

Calendar No. 468

104TH CONGRESS
2^D SESSION

S. 1815

[Report No. 104-293]

A BILL

To provide for improved regulation of the securities markets, eliminate excess securities fees, reduce the costs of investing, and for other purposes.

JUNE 26, 1996

Reported with an amendment

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IN THE SENATE OF THE UNITED STATES

MAY 23, 1996

Mr. GRAMM (for himself, Mr. D'AMATO, Mr. DODD, Mr. BRYAN, Ms. MOSELEY-BRAUN, Mr. MACK, and Mr. BENNETT) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

JUNE 26, 1996

Reported by Mr. D'AMATO, with an amendment

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

A BILL

To provide for improved regulation of the securities markets, eliminate excess securities fees, reduce the costs of investing, and for other purposes.

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

1 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

2 (a) **SHORT TITLE.**—This Act may be cited as the
 3 “Securities Investment Promotion Act of 1996”.

4 (b) **TABLE OF CONTENTS.**—The table of contents for
 5 this Act is as follows:

Sec. 1. Short title; table of contents.

Sec. 2. Severability.

TITLE I—INVESTMENT ADVISERS INTEGRITY ACT

Sec. 101. Short title.

Sec. 102. Funding for enhanced enforcement priority.

Sec. 103. Improved supervision through State and Federal cooperation.

Sec. 104. Interstate cooperation.

Sec. 105. Disqualification of convicted felons.

TITLE II—FACILITATING INVESTMENT IN MUTUAL FUNDS

Sec. 201. Short title.

Sec. 202. Funds of funds.

Sec. 203. Flexible registration of securities.

Sec. 204. Facilitating use of current information in advertising.

Sec. 205. Variable insurance contracts.

Sec. 206. Prohibition on deceptive investment company names.

Sec. 207. Excepted investment companies.

Sec. 208. Performance fees exemptions.

TITLE III—REDUCING THE COST OF SAVING AND INVESTMENT

Sec. 301. Exemption for economic, business, and industrial development
 companies.

Sec. 302. Intrastate closed-end investment company exemption.

Sec. 303. Definition of eligible portfolio company.

Sec. 304. Definition of business development company.

Sec. 305. Acquisition of assets by business development companies.

Sec. 306. Capital structure amendments.

Sec. 307. Filing of written statements.

Sec. 308. Facilitating national securities markets.

Sec. 309. Regulatory flexibility.

Sec. 310. Analysis of economic effects of regulation.

Sec. 311. Privatization of EDGAR.

Sec. 312. Improving coordination of supervision.

Sec. 313. Increased access to foreign business information.

Sec. 314. Short-form registration.

Sec. 315. Church employee pension plans.

Sec. 316. Promoting global preeminence of American securities markets.

1 **SEC. 2. SEVERABILITY.**

2 If any provision of this Act, an amendment made by
 3 this Act, or the application of such provision or amend-
 4 ment to any person or circumstance is held to be unconsti-
 5 tutional, the remainder of this Act, the amendments made
 6 by this Act, and the application of the provisions of such
 7 to any person or circumstance shall not be affected
 8 thereby.

9 **TITLE I—INVESTMENT ADVISERS**
 10 **INTEGRITY ACT**

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

12 This title may be cited as the “Investment Advisers
 13 Integrity Act”.

14 **SEC. 102. FUNDING FOR ENHANCED ENFORCEMENT**
 15 **PRIORITY.**

16 There are authorized to be appropriated to the Secu-
 17 rities and Exchange Commission, for the enforcement of
 18 the Investment Advisers Act of 1940, not more than
 19 \$16,000,000 in each of fiscal years 1997 and 1998.

20 **SEC. 103. IMPROVED SUPERVISION THROUGH STATE AND**
 21 **FEDERAL COOPERATION.**

22 (a) STATE AND FEDERAL RESPONSIBILITIES.—The
 23 Investment Advisers Act of 1940 (15 U.S.C. 80b–1 et
 24 seq.) is amended by inserting after section 203 the follow-
 25 ing new section:

1 **“SEC. 203A. STATE AND FEDERAL RESPONSIBILITIES.**

2 “(a) ADVISERS SUBJECT TO STATE AUTHORITIES.—

3 “(1) IN GENERAL.—No investment adviser that
4 is regulated or required to be regulated as an invest-
5 ment adviser in the State in which it maintains its
6 principal office and place of business shall register
7 under section 203(a), unless the adviser—

8 “(A) has assets under management of not
9 less than \$25,000,000, or such higher amount
10 as the Commission may, by rule, deem appro-
11 priate in accordance with the purposes of this
12 title; or

13 “(B) is an adviser to an investment com-
14 pany registered under title I of this Act, or a
15 company that has elected to be a business de-
16 velopment company pursuant to section 54 of
17 title I of this Act.

18 “(2) DEFINITION.—For purposes of this sub-
19 section, the term ‘assets under management’ means
20 the securities portfolios with respect to which an in-
21 vestment adviser provides continuous and regular
22 supervisory or management services.

23 “(b) ADVISERS SUBJECT TO COMMISSION
24 AUTHORITY.—

25 “(1) IN GENERAL.—No law of any State or po-
26 litical subdivision thereof requiring the registration,

1 licensing, or qualification as an investment adviser
2 or employee of an investment adviser shall apply to
3 any person—

4 “(A) that is registered under section 203
5 as an investment adviser, or that is an em-
6 ployee of such a person; or

7 “(B) that is not registered under section
8 203 because that person is excepted from the
9 definition of an investment adviser under sec-
10 tion 202(a)(11).

11 “(2) LIMITATION.—Nothing in this subsection
12 shall prohibit the securities commission (or any
13 agency or office performing like functions) of any
14 State from—

15 “(A) requiring the filing with such com-
16 mission, agency, or office of any document filed
17 with the Commission by an investment adviser,
18 or any other document, whether or not such
19 document may be required to be filed with the
20 Commission, relating to an employee of an in-
21 vestment adviser solely for notice purposes, to-
22 gether with a consent to service of process and
23 requisite fees; or

24 “(B) investigating and bringing enforce-
25 ment actions with respect to fraud or deceit

1 against an investment adviser or person associ-
2 ated with an investment adviser.

3 “(c) EXEMPTIONS.—The Commission may, by rule or
4 regulation upon its own motion, or by order upon applica-
5 tion, exempt any person or class of persons from the prohi-
6 bitions of subsection (a) and permit the registration with
7 the Commission of any person or class of persons to which
8 the application of subsection (a) would be unfair, a burden
9 on interstate commerce, or otherwise inconsistent with the
10 purposes of this section.

11 “(d) FILING DEPOSITORIES.—The Commission may,
12 by rule, require an investment adviser—

13 “(1) to file with the Commission any fee, appli-
14 cation, report, or notice required by this title or by
15 the rules issued under this title through any entity
16 designated by the Commission for that purpose; and

17 “(2) to pay the reasonable costs associated with
18 such filing.

19 “(e) STATE ASSISTANCE.—Upon request of the secu-
20 rities commissioner (or any agency or officer performing
21 like functions) of any State, the Commission may provide
22 such training, technical assistance, or other reasonable as-
23 sistance in connection with the regulation of investment
24 advisers by the State.”

1 (b) ADVISERS NOT ELIGIBLE TO REGISTER.—Sec-
 2 tion 203 of the Investment Advisers Act of 1940 (15
 3 U.S.C. 80b-3) is amended—

4 (1) in subsection (e), in the matter immediately
 5 following paragraph (2), by inserting “and that the
 6 applicant is not prohibited from registering as an in-
 7 vestment adviser under section 203A” after “satis-
 8 fied”; and

9 (2) in subsection (h), in the second sentence—

10 (A) by striking “existence or” and insert-
 11 ing “existence,”; and

12 (B) by inserting “or is prohibited from
 13 registering as an investment adviser under sec-
 14 tion 203A,” after “adviser,”.

15 (c) CONFORMING AMENDMENT.—Section 203(a) of
 16 the Investment Advisers Act of 1940 (15 U.S.C. 80b-
 17 3(a)) is amended by striking “subsection (b)” and insert-
 18 ing “subsection (b) and section 203A”.

19 **SEC. 104. INTERSTATE COOPERATION.**

20 Section 222 of the Investment Advisers Act of 1940
 21 (15 U.S.C. 80b-18a) is amended to read as follows:

22 **“SEC. 222. STATE REGULATION OF INVESTMENT ADVISERS.**

23 **“(a) JURISDICTION OF STATE REGULATORS.—**Notth-
 24 ing in this title shall affect the jurisdiction of the securities
 25 commissioner (or any agency or officer performing like

1 functions) of any State over any security or any person
2 insofar as it does not conflict with the provisions of this
3 title or the rules and regulations thereunder.

4 “(b) DUAL COMPLIANCE PURPOSES.—No State may
5 enforce any law or regulation that would require an invest-
6 ment adviser to maintain any books or records in addition
7 to those required under the laws of the State in which
8 it maintains its principal place of business, if the invest-
9 ment adviser—

10 “(1) is registered or licensed as such in the
11 State in which it maintains its principal place of
12 business; and

13 “(2) is in compliance with the applicable books
14 and records requirements of the State in which it
15 maintains its principle place of business.

16 “(c) LIMITATION ON CAPITAL AND BOND REQUIRE-
17 MENTS.—No State may enforce any law or regulation that
18 would require an investment adviser to maintain a higher
19 minimum net capital or to post any bond in addition to
20 any that is required under the laws of the State in which
21 it maintains its principal place of business, if the invest-
22 ment adviser—

23 “(1) is registered or licensed as such in the
24 State in which it maintains its principal place of
25 business; and

1 “(2) is in compliance with the applicable net
2 capital or bonding requirements of the State in
3 which it maintains its principal place of business.”.

4 **SEC. 105. DISQUALIFICATION OF CONVICTED FELONS.**

5 (a) AMENDMENT.—Section 203(e) of the Investment
6 Advisers Act of 1940 (15 U.S.C. 80b-3(e)) is amended—

7 (1) by redesignating paragraphs (3) through
8 (7) as paragraphs (4) through (8), respectively; and

9 (2) by inserting after paragraph (2) the follow-
10 ing new paragraph:

11 “(3) has been convicted during the 10-year pe-
12 riod preceding the date of filing of any application
13 for registration, or at any time thereafter, of—

14 “(A) any crime that is punishable by im-
15 prisonment for 1 or more years, and that is not
16 described in paragraph (2); or

17 “(B) a substantially equivalent crime by a
18 foreign court of competent jurisdiction.”.

19 (b) CONFORMING AMENDMENTS.—Section 203 of the
20 Investment Advisers Act of 1940 (15 U.S.C. 80b-3) is
21 amended—

22 (1) in subsection (e)(6) (as redesignated by
23 subsection (a) of this section), by striking “this
24 paragraph (5)” and inserting “this paragraph”;

25 (2) in subsection (f)—

1 (A) by striking “paragraph (1), (4), (5), or
2 (7)” and inserting “paragraph (1), (5), (6), or
3 (8)”; and

4 (B) by striking “paragraph (3)” and in-
5 serting “paragraph (4)”; and

6 (3) in subsection (i)(1)(D); by striking “section
7 203(e)(5) of this title” and inserting “subsection
8 (e)(6) of this section”.

9 **TITLE II—FACILITATING**
10 **INVESTMENT IN MUTUAL FUNDS**

11 **SEC. 201. SHORT TITLE.**

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

14 **SEC. 202. FUNDS OF FUNDS.**

15 Section 12(d)(1) of the Investment Company Act of
16 1940 (15 U.S.C. 80a-12(d)(1)) is amended—

17 (1) in subparagraph (E)(iii)—

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

21 (B) by inserting “in the event that such in-
22 vestment company is not a registered invest-
23 ment company,” after “(bb)”; and

24 (2) by redesignating subparagraphs (G) and
25 (H) as subparagraphs (H) and (I), respectively;

1 ~~(3)~~ by inserting after subparagraph ~~(F)~~ the fol-
2 lowing new subparagraph:

3 ~~“(G) This paragraph does not apply to securities of~~
4 ~~a registered open-end investment company or a registered~~
5 ~~unit investment trust (hereafter in this subparagraph re-~~
6 ~~ferred to as the ‘acquired company’)~~ purchased or other-
7 wise acquired by a registered open-end investment com-
8 pany or a registered unit investment trust (hereafter in
9 this subparagraph referred to as the ‘acquiring company’)
10 if—

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

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

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

1 “(H) any sales loads and other distribution-re-
2 lated fees charged with respect to securities of the
3 acquiring company, when aggregated with any sales
4 load and distribution-related fees paid by the acquir-
5 ing company with respect to securities of the ac-
6 quired fund, are not excessive under rules adopted
7 pursuant to section 22(b) or section 22(c) of this
8 title by a securities association registered under sec-
9 tion 15A of the Securities Exchange Act of 1934 or
10 the Commission;

11 “(iv) the acquired company has a policy that
12 prohibits it from acquiring any securities of reg-
13 istered open-end investment companies or registered
14 unit investment trusts in reliance on this subpara-
15 graph or subparagraph (F); and

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

22 For purposes of this subparagraph, the term ‘group of in-
23 vestment companies’ means any 2 or more registered in-
24 vestment companies that hold themselves out to investors

1 as related companies for purposes of investment and inves-
 2 tor services.”; and

3 (4) by adding at the end the following new sub-
 4 paragraph:

5 “(J) The Commission, by rules and regulations, upon
 6 its own motion, or by order upon application, may condi-
 7 tionally or unconditionally exempt any person, security, or
 8 transaction, or any class or classes of persons, securities,
 9 or transactions from any provision of this subsection, if
 10 and to the extent that such exemption is consistent with
 11 the public interest and the protection of investors.”.

12 **SEC. 203. FLEXIBLE REGISTRATION OF SECURITIES.**

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

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

17 (2) by redesignating paragraph (3) as sub-
 18 section (e); and

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

21 (b) REGISTRATION OF INDEFINITE AMOUNT OF SE-
 22 CURITIES.—Section 24(f) of the Investment Company Act
 23 of 1940 (15 U.S.C. 80a-24(f)) is amended to read as
 24 follows:

1 “(f) REGISTRATION OF INDEFINITE AMOUNT OF SE-
2 CURITIES.—

3 “(1) REGISTRATION OF SECURITIES.—Upon the
4 effective date, as provided by section 8 of the Securi-
5 ties Act of 1933, of its registration statement, a
6 face-amount certificate company, open-end manage-
7 ment company, or unit investment trust, shall be
8 deemed to have registered an indefinite amount of
9 securities.

10 “(2) PAYMENT OF REGISTRATION FEES.—Not
11 later than 90 days after the end of the fiscal year
12 of an entity referred to in paragraph (1), the entity
13 shall pay a registration fee to the Commission, cal-
14 culated in the manner specified in section 6(b) of the
15 Securities Act of 1933, based on the aggregate sales
16 price for which its securities (including, for purposes
17 of this paragraph, all securities issued pursuant to
18 a dividend reinvestment plan) were sold during the
19 previous fiscal year of the entity, reduced by—

20 “(A) the aggregate redemption or repur-
21 chase price of the securities of the entity during
22 that year; and

23 “(B) the aggregate redemption or repur-
24 chase price of the securities of the entity during
25 any prior fiscal year ending not more than 1

1 year before the date of enactment of the Invest-
2 ment Company Act Amendments of 1996, that
3 were not used previously by the entity to reduce
4 fees payable under this section.

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

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

19 (c) EFFECTIVE DATE.—The amendments made by
20 this section shall become effective 180 days after the date
21 of enactment of this Act.

1 **SEC. 204. FACILITATING USE OF CURRENT INFORMATION**
 2 **IN ADVERTISING.**

3 Section 24 of the Investment Company Act of 1940
 4 (15 U.S.C. 80a-24) is amended by adding at the end the
 5 following new subsection:

6 “(g) **ADDITIONAL PROSPECTUSES.**—In addition to
 7 any prospectus permitted or required by section 10(a) of
 8 the Securities Act of 1933, the Commission shall permit,
 9 by rules or regulations deemed necessary or appropriate
 10 in the public interest or for the protection of investors,
 11 the use of a prospectus for the purposes of section 5(b)(1)
 12 of that Act with respect to securities issued by a registered
 13 investment company. Such a prospectus, which may in-
 14 clude information the substance of which is not included
 15 in the prospectus specified in section 10(a) of the Securi-
 16 ties Act of 1933, shall be deemed to be permitted by sec-
 17 tion 10(b) of that Act.”

18 **SEC. 205. VARIABLE INSURANCE CONTRACTS.**

19 (a) **UNIT INVESTMENT TRUST TREATMENT.**—Sec-
 20 tion 26 of the Investment Company Act of 1940 (15
 21 U.S.C. 80a-26) is amended by adding at the end the fol-
 22 lowing new subsection:

23 “(e) **EXEMPTION.**—

24 “(1) **IN GENERAL.**—Subsection (a) does not
 25 apply to any registered separate account funding
 26 variable insurance contracts, or to the sponsoring in-

1 insurance company and principal underwriter of such
2 account.

