

Union Calendar No. 310

104TH CONGRESS
2^D Session

H. R. 3005

[Report No. 104-622]

A BILL

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.

JUNE 17, 1996

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

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IN THE HOUSE OF REPRESENTATIVES

MARCH 5, 1996

Mr. FIELDS of Texas introduced the following bill; which was referred to the Committee on Commerce

JUNE 17, 1996

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in *italic*]

[For text of introduced bill, see copy of bill as introduced on March 5, 1996]

A BILL

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 “Se-*
 5 *curities Amendments of 1996”.*

6 (b) *TABLE OF CONTENTS.*—*The table of contents of this*
 7 *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.

8 **TITLE I—CAPITAL MARKETS DE-**
 9 **REGULATION AND LIBERAL-**
 10 **IZATION**

11 **SEC. 101. SHORT TITLE.**

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

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

2 (a) *SECURITIES ACT OF 1933.*—

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

6 **“SEC. 18. EXEMPTION FROM STATE REGULATION OF SECURITIES OFFERINGS.**

7
8 “(a) *SCOPE OF EXEMPTION.*—*Except as otherwise pro-*
9 *vided in this section, no law, rule, regulation, or order, or*
10 *other administrative action of any State or Territory of the*
11 *United States, or the District of Columbia, or any political*
12 *subdivision thereof—*

13 “(1) *requiring, or with respect to, registration or*
14 *qualification of securities, or registration or qualifica-*
15 *tion of securities transactions, shall directly or indi-*
16 *rectly apply to a security that—*

17 “(A) *is a covered security; or*

18 “(B) *will be a covered security upon com-*
19 *pletion of the transaction;*

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

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

24 “(i) *any offering document that is pre-*
25 *pared by the issuer; or*

1 “(ii) any offering document that is not
2 prepared by the issuer if such offering docu-
3 ment is required to be and is filed with the
4 Commission or any national securities or-
5 ganization registered under section 15A of
6 the Securities Exchange Act of 1934 (15
7 U.S.C. 780-3);

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

11 “(C) any proxy statement, report to share-
12 holders, or other disclosure document relating to
13 a covered security or the issuer thereof that is re-
14 quired to be and is filed with the Commission or
15 any national securities organization registered
16 under section 15A of the Securities Exchange Act
17 of 1934 (15 U.S.C. 780-3); or

18 “(3) shall directly or indirectly prohibit, limit,
19 or impose conditions, based on the merits of such of-
20 fering or issuer, upon the offer or sale of any security
21 described in paragraph (1).

22 “(b) COVERED SECURITIES.—For purposes of this sec-
23 tion, the following are covered securities:

1 “(1) *EXCLUSIVE FEDERAL REGISTRATION OF NA-*
2 *TIONALLY TRADED SECURITIES.*—*A security is a cov-*
3 *ered security if such security is—*

4 “(A) *listed, or authorized for listing, on the*
5 *New York Stock Exchange or the American Stock*
6 *Exchange, or included or qualified for inclusion*
7 *in the National Market System of the National*
8 *Association of Securities Dealers Automated*
9 *Quotation System (or any successor to such enti-*
10 *ties);*

11 “(B) *listed, or authorized for listing, on a*
12 *national securities exchange (or tier or segment*
13 *thereof) that has listing standards that the Com-*
14 *mission determines by rule (on its own initiative*
15 *or on the basis of a petition) are substantially*
16 *similar to the listing standards applicable to se-*
17 *curities described in subparagraph (A); or*

18 “(C) *is a security of the same issuer that is*
19 *equal in seniority or senior to a security de-*
20 *scribed in subparagraph (A) or (B).*

21 “(2) *EXCLUSIVE FEDERAL REGISTRATION OF IN-*
22 *VESTMENT COMPANIES.*—*A security is a covered secu-*
23 *urity if such security is a security issued by an invest-*
24 *ment company that is registered under the Investment*
25 *Company Act of 1940 (15 U.S.C. 80a et seq.).*

1 “(3) *SALES TO QUALIFIED PURCHASERS.*—A se-
2 *curity is a covered security with respect to the offer*
3 *or sale of the security to qualified purchasers, as de-*
4 *finied by the Commission by rule. In prescribing such*
5 *rule, the Commission may define qualified purchaser*
6 *differently with respect to different categories of secu-*
7 *rities, consistent with the public interest and the pro-*
8 *tection of investors.*

9 “(4) *EXEMPTION IN CONNECTION WITH CERTAIN*
10 *EXEMPT OFFERINGS.*—A security is a covered security
11 *if—*

12 “(A) *the offer or sale of such security is ex-*
13 *empt from registration under this title pursuant*
14 *to section 4(1) or 4(3), and—*

15 “(i) *the issuer of such security files re-*
16 *ports with the Commission pursuant to sec-*
17 *tion 13 or 15(d) of the Securities Exchange*
18 *Act of 1934 (15 U.S.C. 78m, 78o(d)); or*

19 “(ii) *the issuer is exempt from filing*
20 *such reports;*

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

23 “(C) *the offer or sale of such security is ex-*
24 *empt from registration under this title pursuant*
25 *to section 3(a), other than the offer or sale of a*

1 security that is exempt from such registration
2 pursuant to paragraph (4) or (11) of such sec-
3 tion, except that a municipal security that is ex-
4 empt from such registration pursuant to para-
5 graph (2) of such section is not a covered secu-
6 rity with respect to the offer or sale of such secu-
7 rity in the State in which such security is is-
8 sued; or

9 “(D) the offer or sale of such security is ex-
10 empt from registration under this title pursuant
11 to Commission rule or regulation under section
12 4(2) of this title.

