

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.

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; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
 5 “Securities Amendments of 1996”.

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

Sec. 1. Short title; table of contents.

TITLE I—CAPITAL MARKETS DEREGULATION AND
LIBERALIZATION

Sec. 101. Short title.
 Sec. 102. Creation of national securities markets.
 Sec. 103. Margin requirements.
 Sec. 104. Prospectus delivery.
 Sec. 105. Exemptive authority.
 Sec. 106. Promotion of efficiency, competition, and capital formation.
 Sec. 107. Privatization of EDGAR.
 Sec. 108. Coordination of Examining Authorities.
 Sec. 109. Foreign press conferences.
 Sec. 110. Report on Trust Indenture Act of 1939.

TITLE II—INVESTMENT COMPANY ACT AMENDMENTS

Sec. 201. Short title.
 Sec. 202. Funds of funds.
 Sec. 203. Registration of securities.
 Sec. 204. Investment company advertising prospectus.
 Sec. 205. Variable insurance contracts.
 Sec. 206. Reports to the Commission and shareholders.
 Sec. 207. Books, records and inspections.
 Sec. 208. Investment company names.
 Sec. 209. Exceptions from definition of investment company.

TITLE III—SECURITIES AND EXCHANGE COMMISSION
AUTHORIZATION

Sec. 301. Short title.
 Sec. 302. Purposes.
 Sec. 303. Authorization of appropriations.
 Sec. 304. Registration fees.
 Sec. 305. Transaction fees.
 Sec. 306. Time for payment.
 Sec. 307. Sense of the Congress concerning fees.

1 **TITLE I—CAPITAL MARKETS DE-**
2 **REGULATION AND LIBERAL-**
3 **IZATION**

4 **SEC. 101. SHORT TITLE.**

5 This title may be cited as the “Capital Markets De-
6 regulation and Liberalization Act of 1996”.

7 **SEC. 102. CREATION OF NATIONAL SECURITIES MARKETS.**

8 (a) SECURITIES ACT OF 1933.—

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

12 **“SEC. 18. EXEMPTION FROM STATE REGULATION OF SECU-**
13 **RITIES OFFERINGS.**

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

19 “(1) requiring, or with respect to, registration
20 or qualification of securities, or registration or quali-
21 fication of securities transactions, shall directly or
22 indirectly apply to a security that—

23 “(A) is a covered security; or

24 “(B) will be a covered security upon com-
25 pletion of the transaction;

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

3 “(A) with respect to a covered security de-
4 scribed in subsection (b)(1) or (c)(1)—

5 “(i) any offering document that is
6 prepared by the issuer; or

7 “(ii) any offering document that is
8 not prepared by the issuer if such offering
9 document is required to be and is filed
10 with the Commission or any national secu-
11 rities organization registered under section
12 15A of the Securities Exchange Act of
13 1934 (15 U.S.C. 78o–3);

14 “(B) with respect to a covered security de-
15 scribed in paragraph (2), (3), or (4) of sub-
16 section (b), any offering document; or

17 “(C) any proxy statement, report to share-
18 holders, or other disclosure document relating
19 to a covered security or the issuer thereof that
20 is required to be and is filed with the Commis-
21 sion or any national securities organization reg-
22 istered under section 15A of the Securities Ex-
23 change Act of 1934 (15 U.S.C. 78o–3); or

24 “(3) shall directly or indirectly prohibit, limit,
25 or impose conditions, based on the merits of such of-

1 fering or issuer, upon the offer or sale of any secu-
2 rity described in paragraph (1).

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

5 “(1) EXCLUSIVE FEDERAL REGISTRATION OF
6 NATIONALLY TRADED SECURITIES.—A security is a
7 covered security if such security is—

8 “(A) listed, or authorized for listing, on
9 the New York Stock Exchange or the American
10 Stock Exchange, or included or qualified for in-
11 clusion in the National Market System of the
12 National Association of Securities Dealers
13 Automated Quotation System (or any successor
14 to such entities);

15 “(B) listed, or authorized for listing, on a
16 national securities exchange (or tier or segment
17 thereof) that has listing standards that the
18 Commission determines by rule (on its own ini-
19 tiative or on the basis of a petition) are sub-
20 stantially similar to the listing standards appli-
21 cable to securities described in subparagraph
22 (A); or

23 “(C) is a security of the same issuer that
24 is equal in seniority or senior to a security de-
25 scribed in subparagraph (A) or (B).

1 “(2) EXCLUSIVE FEDERAL REGISTRATION OF
2 INVESTMENT COMPANIES.—A security is a covered
3 security if such security is a security issued by an
4 investment company that is registered under the In-
5 vestment Company Act of 1940 (15 U.S.C. 80a et
6 seq.).

7 “(3) SALES TO QUALIFIED PURCHASERS.—A
8 security is a covered security with respect to the
9 offer or sale of the security to qualified purchasers,
10 as defined by the Commission by rule. In prescribing
11 such rule, the Commission may define qualified pur-
12 chaser differently with respect to different categories
13 of securities, consistent with the public interest and
14 the protection of investors.

15 “(4) EXEMPTION IN CONNECTION WITH CER-
16 TAIN EXEMPT OFFERINGS.—A security is a covered
17 security if—

18 “(A) the offer or sale of such security is
19 exempt from registration under this title pursu-
20 ant to section 4(1) or 4(3), and—

21 “(i) the issuer of such security files
22 reports with the Commission pursuant to
23 section 13 or 15(d) of the Securities Ex-
24 change Act of 1934 (15 U.S.C. 78m,
25 78o(d)); or

1 “(ii) the issuer is exempt from filing
2 such reports;

3 “(B) such security is exempt from registra-
4 tion under this title pursuant to section 4(4);

5 “(C) the offer or sale of such security is
6 exempt from registration under this title pursu-
7 ant to section 3(a), other than the offer or sale
8 of a security that is exempt from such registra-
9 tion pursuant to paragraph (4) or (11) of such
10 section, except that a municipal security that is
11 exempt from such registration pursuant to
12 paragraph (2) of such section is not a covered
13 security with respect to the offer or sale of such
14 security in the State in which the issuer of such
15 security is located; or

16 “(D) the offer or sale of such security is
17 exempt from registration under this title pursu-
18 ant to Commission rule or regulation under sec-
19 tion 4(2) of this title.

20 “(c) CONDITIONALLY COVERED SECURITIES.—

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

1 “(A) the issuer of such security has (or
2 will have upon conclusion of the transaction)
3 total assets exceeding \$10,000,000;

4 “(B) such security is the subject of a reg-
5 istration statement that is filed with the Com-
6 mission pursuant to this title; and

7 “(C) the issuer files with such registration
8 statement audited financial statements for each
9 of the two most recent fiscal years of its oper-
10 ations ending before the filing of the registra-
11 tion statement.

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

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

20 “(B) a penny stock (as such term is de-
21 fined in section 3(a)(51) of the Securities Ex-
22 change Act of 1934 (15 U.S.C. 78c(a)(51)); or

23 “(C) a security issued in an offering relat-
24 ing to a rollup transaction (as such term is de-

1 fined in paragraphs (4) and (5) of section 14(h)
2 of such Act (15 U.S.C. 78n(h)(4), (5)).

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

6 “(A) with respect to any State, if the is-
7 suer, or a principal officer or principal share-
8 holder thereof—

9 “(i) is subject to a statutory disquali-
10 fication, as defined in subparagraph (A),
11 (B), (C), or (D) of section 3(a)(39) of the
12 Securities Exchange Act of 1934 (15
13 U.S.C. 78c(a)(39));

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

20 “(iii) is currently named in and sub-
21 ject to any order, judgment, or decree of
22 any court of competent jurisdiction acting
23 pursuant to Federal or State law tempo-
24 rarily or permanently restraining or enjoin-
25 ing such issuer, officer, or shareholder

1 from engaging in or continuing any con-
2 duct or practice in connection with a secu-
3 rity; or

4 “(B) with respect to a particular State, if
5 the issuer, or a principal officer or principal
6 shareholder thereof—

7 “(i) has filed a registration statement
8 which is the subject of a currently effective
9 stop order entered pursuant to that State’s
10 securities laws within 5 years prior to the
11 offering;

12 “(ii) is currently named in and subject
13 to any administrative enforcement order or
14 judgment of that State’s securities com-
15 mission (or any agency or office perform-
16 ing like functions) entered within 5 years
17 prior to the offering, or is currently named
18 in and subject to any other administrative
19 enforcement order or judgment of that
20 State entered within 5 years prior to the
21 offering that finds fraud or deceit; or

22 “(iii) is currently named in and sub-
23 ject to any administrative enforcement
24 order or judgment of that State which pro-
25 hibits or denies registration, or revokes the

1 use of any exemption from registration, in
2 connection with the offer, purchase, or sale
3 of securities.