3 ~~“(2) LIMITATION ON SALES.—It shall be unlaw-~~
4 ~~ful for any registered separate account funding vari-~~
5 ~~able insurance contracts, or for the sponsoring in-~~
6 ~~surance company of such account, to sell any such~~
7 ~~contract, unless—~~

8 ~~“(A) the fees and charges deducted under~~
9 ~~the contract, in the aggregate, are reasonable in~~
10 ~~relation to the services rendered, the expenses~~
11 ~~expected to be incurred, and the risks assumed~~
12 ~~by the insurance company, and the insurance~~
13 ~~company so represents in the registration state-~~
14 ~~ment for the contract; and~~

15 ~~“(B) the insurance company—~~

16 ~~“(i) complies with all other applicable~~
17 ~~provisions of this section, as if it were a~~
18 ~~trustee or custodian of the registered sepa-~~
19 ~~rate account;~~

20 ~~“(ii) files with the insurance regu-~~
21 ~~latory authority of a State or territory of~~
22 ~~the United States or of the District of Co-~~
23 ~~lumbia in which is located the principal~~
24 ~~place of business of the insurance com-~~
25 ~~pany, an annual statement of its financial~~

1 condition, which most recent statement in-
2 dicates that the insurance company has a
3 combined capital and surplus, if a stock
4 company, or an unassigned surplus, if a
5 mutual company, of not less than
6 \$1,000,000, or such other amount as the
7 Commission may from time to time pre-
8 scribe by rule, as necessary or appropriate
9 in the public interest or for the protection
10 of investors; and

11 “(iii) together with its registered sepa-
12 rate accounts, is supervised and examined
13 periodically by the insurance authority of
14 such State, territory, or the District of Co-
15 lumbia.

16 “(3) FEES AND CHARGES.—For purposes of
17 paragraph (2), the fees and charges deducted under
18 the contract shall include all fees and charges im-
19 posed for any purpose and in any manner.

20 “(4) REGULATORY AUTHORITY.—The Commis-
21 sion may issue such rules and regulations to carry
22 out paragraph (2)(A) as it determines are necessary
23 or appropriate in the public interest or for the pro-
24 tection of investors.”

1 (b) **PERIODIC PAYMENT PLAN TREATMENT.**—Sec-
 2 tion 27 of the Investment Company Act of 1940 (15
 3 U.S.C. 80a-27) is amended by adding at the end the fol-
 4 lowing new subsection:

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

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

14 “(A) such contract is a redeemable security;
 15 and

16 “(B) the insurance company complies with sec-
 17 tion 26(e) and any rules or regulations adopted by
 18 the Commission thereunder.”.

19 **SEC. 206. PROHIBITION ON DECEPTIVE INVESTMENT COM-**
 20 **PANY NAMES.**

21 Section 35(d) of the Investment Company Act of
 22 1940 (15 U.S.C. 80a-34(d)) is amended to read as
 23 follows:

24 “(d) It shall be unlawful for any registered invest-
 25 ment company to adopt as a part of the name or title of

1 such company, or of any securities of which it is the issuer,
 2 any word or words that are materially deceptive or mis-
 3 leading. The Commission is authorized, by rule, regula-
 4 tion, or order, to define such names or titles as are materi-
 5 ally deceptive or misleading.”.

6 **SEC. 207. EXCEPTED INVESTMENT COMPANIES.**

7 (a) AMENDMENTS.—Section 3(c) of the Investment
 8 Company Act of 1940 (15 U.S.C. 80a-3(c)) is amended—

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

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

19 (A) by inserting after “issuer,” the first
 20 place that term appears, the following: “and is
 21 or, but for the exception provided for in this
 22 paragraph or paragraph (7), would be an in-
 23 vestment company,”; and

1 (B) by striking “unless, as of” and all that
2 follows through the end of the subparagraph
3 and inserting a period; and

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

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

1 ficially owned by not more than 100 persons
2 who are not qualified purchasers, if—

3 “(I) such persons acquired such secu-
4 rities on or before April 30, 1996; and

5 “(II) at the time such securities were
6 acquired by such persons, the issuer was
7 excepted by paragraph (1); and

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

10 “(I) such issuer has disclosed to each
11 beneficial owner that future investors will
12 be limited to qualified purchasers, and that
13 ownership in such issuer is no longer lim-
14 ited to not more than 100 persons; and

15 “(II) concurrently with or after such
16 disclosure, such issuer has provided each
17 beneficial owner with a reasonable oppor-
18 tunity to redeem any part or all of their in-
19 terests in the issuer, notwithstanding any
20 agreement to the contrary between such is-
21 suer and persons, for their proportionate
22 share of the issuer’s net assets.

23 “(C) Each person that elects to redeem under
24 subparagraph (B)(ii)(II) shall receive an amount in
25 cash equal to that person’s proportionate share of

1 the issuer's net assets, unless the issuer elects to
2 provide such person with the option of receiving, and
3 such person agrees to receive, all or a portion of
4 such person's share in assets of the issuer. If the is-
5 suer elects to provide such persons with such an op-
6 portunity, disclosure concerning such opportunity
7 shall be made in the disclosure required by subpara-
8 graph (B)(ii)(I).

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

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

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

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

13 “(51)(A) ‘Qualified purchaser’ means—

14 “(i) any natural person who owns at least
15 \$5,000,000 in investments, as defined by the
16 Commission;

17 “(ii) any company that owns not less than
18 \$5,000,000 in investments and that is owned
19 directly or indirectly by or for 2 or more natu-
20 ral persons who are related as siblings or
21 spouse (including former spouses); or direct lin-
22 eal descendants by birth, marriage, or adoption;
23 spouses of such persons; the estates of such
24 persons; or foundations, charitable organiza-

1 tions, or trusts established by or for the benefit
2 of such persons;

3 “(iii) any trust that is not covered by sub-
4 paragraph (B) and that was not formed for the
5 specific purpose of acquiring the securities of-
6 fered, as to which the trustee or other person
7 authorized to make decisions with respect to the
8 trust, and each settlor or other person who has
9 contributed assets to the trust, is a person de-
10 scribed in clause (i), (ii), or (iv);

11 “(iv) any person, acting for its own ac-
12 count or the accounts of other qualified pur-
13 chasers, who in the aggregate owns and invests
14 on a discretionary basis, not less than
15 \$25,000,000 in investments; or

16 “(v) any person that the Commission, by
17 rule or regulation, has determined does not
18 need the protections of this title, after consider-
19 ation of factors such as—

20 “(I) a high degree of financial sophis-
21 tication, including extensive knowledge of
22 and experience in financial matters;

23 “(II) a substantial amount of assets
24 owned or under management;

25 “(III) relationship with an issuer; or

1 ~~“(IV) such other factors as the Com-~~
2 mission may determine to be consistent
3 with the purposes of this paragraph.

4 ~~“(B) The Commission may adopt such rules~~
5 and regulations applicable to the persons and trusts
6 specified in clauses (i) through (v) of subparagraph
7 (A) as it determines are necessary or appropriate in
8 the public interest and for the protection of inves-
9 tors.

10 ~~“(C) The term ‘qualified purchaser’ does not in-~~
11 clude a company that, but for the exceptions pro-
12 vided for in paragraph (1) or (7) of section 3(e),
13 would be an investment company (hereafter in this
14 paragraph referred to as an ‘excepted investment
15 company’), unless all beneficial owners of its out-
16 standing securities (other than short-term paper),
17 determined in accordance with section 3(e)(1)(A),
18 that acquired such securities on or before April 30,
19 1996 (hereafter in this paragraph referred to as
20 ‘pre-amendment beneficial owners’), and all pre-
21 amendment beneficial owners of the outstanding se-
22 curities (other than short-term paper) of any ex-
23 cepted investment company that, directly or indi-
24 rectly, owns any outstanding securities of such ex-

1 cepted investment company, have consented to its
2 treatment as a qualified purchaser.”.

3 (c) CONFORMING AMENDMENT.—Section 3(a) of the
4 Investment Company Act of 1940 (15 U.S.C. 80a-3(a))
5 is amended in the matter immediately following paragraph
6 (3)—

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

8 (2) by inserting before the period the following:
9 “; and (ii) which are not relying on the exception
10 from the definition of investment company in para-
11 graph (1) or (7) of subsection (c)”.

12 (d) RULEMAKING REQUIRED.—

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

14 Not later than 1 year after the date of enactment
15 of this Act, the Commission shall prescribe rules to
16 implement the requirements of section 3(c)(1)(B) of
17 the Investment Company Act of 1940 (15 U.S.C.
18 80a-3(c)(1)(B)).

19 (2) IDENTIFICATION OF INVESTMENTS.—Not

20 later than 180 days after the date of enactment of
21 this Act, the Commission shall prescribe rules defin-
22 ing or otherwise identifying “investments” for the
23 purposes of section 2(a)(51) of the Investment Com-
24 pany Act of 1940, as amended by this Act.

1 (3) **EMPLOYEE EXCEPTION.**—Not later than 1
 2 year after the date of enactment of this Act, the
 3 Commission shall prescribe rules pursuant to its au-
 4 thority under section 6 of the Investment Company
 5 Act of 1940 to permit the ownership by knowledge-
 6 able employees of an issuer of the securities or an
 7 affiliated person without loss of the exception of the
 8 issuer under paragraph (1) or (7) of section 3(e) of
 9 that Act from treatment as an investment company
 10 under that Act.

11 (e) **EFFECTIVE DATE.**—The amendments made by
 12 this section shall become effective on the earlier of—

13 (1) 180 days after the date of enactment of this
 14 Act; or

15 (2) the date on which the rulemaking required
 16 under subsection (d)(2) is completed.

17 **SEC. 208. PERFORMANCE FEES EXEMPTIONS.**

18 Section 205 of the Investment Advisers Act of 1940
 19 (15 U.S.C. 80b-5) is amended—

20 (1) in subsection (b)—

21 (A) in paragraph (2), by striking “or” at
 22 the end;

23 (B) in paragraph (3), by striking the pe-
 24 riod at the end and inserting “; or”; and

1 (C) by adding at the end the following new
2 paragraph:

3 “(4) apply to an investment advisory contract
4 with a company excepted from the definition of an
5 investment company under section 3(e)(7) of title I
6 of this Act.”; and

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

9 “(e) The Commission, by rule or regulation, upon its
10 own motion, or by order upon application, may condi-
11 tionally or unconditionally exempt any person or trans-
12 action, or any class or classes of persons or transactions,
13 from subsection (a)(1), if and to the extent that the ex-
14 emption relates to an investment advisory contract with—

15 “(1) any person that the Commission deter-
16 mines does not need the protections of subsection
17 (a)(1), on the basis of such factors as financial so-
18 phistication, net worth, knowledge and experience in
19 financial matters, amount of assets under manage-
20 ment, relationship with a registered investment ad-
21 viser, and such other factors as the Commission de-
22 termines are consistent with this section; or

23 “(2) a person who is not a resident of the Unit-
24 ed States.”.

1 **TITLE III—REDUCING THE COST**
2 **OF SAVING AND INVESTMENT**

3 **SEC. 301. EXEMPTION FOR ECONOMIC, BUSINESS, AND IN-**
4 **DUSTRIAL DEVELOPMENT COMPANIES.**

5 Section 6(a) of the Investment Company Act of 1940
6 (15 U.S.C. 80a-6(a)) is amended by adding at the end
7 the following new paragraph:

8 “(5)(A) Any company that is not engaged in
9 the business of issuing redeemable securities, the op-
10 erations of which are subject to regulation by the
11 State in which the company is organized under a
12 statute governing entities that provide financial or
13 managerial assistance to enterprises doing business,
14 or proposing to do business, in that State if—

15 “(i) the organizational documents of the
16 company state that the activities of the com-
17 pany are limited to the promotion of economic,
18 business, or industrial development in the State
19 through the provision of financial or managerial
20 assistance to enterprises doing business, or pro-
21 posing to do business, in that State, and such
22 other activities that are incidental or necessary
23 to carry out that purpose;

24 “(ii) immediately following each sale of the
25 securities of the company by the company or

1 any underwriter for the company, not less than
2 80 percent of the securities of the company
3 being offered in such sale, on a class-by-class
4 basis, are held by persons who reside or who
5 have a substantial business presence in that
6 State;

7 “(iii) the securities of the company are
8 sold, or proposed to be sold, by the company or
9 by any underwriter for the company, solely to
10 accredited investors, as that term is defined in
11 section 2(15) of the Securities Act of 1933, or
12 to such other persons that the Commission, as
13 necessary or appropriate in the public interest
14 and consistent with the protection of investors,
15 may permit by rule, regulation, or order; and

16 “(iv) the company does not purchase any
17 security issued by an investment company or by
18 any company that would be an investment com-
19 pany except for the exclusions from the defini-
20 tion of the term “investment company” under
21 paragraph (1) or (7) of section 3(c), other
22 than—

23 “(I) any debt security that is rated in-
24 vestment grade by not less than 1 nation-

1 ally recognized statistical rating organiza-
2 tion; or

3 “~~(H)~~ any security issued by a reg-
4 istered open-end investment company that
5 is required by its investment policies to in-
6 vest not less than 65 percent of its total
7 assets in securities described in subclause
8 (I) or securities that are determined by
9 such registered open-end investment com-
10 pany to be comparable in quality to securi-
11 ties described in subclause (I).

12 “~~(B)~~ Notwithstanding the exemption provided
13 by this paragraph, section 9 (and, to the extent nec-
14 essary to enforce section 9, sections 38 through 51)
15 shall apply to a company described in this paragraph
16 as if the company were an investment company reg-
17 istered under this title.

18 “~~(C)~~ Any company proposing to rely on the ex-
19 emption provided by this paragraph shall file with
20 the Commission a notification stating that the com-
21 pany intends to do so, in such form and manner as
22 the Commission may prescribe by rule.

23 “~~(D)~~ Any company meeting the requirements of
24 this paragraph may rely on the exemption provided
25 by this paragraph upon filing with the Commission

1 the notification required by subparagraph (C), until
 2 such time as the Commission determines by order
 3 that such reliance is not in the public interest or is
 4 not consistent with the protection of investors.

5 “(E) The exemption provided by this paragraph
 6 may be subject to such additional terms and condi-
 7 tions as the Commission may by rule, regulation, or
 8 order determine are necessary or appropriate in the
 9 public interest or for the protection of investors.”.

10 **SEC. 302. INTRASTATE CLOSED-END INVESTMENT COM-**
 11 **PANY EXEMPTION.**

12 Section 6(d)(1) of the Investment Company Act of
 13 1940 (15 U.S.C. 80a-6(d)(1)) is amended by striking
 14 “\$100,000” and inserting “\$10,000,000, or such other
 15 amount as the Commission may set by rule, regulation,
 16 or order”.

17 **SEC. 303. DEFINITION OF ELIGIBLE PORTFOLIO COMPANY.**

18 Section 2(a)(46)(C) of the Investment Company Act
 19 of 1940 (15 U.S.C. 80a-2(a)(46)(C)) is amended—

20 (1) in clause (ii), by striking “or” at the end;

21 (2) by redesignating clause (iii) as clause (iv);

22 and

23 (3) by inserting after clause (ii) the following:

24 “(iii) it has total assets of not more
 25 than \$4,000,000, and capital and surplus

1 (shareholders' equity less retained earn-
 2 ings) of not more than \$2,000,000, except
 3 that the Commission may adjust such
 4 amounts by rule, regulation, or order to re-
 5 flect changes in 1 or more generally ac-
 6 cepted indices or other indicators for small
 7 businesses; or".

8 **SEC. 304. DEFINITION OF BUSINESS DEVELOPMENT COM-**
 9 **PANY.**

10 Section 2(a)(48)(B) of the Investment Company Act
 11 of 1940 (15 U.S.C. 80a-2(a)(48)(B)) is amended by in-
 12 serting before the semicolon at the end the following: "
 13 and provided further that a business development com-
 14 pany need not make available significant managerial as-
 15 sistance with respect to any company described in section
 16 2(a)(46)(C)(iii), or with respect to any other company that
 17 meets such criteria as the Commission may by rule, regu-
 18 lation, or order permit, as consistent with the public inter-
 19 est, the protection of investors, and the purposes fairly in-
 20 tended by the policy and provisions of this title".

21 **SEC. 305. ACQUISITION OF ASSETS BY BUSINESS DEVELOP-**
 22 **MENT COMPANIES.**

23 Section 55(a)(1)(A) of the Investment Company Act
 24 of 1940 (15 U.S.C. 80a-54(a)(1)(A)) is amended—

1 (1) by striking “or from any person” and in-
2 serting “from any person”; and

3 (2) by inserting before the semicolon “; or from
4 any other person, subject to such rules and regula-
5 tions as the Commission may prescribe as necessary
6 or appropriate in the public interest or for the pro-
7 tection of investors”.

8 **SEC. 306. CAPITAL STRUCTURE AMENDMENTS.**

9 Section 61(a) of the Investment Company Act of
10 1940 (15 U.S.C. 80a-60(a)) is amended—

11 (1) in paragraph (2), by striking “if such busi-
12 ness development company” and all that follows
13 through the end of paragraph (2) and inserting a
14 period;

15 (2) in paragraph (3)(A)—

16 (A) by striking “senior securities rep-
17 resenting indebtedness accompanied by”;

18 (B) inserting “accompanied by securities,”
19 after “of such company,”; and

20 (C) in clause (ii), by striking “senior”; and

21 (3) in paragraph (3)—

22 (A) in subparagraph (A), by striking
23 “and” at the end;

1 ~~(B)~~ in subparagraph ~~(B)~~, by striking the
2 period at the end of clause (iv) and inserting “;
3 and”; and

4 ~~(C)~~ by inserting after subparagraph ~~(B)~~
5 the following new subparagraph:

6 “~~(C)~~ a business development company may
7 issue warrants, options, or rights to subscribe
8 to, convert to, or purchase voting securities not
9 accompanied by securities, if—

10 “(i) such warrants, options, or rights
11 satisfy the conditions in clauses (i) and
12 (iii) of subparagraph (A); and

13 “(ii) the proposal to issue such war-
14 rants, options, or rights is authorized by
15 the shareholders or partners of such busi-
16 ness development company, and such issu-
17 ance is approved by the required majority
18 (as defined in section 57(o)) of the direc-
19 tors of or general partners in such com-
20 pany on the basis that such issuance is in
21 the best interests of the company and its
22 shareholders or partners.”.

