

104<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

# H. R. 1495

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.

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## IN THE HOUSE OF REPRESENTATIVES

APRIL 7, 1995

Mr. FIELDS of Texas (for himself and Mr. MARKEY) introduced the following bill; which was referred to the Committee on Commerce

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## A BILL

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.**

4 This Act may be cited as the “Investment Company  
5 Act Amendments of 1995”.

1 **SEC. 2. CORPORATE GOVERNANCE.**

2 (a) AFFILIATIONS OF DIRECTORS.—Section 10(a) of  
3 the Investment Company Act of 1940 (15 U.S.C. 80a–  
4 10(a)) is amended to read as follows:

5 “SEC. 10. (a) A registered investment company shall  
6 have a board of directors at least a majority of the mem-  
7 bers of which are persons who are not interested persons  
8 of such registered company. After any public offering of  
9 the company’s voting securities, the selection and nomina-  
10 tion of the directors who are not interested persons shall  
11 be committed to the discretion of such directors.”.

12 (b) INVESTMENT ADVISORY AND UNDERWRITING  
13 CONTRACTS.—Section 15(a) of the Investment Company  
14 Act of 1940 (15 U.S.C. 80a–15(a)) is amended to read  
15 as follows:

16 “SEC. 15. (a) It shall be unlawful for any person to  
17 serve or act as investment adviser of a registered invest-  
18 ment company, except pursuant to a written contract,  
19 which contract, whether with such registered company or  
20 with an investment adviser of such registered company—

21 “(1) precisely describes all compensation to be  
22 paid thereunder;

23 “(2) shall continue in effect for a period more  
24 than two years from the date of its execution, only  
25 so long as such continuance is specifically approved  
26 at least annually by the board of directors or by vote

1 of a majority of the outstanding voting securities of  
2 such company;

3 “(3) provides, in substance, that it may be ter-  
4 minated at any time, without the payment of any  
5 penalty, by the board of directors of such registered  
6 company, by those directors who are not interested  
7 persons of such company, or by a vote of a majority  
8 of the outstanding voting securities of such company  
9 on not more than 60 days written notice to the in-  
10 vestment adviser; and

11 “(4) provides, in substance, for its automatic  
12 termination in the event of its assignment.”.

13 (c) ACCOUNTANTS AND AUDITORS.—Section 32(a) of  
14 the Investment Company Act of 1940 (15 U.S.C. 80a-  
15 31(a)) is amended to read as follows:

16 “SEC. 32. (a) It shall be unlawful for any registered  
17 management company or registered face-amount certifi-  
18 cate company to file with the Commission any financial  
19 statement signed or certified by an independent public ac-  
20 countant, unless—

21 “(1) such accountant shall have been selected  
22 by the vote, cast in person, of a majority of those  
23 members of the board of directors who are not inter-  
24 ested persons of such registered company—

1           “(A) at a board of directors meeting held  
2           within 90 days before or after the beginning of  
3           the fiscal year if the company is in a set of in-  
4           vestment companies (as defined by Commission  
5           rule, regulation, or order), all of the members  
6           of which do not have an identical fiscal year-  
7           end; or

8           “(B) at a board of directors meeting held  
9           within 30 days before or 90 days after the be-  
10          ginning of the fiscal year if the company is not  
11          in a set of investment companies or is in a set  
12          and each of the members of such set has the  
13          same fiscal year-end;

14          “(2) the employment of such accountant shall  
15          have been conditioned upon the right of the company  
16          by vote of a majority of the outstanding voting secu-  
17          rities at any meeting called for the purpose to termi-  
18          nate such employment forthwith without any pen-  
19          alty; and

20          “(3) such certificate or report of such account-  
21          ant shall be addressed both to the board of directors  
22          of such registered company and to the security hold-  
23          ers thereof.

24 In the case of a common-law trust of the character de-  
25 scribed in section 16(c), the employment of an accountant

1 may be terminated and such accountant removed by action  
2 of the holders of record of a majority of the outstanding  
3 shares of beneficial interest in such trust in the same man-  
4 ner as is provided in section 16(c) in respect of the re-  
5 moval of a trustee, and all the provisions therein contained  
6 as to the calling of a meeting shall be applicable. The pro-  
7 visions of paragraph (42) of section 2(a) as to a majority  
8 shall be applicable to the vote cast at any meeting of the  
9 shareholders of such a trust held pursuant to this sub-  
10 section.”.

11 (d) CHANGES IN INVESTMENT POLICY.—Section  
12 13(a)(1) of the Investment Company Act of 1940 (15  
13 U.S.C. 80a-13(a)(1)) is amended by inserting after “(1)”  
14 the following: “change its investment objective, or”.