4 “(4) EXCEPTIONS TO LIMITATIONS.—

5 (A) DEBT SECURITY EXEMPTION.—The
6 limitations in paragraph (2)(A) shall not apply
7 with respect to the debt securities of any issuer
8 that is a partnership or limited liability com-
9 pany, provided that (i) the issuer is either a
10 registered dealer or an affiliate of such a dealer,
11 (ii) the issuer has, both before and after the of-
12 fering, capital or equity (each computed in ac-
13 cordance with United States generally accepted
14 accounting principles) of not less than
15 \$75,000,000, and (iii) if the issuer is not a reg-
16 istered dealer, such issuer does not use the pro-
17 ceeds of the offering primarily to fund the non-
18 financial business of the issuer or any of its af-
19 filiates that are not registered dealers.

20 “(B) MISCONDUCT EXEMPTIONS.—The
21 limitations in paragraph (3)(A) shall not apply
22 if the Commission has exempted the subject
23 person from the application of such paragraph
24 by rule or order, and the limitations in para-
25 graph (3)(B) shall not apply if the securities

1 commission (or any agency or office performing
2 like functions) of the affected State has exempt-
3 ed the subject person from the application of
4 such paragraph by rule or order.

5 “(C) REASONABLE STEPS.—The provisions
6 of paragraph (3) shall not apply if the issuer
7 has taken reasonable steps to ascertain whether
8 any principal officer or principal shareholder is
9 subject to such paragraph, and such steps do
10 not reveal a person who is subject to such para-
11 graph. An issuer shall be considered to have
12 taken reasonable steps if such issuer or its
13 agent has conducted a search of any centralized
14 data bases that the Commission may designate
15 by rule, and has received an affidavit under
16 oath by each such principal officer or principal
17 shareholder stating that such officer or share-
18 holder is not subject to the provisions of para-
19 graph (3).

20 “(D) EFFECT OF LIMITATIONS ON REM-
21 EDIES.—Notwithstanding paragraph (3), an is-
22 suer shall not be subject to a right of rescission
23 under State securities laws solely as a result of
24 the operation of such paragraph.

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

5 “(d) PRESERVATION OF AUTHORITY.—

6 “(1) FRAUD AUTHORITY.—Consistent with this
7 section, the securities commission (or any agency or
8 office performing like functions) of any State or Ter-
9 ritory of the United States, or the District of Colum-
10 bia, shall retain jurisdiction under the laws of such
11 State, Territory, or District to investigate and bring
12 enforcement actions with respect to fraud or deceit
13 in connection with securities or securities trans-
14 actions.

15 “(2) PRESERVATION OF FILING REQUIRE-
16 MENTS.—

17 “(A) NOTICE FILINGS PERMITTED.—Noth-
18 ing contained in this section shall prohibit the
19 securities commission (or any agency or office
20 performing like functions) of any State or Ter-
21 ritory of the United States, or the District of
22 Columbia, from requiring the filing of any docu-
23 ments filed with the Commission pursuant to
24 this title solely for notice purposes, together
25 with any required fee.

1 “(B) PRESERVATION OF FEES.—Until oth-
2 erwise provided by State law enacted after the
3 date of enactment of the Securities Amend-
4 ments of 1996, filing or registration fees with
5 respect to securities or securities transactions
6 may continue to be collected in amounts deter-
7 mined pursuant to State law as in effect on the
8 day before such date.

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

19 “(3) ENFORCEMENT OF REQUIREMENTS.—
20 Nothing in this section shall prohibit the securities
21 commission (or any agency or office performing like
22 functions) of any State or Territory of the United
23 States, or the District of Columbia, from suspending
24 the offer or sale of securities within such State, Ter-
25 ritory, or District as a result of the failure to submit

1 any filing or fee required under law and permitted
2 under this section.

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

4 “(1) PRINCIPAL OFFICER.—The term ‘principal
5 officer’ means a director, chief executive officer, or
6 chief financial officer of an issuer, or any other offi-
7 cer performing like functions.

8 “(2) PRINCIPAL SHAREHOLDER.—The term
9 ‘principal shareholder’ means any person who is di-
10 rectly or indirectly the beneficial owner of more than
11 20 percent of any class of equity security of an is-
12 suer. When two or more persons act as a partner-
13 ship, limited partnership, syndicate, or other group
14 for the purpose of acquiring, holding, or disposing of
15 securities of an issuer, such syndicate or group shall
16 be deemed a ‘person’ for purposes of this paragraph.
17 In determining, for purposes of this paragraph, any
18 percentage of a class of any security, such class shall
19 be deemed to consist of the amount of the outstand-
20 ing securities of such class, exclusive of any securi-
21 ties of such class held by or for the account of the
22 issuer or a subsidiary of the issuer.

23 “(3) OFFERING DOCUMENT.—The term ‘offer-
24 ing document’ has the meaning given the term ‘pro-
25 spectus’ by section 2(10), but without regard to the

1 provisions of clauses (a) and (b) of such section, ex-
2 cept that, with respect to a security described in
3 subsection (b)(2) of this section, such term also in-
4 cludes a communication that is not deemed to offer
5 such a security pursuant to a rule of the Commis-
6 sion.

7 “(4) PREPARED BY THE ISSUER.—Within 6
8 months after the date of enactment of the Securities
9 Amendments of 1996, the Commission shall, by rule,
10 define the term ‘prepared by the issuer’ for purposes
11 of this section.”.

12 (2) STUDY OF UNIFORMITY.—The Securities
13 Exchange Commission shall conduct a study after
14 consultation with States, issuers, brokers, and deal-
15 ers on the extent to which uniformity of State regu-
16 latory requirements for securities or securities trans-
17 actions has been achieved for securities that are not
18 covered securities (within the meaning of section 18
19 of the Securities Act of 1933 as amended by para-
20 graph (1) of this subsection). Such study shall spe-
21 cifically focus on the impact of such uniformity or
22 lack thereof on the cost of capital, innovation and
23 technological development in securities markets, and
24 duplicative regulation with respect to securities issu-
25 ers (including small business), brokers, and dealers

1 and the effect on investor protection. The Commis-
2 sion shall submit to the Congress a report on the re-
3 sults of such study within one year after the date of
4 enactment of this Act.

5 (b) BROKER/DEALER REGULATION.—

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

9 “(h) LIMITATIONS ON STATE LAW.—

10 “(1) CAPITAL, MARGIN, BOOKS AND RECORDS,
11 BONDING, AND REPORTS.—No law, rule, regulation,
12 or order, or other administrative action of any State
13 or political subdivision thereof shall establish capital,
14 custody, margin, financial responsibility, making and
15 keeping records, bonding, or financial or operational
16 reporting requirements for brokers, dealers, municipi-
17 pal securities dealers, government securities brokers,
18 or government securities dealers that differ from, or
19 are in addition to, the requirements in those areas
20 established under this title. The Commission shall
21 consult periodically the securities commissions (or
22 any agency or office performing like functions) of
23 the States concerning the adequacy of such require-
24 ments as established under this title.

1 “(2) EXEMPTION TO PERMIT SERVICE TO CUS-
2 TOMERS.—No law, rule, regulation, or order, or
3 other administrative action of any State or political
4 subdivision thereof shall require an associated per-
5 son to register with such State prior to effecting a
6 transaction described in paragraph (3) for a cus-
7 tomer in such State if—

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

12 “(B) such associated person is not ineli-
13 gible to register with such State for any reason
14 other than such a transaction;

15 “(C) such associated person is registered
16 with a registered securities association and at
17 least one State; and

18 “(D) the broker or dealer with which such
19 person is associated is registered with such
20 State.