1 **SEC. 307. FILING OF WRITTEN STATEMENTS.**

2 Section 64(b)(1) of the Investment Company Act of
3 1940 (15 U.S.C. 80a-63(b)(1)) is amended by inserting
4 “and capital structure” after “portfolio”.

5 **SEC. 308. FACILITATING NATIONAL SECURITIES MARKETS.**

6 Section 18 of the Securities Act of 1933 (15 U.S.C.
7 77r) is amended to read as follows:

8 **“SEC. 18. EXEMPTION FROM STATE CONTROL OF**
9 **SECURITIES OFFERINGS.**

10 **“(a) EXEMPTION FROM STATE LAW FOR REG-**
11 **ISTERED SECURITIES.—**Except with respect to offerings
12 described in subsection (b) and as otherwise specifically
13 provided in this section, no law, rule, regulation, order,
14 or other administrative action of any State or Territory
15 of the United States, or the District of Columbia, or any
16 political subdivision thereof—

17 “(1) requiring, or with respect to, registration
18 or qualification of securities or securities trans-
19 actions shall directly or indirectly apply to an offer-
20 ing subject to a registration statement filed pursu-
21 ant to this title;

22 “(2) shall directly or indirectly prohibit, limit,
23 or impose conditions upon the use of any offering
24 document, including any prospectus contained in a
25 registration statement that has been filed with the
26 Commission; or

1 ~~“(3) shall directly or indirectly prohibit, limit,~~
 2 ~~or impose conditions upon the offer or sale of any~~
 3 ~~security registered with the Commission under this~~
 4 ~~title based on the merits of such offering or issuer.~~

5 ~~“(b) SPECIAL RULES FOR CERTAIN OFFERINGS.—~~

6 ~~Except with respect to a security of an investment com-~~
 7 ~~pany that is registered under the Investment Company~~
 8 ~~Act of 1940, the provisions of subsection (a) shall not~~
 9 ~~apply to—~~

10 ~~“(1) an offering—~~

11 ~~“(A) by an issuer that is a blank check~~
 12 ~~company, as defined in section 7(b), a partner-~~
 13 ~~ship, a limited liability company, or a direct~~
 14 ~~participation investment program;~~

15 ~~“(B) of penny stock; or~~

16 ~~“(C) giving effect to a limited partnership~~
 17 ~~rollup transaction;~~

18 ~~“(2) an offering of a security, if a person asso-~~
 19 ~~ciated with the offering is subject to a statutory dis-~~
 20 ~~qualification, as defined in section 3(a)(39) of the~~
 21 ~~Securities Exchange Act of 1934 or any substan-~~
 22 ~~tially equivalent State law; or~~

23 ~~“(3) an offering of a security that—~~

24 ~~“(A) is not listed on the New York Stock~~
 25 ~~Exchange, the American Stock Exchange, or as~~

1 part of a category of securities on another ex-
2 change or trading system, as determined by the
3 Commission consistent with the purposes of this
4 title and the protection of investors;

5 “(B) is not authorized for trading on the
6 National Market System of the National Asso-
7 ciation of Securities Dealers Automated
8 Quotation System; or

9 “(C) will not be listed or authorized for
10 quotation as described in subparagraph (A) or
11 (B) upon completion of the transaction.

12 “(e) EXEMPTION FROM STATE LAW FOR TRANS-
13 ACTIONS IN SECURITIES WITH QUALIFIED PUR-
14 CHASERS.—Notwithstanding subsection (b), subsection
15 (a) shall apply with respect to offers and sales to qualified
16 purchasers, as defined by the Commission.

17 “(d) PRESERVATION OF FILING REQUIREMENTS.—
18 Nothing in this section shall prohibit the securities com-
19 mission (or any agency or office performing like functions)
20 of any State or Territory of the United States, or the Dis-
21 trict of Columbia, from requiring the filing of any docu-
22 ments filed with the Commission pursuant to this title
23 solely for notice purposes, along with a consent to service
24 of process and requisite fee, except that no such filing,
25 consent, or fee may be required with respect to securities;

1 or transactions relating to securities that are of the same
2 class as securities, or are senior to such a class, as de-
3 scribed in subsection (b)(3). Nothing in this section shall
4 prohibit States from enforcing fee requirements in effect
5 on May 31, 1996.

6 “(e) PRESERVATION OF STATE AUTHORITY.—Noth-
7 ing in this section shall affect the jurisdiction of the secu-
8 rities commission (or any agency or office performing like
9 functions) of any State or Territory of the United States,
10 or the District of Columbia, pursuant to the laws of such
11 State or Territory, with respect to any fraud or broker-
12 dealer conduct in connection with securities or securities
13 transactions.”

14 **SEC. 309. REGULATORY FLEXIBILITY.**

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

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

19 “The Commission, by rule or regulation, may condi-
20 tionally or unconditionally exempt any person, security, or
21 transaction, or any class or classes of persons, securities,
22 or transactions, from any provision or provisions of this
23 title or of any rule or regulation issued thereunder, to the
24 extent that such exemption is necessary or appropriate in

1 the public interest, and is consistent with the protection
2 of investors.”.

3 (b) UNDER THE SECURITIES EXCHANGE ACT OF
4 1934.—Title I of the Securities Exchange Act of 1934 (15
5 U.S.C. 78a et seq.) is amended by adding at the end the
6 following new section:

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

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

21 **SEC. 310. ANALYSIS OF ECONOMIC EFFECTS OF REGULA-**
22 **TION.**

23 (a) AUTHORIZATION OF APPROPRIATIONS.—There
24 are authorized to be appropriated to carry out the Eco-
25 nomic Analysis Program, including funding for the Office

1 of Economic Analysis of the Securities and Exchange
2 Commission, \$6,000,000 for fiscal year 1997, and
3 \$6,000,000 for fiscal year 1998.

4 (b) ANALYSIS OF ECONOMIC EFFECTS OF REGULA-
5 TION.—

6 (1) IN GENERAL.—The Chief Economist of the
7 Commission shall prepare a report on each proposed
8 regulation of the Commission. Such report shall be
9 provided to each Commissioner and shall be pub-
10 lished in the Federal Register before any such regu-
11 lation of the Commission may become effective.

12 (2) REPORT CONTENTS.—The report required
13 by this subsection shall include—

14 (A) an analysis of the likely effects of the
15 proposed regulation on the economy of the
16 United States, and particularly upon the securi-
17 ties markets and the participants in those mar-
18 kets; and

19 (B) the estimated impact of the proposed
20 regulation upon economic and market behavior,
21 including any impact on market liquidity, the
22 costs of investment, and the financial risks of
23 investment.

1 **SEC. 311. PRIVATIZATION OF EDGAR.**

2 Not later than 180 days after the date of enactment
3 of this Act, the Commission shall submit to the Congress
4 a report on the Electronic Data Gathering Analysis and
5 Retrieval System consisting of the Commission's plan for
6 promoting competition and innovation of the system
7 through privatization of all or any part of the system.
8 Such plan shall include such recommendations for action
9 as may be necessary to implement the plan.

10 **SEC. 312. IMPROVING COORDINATION OF SUPERVISION.**

11 Section 17 of the Securities Exchange Act of 1934
12 (15 U.S.C. 78q) is amended by adding at the end the fol-
13 lowing new subsection:

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

15 “(1) **OBJECTIVE.**—The Commission and the ex-
16 amining authorities shall promote effective and effi-
17 cient oversight of the activities of brokers and deal-
18 ers, avoiding redundancy, while maintaining the
19 highest level of examination and oversight quality.

20 “(2) **ELIMINATION OF DUPLICATION.**—The
21 Commission and the examining authorities, through
22 cooperation and coordination of examination and
23 oversight activities, shall eliminate any unnecessary
24 and burdensome duplication in the examination
25 process.

1 “(3) COORDINATION OF EXAMINATIONS.—The
2 Commission and the examining authorities shall
3 share such information, including reports of exami-
4 nations, customer complaint information, and other
5 nonpublic regulatory information, as appropriate to
6 foster a coordinated approach to regulatory over-
7 sight of brokers and dealers that are subject to ex-
8 amination by more than one examining authority.

9 “(4) EXAMINATIONS FOR CAUSE.—At any time,
10 any examining authority may conduct an examina-
11 tion for cause of any broker or dealer subject to its
12 jurisdiction.

13 “(5) CONFIDENTIALITY.—

14 “(A) IN GENERAL.—The provisions of sec-
15 tion 24 shall apply to the sharing of informa-
16 tion in accordance with this subsection. The
17 Commission shall take appropriate action under
18 section 24(e) to assure that such information
19 is not inappropriately disclosed.

20 “(B) APPROPRIATE DISCLOSURE NOT PRO-
21 HIBITED.—Nothing in this paragraph shall au-
22 thorize the Commission or any examining au-
23 thority to withhold information from the Con-
24 gress, or prevent the Commission or any exam-
25 ining authority from complying with a request

1 for information from any other Federal depart-
 2 ment or agency requesting the information for
 3 purposes within the scope of its jurisdiction, or
 4 complying with an order of a court of the Unit-
 5 ed States in an action brought by the United
 6 States or the Commission.

7 “(6) DEFINITION.—For purposes of this sub-
 8 section, the term ‘examining authority’ means the
 9 self-regulatory organizations registered with the
 10 Commission under this title (other than registered
 11 clearing agencies) with the authority to examine, in-
 12 spect, and otherwise oversee the activities of a reg-
 13 istered broker or dealer.”.

14 **SEC. 313. INCREASED ACCESS TO FOREIGN BUSINESS IN-**
 15 **FORMATION.**

16 (a) THE SECURITIES ACT OF 1993.—Section 2(3) of
 17 the Securities Act of 1933 (15 U.S.C. 77b(3)) is amended
 18 in the third sentence—

19 (1) by striking “not include preliminary” and
 20 inserting “not include the following: (A) prelimi-
 21 nary”; and

22 (2) by inserting before the period “or (B) solely
 23 for purposes of section 5, press conferences held out-
 24 side of the United States, public meetings with is-
 25 suer representatives conducted outside of the United

1 States, or press related materials released outside of
2 the United States in which an offshore offering is
3 discussed, irrespective of whether journalists from
4 the United States or journalists for publications (in-
5 cluding on-line services) with circulation in the Unit-
6 ed States attend such press conferences or meetings
7 or receive such press related materials.”.

8 (b) THE SECURITIES EXCHANGE ACT OF 1934.—
9 Section 14 of the Securities Exchange Act of 1934 (15
10 U.S.C. 78n) is amended by adding at the end the following
11 new subsection:

12 “(i) TREATMENT OF PRESS RELATED MATERIALS.—

13 “(1) IN GENERAL.—Any person making a ten-
14 der offer for, or a request or invitation for tenders
15 of, the securities of a foreign issuer may grant jour-
16 nalists from the United States or journalists for
17 publications (including on-line services) with circula-
18 tion in the United States access to press conferences
19 outside of the United States, meetings with its rep-
20 resentatives conducted outside of the United States,
21 or press related materials released outside of the
22 United States in which an offshore tender offer is
23 discussed, without being deemed to have used the ju-
24 risdictional means specified in subsection (d)(1) or
25 becoming subject to any regulations promulgated by

1 the Commission, pursuant to subsection (e) of this
2 section or 13(e), or otherwise, that relate to tender
3 offers or requests or invitations for tenders.

4 “(2) DEFINITION.—For purposes of this sub-
5 section, the term ‘foreign issuer’ means any corpora-
6 tion or other organization—

7 “(A) that is incorporated or organized
8 under the laws of any foreign country; or

9 “(B) the principal place of business of
10 which is located in a foreign country.”

11 **SEC. 314. SHORT-FORM REGISTRATION.**

12 (a) IN GENERAL.—Not later than 180 days after the
13 date of enactment of this Act, the Commission shall
14 amend Form S-3 (17 C.F.R. 239.13, relating to registra-
15 tion under the Securities Act of 1933, of securities of cer-
16 tain issuers offered pursuant to certain types of trans-
17 actions) to allow such form, or its equivalent, to be used
18 for primary offerings by a registrant if—

19 (1) the outstanding stock of the registrant held
20 by nonaffiliates of the registrant has an adequate
21 aggregate market value as determined by the Com-
22 mission; and

23 (2) such registrant otherwise meets the eligi-
24 bility requirements for registration using such form,
25 or its equivalent.

1 (b) **ADJUSTMENTS.**—Any adjustment to the adequate
 2 aggregate market value threshold referred to in subsection
 3 (a)(1)(B) by the Commission following the date of enact-
 4 ment of this Act shall apply equally to voting and nonvot-
 5 ing common shares and such other securities as the Com-
 6 mission shall establish.

7 (c) **DEFINITION.**—For purposes of this section, the
 8 term “stock” includes voting and nonvoting common
 9 shares, and such other securities as the Commission shall
 10 establish.

11 **SEC. 315. CHURCH EMPLOYEE PENSION PLANS.**

12 (a) **AMENDMENT TO THE INVESTMENT COMPANY**
 13 **ACT OF 1940.**—Section 3(e) of the Investment Company
 14 Act of 1940 (15 U.S.C. 80a-3(e)) is amended by adding
 15 at the end the following new paragraph:

16 “(14) Any church plan described in section
 17 414(e) of the Internal Revenue Code of 1986, if,
 18 under any such plan, no part of the assets may be
 19 used for, or diverted to, purposes other than the ex-
 20 clusive benefit of plan participants or beneficiaries,
 21 or any company or account that is—

22 “(A) established by a person that is eligible
 23 to establish and maintain such a plan under
 24 section 414(e) of the Internal Revenue Code of
 25 1986; and

1 “(B) substantially all of the activities of
2 which consist of—

3 “(i) managing or holding assets con-
4 tributed to such church plans or other as-
5 sets which are permitted to be commingled
6 with the assets of church plans under the
7 Internal Revenue Code of 1986; or

8 “(ii) administering or providing bene-
9 fits pursuant to church plans.

10 (b) AMENDMENT TO THE SECURITIES ACT OF
11 1933.—Section 3(a) of the Securities Act of 1933 (15
12 U.S.C. 77(a)) is amended by adding at the end the follow-
13 ing new paragraph:

14 “(13) Any security issued by or any interest or
15 participation in any church plan, company or ac-
16 count that is excluded from the definition of an in-
17 vestment company under section 3(e)(14) of the In-
18 vestment Company Act of 1940.”.

19 (c) AMENDMENTS TO THE SECURITIES EXCHANGE
20 ACT OF 1934.—

21 (1) EXEMPTED SECURITIES.—Section
22 3(a)(12)(A) of the Securities Exchange Act of 1934
23 (15 U.S.C. 78(e)(12)(A)) is amended—

24 (A) in clause (v); by striking “and” at the
25 end;

1 (B) by redesignating clause (vi) as clause
2 (vii); and

3 (C) by inserting after clause (v) the follow-
4 ing new clause:

5 “(vi) any security issued by or any in-
6 terest or participation in any church plan,
7 company, or account that is excluded from
8 the definition of an investment company
9 under section 3(e)(14) of the Investment
10 Company Act of 1940; and”.

11 (2) EXEMPTION FROM BROKER-DEALER PROVI-
12 SIONS.—Section 3 of the Securities Exchange Act of
13 1934 (15 U.S.C. 78(e)) is amended by adding at the
14 end the following new subsection:

15 “(f) CHURCH PLANS.—No church plan described in
16 section 414(e) of the Internal Revenue Code of 1986, no
17 person or entity eligible to establish and maintain such
18 a plan under the Internal Revenue Code of 1986, no com-
19 pany or account that is excluded from the definition of
20 an investment company under section 3(e)(14) of the In-
21 vestment Company Act of 1940, and no trustee, director,
22 officer or employee of or volunteer for such plan, company,
23 account person, or entity, shall be deemed to be a ‘broker’,
24 ‘dealer’, ‘municipal securities broker’, ‘municipal securities
25 dealer’, ‘government securities broker’, ‘government secu-

1 rities dealer', 'clearing agency', or 'transfer agent' for pur-
 2 poses of this title—

3 “(1) solely because such plan, company, person,
 4 or entity buys, holds, sells, trades in, or transfers se-
 5 curities or acts as an intermediary in making pay-
 6 ments in connection with transactions in securities
 7 for its own account in its capacity as trustee or ad-
 8 ministrator of, or otherwise on behalf of, or for the
 9 account of, any church plan, company, or account
 10 that is excluded from the definition of an investment
 11 company under section 3(e)(14) of the Investment
 12 Company Act of 1940; and

13 “(2) if no such person or entity receives a com-
 14 mission or other transaction-related sales compensa-
 15 tion in connection with any activities conducted in
 16 reliance on the exemption provided by this sub-
 17 section.”.