13 “(c) *CONDITIONALLY COVERED SECURITIES.*—

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

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

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

23 “(C) the issuer files with such registration
24 statement audited financial statements for each
25 of the two most recent fiscal years of its oper-

1 *ations ending before the filing of the registration*
2 *statement.*

3 “(2) *LIMITATIONS FOR CERTAIN OFFERINGS.—*
4 *Notwithstanding paragraph (1), a security is not a*
5 *covered security if such security is—*

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

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

14 “(C) *a security issued in an offering relat-*
15 *ing to a rollup transaction (as such term is de-*
16 *defined in paragraphs (4) and (5) of section 14(h)*
17 *of such Act (15 U.S.C. 78n(h)(4), (5)).*

18 “(3) *LIMITATIONS BASED ON MISCONDUCT.—Not-*
19 *withstanding paragraph (1), a security is not a cov-*
20 *ered security—*

21 “(A) *with respect to any State, if the issuer,*
22 *or a principal officer or principal shareholder*
23 *thereof—*

24 “(i) *is subject to a statutory disquali-*
25 *fication, as defined in subparagraph (A),*

1 *(B), (C), or (D) of section 3(a)(39) of the*
2 *Securities Exchange Act of 1934 (15 U.S.C.*
3 *78c(a)(39));*

4 *“(ii) has been convicted within 5 years*
5 *prior to the offering of any felony under*
6 *Federal or State law in connection with the*
7 *offer, purchase, or sale of any security, or*
8 *any felony under Federal or State law in-*
9 *volving fraud or deceit; or*

10 *“(iii) is currently named in and sub-*
11 *ject to any order, judgment, or decree of any*
12 *court of competent jurisdiction acting pur-*
13 *suant to Federal or State law temporarily*
14 *or permanently restraining or enjoining*
15 *such issuer, officer, or shareholder from en-*
16 *gaging in or continuing any conduct or*
17 *practice in connection with a security; or*

18 *“(B) with respect to a particular State, if*
19 *the issuer, or a principal officer or principal*
20 *shareholder thereof—*

21 *“(i) has filed a registration statement*
22 *which is the subject of a currently effective*
23 *stop order entered pursuant to that State’s*
24 *securities laws within 5 years prior to the*
25 *offering;*

1 “(ii) is currently named in and subject
2 to any administrative enforcement order or
3 judgment of that State’s securities commis-
4 sion (or any agency or office performing
5 like functions) entered within 5 years prior
6 to the offering, or is currently named in
7 and subject to any other administrative en-
8 forcement order or judgment of that State
9 entered within 5 years prior to the offering
10 that finds fraud or deceit; or

11 “(iii) is currently named in and sub-
12 ject to any administrative enforcement
13 order or judgment of that State which pro-
14 hibits or denies registration, or revokes the
15 use of any exemption from registration, in
16 connection with the offer, purchase, or sale
17 of securities.

18 “(4) *EXCEPTIONS TO LIMITATIONS.*—

19 “(A) *EXEMPTIONS.*—The limitations in
20 paragraph (3)(A) shall not apply if the Commis-
21 sion has exempted the subject person from the
22 application of such paragraph by rule or order,
23 and the limitations in paragraph (3)(B) shall
24 not apply if the securities commission (or any
25 agency or office performing like functions) of the

1 *affected State has exempted the subject person*
2 *from the application of such paragraph by rule*
3 *or order.*

4 “(B) *REASONABLE STEPS.*—*The provisions*
5 *of paragraph (3) shall not apply if the issuer has*
6 *taken reasonable steps to ascertain whether any*
7 *principal officer or principal shareholder is sub-*
8 *ject to such paragraph, and such steps do not re-*
9 *veal a person who is subject to such paragraph.*
10 *An issuer shall be considered to have taken rea-*
11 *sonable steps if such issuer or its agent has con-*
12 *ducted a search of any centralized data bases*
13 *that the Commission may designate by rule, and*
14 *has received an affidavit under oath by each*
15 *such principal officer or principal shareholder*
16 *stating that such officer or shareholder is not*
17 *subject to the provisions of paragraph (3).*

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

23 “(5) *NO EFFECT UNDER SUBSECTION (B).*—*No*
24 *limitation under this subsection shall affect the treat-*

1 *ment of a security that qualifies as a covered security*
2 *under subsection (b).*

3 “(d) *PRESERVATION OF AUTHORITY.*—

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

12 “(2) *PRESERVATION OF FILING REQUIRE-*
13 *MENTS.*—

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

23 “(B) *PRESERVATION OF FEES.*—*Until oth-*
24 *erwise provided by State law enacted after the*
25 *date of enactment of the Securities Amendments*

1 *of 1996, filing or registration fees with respect to*
2 *securities or securities transactions may continue*
3 *to be collected in amounts determined pursuant*
4 *to State law as in effect on the day before such*
5 *date.*

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

16 “(3) *ENFORCEMENT OF REQUIREMENTS.—Not-*
17 *ing in this section shall prohibit the securities com-*
18 *mission (or any agency or office performing like func-*
19 *tions) of any State or Territory of the United States,*
20 *or the District of Columbia, from suspending the offer*
21 *or sale of securities within such State, Territory, or*
22 *District as a result of the failure to submit any filing*
23 *or fee required under law and permitted under this*
24 *section.*

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

1 “(1) *PRINCIPAL OFFICER.*—*The term ‘principal*
2 *officer’ means a director, chief executive officer, or*
3 *chief financial officer of an issuer, or any other officer*
4 *performing like functions.*

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

20 “(3) *OFFERING DOCUMENT.*—*The term ‘offering*
21 *document’ has the meaning given the term ‘prospec-*
22 *tus’ by section 2(10), but without regard to the provi-*
23 *sions of clauses (a) and (b) of such section, except*
24 *that, with respect to a security described in subsection*
25 *(b)(2) of this section, such term also includes a com-*

1 *munication that is not deemed to offer such a security*
2 *pursuant to a rule of the Commission.*

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

8 *(2) STUDY OF UNIFORMITY.—The Securities Ex-*
9 *change Commission shall conduct a study after con-*
10 *sultation with States, issuers, brokers, and dealers on*
11 *the extent to which uniformity of State regulatory re-*
12 *quirements for securities or securities transactions has*
13 *been achieved for securities that are not covered secu-*
14 *rities (within the meaning of section 18 of the Securi-*
15 *ties Act of 1933 as amended by paragraph (1) of this*
16 *subsection). Such study shall specifically focus on the*
17 *impact of such uniformity or lack thereof on the cost*
18 *of capital, innovation and technological development*
19 *in securities markets, and duplicative regulation with*
20 *respect to securities issuers (including small business),*
21 *brokers, and dealers and the effect on investor protec-*
22 *tion. The Commission shall submit to the Congress a*
23 *report on the results of such study within one year*
24 *after the date of enactment of this Act.*

