investment adviser not a majority-owned subsidiary of, and every depositor of any registered investment company, and every principal underwriter for any registered investment company other than a closed-end company, shall maintain and preserve for such period or periods as the Commission shall prescribe by rules and regulations, such records as are necessary or appropriate to record such person's transactions with such registered company. In exercising its authority under this subsection, the Commission shall take such steps as it deems necessary or appropriate, consistent with the public interest and for the protection of investors, to avoid unnecessary recordkeeping by, and minimize the compliance burden on, persons required to maintain records under this subsection (hereinafter in this section referred to as 'subject persons'). Such steps shall include considering, and requesting public comment on—

"(1) feasible alternatives that minimize the recordkeeping burdens on subject persons;

"(2) the necessity of such records in view of the public benefits derived from the independent scrutiny of such records through Commission examination;

"(3) the costs associated with maintaining the information that would be required to be reflected in such records; and

"(4) the effects that a proposed recordkeeping requirement would have on internal compliance policies and procedures.

"(b) All records required to be maintained and preserved in accordance with subsection (a) of this section shall be subject at any time and from time to time to such reasonable periodic, special, and other examinations by the Commission, or any member or representative thereof, as the Commission may prescribe. For purposes of such examinations, any subject person shall make available to the Commission or its representatives any copies or extracts from such records as may be prepared without undue effort, expense, or delay as the Commission or its representatives may reasonably request. The Commission shall exercise its authority under this subsection with due regard for the benefits of internal compliance policies and procedures and the effective implementation and operation thereof.'';

(2) by redesignating existing subsections (c) and (d) as subsections (e) and (f), respectively; and

(3) by inserting after subsection (b) the following new subsections:

''(c) Notwithstanding any other provision of law, the Commission shall not be compelled to disclose any internal compliance or audit records, or information contained therein, provided to the Commission under this section. Nothing in this subsection shall authorize the Commission to withhold information from Congress or prevent the Commission from complying with a request for information from any other Federal department or agency requesting the information for purposes within the scope of its jurisdiction, or complying with an order of a court of the United States in an action brought by the United States or the Commission. For purposes of section 552 of title 5, United States Code, this section shall be considered a statute described in subsection (b)(3)(B) of such section 552.

''(d) For purposes of this section—

''(1) 'internal compliance policies and procedures' means policies and procedures designed by subject persons to promote compliance with the Federal securities laws; and

"(2) 'internal compliance and audit record' means any record prepared by a subject person in accordance with internal compliance policies and procedures.".

SEC. 208. INVESTMENT COMPANY NAMES.

Section 35(d) of the Investment Company Act of 1940 (15 U.S.C. 80a–34(d)) is amended to read as follows:

"(d) It shall be unlawful for any registered investment company to adopt as a part of the name or title of such company, or of any securities of which it is the issuer, any word or words that the Commission finds are materially deceptive or misleading. The Commission is authorized, by rule, regulation, or order, to define such names or titles as are materially deceptive or misleading.".

SEC. 209. EXCEPTIONS FROM DEFINITION OF INVESTMENT COMPANY.

(a) AMENDMENTS.—Section 3(c) of the Investment Company Act of 1940 (15 U.S.C. 80a–3(c)) is amended—

(1) in paragraph (1), by inserting after the first sentence the following new sentence: "Such issuer nonetheless is deemed to be an investment company for purposes of the limitations set forth in section

12(d)(1)(A)(i) and (B)(i) governing the purchase or other acquisition by such issuer of any security issued by any registered investment company and the sale of any security issued by any registered open-end company to any such issuer.'';

(2) in subparagraph (A) of paragraph (1)—

(A) by inserting after ''issuer,'' the first place it appears the following: ''and is or, but for the exception in this paragraph or paragraph (7), would be an investment company,''; and

(B) by striking all that follows ''(other than short-term paper)'' and inserting a period;