18 (d) AMENDMENT TO THE INVESTMENT ADVISERS
 19 ACT OF 1940.—Section 203(b) of the Investment Advisers
 20 Act of 1940 (15 U.S.C. 80b-3(b)) is amended—

21 (1) in paragraph (2), by striking “or” at the
 22 end;

23 (2) in paragraph (3), by striking the period at
 24 the end and inserting “; or”; and

1 (3) by adding at the end the following new
2 paragraph:

3 “(4) any plan described in section 414(d) of the
4 Internal Revenue Code of 1986, any person or entity
5 eligible to establish and maintain such a plan under
6 the Internal Revenue Code of 1986, or any trustee,
7 director, officer, or employee of or volunteer for any
8 such plan or person, if such person or entity pro-
9 vides investment advice exclusively to any plan, per-
10 son, or entity or any company, account, or fund that
11 is excluded from the definition of an investment
12 company under section 3(e)(14) of the Investment
13 Company Act of 1940.”.

14 (e) AMENDMENT TO THE TRUST INDENTURE ACT OF
15 1939.—Section 304(a)(4)(A) of the Trust Indenture Act
16 of 1939 (15 U.S.C. 77ddd(4)(A)) is amended by striking
17 “or (11)” and inserting “(11), or (14)”.

18 (f) PROTECTION OF CHURCH EMPLOYEE BENEFIT
19 PLANS UNDER STATE LAW.—

20 (1) REGISTRATION REQUIREMENTS.—Any secu-
21 rity issued by or any interest or participation in any
22 church plan, company, or account that is excluded
23 from the definition of an investment company under
24 section 3(e)(14) of the Investment Company Act of
25 1940, and any offer, sale, or purchase thereof, shall

1 be exempt from any law of a State that requires reg-
2 istration or qualification of securities.

3 (2) TREATMENT OF CHURCH PLANS.—No
4 church plan described in section 414(e) of the Inter-
5 nal Revenue Code of 1986, no person or entity eligi-
6 ble to establish and maintain such a plan under the
7 Internal Revenue Code of 1986, no company or ac-
8 count that is excluded from the definition of an in-
9 vestment company under section 3(e)(14) of the In-
10 vestment Company Act of 1940, and no trustee, di-
11 rector, officer, or employee of or volunteer for any
12 such plan, person, entity, company, or account shall
13 be required to qualify, register, or be subject to reg-
14 ulation as an investment company or as a broker,
15 dealer, investment adviser, or agent under the laws
16 of any State solely because such plan, person, entity,
17 company, or account buys, holds, sells, or trades in
18 securities for its own account or in its capacity as
19 a trustee or administrator of or otherwise on behalf
20 of, or for the account of, or provides investment ad-
21 vice to, for, or on behalf of, any such plan, person,
22 or entity or any company or account that is excluded
23 from the definition of an investment company under
24 section 3(e)(14) of the Investment Company Act of
25 1940.

1 (g) FURTHER AMENDMENTS TO THE SECURITIES
 2 EXCHANGE ACT OF 1934.—Section 3 of the Securities
 3 Exchange Act of 1934 (15 U.S.C. 78c) is amended by add-
 4 ing at the end the following new subsection:

5 “(g) DISCLOSURE TO CHURCH PLAN PARTICI-
 6 PANTS.—A person that maintains a church plan that is
 7 excluded from the definition of an investment company
 8 solely by reason of section 3(e)(14) of the Investment
 9 Company Act of 1940 shall provide disclosure to plan par-
 10 ticipants, in writing, and not less frequently than annu-
 11 ally, and for new participants joining such a plan after
 12 May 31, 1996, prior to joining such plan, that—

13 “(1) the plan, or any company or account main-
 14 tained to manage or hold plan assets and interests
 15 in such plan, company, or account, are not subject
 16 to registration, regulation, or reporting under this
 17 title, the Securities Act of 1933, the Investment
 18 Company Act of 1940 or State securities laws; and

19 “(2) plan participants and beneficiaries there-
 20 fore will not be afforded the protections of those pro-
 21 visions.”.

22 **SEC. 316. PROMOTING GLOBAL PREEMINENCE OF AMER-**
 23 **ICAN SECURITIES MARKETS.**

24 It is the sense of the Congress that—

1 (1) the United States and foreign securities
2 markets are increasingly becoming international
3 securities markets, as issuers and investors seek the
4 benefits of new capital and secondary market oppor-
5 tunities without regard to national borders;

6 (2) as issuers seek to raise capital across
7 national borders, they confront differing accounting
8 requirements in the various regulatory jurisdictions;

9 (3) the establishment of a high-quality com-
10 prehensive set of generally accepted international ac-
11 counting standards in cross-border securities offer-
12 ings would greatly facilitate international financing
13 activities and, most significantly, would enhance the
14 ability of foreign corporations to access and list in
15 United States markets;

16 (4) in addition to the efforts made before the
17 date of enactment of this Act by the Commission to
18 respond to the growing internationalization of secu-
19 rities markets, the Commission should enhance its
20 vigorous support for the development of high-quality
21 international accounting standards as soon as prac-
22 ticable; and

23 (5) the Commission, in view of its clear author-
24 ity under law to facilitate the access of foreign cor-
25 porations to list their stocks in United States mar-

1 kets, should report to the Congress, not later than
 2 one year after the date of enactment of this Act on
 3 progress in the development of international ac-
 4 counting standards and the outlook for successful
 5 completion of a set of international standards that
 6 would be acceptable to the Commission for offerings
 7 and listings by foreign corporations in United States
 8 markets.

9 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

10 (a) *SHORT TITLE.*—*This Act may be cited as the “Se-*
 11 *curities Investment Promotion Act of 1996”.*

12 (b) *TABLE OF CONTENTS.*—*The table of contents for*
 13 *this Act is as follows:*

Sec. 1. Short title; table of contents.

Sec. 2. Severability.

TITLE I—INVESTMENT ADVISERS SUPERVISION COORDINATION ACT

Sec. 101. Short title.

Sec. 102. Funding for enhanced enforcement priority.

Sec. 103. Improved supervision through State and Federal cooperation.

Sec. 104. Interstate cooperation.

Sec. 105. Disqualification of convicted felons.

Sec. 106. Continued State authority.

Sec. 107. Effective date.

TITLE II—FACILITATING INVESTMENT IN MUTUAL FUNDS

Sec. 201. Short title.

Sec. 202. Funds of funds.

Sec. 203. Flexible registration of securities.

Sec. 204. Facilitating use of current information in advertising.

Sec. 205. Variable insurance contracts.

Sec. 206. Prohibition on deceptive investment company names.

Sec. 207. Excepted investment companies.

Sec. 208. Performance fees exemptions.

Sec. 209. Reports to the Commission and shareholders.

Sec. 210. Books, records, and inspections.

TITLE III—REDUCING THE COST OF SAVING AND INVESTMENT

- Sec. 301. Exemption for economic, business, and industrial development companies.*
- Sec. 302. Intrastate closed-end investment company exemption.*
- Sec. 303. Definition of eligible portfolio company.*
- Sec. 304. Definition of business development company.*
- Sec. 305. Acquisition of assets by business development companies.*
- Sec. 306. Capital structure amendments.*
- Sec. 307. Filing of written statements.*
- Sec. 308. Facilitating national securities markets.*
- Sec. 309. Regulatory flexibility.*
- Sec. 310. Analysis of economic effects of regulation.*
- Sec. 311. Privatization of EDGAR.*
- Sec. 312. Improving coordination of supervision.*
- Sec. 313. Increased access to foreign business information.*
- Sec. 314. Short-form registration.*
- Sec. 315. Church employee pension plans.*
- Sec. 316. Promoting global preeminence of American securities markets.*
- Sec. 317. Broker-dealer exemption from State law for certain de minimis transactions.*
- Sec. 318. Studies and reports.*

1 SEC. 2. SEVERABILITY.

2 *If any provision of this Act, an amendment made by*
 3 *this Act, or the application of such provision or amendment*
 4 *to any person or circumstance is held to be unconstitu-*
 5 *tional, the remainder of this Act, the amendments made by*
 6 *this Act, and the application of the provisions of such to*
 7 *any person or circumstance shall not be affected thereby.*

8 ***TITLE I—INVESTMENT ADVISERS***
 9 ***SUPERVISION COORDINATION***
 10 ***ACT***

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

12 *This title may be cited as the “Investment Advisers*
 13 *Supervision Coordination Act”.*

1 **SEC. 102. FUNDING FOR ENHANCED ENFORCEMENT**
 2 **PRIORITY.**

3 *There are authorized to be appropriated to the Securi-*
 4 *ties and Exchange Commission, for the enforcement of the*
 5 *Investment Advisers Act of 1940, not more than*
 6 *\$16,000,000 in each of fiscal years 1997 and 1998.*

7 **SEC. 103. IMPROVED SUPERVISION THROUGH STATE AND**
 8 **FEDERAL COOPERATION.**

9 *(a) STATE AND FEDERAL RESPONSIBILITIES.—The*
 10 *Investment Advisers Act of 1940 (15 U.S.C. 80b–1 et seq.)*
 11 *is amended by inserting after section 203 the following new*
 12 *section:*

13 **“SEC. 203A. STATE AND FEDERAL RESPONSIBILITIES.**

14 **“(a) ADVISERS SUBJECT TO STATE AUTHORITIES.—**

15 **“(1) IN GENERAL.—***No investment adviser that*
 16 *is regulated or required to be regulated as an invest-*
 17 *ment adviser in the State in which it maintains its*
 18 *principal office and place of business shall register*
 19 *under section 203, unless the investment adviser—*

20 *“(A) has assets under management of not*
 21 *less than \$25,000,000, or such higher amount as*
 22 *the Commission may, by rule, deem appropriate*
 23 *in accordance with the purposes of this title; or*

24 *“(B) is an adviser to an investment com-*
 25 *pany registered under title I of this Act, or a*
 26 *company that has elected to be a business devel-*

1 *opment company pursuant to section 54 of title*
 2 *I of this Act.*

3 “(2) *DEFINITION.*—*For purposes of this sub-*
 4 *section, the term ‘assets under management’ means*
 5 *the securities portfolios with respect to which an in-*
 6 *vestment adviser provides continuous and regular su-*
 7 *pervisory or management services.*

8 “(b) *ADVISERS SUBJECT TO COMMISSION*
 9 *AUTHORITY.*—

10 “(1) *IN GENERAL.*—*No law of any State or po-*
 11 *litical subdivision thereof requiring the registration,*
 12 *licensing, or qualification as an investment adviser or*
 13 *supervised person of an investment adviser shall*
 14 *apply to any person—*

15 “(A) *that is registered under section 203 as*
 16 *an investment adviser, or that is a supervised*
 17 *person of such a person; or*

18 “(B) *that is not registered under section*
 19 *203 because that person is excepted from the defi-*
 20 *inition of an investment adviser under section*
 21 *202(a)(11).*

22 “(2) *LIMITATION.*—*Nothing in this subsection*
 23 *shall prohibit the securities commission (or any agen-*
 24 *cy or office performing like functions) of any State*
 25 *from—*

1 “(A) requiring the filing with such commis-
2 sion, agency, or office of any document filed with
3 the Commission by an investment adviser, to-
4 gether with a consent to service of process and
5 requisite fees; or

6 “(B) investigating and bringing enforce-
7 ment actions with respect to fraud or deceit
8 against an investment adviser or person associ-
9 ated with an investment adviser.

10 “(c) *EXEMPTIONS.*—Notwithstanding subsection (a),
11 the Commission, by rule or regulation upon its own motion,
12 or by order upon application, may permit the registration
13 with the Commission of any person or class of persons to
14 which the application of subsection (a) would be unfair, a
15 burden on interstate commerce, or otherwise inconsistent
16 with the purposes of this section.

17 “(d) *FILING DEPOSITORIES.*—The Commission may,
18 by rule, require an investment adviser—

19 “(1) to file with the Commission any fee, appli-
20 cation, report, or notice required by this title or by
21 the rules issued under this title through any entity
22 designated by the Commission for that purpose; and

23 “(2) to pay the reasonable costs associated with
24 such filing.

1 “(e) *STATE ASSISTANCE*.—Upon request of the securi-
2 ties commissioner (or any agency or officer performing like
3 functions) of any State, the Commission may provide such
4 training, technical assistance, or other reasonable assistance
5 in connection with the regulation of investment advisers by
6 the State.”.

7 (b) *ADVISERS NOT ELIGIBLE TO REGISTER*.—Section
8 203 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–
9 3) is amended—

10 (1) in subsection (c), in the matter immediately
11 following paragraph (2), by inserting “and that the
12 applicant is not prohibited from registering as an in-
13 vestment adviser under section 203A” after “satis-
14 fied”; and

15 (2) in subsection (h), in the second sentence—

16 (A) by striking “existence or” and inserting
17 “existence,”; and

18 (B) by inserting “or is prohibited from reg-
19 istering as an investment adviser under section
20 203A,” after “adviser,”.

21 (c) *DEFINITION OF “SUPERVISED PERSON”*.—Section
22 202(a) of the Investment Advisers Act of 1940 (15 U.S.C.
23 80b–2(a)) is amended—

24 (1) by striking “requires—” and inserting “re-
25 quires, the following definitions shall apply:”; and

1 (2) *by adding at the end the following new para-*
2 *graph:*

3 “(25) ‘Supervised person’ means any partner, of-
4 *ficer, director (or other person occupying a similar*
5 *status or performing similar functions), or employee*
6 *of an investment adviser, or other person who pro-*
7 *vides investment advice on behalf of the investment*
8 *adviser and is subject to the supervision and control*
9 *of the investment adviser.”.*

10 (d) *CONFORMING AMENDMENT.—Section 203(a) of the*
11 *Investment Advisers Act of 1940 (15 U.S.C. 80b–3(a)) is*
12 *amended by striking “subsection (b) of this section” and*
13 *inserting “subsection (b) and section 203A”.*

14 **SEC. 104. INTERSTATE COOPERATION.**

15 Section 222 of the Investment Advisers Act of 1940 (15
16 U.S.C. 80b–18a) is amended to read as follows:

17 **“SEC. 222. STATE REGULATION OF INVESTMENT ADVISERS.**

18 “(a) *JURISDICTION OF STATE REGULATORS.—Nothing*
19 *in this title shall affect the jurisdiction of the securities com-*
20 *missioner (or any agency or officer performing like func-*
21 *tions) of any State over any security or any person insofar*
22 *as it does not conflict with the provisions of this title or*
23 *the rules and regulations thereunder.*

24 “(b) *DUAL COMPLIANCE PURPOSES.—No State may*
25 *enforce any law or regulation that would require an invest-*

1 *ment adviser to maintain any books or records in addition*
2 *to those required under the laws of the State in which it*
3 *maintains its principal place of business, if the investment*
4 *adviser—*

5 “(1) *is registered or licensed as such in the State*
6 *in which it maintains its principal place of business;*
7 *and*

8 “(2) *is in compliance with the applicable books*
9 *and records requirements of the State in which it*
10 *maintains its principle place of business.*

11 “(c) *LIMITATION ON CAPITAL AND BOND REQUIRE-*
12 *MENTS.—No State may enforce any law or regulation that*
13 *would require an investment adviser to maintain a higher*
14 *minimum net capital or to post any bond in addition to*
15 *any that is required under the laws of the State in which*
16 *it maintains its principal place of business, if the invest-*
17 *ment adviser—*

18 “(1) *is registered or licensed as such in the State*
19 *in which it maintains its principal place of business;*
20 *and*

21 “(2) *is in compliance with the applicable net*
22 *capital or bonding requirements of the State in which*
23 *it maintains its principal place of business.”.*

1 **SEC. 105. DISQUALIFICATION OF CONVICTED FELONS.**

2 (a) *AMENDMENT.*—Section 203(e) of the Investment
3 Advisers Act of 1940 (15 U.S.C. 80b–3(e)) is amended—

4 (1) by redesignating paragraphs (3) through (7)
5 as paragraphs (4) through (8), respectively; and

6 (2) by inserting after paragraph (2) the follow-
7 ing new paragraph:

8 “(3) has been convicted during the 10-year pe-
9 riod preceding the date of filing of any application
10 for registration, or at any time thereafter, of—

11 “(A) any crime that is punishable by im-
12 prisonment for 1 or more years, and that is not
13 described in paragraph (2); or

14 “(B) a substantially equivalent crime by a
15 foreign court of competent jurisdiction.”.

16 (b) *CONFORMING AMENDMENTS.*—Section 203 of the
17 Investment Advisers Act of 1940 (15 U.S.C. 80b–3) is
18 amended—

19 (1) in subsection (e)(6) (as redesignated by sub-
20 section (a) of this section), by striking “this para-
21 graph (5)” and inserting “this paragraph”;

22 (2) in subsection (f)—

23 (A) by striking “paragraph (1), (4), (5), or
24 (7) of subsection (e) of this section” and insert-
25 ing “paragraph (1), (5), (6), or (8) of subsection
26 (e)”;

1 (B) by striking “paragraph (3)” and insert-
2 ing “paragraph (4)”; and

3 (C) by striking “said subsection” each place
4 that term appears and inserting “subsection”;
5 and

6 (3) in subsection (i)(1)(D), by striking “section
7 203(e)(5) of this title” and inserting “subsection
8 (e)(6)”.