25 *(b) BROKER/DEALER REGULATION.—*

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

4 “(h) *LIMITATIONS ON STATE LAW.—*

5 “*(1) CAPITAL, MARGIN, BOOKS AND RECORDS,*
6 *BONDING, AND REPORTS.—No law, rule, regulation, or*
7 *order, or other administrative action of any State or*
8 *political subdivision thereof shall establish capital,*
9 *custody, margin, financial responsibility, making and*
10 *keeping records, bonding, or financial or operational*
11 *reporting requirements for brokers, dealers, municipal*
12 *securities dealers, government securities brokers, or*
13 *government securities dealers that differ from, or are*
14 *in addition to, the requirements in those areas estab-*
15 *lished under this title. The Commission shall consult*
16 *periodically the securities commissions (or any agen-*
17 *cy or office performing like functions) of the States*
18 *concerning the adequacy of such requirements as es-*
19 *tablished under this title.*

20 “(2) *EXEMPTION TO PERMIT SERVICE TO CUS-*
21 *TOMERS.—No law, rule, regulation, or order, or other*
22 *administrative action of any State or political sub-*
23 *division thereof shall prohibit an associated person*
24 *from effecting a transaction described in paragraph*
25 *(3) for a customer in such State if—*

1 “(A) such associated person is not ineligible
2 to register with such State for any reason other
3 than such a transaction;

4 “(B) such associated person is registered
5 with a registered securities association and at
6 least one State; and

7 “(C) the broker or dealer with which such
8 person is associated is registered with such State.

9 “(3) DESCRIBED TRANSACTIONS.—A transaction
10 is described in this paragraph if—

11 “(A) such transaction is effected—

12 “(i) on behalf of a customer that, for
13 30 days prior to the day of the transaction,
14 maintains an account with the broker or
15 dealer; and

16 “(ii) by an associated person (I) to
17 which the customer was assigned for 14
18 days prior to the day of the transaction,
19 and (II) who is registered with a State in
20 which the customer was a resident or was
21 present for at least 30 consecutive days dur-
22 ing the one-year period prior to the trans-
23 action;

24 except that, if the customer is present in another
25 State for 30 or more consecutive days or has per-

1 *manently changed his or her residence to another*
2 *State, such transaction is not described in this*
3 *subparagraph unless the associated person files*
4 *with such State an application for registration*
5 *within 10 business days of the later of the date*
6 *of the transaction or the date of the discovery of*
7 *the presence of the customer in the State for 30*
8 *or more consecutive days or the change in the*
9 *customer's residence;*

10 *“(B) the transaction is effected—*

11 *“(i) on behalf of a customer that, for*
12 *30 days prior to the day of the transaction,*
13 *maintains an account with the broker or*
14 *dealer; and*

15 *“(ii) within the period beginning on*
16 *the date on which such associated person*
17 *files with the State in which the transaction*
18 *is effected an application for registration*
19 *and ending on the earlier of (I) 60 days*
20 *after the date the application is filed, or*
21 *(II) the time at which such State notifies*
22 *the associated person that it has denied the*
23 *application for registration or has stayed*
24 *the pendency 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 reg-
6 istered.

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 consulta-
16 tion with registered securities associations, national
17 securities exchanges, and States, shall conduct a study
18 of—

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

22 (B) methods for States to attain uniform li-
23 censing requirements for such persons.

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

1 *the Congress a report on the study conducted under*
2 *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 *serting “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 of*
16 *1934 (15 U.S.C. 78g(c)) is amended to read as fol-*
17 *lows:*

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

20 “(1) *PROHIBITION.—It shall be unlawful for any*
21 *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 main-*
24 *tenance 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 of
4 the Federal Reserve System shall prescribe under
5 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 securities
22 or of evading or circumventing the provi-
23 sions of subparagraph (A) of this para-
24 graph.

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

7 “(A) *a substantial portion of whose business*
8 *consists of transactions with persons other than*
9 *brokers or dealers; or*

10 “(B) *to finance its activities as a market*
11 *maker or an underwriter;*
12 *except that the Board of Governors of the Federal Re-*
13 *serve System may impose such rules and regulations,*
14 *in whole or in part, on any credit otherwise exempted*
15 *by this paragraph if it determines that such action is*
16 *necessary or appropriate in the public interest or for*
17 *the protection of investors.”.*

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

22 “(d) *UNLAWFUL CREDIT EXTENSION IN VIOLATION OF*
23 *RULES AND REGULATIONS; EXCEPTION TO APPLICATION OF*
24 *RULES, ETC.*—

1 “(1) *PROHIBITION.*—*It shall be unlawful for any*
2 *person not subject to subsection (c) of this section to*
3 *extend or maintain credit or to arrange for the exten-*
4 *sion or maintenance of credit for the purpose of pur-*
5 *chasing or carrying any security, in contravention of*
6 *such rules and regulations as the Board of Governors*
7 *of the Federal Reserve System shall prescribe to pre-*
8 *vent the excessive use of credit for the purchasing or*
9 *carrying of or trading in securities in circumvention*
10 *of the other provisions of this section. Such rules and*
11 *regulations may impose upon all loans made for the*
12 *purpose of purchasing or carrying securities limita-*
13 *tions similar to those imposed upon members, brokers,*
14 *or dealers by subsection (c) of this section and the*
15 *rules and regulations thereunder.*

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

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

21 “(B) *on an exempted security;*

22 “(C) *to or for a member of a national secu-*
23 *rities exchange or a registered broker or dealer—*

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 an
7 equity security; or

8 “(E) as the Board of Governors of the Fed-
9 eral Reserve System shall, by such rules, regula-
10 tions, or orders as it may deem necessary or ap-
11 propriate in the public interest or for the protec-
12 tion of investors, exempt, either unconditionally
13 or upon specified terms and conditions or for
14 stated periods, from the operation of this sub-
15 section and the rules and regulations thereunder;

16 except that the Board of Governors of the Federal Re-
17 serve System may impose such rules and regulations,
18 in whole or in part, on any credit otherwise exempted
19 by subparagraph (C) of this paragraph if it deter-
20 mines that such action is necessary or appropriate in
21 the public interest or for the protection of investors.”.

22 (b) *BORROWING BY MEMBERS, BROKERS, AND DEAL-*
23 *ERS.*—Section 8 of the Securities Exchange Act of 1934 (15
24 U.S.C. 78h) is amended—

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

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

3 **SEC. 104. PROSPECTUS DELIVERY.**

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

9 (b) *REPORT ON ADVISORY COMMITTEE RECOMMENDA-*
10 *TIONS.*—Within one year after the date of enactment of this
11 Act, the Commission shall report to Congress on the Com-
12 mission’s views on the recommendations of the Advisory
13 Committee on Capital Formation, including any actions
14 taken to implement the recommendations of the Advisory
15 Committee.