21 “(3) DESCRIBED TRANSACTIONS.—A trans-
22 action is described in this paragraph if—

23 “(A) such transaction is effected by an as-
24 sociated person (i) to which the customer was
25 assigned for 14 days prior to the day of the

1 transaction, and (ii) who is registered with a
2 State in which the customer was a resident or
3 was present for at least 30 consecutive days
4 during the one-year period prior to the trans-
5 action; except that, if the customer is present in
6 another State for 30 or more consecutive days
7 or has permanently changed his or her resi-
8 dence to another State, such transaction is not
9 described in this subparagraph unless the asso-
10 ciated person files with such State an applica-
11 tion for registration within 10 calendar days of
12 the later of the date of the transaction or the
13 date of the discovery of the presence of the cus-
14 tomer in the State for 30 or more consecutive
15 days or the change in the customer's residence;

16 “(B) the transaction is effected within the
17 period beginning on the date on which such as-
18 sociated person files with the State in which the
19 transaction is effected an application for reg-
20 istration and ending on the earlier of (i) 60
21 days after the date the application is filed, or
22 (ii) the time at which such State notifies the as-
23 sociated person that it has denied the applica-
24 tion for registration or has stayed the pendency
25 of the application for cause; or

1 “(C) the transaction is one of 10 or fewer
2 transactions in a calendar year (excluding any
3 transactions described in subparagraph (A) or
4 (B)) which the associated person effects in the
5 States in which the associated person is not
6 registered.

7 “(4) ALTERNATE ASSOCIATED PERSONS.—For
8 purposes of paragraph (3)(A)(ii), each of up to 3 as-
9 sociated persons who are designated to effect trans-
10 actions during the absence or unavailability of the
11 principal associated person for a customer may be
12 treated as an associated person to which such cus-
13 tomer is assigned for purposes of such paragraph.”.

14 (2) STUDY.—Within 6 months after the date of
15 enactment of this Act, the Commission, after con-
16 sultation with registered securities associations, na-
17 tional securities exchanges, and States, shall conduct
18 a study of—

19 (A) the impact of disparate State licensing
20 requirements on associated persons of reg-
21 istered brokers or dealers; and

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

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

1 to the Congress a report on the study conducted
2 under paragraph (2). Such report shall include rec-
3 ommendations concerning appropriate methods de-
4 scribed in paragraph (2)(B), including any necessary
5 legislative changes to implement such recommenda-
6 tions.

7 (4) TECHNICAL AMENDMENT.—Section 28(a) of
8 the Securities Exchange Act of 1934 (15 U.S.C.
9 78bb(a)) is amended by striking “Nothing” and in-
10 sserting “Except as otherwise specifically provided
11 elsewhere in this title, nothing”.

12 **SEC. 103. MARGIN REQUIREMENTS.**

13 (a) MARGIN REQUIREMENTS.—

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

18 “(c) UNLAWFUL CREDIT EXTENSION TO CUS-
19 TOMERS.—

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

1 “(A) on any security (other than an ex-
2 empted security), in contravention of the rules
3 and regulations which the Board of Governors
4 of the Federal Reserve System shall prescribe
5 under subsections (a) and (b) of this section;

6 “(B) without collateral or on any collateral
7 other than securities, except in accordance with
8 such rules and regulations as the Board of Gov-
9 ernors of the Federal Reserve System may pre-
10 scribe—

11 “(i) to permit under specified condi-
12 tions and for a limited period any such
13 member, broker, or dealer to maintain a
14 credit initially extended in conformity with
15 the rules and regulations of the Board of
16 governors of the Federal Reserve System;
17 and

18 “(ii) to permit the extension or main-
19 tenance of credit in cases where the exten-
20 sion or maintenance of credit is not for the
21 purpose of purchasing or carrying securi-
22 ties or of evading or circumventing the
23 provisions of subparagraph (A) of this
24 paragraph.

1 “(2) EXCEPTION.—This subsection and the
 2 rules and regulations thereunder shall not apply to
 3 any credit extended, maintained, or arranged by a
 4 member of a national securities exchange or a
 5 broker or dealer to or for a member of a national
 6 securities exchange or a registered broker or deal-
 7 er—

8 “(A) a substantial portion of whose busi-
 9 ness consists of transactions with persons other
 10 than brokers or dealers; or

11 “(B) to finance its activities as a market
 12 maker or an underwriter;

13 except that the Board of Governors of the Federal
 14 Reserve System may impose such rules and regula-
 15 tions, in whole or in part, on any credit otherwise
 16 exempted by this paragraph if it determines that
 17 such action is necessary or appropriate in the public
 18 interest or for the protection of investors.”.

19 (2) EXTENSIONS OF CREDIT BY OTHER LEND-
 20 ERS.—Section 7(d) of the Securities Exchange Act
 21 of 1934 (78 U.S.C. 78g(d)) is amended to read as
 22 follows:

23 “(d) UNLAWFUL CREDIT EXTENSION IN VIOLATION
 24 OF RULES AND REGULATIONS; EXCEPTION TO APPLICA-
 25 TION OF RULES, ETC.—

1 “(1) PROHIBITION.—It shall be unlawful for
2 any person not subject to subsection (c) of this sec-
3 tion to extend or maintain credit or to arrange for
4 the extension or maintenance of credit for the pur-
5 pose of purchasing or carrying any security, in con-
6 travention of such rules and regulations as the
7 Board of Governors of the Federal Reserve System
8 shall prescribe to prevent the excessive use of credit
9 for the purchasing or carrying of or trading in secu-
10 rities in circumvention of the other provisions of this
11 section. Such rules and regulations may impose upon
12 all loans made for the purpose of purchasing or car-
13 rying securities limitations similar to those imposed
14 upon members, brokers, or dealers by subsection (c)
15 of this section and the rules and regulations there-
16 under.

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

20 “(A) by a person not in the ordinary
21 course of business;

22 “(B) on an exempted security;

23 “(C) to or for a member of a national se-
24 curities exchange or a registered broker or deal-
25 er—

1 “(i) a substantial portion of whose
2 business consists of transactions with per-
3 sons other than brokers or dealers; or

4 “(ii) to finance its activities as a mar-
5 ket maker or an underwriter;

6 “(D) by a bank on a security other than
7 an equity security; or

8 “(E) as the Board of Governors of the
9 Federal Reserve System shall, by such rules,
10 regulations, or orders as it may deem necessary
11 or appropriate in the public interest or for the
12 protection of investors, exempt, either uncondi-
13 tionally or upon specified terms and conditions
14 or for stated periods, from the operation of this
15 subsection and the rules and regulations there-
16 under;

17 except that the Board of Governors of the Federal
18 Reserve System may impose such rules and regula-
19 tions, in whole or in part, on any credit otherwise
20 exempted by subparagraph (C) of this paragraph if
21 it determines that such action is necessary or appro-
22 priate in the public interest or for the protection of
23 investors.”.

1 (b) BORROWING BY MEMBERS, BROKERS, AND
2 DEALERS.—Section 8 of the Securities Exchange Act of
3 1934 (15 U.S.C. 78h) is amended—

4 (1) by striking subsection (a), and

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

7 **SEC. 104. PROSPECTUS DELIVERY.**

8 (a) REPORT ON ELECTRONIC DELIVERY.—Within six
9 months after the date of enactment of this Act, the Com-
10 mission shall report to Congress on the steps the Commis-
11 sion has taken, or anticipates taking, to facilitate the elec-
12 tronic delivery of prospectuses to institutional and other
13 investors.

14 (b) REPORT ON ADVISORY COMMITTEE REC-
15 OMMENDATIONS.—Within one year after the date of en-
16 actment of this Act, the Commission shall report to Con-
17 gress on the Commission's views on the recommendations
18 of the Advisory Committee on Capital Formation, includ-
19 ing any actions taken to implement the recommendations
20 of the Advisory Committee.

21 **SEC. 105. EXEMPTIVE AUTHORITY.**

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

1 **“SEC. 28. GENERAL EXEMPTIVE AUTHORITY.**

2 “The Commission, by rules and regulations, may con-
3 ditionally or unconditionally exempt any person, security,
4 or transaction, or any class or classes of persons, securi-
5 ties, or transactions, from any provision or provisions of
6 this title or of any rule or regulation thereunder, to the
7 extent that such exemption is necessary or appropriate in
8 the public interest, and is consistent with the protection
9 of investors.”.