9 **SEC. 106. CONTINUED STATE AUTHORITY.**

10 *Notwithstanding any other provision of this title, or*
11 *any amendment made by this title, a State or Territory*
12 *of the United States, or the District of Columbia may con-*
13 *tinue to collect filing, registration, or licensing fees in*
14 *amounts determined pursuant to State law as in effect on*
15 *the day before the date of enactment of this Act, until other-*
16 *wise specifically provided under a State law enacted on or*
17 *after that date of enactment.*

18 **SEC. 107. EFFECTIVE DATE.**

19 *This title and the amendments made by this title shall*
20 *take effect 180 days after the date of enactment of this Act.*

21 **TITLE II—FACILITATING**
22 **INVESTMENT IN MUTUAL FUNDS**

23 **SEC. 201. SHORT TITLE.**

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

1 **SEC. 202. FUNDS OF FUNDS.**

2 *Section 12(d)(1) of the Investment Company Act of*
3 *1940 (15 U.S.C. 80a-12(d)(1)) is amended—*

4 *(1) in subparagraph (E)(iii)—*

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

8 *(B) by inserting “in the event that such in-*
9 *vestment company is not a registered investment*
10 *company,” after “(bb)”;*

11 *(2) by redesignating subparagraphs (G) and (H)*
12 *as subparagraphs (H) and (I), respectively;*

13 *(3) by striking “this paragraph (1)” each place*
14 *that term appears and inserting “this paragraph”;*

15 *(4) by inserting after subparagraph (F) the fol-*
16 *lowing new subparagraph:*

17 *“(G)(i) This paragraph does not apply to securities*
18 *of a registered open-end investment company or a registered*
19 *unit investment trust (hereafter in this subparagraph re-*
20 *ferred to as the ‘acquired company’) purchased or otherwise*
21 *acquired by a registered open-end investment company or*
22 *a registered unit investment trust (hereafter in this sub-*
23 *paragraph referred to as the ‘acquiring company’) if—*

24 *“(I) the acquired company and the acquiring*
25 *company are part of the same group of investment*
26 *companies;*

1 “(II) the securities of the acquired company, se-
2 curities of other registered open-end investment com-
3 panies and registered unit investment trusts that are
4 part of the same group of investment companies, Gov-
5 ernment securities, and short-term paper are the only
6 investments held by the acquiring company;

7 “(III)(aa) the acquiring company does not pay
8 and is not assessed any charges or fees for distribu-
9 tion-related activities with respect to securities of the
10 acquired company, unless the acquiring company does
11 not charge a sales load or other fees or charges for dis-
12 tribution-related activities; or

13 “(bb) any sales loads and other distribution-re-
14 lated fees charged with respect to securities of the ac-
15 quiring company, when aggregated with any sales
16 load and distribution-related fees paid by the acquir-
17 ing company with respect to securities of the acquired
18 fund, are not excessive under rules adopted pursuant
19 to section 22(b) or section 22(c) by a securities asso-
20 ciation registered under section 15A of the Securities
21 Exchange Act of 1934 or the Commission;

22 “(IV) the acquired company has a policy that
23 prohibits it from acquiring any securities of reg-
24 istered open-end investment companies or registered

1 *unit investment trusts in reliance on this subpara-*
 2 *graph or subparagraph (F); and*

3 *“(V) such acquisition is not in contravention of*
 4 *such rules and regulations as the Commission may*
 5 *from time to time prescribe with respect to acquisi-*
 6 *tions in accordance with this subparagraph, as nec-*
 7 *essary and appropriate for the protection of investors.*

8 *“(ii) For purposes of this subparagraph, the term*
 9 *‘group of investment companies’ means any 2 or more reg-*
 10 *istered investment companies that hold themselves out to in-*
 11 *vestors as related companies for purposes of investment and*
 12 *investor services.”; and*

13 *(5) by adding at the end the following new sub-*
 14 *paragraph:*

15 *“(J) The Commission, by rules and regulations, upon*
 16 *its own motion, or by order upon application, may condi-*
 17 *tionally or unconditionally exempt any person, security, or*
 18 *transaction, or any class or classes of persons, securities,*
 19 *or transactions from any provision of this subsection, if and*
 20 *to the extent that such exemption is consistent with the pub-*
 21 *lic interest and the protection of investors.”.*

22 **SEC. 203. FLEXIBLE REGISTRATION OF SECURITIES.**

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

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

2 (2) by striking “(3) For” and inserting “For”;

3 and

4 (3) by striking “pursuant to this subsection or
5 otherwise”.

6 (b) *REGISTRATION OF INDEFINITE AMOUNT OF SECURITIES.*—Section 24(f) of the Investment Company Act of
7 1940 (15 U.S.C. 80a–24(f)) is amended to read as follows:

9 “(f) *REGISTRATION OF INDEFINITE AMOUNT OF SECURITIES.*—
10 *RITIES.*—

11 “(1) *REGISTRATION OF SECURITIES.*—Upon the
12 effective date of its registration statement, as provided
13 by section 8 of the Securities Act of 1933, a face-
14 amount certificate company, open-end management
15 company, or unit investment trust, shall be deemed to
16 have registered an indefinite amount of securities.

17 “(2) *PAYMENT OF REGISTRATION FEES.*—Not
18 later than 90 days after the end of the fiscal year of
19 an entity referred to in paragraph (1), the entity
20 shall pay a registration fee to the Commission, cal-
21 culated in the manner specified in section 6(b) of the
22 Securities Act of 1933, based on the aggregate sales
23 price for which its securities (including, for purposes
24 of this paragraph, all securities issued pursuant to a
25 dividend reinvestment plan) were sold pursuant to a

1 registration of an indefinite amount of securities
2 under this subsection during the previous fiscal year
3 of the entity, reduced by—

4 “(A) the aggregate redemption or repur-
5 chase price of the securities of the entity during
6 that year; and

7 “(B) the aggregate redemption or repur-
8 chase price of the securities of the entity during
9 any prior fiscal year ending not more than 1
10 year before the date of enactment of the Invest-
11 ment Company Amendments Act of 1996, that
12 were not used previously by the entity to reduce
13 fees payable under this section.

14 “(3) *INTEREST DUE ON LATE PAYMENT.*—An en-
15 tity paying the fee required by this subsection or any
16 portion thereof more than 90 days after the end of the
17 fiscal year of the entity shall pay to the Commission
18 interest on unpaid amounts, compounded daily, at
19 the underpayment rate established by the Secretary of
20 the Treasury pursuant to section 3717 of title 31,
21 United States Code. The payment of interest pursuant
22 to this paragraph shall not preclude the Commission
23 from bringing an action to enforce the requirements
24 of paragraph (2).

1 “(4) *RULEMAKING AUTHORITY.*—*The Commis-*
 2 *sion may adopt rules and regulations to implement*
 3 *this subsection.*”.

4 (c) *EFFECTIVE DATE.*—*The amendments made by this*
 5 *section shall become effective on the earlier of—*

6 (1) *1 year after the date of enactment of this Act;*

7 or

8 (2) *the effective date of final rules or regulations*
 9 *issued in accordance with section 24(f) of the Invest-*
 10 *ment Company Act of 1940, as amended by this sec-*
 11 *tion.*

12 **SEC. 204. FACILITATING USE OF CURRENT INFORMATION**
 13 **IN ADVERTISING.**

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

17 “(g) *ADDITIONAL PROSPECTUSES.*—*In addition to*
 18 *any prospectus permitted or required by section 10(a) of*
 19 *the Securities Act of 1933, the Commission shall permit,*
 20 *by rules or regulations deemed necessary or appropriate in*
 21 *the public interest or for the protection of investors, the use*
 22 *of a prospectus for the purposes of section 5(b)(1) of that*
 23 *Act with respect to securities issued by a registered invest-*
 24 *ment company. Such a prospectus, which may include in-*
 25 *formation the substance of which is not included in the pro-*

1 *spectus specified in section 10(a) of the Securities Act of*
2 *1933, shall be deemed to be permitted by section 10(b) of*
3 *that Act.”.*

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

5 *(a) UNIT INVESTMENT TRUST TREATMENT.—Section*
6 *26 of the Investment Company Act of 1940 (15 U.S.C. 80a–*
7 *26) is amended by adding at the end the following new sub-*
8 *section:*

9 *“(e) EXEMPTION.—*

10 *“(1) IN GENERAL.—Subsection (a) does not*
11 *apply to any registered separate account funding*
12 *variable insurance contracts, or to the sponsoring in-*
13 *surance company and principal underwriter of such*
14 *account.*

15 *“(2) LIMITATION ON SALES.—It shall be unlaw-*
16 *ful for any registered separate account funding vari-*
17 *able insurance contracts, or for the sponsoring insur-*
18 *ance company of such account, to sell any such con-*
19 *tract, unless—*

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

1 pany so represents in the registration statement
2 for the contract; and

3 “(B) the insurance company—

4 “(i) complies with all other applicable
5 provisions of this section, as if it were a
6 trustee or custodian of the registered separate
7 account;

8 “(ii) files with the insurance regulatory
9 authority of the State or territory of
10 the United States or of the District of Columbia
11 in which is located the principal
12 place of business of the insurance company,
13 an annual statement of its financial condition,
14 which most recent statement indicates
15 that the insurance company has a combined
16 capital and surplus, if a stock company, or
17 an unassigned surplus, if a mutual company,
18 of not less than \$1,000,000, or such
19 other amount as the Commission may from
20 time to time prescribe by rule, as necessary
21 or appropriate in the public interest or for
22 the protection of investors; and

23 “(iii) together with its registered separate
24 accounts, is supervised and examined
25 periodically by the insurance authority of

1 *such State, territory, or the District of Co-*
2 *lumbia.*

3 “(3) *FEEES AND CHARGES.*—*For purposes of*
4 *paragraph (2), the fees and charges deducted under*
5 *the contract shall include all fees and charges imposed*
6 *for any purpose and in any manner.*

7 “(4) *REGULATORY AUTHORITY.*—*The Commis-*
8 *sion may issue such rules and regulations to carry*
9 *out paragraph (2)(A) as it determines are necessary*
10 *or appropriate in the public interest or for the protec-*
11 *tion of investors.”.*

12 “(b) *PERIODIC PAYMENT PLAN TREATMENT.*—*Section*
13 *27 of the Investment Company Act of 1940 (15 U.S.C. 80a-*
14 *27) is amended by adding at the end the following new sub-*
15 *section:*

16 “(i)(1) *This section does not apply to any registered*
17 *separate account funding variable insurance contracts, or*
18 *to the sponsoring insurance company and principal under-*
19 *writer of such account, except as provided in paragraph*
20 *(2).*

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—*

25 “(A) *such contract is a redeemable security; and*

1 “(B) the insurance company complies with sec-
2 tion 26(e) and any rules or regulations issued by the
3 Commission under section 26(e).”.

4 **SEC. 206. PROHIBITION ON DECEPTIVE INVESTMENT COM-**
5 **PANY NAMES.**

6 Section 35(d) of the Investment Company Act of 1940
7 (15 U.S.C. 80a-34(d)) is amended to read as follows:

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

15 **SEC. 207. EXCEPTED INVESTMENT COMPANIES.**

16 (a) **AMENDMENTS.**—Section 3(c) of the Investment
17 Company Act of 1940 (15 U.S.C. 80a-3(c)) is amended—

18 (1) in paragraph (1), by inserting after the first
19 sentence the following: “Such issuer shall be deemed
20 to be an investment company for purposes of the limi-
21 tations set forth in subparagraphs (A)(i) and (B)(i)
22 of section 12(d)(1) governing the purchase or other ac-
23 quisition by such issuer of any security issued by any
24 registered investment company and the sale of any se-

1 *curity issued by any registered open-end investment*
2 *company to any such issuer.”;*

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

4 *(A) by inserting after “issuer,” the first*
5 *place that term appears, the following: “and is*
6 *or, but for the exception provided for in this*
7 *paragraph or paragraph (7), would be an invest-*
8 *ment company,”; and*

9 *(B) by striking “unless, as of” and all that*
10 *follows through the end of the subparagraph and*
11 *inserting a period;*

12 *(3) in paragraph (2)—*

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

16 *(B) by inserting “(A)” after “(2)”;* and

17 *(C) by adding at the end the following new*
18 *subparagraph:*

19 *“(B) For purposes of this paragraph—*

20 *“(i) the term ‘market intermediary’ means*
21 *any person that regularly holds itself out as*
22 *being willing contemporaneously to engage in,*
23 *and that is regularly engaged in, the business of*
24 *entering into transactions on both sides of the*

1 *market for a financial contract or one or more*
2 *such financial contracts; and*

3 “(i) the term ‘financial contract’ means
4 any arrangement that—

5 “(I) takes the form of an individually
6 negotiated contract, agreement, or option to
7 buy, sell, lend, swap, or repurchase, or other
8 similar individually negotiated transaction
9 commonly entered into by participants in
10 the financial markets;

11 “(II) is in respect of securities, com-
12 modities, currencies, interest or other rates,
13 other measures of value, or any other finan-
14 cial or economic interest similar in purpose
15 or function to any of the foregoing; and

16 “(III) is entered into in response to a
17 request from a counter party for a
18 quotation, or is otherwise entered into and
19 structured to accommodate the objectives of
20 the counter party to such arrangement.”;
21 and

22 (4) by striking paragraph (7) and inserting the
23 following:

24 “(7)(A) Any issuer, the outstanding securities of
25 which are owned exclusively by persons who, at the

1 *time of acquisition of such securities, are qualified*
2 *purchasers, and which is not making and does not at*
3 *that time propose to make a public offering of such*
4 *securities. Securities that are owned by persons who*
5 *received the securities from a qualified purchaser as*
6 *a gift or bequest, or in a case in which the transfer*
7 *was caused by legal separation, divorce, death, or*
8 *other involuntary event, shall be deemed to be owned*
9 *by a qualified purchaser, subject to such rules, regula-*
10 *tions, and orders as the Commission may prescribe as*
11 *necessary or appropriate in the public interest or for*
12 *the protection of investors.*

13 *“(B) Notwithstanding subparagraph (A), an is-*
14 *ssuer is within the exception provided by this para-*
15 *graph if—*

16 *“(i) in addition to qualified purchasers,*
17 *outstanding securities of that issuer are bene-*
18 *ficially owned by not more than 100 persons who*
19 *are not qualified purchasers, if—*

20 *“(I) such persons acquired such securi-*
21 *ties on or before April 30, 1996; and*

22 *“(II) at the time such securities were*
23 *acquired by such persons, the issuer was ex-*
24 *cepted by paragraph (1); and*

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

3 “(I) such issuer has disclosed to each
4 beneficial owner that future investors will
5 be limited to qualified purchasers, and that
6 ownership in such issuer is no longer lim-
7 ited to not more than 100 persons; and

8 “(II) concurrently with or after such
9 disclosure, such issuer has provided each
10 beneficial owner with a reasonable oppor-
11 tunity to redeem any part or all of their in-
12 terests in the issuer, notwithstanding any
13 agreement to the contrary between the issuer
14 and such persons, for that person’s propor-
15 tionate share of the issuer’s net assets.

16 “(C) Each person that elects to redeem under
17 subparagraph (B)(ii)(II) shall receive an amount in
18 cash equal to that person’s proportionate share of the
19 issuer’s net assets, unless the issuer elects to provide
20 such person with the option of receiving, and such
21 person agrees to receive, all or a portion of such per-
22 son’s share in assets of the issuer. If the issuer elects
23 to provide such persons with such an opportunity,
24 disclosure concerning such opportunity shall be made
25 in the disclosure required by subparagraph (B)(ii)(I).

