

104TH CONGRESS
2D SESSION

H. R. 3005

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.

IN THE HOUSE OF REPRESENTATIVES

MARCH 5, 1996

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

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
5 “Securities Amendments of 1996”.

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

Sec. 1. Short title; table of contents.

TITLE I—CAPITAL MARKETS DEREGULATION AND
LIBERALIZATION

Sec. 101. Short title.
 Sec. 102. Investment recommendations to institutional clients.
 Sec. 103. Creation of national securities markets.
 Sec. 104. Securities margin requirements.
 Sec. 105. Williams act study.
 Sec. 106. Prospectus delivery.
 Sec. 107. Exemptive authority.
 Sec. 108. Promotion of efficiency, competition, and capital formation.
 Sec. 109. Reduction in number of members of Commission.
 Sec. 110. Privatization of EDGAR.
 Sec. 111. Designation of primary SRO and examining authority.
 Sec. 112. Treatment of press conferences.
 Sec. 113. 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. Excepted investment companies.

3 **TITLE I—CAPITAL MARKETS DE-**
 4 **REGULATION AND LIBERAL-**
 5 **IZATION**

6 **SEC. 101. SHORT TITLE.**

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

9 **SEC. 102. INVESTMENT RECOMMENDATIONS TO INSTITU-**
 10 **TIONAL CLIENTS.**

11 (a) RULES OF NATIONAL SECURITIES EXCHANGES
 12 PERTAINING TO INVESTMENT RECOMMENDATIONS TO IN-

1 INSTITUTIONAL CLIENTS.—Section 6(b) of the Securities
2 Exchange Act of 1934 (15 U.S.C. 78f(b)) is amended by
3 inserting after paragraph (9) the following new paragraph:

4 “(10) INVESTMENT RECOMMENDATIONS TO IN-
5 STITUTIONAL CLIENTS.—

6 “(A) IN GENERAL.—The rules of the ex-
7 change do not provide that a member has an
8 obligation to form a belief as to the suitability
9 of an investment recommendation made by a
10 member to an institutional client, except that
11 the rules of the association may contain a provi-
12 sion in accordance with subparagraph (B).

13 “(B) PROVISION FOR WRITTEN AGREE-
14 MENTS.—The rules of the exchange may pro-
15 vide that a broker or dealer has an obligation
16 to form a reasonable belief as to the suitability
17 of an investment recommendation made by the
18 broker or dealer client if the following condi-
19 tions are met:

20 “(i) the broker or dealer and the insti-
21 tutional client expressly agree in writing,
22 prior to or contemporaneously with the
23 recommendation, that the recommendation
24 will be made by the broker or dealer on a
25 reasonable belief that the recommendation

1 is suitable for such institutional client,
2 based upon facts disclosed by such institu-
3 tional client as to its other security hold-
4 ings and as to its financial situation and
5 needs; and

6 “(ii) such other conditions as the ex-
7 change may establish in accordance with
8 the requirements of this section.

9 “(C) DEFINITION OF INSTITUTIONAL CLI-
10 ENT.—For purposes of this paragraph, the
11 term ‘institutional client’ means any person
12 other than a natural person that has at least
13 \$10,000,000 invested in securities in the aggre-
14 gate in its portfolio.”.

15 (b) PRESUMPTION IN ACTIONS PERTAINING TO REC-
16 OMMENDATIONS TO INSTITUTIONAL CLIENTS.—Section
17 15 of the Securities Exchange Act of 1934 (15 U.S.C.
18 78o) is amended by inserting after subsection (g) the fol-
19 lowing new subsection:

20 “(h) INVESTMENT RECOMMENDATIONS TO INSTITU-
21 TIONAL CLIENTS.—

22 “(1) PRESUMPTION.—In any action brought
23 against a broker or dealer or a person associated
24 with a broker or dealer under this title or under any
25 rule or regulation thereunder pertaining to an in-

1 investment recommendation to an institutional client,
2 the broker or dealer or associated person shall be en-
3 titled to a presumption that it is not liable for the
4 investment decisions of an institutional client.

5 “(2) STANDARD FOR REBUTTING PRESUMP-
6 TION.—The presumption set out in paragraph (1)
7 may only be rebutted by proof that the broker or
8 dealer or associated person and the institutional cli-
9 ent expressly agreed in writing, prior to or contem-
10 poraneously with the recommendation, that the rec-
11 ommendation would be made by the broker or dealer
12 or associated person on a reasonable belief that the
13 recommendation would be suitable for such institu-
14 tional client, based upon facts disclosed by such in-
15 stitutional client as to its other security holdings and
16 as to its financial situation and needs.

17 “(3) DEFINITION OF INSTITUTIONAL CLIENT.—
18 For purposes of this subsection, the term ‘institu-
19 tional client’ means any person other than a natural
20 person that has at least \$10,000,000 invested in se-
21 curities in the aggregate in its portfolio.

22 “(4) LIMITATION.—This subsection shall not be
23 deemed to create or affirm any private right of ac-
24 tion against a broker or dealer or associated person

1 for any investment recommendation to an institu-
2 tional client.”.

3 (c) RULES OF SECURITIES ASSOCIATIONS.—Section
4 15A(b) of the Securities Exchange Act of 1934 (15 U.S.C.
5 78o–3(b)) is amended by inserting after paragraph (13)
6 the following new paragraph:

7 “(14) INVESTMENT RECOMMENDATIONS TO IN-
8 STITUTIONAL CLIENTS.—

9 “(A) IN GENERAL.—The rules of the asso-
10 ciation do not provide that a member has an
11 obligation to form a belief as to the suitability
12 of an investment recommendation made by a
13 member to an institutional client, except that
14 the rules of the association may contain a provi-
15 sion in accordance with subparagraph (B).

16 “(B) PROVISION FOR WRITTEN AGREE-
17 MENTS.—The rules of the association may pro-
18 vide that a broker or dealer has an obligation
19 to form a reasonable belief as to the suitability
20 of an investment recommendation made by the
21 broker or dealer client if the following condi-
22 tions are met:

23 “(i) the broker or dealer and the insti-
24 tutional client expressly agree in writing,
25 prior to or contemporaneously with the

1 recommendation, that the recommendation
2 will be made by the broker or dealer on
3 a reasonable belief that the recommenda-
4 tion is suitable for such institutional client,
5 based upon facts disclosed by such institu-
6 tional client as to its other security hold-
7 ings and as to its financial situation and
8 needs; and

9 “(ii) such other conditions as the as-
10 sociation may establish in accordance with
11 the requirements of this section.

12 “(C) DEFINITION OF INSTITUTIONAL CLI-
13 ENT.—For purposes of this paragraph, the
14 term ‘institutional client’ means any person
15 other than a natural person that has at least
16 \$10,000,000 invested in securities in the aggre-
17 gate in its portfolio.”.

