

103D CONGRESS
1ST SESSION

S. 424

To amend the Securities Exchange Act of 1934 with respect to limited partnership rollups.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 24 (legislative day, JANUARY 5), 1993

Mr. DODD (for himself, Mr. RIEGLE, Mr. D'AMATO, Mr. SARBANES, Mr. BOND, Mr. SASSER, Mr. SHELBY, Mr. KERRY, Mr. BRYAN, Mr. DOMENICI, Mrs. BOXER, Mrs. MURRAY, Ms. MIKULSKI, Mr. ROBB, Mr. LEAHY, Mr. INOUE, Mr. SIMON, Mr. KERREY, Mr. LEVIN, Mr. HOLLINGS, Mr. HARKIN, Mr. AKAKA, Mr. LAUTENBERG, Mr. BRADLEY, Mr. JEFFORDS, Mr. PRYOR, Mr. KOHL, Mr. GRAHAM, Mr. CONRAD, Mr. BOREN, Mr. BINGAMAN, and Mr. WOFFORD) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing and Urban Affairs

A BILL

To amend the Securities Exchange Act of 1934 with respect to limited partnership rollups.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Limited Partnership
5 Rollup Reform Act of 1993”.

1 **SEC. 2. REVISION OF PROXY SOLICITATION RULES WITH**
2 **RESPECT TO LIMITED PARTNERSHIP ROLLUP**
3 **TRANSACTIONS.**

4 (a) AMENDMENT.—Section 14 of the Securities and
5 Exchange Act of 1934 (15 U.S.C. 78n) is amended by
6 adding at the end the following new subsection:

7 “(h) PROXY SOLICITATIONS AND TENDER OFFERS
8 IN CONNECTION WITH LIMITED PARTNERSHIP ROLLUP
9 TRANSACTIONS.—

10 “(1) PROXY RULES TO CONTAIN SPECIAL PRO-
11 VISIONS.—It shall be unlawful for any person to so-
12 licit any proxy, consent, or authorization concerning
13 a limited partnership rollup transaction, or to make
14 any tender offer in furtherance of a limited partner-
15 ship rollup transaction, unless such transaction is
16 conducted in accordance with rules prescribed by the
17 Commission under sections 14(a) and 14(d), as re-
18 quired by this subsection. Such rules shall—

19 “(A) permit any holder of a security that
20 is the subject of the proposed limited partner-
21 ship rollup transaction to engage in preliminary
22 communications for the purposes of determining
23 whether to solicit proxies, consents, or author-
24 izations in opposition to the proposed trans-
25 action, without regard to whether any such
26 communication would otherwise be considered a

1 solicitation of proxies, and without being re-
2 quired to file soliciting material with the Com-
3 mission prior to making that determination, ex-
4 cept that nothing in this subparagraph shall be
5 construed to limit the application of any provi-
6 sion of this title prohibiting, or reasonably de-
7 signed to prevent, fraudulent, deceptive, or ma-
8 nipulative acts or practices under this title;

9 “(B) require the issuer to provide to hold-
10 ers of the securities that are the subject of the
11 transaction such list of the holders of the issu-
12 er’s securities as the Commission may deter-
13 mine in such form and subject to such terms
14 and conditions as the Commission may specify;

15 “(C) prohibit compensating any person so-
16 liciting proxies, consents, or authorizations di-
17 rectly from security holders concerning such a
18 transaction—

19 “(i) on the basis of whether the solici-
20 ited proxies, consents, or authorizations ei-
21 ther approve or disapprove the proposed
22 transaction; or

23 “(ii) contingent on the transaction’s
24 approval, disapproval, or completion;

1 “(D) set forth disclosure requirements for
2 soliciting material distributed in connection
3 with a limited partnership rollup transaction,
4 including requirements for clear, concise, and
5 comprehensible disclosure, with respect to—

6 “(i) any changes in the business plan,
7 voting rights, form of ownership interest or
8 the general partner’s compensation in the
9 proposed limited partnership rollup trans-
10 action from each of the original limited
11 partnerships;

12 “(ii) the conflicts of interest, if any, of
13 the general partner;