1 “(D) *An issuer that is excepted under this para-*
2 *graph shall nonetheless be deemed to be an investment*
3 *company for purposes of the limitations set forth in*
4 *subparagraphs (A)(i) and (B)(i) of section 12(d)(1)*
5 *relating to the purchase or other acquisition by such*
6 *issuer of any security issued by any registered invest-*
7 *ment company and the sale of any security issued by*
8 *any registered open-end investment company to any*
9 *such issuer.*

10 “(E) *For purposes of determining compliance*
11 *with this paragraph and paragraph (1), an issuer*
12 *that is otherwise excepted under this paragraph and*
13 *an issuer that is otherwise excepted under paragraph*
14 *(1) shall not be treated by the Commission as being*
15 *a single issuer for purposes of determining whether*
16 *the outstanding securities of the issuer excepted under*
17 *paragraph (1) are beneficially owned by not more*
18 *than 100 persons or whether the outstanding securi-*
19 *ties of the issuer excepted under this paragraph are*
20 *owned by persons that are not qualified purchasers.*
21 *Nothing in this subparagraph shall be construed to es-*
22 *tablish that a person is a bona fide qualified pur-*
23 *chaser for purposes of this paragraph or a bona fide*
24 *beneficial owner for purposes of paragraph (1).”.*

1 (b) *DEFINITION OF QUALIFIED PURCHASER.*—Section
2 *2(a) of the Investment Company Act of 1940 (15 U.S.C.*
3 *80a–2(a)) is amended by adding at the end the following*
4 *new paragraph:*

5 “(51)(A) ‘Qualified purchaser’ means—

6 “(i) any natural person (including any per-
7 son who holds a joint, community property, or
8 other similar shared ownership interest in an is-
9 suer that is excepted under section 3(c)(7) with
10 that person’s qualified purchaser spouse) who
11 owns not less than \$5,000,000 in investments, as
12 defined by the Commission;

13 “(ii) any company that owns not less than
14 \$5,000,000 in investments and that is owned di-
15 rectly or indirectly by or for 2 or more natural
16 persons who are related as siblings or spouse (in-
17 cluding former spouses), or direct lineal descend-
18 ants by birth or adoption, spouses of such per-
19 sons, the estates of such persons, or foundations,
20 charitable organizations, or trusts established by
21 or for the benefit of such persons;

22 “(iii) any trust that is not covered by sub-
23 paragraph (B) and that was not formed for the
24 specific purpose of acquiring the securities of-
25 fered, as to which the trustee or other person au-

1 *thorized to make decisions with respect to the*
2 *trust, and each settlor or other person who has*
3 *contributed assets to the trust, is a person de-*
4 *scribed in clause (i), (ii), or (iv);*

5 *“(iv) any person, acting for its own account*
6 *or the accounts of other qualified purchasers,*
7 *who in the aggregate owns and invests on a dis-*
8 *cretionary basis, not less than \$25,000,000 in in-*
9 *vestments; or*

10 *“(v) any person that the Commission, by*
11 *rule or regulation, has determined does not need*
12 *the protections of this title, after consideration of*
13 *factors such as—*

14 *“(I) a high degree of financial sophis-*
15 *tication, including extensive knowledge of*
16 *and experience in financial matters;*

17 *“(II) a substantial amount of assets*
18 *owned or under management;*

19 *“(III) relationship with an issuer; and*

20 *“(IV) such other factors as the Com-*
21 *mission may determine to be consistent*
22 *with the purposes of this paragraph.*

23 *“(B) The Commission may adopt such rules and*
24 *regulations applicable to the persons and trusts speci-*
25 *fied in clauses (i) through (v) of subparagraph (A) as*

1 *it determines are necessary or appropriate in the*
2 *public interest or for the protection of investors.*

3 “(C) *The term ‘qualified purchaser’ does not in-*
4 *clude a company that, but for the exceptions provided*
5 *for in paragraph (1) or (7) of section 3(c), would be*
6 *an investment company (hereafter in this paragraph*
7 *referred to as an ‘excepted investment company’), un-*
8 *less all beneficial owners of its outstanding securities*
9 *(other than short-term paper), determined in accord-*
10 *ance with section 3(c)(1)(A), that acquired such secu-*
11 *rities on or before April 30, 1996 (hereafter in this*
12 *paragraph referred to as ‘pre-amendment beneficial*
13 *owners’), and all pre-amendment beneficial owners of*
14 *the outstanding securities (other than short-term*
15 *paper) of any excepted investment company that, di-*
16 *rectly or indirectly, owns any outstanding securities*
17 *of such excepted investment company, have consented*
18 *to its treatment as a qualified purchaser. Unanimous*
19 *consent of all trustees, directors, or general partners*
20 *of a company or trust referred to in clause (ii) or*
21 *(iii) of subparagraph (A) shall constitute consent for*
22 *purposes of this subparagraph.”.*

23 *(c) CONFORMING AMENDMENTS.—Section 3(a) of the*
24 *Investment Company Act of 1940 (15 U.S.C. 80a-3(a)) is*
25 *amended—*

1 (1) *by striking “(1)” and inserting “(A)”;*
 2 (2) *by striking “(2)” and inserting “(B)”;*
 3 (3) *by striking “(3)” and inserting “(C)”;*
 4 (4) *by inserting “(1)” after “(a)”;*
 5 (5) *by striking “As used” and inserting “(2) As*
 6 *used”;* and

7 (6) *in paragraph (2)(C), as designated by para-*
 8 *graph (5) of this subsection—*

9 (A) *by striking “which are” and inserting*
 10 *the following: “which (i) are”;* and

11 (B) *by inserting before the period at the*
 12 *end, the following: “, and (ii) are not relying on*
 13 *the exception from the definition of investment*
 14 *company in paragraph (1) or (7) of subsection*
 15 *(c)”.*

16 (d) *RULEMAKING REQUIRED.—*

17 (1) *IMPLEMENTATION OF SECTION 3(c)(1)(B).—*
 18 *Not later than 1 year after the date of enactment of*
 19 *this Act, the Commission shall prescribe rules to im-*
 20 *plement 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) *IDENTIFICATION OF INVESTMENTS.—Not*
 24 *later than 180 days after the date of enactment of this*
 25 *Act, the Commission shall prescribe rules defining the*

1 *term, or otherwise identifying, “investments” for pur-*
 2 *poses of section 2(a)(51) of the Investment Company*
 3 *Act of 1940, as added by this Act.*

4 (3) *EMPLOYEE EXCEPTION.*—*Not later than 1*
 5 *year after the date of enactment of this Act, the Com-*
 6 *mission shall prescribe rules pursuant to its authority*
 7 *under section 6 of the Investment Company Act of*
 8 *1940 to permit the ownership of securities by knowl-*
 9 *edgeable employees of the issuer of the securities or*
 10 *an affiliated person without loss of the exception of*
 11 *the issuer under paragraph (1) or (7) of section 3(c)*
 12 *of that Act from treatment as an investment company*
 13 *under that Act.*

14 (e) *EFFECTIVE DATE.*—*The amendments made by this*
 15 *section shall take effect on the earlier of—*

16 (1) *180 days after the date of enactment of this*
 17 *Act; or*

18 (2) *the date on which the rulemaking required*
 19 *under subsection (d)(2) is completed.*

20 **SEC. 208. PERFORMANCE FEES EXEMPTIONS.**

21 *Section 205 of the Investment Advisers Act of 1940 (15*
 22 *U.S.C. 80b–5) is amended—*

23 (1) *in subsection (b)—*

24 (A) *in paragraph (2), by striking “or” at*
 25 *the end;*

1 (B) in paragraph (3), by striking the period
2 at the end and inserting a semicolon; and

3 (C) by adding at the end the following new
4 paragraphs:

5 “(4) apply to an investment advisory contract
6 with a company excepted from the definition of an
7 investment company under section 3(c)(7) of title I of
8 this Act; or

9 “(5) apply to an investment advisory contract
10 with a person who is not a resident of the United
11 States.”; and

12 (2) by adding at the end the following new sub-
13 section:

14 “(e) The Commission, by rule or regulation, upon its
15 own motion, or by order upon application, may condi-
16 tionally or unconditionally exempt any person or trans-
17 action, or any class or classes of persons or transactions,
18 from subsection (a)(1), if and to the extent that the exemp-
19 tion relates to an investment advisory contract with any
20 person that the Commission determines does not need the
21 protections of subsection (a)(1), on the basis of such factors
22 as financial sophistication, net worth, knowledge of and ex-
23 perience in financial matters, amount of assets under man-
24 agement, relationship with a registered investment adviser,

1 *and such other factors as the Commission determines are*
2 *consistent with this section.”.*

3 **SEC. 209. REPORTS TO THE COMMISSION AND SHAREHOLD-**
4 **ERS.**

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

7 *(1) in subsection (b), by striking paragraph (1)*
8 *and inserting the following:*

9 *“(1) such information, documents, and reports*
10 *(other than financial statements), as the Commission*
11 *may require to keep reasonably current the informa-*
12 *tion and documents contained in the registration*
13 *statement of such company filed under this title;”;*

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

16 *(3) by inserting after subsection (b) the following*
17 *new subsection:*

18 *“(c)(1) The Commission shall take such action as it*
19 *deems necessary or appropriate, consistent with the public*
20 *interest and the protection of investors, to avoid unneces-*
21 *sary reporting by, and minimize the compliance burdens*
22 *on, registered investment companies and their affiliated*
23 *persons in exercising its authority—*

24 *“(A) under subsection (f); and*

1 “(B) under subsection (b)(1), if the Commission
2 requires the filing of information, documents, and re-
3 ports under that subsection on a basis more frequently
4 than semiannually.

5 “(2) Action taken by the Commission under paragraph
6 (1) shall include considering, and requesting public com-
7 ment on—

8 “(A) feasible alternatives that minimize the re-
9 porting burdens on registered investment companies;
10 and

11 “(B) the utility of such information, documents,
12 and reports to the Commission in relation to the costs
13 to registered investment companies and their affili-
14 ated persons of providing such information, docu-
15 ments, and reports.”;

16 (4) by inserting after subsection (e) (as redesign-
17 ated by paragraph (2) of this section), the following
18 new subsection:

19 “(f) The Commission may, by rule, require that semi-
20 annual reports containing the information set forth in sub-
21 section (e) include such other information as the Commis-
22 sion deems necessary or appropriate in the public interest
23 or for the protection of investors.”; and

1 (5) in subsection (g) (as redesignated by para-
2 graph (2) of this section), by striking “subsections (a)
3 and (d)” and inserting “subsections (a) and (e)”.

4 **SEC. 210. BOOKS, RECORDS, AND INSPECTIONS.**

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

7 (1) by striking subsections (a) and (b) and in-
8 serting the following:

9 “(a)(1) Each registered investment company, and each
10 underwriter, broker, dealer, or investment adviser that is
11 a majority-owned subsidiary of such a company, shall
12 maintain and preserve such records (as defined in section
13 3(a)(37) of the Securities Exchange Act of 1934) for such
14 period or periods as the Commission, by rules and regula-
15 tions, may prescribe as necessary or appropriate in the
16 public interest or for the protection of investors. Each in-
17 vestment adviser that is not a majority-owned subsidiary
18 of, and each depositor of any registered investment com-
19 pany, and each principal underwriter for any registered
20 investment company other than a closed-end company, shall
21 maintain and preserve for such period or periods as the
22 Commission shall prescribe by rules and regulations, such
23 records as are necessary or appropriate to record such per-
24 son’s transactions with such registered company.

1 “(2) *In exercising its authority under this subsection,*
2 *the Commission shall take such steps as it deems necessary*
3 *or appropriate, consistent with the public interest and for*
4 *the protection of investors, to avoid unnecessary record-*
5 *keeping by, and minimize the compliance burden on, per-*
6 *sons required to maintain records under this subsection*
7 *(hereafter in this section referred to as ‘subject persons’).*
8 *Such steps shall include considering, and requesting public*
9 *comment on—*

10 “(A) *feasible alternatives that minimize the rec-*
11 *ordkeeping burdens on subject persons;*

12 “(B) *the necessity of such records in view of the*
13 *public benefits derived from the independent scrutiny*
14 *of such records through Commission examination;*

15 “(C) *the costs associated with maintaining the*
16 *information that would be required to be reflected in*
17 *such records; and*

18 “(D) *the effects that a proposed recordkeeping re-*
19 *quirement would have on internal compliance policies*
20 *and procedures.*

21 “(b) *All records required to be maintained and pre-*
22 *served in accordance with subsection (a) shall be subject at*
23 *any time and from time to time to such reasonable periodic,*
24 *special, and other examinations by the Commission, or any*
25 *member or representative thereof, as the Commission may*

1 *prescribe. For purposes of such examinations, any subject*
2 *person shall make available to the Commission or its rep-*
3 *resentatives any copies or extracts from such records as may*
4 *be prepared without undue effort, expense, or delay as the*
5 *Commission or its representatives may reasonably request.*
6 *The Commission shall exercise its authority under this sub-*
7 *section with due regard for the benefits of internal compli-*
8 *ance policies and procedures and the effective implementa-*
9 *tion and operation thereof.”;*

10 *(2) by redesignating subsections (c) and (d) as*
11 *subsections (e) and (f), respectively; and*

12 *(3) by inserting after subsection (b) the following*
13 *new subsections:*

14 *“(c) Notwithstanding any other provision of law, the*
15 *Commission shall not be compelled to disclose any internal*
16 *compliance or audit records, or information contained*
17 *therein, provided to the Commission under this section.*
18 *Nothing in this subsection shall authorize the Commission*
19 *to withhold information from the Congress or prevent the*
20 *Commission from complying with a request for information*
21 *from any other Federal department or agency requesting*
22 *the information for purposes within the scope of the juris-*
23 *isdiction of that department or agency, or complying with*
24 *an order of a court of the United States in an action*
25 *brought by the United States or the Commission. For pur-*

1 *poses of section 552 of title 5, United States Code, this sec-*
 2 *tion shall be considered a statute described in subsection*
 3 *(b)(3)(B) of such section 552.*

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

5 *“(1) the term ‘internal compliance policies and*
 6 *procedures’ means policies and procedures designed*
 7 *by subject persons to promote compliance with the*
 8 *Federal securities laws; and*

9 *“(2) the term ‘internal compliance and audit*
 10 *record’ means any record prepared by a subject per-*
 11 *son in accordance with internal compliance policies*
 12 *and procedures.”.*

13 ***TITLE III—REDUCING THE COST***
 14 ***OF SAVING AND INVESTMENT***

15 ***SEC. 301. EXEMPTION FOR ECONOMIC, BUSINESS, AND IN-***
 16 ***DUSTRIAL DEVELOPMENT COMPANIES.***

17 *Section 6(a) of the Investment Company Act of 1940*
 18 *(15 U.S.C. 80a–6(a)) is amended by adding at the end the*
 19 *following new paragraph:*

20 *“(5)(A) Any company that is not engaged in the*
 21 *business of issuing redeemable securities, the oper-*
 22 *ations of which are subject to regulation by the State*
 23 *in which the company is organized under a statute*
 24 *governing entities that provide financial or manage-*

1 *rial assistance to enterprises doing business, or pro-*
2 *posing to do business, in that State if—*

3 *“(i) the organizational documents of the*
4 *company state that the activities of the company*
5 *are limited to the promotion of economic, busi-*
6 *ness, or industrial development in the State*
7 *through the provision of financial or managerial*
8 *assistance to enterprises doing business, or pro-*
9 *posing to do business, in that State, and such*
10 *other activities that are incidental or necessary*
11 *to carry out that purpose;*

12 *“(ii) immediately following each sale of the*
13 *securities of the company by the company or any*
14 *underwriter for the company, not less than 80*
15 *percent of the securities of the company being of-*
16 *fered in such sale, on a class-by-class basis, are*
17 *held by persons who reside or who have a sub-*
18 *stantial business presence in that State;*

19 *“(iii) the securities of the company are sold,*
20 *or proposed to be sold, by the company or by any*
21 *underwriter for the company, solely to accredited*
22 *investors, as that term is defined in section 2(15)*
23 *of the Securities Act of 1933, or to such other*
24 *persons that the Commission, as necessary or ap-*
25 *propriate in the public interest and consistent*

1 with the protection of investors, may permit by
2 rule, regulation, or order; and

3 “(iv) the company does not purchase any
4 security issued by an investment company or by
5 any company that would be an investment com-
6 pany except for the exclusions from the definition
7 of the term ‘investment company’ under para-
8 graph (1) or (7) of section 3(c), other than—

9 “(I) any debt security that is rated in-
10 vestment grade by not less than 1 nation-
11 ally recognized statistical rating organiza-
12 tion; or

13 “(II) any security issued by a reg-
14 istered open-end investment company that
15 is required by its investment policies to in-
16 vest not less than 65 percent of its total as-
17 sets in securities described in subclause (I)
18 or securities that are determined by such
19 registered open-end investment company to
20 be comparable in quality to securities de-
21 scribed in subclause (I).