16 **SEC. 105. EXEMPTIVE AUTHORITY.**

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

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

22 *“The Commission, by rules and regulations, may con-*
23 *ditionally or unconditionally exempt any person, security,*
24 *or transaction, or any class or classes of persons, securities,*
25 *or transactions, from any provision or provisions of this*

1 *title or of any rule or regulation thereunder, to the extent*
2 *that such exemption is necessary or appropriate in the pub-*
3 *lic interest, and is consistent with the protection of inves-*
4 *tors.”.*

5 (b) *GENERAL EXEMPTIVE AUTHORITY UNDER THE*
6 *SECURITIES EXCHANGE ACT OF 1934.—Title I of the Secu-*
7 *rities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is*
8 *amended by adding at the end the following new section:*
9 **“SEC. 36. GENERAL EXEMPTIVE AUTHORITY.**

10 *“Notwithstanding any other provision of this title, the*
11 *Commission, by rule, regulation, or order, may condi-*
12 *tionally or unconditionally exempt any person, security, or*
13 *transaction, or any class or classes of persons, securities,*
14 *or transactions, from any provision or provisions of this*
15 *title or of any rule or regulation thereunder, to the extent*
16 *that such exemption is necessary or appropriate in the pub-*
17 *lic interest, and is consistent with the protection of inves-*
18 *tors. The Commission shall by rules and regulations deter-*
19 *mine the procedures under which an exemptive order under*
20 *this section shall be granted and may, in its sole discretion,*
21 *decline to entertain any application for an order of exemp-*
22 *tion under this section.”.*

1 **SEC. 106. PROMOTION OF EFFICIENCY, COMPETITION, AND**
2 **CAPITAL FORMATION.**

3 (a) *SECURITIES ACT OF 1933.*—Section 2 of the *Secu-*
4 *rities Act of 1933 (15 U.S.C. 77b)* is amended—

5 (1) by inserting “(a) *DEFINITIONS.*—” after
6 “*SEC. 2.*”; and

7 (2) by adding at the end the following new sub-
8 *section:*

9 “(b) *CONSIDERATION OF PROMOTION OF EFFICIENCY,*
10 *COMPETITION, AND CAPITAL FORMATION.*—Whenever pur-
11 *suant to this title the Commission is engaged in rulemaking*
12 *and is required to consider or determine whether an action*
13 *is necessary or appropriate in the public interest, the Com-*
14 *mission shall also consider, in addition to the protection*
15 *of investors, whether the action will promote efficiency, com-*
16 *petition, and capital formation.”.*

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

20 “(f) *CONSIDERATION OF PROMOTION OF EFFICIENCY,*
21 *COMPETITION, AND CAPITAL FORMATION.*—Whenever pur-
22 *suant to this title the Commission is engaged in rule-*
23 *making, or in the review of a rule of a self-regulatory orga-*
24 *nization, and is required to consider or determine whether*
25 *an action is necessary or appropriate in the public interest,*
26 *the Commission shall also consider, in addition to the pro-*

1 *tection of investors, whether the action will promote effi-*
2 *ciency, competition, and capital formation.”.*

3 *(c) INVESTMENT COMPANY ACT of 1940.—Section 2 of*
4 *the Investment Company Act of 1940 (15 U.S.C. 80a–2)*
5 *is amended by adding at the end the following new sub-*
6 *section:*

7 *“(c) CONSIDERATION OF PROMOTION OF EFFICIENCY,*
8 *COMPETITION, AND CAPITAL FORMATION.—Whenever pur-*
9 *suant to this title the Commission is engaged in rulemaking*
10 *and is required to consider or determine whether an action*
11 *is consistent with the public interest, the Commission shall*
12 *also consider, in addition to the protection of investors,*
13 *whether the action will promote efficiency, competition, and*
14 *capital formation.”.*

15 **SEC. 107. PRIVATIZATION OF EDGAR.**

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

23 *(b) REVIEW AND REPORT.—Within 180 days after the*
24 *date of enactment of this Act, the Commission shall submit*
25 *to the Congress a report on the examination under sub-*

1 *section (a). Such report shall include such recommendations*
2 *for such legislative action as may be necessary to implement*
3 *the proposal that the Commission determines most effec-*
4 *tively achieves the objectives described in subsection (a).*

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

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

9 *“(i) COORDINATION OF EXAMINING AUTHORITIES.—*

10 *“(1) ELIMINATION OF DUPLICATION.—The Com-*
11 *mission and the examining authorities, through co-*
12 *operation and coordination of examination and over-*
13 *sight as required by this subsection, shall eliminate*
14 *any unnecessary and burdensome duplication in the*
15 *examination process.*

16 *“(2) PLANNING CONFERENCES.—*

17 *“(A) The Commission and the examining*
18 *authorities shall meet at least annually for a na-*
19 *tional general planning conference to discuss co-*
20 *ordination of examination schedules and prior-*
21 *ities and other areas of interest relevant to exam-*
22 *ination coordination and cooperation.*

23 *“(B) Within each geographic region des-*
24 *ignated by the Commission, the Commission and*
25 *the relevant examining authorities shall meet at*

1 *least annually for a regional planning conference*
2 *to discuss examination schedules and priorities*
3 *and other areas of related interest, and to en-*
4 *courage information-sharing and to avoid unnec-*
5 *essary duplication of examinations.*

6 “(3) *COORDINATION TRACKING SYSTEM FOR*
7 *BROKER-DEALER EXAMINATIONS.—*

8 “(A) *The Commission and the examining*
9 *authorities shall prepare, on a periodic basis in*
10 *a uniform computerized format, information on*
11 *registered broker and dealer examinations and*
12 *shall submit such information to the Commis-*
13 *sion.*

14 “(B) *The Commission shall maintain a*
15 *computerized database of consolidated examina-*
16 *tion information to be used for examination*
17 *planning and scheduling and for monitoring co-*
18 *ordination of registered broker and dealer exami-*
19 *nations under this section.*

20 “(4) *COORDINATION OF EXAMINATIONS.—*

21 “(A) *The examining authorities shall share*
22 *among themselves such information, including*
23 *reports of examinations, customer complaint in-*
24 *formation, and other non-public regulatory in-*
25 *formation, as appropriate to foster a coordinated*