10 (b) GENERAL EXEMPTIVE AUTHORITY UNDER THE
11 SECURITIES EXCHANGE ACT OF 1934.—Title I of the Se-
12 curities Exchange Act of 1934 (15 U.S.C. 78a et seq.)
13 is amended by adding at the end the following new section:
14 **“SEC. 36. GENERAL EXEMPTIVE AUTHORITY.**

15 “(a) AUTHORITY.—Except as provided in subsection
16 (b) but notwithstanding any other provision of this title,
17 the Commission, by rule, regulation, or order, may condi-
18 tionally or unconditionally exempt any person, security, or
19 transaction, or any class or classes of persons, securities,
20 or transactions, from any provision or provisions of this
21 title or of any rule or regulation thereunder, to the extent
22 that such exemption is necessary or appropriate in the
23 public interest, and is consistent with the protection of in-
24 vestors. The Commission shall by rules and regulations de-
25 termine the procedures under which an exemptive order
26 under this section shall be granted and may, in its sole

1 discretion, decline to entertain any application for an
2 order of exemption under this section.

3 “(b) LIMITATION.—The Commission shall not exer-
4 cise authority under this section to exempt any person,
5 security, or transaction, or any class or classes of persons,
6 securities, or transactions, from section 15C of this title
7 or the rules or regulations thereunder, or (for purposes
8 of such section 15C or such rules or regulations) from the
9 definitions in paragraphs (42) through (45) of section 3(a)
10 of this title.”.

11 **SEC. 106. PROMOTION OF EFFICIENCY, COMPETITION, AND**
12 **CAPITAL FORMATION.**

13 (a) SECURITIES ACT OF 1933.—Section 2 of the Se-
14 curities Act of 1933 (15 U.S.C. 77b) is amended—

15 (1) by inserting “(a) DEFINITIONS.—” after
16 “SEC. 2.”; and

17 (2) by adding at the end the following new sub-
18 section:

19 “(b) CONSIDERATION OF PROMOTION OF EFFI-
20 CIENCY, COMPETITION, AND CAPITAL FORMATION.—
21 Whenever pursuant to this title the Commission is en-
22 gaged in rulemaking and is required to consider or deter-
23 mine whether an action is necessary or appropriate in the
24 public interest, the Commission shall also consider, in ad-
25 dition to the protection of investors, whether the action

1 will promote efficiency, competition, and capital forma-
2 tion.”.

3 (b) SECURITIES EXCHANGE ACT of 1934.—Section
4 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c)
5 is amended by adding at the end the following new sub-
6 section:

7 “(f) CONSIDERATION OF PROMOTION OF EFFI-
8 CIENCY, COMPETITION, AND CAPITAL FORMATION.—
9 Whenever pursuant to this title the Commission is en-
10 gaged in rulemaking, or in the review of a rule of a self-
11 regulatory organization, and is required to consider or de-
12 termine whether an action is necessary or appropriate in
13 the public interest, the Commission shall also consider, in
14 addition to the protection of investors, whether the action
15 will promote efficiency, competition, and capital forma-
16 tion.”.

17 (c) INVESTMENT COMPANY ACT of 1940.—Section 2
18 of the Investment Company Act of 1940 (15 U.S.C. 80a-
19 2) is amended by adding at the end the following new sub-
20 section:

21 “(c) CONSIDERATION OF PROMOTION OF EFFI-
22 CIENCY, COMPETITION, AND CAPITAL FORMATION.—
23 Whenever pursuant to this title the Commission is en-
24 gaged in rulemaking and is required to consider or deter-
25 mine whether an action is consistent with the public inter-

1 est, the Commission shall also consider, in addition to the
2 protection of investors, whether the action will promote ef-
3 ficiency, competition, and capital formation.”.

4 **SEC. 107. PRIVATIZATION OF EDGAR.**

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

12 (b) REVIEW AND REPORT.—Within 180 days after
13 the date of enactment of this Act, the Commission shall
14 submit to the Congress a report on the examination under
15 subsection (a). Such report shall include such rec-
16 ommendations for such legislative action as may be nec-
17 essary to implement the proposal that the Commission de-
18 termines most effectively achieves the objectives described
19 in subsection (a).

20 **SEC. 108. COORDINATION OF EXAMINING AUTHORITIES.**

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

24 “(i) COORDINATION OF EXAMINING AUTHORITIES.—

1 “(1) ELIMINATION OF DUPLICATION.—The
2 Commission and the examining authorities, through
3 cooperation and coordination of examination and
4 oversight as required by this subsection, shall elimi-
5 nate any unnecessary and burdensome duplication in
6 the examination process.

7 “(2) PLANNING CONFERENCES.—

8 “(A) The Commission and the examining
9 authorities shall meet at least annually for a
10 national general planning conference to discuss
11 coordination of examination schedules and pri-
12 orities and other areas of interest relevant to
13 examination coordination and cooperation.

14 “(B) Within each geographic region des-
15 ignated by the Commission, the Commission
16 and the relevant examining authorities shall
17 meet at least annually for a regional planning
18 conference to discuss examination schedules and
19 priorities and other areas of related interest,
20 and to encourage information-sharing and to
21 avoid unnecessary duplication of examinations.

22 “(3) COORDINATION TRACKING SYSTEM FOR
23 BROKER-DEALER EXAMINATIONS.—

24 “(A) The Commission and the examining
25 authorities shall prepare, on a periodic basis in

1 a uniform computerized format, information on
2 registered broker and dealer examinations and
3 shall submit such information to the Commis-
4 sion.

5 “(B) The Commission shall maintain a
6 computerized database of consolidated examina-
7 tion information to be used for examination
8 planning and scheduling and for monitoring co-
9 ordination of registered broker and dealer ex-
10 aminations under this section.

11 “(4) COORDINATION OF EXAMINATIONS.—

12 “(A) The examining authorities shall share
13 among themselves such information, including
14 reports of examinations, customer complaint in-
15 formation, and other non-public regulatory in-
16 formation, as appropriate to foster a coordi-
17 nated approach to regulatory oversight of reg-
18 istered brokers and dealers subject to examina-
19 tion by more than one examining authority.

20 “(B) To the extent practicable, the exam-
21 ining authorities shall assure that each reg-
22 istered broker and dealer subject to examina-
23 tion by more than one examining authority that
24 requests a coordinated examination shall have
25 all requested aspects of the examination con-

1 ducted simultaneously and without duplication
2 of the areas covered. The examining authorities
3 shall also prepare an advance schedule of all
4 such coordinated examinations.

5 “(5) PROHIBITED NON-COORDINATED EXAMI-
6 NATIONS.—Any examining authority that does not
7 participate in a coordinated examination pursuant to
8 paragraph (4) of this subsection shall not conduct a
9 routine examination other than a coordinated exam-
10 ination of that broker or dealer within 9 months of
11 the conclusion of a scheduled coordinated examina-
12 tion.

13 “(6) EXAMINATIONS FOR CAUSE.—At any time,
14 any examining authority may conduct an examina-
15 tion for cause of any broker or dealer subject to its
16 jurisdiction.

17 “(7) BROKER-DEALER EXAMINATION EVALUA-
18 TION PANEL.—The Commission shall establish an
19 examination evaluation panel composed of represent-
20 atives of registered brokers and dealers that are
21 members of more than one self-regulatory organiza-
22 tion that conducts routine examinations. Prior to
23 each national general planning conference required
24 by paragraph (2)(A) of this subsection, the Commis-
25 sion shall convene the examination evaluation panel

1 to review consolidated and statistical information on
2 the coordination of examinations and information on
3 examinations that are not coordinated, including the
4 findings of Commission examiners on the effective-
5 ness of the examining authorities in achieving co-
6 ordinated examinations. The Commission shall
7 present any findings and recommendations of the ex-
8 amination evaluation panel to the next meeting of
9 the national general planning conference, and shall
10 report back to the examination evaluation panel on
11 the actions taken by the examining authorities re-
12 garding those findings and recommendations. The
13 examination evaluation panel shall not be subject to
14 the Federal Advisory Committee Act (5 U.S.C.
15 App.).