22 “(B) Notwithstanding the exemption provided by
23 this paragraph, section 9 (and, to the extent necessary
24 to enforce section 9, sections 38 through 51) shall
25 apply to a company described in this paragraph as

1 *if the company were an investment company reg-*
2 *istered under this title.*

3 *“(C) Any company proposing to rely on the ex-*
4 *emption provided by this paragraph shall file with*
5 *the Commission a notification stating that the com-*
6 *pany intends to do so, in such form and manner as*
7 *the Commission may prescribe by rule.*

8 *“(D) Any company meeting the requirements of*
9 *this paragraph may rely on the exemption provided*
10 *by this paragraph upon filing with the Commission*
11 *the notification required by subparagraph (C), until*
12 *such time as the Commission determines by order that*
13 *such reliance is not in the public interest or is not*
14 *consistent with the protection of investors.*

15 *“(E) The exemption provided by this paragraph*
16 *may be subject to such additional terms and condi-*
17 *tions as the Commission may by rule, regulation, or*
18 *order determine are necessary or appropriate in the*
19 *public interest or for the protection of investors.”.*

20 **SEC. 302. INTRASTATE CLOSED-END INVESTMENT COM-**
21 **PANY EXEMPTION.**

22 *Section 6(d)(1) of the Investment Company Act of*
23 *1940 (15 U.S.C. 80a-6(d)(1)) is amended by striking*
24 *“\$100,000” and inserting “\$10,000,000, or such other*

1 *amount as the Commission may set by rule, regulation, or*
2 *order”.*

3 **SEC. 303. DEFINITION OF ELIGIBLE PORTFOLIO COMPANY.**

4 *Section 2(a)(46)(C) of the Investment Company Act of*
5 *1940 (15 U.S.C. 80a-2(a)(46)(C)) is amended—*

6 *(1) in clause (ii), by striking “or” at the end;*

7 *(2) by redesignating clause (iii) as clause (iv);*

8 *and*

9 *(3) by inserting after clause (i) the following:*

10 *“(iii) it has total assets of not more*
11 *than \$4,000,000, and capital and surplus*
12 *(shareholders’ equity less retained earnings)*
13 *of not less than \$2,000,000, except that the*
14 *Commission may adjust such amounts by*
15 *rule, regulation, or order to reflect changes*
16 *in 1 or more generally accepted indices or*
17 *other indicators for small businesses; or”.*

18 **SEC. 304. DEFINITION OF BUSINESS DEVELOPMENT COM-**
19 **PANY.**

20 *Section 2(a)(48)(B) of the Investment Company Act*
21 *of 1940 (15 U.S.C. 80a-2(a)(48)(B)) is amended by adding*
22 *at the end the following: “provided further that a business*
23 *development company need not make available significant*
24 *managerial assistance with respect to any company de-*
25 *scribed in paragraph (46)(C)(iii), or with respect to any*

1 *other company that meets such criteria as the Commission*
2 *may by rule, regulation, or order permit, as consistent with*
3 *the public interest, the protection of investors, and the pur-*
4 *poses of this title; and”.*

5 **SEC. 305. ACQUISITION OF ASSETS BY BUSINESS DEVELOP-**
6 **MENT COMPANIES.**

7 *Section 55(a)(1)(A) of the Investment Company Act*
8 *of 1940 (15 U.S.C. 80a-54(a)(1)(A)) is amended—*

9 *(1) by striking “or from any person” and insert-*
10 *ing “from any person”; and*

11 *(2) by inserting before the semicolon “, or from*
12 *any other person, subject to such rules and regula-*
13 *tions as the Commission may prescribe as necessary*
14 *or appropriate in the public interest or for the protec-*
15 *tion of investors”.*

16 **SEC. 306. CAPITAL STRUCTURE AMENDMENTS.**

17 *Section 61(a) of the Investment Company Act of 1940*
18 *(15 U.S.C. 80a-60(a)) is amended—*

19 *(1) in paragraph (2), by striking “if such busi-*
20 *ness development company” and all that follows*
21 *through the end of the paragraph and inserting a pe-*
22 *riod;*

23 *(2) in paragraph (3)(A)—*

24 *(A) by striking “senior securities represent-*
25 *ing indebtedness accompanied by”;*

1 (B) by inserting “accompanied by securi-
2 ties,” after “of such company,”; and

3 (C) in clause (ii), by striking “senior”; and
4 (3) in paragraph (3)—

5 (A) in subparagraph (A), by striking “and”
6 at the end;

7 (B) in subparagraph (B), by striking the
8 period at the end of clause (iv) and inserting “;
9 and”; and

10 (C) by inserting immediately after subpara-
11 graph (B) the following new subparagraph:

12 “(C) a business development company may
13 issue warrants, options, or rights to subscribe to,
14 convert to, or purchase voting securities not ac-
15 companied by securities, if—

16 “(i) such warrants, options, or rights
17 satisfy the conditions in clauses (i) and
18 (iii) of subparagraph (A); and

19 “(ii) the proposal to issue such war-
20 rants, options, or rights is authorized by the
21 shareholders or partners of such business de-
22 velopment company, and such issuance is
23 approved by the required majority (as de-
24 fined in section 57(o)) of the directors of or
25 general partners in such company on the

1 *basis that such issuance is in the best inter-*
2 *ests of the company and its shareholders or*
3 *partners.”.*

4 **SEC. 307. FILING OF WRITTEN STATEMENTS.**

5 *Section 64(b)(1) of the Investment Company Act of*
6 *1940 (15 U.S.C. 80a-63(b)(1)) is amended by inserting*
7 *“and capital structure” after “portfolio”.*

8 **SEC. 308. FACILITATING NATIONAL SECURITIES MARKETS.**

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

11 **“SEC. 18. EXEMPTION FROM STATE CONTROL OF**
12 **SECURITIES OFFERINGS.**

13 *“(a) EXEMPTION FROM STATE LAW FOR REGISTERED*
14 *SECURITIES.—Except with respect to offerings described in*
15 *subsection (b) and as otherwise specifically provided in this*
16 *section, no law, rule, regulation, order, or other administra-*
17 *tive action of any State or Territory of the United States,*
18 *or the District of Columbia, or any political subdivision*
19 *thereof—*

20 *“(1) requiring, or with respect to, registration or*
21 *qualification of securities or securities transactions*
22 *shall directly or indirectly apply to an offering sub-*
23 *ject to a registration statement filed pursuant to this*
24 *title;*

1 “(2) shall directly or indirectly prohibit, limit,
2 or impose conditions upon the use of any offering doc-
3 ument, including any prospectus contained in a reg-
4 istration statement that has been filed with the Com-
5 mission; or

6 “(3) shall directly or indirectly prohibit, limit,
7 or impose conditions upon the offer or sale of any se-
8 curity registered with the Commission under this title
9 based on the merits of such offering or issuer.

10 “(b) *SPECIAL RULES FOR CERTAIN OFFERINGS.*—*Ex-*
11 *cept with respect to a security of an investment company*
12 *that is registered under the Investment Company Act of*
13 *1940, the provisions of subsection (a) shall not apply to—*

14 “(1) an offering—

15 “(A) by an issuer that is a blank check com-
16 pany, as defined in section 7(b), or a direct par-
17 ticipation investment program;

18 “(B) of penny stock; or

19 “(C) giving effect to a limited partnership
20 rollup transaction;

21 “(2) an offering of a security, if a person associ-
22 ated with the offering is subject to a statutory dis-
23 qualification, as defined in section 3(a)(39) of the *Se-*
24 curities Exchange Act of 1934, or any substantially
25 equivalent State law; or

1 “(3) an offering of a security that—

2 “(A) is not listed on the New York Stock
3 Exchange, the American Stock Exchange, or the
4 National Market Segment of the National Asso-
5 ciation of Securities Dealers Automated
6 Quotation System Stock Market;

7 “(B) is not listed, authorized for listing, or
8 authorized for trading on a national securities
9 exchange (or tier or segment thereof) that has
10 standards for listing or for trading authorization
11 that the Commission determines, by rule (on its
12 own initiative or on the basis of a petition), are
13 substantially similar to the standards for listing
14 or for trading authorization that are applicable
15 to securities described in subparagraph (A); or

16 “(C) will not be listed or authorized for
17 trading as described in subparagraph (A) or (B)
18 upon completion of the transaction.

19 “(c) *EXEMPTION FROM STATE LAW FOR TRANS-*
20 *ACTIONS IN SECURITIES WITH QUALIFIED PURCHASERS.—*
21 *Notwithstanding subsection (b), subsection (a) shall apply*
22 *with respect to offers and sales to qualified purchasers, as*
23 *defined by the Commission.*

24 “(d) *PRESERVATION OF FILING REQUIREMENTS.—*

1 “(1) *IN GENERAL.*—Nothing in this section shall
2 *prohibit the securities commission (or any agency or*
3 *office performing like functions) of any State or Ter-*
4 *ritory of the United States, or the District of Colum-*
5 *bia, from requiring the filing of any documents filed*
6 *with the Commission pursuant to this title solely for*
7 *notice purposes, along with a consent to service of*
8 *process and requisite fee, except that no such filing,*
9 *consent, or fee may be required with respect to securi-*
10 *ties, or transactions relating to securities that are of*
11 *the same class, or are senior to such a class, as securi-*
12 *ties described in subsection (b)(3).*

13 “(2) *CONTINUED STATE AUTHORITY.*—Notwith-
14 *standing paragraph (1), a State or Territory of the*
15 *United States, or the District of Columbia may con-*
16 *tinue to collect filing or registration fees with respect*
17 *to securities or securities transactions in amounts de-*
18 *termined pursuant to State law as in effect on the*
19 *day before the date of enactment of the Securities In-*
20 *vestment Promotion Act of 1996, until otherwise spe-*
21 *cifically provided under a State law enacted on or*
22 *after that date of enactment.*

23 “(e) *PRESERVATION OF STATE AUTHORITY.*—Nothing
24 *in this section shall affect the jurisdiction of the securities*
25 *commission (or any agency or office performing like func-*

1 tions) of any State or Territory of the United States, or
 2 the District of Columbia pursuant to the laws of such State
 3 or Territory, with respect to any fraud or broker-dealer con-
 4 duct in connection with securities or securities trans-
 5 actions.”.

6 **SEC. 309. REGULATORY FLEXIBILITY.**

7 (a) UNDER THE SECURITIES ACT OF 1933.—Title I
 8 of the Securities Act of 1933 (15 U.S.C. 77a et seq.) is
 9 amended by adding at the end the following new section:

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

11 “The Commission, by rule or regulation, may condi-
 12 tionally or unconditionally exempt any person, security, or
 13 transaction, or any class or classes of persons, securities,
 14 or transactions, from any provision or provisions of this
 15 title or of any rule or regulation issued under this title,
 16 to the extent that such exemption is necessary or appro-
 17 priate in the public interest, and is consistent with the pro-
 18 tection of investors.”.

19 (b) UNDER THE SECURITIES EXCHANGE ACT OF
 20 1934.—Title I of the Securities Exchange Act of 1934 (15
 21 U.S.C. 78a et seq.) is amended by adding at the end the
 22 following new section:

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

24 “(a) IN GENERAL.—Except as provided in subsection
 25 (b), the Commission, by rule, regulation, or order, may con-

1 *ditionally or unconditionally exempt any person, security,*
 2 *or transaction, or any class or classes of persons, securities,*
 3 *or transactions, from any provision or provisions of this*
 4 *title or of any rule or regulation issued under this title,*
 5 *to the extent that such exemption is necessary or appro-*
 6 *priate in the public interest, and is consistent with the pro-*
 7 *tection of investors. The Commission shall, by rule or regu-*
 8 *lation, determine the procedures under which an exemptive*
 9 *order under this section shall be granted and may, in its*
 10 *sole discretion, decline to entertain any application for an*
 11 *order of exemption under this section.*

12 “(b) *LIMITATION.—The Commission may not, under*
 13 *this section, exempt any person, security, or transaction,*
 14 *or any class or classes of persons, securities, or transactions*
 15 *from section 15C or the rules or regulations issued there-*
 16 *under or (for purposes of section 15C and the rules and*
 17 *regulations issued thereunder) from the definitions in para-*
 18 *graphs (42), (43), (44), or (45) of section 3(a).”.*

19 **SEC. 310. ANALYSIS OF ECONOMIC EFFECTS OF REGULA-**
 20 **TION.**

21 (a) *AUTHORIZATION OF APPROPRIATIONS.—There are*
 22 *authorized to be appropriated to carry out the Economic*
 23 *Analysis Program, including funding for the Office of Eco-*
 24 *nomics Analysis of the Securities and Exchange Commis-*

1 sion, \$6,000,000 for fiscal year 1997, and \$6,000,000 for
2 fiscal year 1998.

3 (b) ANALYSIS OF ECONOMIC EFFECTS OF REGULA-
4 TION.—

5 (1) IN GENERAL.—The Chief Economist of the
6 Commission shall prepare a report on each proposed
7 regulation of the Commission. Such report shall be
8 provided to each Commissioner and shall be published
9 in the Federal Register before any such regulation of
10 the Commission may become effective.

11 (2) REPORT CONTENTS.—The report required by
12 this subsection shall include—

13 (A) an analysis of the likely effects of the
14 proposed regulation on the economy of the Unit-
15 ed States, and particularly upon the securities
16 markets and the participants in those markets;
17 and

18 (B) the estimated impact of the proposed
19 regulation upon economic and market behavior,
20 including any impact on market liquidity, the
21 costs of investment, and the financial risks of in-
22 vestment.

23 **SEC. 311. PRIVATIZATION OF EDGAR.**

24 Not later than 180 days after the date of enactment
25 of this Act, the Commission shall submit to the Congress

1 *a report on the Electronic Data Gathering Analysis and*
2 *Retrieval System consisting of the Commission's plan for*
3 *promoting competition and innovation of the system*
4 *through privatization of all or any part of the system. Such*
5 *plan shall include such recommendations for action as may*
6 *be necessary to implement the plan.*

7 **SEC. 312. IMPROVING COORDINATION OF SUPERVISION.**

8 *Section 17 of the Securities Exchange Act of 1934 (15*
9 *U.S.C. 78q) is amended by adding at the end the following*
10 *new subsection:*

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

12 *“(1) OBJECTIVE.—The Commission and the ex-*
13 *amining authorities shall promote effective and effi-*
14 *cient oversight of the activities of brokers and dealers,*
15 *avoiding redundancy, while maintaining the highest*
16 *level of examination and oversight quality.*

17 *“(2) ELIMINATION OF DUPLICATION.—The Com-*
18 *mission and the examining authorities, through co-*
19 *operation and coordination of examination and over-*
20 *sight activities, shall eliminate any unnecessary and*
21 *burdensome duplication in the examination process.*

22 *“(3) COORDINATION OF EXAMINATIONS.—The*
23 *Commission and the examining authorities shall*
24 *share such information, including reports of examina-*
25 *tions, customer complaint information, and other*

1 *nonpublic regulatory information, as appropriate to*
2 *foster a coordinated approach to regulatory oversight*
3 *of brokers and dealers that are subject to examination*
4 *by more than one examining authority.*

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

9 “(5) *CONFIDENTIALITY.*—

10 “(A) *IN GENERAL.*—*The provisions of sec-*
11 *tion 24 shall apply to the sharing of information*
12 *in accordance with this subsection. The Commis-*
13 *sion shall take appropriate action under section*
14 *24(c) to assure that such information is not in-*
15 *appropriately disclosed.*

16 “(B) *APPROPRIATE DISCLOSURE NOT PRO-*
17 *HIBITED.*—*Nothing in this paragraph shall au-*
18 *thorize the Commission or any examining au-*
19 *thority to withhold information from the Con-*
20 *gress, or prevent the Commission or any examin-*
21 *ing authority from complying with a request for*
22 *information from any other Federal department*
23 *or agency requesting the information for pur-*
24 *poses within the scope of its jurisdiction, or com-*
25 *plying with an order of a court of the United*

1 *States in an action brought by the United States*
2 *or the Commission.*

3 “(6) *DEFINITION.*—*For purposes of this sub-*
4 *section, the term ‘examining authority’ means the*
5 *self-regulatory organizations registered with the Com-*
6 *mission under this title (other than registered clearing*
7 *agencies) with the authority to examine, inspect, and*
8 *otherwise oversee the activities of a registered broker*
9 *or dealer.’”.*

10 **SEC. 313. INCREASED ACCESS TO FOREIGN BUSINESS IN-**
11 **FORMATION.**

12 *(a) THE SECURITIES ACT OF 1993.*—*Section 2(3) of*
13 *the Securities Act of 1933 (15 U.S.C. 77b(3)) is amended*
14 *in the third sentence—*

15 *(1) by striking “not include preliminary” and*
16 *inserting “not include (A) preliminary”; and*

17 *(2) by inserting before the period “; or (B) solely*
18 *for purposes of section 5, press conferences held out-*
19 *side of the United States, public meetings with issuer*
20 *representatives conducted outside of the United States,*
21 *or press related materials released outside of the Unit-*
22 *ed States in which an offshore offering is discussed,*
23 *irrespective of whether journalists from the United*
24 *States or journalists for publications (including on-*
25 *line services) with circulation in the United States at-*

1 *tend such press conferences or meetings or receive such*
2 *press related materials.”.*

3 **(b) THE SECURITIES EXCHANGE ACT OF 1934.**—*Sec-*
4 *tion 14 of the Securities Exchange Act of 1934 (15 U.S.C.*
5 *78n) is amended by adding at the end the following new*
6 *subsection:*

7 **“(i) TREATMENT OF PRESS RELATED MATERIALS.**—

8 **“(1) IN GENERAL.**—*Any person making a tender*
9 *offer for, or a request or invitation for tenders of, the*
10 *securities of a foreign issuer may grant journalists*
11 *from the United States or journalists for publications*
12 *(including on-line services) with circulation in the*
13 *United States access to press conferences occurring*
14 *outside of the United States, meetings with its rep-*
15 *resentatives conducted outside of the United States, or*
16 *press related materials released outside of the United*
17 *States in which an offshore tender offer is discussed,*
18 *without being deemed to have used the jurisdictional*
19 *means specified in subsection (d)(1) or becoming sub-*
20 *ject to any regulations promulgated by the Commis-*
21 *sion, pursuant to subsection (e) of this section or sec-*
22 *tion 13(e), or otherwise, that relate to tender offers or*
23 *requests or invitations for tenders.*

1 “(2) *DEFINITION.*—For purposes of this sub-
 2 section, the term ‘foreign issuer’ means any corpora-
 3 tion or other organization—

4 “(A) that is incorporated or organized
 5 under the laws of any foreign country; or

6 “(B) the principal place of business of
 7 which is located in a foreign country.”.

8 **SEC. 314. SHORT-FORM REGISTRATION.**

9 (a) *IN GENERAL.*—Not later than 180 days after the
 10 date of enactment of this Act, the Commission shall amend
 11 Form S-3 (17 C.F.R. 239.13, relating to registration under
 12 the Securities Act of 1933, of securities of certain issuers
 13 offered pursuant to certain types of transactions) to allow
 14 such form, or its equivalent, to be used for primary offerings
 15 by a registrant if—

16 (1) the outstanding stock of the registrant held
 17 by nonaffiliates of the registrant has an adequate ag-
 18 gregate market value, as determined by the Commis-
 19 sion; and

20 (2) such registrant otherwise meets the eligibility
 21 requirements for registration using such form, or its
 22 equivalent.