1 *approach to regulatory oversight of registered*
2 *brokers and dealers subject to examination by*
3 *more than one examining authority.*

4 “(B) *To the extent practicable, the examin-*
5 *ing authorities shall assure that each registered*
6 *broker and dealer subject to examination by*
7 *more than one examining authority that requests*
8 *a coordinated examination shall have all re-*
9 *quested aspects of the examination conducted si-*
10 *multaneously and without duplication of the*
11 *areas covered. The examining authorities shall*
12 *also prepare an advance schedule of all such co-*
13 *ordinated examinations.*

14 “(5) *PROHIBITED NON-COORDINATED EXAMINA-*
15 *TIONS.—Any examining authority that does not par-*
16 *ticipate in a coordinated examination pursuant to*
17 *paragraph (4) of this subsection shall not conduct a*
18 *routine examination other than a coordinated exam-*
19 *ination of that broker or dealer within 9 months of*
20 *the conclusion of a scheduled coordinated examina-*
21 *tion.*

22 “(6) *EXAMINATIONS FOR CAUSE.—At any time,*
23 *any examining authority may conduct an examina-*
24 *tion for cause of any broker or dealer subject to its*
25 *jurisdiction.*

1 “(7) *BROKER-DEALER EXAMINATION EVALUATION*
2 *PANEL.—The Commission shall establish an examina-*
3 *tion evaluation panel composed of representatives of*
4 *registered brokers and dealers that are members of*
5 *more than one self-regulatory organization that con-*
6 *ducts routine examinations. Prior to each national*
7 *general planning conference required by paragraph*
8 *(2)(A) of this subsection, the Commission shall con-*
9 *vene the examination evaluation panel to review con-*
10 *solidated and statistical information on the coordina-*
11 *tion of examinations and information on examina-*
12 *tions that are not coordinated, including the findings*
13 *of Commission examiners on the effectiveness of the*
14 *examining authorities in achieving coordinated ex-*
15 *aminations. The Commission shall present any find-*
16 *ings and recommendations of the examination evalua-*
17 *tion panel to the next meeting of the national general*
18 *planning conference, and shall report back to the ex-*
19 *amination evaluation panel on the actions taken by*
20 *the examining authorities regarding those findings*
21 *and recommendations. The examination evaluation*
22 *panel shall not be subject to the Federal Advisory*
23 *Committee Act (5 U.S.C. App.).*

24 “(8) *REPORT TO CONGRESS.—Within one year*
25 *after the date of enactment of this Act, the Commis-*

1 *sion shall report to the Congress on the progress it*
2 *and the examining authorities have made in reducing*
3 *duplication and improving coordination in registered*
4 *broker and dealer examinations, and on the activities*
5 *of the examination evaluation panel. Such report*
6 *shall also indicate whether the Commission has iden-*
7 *tified additional redundancies that have failed to be*
8 *addressed in the coordination of examining authori-*
9 *ties, or any recommendations of the examination*
10 *evaluation panel established under paragraph (7) of*
11 *this subsection that have not been addressed by the ex-*
12 *amining authorities or the Commission.”.*

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

16 *“(54) The term ‘examining authority’ means any*
17 *self-regulatory organization registered with the Com-*
18 *mission under this title (other than registered clearing*
19 *agencies) with the authority to examine, inspect, and*
20 *otherwise oversee the activities of a registered broker*
21 *or dealer.”.*

22 **SEC. 109. FOREIGN PRESS CONFERENCES.**

23 *No later than one year after the date of enactment of*
24 *this Act, the Commission shall adopt rules under the Securi-*
25 *ties Act of 1933 concerning the status under the registration*

1 *provisions of the Securities Act of 1933 of foreign press con-*
 2 *ferences and foreign press releases by persons engaged in*
 3 *the offer and sale of securities.*

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

5 *Within 6 months after the date of enactment of this*
 6 *Act, the Securities and Exchange Commission shall submit*
 7 *to the Congress a report on the benefits of, the continuing*
 8 *need for, and, if necessary, options for the modification or*
 9 *elimination of, the Trust Indenture Act of 1939 (15 U.S.C.*
 10 *77aaa et seq.).*

11 **TITLE II—INVESTMENT**
 12 **COMPANY ACT AMENDMENTS**

13 **SEC. 201. SHORT TITLE.**

14 *This title may be cited as the “Investment Company*
 15 *Act Amendments of 1996”.*

16 **SEC. 202. FUNDS OF FUNDS.**

17 *Section 12(d)(1) of the Investment Company Act of*
 18 *1940 (15 U.S.C. 80a–12(d)(1)) is amended—*

19 *(1) in subparagraph (E)(iii)—*

20 *(A) by striking “in the event such invest-*
 21 *ment company is not a registered investment*
 22 *company,”; and*

23 *(B) by inserting “in the event such invest-*
 24 *ment company is not a registered investment*
 25 *company” after “(bb)”;*

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

3 (3) by inserting after subparagraph (F) the fol-
4 lowing new subparagraph:

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

10 “(i) the acquired company and the acquiring
11 company are part of the same group of investment
12 companies;

13 “(ii) the securities of the acquired company, se-
14 curities of other registered open-end companies that
15 are part of the same group of investment companies,
16 Government securities, and short-term paper are the
17 only investments held by the acquiring company;

18 “(iii)(I) the acquiring company does not pay
19 and is not assessed any charges or fees for distribu-
20 tion-related activities with respect to securities of the
21 acquired company unless the acquiring company does
22 not charge a sales load or other fees or charges for dis-
23 tribution-related activities; or

24 “(II) any sales loads and other distribution-re-
25 lated fees charged with respect to securities of the ac-

1 *quiring company, when aggregated with any sales*
2 *load and distribution-related fees paid by the acquir-*
3 *ing company with respect to securities of the acquired*
4 *company, are not excessive under rules adopted pur-*
5 *suant to either section 22(b) or section 22(c) of this*
6 *title by a securities association registered under sec-*
7 *tion 15A of the Securities Exchange Act of 1934 or*
8 *the Commission;*

9 *“(iv) the acquired company shall have a fun-*
10 *damental policy that prohibits it from acquiring any*
11 *securities of registered open-end companies in reliance*
12 *on this subparagraph or subparagraph (F) of this*
13 *subsection; and*

14 *“(v) such acquisition is not in contravention of*
15 *such rules and regulations as the Commission may*
16 *from time to time prescribe with respect to acquisi-*
17 *tions in accordance with this subparagraph as nec-*
18 *essary and appropriate for the protection of investors.*

19 *For purposes of this subparagraph, a ‘group of investment*
20 *companies’ shall mean any two or more registered invest-*
21 *ment companies that hold themselves out to investors as re-*
22 *lated companies for purposes of investment and investor*
23 *services.’; and*

24 *(4) adding at the end the following new subpara-*
25 *graph:*

1 “(J) The Commission, by rules and regulations upon
2 its own motion or by order upon application, may condi-
3 tionally or unconditionally exempt any person, security, or
4 transaction, or any class or classes of persons, securities,
5 or transactions from any provisions of this subsection, if
6 and to the extent such exemption is consistent with the pub-
7 lic interest and the protection of investors.”.