18 **SEC. 103. CREATION OF NATIONAL SECURITIES MARKETS.**

19 (a) SECURITIES ACT OF 1933.—Section 18 of the Se-
20 curities Act of 1933 (15 U.S.C. 77r) is amended to read
21 as follows:

22 **“SEC. 18. EXEMPTION FROM STATE CONTROL OF SECURI-
23 TIES OFFERINGS.**

24 “(a) EXEMPTION FROM STATE LAW FOR REG-
25 ISTERED SECURITIES.—No law of any State or Territory

1 of the United States, or the District of Columbia, or any
2 political subdivision thereof—

3 “(1) requiring, or with respect to, registration
4 or qualification of securities or securities trans-
5 actions shall apply to any securities that are offered
6 or sold using any means or instruments of transpor-
7 tation or communication in interstate commerce or
8 of the mails pursuant to—

9 “(A) a registration statement filed pursu-
10 ant to this title, with the exception of a reg-
11 istration statement filed by an issuer which is
12 a blank check company as defined in section
13 7(b) of this title;

14 “(B) an exemption from registration set
15 forth in section 3(a) of this title, with the ex-
16 ception of section 3(a)(11) or any rule or regu-
17 lation promulgated thereunder; or

18 “(C) any other exemption from section 5 of
19 this title;

20 “(2) shall prohibit, limit, or impose conditions
21 upon the use of any prospectus contained in a reg-
22 istration statement that has been filed with the
23 Commission, or any sales literature used in connec-
24 tion therewith; or

1 “(3) shall prohibit, limit, or impose conditions
2 upon the offer or sale of any security registered with
3 the Commission under this title based upon the mer-
4 its of such offering or the issuer thereof;
5 except where the Commission may, by rule or regulation,
6 exclude such securities from the provisions of this section
7 upon a finding that the public interest and the protection
8 of investors would be served by State regulation.

9 “(b) PRESERVATION OF FILING REQUIREMENTS.—
10 Nothing contained in this title shall prohibit the securities
11 commission (or any agency or office performing like func-
12 tions) of any State or Territory of the United States, or
13 the District of Columbia, from requiring the filing of any
14 documents filed with the Commission pursuant to this
15 title, or from requiring some other form of filing, solely
16 for notice purposes, along with a consent to service of
17 process and requisite fee; except that no such filing, con-
18 sent, or fee may be required with respect to securities, or
19 transactions relating to securities, that are of the same
20 class as securities, or are senior to such a class, listed on
21 a national securities exchange or designated for trading
22 in the National Market System of the National Associa-
23 tion of Securities Dealers Automated Quotation System,
24 or securities that will be so listed or designated for trading
25 upon completion of the transaction.

1 “(c) EXCEPTIONS.—Nothing in this title shall affect
2 the jurisdiction of the securities commission (or any agen-
3 cy or office performing like functions) of any State or Ter-
4 ritory of the United States, or the District of Columbia,
5 over—

6 “(1) any securities or transactions in securities
7 excluded, by statute, rule, or regulation, from the
8 operation of subsection (a) of this section, or

9 “(2) any person who, in the offer or sale of any
10 securities subject to subsection (a) of this section,
11 directly or indirectly, engages in conduct that vio-
12 lates section 17(a) of this title, regardless of whether
13 the jurisdictional means specified therein are satis-
14 fied.”.

15 (2) TECHNICAL AMENDMENT.—Section
16 19(c)(3)(C) is amended by striking the last sentence.

17 (3) EFFECTIVE DATE.—The amendments made
18 by this subsection shall be effective 180 days after
19 the date of the enactment of this Act.

20 (b) SECURITIES EXCHANGE ACT OF 1934.—

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

24 “(h) EXEMPTION FROM STATE LAW FOR REG-
25 ISTERED PERSONS.—

1 “(1) EXEMPTION.—No law of any State or po-
2 litical subdivision thereof requiring the registration,
3 licensing, qualification, or inspection of a broker,
4 dealer, or person acting in a similar capacity in con-
5 nection with the purchase or sale of any security,
6 shall apply to—

7 “(A) any person who is registered with the
8 Commission as a broker or dealer, municipal se-
9 curities dealer, or government securities broker
10 or dealer under this title, or who the Commis-
11 sion by rule or order has exempted from reg-
12 istration, or any issuer;

13 “(B) any member of a national securities
14 exchange; or

15 “(C) any person associated with a broker
16 or dealer, member of a national securities ex-
17 change, municipal securities dealer, government
18 securities broker or dealer, or any issuer, in-
19 cluded within the coverage of subparagraph (A)
20 or (B).

21 “(2) PERMITTED STATE ACTIVITIES.—Nothing
22 contained in this subsection shall prohibit a State
23 from requiring registration, licensing, qualification,
24 or inspection of any person, other than an issuer,

1 who is within the coverage of paragraph (1) of this
2 subsection—

3 “(A) in the case of paragraphs (1) (A) and
4 (B), the State performs its registration, licens-
5 ing, qualification, or inspection procedures
6 through a central registration depository system
7 operated by a national securities association
8 registered under section 15A of this title, and
9 the State’s requirements are substantially simi-
10 lar to the Commission’s registration require-
11 ments and do not include any provisions that
12 are inconsistent with, or in addition to, the
13 Commission’s registration requirements; or

14 “(B) in the case of paragraph (1)(C), the
15 State performs its registration, licensing, quali-
16 fication, or inspection procedures through a
17 central registration depository system operated
18 by a national securities association registered
19 under section 15A of this title and the State’s
20 requirements are substantially similar to, and
21 not inconsistent with, the registration require-
22 ments of such association or the Commission.

23 “(3) PROHIBITED REQUIREMENTS.—No law of
24 any State or political subdivision thereof shall estab-
25 lish broker or dealer capital, books, and records, or

1 financial reporting requirements regarding persons
2 registered, licensed, qualified, or inspected pursuant
3 to paragraph (1) of this subsection that differ from
4 requirements established in these areas by the Com-
5 mission.

6 “(4) EXEMPTIONS.—The Commission may by
7 rule, regulation, or order exempt State requirements
8 from the provisions of paragraphs (1), (2), and (3)
9 of this subsection, in whole or in part, conditionally
10 or unconditionally, upon a finding that the public in-
11 terest, the protection of investors, and the mainte-
12 nance of fair and orderly markets would be served
13 by such State regulation.

14 “(5) FEES PERMITTED.—Nothing in this sub-
15 section shall prohibit any State or political subdivi-
16 sion thereof from charging requisite fees in connec-
17 tion with the registration, licensing, or qualification
18 of persons within the coverage of this subsection.

19 “(6) PRESERVATION OF AUTHORITY.—Nothing
20 contained in this subsection shall affect the jurisdic-
21 tion of any State or political subdivision thereof to
22 administer or enforce any provision of State law not
23 preempted by this subsection.”

24 (2) EFFECTIVE DATE.—The amendments made
25 by this subsection shall be effective upon enactment.