16 “(8) REPORT TO CONGRESS.—Within one year
17 after the date of enactment of this Act, the Commis-
18 sion shall report to the Congress on the progress it
19 and the examining authorities have made in reduc-
20 ing duplication and improving coordination in reg-
21 istered broker and dealer examinations, and on the
22 activities of the examination evaluation panel. Such
23 report shall also indicate whether the Commission
24 has identified additional redundancies that have
25 failed to be addressed in the coordination of examin-

1 ing authorities, or any recommendations of the ex-
2 amination evaluation panel established under para-
3 graph (7) of this subsection that have not been ad-
4 dressed by the examining authorities or the Commis-
5 sion.”.

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

9 “(54) The term ‘examining authority’ means
10 any self-regulatory organization registered with the
11 Commission under this title (other than registered
12 clearing agencies) with the authority to examine, in-
13 spect, and otherwise oversee the activities of a reg-
14 istered broker or dealer.”.

15 **SEC. 109. FOREIGN PRESS CONFERENCES.**

16 No later than one year after the date of enactment
17 of this Act, the Commission shall adopt rules under the
18 Securities Act of 1933 concerning the status under the
19 registration provisions of the Securities Act of 1933 of for-
20 eign press conferences and foreign press releases by per-
21 sons engaged in the offer and sale of securities.

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

23 Within 6 months after the date of enactment of this
24 Act, the Securities and Exchange Commission shall sub-
25 mit to the Congress a report on the benefits of, the con-

tinuing 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

1 a registered open-end company (the ‘acquiring company’)
2 if—

3 “(i) the acquired company and the acquiring
4 company are part of the same group of investment
5 companies;

6 “(ii) the securities of the acquired company, se-
7 curities of other registered open-end companies that
8 are part of the same group of investment companies,
9 Government securities, and short-term paper are the
10 only investments held by the acquiring company;

11 “(iii)(I) the acquiring company does not pay
12 and is not assessed any charges or fees for distribu-
13 tion-related activities with respect to securities of the
14 acquired company unless the acquiring company
15 does not charge a sales load or other fees or charges
16 for distribution-related activities; or

17 “(II) any sales loads and other distribution-re-
18 lated fees charged with respect to securities of the
19 acquiring company, when aggregated with any sales
20 load and distribution-related fees paid by the acquir-
21 ing company with respect to securities of the ac-
22 quired company, are not excessive under rules adopt-
23 ed pursuant to either section 22(b) or section 22(c)
24 of this title by a securities association registered

1 under section 15A of the Securities Exchange Act of
2 1934 or the Commission;

3 “(iv) the acquired company shall have a fun-
4 damental policy that prohibits it from acquiring any
5 securities of registered open-end companies in reli-
6 ance on this subparagraph or subparagraph (F) of
7 this subsection; and

8 “(v) such acquisition is not in contravention of
9 such rules and regulations as the Commission may
10 from time to time prescribe with respect to acquisi-
11 tions in accordance with this subparagraph as nec-
12 essary and appropriate for the protection of inves-
13 tors.

14 For purposes of this subparagraph, a ‘group of investment
15 companies’ shall mean any two or more registered invest-
16 ment companies that hold themselves out to investors as
17 related companies for purposes of investment and investor
18 services.”; and

19 (4) adding at the end the following new sub-
20 paragraph:

21 “(J) The Commission, by rules and regulations upon
22 its own motion or by order upon application, may condi-
23 tionally or unconditionally exempt any person, security, or
24 transaction, or any class or classes of persons, securities,
25 or transactions from any provisions of this subsection, if

1 and to the extent such exemption is consistent with the
 2 public interest and the protection of investors.”.

3 **SEC. 203. REGISTRATION OF SECURITIES.**

4 (a) AMENDMENTS TO REGISTRATION STATE-
 5 MENTS.—Section 24(e) of the Investment Company Act
 6 of 1940 (15 U.S.C. 80a–24(e)) is amended—

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

8 (2) by redesignating paragraph (3) as sub-
 9 section (e); and

10 (3) in subsection (e) (as so redesignated) by
 11 striking “pursuant to this subsection or otherwise”.

12 (b) REGISTRATION OF INDEFINITE AMOUNT OF SE-
 13 CURITIES.—Section 24(f) of the Investment Company Act
 14 of 1940 (15 U.S.C. 80a–24(f)) is amended to read as fol-
 15 lows:

16 “(f) REGISTRATION OF INDEFINITE AMOUNT OF SE-
 17 CURITIES.—

18 “(1) INDEFINITE REGISTRATION OF SECURI-
 19 TIES.—Upon the effectiveness of its registration
 20 statement under the Securities Act of 1933, a face-
 21 amount certificate company, open-end management
 22 company, or unit investment trust shall be deemed
 23 to have registered an indefinite amount of securities.

24 “(2) PAYMENT OF REGISTRATION FEES.—With-
 25 in 90 days after the end of the company’s fiscal

1 year, the company shall pay a registration fee to the
2 Commission, calculated in the manner specified in
3 section 6(b) of the Securities Act of 1933, based on
4 the aggregate sales price for which its securities (in-
5 cluding, for this purpose, all securities issued pursu-
6 ant to a dividend reinvestment plan) were sold pur-
7 suant to a registration of an indefinite amount of se-
8 curities under this subsection during the company's
9 previous fiscal year reduced by—

10 “(A) the aggregate redemption or repur-
11 chase price of the securities of the company
12 during that year, and

13 “(B) the aggregate redemption or repur-
14 chase price of the securities of the company
15 during any prior fiscal year ending not more
16 than 1 year before the date of enactment of the
17 Investment Company Act Amendments of 1996
18 that were not used previously by the company
19 to reduce fees payable under this section.

20 “(3) INTEREST DUE ON LATE PAYMENT.—A
21 company paying the fee or any portion thereof more
22 than 90 days after the end of the company's fiscal
23 year shall pay to the Commission interest on unpaid
24 amounts, compounded daily, at the underpayment
25 rate established by the Secretary of the Treasury

1 pursuant to section 3717(a) of title 31, United
2 States Code. The payment of interest pursuant to
3 the requirement of this paragraph shall not preclude
4 the Commission from bringing an action to enforce
5 the requirements of paragraph (2) of this subsection.

6 “(4) RULEMAKING AUTHORITY.—The Commis-
7 sion may adopt rules and regulations to implement
8 the provisions of this subsection.”.

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

13 **SEC. 204. INVESTMENT COMPANY ADVERTISING PROSPEC-**
14 **TUS.**

15 Section 24 of the Investment Company Act of 1940
16 (15 U.S.C. 80a–24) is amended by adding at the end the
17 following new subsection:

18 “(g) In addition to the prospectuses permitted or re-
19 quired in section 10 of the Securities Act of 1933, the
20 Commission shall permit, by rules or regulations deemed
21 necessary or appropriate in the public interest or for the
22 protection of investors, the use of a prospectus for the pur-
23 poses of section 5(b)(1) of such Act with respect to securi-
24 ties issued by a registered investment company. Such a
25 prospectus, which may include information the substance

1 of which is not included in the prospectus specified in sec-
 2 tion 10(a) of the Securities Act of 1933, shall be deemed
 3 to be permitted by section 10(b) of such Act.”.

4 **SEC. 205. VARIABLE INSURANCE CONTRACTS.**

5 (a) UNIT INVESTMENT TRUST TREATMENT.—Sec-
 6 tion 26 of the Investment Company Act of 1940 (15
 7 U.S.C. 80a–26) is amended by adding at the end the fol-
 8 lowing new subsection:

9 “(e)(1) Subsection (a) shall not apply to any reg-
 10 istered separate account funding variable insurance con-
 11 tracts, or to the sponsoring insurance company and prin-
 12 cipal underwriter of such account.

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

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

23 “(B) the insurance company (i) complies with
 24 all other applicable provisions of this section as if it
 25 were a trustee or custodian of the registered sepa-

1 rate account; (ii) files with the insurance regulatory
2 authority of a State an annual statement of its fi-
3 nancial condition, which most recent statement indi-
4 cates that it has a combined capital and surplus, if
5 a stock company, or an unassigned surplus, if a mu-
6 tual company, of not less than \$1,000,000, or such
7 other amount as the Commission may from time to
8 time prescribe by rule as necessary or appropriate in
9 the public interest or for the protection of investors;
10 and (iii) together with its registered separate ac-
11 counts, is supervised and examined periodically by
12 the insurance authority of such State.