15 (e) FILING INFORMATION.—Section 8(b)(1) of the  
16 Investment Company Act of 1940 (15 U.S.C. 80a-8(b))  
17 is amended—

18 (1) by inserting after “(1)” the following: “a re-  
19 cital of the investment objective of the registrant  
20 and”; and

21 (2) by inserting “of policy” after “activities,  
22 such recital”.

23 (f) VOTING PROCEDURES.—Section 12(d)(1)(E)(iii)  
24 of the Investment Company Act of 1940 (15 U.S.C. 80a-  
25 12(d)(1)(E)(iii)) is amended—



1 tection of investors permit the use of a prospectus for the  
2 purposes of section 5(b)(1) of such Act which makes an  
3 offer in the form of an advertisement for securities issued  
4 by a registered investment company. Such a prospectus  
5 shall be deemed to be permitted by section 10(b) of the  
6 Securities Act of 1933.”.

7 **SEC. 4. BOOKS, RECORDS AND INSPECTIONS.**

8 Section 31 of the Investment Company Act of 1940  
9 (15 U.S.C. 80a-30) is amended—

10 (1) by striking subsections (a) and (b) and in-  
11 serting the following:

12 “(a) Every registered investment company, and every  
13 underwriter, broker, dealer, or investment adviser that is  
14 a majority-owned subsidiary of such a company, shall  
15 maintain and preserve such records (as defined in section  
16 3(a)(37) of the Securities Exchange Act of 1934) for such  
17 period or periods as the Commission, by rules and regula-  
18 tions, may prescribe as necessary or appropriate in the  
19 public interest or for the protection of investors. Every in-  
20 vestment adviser not a majority-owned subsidiary of, and  
21 every depositor of any registered investment company, and  
22 every principal underwriter for any registered investment  
23 company other than a closed-end company, shall maintain  
24 and preserve for such period or periods as the Commission  
25 shall prescribe by rules and regulations, such records as

1 are necessary or appropriate to record such person's trans-  
2 actions with such registered company.

3       “(b) All records required to be maintained and pre-  
4 served in accordance with subsection (a) of this section  
5 shall be subject at any time and from time to time to such  
6 reasonable periodic, special, and other examinations by the  
7 Commission, or any member or representative thereof, as  
8 the Commission may prescribe. For purposes of such ex-  
9 aminations, such persons shall make available to the Com-  
10 mission or its representatives any copies or extracts from  
11 such records as may be prepared without undue effort, ex-  
12 pense, or delay as the Commission or its representatives  
13 may reasonably request.”;

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

16           (3) by inserting after subsection (b) the follow-  
17       ing new subsection:

18       “(c) The Commission shall have the authority to pre-  
19 scribe rules specifying the format and manner in which  
20 the records required to be maintained and preserved by  
21 any person pursuant to subsection (a) are transmitted to  
22 the Commission or its representatives. In using such au-  
23 thority, the Commission shall minimize the burden that  
24 any requirement that such records be maintained, pre-

1 served, or transmitted in machine readable format may  
2 place on small entities that are subject to subsection (a).”.

3 **SEC. 5. REPORTS TO THE COMMISSION AND SHAREHOLD-**  
4 **ERS.**

5 Section 30 of the Investment Company Act of 1940  
6 (15 U.S.C. 80a-29) is amended—

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

9 “(1) such information, documents and reports,  
10 in such format and for such period or periods, as the  
11 Commission may require to keep reasonably current  
12 the information and documents contained in the reg-  
13 istration statement of such company filed under this  
14 title, or as the Commission by rules and regulations  
15 may prescribe as necessary or appropriate in the  
16 public interest or for the protection of investors;”;

17 (2) by inserting after the last sentence of sub-  
18 section (b) the following new sentence: “The Com-  
19 mission shall have the authority to prescribe rules  
20 specifying the format and manner in which the in-  
21 formation, documents, or reports required to be filed  
22 pursuant to paragraph (1) are transmitted to the  
23 Commission or its representatives.”; and

24 (3) in subsection (d)—

1 (A) by striking “and” at the end of para-  
2 graph (5);

3 (B) by striking the colon at the end of  
4 paragraph (6) and inserting “; and”; and

5 (C) by inserting after paragraph (6) the  
6 following new paragraph:

7 “(7) such other information as the Commission  
8 may by rule require as being necessary or appro-  
9 priate in the public interest or for the protection of  
10 investors:”.