1 **SEC. 104. SECURITIES MARGIN REQUIREMENTS.**

2 (a) MARGIN REQUIREMENTS.—Section 7 of the Secu-
3 rities Exchange Act of 1934 (15 U.S.C. 78g) is amended
4 to read as follows:

5 **“SEC. 7. MARGIN REQUIREMENTS.**

6 “(a) UNLAWFUL CREDIT EXTENSION IN VIOLATION
7 OF RULES AND REGULATIONS; EXCEPTION TO APPLICA-
8 TION OF RULES, ETC.—

9 “(1) GENERAL LIMITATIONS.—It shall be un-
10 lawful for any person to extend or maintain credit
11 on any equity security of a class designated by the
12 Board of Governors of the Federal Reserve System
13 for the purpose of purchasing or carrying any equity
14 security of a class so designated, in contravention of
15 such rules and regulations as the Board of Gov-
16 ernors of the Federal Reserve System shall prescribe
17 to prevent the excessive use of credit for the pur-
18 chasing or carrying of equity securities of a class so
19 designated.

20 “(2) APPLICABILITY.—Such rules and regula-
21 tions shall designate the classes of equity securities
22 subject to credit restrictions under this subsection
23 and shall apply equally to banks, brokers, dealers,
24 and other lenders. This subsection and the rules and
25 regulations thereunder shall not apply to any credit
26 extended or maintained—

1 “(A) by a person not in the ordinary
2 course of business;

3 “(B) on an exempted security;

4 “(C) to or for an excluded account; or

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

14 “(3) EXEMPTION.—Notwithstanding subpara-
15 graphs (A), (B), and (C) of paragraph (2), the
16 Board of Governors of the Federal Reserve System
17 may impose such rules and regulations, in whole or
18 in part, on any extension of credit otherwise exempt-
19 ed by such subparagraphs if the Board of Governors
20 determines that such action is necessary to deal with
21 substantial instability or the imminent threat of sub-
22 stantial instability in the financial markets.

23 “(b) UNLAWFUL USE OF FOREIGN CREDIT FACILI-
24 TIES.—

1 “(1) LIMITATIONS.—It shall be unlawful for
2 any United States person, or any foreign person con-
3 trolled by a United States person or acting on behalf
4 of or in conjunction with such person, to obtain, re-
5 ceive, or enjoy the beneficial use of any extension of
6 credit from any lender (without regard to whether
7 the lender’s office or place of business is in a State
8 or the transaction occurred in whole or in part with-
9 in a State) for the purpose of—

10 “(A) purchasing or carrying United States
11 equity securities of a class designated by the
12 Board of Governors of the Federal Reserve Sys-
13 tem pursuant to subsection (a); or

14 “(B) purchasing or carrying within the
15 United States of any other equity securities of
16 a class so designated, if, under this section or
17 rules and regulations prescribed thereunder, the
18 extension of credit is prohibited or would be
19 prohibited if it had been made or the trans-
20 action had otherwise occurred in a lender’s of-
21 fice or other place of business in a State.

22 “(2) DEFINITIONS.—For the purposes of this
23 subsection:

24 “(A) The term ‘United States person’ in-
25 cludes a person which is organized or exists

1 under the laws of any State or, in the case of
2 a natural person, a citizen or resident of the
3 United States; a domestic estate; or a trust in
4 which one or more of the foregoing persons has
5 a cumulative direct or indirect beneficial inter-
6 est in excess of 50 percent of the value of the
7 trust.

8 “(B) The term ‘United States equity secu-
9 rity’ means an equity security (other than an
10 exempted security) issued by a person incor-
11 porated under the laws of any State, or whose
12 principal place of business is within a State.

13 “(C) The term ‘foreign person controlled
14 by a United States person’ includes any
15 noncorporate entity in which United States per-
16 sons directly or indirectly have more than a 50
17 percent beneficial interest, and any corporation
18 in which one or more United States persons, di-
19 rectly or indirectly, own stock possessing more
20 than 50 percent of the total combined voting
21 power of all classes of stock entitled to vote, or
22 more than 50 percent of the total value of
23 shares of all classes of stock.

24 “(3) EXEMPTIONS.—The Board of Governors of
25 the Federal Reserve System may, in its discretion

1 and with due regard for the purposes of this section,
2 by rule, regulation, or order exempt any class of
3 United States persons or foreign persons controlled
4 by a United States person from the application of
5 this subsection.

6 “(c) INCONSISTENT RULES.—No margin, financial
7 responsibility, or other rule of any national securities ex-
8 change or of any national securities association shall im-
9 pose any limitation on the extension or maintenance of
10 credit more restrictive than, or otherwise inconsistent
11 with, those provided for in this section and the rules and
12 regulations of the Board of Governors of the Federal Re-
13 serve System adopted hereunder.”.

14 (b) REMOVAL OF RESTRICTIONS ON BORROWING BY
15 BROKER-DEALERS.—Section 8 of the Securities Exchange
16 Act of 1934 (15 U.S.C. 78h) is amended—

17 (1) by striking out “member of a national secu-
18 rities exchange, or broker or dealer who transacts
19 business in securities through the medium of any
20 member of a national securities exchange,”; and

21 (2) by striking out subsection (a) and by redesi-
22 gnating subsections (b) and (c) as subsections (a)
23 and (b), respectively.

1 (c) TRADING BY MEMBERS OF EXCHANGES, BRO-
2 KERS AND DEALERS.—Section 11(d) of the Securities Ex-
3 change Act of 1934 (15 U.S.C. 78k(d)) is amended—

4 (1) by striking out “a member of a national se-
5 curities exchange” and inserting in lieu thereof “any
6 person”;

7 (2) by striking out “, or for any person who
8 both as a broker and a dealer transacts a business
9 in securities through the medium of a member or
10 otherwise,”;

11 (3) by striking out “in the case of a member”;

12 (4) by inserting “(other than an excluded ac-
13 count)” after “customer” the first place it appears;

14 (5) by inserting “equity” before “security” the
15 first place it appears;

16 (6) by striking out “(i)” and by striking out “or
17 (ii) any mortgage related security or any small busi-
18 ness related security against full payment of the en-
19 tire purchase price thereof upon such delivery within
20 180 days after such purchase or within such shorter
21 period as the Commission may prescribe by rule or
22 regulation”; and

23 (7) by adding at the end thereof the following
24 new sentence: “The Commission may, by such rules,
25 regulations, or orders as it may deem necessary or

1 appropriate in the public interest or for the protec-
2 tion of investors, exempt either unconditionally or
3 upon specified terms and conditions, or for stated
4 periods, any security or transaction, or class of secu-
5 rities or transactions from the operation of this sub-
6 section and the rules and regulations thereunder.”.

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

10 “(54) The term ‘excluded account’ means any
11 person who comes within any of the following cat-
12 egories:

13 “(A) A financial institution, trust com-
14 pany, savings association, or savings and loan
15 association (acting in an individual, fiduciary,
16 or agency capacity).

17 “(B) A broker or dealer or an investment
18 adviser (acting on its own behalf or on behalf
19 of another).

20 “(C) A futures commission merchant, floor
21 broker, or floor trader (acting on its own behalf
22 or on behalf of another).

23 “(D) An insurance company.

24 “(E) An investment company, small busi-
25 ness investment company, business development

1 company, or private business development com-
2 pany.