13 “(3) The Commission may adopt such rules and regu-
14 lations under paragraph (2)(A) as it determines are nec-
15 essary or appropriate in the public interest or for the pro-
16 tection of investors. For the purposes of such paragraph,
17 the fees and charges deducted under the contract shall in-
18 clude all fees and charges imposed for any purpose and
19 in any manner.”.

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

23 “(i)(1) This section shall not apply to any registered
24 separate account funding variable insurance contracts, or
25 to the sponsoring insurance company and principal under-

1 writer of such account, except as provided in paragraph
2 (2).

3 “(2) It shall be unlawful for any registered separate
4 account funding variable insurance contracts, or for the
5 sponsoring insurance company of such account, to sell any
6 such contract unless (A) such contract is a redeemable se-
7 curity, and (B) the insurance company complies with sec-
8 tion 26(e) and any rules or regulations adopted by the
9 Commission thereunder.”.

10 **SEC. 206. REPORTS TO THE COMMISSION AND SHAREHOLD-**
11 **ERS.**

12 Section 30 of the Investment Company Act of 1940
13 (15 U.S.C. 80a–29) is amended—

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

16 “(1) such information, documents, and reports
17 (other than financial statements), as the Commis-
18 sion may require to keep reasonably current the in-
19 formation and documents contained in the registra-
20 tion statement of such company filed under this
21 title; and”;

22 (2) by redesignating subsections (c), (d), (e),
23 and (f) as subsections (d), (e), (g), and (h), respec-
24 tively;

1 (3) by inserting after subsection (b) the follow-
2 ing new subsection:

3 “(c) In exercising its authority under subsection
4 (b)(1) to require the filing of information, documents, and
5 reports on a basis more frequently than semi-annually, the
6 Commission shall take such steps as it deems necessary
7 or appropriate, consistent with the public interest and the
8 protection of investors, to avoid unnecessary reporting by,
9 and minimize the compliance burdens on, registered in-
10 vestment companies and their affiliated persons. Such
11 steps shall include considering and requesting public com-
12 ment on—

13 “(1) feasible alternatives that minimize the re-
14 porting burdens on registered investment companies;
15 and

16 “(2) the utility of such information, documents,
17 and reports to the Commission in relation to the
18 costs to registered investment companies and their
19 affiliated persons of providing such information, doc-
20 uments, and reports.”;

21 (4) by inserting after subsection (e) (as redesign-
22 nated by paragraph (2) of this section) the following
23 new subsection:

24 “(f) The Commission may by rule require that semi-
25 annual reports containing the information set forth in sub-

1 section (e) include such other information as the Commis-
 2 sion deems necessary or appropriate in the public interest
 3 or for the protection of investors. In exercising its author-
 4 ity under this subsection, the Commission shall take such
 5 steps as it deems necessary or appropriate, consistent with
 6 the public interest and the protection of investors, to avoid
 7 unnecessary reporting by, and minimize the compliance
 8 burdens on, registered investment companies and their af-
 9 filiated persons. Such steps shall include considering and
 10 requesting public comment on—

11 “(1) feasible alternatives that minimize the re-
 12 porting burdens on registered investment companies;
 13 and

14 “(2) the utility of such information to share-
 15 holders in relation to the costs to registered invest-
 16 ment companies and their affiliated persons of pro-
 17 viding such information to shareholders.”; and

18 (5) in subsection (g) (as so redesignated) by
 19 striking “subsections (a) and (d)” and inserting
 20 “subsections (a) and (e)”.

21 **SEC. 207. BOOKS, RECORDS AND INSPECTIONS.**

22 Section 31 of the Investment Company Act of 1940
 23 (15 U.S.C. 80a–30) is amended—

24 (1) by striking subsections (a) and (b) and in-
 25 serting the following:

1 “(a) Every registered investment company, and every
2 underwriter, broker, dealer, or investment adviser that is
3 a majority-owned subsidiary of such a company, shall
4 maintain and preserve such records (as defined in section
5 3(a)(37) of the Securities Exchange Act of 1934) for such
6 period or periods as the Commission, by rules and regula-
7 tions, may prescribe as necessary or appropriate in the
8 public interest or for the protection of investors. Every in-
9 vestment adviser not a majority-owned subsidiary of, and
10 every depositor of any registered investment company, and
11 every principal underwriter for any registered investment
12 company other than a closed-end company, shall maintain
13 and preserve for such period or periods as the Commission
14 shall prescribe by rules and regulations, such records as
15 are necessary or appropriate to record such person’s trans-
16 actions with such registered company. In exercising its au-
17 thority under this subsection, the Commission shall take
18 such steps as it deems necessary or appropriate, consistent
19 with the public interest and for the protection of investors,
20 to avoid unnecessary recordkeeping by, and minimize the
21 compliance burden on, persons required to maintain
22 records under this subsection (hereinafter in this section
23 referred to as ‘subject persons’). Such steps shall include
24 considering, and requesting public comment on—

1 “(1) feasible alternatives that minimize the rec-
2 ordkeeping burdens on subject persons;

3 “(2) the necessity of such records in view of the
4 public benefits derived from the independent scru-
5 tiny of such records through Commission examina-
6 tion;

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

10 “(4) the effects that a proposed recordkeeping
11 requirement would have on internal compliance poli-
12 cies and procedures.

13 “(b) All records required to be maintained and pre-
14 served in accordance with subsection (a) of this section
15 shall be subject at any time and from time to time to such
16 reasonable periodic, special, and other examinations by the
17 Commission, or any member or representative thereof, as
18 the Commission may prescribe. For purposes of such ex-
19 aminations, any subject person shall make available to the
20 Commission or its representatives any copies or extracts
21 from such records as may be prepared without undue ef-
22 fort, expense, or delay as the Commission or its represent-
23 atives may reasonably request. The Commission shall exer-
24 cise its authority under this subsection with due regard
25 for the benefits of internal compliance policies and proce-

1 dures and the effective implementation and operation
2 thereof.”;

3 (2) by redesignating existing subsections (c)
4 and (d) as subsections (e) and (f), respectively; and
5 (3) by inserting after subsection (b) the follow-
6 ing new subsections:

7 “(c) Notwithstanding any other provision of law, the
8 Commission shall not be compelled to disclose any internal
9 compliance or audit records, or information contained
10 therein, provided to the Commission under this section.
11 Nothing in this subsection shall authorize the Commission
12 to withhold information from Congress or prevent the
13 Commission from complying with a request for informa-
14 tion from any other Federal department or agency re-
15 questing the information for purposes within the scope of
16 its jurisdiction, or complying with an order of a court of
17 the United States in an action brought by the United
18 States or the Commission. For purposes of section 552
19 of title 5, United States Code, this section shall be consid-
20 ered a statute described in subsection (b)(3)(B) of such
21 section 552.

22 “(d) For purposes of this section—

23 “(1) ‘internal compliance policies and proce-
24 dures’ means policies and procedures designed by

1 subject persons to promote compliance with the Fed-
 2 eral securities laws; and

3 “(2) ‘internal compliance and audit record’
 4 means any record prepared by a subject person in
 5 accordance with internal compliance policies and
 6 procedures.”.

7 **SEC. 208. INVESTMENT COMPANY NAMES.**

8 Section 35(d) of the Investment Company Act of
 9 1940 (15 U.S.C. 80a–34(d)) is amended to read as fol-
 10 lows:

11 “(d) It shall be unlawful for any registered invest-
 12 ment company to adopt as a part of the name or title of
 13 such company, or of any securities of which it is the issuer,
 14 any word or words that the Commission finds are materi-
 15 ally deceptive or misleading. The Commission is author-
 16 ized, by rule, regulation, or order, to define such names
 17 or titles as are materially deceptive or misleading.”.