11 **SEC. 6. UNIFIED FEE INVESTMENT COMPANY.**

12 The Investment Company Act of 1940 (15 U.S.C.  
13 80a) is amended by inserting the following new section  
14 after section 65 (15 U.S.C. 80a-64):

15 “UNIFIED FEE INVESTMENT COMPANY

16 “SEC. 66. (a) Subject to the requirements of this sec-  
17 tion, the Commission may by rule or order exempt, in  
18 whole or in part, a registered open-end investment com-  
19 pany from sections 12(b), 15, 22(b), and 36(b) of this  
20 title, and such other provisions as may be necessary or  
21 appropriate to further the purposes of this section and  
22 consistent with the protection of investors. For purposes  
23 of this section, any such company is referred to as an ‘ex-  
24 empted company’.

25 “(b) Notwithstanding section 10(a), the exempted  
26 company shall have a board of directors at least two-thirds

1 of the members of which are persons who are not inter-  
2 ested persons of the company. After any public offering  
3 of the exempted company's voting securities, the selection  
4 and nomination of those directors who are not interested  
5 persons of the exempted company shall be committed to  
6 the discretion of such directors.

7       “(c) The exempted company shall have engaged an  
8 investment manager pursuant to a written management  
9 contract which shall require the investment manager to  
10 perform, or make provision for, all services necessary to  
11 the exempted company's operations and the distribution  
12 of its securities in return for a single fee covering all serv-  
13 ices and expenses of the exempted company, except taxes,  
14 interest, brokerage commissions, fees paid to those direc-  
15 tors who are not interested persons of the exempted com-  
16 pany for their services as members of the exempted com-  
17 pany's board of directors and fees paid to legal counsel  
18 or any expert acting solely on behalf of such directors, and  
19 any extraordinary expenses. The fee payable under the  
20 management contract—

21               “(1) may not change more frequently than an-  
22 nually and only upon adequate notice to the exempt-  
23 ed company's shareholders, which notice shall be  
24 deemed to be a solicitation of a proxy within the  
25 meaning of section 20 of this title; and

1           “(2) shall be prominently disclosed on the cover  
2           page of the exempted company’s prospectus and in  
3           all advertising and sales literature concerning the ex-  
4           empted company or its securities.

5           “(d) The board of directors of the exempted company  
6           and those directors who are not interested persons of the  
7           exempted company by majority vote shall approve—

8           “(1) prior to effectiveness the management con-  
9           tract and any other contract entered into by the in-  
10          vestment manager for the provision of services or  
11          the payment of expenses necessary to the exempted  
12          company’s operations or distribution of its securities  
13          (‘fund contract’);

14          “(2) at least annually a management contract  
15          and any fund contract that continues in effect for a  
16          period of more than 2 years; and

17          “(3) any amendment of the management con-  
18          tract or any material amendment of any fund con-  
19          tract.

20       Notwithstanding section 15(c), the directors of the ex-  
21       empted company shall have a duty to request and evalu-  
22       ate, and the contracting party shall have a duty to furnish,  
23       such information as may reasonably be necessary to evalu-  
24       ate the adequacy of the services provided under the man-  
25       agement contract and any fund contract. In evaluating the

1 management contract, the directors also shall have a duty  
2 to determine that the compensation payable under the  
3 contract is not unconscionable or grossly excessive.

4 “(e) Notwithstanding section 22(a), the exempted  
5 company’s securities shall be sold and redeemed at the  
6 current net asset value of such securities. Except for the  
7 fee paid to the investment manager and the expenses enu-  
8 merated in subsection (c), no expenses shall be deducted  
9 from the exempted company’s assets or charged to all  
10 shareholder accounts.”.

11 **SEC. 7. INVESTMENT COMPANY NAMES.**

12 Section 35(d) of the Investment Company Act of  
13 1940 (15 U.S.C. 80a–34) is amended to read as follows:

14 “(d) It shall be unlawful for any registered invest-  
15 ment company to adopt as a part of the name or title of  
16 such company, or of any securities of which it is the issuer,  
17 any word or words that are materially deceptive or mis-  
18 leading. The Commission is authorized, by rules, regula-  
19 tions or order, to define such names or titles as are decep-  
20 tive or misleading.”.

21 **SEC. 8. PRIVATE INVESTMENT COMPANIES.**

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

24 (1) in paragraph (1), by inserting after the first  
25 sentence the following new sentence: “Such issuer

1       nonetheless is deemed to be an investment company  
2       for purposes of the limitations set forth in section  
3       12(d)(1)(A)(i) and (B)(i) governing the purchase or  
4       other acquisition by such issuer of any security is-  
5       sued by any registered investment company and the  
6       sale of any security issued by any registered open-  
7       end investment company to any such issuer.”;

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

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

14                     (B) by striking all that follows the words  
15                     “(other than short-term paper)” and inserting a  
16                     period; and

17               (3) by striking paragraph (7) and inserting the  
18       following:

19                       “(7) Any issuer whose outstanding securities  
20                      are owned exclusively by persons who, at the time of  
21                      acquisition of such securities, are qualified pur-  
22                      chasers. Such issuer nonetheless is deemed to be an  
23                      investment company for purposes of the limitations  
24                      set forth in section 12(d)(1)(A)(i) and (B)(i) govern-  
25                      ing the purchase or other acquisition by such issuer

1 of any security issued by any registered investment  
2 company and the sale of any security issued by any  
3 registered open-end investment company to any such  
4 issuer.”.