3 “(F) Any governmental entity (including
4 the United States, any State or any foreign
5 government), any political subdivision thereof,
6 any multinational or supranational entity, or
7 any department, agency, or instrumentality of
8 any of the foregoing.

9 “(G) A corporation, partnership, propri-
10 etorship, organization, trust, or other entity,
11 not formed for the specific purpose of evading
12 the requirements of any rule or regulation
13 adopted under section 7, with total assets ex-
14 ceeding \$5,000,000 or the obligations of which
15 with respect to any extension of credit are guar-
16 anteed or otherwise supported by a letter of
17 credit or keepwell, support, or other agreement
18 by any such entity or by an entity referred to
19 in subparagraph (A), (B), (C), (D), (E), or (F)
20 of this paragraph.

21 “(H) An employee benefit plan with assets
22 exceeding \$5,000,000 or whose investment deci-
23 sions are made by a bank, trust company,
24 broker, dealer, or registered investment adviser.

1 “(I) Any entity in which all the equity
2 owners are ‘excluded accounts’.

3 “(J) Any person, other than a natural per-
4 son, who is an affiliate of the person extending
5 or maintaining credit.

6 “(K) Such other persons as the Board of
7 Governors of the Federal Reserve System shall,
8 by rule, regulation, or order, designate as an
9 ‘excluded account’, either unconditionally or
10 upon specified terms and conditions, or for
11 specified periods.”.

12 (e) EFFECTIVE DATE.—The amendments made by
13 this section shall be effective 270 days after the date of
14 enactment of this Act.

15 **SEC. 105. WILLIAMS ACT STUDY.**

16 (a) STUDY REQUIRED.—The Securities and Ex-
17 change Commission shall conduct a study of—

18 (1) the burdens imposed on institutional inves-
19 tors and other entities by the requirements of sub-
20 sections (d), (g), and (h) of section 13 of the Securi-
21 ties Exchange Act of 1934 (15 U.S.C. 78m (d), (g),
22 (h)); and

23 (2) the extent to which the requirements of
24 such section 13(d) redistribute income from active to
25 passive investors.

1 (b) REPORT.—Within 18 months after the date of en-
2 actment of this Act, the Commission shall submit to the
3 Congress a report on the results of the study required by
4 subsection (a). Such report shall include such legislative
5 recommendations as the Commission considers appro-
6 priate to reduce the regulatory burdens associated with
7 subsections (d), (g), and (h) of section 13 of the Securities
8 Exchange Act of 1934.

9 **SEC. 106. PROSPECTUS DELIVERY.**

10 (a) DEFINITION OF PROSPECTUS.—Section 2(10) of
11 the Securities Act of 1933 (15 U.S.C. 77b(10)) is amend-
12 ed by striking “or confirms the sale of any security”.

13 (b) DELIVERY ON REQUEST.—Section 5(b)(2) of the
14 Securities Act of 1933 (15 U.S.C. 77e(b)(2)) is amended
15 by inserting before the period at the end the following:
16 “, if the purchaser or prospective purchaser of such secu-
17 rity has requested a prospectus”.

18 (c) AUTHORITY TO EXEMPT.—Section 5 of the Secu-
19 rities Act of 1933 (15 U.S.C. 77(e)) is amended by adding
20 a new subsection (d) after subsection (c) as follows:

21 “(d) AUTHORITY TO EXEMPT.—The Commission
22 may from time to time by its rules and regulations and
23 subject to such terms and conditions as may be prescribed
24 therein, upon its own motion or by order on application
25 by an interested person, exempt from subsection (b) of

1 section 5 any person or prospectus, or any class or classes
2 of persons or prospectuses, if and to the extent that such
3 exemption is necessary or appropriate in the public inter-
4 est and consistent with the protection of investors. The
5 Commission shall by rules and regulations determine the
6 procedures under which an exemption under this sub-
7 section shall be granted, and may, in its sole discretion,
8 decline to entertain any application for an order of exemp-
9 tion under this subsection.”.

10 **SEC. 107. EXEMPTIVE AUTHORITY.**

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

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

16 “The Commission, by rules and regulations, may con-
17 ditionally or unconditionally exempt any person, security,
18 or transaction, or any class or classes of persons, securi-
19 ties, or transactions, from any provision or provisions of
20 this title or of any rule or regulation thereunder, to the
21 extent that such exemption is necessary or appropriate in
22 the public interest, and is consistent with the protection
23 of investors and the promotion of efficiency, competition,
24 and capital formation.”.

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

5 **“SEC. 36. GENERAL EXEMPTIVE AUTHORITY.**

6 “Notwithstanding any other provision of title, the
7 Commission, by rule, regulation, or order, may condi-
8 tionally or unconditionally exempt any person, security, or
9 transaction, or any class or classes of persons, securities,
10 or transactions, from any provision or provisions of this
11 title or of any rule or regulation thereunder, to the extent
12 that such exemption is necessary or appropriate in the
13 public interest, and is consistent with the protection of in-
14 vestors and the promotion of efficiency, competition, and
15 capital formation. The Commission shall by rules and reg-
16 ulations determine the procedures under which an exemp-
17 tive order under this section shall be granted.”.

18 **SEC. 108. PROMOTION OF EFFICIENCY, COMPETITION, AND**

19 **CAPITAL FORMATION.**

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

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

24 (2) by adding at the end the following new sub-
25 section:

1 “(b) CONSIDERATION OF PROMOTION OF EFFI-
2 CIENCY, COMPETITION, AND CAPITAL FORMATION.—
3 Whenever in this title the Commission is required to con-
4 sider or determine whether an action is consistent with
5 the public interest or the protection of investors (or both),
6 the Commission shall also consider or determine whether
7 the action will promote efficiency, competition, and capital
8 formation. This subsection shall not apply with respect to
9 any investigation or other action taken with respect to a
10 violation of this title.”.

11 (b) SECURITIES EXCHANGE ACT of 1934.—Section
12 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c)
13 is amended by adding at the end the following new sub-
14 section:

15 “(e) CONSIDERATION OF PROMOTION OF EFFI-
16 CIENCY, COMPETITION, AND CAPITAL FORMATION.—
17 Whenever in this title the Commission is required to con-
18 sider or determine whether an action is consistent with
19 the public interest or the protection of investors (or both),
20 the Commission shall also consider or determine whether
21 the action will promote efficiency, competition, and capital
22 formation. This subsection shall not apply with respect to
23 any investigation or other action taken with respect to a
24 violation of this title.”.

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

5 “(c) CONSIDERATION OF PROMOTION OF EFFI-
6 CIENCY, COMPETITION, AND CAPITAL FORMATION.—
7 Whenever in this title the Commission is required to con-
8 sider or determine whether an action is consistent with
9 the public interest or the protection of investors (or both),
10 the Commission shall also consider or determine whether
11 the action will promote efficiency, competition, and capital
12 formation. This subsection shall not apply with respect to
13 any investigation or other action taken with respect to a
14 violation of this title.”.