18 **SEC. 209. EXCEPTIONS FROM DEFINITION OF INVESTMENT**
 19 **COMPANY.**

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

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

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

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

7 (A) by inserting after “issuer,” the first
8 place it appears the following: “and is or, but
9 for the exception in this paragraph or para-
10 graph (7), would be an investment company,”;
11 and

12 (B) by striking all that follows “(other
13 than short-term paper)” and inserting a period;
14 (3) in paragraph (2)—

15 (A) by striking “and acting as broker,”
16 and inserting “acting as broker, and acting as
17 market intermediary,”; and

18 (B) by adding at the end of such para-
19 graph the following new sentences: “For the
20 purposes of this paragraph, the term ‘market
21 intermediary’ means any person that regularly
22 holds itself out as being willing contempora-
23 neously to engage in, and is regularly engaged
24 in the business of entering into, transactions on
25 both sides of the market for a financial contract

1 or one or more such financial contracts. For
2 purposes of the preceding sentence, the term ‘fi-
3 nancial contract’ means any arrangement that
4 (A) takes the form of an individually negotiated
5 contract, agreement, or option to buy, sell, lend,
6 swap, or repurchase, or other similar individ-
7 ually negotiated transaction commonly entered
8 into by participants in the financial markets;
9 (B) is in respect of securities, commodities, cur-
10 rencies, interest or other rates, other measures
11 of value, or any other financial or economic in-
12 terest similar in purpose or function to any of
13 the foregoing; and (C) is entered into in re-
14 sponse to a request from a counterparty for a
15 quotation or is otherwise entered into and
16 structured to accommodate the objectives of the
17 counterparty to such arrangement.”; and

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

20 “(7)(A) Any issuer (i) whose outstanding secu-
21 rities are owned exclusively by persons who, at the
22 time of acquisition of such securities, are qualified
23 purchasers, and (ii) who is not making and does not
24 presently propose to make a public offering of such
25 securities. Securities that are owned by persons who

1 received the securities from a qualified purchaser as
2 a gift or bequest, or where the transfer was caused
3 by legal separation, divorce, death, or other involun-
4 tary event, shall be deemed to be owned by a quali-
5 fied purchaser, subject to such rules, regulations,
6 and orders as the Commission may prescribe as nec-
7 essary or appropriate in the public interest or for
8 the protection of investors.

9 “(B) Notwithstanding subparagraph (A), an is-
10 suer is within the exception provided by this para-
11 graph if—

12 “(i) in addition to qualified purchasers, its
13 outstanding securities are beneficially owned by
14 not more than 100 persons who are not quali-
15 fied purchasers if (I) such persons acquired
16 such securities on or before December 31,
17 1995, and (II) at the time such securities were
18 acquired by such persons, the issuer was ex-
19 cepted by paragraph (1) of this subsection; and

20 “(ii) prior to availing itself of the exception
21 provided by this paragraph—

22 “(I) such issuer has disclosed to such
23 persons that future investors will be lim-
24 ited to qualified purchasers, and that own-

1 ership in such issuer is no longer limited to
2 not more than 100 persons, and

3 “(II) concurrently with or after such
4 disclosure, such issuer has provided such
5 persons with a reasonable opportunity to
6 redeem any part or all of their interests in
7 the issuer for their proportionate share of
8 the issuer’s current net assets, or the cash
9 equivalent thereof.

10 “(C) An issuer that is excepted under this para-
11 graph shall nonetheless be deemed to be an invest-
12 ment company for purposes of the limitations set
13 forth in section 12(d)(1)(A)(i) and (B)(i) governing
14 the purchase or other acquisition by such issuer of
15 any security issued by any registered investment
16 company and the sale of any security issued by any
17 registered open-end company to any such issuer.

18 “(D) For purposes of determining compliance
19 with this paragraph and paragraph (1) of this sub-
20 section, an issuer that is otherwise excepted under
21 this paragraph and an issuer that is otherwise ex-
22 cepted under paragraph (1) shall not be treated by
23 the Commission as being a single issuer for purposes
24 of determining whether the outstanding securities of
25 the issuer excepted under paragraph (1) are bene-

1 ficially owned by not more than 100 persons or
2 whether the outstanding securities of the issuer ex-
3 cepted under this paragraph are owned by persons
4 that are not qualified purchasers. Nothing in this
5 provision shall be deemed to establish that a person
6 is a bona fide qualified purchaser for purposes of
7 this paragraph or a bona fide beneficial owner for
8 purposes of paragraph (1) of this subsection.”.

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

13 “(51) ‘Qualified purchaser’ means—

14 “(A) any natural person who owns at least
15 \$10,000,000 in securities of issuers that are not
16 controlled by such person, except that securities
17 of such a controlled issuer may be counted to-
18 ward such amount if such issuer is, or but for
19 the exception in paragraph (1) or (7) of section
20 3(e) would be, an investment company;

21 “(B) any trust not formed for the specific
22 purpose of acquiring the securities offered, as
23 to which the trustee or other person authorized
24 to make decisions with respect to the trust, and
25 each settlor or other person who has contrib-

1 uted assets to the trust, is a person described
2 in subparagraph (A) or (C); or

3 “(C) any person, acting for its own ac-
4 count or the accounts of other qualified pur-
5 chasers, who in the aggregate owns and invests
6 on a discretionary basis, not less than
7 \$100,000,000 in securities of issuers that are
8 not affiliated persons (as defined in paragraph
9 (3)(C) of this subsection) of such person, except
10 that securities of such an affiliated person is-
11 suer may be counted toward such amount if
12 such issuer is, or but for the exception in para-
13 graph (1) or (7) of section 3(c) would be, an in-
14 vestment company.

15 The Commission may adopt such rules and regula-
16 tions governing the persons and trusts specified in
17 subparagraphs (A), (B), and (C) of this paragraph
18 as it determines are necessary or appropriate in the
19 public interest and for the protection of investors.”.

20 (c) CONFORMING AMENDMENT.—The last sentence
21 of section 3(a) of the Investment Company Act of 1940
22 (15 U.S.C. 80a–3(a)) is amended—

23 (1) by inserting “(i)” after “of the owner”; and

24 (2) by inserting before the period the following:

25 “, and (ii) which are not relying on the exception

1 from the definition of investment company in sub-
2 section (c)(1) or (c)(7) of this section”.

3 (d) RULEMAKING REQUIRED.—

4 (1) IMPLEMENTATION OF SECTION 3(c)(1)(B).—

5 Within one year after the date of enactment of this
6 Act, the Commission shall prescribe rules to imple-
7 ment the requirements of section 3(c)(1)(B) of the
8 Investment Company Act of 1940 (15 U.S.C. 80a–
9 3(c)(1)(B)).

10 (2) EMPLOYEE EXCEPTION.—Within one year
11 after the date of enactment of this Act, the Commis-
12 sion shall prescribe rules pursuant to its authority
13 under section 6 of the Investment Company Act of
14 1940 (15 U.S.C. 80a–6) to permit the ownership by
15 knowledgeable employees of an issuer or an affiliated
16 person of the issuer of the securities of that issuer
17 or affiliated person without loss of the issuer’s ex-
18 ception under section 3(c)(1) or 3(c)(7) of such Act
19 from treatment as an investment company under
20 such Act.

1 **TITLE III—SECURITIES AND EX-**
2 **CHANGE COMMISSION AU-**
3 **THORIZATION**

4 **SEC. 301. SHORT TITLE.**

5 This title may be cited as the “Securities and Ex-
6 change Commission Authorization Act of 1996”.

7 **SEC. 302. PURPOSES.**

8 The purposes of this title are—

9 (1) to authorize appropriations for the Securi-
10 ties and Exchange Commission for fiscal year 1997;
11 and

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

14 **SEC. 303. AUTHORIZATION OF APPROPRIATIONS.**

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

17 **“SEC. 35. AUTHORIZATION OF APPROPRIATIONS.**

18 “There are authorized to be appropriated to carry out
19 the functions, powers, and duties of the Commission
20 \$317,000,000 for fiscal year 1997.”.

21 **SEC. 304. REGISTRATION FEES.**

22 Section 6(b) of the Securities Act of 1933 (15 U.S.C.
23 77f(b)) is amended to read as follows:

24 “(b) REGISTRATION FEE.—

1 “(1) RECOVERY OF COST OF SERVICES.—The
2 Commission shall, in accordance with this sub-
3 section, collect registration fees that are designed to
4 recover the costs to the government of the securities
5 registration process, and costs related to such proc-
6 ess, including enforcement activities, policy and rule-
7 making activities, administration, legal services, and
8 international regulatory activities.

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

20 “(3) GENERAL REVENUE FEES.—The rate de-
21 termined under this paragraph is a rate equal to
22 \$200 for each \$1,000,000 of the maximum aggre-
23 gate price at which such securities are proposed to
24 be offered, except that during fiscal year 2002 and
25 any succeeding fiscal year such rate is equal to \$182

1 for each \$1,000,000 of the maximum aggregate
2 price at which such securities are proposed to be of-
3 fered. Fees collected during any fiscal year pursuant
4 to this paragraph shall be deposited and credited as
5 general revenues of the Treasury.

