

108TH CONGRESS  
2D SESSION

# S. 2059

To improve the governance and regulation of mutual funds under the securities laws, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

FEBRUARY 10, 2004

Mr. FITZGERALD (for himself, Mr. LEVIN, and Ms. COLLINS) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

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## A BILL

To improve the governance and regulation of mutual funds under the securities laws, 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,*

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

4 (a) **SHORT TITLE.**—This Act may be cited as the  
5 “Mutual Fund Reform Act of 2004”.

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

Sec. 1. Short title; table of contents.  
Sec. 2. Definitions.  
Sec. 3. Rulemaking.

TITLE I—FUND GOVERNANCE

- Sec. 110. Independent directors.
- Sec. 111. Study of director compensation and independence.
- Sec. 112. Fiduciary duties of directors.
- Sec. 113. Fiduciary duty of investment adviser.
- Sec. 114. Termination of fund advisers.
- Sec. 115. Independent accounting and auditing.
- Sec. 116. Prevention of fraud; internal compliance and control procedures.

#### TITLE II—FUND TRANSPARENCY

- Sec. 210. Cost consolidation and clarity.
- Sec. 211. Advisor compensation and ownership of fund shares.
- Sec. 212. Point of sale and additional disclosure of broker compensation.
- Sec. 213. Breakpoint discounts.
- Sec. 214. Portfolio turnover ratio.
- Sec. 215. Proxy voting policies and record.
- Sec. 216. Customer information from account intermediaries.
- Sec. 217. Advertising.

#### TITLE III—FUND REGULATION AND OVERSIGHT

- Sec. 310. Prohibition of asset-based distribution expenses.
- Sec. 311. Prohibition on revenue sharing, directed brokerage, and soft dollar arrangements.
- Sec. 312. Market timing.
- Sec. 313. Elimination of stale prices.
- Sec. 314. Prohibition of short term trading; mandatory redemption fees.
- Sec. 315. Prevention of after-hours trading.
- Sec. 316. Ban on joint management of mutual funds and hedge funds.
- Sec. 317. Selective disclosures.

#### TITLE IV—STUDIES

- Sec. 410. Study of adviser conflict of interest.
- Sec. 411. Study of coordination of enforcement efforts.
- Sec. 412. Study of Commission organizational structure.
- Sec. 413. Trends in arbitration clauses.
- Sec. 414. Hedge fund regulation.
- Sec. 415. Investor education and the Internet.

### 1 **SEC. 2. DEFINITIONS.**

2 In this Act, the following definitions shall apply:

3 (1) **COMMISSION.**—The term “Commission”  
 4 means the Securities and Exchange Commission.

5 (2) **INVESTMENT ADVISER.**—The term “invest-  
 6 ment adviser” has the same meaning as in section  
 7 2(a)(20) of the Investment Company Act of 1940  
 8 (15 U.S.C. 80a-2(a)(20)).

1           (3) INVESTMENT COMPANY.—The term “invest-  
2           ment company” has the same meaning as in section  
3           3 of the Investment Company Act of 1940 (15  
4           U.S.C. 80–3).

5           (4) REGISTERED INVESTMENT COMPANY.—The  
6           term “registered investment company” means an in-  
7           vestment company that is registered under section 8  
8           of the Investment Company Act of 1940 (15 U.S.C.  
9           80a–8).

10 **SEC. 3. RULEMAKING.**

11           (a) TIMING.—Unless otherwise specified in this Act  
12           or the amendments made by this Act, the Commission  
13           shall issue, in final form, all rules and regulations required  
14           by this Act and the amendments made by this Act not  
15           later than 180 days after the date of enactment of this  
16           Act.

17           (b) AUTHORITY TO DEFINE TERMS.—The Commis-  
18           sion may, in issuing rules and regulations under this Act  
19           or the amendments made by this Act, define any term  
20           used in this Act or such amendments that is not otherwise  
21           defined for purposes of this Act or such amendment, as  
22           the Commission determines necessary and appropriate.

23           (c) EXEMPTION AUTHORITY.—The Commission may,  
24           in issuing rules and regulations under this Act or the  
25           amendments made by this Act, exempt any investment

1 company or other person from the application of such  
2 rules, as the Commission determines is necessary and ap-  
3 propriate, in the public interest or for the protection of  
4 investors.

## 5 **TITLE I—FUND GOVERNANCE**

### 6 **SEC. 110. INDEPENDENT DIRECTORS.**

7 (a) INDEPENDENT FUND BOARDS.—Section 10(a) of  
8 the Investment Company Act of 1940 (15 U.S.C. 80a–  
9 10(a)) is amended—

10 (1) by striking “shall have” and inserting the  
11 following: “shall—

12 “(1) have”;

13 (2) by striking “60 per centum” and inserting  
14 “25 percent”;

15 (3) by striking the period at the end and insert-  
16 ing a semicolon; and

17 (4) by adding at the end the following:

18 “(2) have as chairman of its board of directors  
19 an interested person of such registered company; or

20 “(3) have as a member of its board of directors  
21 any person that is not an interested person of such  
22 registered investment company—

23 “(A) who has served without being ap-  
24 proved or elected by the shareholders of such

1 registered investment company at least once  
2 every 5 years; and

3 “(B) unless such director has been found,  
4 on an annual basis, by a majority of the direc-  
5 tors who are not interested persons, after rea-  
6 sonable inquiry by such directors, not to have  
7 any material business or familial relationship  
8 with the registered investment company, a sig-  
9 nificant service provider to the company, or any  
10 entity controlling, controlled by, or under com-  
11 mon control with such service provider, that is  
12 likely to impair the independence of the direc-  
13 tor.”.