(3) in paragraph (2)—

(A) by striking ''and acting as broker,'' and inserting ''acting as broker, and acting as market intermediary,''; and

(B) by adding at the end of such paragraph the following new sentences: ''For the purposes of this paragraph, the term 'market intermediary' means any person that regularly holds itself out as being willing contemporaneously to engage in, and is regularly engaged in the business of entering into, transactions on both sides of the market for a financial contract or one or more such financial contracts. For purposes of the preceding sentence, the term 'financial contract' means any arrangement that (A) takes the form of an individually negotiated contract, agreement, or option to buy, sell, lend, swap, or repurchase, or other similar individually negotiated transaction commonly entered into by participants in the financial markets; (B) is in respect of securities, commodities, currencies, interest or other rates, other measures of value, or any other financial or economic interest similar in purpose or function to any of the foregoing; and (C) is entered into in response to a request from a counterparty for a quotation or is otherwise entered into and structured to accommodate the objectives of the counterparty to such arrangement.''; and

(4) by striking paragraph (7) and inserting the following:

''(7)(A) Any issuer (i) whose outstanding securities are owned exclusively by persons who, at the time of acquisition of such securities, are qualified purchasers, and (ii) who is not making and does not presently propose to make a public offering of such securities. Securities that are owned by persons who received the securities from a qualified purchaser as a gift or bequest, or where the transfer was caused by legal separation, divorce, death, or other involuntary event, shall be deemed to be owned by a qualified purchaser, subject to such rules, regulations, and orders as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.

"(B) Notwithstanding subparagraph (A), an issuer is within the exception provided by this paragraph if—

"(i) in addition to qualified purchasers, its outstanding securities are beneficially owned by not more than 100 persons who are not qualified purchasers if (I) such persons acquired such securities on or before December 31, 1995, and (II) at the time such securities were acquired by such persons, the issuer was excepted by paragraph (1) of this subsection; and

"(ii) prior to availing itself of the exception provided by this paragraph—

"(I) such issuer has disclosed to such persons that future investors will be limited to qualified purchasers, and that ownership in such issuer is no longer limited to not more than 100 persons, and

"(II) concurrently with or after such disclosure, such issuer has provided such persons with a reasonable opportunity to redeem any part or all of their interests in the issuer for their proportionate share of the issuer's current net assets, or the cash equivalent thereof.

"(C) An issuer that is excepted under this paragraph shall nonetheless be deemed to be an investment company for purposes of the limitations set forth in section 12(d)(1)(A)(i) and (B)(i) governing the purchase or other acquisition by such issuer of any security issued by any registered investment company and the sale of any security issued by any registered open-end company to any such issuer.

"(D) For purposes of determining compliance with this paragraph and paragraph (1) of this subsection, an issuer that is otherwise excepted under this paragraph and an issuer that is otherwise excepted under paragraph (1) shall not be treated by the Commission as being a single issuer for purposes of determining whether the outstanding securities of the issuer excepted under paragraph (1) are beneficially owned by not more than 100 persons or whether the outstanding securities of the issuer excepted under this paragraph are owned by persons that are not qualified purchasers. Nothing in this provision shall be deemed to establish that a person is a bona fide qualified purchaser for purposes of this paragraph or a bona fide beneficial owner for purposes of paragraph (1) of this subsection.''.

(b) DEFINITION OF QUALIFIED PURCHASER.—Section 2(a) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)) is amended by inserting after paragraph (50) the following new paragraph:

''(51) 'Qualified purchaser' means—

''(A) any natural person who owns at least $10,000,000 in securities of issuers that are not controlled by such person, except that securities of such a controlled issuer may be counted toward such amount if such issuer is, or but for the exception in paragraph (1) or (7) of section 3(c) would be, an investment company;

''(B) any trust not formed for the specific purpose of acquiring the securities offered, as to which the trustee or other person authorized to make decisions with respect to the trust, and each settlor or other person who has contributed assets to the trust, is a person described in subparagraph (A) or (C); or

"(C) any person, acting for its own account or the accounts of other qualified purchasers, who in the aggregate owns and invests on a discretionary basis, not less than $100,000,000 in securities of issuers that are not affiliated persons (as defined in paragraph (3)(C) of this subsection) of such person, except that securities of such an affiliated person issuer may be counted toward such amount if such issuer is, or but for the exception in paragraph (1) or (7) of section 3(c) would be, an investment company.