8 **SEC. 203. REGISTRATION OF SECURITIES.**

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

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

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

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

17 (b) *REGISTRATION OF INDEFINITE AMOUNT OF SECU-*
18 *RITIES.*—Section 24(f) of the Investment Company Act of
19 1940 (15 U.S.C. 80a–24(f)) is amended to read as follows:

20 “(f) *REGISTRATION OF INDEFINITE AMOUNT OF SECU-*
21 *RITIES.*—

22 “(1) *INDEFINITE REGISTRATION OF SECURI-*
23 *TIES.*—Upon the effectiveness of its registration state-
24 ment under the Securities Act of 1933, a face-amount
25 certificate company, open-end management company,

1 *or unit investment trust shall be deemed to have reg-*
2 *istered an indefinite amount of securities.*

3 *“(2) PAYMENT OF REGISTRATION FEES.—Within*
4 *90 days after the end of the company’s fiscal year, the*
5 *company shall pay a registration fee to the Commis-*
6 *sion, calculated in the manner specified in section*
7 *6(b) of the Securities Act of 1933, based on the aggre-*
8 *gate sales price for which its securities (including, for*
9 *this purpose, all securities issued pursuant to a divi-*
10 *dend reinvestment plan) were sold pursuant to a reg-*
11 *istration of an indefinite amount of securities under*
12 *this subsection during the company’s previous fiscal*
13 *year reduced by—*

14 *“(A) the aggregate redemption or repur-*
15 *chase price of the securities of the company dur-*
16 *ing that year, and*

17 *“(B) the aggregate redemption or repur-*
18 *chase price of the securities of the company dur-*
19 *ing any prior fiscal year ending not more than*
20 *1 year before the date of enactment of the Invest-*
21 *ment Company Act Amendments of 1996 that*
22 *were not used previously by the company to re-*
23 *duce fees payable under this section.*

24 *“(3) INTEREST DUE ON LATE PAYMENT.—A com-*
25 *pany paying the fee or any portion thereof more than*

1 90 days after the end of the company’s fiscal year
2 shall pay to the Commission interest on unpaid
3 amounts, compounded daily, at the underpayment
4 rate established by the Secretary of the Treasury pur-
5 suant to section 3717(a) of title 31, United States
6 Code. The payment of interest pursuant to the re-
7 quirement of this paragraph shall not preclude the
8 Commission from bringing an action to enforce the
9 requirements of paragraph (2) of this subsection.

10 “(4) *RULEMAKING AUTHORITY.*—The Commis-
11 sion may adopt rules and regulations to implement
12 the provisions of this subsection.”.

13 (c) *EFFECTIVE DATE.*—The amendments made by this
14 section shall be effective 6 months after the date of enact-
15 ment of this Act or on such earlier date as the Commission
16 may specify by rule.

17 **SEC. 204. INVESTMENT COMPANY ADVERTISING PROSPEC-**
18 **TUS.**

19 Section 24 of the Investment Company Act of 1940 (15
20 U.S.C. 80a–24) is amended by adding at the end the follow-
21 ing new subsection:

22 “(g) In addition to the prospectuses permitted or re-
23 quired in section 10 of the Securities Act of 1933, the Com-
24 mission shall permit, by rules or regulations deemed nec-
25 essary or appropriate in the public interest or for the pro-

1 *tection of investors, the use of a prospectus for the purposes*
2 *of section 5(b)(1) of such Act with respect to securities is-*
3 *sued by a registered investment company. Such a prospec-*
4 *tus, which may include information the substance of which*
5 *is not included in the prospectus specified in section 10(a)*
6 *of the Securities Act of 1933, shall be deemed to be permitted*
7 *by section 10(b) of such Act.”.*

8 **SEC. 205. VARIABLE INSURANCE CONTRACTS.**

9 *(a) UNIT INVESTMENT TRUST TREATMENT.—Section*
10 *26 of the Investment Company Act of 1940 (15 U.S.C. 80a-*
11 *26) is amended by adding at the end the following new sub-*
12 *section:*

13 *“(e)(1) Subsection (a) shall not apply to any registered*
14 *separate account funding variable insurance contracts, or*
15 *to the sponsoring insurance company and principal under-*
16 *writer of such account.*

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

21 *“(A) the fees and charges deducted under the con-*
22 *tract in the aggregate are reasonable in relation to the*
23 *services rendered, the expenses expected to be incurred,*
24 *and the risks assumed by the insurance company, and*

1 *the insurance company so represents in the registra-*
2 *tion statement for the contract; and*

3 “(B) *the insurance company (i) complies with*
4 *all other applicable provisions of this section as if it*
5 *were a trustee or custodian of the registered separate*
6 *account; (ii) files with the insurance regulatory au-*
7 *thority of a State an annual statement of its finan-*
8 *cial condition, which most recent statement indicates*
9 *that it has a combined capital and surplus, if a stock*
10 *company, or an unassigned surplus, if a mutual com-*
11 *pany, of not less than \$1,000,000, or such other*
12 *amount as the Commission may from time to time*
13 *prescribe by rule as necessary or appropriate in the*
14 *public interest or for the protection of investors; and*
15 *(iii) together with its registered separate accounts, is*
16 *supervised and examined periodically by the insur-*
17 *ance authority of such State.*

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

1 (b) *PERIODIC PAYMENT PLAN TREATMENT.*—Section
 2 27 of such Act (15 U.S.C. 80a–27) is amended by adding
 3 at the end the following new subsection:

4 “(i)(1) This section shall not apply to any registered
 5 separate account funding variable insurance contracts, or
 6 to the sponsoring insurance company and principal under-
 7 writer of such account, except as provided in paragraph
 8 (2).