15 **SEC. 109. REDUCTION IN NUMBER OF MEMBERS OF COM-**
16 **MISSION.**

17 (a) AMENDMENTS.—Section 4(a) of the Securities
18 Exchange Act of 1934 (15 U.S.C. 78d(a)) is amended—

19 (1) by striking “five commissioners” and insert-
20 ing “3 commissioners”; and

21 (2) by striking “three of such commissioners”
22 and inserting “2 of such commissioners”.

23 (b) EFFECTIVE DATE; IMPLEMENTATION.—The
24 amendments made by subsection (a) shall take effect on
25 the date of enactment of this Act, except that—

1 (1) the offices the terms of which expired on
2 June 5, 1994, and June 5, 1995, shall be abolished;
3 and

4 (2) notwithstanding section 4(a) of the Securi-
5 ties Exchange Act of 1934—

6 (A) upon the expiration of the term of of-
7 fice prescribed by law to occur on June 5,
8 1996, any person appointed to serve as a com-
9 missioner of the Securities and Exchange Com-
10 mission to fill such office for the following term
11 shall be eligible to serve until June 5, 1999;

12 (B) upon the expiration of the term of of-
13 fice prescribed by law to occur on June 5,
14 1997, any person appointed to serve as a com-
15 missioner of the Securities and Exchange Com-
16 mission to fill such office for the following term
17 shall be eligible to serve until June 5, 2001;
18 and

19 (C) upon the expiration of the term of of-
20 fice prescribed by law to occur on June 5,
21 1998, any person appointed to serve as a com-
22 missioner of the Securities and Exchange Com-
23 mission to fill such office for the following term
24 shall be eligible to serve until June 5, 2003.

1 **SEC. 110. PRIVATIZATION OF EDGAR.**

2 (a) REQUEST FOR PROPOSALS.—The Securities and
3 Exchange Commission shall, by public notice, request pro-
4 posals for the privatization of the EDGAR system. Such
5 notice shall specify the methods by which the Commission
6 will evaluate such proposal, which shall include the follow-
7 ing objectives:

8 (1) return to the Government on its investment
9 in the establishment of such system; and

10 (2) promote the automation and rapid dissemi-
11 nation of information required to be disclosed.

12 (b) REVIEW AND REPORT.—Within 180 days after
13 the date of enactment of this Act, the Commission shall
14 review the proposal received pursuant to subsection (a)
15 and submit to the Congress a report thereon. Such report
16 shall include such recommendations for such legislative ac-
17 tion as may be necessary to implement the proposal that
18 the Commission determines most effectively achieves the
19 objections described in subsection (a).

20 **SEC. 111. DESIGNATION OF PRIMARY SRO AND EXAMINING**
21 **AUTHORITY.**

22 (a) AMENDMENTS.—Section 17(d) of the Securities
23 Exchange Act of 1934 (15 U.S.C. 78q(d)) is amended to
24 read as follows:

25 “(d) DESIGNATION OF EXAMINING AUTHORITIES.—

1 “(1) DESIGNATION.—After notice and com-
2 ment, the Commission shall designate for each reg-
3 istered broker or dealer a self-regulatory organiza-
4 tion of which the broker or dealer is a member
5 (other than a registered clearing agency) as its ex-
6 amining authority. In no event shall the Commission
7 designate more than one examining authority for
8 any broker or dealer, except with the consent of such
9 broker or dealer. In making any such designation,
10 the Commission shall take into consideration the
11 regulatory capabilities and procedures of the self-
12 regulatory organizations, availability of staff, con-
13 venience of location, unnecessary regulatory duplica-
14 tion, and such other factors as the Commission may
15 consider germane to the protection of investors, the
16 promotion of efficiency, competition, and capital for-
17 mation, cooperation and coordination among self-
18 regulatory organizations, and the development of a
19 national market system and a national system for
20 the clearance and settlement of securities trans-
21 actions.

22 “(2) ROUTINE EXAMINATIONS AND ENFORCE-
23 MENT OF RULES.—(A) Subject to paragraph (5), an
24 examining authority shall have exclusive authority to
25 conduct routine examinations and inspections of the

1 financial operations or sales practices of any broker
2 or dealer for which it has been designated as the ex-
3 amining authority, and to issue a report of examina-
4 tion relating to each such examination or inspection
5 noting any deficiencies found.

6 “(B) An examining authority shall enforce its
7 own rules with respect to such broker or dealer, and
8 the Federal securities laws and rules and regulations
9 thereunder.

10 “(C) An examining authority shall furnish cop-
11 ies of any report of examination of any broker or
12 dealer to the Commission and to any self-regulatory
13 organization of which such person is a member or in
14 which such person is a participant. Any self-regu-
15 latory organization receiving a copy of the report
16 shall enforce its own rules with respect to such
17 broker or dealer, and the Federal securities laws and
18 rules and regulations thereunder.

19 “(3) CHANGES IN DESIGNATION.—On its own
20 motion or pursuant to a request by a broker or deal-
21 er for which the Commission previously has des-
22 ignated an examining authority, the Commission
23 shall consider changing the designation of an exam-
24 ining authority. After notice and comment, the Com-
25 mission shall change such designation by order if it

1 is consistent with the factors set forth in paragraph
2 (1) of this subsection. The issuance of such an order
3 shall not alter or extinguish any pending disciplinary
4 proceeding that the originally designated examining
5 authority has brought against the broker or dealer
6 or any person associated with a broker or dealer.

7 “(4) COMMISSION RULES.—The Commission
8 may adopt rules for the designation of an examining
9 authority for a broker or dealer, and for changing
10 such designation. Such rules shall be designed to
11 minimize the costs and burdens on the registered
12 broker or dealer, consistent with the protection of in-
13 vestors and the public interest.

14 “(5) PRESERVATION OF EXISTING AUTHOR-
15 ITY.—Nothing in this subsection shall be construed
16 to alter, impair, or limit—

17 “(A) the Commission’s authority (i) to
18 conduct examinations and inspections of a
19 broker or dealer, or (ii) to bring any action
20 under this title against any broker or dealer, or
21 against any person associated with a broker or
22 dealer; or

23 “(B) the authority of any self-regulatory
24 organization to discipline any member or any
25 person associated with a member.”.

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

4 “(53) The term ‘examining authority’ means a
5 self-regulatory organization (other than a registered
6 clearing agency), as designated by the Commission,
7 with exclusive authority to examine, inspect, and
8 otherwise oversee the activities of a registered broker
9 or dealer.”.

10 (c) CONFORMING AMENDMENTS.—

11 (1) Section 19(g) of the Securities Exchange
12 Act of 1934 (15 U.S.C. 78s(g))—

13 (A) by striking subparagraph (A);

14 (B) by inserting “a national securities ex-
15 change and” after “in the case of” in subpara-
16 graph (B); and

17 (C) by redesignating subparagraphs (B)
18 and (C) as subparagraphs (A) and (B), respec-
19 tively.

20 (2) Section 19(h) of such Act is amended in
21 each of paragraphs (1), (2), and (4)—

22 (A) by striking subparagraph (A) of each
23 such paragraph;

1 (B) by inserting “a national securities ex-
2 change and” after “in the case of” in subpara-
3 graph (B) of each such paragraph; and

4 (C) by redesignating subparagraphs (B)
5 and (C) of each such paragraph as subpara-
6 graphs (A) and (B) of each such paragraph, re-
7 spectively.