The Commission may adopt such rules and regulations governing the persons and trusts specified in subparagraphs (A), (B), and (C) of this paragraph as it determines are necessary or appropriate in the public interest and for the protection of investors.".

(c) CONFORMING AMENDMENT.—The last sentence of section 3(a) of the Investment Company Act of 1940 (15 U.S.C. 80a–3(a)) is amended—

(1) by inserting "(i)" after "of the owner"; and

(2) by inserting before the period the following: ", and (ii) which are not relying on the exception

from the definition of investment company in subsection (c)(1) or (c)(7) of this section''.

(d) RULEMAKING REQUIRED.—

(1) IMPLEMENTATION OF SECTION 3(C)(1)(B).— Within one year after the date of enactment of this Act, the Commission shall prescribe rules to implement the requirements of section 3(c)(1)(B) of the Investment Company Act of 1940 (15 U.S.C. 80a–3(c)(1)(B)).

(2) EMPLOYEE EXCEPTION.—Within one year after the date of enactment of this Act, the Commission shall prescribe rules pursuant to its authority under section 6 of the Investment Company Act of 1940 (15 U.S.C. 80a–6) to permit the ownership by knowledgeable employees of an issuer or an affiliated person of the issuer of the securities of that issuer or affiliated person without loss of the issuer's exception under section 3(c)(1) or 3(c)(7) of such Act from treatment as an investment company under such Act.

TITLE III—SECURITIES AND EXCHANGE COMMISSION AUTHORIZATION

SEC. 301. SHORT TITLE.

This title may be cited as the ''Securities and Exchange Commission Authorization Act of 1996''.

SEC. 302. PURPOSES.

The purposes of this title are—

(1) to authorize appropriations for the Securities and Exchange Commission for fiscal year 1997; and

(2) to reduce over time the rates of fees charged under the Federal securities laws.

SEC. 303. AUTHORIZATION OF APPROPRIATIONS.

Section 35 of the Securities Exchange Act of 1934 is amended to read as follows:

''SEC. 35. AUTHORIZATION OF APPROPRIATIONS.

''There are authorized to be appropriated to carry out the functions, powers, and duties of the Commission $317,000,000 for fiscal year 1997.''.

SEC. 304. REGISTRATION FEES.

Section 6(b) of the Securities Act of 1933 (15 U.S.C. 77f(b)) is amended to read as follows:

''(b) REGISTRATION FEE.—

"(1) RECOVERY OF COST OF SERVICES.—The Commission shall, in accordance with this subsection, collect registration fees that are designed to recover the costs to the government of the securities registration process, and costs related to such process, including enforcement activities, policy and rulemaking activities, administration, legal services, and international regulatory activities.

"(2) FEE PAYMENT REQUIRED.—At the time of filing a registration statement, the applicant shall pay to the Commission a fee that shall be equal to the sum of the amounts (if any) determined under the rates established by paragraphs (3) and (4). The Commission shall publish in the Federal Register notices of the fee rates applicable under this section for each fiscal year. In no case shall the fee required by this subsection be less than $200, except that during fiscal year 2002 or any succeeding fiscal year such minimum fee shall be $182.

"(3) GENERAL REVENUE FEES.—The rate determined under this paragraph is a rate equal to $200 for each $1,000,000 of the maximum aggregate price at which such securities are proposed to be offered, except that during fiscal year 2002 and any succeeding fiscal year such rate is equal to $182 for each $1,000,000 of the maximum aggregate price at which such securities are proposed to be offered. Fees collected during any fiscal year pursuant to this paragraph shall be deposited and credited as general revenues of the Treasury.