9 “(2) It shall be unlawful for any registered separate
 10 account funding variable insurance contracts, or for the
 11 sponsoring insurance company of such account, to sell any
 12 such contract unless (A) such contract is a redeemable secu-
 13 rity, and (B) the insurance company complies with section
 14 26(e) and any rules or regulations adopted by the Commis-
 15 sion thereunder.”.

16 **SEC. 206. REPORTS TO THE COMMISSION AND SHAREHOLD-**
 17 **ERS.**

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

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

22 “(1) such information, documents, and reports
 23 (other than financial statements), as the Commission
 24 may require to keep reasonably current the informa-
 25 tion and documents contained in the registration

1 *statement of such company filed under this title;*
2 *and”;*

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

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

7 *“(c) In exercising its authority under subsection (b)(1)*
8 *to require the filing of information, documents, and reports*
9 *on a basis more frequently than semi-annually, the Com-*
10 *mission shall take such steps as it deems necessary or ap-*
11 *propriate, consistent with the public interest and the protec-*
12 *tion of investors, to avoid unnecessary reporting by, and*
13 *minimize the compliance burdens on, registered investment*
14 *companies and their affiliated persons. Such steps shall in-*
15 *clude considering and requesting public comment on—*

16 *“(1) feasible alternatives that minimize the re-*
17 *porting burdens on registered investment companies;*
18 *and*

19 *“(2) the utility of such information, documents,*
20 *and reports to the Commission in relation to the costs*
21 *to registered investment companies and their affili-*
22 *ated persons of providing such information, docu-*
23 *ments, and reports.”;*

1 (4) by inserting after subsection (e) (as redesignig-
2 nated by paragraph (2) of this section) the following
3 new subsection:

4 “(f) The Commission may by rule require that semi-
5 annual reports containing the information set forth in sub-
6 section (e) include such other information as the Commis-
7 sion deems necessary or appropriate in the public interest
8 or for the protection of investors. In exercising its authority
9 under this subsection, the Commission shall take such steps
10 as it deems necessary or appropriate, consistent with the
11 public interest and the protection of investors, to avoid un-
12 necessary reporting by, and minimize the compliance bur-
13 dens on, registered investment companies and their affili-
14 ated persons. Such steps shall include considering and re-
15 questing public comment on—

16 “(1) feasible alternatives that minimize the re-
17 porting burdens on registered investment companies;
18 and

19 “(2) the utility of such information to sharehold-
20 ers in relation to the costs to registered investment
21 companies and their affiliated persons of providing
22 such information to shareholders.”; and

23 (5) in subsection (g) (as so redesignated) by
24 striking “subsections (a) and (d)” and inserting “sub-
25 sections (a) and (e)”.

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

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

4 *(1) by striking subsections (a) and (b) and in-*
5 *serting the following:*

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

1 *under this subsection (hereinafter in this section referred*
2 *to as ‘subject persons’). Such steps shall include considering,*
3 *and requesting public comment on—*

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

6 “(2) *the necessity of such records in view of the*
7 *public benefits derived from the independent scrutiny*
8 *of such records through Commission examination;*

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

12 “(4) *the effects that a proposed recordkeeping re-*
13 *quirement would have on internal compliance policies*
14 *and procedures.*

15 “(b) *All records required to be maintained and pre-*
16 *served in accordance with subsection (a) of this section shall*
17 *be subject at any time and from time to time to such reason-*
18 *able periodic, special, and other examinations by the Com-*
19 *mission, or any member or representative thereof, as the*
20 *Commission may prescribe. For purposes of such examina-*
21 *tions, any subject person shall make available to the Com-*
22 *mission or its representatives any copies or extracts from*
23 *such records as may be prepared without undue effort, ex-*
24 *pense, or delay as the Commission or its representatives*
25 *may reasonably request. The Commission shall exercise its*

1 *authority under this subsection with due regard for the ben-*
2 *efits of internal compliance policies and procedures and the*
3 *effective implementation and operation thereof.”;*

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

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

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

22 *“(d) For purposes of this section—*

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

1 *ject persons to promote compliance with the Federal*
2 *securities laws; and*

3 “(2) ‘*internal compliance and audit record*’
4 *means any record prepared by a subject person in ac-*
5 *cordance with internal compliance policies and proce-*
6 *dures.’”.*

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

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

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

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

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

21 (1) *in paragraph (1), by inserting after the first*
22 *sentence the following new sentence: “Such issuer*
23 *nonetheless is deemed to be an investment company*
24 *for purposes of the limitations set forth in section*
25 *12(d)(1)(A)(i) and (B)(i) governing the purchase or*

1 *other acquisition by such issuer of any security issued*
2 *by any registered investment company and the sale of*
3 *any security issued by any registered open-end com-*
4 *pany to any such issuer.”;*

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

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

10 *(B) by striking all that follows “(other than*
11 *short-term paper)” and inserting a period;*

12 *(3) in paragraph (2)—*

13 *(A) by striking “and acting as broker,” and*
14 *inserting “acting as broker, and acting as mar-*
15 *ket intermediary,”; and*

16 *(B) by adding at the end of such paragraph*
17 *the following new sentences: “For the purposes of*
18 *this paragraph, the term ‘market intermediary’*
19 *means any person that regularly holds itself out*
20 *as being willing contemporaneously to engage in,*
21 *and is regularly engaged in the business of enter-*
22 *ing into, transactions on both sides of the market*
23 *for a financial contract or one or more such fi-*
24 *nancial contracts. For purposes of the preceding*
25 *sentence, the term ‘financial contract’ means any*

1 *arrangement that (A) takes the form of an indi-*
2 *vidually negotiated contract, agreement, or op-*
3 *tion to buy, sell, lend, swap, or repurchase, or*
4 *other similar individually negotiated transaction*
5 *commonly entered into by participants in the fi-*
6 *nancial markets; (B) is in respect of securities,*
7 *commodities, currencies, interest or other rates,*
8 *other measures of value, or any other financial*
9 *or economic interest similar in purpose or func-*
10 *tion to any of the foregoing; and (C) is entered*
11 *into in response to a request from a counterparty*
12 *for a quotation or is otherwise entered into and*
13 *structured to accommodate the objectives of the*
14 *counterparty to such arrangement.”; and*