14 “(iii) whether it is expected that there
15 will be a significant difference between the
16 exchange values of the limited partnerships
17 and the trading price of the securities to
18 be issued in the limited partnership rollup
19 transaction;

20 “(iv) the valuation of the limited part-
21 nerships and the method used to determine
22 the value of limited partners’ interests to
23 be exchanged for the securities in the lim-
24 ited partnership rollup transaction;

1 “(v) the differing risks and effects of
2 the transaction for investors in different
3 limited partnerships proposed to be in-
4 cluded, and the risks and effects of com-
5 pleting the transaction with less than all
6 limited partnerships;

7 “(vi) a statement by the general part-
8 ner as to whether the proposed limited
9 partnership rollup transaction is fair or
10 unfair to investors in each limited partner-
11 ship, a discussion of the basis for that con-
12 clusion, and the general partner’s evalua-
13 tion, and a description, of alternatives to
14 the limited partnership rollup transaction,
15 such as liquidation;

16 “(vii) any opinion (other than an
17 opinion of counsel), appraisal, or report re-
18 ceived by the general partner or sponsor
19 that is prepared by an outside party and
20 that is materially related to the limited
21 partnership rollup transaction and the
22 identity and qualifications of the party who
23 prepared the opinion, appraisal, or report,
24 the method of selection of such party, ma-
25 terial past, existing, or contemplated rela-

1 relationships between the party, or any of its
2 affiliates and the general partner, sponsor,
3 successor, or any other affiliate, compensa-
4 tion arrangements, and the basis for ren-
5 dering and methods used in developing the
6 opinion, appraisal, or report; and

7 “(viii) such other matters deemed nec-
8 essary or appropriate by the Commission;

9 “(E) provide that any solicitation or offer-
10 ing period with respect to any proxy solicita-
11 tion, tender offer, or information statement in
12 a limited partnership rollup transaction shall be
13 for not less than the lesser of 60 calendar days
14 or the maximum number of days permitted
15 under applicable State law; and

16 “(F) contain such other provisions as the
17 Commission determines to be necessary or ap-
18 propriate for the protection of investors in lim-
19 ited partnership rollup transactions.

20 The disclosure requirements under subparagraph
21 (D) shall also require that the soliciting material in-
22 clude a clear and concise summary of the limited
23 partnership rollup transaction (including a summary
24 of the matters referred to in clauses (i) through (vii)
25 of that subparagraph) with the risks of the limited

1 partnership rollup transaction set forth prominently
2 in the fore part thereof.

3 “(2) EXEMPTIONS.—The Commission may, con-
4 sistent with the public interest, the protection of in-
5 vestors, and the purposes of this title, exempt by
6 rule or order any security or class of securities, any
7 transaction or class of transactions, or any person or
8 class of persons, in whole or in part, conditionally or
9 unconditionally, from the requirements imposed pur-
10 suant to paragraph (1) or, from the definition con-
11 tained in paragraph (4).

12 “(3) EFFECT ON COMMISSION AUTHORITY.—
13 Nothing in this subsection limits the authority of the
14 Commission under subsection (a) or (d) or any other
15 provision of this title or precludes the Commission
16 from imposing, under subsection (a) or (d) or any
17 other provision of this title, a remedy or procedure
18 required to be imposed under this subsection.

19 “(4) DEFINITION.—As used in this subsection
20 the term ‘limited partnership rollup transaction’
21 means a transaction involving—

22 “(A) the combination or reorganization of
23 limited partnerships, directly or indirectly, in
24 which some or all investors in the limited part-

1 nerships receive new securities or securities in
2 another entity, other than a transaction—

3 “(i) in which—

4 “(I) the investors’ limited part-
5 nership securities are reported under
6 a transaction reporting plan declared
7 effective before January 1, 1991, by
8 the Commission under section 11A;
9 and

10 “(II) the investors receive new
11 securities or securities in another en-
12 tity that are reported under a trans-
13 action reporting plan declared effec-
14 tive before January 1, 1991, by the
15 Commission under section 11A;