8 (2) Section 19(h)(3) of such Act is amended by
9 striking “transaction—” and all that follows through
10 “(B) in the case of” and “transaction, in the case
11 of a national securities exchange and”.

12 (d) INITIAL DESIGNATION.—The Commission shall
13 complete the initial designations of examining authorities
14 for brokers and dealers required by section 17(d) of the
15 Security Exchange Act of 1934 no later than one year
16 after the date of enactment of this Act.

17 **SEC. 112. TREATMENT OF PRESS CONFERENCES.**

18 (a) DEFINITION OF OFFER.—Section 2(3) of the Se-
19 curities Act of 1933 (15 U.S.C. 77b(3)) is amended—

20 (1) in the third sentence—

21 (A) by inserting “(A)” after “shall not in-
22 clude”; and

23 (B) by inserting before the period at the
24 end thereof the following: “or (B) solely for
25 purposes of section 5, offshore press con-

1 ferences, meetings with issuer representatives
2 conducted offshore, or press releases or other
3 material issued or released offshore in which an
4 offshore offering is discussed, irrespective of
5 whether journalists from the United States or
6 journalists for publications (including on-line
7 services) with circulation in the United States
8 attend such press conferences or meetings or
9 receive such press releases or material”;

10 (2) by inserting after such third sentence the
11 following: “Solely for purposes of section 5, no activ-
12 ity described in clause (B) of this paragraph shall be
13 considered in determining whether any other activity
14 or communication is included within the terms de-
15 fined in this paragraph and the term ‘offer to buy’
16 as used in subsection (c) of section 5 of this Act.”.

17 (b) DEFINITION OF PROSPECTUS.—Section 2(10) of
18 the Securities Act of 1933 (15 U.S.C. 77b(10)) is amend-
19 ed—

20 (1) by redesignating clauses (a) and (b) as
21 clauses (A) and (B), respectively; and

22 (2) by striking the period at the end and insert-
23 ing the following: “, and (C) solely for purposes of
24 section 5, any press release or other material issued
25 or released offshore in which an offshore offering is

1 discussed shall not be deemed a prospectus if such
2 press release or material states that it is not an
3 offer of securities. For purposes of clause (C) of this
4 paragraph, the Commission, as it deems necessary
5 or appropriate in the public interest or for the pro-
6 tection of investors, may adopt rules or regulations
7 requiring such press releases or material to contain
8 additional information.”.

9 **SEC. 113. REPORT ON TRUST INDENTURE ACT OF 1939.**

10 Within 6 months after the date of enactment of this
11 Act, the Securities and Exchange Commission shall sub-
12 mit to the Congress a report on the continuing need for,
13 and options for the modification or elimination of, the
14 Trust Indenture Act of 1939 (15 U.S.C. 77aaa et seq.).

15 **TITLE II—INVESTMENT**
16 **COMPANY ACT AMENDMENTS**

17 **SEC. 201. SHORT TITLE.**

18 This title may be cited as the “Investment Company
19 Act Amendments of 1996”.

20 **SEC. 202. FUNDS OF FUNDS.**

21 Section 12(d)(1) of the Investment Company Act of
22 1940 (15 U.S.C. 80a–12(d)(1)) is amended—

23 (1) in subparagraph (E)—

1 (A) by striking “in the event such invest-
2 ment company is not a registered investment
3 company”; and

4 (B) by inserting “in the event such invest-
5 ment company is not a registered investment
6 company” after “(bb)”;

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

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

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

16 “(i) the acquired company and the acquiring
17 company are part of the same group of investment
18 companies;

19 “(ii) the securities of the acquired company, se-
20 curities of other registered open-end investment
21 companies that are part of the same group of invest-
22 ment companies, Government securities, and short-
23 term paper are the only investments held by the ac-
24 quiring company;

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

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

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

22 “(v) such acquisition is not in contravention of
23 such rules and regulations as the Commission may
24 from time to time prescribe with respect to acquisi-
25 tions in accordance with this subparagraph as nec-

1 essary and appropriate for the protection of inves-
2 tors.

3 For purposes of this subparagraph, a ‘group of investment
4 companies’ shall mean any two or more registered invest-
5 ment companies that hold themselves out to investors as
6 related companies for purposes of investment and investor
7 services.”; and

8 (4) adding at the end the following new sub-
9 paragraph:

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

17 **SEC. 203. REGISTRATION OF SECURITIES.**

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

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

22 (2) by redesignating paragraph (3) as sub-
23 section (e); and

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

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

5 “(f) REGISTRATION OF INDEFINITE AMOUNT OF SE-
6 CURITIES.—

7 “(1) INDEFINITE REGISTRATION OF SECURI-
8 TIES.—Upon the effectiveness of its registration
9 statement under the Securities Act of 1933, a face-
10 amount certificate company, open-end management
11 company, or unit investment trust, shall be deemed
12 to have registered an indefinite amount of securities.

13 “(2) PAYMENT OF REGISTRATION FEES.—With-
14 in 90 days after the end of the company’s fiscal
15 year, the company shall pay a registration fee to the
16 Commission, calculated in the manner specified in
17 section 6(b) of the Securities Act of 1933, based on
18 the aggregate sales price for which its securities (in-
19 cluding, for this purpose, all securities issued pursu-
20 ant to a dividend reinvestment plan) were sold dur-
21 ing the company’s previous fiscal year reduced by—

22 “(A) the aggregate redemption or repur-
23 chase price of the securities of the company
24 during that year, and

1 “(B) the aggregate redemption or repur-
2 chase price of the securities of the company
3 during any prior year that were not used pre-
4 viously by the company to reduce fees payable
5 under this section.

6 “(3) INTEREST DUE ON LATE PAYMENT.—A
7 company paying the fee or any portion thereof more
8 than 90 days after the end of the company’s fiscal
9 year shall pay to the Commission interest on unpaid
10 amounts, compounded daily, at the underpayment
11 rate established by the Secretary of the Treasury
12 pursuant to section 3717 of title 31, United States
13 Code. The payment of interest pursuant to the re-
14 quirement of this paragraph shall not preclude the
15 Commission from bringing an action to enforce the
16 requirements of paragraph (2) of this subsection.

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

20 **SEC. 204. INVESTMENT COMPANY ADVERTISING PROSPEC-**
21 **TUS.**

22 Section 24 of the Investment Company Act of 1940
23 (15 U.S.C. 80a–24) is amended by adding at the end the
24 following new subsection:

1 “(g) In addition to the prospectuses permitted or re-
2 quired in section 10(a) of the Securities Act of 1933, the
3 Commission shall permit, by rules or regulations deemed
4 necessary or appropriate in the public interest or for the
5 protection of investors, the use of a prospectus for the pur-
6 poses of section 5(b)(1) of such Act with respect to securi-
7 ties issued by a registered investment company. Such a
8 prospectus, which may include information the substance
9 of which is not included in the prospectus specified in sec-
10 tion 10(a) of the Securities Act of 1933, shall be deemed
11 to be permitted by section 10(b) of such Act.”.