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

17 *“(7)(A) Any issuer (i) whose outstanding securi-*
18 *ties are owned exclusively by persons who, at the time*
19 *of acquisition of such securities, are qualified pur-*
20 *chasers, and (ii) who is not making and does not*
21 *presently propose to make a public offering of such se-*
22 *curities. Securities that are owned by persons who re-*
23 *ceived the securities from a qualified purchaser as a*
24 *gift or bequest, or where the transfer was caused by*
25 *legal separation, divorce, death, or other involuntary*

1 *event, shall be deemed to be owned by a qualified pur-*
2 *chaser, subject to such rules, regulations, and orders*
3 *as the Commission may prescribe as necessary or ap-*
4 *propriate in the public interest or for the protection*
5 *of investors.*

6 *“(B) Notwithstanding subparagraph (A), an is-*
7 *ssuer is within the exception provided by this para-*
8 *graph if—*

9 *“(i) in addition to qualified purchasers, its*
10 *outstanding securities are beneficially owned by*
11 *not more than 100 persons who are not qualified*
12 *purchasers if (I) such persons acquired such se-*
13 *curities on or before December 31, 1995, and (II)*
14 *at the time such securities were acquired by such*
15 *persons, the issuer was excepted by paragraph*
16 *(1) of this subsection; and*

17 *“(ii) prior to availing itself of the exception*
18 *provided by this paragraph—*

19 *“(I) such issuer has disclosed to such*
20 *persons that future investors will be limited*
21 *to qualified purchasers, and that ownership*
22 *in such issuer is no longer limited to not*
23 *more than 100 persons, and*

24 *“(II) concurrently with or after such*
25 *disclosure, such issuer has provided such*

1 *persons with a reasonable opportunity to re-*
2 *deem any part or all of their interests in*
3 *the issuer for their proportionate share of*
4 *the issuer's current net assets, or the cash*
5 *equivalent thereof.*

6 *“(C) An issuer that is excepted under this para-*
7 *graph shall nonetheless be deemed to be an investment*
8 *company for purposes of the limitations set forth in*
9 *section 12(d)(1)(A)(i) and (B)(i) governing the pur-*
10 *chase or other acquisition by such issuer of any secu-*
11 *rity issued by any registered investment company*
12 *and the sale of any security issued by any registered*
13 *open-end company to any such issuer.*

14 *“(D) For purposes of determining compliance*
15 *with this paragraph and paragraph (1) of this sub-*
16 *section, an issuer that is otherwise excepted under this*
17 *paragraph and an issuer that is otherwise excepted*
18 *under paragraph (1) shall not be treated by the Com-*
19 *mission as being a single issuer for purposes of deter-*
20 *mining whether the outstanding securities of the is-*
21 *ssuer excepted under paragraph (1) are beneficially*
22 *owned by not more than 100 persons or whether the*
23 *outstanding securities of the issuer excepted under*
24 *this paragraph are owned by persons that are not*
25 *qualified purchasers. Nothing in this provision shall*

1 *be deemed to establish that a person is a bona fide*
2 *qualified purchaser for purposes of this paragraph or*
3 *a bona fide beneficial owner for purposes of para-*
4 *graph (1) of this subsection.”.*

5 ***(b) DEFINITION OF QUALIFIED PURCHASER.—****Section*
6 *2(a) of the Investment Company Act of 1940 (15 U.S.C.*
7 *80a–2(a)) is amended by inserting after paragraph (50) the*
8 *following new paragraph:*

9 *“(51) ‘Qualified purchaser’ means—*

10 *“(A) any natural person who owns at least*
11 *\$10,000,000 in securities of issuers that are not*
12 *controlled by such person, except that securities*
13 *of such a controlled issuer may be counted to-*
14 *ward such amount if such issuer is, or but for*
15 *the exception in paragraph (1) or (7) of section*
16 *3(c) would be, an investment company;*

17 *“(B) any trust not formed for the specific*
18 *purpose of acquiring the securities offered, as to*
19 *which the trustee or other person authorized to*
20 *make decisions with respect to the trust, and*
21 *each settlor or other person who has contributed*
22 *assets to the trust, is a person described in sub-*
23 *paragraph (A) or (C); or*

24 *“(C) any person, acting for its own account*
25 *or the accounts of other qualified purchasers,*

1 *who in the aggregate owns and invests on a dis-*
 2 *cretionary basis, not less than \$100,000,000 in*
 3 *securities of issuers that are not affiliated per-*
 4 *sons (as defined in paragraph (3)(C) of this sub-*
 5 *section) of such person, except that securities of*
 6 *such an affiliated person issuer may be counted*
 7 *toward such amount if such issuer is, or but for*
 8 *the exception in paragraph (1) or (7) of section*
 9 *3(c) would be, an investment company.*

10 *The Commission may adopt such rules and regula-*
 11 *tions governing the persons and trusts specified in*
 12 *subparagraphs (A), (B), and (C) of this paragraph as*
 13 *it determines are necessary or appropriate in the*
 14 *public interest and for the protection of investors.”.*

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

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

19 *(2) by inserting before the period the following:*

20 *“, and (ii) which are not relying on the exception*
 21 *from the definition of investment company in sub-*
 22 *section (c)(1) or (c)(7) of this section”.*

23 *(d) RULEMAKING REQUIRED.—*

24 *(1) IMPLEMENTATION OF SECTION 3(c)(1)(B).—*

25 *Within one year after the date of enactment of this*

1 *Act, the Commission shall prescribe rules to imple-*
2 *ment the requirements of section 3(c)(1)(B) of the In-*
3 *vestment Company Act of 1940 (15 U.S.C. 80a-*
4 *3(c)(1)(B)).*

5 (2) *EMPLOYEE EXCEPTION.—Within one year*
6 *after the date of enactment of this Act, the Commis-*
7 *sion shall prescribe rules pursuant to its authority*
8 *under section 6 of the Investment Company Act of*
9 *1940 (15 U.S.C. 80a–6) to permit the ownership by*
10 *knowledgeable employees of an issuer or an affiliated*
11 *person of the issuer of the securities of that issuer or*
12 *affiliated person without loss of the issuer’s exception*
13 *under section 3(c)(1) or 3(c)(7) of such Act from*
14 *treatment as an investment company under such Act.*