16 “(ii) involving only issuers that are
17 not required to register or report under
18 section 12 both before and after the trans-
19 action;

20 “(iii) in which the securities to be is-
21 sued or exchanged are not required to be
22 and are not registered under the Securities
23 Act of 1933;

24 “(iv) which will result in no signifi-
25 cant adverse change to investors in any of

1 the limited partnerships with respect to
2 voting rights, the term of existence of the
3 entity, management compensation, or in-
4 vestment objectives; or

5 “(v) where each investor is provided
6 an option to receive or retain a security
7 under substantially the same terms and
8 conditions as the original issue; or

9 “(B) the reorganization of a single limited
10 partnership in which some or all investors in
11 the limited partnership receive new securities or
12 securities in another entity, and—

13 “(i) transactions in the security issued
14 are reported under a transaction reporting
15 plan declared effective before January 1,
16 1991, by the Commission under section
17 11A;

18 “(ii) the investors’ limited partnership
19 securities are not reported under a trans-
20 action reporting plan declared effective be-
21 fore January 1, 1991, by the Commission
22 under section 11A;

23 “(iii) the issuer is required to register
24 or report under section 12, both before and
25 after the transaction, or the securities to

1 be issued or exchanged are required to be
2 or are registered under the Securities Act
3 of 1933;

4 “(iv) there are significant adverse
5 changes to security holders in voting
6 rights, the term of existence of the entity,
7 management compensation, or investment
8 objectives; and

9 “(v) investors are not provided an op-
10 tion to receive or retain a security under
11 substantially the same terms and condi-
12 tions as the original issue.

13 “(5) EXCLUSION.—For purposes of this sub-
14 section, a limited partnership rollup transaction does
15 not include a transaction that involves only a limited
16 partnership or partnerships having an operating pol-
17 icy or practice of retaining cash available for dis-
18 tribution and reinvesting proceeds from the sale, fi-
19 nancing, or refinancing of assets in accordance with
20 such criteria as the Commission determines appro-
21 priate.”.

22 (b) SCHEDULE FOR REGULATIONS.—The Securities
23 and Exchange Commission shall, not later than 12 months
24 after the date of enactment of this Act, conduct rule-
25 making proceedings and prescribe final regulations under

1 the Securities Act of 1933 and the Securities Exchange
2 Act of 1934 to implement the requirements of section
3 14(h) of the Securities Exchange Act of 1934, as amended
4 by subsection (a).

5 **SEC. 3. RULES OF FAIR PRACTICE IN ROLLUP TRANS-**
6 **ACTIONS.**

7 (a) REGISTERED SECURITIES ASSOCIATION RULE.—
8 Section 15A(b) of the Securities Exchange Act of 1934
9 (15 U.S.C. 78o-3(b)) is amended by adding at the end
10 the following new paragraph:

11 “(12) The rules of the association to promote
12 just and equitable principles of trade, as required by
13 paragraph (6), include rules to prevent members of
14 the association from participating in any limited
15 partnership rollup transaction (as such term is de-
16 fined in paragraphs (4) and (5) of section 14(h)) un-
17 less such transaction was conducted in accordance
18 with procedures designed to protect the rights of
19 limited partners, including—

20 “(A) the right of dissenting limited part-
21 ners to an appraisal and compensation or other
22 rights designed to protect dissenting limited
23 partners;

24 “(B) the right not to have their voting
25 power unfairly reduced or abridged;

1 “(C) the right not to bear an unfair por-
2 tion of the costs of a proposed rollup trans-
3 action that is rejected; and

4 “(D) restrictions on the conversion of con-
5 tingent interests or fees into non-contingent in-
6 terests or fees and restrictions on the receipt of
7 a non-contingent equity interest in exchange for
8 fees for services which have not yet been pro-
9 vided.

10 As used in this paragraph, the term ‘dissenting lim-
11 ited partner’ means a holder of a beneficial interest
12 in a limited partnership that is the subject of a lim-
13 ited partnership rollup transaction who casts a vote
14 against the transaction and complies with proce-
15 dures established by the association, except that for
16 purposes of an exchange or tender offer, such term
17 means any person who files an objection in writing
18 under the rules of the association during the period
19 in which the offer is outstanding and complies with
20 such other procedures established by the associa-
21 tion.”.