"(4) OFFSETTING COLLECTION FEES.—

"(A) IN GENERAL.—Except as provided in subparagraphs (B) and (C), the rate determined under this paragraph is a rate equal to the following amount for each $1,000,000 of the maximum aggregate price at which such securities are proposed to be offered:

"(i) $103 during fiscal year 1997;

"(ii) $70 during fiscal year 1998;

"(iii) $38 during fiscal year 1999;

"(iv) $17 during fiscal year 2000; and

"(v) $0 during fiscal year 2001 or any succeeding fiscal year.

"(B) LIMITATION; DEPOSIT.—Except as provided in subparagraph (C), no amounts shall be collected pursuant to this paragraph (4) for any fiscal year except to the extent provided in advance in appropriations acts. Fees collected during any fiscal year pursuant to this paragraph shall be deposited and credited as offsetting collections in accordance with appropriations Acts.

"(C) LAPSE OF APPROPRIATIONS.—If on the first day of a fiscal year a regular appropriation to the Commission has not been enacted, the Commission shall continue to collect fees (as offsetting collections) under this paragraph at the rate in effect during the preceding fiscal year, until such a regular appropriation is enacted.".

SEC. 305. TRANSACTION FEES.

(a) AMENDMENT.—Section 31 of the Securities Exchange Act of 1934 (15 U.S.C. 78ee) is amended to read as follows:

"SEC. 31. TRANSACTION FEES.

"(a) RECOVERY OF COST OF SERVICES.—The Commission shall, in accordance with this subsection, collect transaction fees that are designed to recover the costs to the Government of the supervision and regulation of securities markets and securities professionals, and costs related to such supervision and regulation, including enforcement activities, policy and rulemaking activities, administration, legal services, and international regulatory activities.

"(b) EXCHANGE-TRADED SECURITIES.—Every national securities exchange shall pay to the Commission a fee at a rate equal to $33 for each $1,000,000 of the aggregate dollar amount of sales of securities (other than bonds, debentures, and other evidences of indebtedness) transacted on such national securities exchange, except that for fiscal year 2002 or any succeeding fiscal year such rate shall be equal to $25 for each $1,000,000 of such aggregate dollar amount of sales. Fees collected pursuant to this subsection shall be deposited and collected as general revenue of the Treasury.

"(c) OFF-EXCHANGE-TRADES OF EXCHANGE REGISTERED SECURITIES.—Every national securities association shall pay to the Commission a fee at a rate equal $33 for each $1,000,000 of the aggregate dollar amount of sales transacted by or through any member of such association otherwise than on a national securities exchange of securities registered on such an exchange (other than bonds, debentures, and other evidences of indebtedness), except that for fiscal year 2002 or any succeeding fiscal year such rate shall be equal to $25 for each $1,000,000 of such aggregate dollar amount of sales. Fees collected pursuant to this subsection shall be deposited and collected as general revenue of the Treasury.

"(d) OFF-EXCHANGE-TRADES OF LAST-SALE-REPORTED SECURITIES.—

"(1) COVERED TRANSACTIONS.—Every national securities association shall pay to the Commission a fee at a rate equal to the dollar amount determined under paragraph (2) for each $1,000,000 of the aggregate dollar amount of sales transacted by or through any member of such association otherwise than on a national securities exchange of securities (other than bonds, debentures, and other evidences of indebtedness) subject to prompt last sale reporting pursuant to the rules of the Commission or a registered national securities association, excluding any sales for which a fee is paid under subsection (c).

"(2) FEE RATES.—Except as provided in paragraph (4), the dollar amount determined under this paragraph is—

"(A) $12 for fiscal year 1997;

"(B) $14 for fiscal year 1998;

"(C) $17 for fiscal year 1999;

"(D) $18 for fiscal year 2000;

"(E) $20 for fiscal year 2001; and

"(F) $25 for fiscal year 2002 or for any succeeding fiscal year.