23 (b) *ADJUSTMENTS.*—Any adjustment to the adequate
 24 aggregate market value threshold referred to in subsection
 25 (a)(1) by the Commission following the date of enactment

1 *of this Act shall apply equally to voting and nonvoting com-*
 2 *mon shares and such other securities as the Commission*
 3 *shall establish.*

4 (c) *DEFINITION.—For purposes of this section, the*
 5 *term “stock” includes voting and nonvoting common shares,*
 6 *and such other securities as the Commission shall establish.*

7 **SEC. 315. CHURCH EMPLOYEE PENSION PLANS.**

8 (a) *AMENDMENT TO THE INVESTMENT COMPANY ACT*
 9 *OF 1940.—Section 3(c) of the Investment Company Act of*
 10 *1940 (15 U.S.C. 80a–3(c)) is amended by adding at the*
 11 *end the following new paragraph:*

12 “(14) *Any church plan described in section*
 13 *414(e) of the Internal Revenue Code of 1986, if, under*
 14 *any such plan, no part of the assets may be used for,*
 15 *or diverted to, purposes other than the exclusive bene-*
 16 *fit of plan participants or beneficiaries, or any com-*
 17 *pany or account that is—*

18 “(A) *established by a person that is eligible*
 19 *to establish and maintain such a plan under sec-*
 20 *tion 414(e) of the Internal Revenue Code of 1986;*
 21 *and*

22 “(B) *substantially all of the activities of*
 23 *which consist of—*

24 “(i) *managing or holding assets con-*
 25 *tributed to such church plans or other assets*

1 *which are permitted to be commingled with*
 2 *the assets of church plans under the Inter-*
 3 *nal Revenue Code of 1986; or*

4 “(i) administering or providing bene-
 5 fits pursuant to church plans.”.

6 (b) *AMENDMENT TO THE SECURITIES ACT OF 1933.—*
 7 *Section 3(a) of the Securities Act of 1933 (15 U.S.C. 77c(a))*
 8 *is amended by adding at the end the following new para-*
 9 *graph:*

10 “(13) Any security issued by or any interest or
 11 participation in any church plan, company or ac-
 12 count that is excluded from the definition of an in-
 13 vestment company under section 3(c)(14) of the In-
 14 vestment Company Act of 1940.”.

15 (c) *AMENDMENTS TO THE SECURITIES EXCHANGE ACT*
 16 *OF 1934.—*

17 (1) *EXEMPTED SECURITIES.—Section*
 18 *3(a)(12)(A) of the Securities Exchange Act of 1934*
 19 *(15 U.S.C. 78c(a)(12)(A)) is amended—*

20 (A) *in clause (v), by striking “and” at the*
 21 *end;*

22 (B) *by redesignating clause (vi) as clause*
 23 *(vii); and*

24 (C) *by inserting after clause (v) the follow-*
 25 *ing new clause:*

1 “(vi) solely for purposes of sections 12,
 2 13, 14, and 16 of this title, any security is-
 3 sued by or any interest or participation in
 4 any church plan, company, or account that
 5 is excluded from the definition of an invest-
 6 ment company under section 3(c)(14) of the
 7 Investment Company Act of 1940; and”.

8 (2) *EXEMPTION FROM BROKER-DEALER PROVI-*
 9 *SIONS.*—Section 3 of the Securities Exchange Act of
 10 1934 (15 U.S.C. 78c) is amended by adding at the
 11 end the following new subsection:

12 “(f) *CHURCH PLANS.*—No church plan described in
 13 section 414(e) of the Internal Revenue Code of 1986, no per-
 14 son or entity eligible to establish and maintain such a plan
 15 under the Internal Revenue Code of 1986, no company or
 16 account that is excluded from the definition of an invest-
 17 ment company under section 3(c)(14) of the Investment
 18 Company Act of 1940, and no trustee, director, officer or
 19 employee of or volunteer for such plan, company, account
 20 person, or entity, acting within the scope of that person’s
 21 employment or activities with respect to such plan, shall
 22 be deemed to be a ‘broker’, ‘dealer’, ‘municipal securities
 23 broker’, ‘municipal securities dealer’, ‘government securities
 24 broker’, ‘government securities dealer’, ‘clearing agency’, or
 25 ‘transfer agent’ for purposes of this title—

1 “(1) solely because such plan, company, person,
2 or entity buys, holds, sells, trades in, or transfers se-
3 curities or acts as an intermediary in making pay-
4 ments in connection with transactions in securities
5 for its own account in its capacity as trustee or ad-
6 ministrator of, or otherwise on behalf of, or for the ac-
7 count of, any church plan, company, or account that
8 is excluded from the definition of an investment com-
9 pany under section 3(c)(14) of the Investment Com-
10 pany Act of 1940; and

11 “(2) if no such person or entity receives a com-
12 mission or other transaction-related sales compensa-
13 tion in connection with any activities conducted in
14 reliance on the exemption provided by this sub-
15 section.”.

16 (d) AMENDMENT TO THE INVESTMENT ADVISERS ACT
17 OF 1940.—Section 203(b) of the Investment Advisers Act
18 of 1940 (15 U.S.C. 80b-3(b)) is amended—

19 (1) in paragraph (3), by striking “or” at the
20 end;

21 (2) in paragraph (4), by striking the period at
22 the end and inserting “; or”; and

23 (3) by adding at the end the following new para-
24 graph:

1 “(5) any plan described in section 414(e) of the
2 *Internal Revenue Code of 1986, any person or entity*
3 *eligible to establish and maintain such a plan under*
4 *the Internal Revenue Code of 1986, or any trustee, di-*
5 *rector, officer, or employee of or volunteer for any*
6 *such plan or person, if such person or entity provides*
7 *investment advice exclusively to any plan, person, or*
8 *entity or any company, account, or fund that is ex-*
9 *cluded from the definition of an investment company*
10 *under section 3(c)(14) of the Investment Company*
11 *Act of 1940.”.*

12 (e) *AMENDMENT TO THE TRUST INDENTURE ACT OF*
13 1939.—*Section 304(a)(4)(A) of the Trust Indenture Act of*
14 1939 (15 U.S.C. 77ddd(4)(A)) *is amended by striking “or*
15 *(11)” and inserting “(11), or (14)”.*

16 (f) *PROTECTION OF CHURCH EMPLOYEE BENEFIT*
17 *PLANS UNDER STATE LAW.—*

18 (1) *REGISTRATION REQUIREMENTS.—Any secu-*
19 *rity issued by or any interest or participation in any*
20 *church plan, company, or account that is excluded*
21 *from the definition of an investment company under*
22 *section 3(c)(14) of the Investment Company Act of*
23 1940, *as added by subsection (a) of this section, and*
24 *any offer, sale, or purchase thereof, shall be exempt*

1 *from any law of a State that requires registration or*
2 *qualification of securities.*

3 (2) *TREATMENT OF CHURCH PLANS.—No church*
4 *plan described in section 414(e) of the Internal Reve-*
5 *nue Code of 1986, no person or entity eligible to es-*
6 *tablish and maintain such a plan under the Internal*
7 *Revenue Code of 1986, no company or account that*
8 *is excluded from the definition of an investment com-*
9 *pany under section 3(c)(14) of the Investment Com-*
10 *pany Act of 1940, as added by subsection (a) of this*
11 *section, and no trustee, director, officer, or employee*
12 *of or volunteer for any such plan, person, entity, com-*
13 *pany, or account shall be required to qualify, register,*
14 *or be subject to regulation as an investment company*
15 *or as a broker, dealer, investment adviser, or agent*
16 *under the laws of any State solely because such plan,*
17 *person, entity, company, or account buys, holds, sells,*
18 *or trades in securities for its own account or in its*
19 *capacity as a trustee or administrator of or otherwise*
20 *on behalf of, or for the account of, or provides invest-*
21 *ment advice to, for, or on behalf of, any such plan,*
22 *person, or entity or any company or account that is*
23 *excluded from the definition of an investment com-*
24 *pany under section 3(c)(14) of the Investment Com-*

1 pany Act of 1940, as added by subsection (a) of this
2 section.

3 (g) AMENDMENT TO THE INVESTMENT COMPANY ACT
4 OF 1940.—Section 30 of the Investment Company Act of
5 1940 (15 U.S.C. 80a–29) is amended by adding at the end
6 the following new subsections:

7 “(g) DISCLOSURE TO CHURCH PLAN PARTICIPANTS.—
8 A person that maintains a church plan that is excluded
9 from the definition of an investment company solely by rea-
10 son of section 3(c)(14) shall provide disclosure to plan par-
11 ticipants, in writing, and not less frequently than annually,
12 and for new participants joining such a plan after May
13 31, 1996, prior to joining such plan, that—

14 “(1) the plan, or any company or account main-
15 tained to manage or hold plan assets and interests in
16 such plan, company, or account, are not subject to
17 registration, regulation, or reporting under this title,
18 the Securities Act of 1933, the Securities Exchange
19 Act of 1934, or State securities laws; and

20 “(2) plan participants and beneficiaries therefore
21 will not be afforded the protections of those provisions.

22 “(h) NOTICE TO COMMISSION.—The Commission may
23 issue rules and regulations to require any person that
24 maintains a church plan that is excluded from the defini-
25 tion of an investment company solely by reason of section

1 3(c)(14) to file a notice with the Commission containing
2 such information and in such form as the Commission may
3 prescribe as necessary or appropriate in the public interest
4 or consistent with the protection of investors.”.

5 **SEC. 316. PROMOTING GLOBAL PREMINENCE OF AMER-**
6 **ICAN SECURITIES MARKETS.**

7 *It is the sense of the Congress that—*

8 *(1) the United States and foreign securities mar-*
9 *kets are increasingly becoming international*
10 *securities markets, as issuers and investors seek the*
11 *benefits of new capital and secondary market oppor-*
12 *tunities without regard to national borders;*

13 *(2) as issuers seek to raise capital across*
14 *national borders, they confront differing accounting*
15 *requirements in the various regulatory jurisdictions;*

16 *(3) the establishment of a high-quality com-*
17 *prehensive set of generally accepted international ac-*
18 *counting standards in cross-border securities offerings*
19 *would greatly facilitate international financing ac-*
20 *tivities and, most significantly, would enhance the*
21 *ability of foreign corporations to access and list in*
22 *United States markets;*

23 *(4) in addition to the efforts made before the date*
24 *of enactment of this Act by the Commission to re-*
25 *spond to the growing internationalization of securities*

1 *markets, the Commission should enhance its vigorous*
 2 *support for the development of high-quality inter-*
 3 *national accounting standards as soon as practicable;*
 4 *and*

5 *(5) the Commission, in view of its clear author-*
 6 *ity under law to facilitate the access of foreign cor-*
 7 *porations to list their securities in United States*
 8 *markets, should report to the Congress, not later than*
 9 *1 year after the date of enactment of this Act, on*
 10 *progress in the development of international account-*
 11 *ing standards and the outlook for successful comple-*
 12 *tion of a set of international standards that would be*
 13 *acceptable to the Commission for offerings and list-*
 14 *ings by foreign corporations in United States mar-*
 15 *kets.*

16 **SEC. 317. BROKER-DEALER EXEMPTION FROM STATE LAW**
 17 **FOR CERTAIN DE MINIMIS TRANSACTIONS.**

18 *(a) IN GENERAL.—Section 15 of the Securities Ex-*
 19 *change Act of 1934 (15 U.S.C. 78o) is amended by adding*
 20 *at the end the following new subsection:*

21 *“(h) EXEMPTION FROM STATE LAW FOR CERTAIN DE*
 22 *MINIMIS TRANSACTIONS.—*

23 *“(1) IN GENERAL.—No law, rule, regulation, or*
 24 *order, or other administrative action of any State or*
 25 *political subdivision thereof may prohibit an associ-*

1 *ated person of a broker or dealer from affecting a*
2 *transaction described in paragraph (2) for a customer*
3 *in such State if—*

4 *“(A) such associated person is not ineligible*
5 *to register with such State for any reason other*
6 *than such a transaction;*

7 *“(B) such associated person is registered*
8 *with a registered securities association and at*
9 *least one State; and*

10 *“(C) the broker or dealer with which such*
11 *person is associated is registered with such State.*

12 *“(2) DESCRIBED TRANSACTIONS.—*

13 *“(A) IN GENERAL.—A transaction is de-*
14 *scribed in this paragraph if—*

15 *“(i) such transaction is effected—*

16 *“(I) on behalf of a customer that,*
17 *for 30 days prior to the day of the*
18 *transaction, maintained an account*
19 *with the broker or dealer; and*

20 *“(II) by an associated person of*
21 *the broker or dealer—*

22 *“(aa) to which the customer*
23 *was assigned for 14 days prior to*
24 *the day of the transaction; and*

1 “(bb) who is registered with
2 a State in which the customer was
3 a resident or was present for at
4 least 30 consecutive days during
5 the one-year period prior to the
6 day of the transaction;

7 “(ii) the transaction is effected—

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

12 “(II) within the period beginning
13 on the date on which such associated
14 person files an application for registra-
15 tion with the State in which the trans-
16 action is effected and ending on the
17 earlier of—

18 “(aa) 60 days after the date
19 on which the application is filed;
20 or

21 “(bb) the date on which such
22 State notifies the associated per-
23 son that it has denied the applica-
24 tion for registration or has stayed

1 *the pendency of the application*
2 *for cause.*

3 “(B) *RULES OF CONSTRUCTION.—For pur-*
4 *poses of subparagraph (A)(i)(II)—*

5 “(i) *each of up to 3 associated persons*
6 *of a broker or dealer who are designated to*
7 *effect transactions during the absence or un-*
8 *availability of the principal associated per-*
9 *son for a customer may be treated as an as-*
10 *sociated person to which such customer is*
11 *assigned; and*

12 “(ii) *if the customer is present in an-*
13 *other State for 30 or more consecutive days*
14 *or has permanently changed his or her resi-*
15 *dence to another State, a transaction is not*
16 *described in this paragraph, unless the asso-*
17 *ciation person of the broker or dealer files*
18 *an application for registration with such*
19 *State not later than 10 business days after*
20 *the later of the date of the transaction, or*
21 *the date of the discovery of the presence of*
22 *the customer in the other State for 30 or*
23 *more consecutive days or the change in the*
24 *customer’s residence.”.*

1 (b) *TECHNICAL AMENDMENT.*—Section 28(a) of the Se-
2 curities Exchange Act of 1934 (15 U.S.C. 78bb(a)) is
3 amended by striking “Nothing” and inserting “Except as
4 otherwise specifically provided in this title, nothing”.

5 **SEC. 318. STUDIES AND REPORTS.**

6 (a) *IMPACT OF TECHNOLOGICAL ADVANCES.*—

7 (1) *STUDY.*—

8 (A) *IN GENERAL.*—The Commission shall
9 conduct a study of—

10 (i) the impact of technological ad-
11 vances and the use of on-line information
12 systems on the securities markets;

13 (ii) how such technologies have changed
14 the way in which the securities markets op-
15 erate; and

16 (iii) any steps taken by the Commis-
17 sion to address such changes.

18 (B) *CONSIDERATIONS.*—In conducting the
19 study under subparagraph (A), the Commission
20 shall consider how the Commission has adapted
21 its enforcement policies and practices in response
22 to technological developments with regard to—

23 (i) disclosure, prospectus delivery, and
24 other customer protection regulations;

1 (ii) intermediaries and exchanges in
2 the domestic and international financial
3 services industry;

4 (iii) reporting by issuers, including
5 communications with holders of securities;

6 (iv) the relationship of the Commission
7 with other national regulatory authorities
8 and organizations to improve coordination
9 and cooperation; and

10 (v) the relationship of the Commission
11 with State regulatory authorities and orga-
12 nizations to improve coordination and co-
13 operation.

14 (2) *REPORT.*—Not later than 1 year after the
15 date of enactment of this Act, the Commission shall
16 submit a report to the Congress on the results of the
17 study conducted under paragraph (1).

18 (b) *SHAREHOLDER PROPOSALS.*—

19 (1) *STUDY.*—The Commission shall conduct a
20 study of—

21 (A) whether shareholder access to proxy
22 statements pursuant to section 14 of the *Securi-*
23 *ties Exchange Act of 1934* has been impaired by
24 recent statutory, judicial, or regulatory changes;
25 and

1 (B) the ability of shareholders to have pro-
2 posals relating to corporate practices and social
3 issues included as part of proxy statements.

4 (2) *REPORT.*—Not later than 1 year after the
5 date of enactment of this Act, the Commission shall
6 submit a report to the Congress on the results of the
7 study conducted under paragraph (1), together with
8 any recommendations for regulatory or legislative
9 changes that it considers necessary to improve share-
10 holder access to proxy statements.

11 (c) *PREFERENCING.*—

12 (1) *STUDY.*—The Commission shall conduct a
13 study of the impact on investors and the national
14 market system of the practice known as
15 “preferencing” on one or more registered securities ex-
16 changes, including consideration of—

17 (A) how preferencing impacts—

18 (i) the execution prices received by re-
19 tail securities customers whose orders are
20 preferred; and

21 (ii) the ability of retail securities cus-
22 tomers in all markets to obtain executions
23 of their limit orders in preferred securi-
24 ties; and

1 (B) *the costs of preferencing to such cus-*
2 *tomers.*

3 (2) *REPORT.—Not later than 6 months after the*
4 *date of enactment of this Act, the Commission shall*
5 *submit a report to the Congress on the results of the*
6 *study conducted under paragraph (1).*

7 (3) *DEFINITION.—For purposes of this sub-*
8 *section, the term “preferencing” refers to the practice*
9 *of a broker acting as a dealer on a national securities*
10 *exchange, directing the orders of customers to buy or*
11 *sell securities to itself for execution under rules that*
12 *permit the broker to take priority in execution over*
13 *same-priced orders or quotations entered prior in*
14 *time.*