12 **SEC. 205. VARIABLE INSURANCE CONTRACTS.**

13 (a) UNIT INVESTMENT TRUST TREATMENT.—Sec-
14 tion 26 of the Investment Company Act (15 U.S.C. 80a-
15 26) is amended by adding at the end the following new
16 subsection:

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

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

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

7 “(B) the insurance company (i) complies with
8 all other applicable provisions of section 26 as if it
9 were a trustee or custodian of the registered separate
10 account; (ii) files with the insurance regulatory
11 authority of a State or territory of the United States
12 or of the District of Columbia an annual statement
13 of its financial condition, which most recent statement
14 indicates that it has a combined capital and
15 surplus, if a stock company, or an unassigned surplus,
16 if a mutual company, of not less than
17 \$1,000,000, or such other amount as the Commission
18 may from time to time prescribe by rule as necessary
19 or appropriate in the public interest or for
20 the protection of investors; and (iii) together with its
21 registered separate accounts, is supervised and examined
22 periodically by the insurance authority of
23 such State, territory, or the District of Columbia.

24 “(3) The Commission may adopt such rules and regulations
25 under paragraph (2)(A) as it determines are necessary

1 essary or appropriate in the public interest or for the pro-
2 tection of investors. For the purposes of such paragraph,
3 the fees and charges deducted under the contract shall in-
4 clude all fees and charges imposed for any purpose and
5 in any manner.”.

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

9 “(i)(1) This section shall not apply to any registered
10 separate account funding variable insurance contracts, or
11 to the sponsoring insurance company and principal under-
12 writer of such account, except as provided in paragraph
13 (2).

14 “(2) It shall be unlawful for any registered separate
15 account funding variable insurance contracts, or for the
16 sponsoring insurance company of such account, to sell any
17 such contract unless (A) such contract is a redeemable se-
18 curity, and (B) the insurance company complies with sec-
19 tion 26(e) and any rules or regulations adopted by the
20 Commission thereunder.

21 **SEC. 206. REPORTS TO THE COMMISSION AND SHAREHOLD-**
22 **ERS.**

23 Section 30 of the Investment Company Act of 1940
24 (15 U.S.C. 80a–29) is amended—

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

3 “(1) such information, documents, and reports
4 (other than financial statements), as the Commis-
5 sion may require to keep reasonably current the in-
6 formation and documents contained in the registra-
7 tion statement of such company filed under this
8 title;” and

9 (2) by redesignating subsections (c), (d), (e),
10 and (f) as subsections (d), (e), (g), and (h), respec-
11 tively;

12 (3) by inserting after subsection (b) the follow-
13 ing new subsection:

14 “(c) In exercising its authority under subsection
15 (b)(1) to require the filing of information, documents, and
16 reports on a basis more frequently than semi-annually, the
17 Commission shall take such steps as it deems necessary
18 or appropriate, consistent with the public interest and the
19 protection of investors, to avoid unnecessary reporting by,
20 and minimize the compliance burdens on, registered in-
21 vestment companies and their affiliated persons. Such
22 steps shall include considering and requesting public com-
23 ment on—

1 “(1) feasible alternatives that minimize the re-
2 porting burdens on registered investment companies;
3 and

4 “(2) the utility of such information, documents,
5 and reports to the Commission in relation to the
6 costs to registered investment companies and their
7 affiliated persons of providing such information, doc-
8 uments, and reports.”;

9 (4) by inserting after subsection (e) (as redesign-
10 nated by paragraph (2) of this section) the following
11 new subsection:

12 “(f) The Commission may by rule require that semi-
13 annual reports containing the information set forth in sub-
14 section (e) include such other information as the Commis-
15 sion deems necessary or appropriate in the public interest
16 or for the protection of investors. In exercising its author-
17 ity under this subsection, the Commission shall take such
18 steps as it deems necessary or appropriate, consistent with
19 the public interest and the protection of investors, to avoid
20 unnecessary reporting by, and minimize the compliance
21 burdens on, registered investment companies and their af-
22 filiated persons. Such steps shall include considering and
23 requesting public comment on—

1 “(1) feasible alternatives that minimize the re-
2 porting burdens on registered investment companies;
3 and

4 “(2) the utility of such information to share-
5 holders in relation to the costs to registered invest-
6 ment companies and their affiliated persons of pro-
7 viding such information to shareholders.”; and

8 (5) in subsection (g) (as so redesignated) by
9 striking “subsections (a) and (d)” and inserting
10 “subsections (a) and (e)”.

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

12 Section 31 of the Investment Company Act of 1940
13 (15 U.S.C. 80a–30) is amended—

14 (1) by striking subsections (a) and (b) and in-
15 serting the following:

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

1 every principal underwriter for any registered investment
2 company other than a closed-end company, shall maintain
3 and preserve for such period or periods as the Commission
4 shall prescribe by rules and regulations, such records as
5 are necessary or appropriate to record such person's trans-
6 actions with such registered company. In exercising its au-
7 thority under this subsection, the Commission shall take
8 such steps as it deems necessary or appropriate, consistent
9 with the public interest and for the protection of investors,
10 to avoid unnecessary recordkeeping by, and minimize the
11 compliance burden on, persons required to maintain
12 records under this subsection (hereinafter in this section
13 referred to as 'subject persons'). Such steps shall include
14 considering, and requesting public comment on—

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

17 “(2) the necessity of such records in view of the
18 public benefits derived from the independent scru-
19 tiny of such records through Commission examina-
20 tion;

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

1 “(4) the effects that a proposed recordkeeping
2 requirement would have on internal compliance poli-
3 cies and procedures.

4 “(b) All records required to be maintained and pre-
5 served in accordance with subsection (a) of this section
6 shall be subject at any time and from time to time to such
7 reasonable periodic, special, and other examinations by the
8 Commission, or any member or representative thereof, as
9 the Commission may prescribe. For purposes of such ex-
10 aminations, any subject person shall make available to the
11 Commission or its representatives any copies or extracts
12 from such records as may be prepared without undue ef-
13 fort, expense, or delay as the Commission or its represent-
14 atives may reasonably request. The Commission shall exer-
15 cise its authority under this subsection with due regard
16 for the benefits of internal compliance policies and proce-
17 dures and the effective implementation and operation
18 thereof.”;

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

21 (3) by inserting after subsection (b) the follow-
22 ing new subsections:

23 “(c) Notwithstanding any other provision of law, the
24 Commission shall not be compelled to disclose any internal
25 compliance or audit records, or information contained

1 therein, provided to the Commission under this section.
2 Nothing in this subsection shall authorize the Commission
3 to withhold information from Congress or prevent the
4 Commission from complying with a request for informa-
5 tion from any other Federal department or agency re-
6 questing the information for purposes within the scope of
7 its jurisdiction, or complying with an order of a court of
8 the United States in an action brought by the United
9 States or the Commission. For purposes of section 552
10 of title 5, United States Code, this section shall be consid-
11 ered a statute described in subsection (b)(3)(B) of such
12 section 552.