"(3) LIMITATION; DEPOSIT OF FEES.—Except as provided in paragraph (4), no amounts shall be collected pursuant to this subsection (d) for any fiscal year beginning before October 1, 2001, except to the extent provided in advance in appropriations Acts. Fees collected during any such fiscal year pursuant to this subsection shall be deposited and credited as offsetting collections to the account providing appropriations to the Commission, except that any amounts in excess of the following amounts (and any amount collected for fiscal years beginning on or after October 1, 2001) shall be deposited and credited as general revenues of the Treasury:

"(A) $20,000,000 for fiscal year 1997;

"(B) $26,000,000 for fiscal year 1998;

"(C) $32,000,000 for fiscal year 1999;

"(D) $32,000,000 for fiscal year 2000;

"(E) $32,000,000 for fiscal year 2001; and

"(F) $0 for fiscal year 2002 and any succeeding fiscal year.

"(4) LAPSE OF APPROPRIATIONS.—If on the first day of a fiscal year a regular appropriation to the Commission has not been enacted, the Commission shall continue to collect fees (as offsetting collections) under this subsection at the rate in effect during the preceding fiscal year, until such a regular appropriation is enacted.

"(e) DATES FOR PAYMENT OF FEES.—The fees required by subsections (b), (c), and (d) of this section shall be paid—

"(1) on or before March 15, with respect to transactions and sales occurring during the period beginning on the preceding September 1 and ending at the close of the preceding December 31; and

"(2) on or before September 30, with respect to transactions and sales occurring during the period beginning on the preceding January 1 and ending at the close of the preceding August 31.

"(f) EXEMPTIONS.—The Commission, by rule, may exempt any sale of securities or any class of sales of securities from any fee imposed by this section, if the Commission finds that such exemption is consistent with the public interest, the equal regulation of markets and brokers and dealers, and the development of a national market system.

"(g) PUBLICATION.—The Commission shall publish in the Federal Register notices of the fee rates applicable under this section for each fiscal year.".

(b) EFFECTIVE DATES; TRANSITION.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendment made by subsection (a) shall apply with respect to transactions in securities that occur on or after January 1, 1997.

(2) OFF-EXCHANGE TRADES OF LAST SALE REPORTED TRANSACTIONS.—The amendment made by subsection (a) shall apply with respect to transactions described in section 31(d)(1) of the Securities Exchange Act of 1934 (as amended by subsection (a) of this section) that occur on or after September 1, 1996.

(3) RULE OF CONSTRUCTION.—Nothing in this subsection shall be construed to affect the obligation of national securities exchanges and registered brokers and dealers under section 31 of the Securities Exchange Act of 1934 (15 U.S.C. 78ee) as in effect prior to the amendment made by subsection (a) to make the payments required by such section on March 15, 1997.

SEC. 306. TIME FOR PAYMENT.

Section 4(e) of the Securities Exchange Act of 1934 (15 U.S.C. 78d(e)) is amended by inserting before the period at the end thereof the following: ''and the Commission may also specify the time that such fee shall be determined and paid relative to the filing of any statement or document with the Commission''.

SEC. 307. SENSE OF THE CONGRESS CONCERNING FEES.

It is the sense of the Congress that—

(1) the fees authorized by the amendments made by this Act are in lieu of, and not in addition to, any fees that the Securities and Exchange Commission is authorized to impose or collect pursuant to section 9701 of title 31, United States Code; and

(2) in order to maintain the competitiveness of United States securities markets relative to foreign markets, no fee should be assessed on transactions involving portfolios of equity securities taking place at times of day characterized by low volume and during non-traditional trading hours.

Passed the House of Representatives June 19, 1996.

Attest: ROBIN H. CARLE,

Clerk.