6 “(4) OFFSETTING COLLECTION FEES.—

7 “(A) IN GENERAL.—Except as provided in
8 subparagraphs (B) and (C), the rate deter-
9 mined under this paragraph is a rate equal to
10 the following amount for each \$1,000,000 of
11 the maximum aggregate price at which such se-
12 curities are proposed to be offered:

13 “(i) \$103 during fiscal year 1997;

14 “(ii) \$70 during fiscal year 1998;

15 “(iii) \$38 during fiscal year 1999;

16 “(iv) \$17 during fiscal year 2000; and

17 “(v) \$0 during fiscal year 2001 or any
18 succeeding fiscal year.

19 “(B) LIMITATION; DEPOSIT.—Except as
20 provided in subparagraph (C), no amounts shall
21 be collected pursuant to this paragraph (4) for
22 any fiscal year except to the extent provided in
23 advance in appropriations acts. Fees collected
24 during any fiscal year pursuant to this para-
25 graph shall be deposited and credited as offset-

1 ting collections in accordance with appropria-
2 tions Acts.

3 “(C) LAPSE OF APPROPRIATIONS.—If on
4 the first day of a fiscal year a regular appro-
5 piation to the Commission has not been en-
6 acted, the Commission shall continue to collect
7 fees (as offsetting collections) under this para-
8 graph at the rate in effect during the preceding
9 fiscal year, until such a regular appropriation is
10 enacted.”.

11 **SEC. 305. TRANSACTION FEES.**

12 (a) AMENDMENT.—Section 31 of the Securities Ex-
13 change Act of 1934 (15 U.S.C. 78ee) is amended to read
14 as follows:

15 **“SEC. 31. TRANSACTION FEES.**

16 “(a) RECOVERY OF COST OF SERVICES.—The Com-
17 mission shall, in accordance with this subsection, collect
18 transaction fees that are designed to recover the costs to
19 the Government of the supervision and regulation of secu-
20 rities markets and securities professionals, and costs relat-
21 ed to such supervision and regulation, including enforce-
22 ment activities, policy and rulemaking activities, adminis-
23 tration, legal services, and international regulatory activi-
24 ties.

1 “(b) EXCHANGE-TRADED SECURITIES.—Every na-
2 tional securities exchange shall pay to the Commission a
3 fee at a rate equal to \$33 for each \$1,000,000 of the ag-
4 gregate dollar amount of sales of securities (other than
5 bonds, debentures, and other evidences of indebtedness)
6 transacted on such national securities exchange, except
7 that for fiscal year 2002 or any succeeding fiscal year such
8 rate shall be equal to \$25 for each \$1,000,000 of such
9 aggregate dollar amount of sales. Fees collected pursuant
10 to this subsection shall be deposited and collected as gen-
11 eral revenue of the Treasury.

12 “(c) OFF-EXCHANGE-TRADES OF EXCHANGE REG-
13 ISTERED SECURITIES.—Every national securities associa-
14 tion shall pay to the Commission a fee at a rate equal
15 \$33 for each \$1,000,000 of the aggregate dollar amount
16 of sales transacted by or through any member of such as-
17 sociation otherwise than on a national securities exchange
18 of securities registered on such an exchange (other than
19 bonds, debentures, and other evidences of indebtedness),
20 except that for fiscal year 2002 or any succeeding fiscal
21 year such rate shall be equal to \$25 for each \$1,000,000
22 of such aggregate dollar amount of sales. Fees collected
23 pursuant to this subsection shall be deposited and col-
24 lected as general revenue of the Treasury.

1 “(d) OFF-EXCHANGE-TRADES OF LAST-SALE-RE-
2 PORTED SECURITIES.—

3 “(1) COVERED TRANSACTIONS.—Every national
4 securities association shall pay to the Commission a
5 fee at a rate equal to the dollar amount determined
6 under paragraph (2) for each \$1,000,000 of the ag-
7 gregate dollar amount of sales transacted by or
8 through any member of such association otherwise
9 than on a national securities exchange of securities
10 (other than bonds, debentures, and other evidences
11 of indebtedness) subject to prompt last sale report-
12 ing pursuant to the rules of the Commission or a
13 registered national securities association, excluding
14 any sales for which a fee is paid under subsection
15 (c).

16 “(2) FEE RATES.—Except as provided in para-
17 graph (4), the dollar amount determined under this
18 paragraph is—

19 “(A) \$12 for fiscal year 1997;

20 “(B) \$14 for fiscal year 1998;

21 “(C) \$17 for fiscal year 1999;

22 “(D) \$18 for fiscal year 2000;

23 “(E) \$20 for fiscal year 2001; and

24 “(F) \$25 for fiscal year 2002 or for any
25 succeeding fiscal year.

1 “(3) LIMITATION; DEPOSIT OF FEES.—Except
2 as provided in paragraph (4), no amounts shall be
3 collected pursuant to this subsection (d) for any fis-
4 cal year beginning before October 1, 2001, except to
5 the extent provided in advance in appropriations
6 Acts. Fees collected during any such fiscal year pur-
7 suant to this subsection shall be deposited and cred-
8 ited as offsetting collections to the account providing
9 appropriations to the Commission, except that any
10 amounts in excess of the following amounts (and any
11 amount collected for fiscal years beginning on or
12 after October 1, 2001) shall be deposited and cred-
13 ited as general revenues of the Treasury:

14 “(A) \$20,000,000 for fiscal year 1997;
15 “(B) \$26,000,000 for fiscal year 1998;
16 “(C) \$32,000,000 for fiscal year 1999;
17 “(D) \$32,000,000 for fiscal year 2000;
18 “(E) \$32,000,000 for fiscal year 2001; and
19 “(F) \$0 for fiscal year 2002 and any suc-
20 ceeding fiscal year.

21 “(4) LAPSE OF APPROPRIATIONS.—If on the
22 first day of a fiscal year a regular appropriation to
23 the Commission has not been enacted, the Commis-
24 sion shall continue to collect fees (as offsetting col-
25 lections) under this subsection at the rate in effect

1 during the preceding fiscal year, until such a regular
2 appropriation is enacted.

3 “(e) DATES FOR PAYMENT OF FEES.—The fees re-
4 quired by subsections (b), (c), and (d) of this section shall
5 be paid—

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

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

14 “(f) EXEMPTIONS.—The Commission, by rule, may
15 exempt any sale of securities or any class of sales of secu-
16 rities from any fee imposed by this section, if the Commis-
17 sion finds that such exemption is consistent with the pub-
18 lic interest, the equal regulation of markets and brokers
19 and dealers, and the development of a national market
20 system.

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

24 (b) EFFECTIVE DATES; TRANSITION.—

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

5 (2) OFF-EXCHANGE TRADES OF LAST SALE RE-
6 PORTED TRANSACTIONS.—The amendment made by
7 subsection (a) shall apply with respect to trans-
8 actions described in section 31(d)(1) of the Securi-
9 ties Exchange Act of 1934 (as amended by sub-
10 section (a) of this section) that occur on or after
11 September 1, 1996.

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

20 **SEC. 306. TIME FOR PAYMENT.**

21 Section 4(e) of the Securities Exchange Act of 1934
22 (15 U.S.C. 78d(e)) is amended by inserting before the pe-
23 riod at the end thereof the following: “and the Commission
24 may also specify the time that such fee shall be determined

1 and paid relative to the filing of any statement or docu-
2 ment with the Commission”.

3 **SEC. 307. SENSE OF THE CONGRESS CONCERNING FEES.**

4 It is the sense of the Congress that—

- 5 (1) the fees authorized by the amendments
6 made by this Act are in lieu of, and not in addition
7 to, any fees that the Securities and Exchange Com-
8 mission is authorized to impose or collect pursuant
9 to section 9701 of title 31, United States Code; and
10 (2) in order to maintain the competitiveness of
11 United States securities markets relative to foreign
12 markets, no fee should be assessed on transactions
13 involving portfolios of equity securities taking place
14 at times of day characterized by low volume and
15 during non-traditional trading hours.

Passed the House of Representatives June 19, 1996.

Attest:

ROBIN H. CARLE,

Clerk.