13 “(d) For purposes of this section:

14 “(1) ‘internal compliance policies and proce-
15 dures’ shall mean policies and procedures designed
16 by subject persons to promote compliance with the
17 Federal securities laws; and

18 “(2) ‘internal compliance and audit record’
19 shall mean any record prepared by a subject person
20 in accordance with internal compliance policies and
21 procedures.”.

22 **SEC. 208. INVESTMENT COMPANY NAMES.**

23 Section 35(d) of the Investment Company Act of
24 1940 (15 U.S.C. 80a-34) is amended to read as follows:

1 “(d) It shall be unlawful for any registered invest-
2 ment company to adopt as a part of the name or title of
3 such company, or of any securities of which it is the issuer,
4 any word or words that are materially deceptive or mis-
5 leading. The Commission is authorized, by rule, regula-
6 tion, or order, to define such names or titles as are materi-
7 ally deceptive or misleading.”.

8 **SEC. 209. EXCEPTED INVESTMENT COMPANIES.**

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

11 (1) in paragraph (1), by inserting after the first
12 sentence the following new sentence: “Such issuer
13 nonetheless is deemed to be an investment company
14 for purposes of the limitations set forth in section
15 12(d)(1) (A)(i) and (B)(i) governing the purchase or
16 other acquisition by such issuer of any security is-
17 sued by any registered investment company and the
18 sale of any security issued by any registered open-
19 end investment company to any such issuer.”;

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

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

25 and

1 (B) by striking all that follows the words
2 “(other than short-term paper)” and inserting a
3 period; and

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

6 “(7)(A) Any issuer (i) whose outstanding secu-
7 rities are owned exclusively by persons who, at the
8 time of acquisition of such securities, are qualified
9 purchasers, and (ii) who is not making and does not
10 presently propose to make a public offering of such
11 securities. Securities that are owned by persons who
12 received the securities from a qualified purchaser as
13 a gift or bequest, or where the transfer was caused
14 by legal separation, divorce, death, or other involun-
15 tary event, shall be deemed to be owned by a quali-
16 fied purchaser, subject to such rules, regulations,
17 and orders as the Commission may prescribe as nec-
18 essary or appropriate in the public interest or for
19 the protection of investors.

20 “(B) Notwithstanding subparagraph (A), an is-
21 suer is within the exception provided by this para-
22 graph if—

23 “(i) in addition to qualified purchasers, its
24 outstanding securities are beneficially owned by
25 not more than 100 persons who are not quali-

1 fied purchasers if (I) such persons acquired
2 such securities on or before December 31,
3 1995, and (II) at the time such securities were
4 acquired by such persons, the issuer was ex-
5 cepted by paragraph (1) of this subsection; and

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

8 “(I) such issuer has disclosed to such
9 persons that future investors will be lim-
10 ited to qualified purchasers, and that own-
11 ership in such issuer is no longer limited to
12 not more than 100 persons, and

13 “(II) concurrently with or after such
14 disclosure, such issuer has provided such
15 persons with a reasonable opportunity to
16 redeem any part or all of their interests in
17 the issuer for their proportionate share of
18 the issuer’s current net assets, or the cash
19 equivalent thereof.

20 “(C) An issuer that is excepted under this para-
21 graph shall nonetheless be deemed to be an invest-
22 ment company for purposes of the limitations set
23 forth in section 12(d)(1) (A)(i) and (B)(i) governing
24 the purchase or other acquisition by such issuer of
25 any security issued by any registered investment

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

4 “(D) For purposes of determining compliance
5 with this paragraph and paragraph (1) of this sub-
6 section, an issuer that is otherwise excepted under
7 this paragraph and an issuer that is otherwise ex-
8 cepted under paragraph (1) shall not be treated by
9 the Commission as being a single issuer for purposes
10 of determining whether the outstanding securities of
11 the issuer excepted under paragraph (1) are bene-
12 ficially owned by not more than 100 persons or
13 whether the outstanding securities of the issuer ex-
14 cepted under this paragraph are owned by persons
15 that are not qualified purchasers. Nothing in this
16 provision shall be deemed to establish that a person
17 is a bona fide qualified purchaser for purposes of
18 this paragraph or a bona fide beneficial owner for
19 purposes of paragraph (1) of this subsection.”.

20 (b) DEFINITION OF QUALIFIED PURCHASER.—Sec-
21 tion 2(a) of the Investment Company Act of 1940 (15
22 U.S.C. 80a-2(a)) is amended by inserting after paragraph
23 (50) the following new paragraph:

24 “(51) ‘Qualified purchaser’ means—

1 “(A) any natural person who owns at least
2 \$10,000,000 in securities of issuers that are not
3 controlled by such person, except that securities
4 of such a controlled issuer may be counted to-
5 ward such amount if such issuer is, or but for
6 the exception in paragraph (1) or (7) of section
7 3(e) would be, an investment company;

8 “(B) any trust not formed for the specific
9 purpose of acquiring the securities offered, as
10 to which the trustee or other person authorized
11 to make decisions with respect to the trust, and
12 each settlor or other person who has contrib-
13 uted assets to the trust, is a person described
14 in subparagraph (A) or (C); or

15 “(C) any person, acting for its own ac-
16 count or the accounts of other qualified pur-
17 chasers, who in the aggregate owns and invests
18 on a discretionary basis, not less than
19 \$100,000,000 in securities of issuers that are
20 not affiliated persons (as defined in section
21 2(a)(3)(C)) of such person, except that securi-
22 ties of such an affiliated person issuer may be
23 counted toward such amount if such issuer is,
24 or but for the exception in paragraph (1) or (7)

1 of section 3(e) would be, an investment com-
2 pany.

3 The Commission may adopt such rules and regula-
4 tions governing the persons and trusts specified in
5 subparagraphs (A), (B), and (C) as it determines
6 are necessary or appropriate in the public interest
7 and for the protection of investors.”.

8 (c) CONFORMING AMENDMENT.—The last sentence
9 of section 3(a) of the Investment Company Act of 1940
10 (15 U.S.C. 80a-3(a)) is amended—

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

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

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

16 (d) RULEMAKING REQUIRED.—

17 (1) IMPLEMENTATION OF SECTION 3(C)(1)(B).—

18 Within one year after the date of enactment of this
19 Act, the Commission shall prescribe rules to imple-
20 ment the requirements of section 3(c)(1)(B) of the
21 Investment Company Act of 1940 (15 U.S.C. 80a-
22 3(c)(1)(B)).

23 (2) EMPLOYEE EXCEPTION.—Within one year
24 after the date of enactment of this Act, the Commis-
25 sion shall prescribe rules pursuant to its authority

1 under section 6 of the Investment Company Act of
2 1940 (15 U.S.C. 80a-6) to permit the ownership by
3 knowledgeable employees of an issuer of the securi-
4 ties of that issuer without loss of the issuer's excep-
5 tion under section 3(c)(1) or 3(c)(7) of such Act
6 from treatment as an investment company under
7 that Act.

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