22 (b) LISTING STANDARDS OF NATIONAL SECURITIES
23 EXCHANGES.—Section 6(b) of the Securities Exchange
24 Act of 1934 (15 U.S.C. 78f(b)) is amended by adding at
25 the end the following:

1 “(9) The rules of the exchange prohibit the list-
2 ing of any security issued in a limited partnership
3 rollup transaction (as such term is defined in para-
4 graphs (4) and (5) of section 14(h)), unless such
5 transaction was conducted in accordance with proce-
6 dures designed to protect the rights of limited part-
7 ners, including—

8 “(A) the right of dissenting limited part-
9 ners to an appraisal and compensation or other
10 rights designed to protect dissenting limited
11 partners;

12 “(B) the right not to have their voting
13 power unfairly reduced or abridged;

14 “(C) the right not to bear an unfair por-
15 tion of the costs of a proposed rollup trans-
16 action that is rejected; and

17 “(D) restrictions on the conversion of con-
18 tingent interests or fees into non-contingent in-
19 terests or fees and restrictions on the receipt of
20 a non-contingent equity interest in exchange for
21 fees for services which have not yet been pro-
22 vided.

23 As used in this paragraph, the term ‘dissenting lim-
24 ited partner’ means a holder of a beneficial interest
25 in a limited partnership that is the subject of a lim-

1 ited partnership transaction who casts a vote against
2 the transaction and complies with procedures estab-
3 lished by the exchange, except that for purposes of
4 an exchange or tender offer, such term means any
5 person who files an objection in writing under the
6 rules of the exchange during the period in which the
7 offer is outstanding.”.

8 (c) STANDARDS FOR AUTOMATED QUOTATION SYS-
9 TEMS.—Section 15A(b) of the Securities Exchange Act of
10 1934 (15 U.S.C. 78o-3(b)) is amended by adding at the
11 end the following new paragraph:

12 “(13) The rules of the association prohibit the
13 authorization for quotation on an automated
14 interdealer quotation system sponsored by the asso-
15 ciation of any security designated by the Commis-
16 sion as a national market system security resulting
17 from a limited partnership rollup transaction (as
18 such term is defined in paragraphs (4) and (5) of
19 section 14(h)), unless such transaction was con-
20 ducted in accordance with procedures designed to
21 protect the rights of limited partners, including—

22 “(A) the right of dissenting limited part-
23 ners to an appraisal and compensation or other
24 rights designed to protect dissenting limited
25 partners;

1 “(B) the right not to have their voting
2 power unfairly reduced or abridged;

3 “(C) the right not to bear an unfair por-
4 tion of the costs of a proposed rollup trans-
5 action that is rejected; and

6 “(D) restrictions on the conversion of con-
7 tingent interests or fees into non-contingent in-
8 terests or fees and restrictions on the receipt of
9 a non-contingent equity interest in exchange for
10 fees for services which have not yet been pro-
11 vided.

12 As used in this paragraph, the term ‘dissenting lim-
13 ited partner’ means a holder of a beneficial interest
14 in a limited partnership that is the subject of a lim-
15 ited partnership transaction who casts a vote against
16 the transaction and complies with procedures estab-
17 lished by the association, except that for purposes of
18 an exchange or tender offer such term means any
19 person who files an objection in writing under the
20 rules of the association during the period during
21 which the offer is outstanding.”.

22 (d) EFFECT ON EXISTING AUTHORITY.—The amend-
23 ments made by this section shall not limit the authority
24 of the Securities and Exchange Commission, a registered
25 securities association, or a national securities exchange

1 under any provision of the Securities Exchange Act of
2 1934, or preclude the Commission or such association or
3 exchange from imposing, under any other such provision,
4 a remedy or procedure required to be imposed under such
5 amendments.

6 (e) EFFECTIVE DATE.—The amendments made by
7 this section shall become effective 18 months after the
8 date of enactment of this Act.

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