5 (b) DEFINITION OF QUALIFIED PURCHASER.—Sec-  
6 tion 2(a) of the Investment Company Act of 1940 (15  
7 U.S.C. 80a-2(a)) is amended by inserting after paragraph  
8 (50) the 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, each of  
12 which is not an affiliated person, as defined in  
13 section 2(a)(3)(C), of such person; or

14 “(B) any person, acting for its own ac-  
15 count or the accounts of other qualified pur-  
16 chasers, who in the aggregate owns and invests  
17 on a discretionary basis, not less than  
18 \$100,000,000 in securities of issuers, each of  
19 which is not an affiliated person, as defined in  
20 section 2(a)(3)(C), of such person.

21 The Commission also may adopt such rules and reg-  
22 ulations governing the persons specified in subpara-  
23 graphs (A) and (B) as it determines are necessary  
24 or appropriate in the public interest and for the pro-  
25 tection of investors.”.

1 (c) CONFORMING AMENDMENT.—The last sentence  
2 of section 3(a) of the Investment Company Act of 1940  
3 (15 U.S.C. 80a-3(a)) is amended by inserting before the  
4 period the following: “or relying on the exclusion from the  
5 definition of investment company in subsection (c)(1) or  
6 (c)(7) of this section”.

7 **SEC. 9. FUNDS OF FUNDS.**

8 Section 12(d)(1) of the Investment Company Act of  
9 1940 (15 U.S.C. 80a-12(d)(1)) is amended by—

10 (1) redesignating existing subparagraphs (G)  
11 and (H) as subparagraphs (H) and (I), respectively;

12 (2) inserting after subparagraph (F) the follow-  
13 ing new subparagraph:

14 “(G) The provisions of this paragraph (1) shall not  
15 apply to securities of a registered open-end investment  
16 company (the ‘acquired company’) purchased or otherwise  
17 acquired by a registered open-end investment company  
18 (the ‘acquiring company’) if—

19 “(i) the acquired company and the acquiring  
20 company are part of the same group of investment  
21 companies;

22 “(ii) the securities of the acquired company, se-  
23 curities of other registered open-end investment  
24 companies that are part of the same group of invest-

1       ment companies, and short-term paper are the only  
2       investment securities held by the acquiring company;

3           “(iii)(I) the acquiring company does not pay  
4       and is not assessed any charges or fees for distribu-  
5       tion-related activities with respect to securities of the  
6       acquired company unless the acquiring company  
7       does not charge a sales load or other fees or charges  
8       for distribution-related activities; or

9           “(II) any sales loads and other distribution-re-  
10      lated fees charged with respect to securities of the  
11      acquiring company, when aggregated with any sales  
12      load and distribution-related fees paid by the acquir-  
13      ing company with respect to securities of the ac-  
14      quired fund, are not excessive under rules adopted  
15      pursuant to either section 22(b) or section 22(c) of  
16      this title by a securities association registered under  
17      section 15A of the Securities Exchange Act of 1934  
18      or the Commission;

19           “(iv) the acquired company shall have a fun-  
20      damental policy that prohibits it from acquiring any  
21      securities of registered open-end investment compa-  
22      nies in reliance on this subparagraph or subpara-  
23      graph (F) of this subsection;

24           “(v) the acquiring company shall exercise voting  
25      rights by proxy or otherwise with respect to the se-

1 securities of the acquired company purchased or ac-  
2 quired in the manner prescribed by subparagraph  
3 (E) of this subsection; and

4 “(vi) such acquisition is not in contravention of  
5 such rules and regulations as the Commission may  
6 have prescribed with respect to acquisitions in ac-  
7 cordance with this subparagraph as necessary and  
8 appropriate for the protection of investors.

9 For purposes of this subparagraph, a ‘group of investment  
10 companies’ shall mean any two or more registered invest-  
11 ment companies that hold themselves out to investors as  
12 related companies for purposes of investment and investor  
13 services.”; and

14 (3) adding at the end the following new sub-  
15 paragraph:

16 “(J) The Commission, by rules and regulations upon  
17 its own motion or by order upon application, 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 provisions of this subsection, if  
21 and to the extent such exemption is consistent with the  
22 protection of investors.”.

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