14 (b) ACTION BY INDEPENDENT DIRECTORS.—Section  
15 10 of the Investment Company Act of 1940 (15 U.S.C.  
16 80a–10) is amended by adding at the end the following:

17 “(i) INDEPENDENT COMMITTEE.—

18 “(1) IN GENERAL.—The members of the board  
19 of directors of a registered investment company who  
20 are not interested persons of such registered invest-  
21 ment company shall establish a committee comprised  
22 solely of such members, which committee shall be re-  
23 sponsible for—

24 “(A) selecting persons to be nominated for  
25 election to the board of directors;

1           “(B) adopting qualification standards for  
2           the nomination of directors; and

3           “(C) determining the compensation to be  
4           paid to directors.

5           “(2) DISCLOSURE.—The standards developed  
6           under paragraph (1)(B) shall be disclosed in the reg-  
7           istration statement of the registered investment com-  
8           pany.”.

9           (c) DEFINITION OF INTERESTED PERSON.—Section  
10          2(a)(19) of the Investment Company Act of 1940 (15  
11          U.S.C. 80a-2) is amended—

12           (1) in subparagraph (A)—

13           (A) in clause (iv), by striking “two” and  
14           inserting “5”; and

15           (B) by striking clause (vii) and inserting  
16           the following:

17           “(vii) any natural person who has  
18           served as an officer or director, or as an  
19           employee within the preceding 10 fiscal  
20           years, of an investment adviser or principal  
21           underwriter to such registered investment  
22           company, or of any entity controlling, con-  
23           trolled by, or under common control with  
24           such investment adviser or principal under-  
25           writer;

1           “(viii) any natural person who has  
2 served as an officer or director, or as an  
3 employee within the preceding 10 fiscal  
4 years, of any entity that has within the  
5 preceding 5 fiscal years acted as a signifi-  
6 cant service provider to such registered in-  
7 vestment company, or of any entity con-  
8 trolling, controlled by, or under the com-  
9 mon control with such service provider;

10           “(ix) any natural person who is a  
11 member of a class of persons that the  
12 Commission, by rule or regulation, deter-  
13 mines is unlikely to exercise an appropriate  
14 degree of independence as a result of—

15           “(I) a material business relation-  
16 ship with the investment company or  
17 an affiliated person of such invest-  
18 ment company;

19           “(II) a close familial relationship  
20 with any natural person who is an af-  
21 filiated person of such investment  
22 company; or

23           “(III) any other reason deter-  
24 mined by the Commission.”;

25           (2) in subparagraph (B)—

1 (A) in clause (iv), by striking “two” and  
2 inserting “5”; and

3 (B) by striking clause (vii) and inserting  
4 the following:

5 “(vii) any natural person who is a  
6 member of a class of persons that the  
7 Commission, by rule or regulation, deter-  
8 mines is unlikely to exercise an appropriate  
9 degree of independence as a result of—

10 “(I) a material business relation-  
11 ship with such investment adviser or  
12 principal underwriter or affiliated per-  
13 son of such investment adviser or  
14 principal underwriter;

15 “(II) a close familial relationship  
16 with any natural person who is an af-  
17 filiated person of such investment ad-  
18 viser or principal underwriter; or

19 “(III) any other reason as deter-  
20 mined by the Commission.”.

21 (d) DEFINITION OF SIGNIFICANT SERVICE PRO-  
22 VIDER.—Section 2(a) of the Investment Company Act of  
23 1940 is amended by adding at the end the following:

24 “(53) SIGNIFICANT SERVICE PROVIDER.—

1           “(A) IN GENERAL.—Not later than 270  
 2           days after the date of enactment of the Mutual  
 3           Fund Reform Act of 2004, the Commission  
 4           shall issue final rules defining the term ‘signifi-  
 5           cant service provider’.

6           “(B) REQUIREMENTS.—The definition de-  
 7           veloped under paragraph (1) shall include, at a  
 8           minimum, the investment adviser and principal  
 9           underwriter of a registered investment company  
 10          for purposes of paragraph (19).”.

11 **SEC. 111. STUDY OF DIRECTOR COMPENSATION AND INDE-**  
 12 **PENDENCE.**

13          (a) IN GENERAL.—The Commission shall conduct a  
 14          study of—

15               (1) whether any limits should be placed upon  
 16               the amount of compensation paid by a registered in-  
 17               vestment company or any affiliate of such company  
 18               to a director thereof; and

19               (2) whether a director of a registered invest-  
 20               ment company who is otherwise not an interested  
 21               person of a registered investment company, as de-  
 22               fined in section 2(a)(19) of the Investment Company  
 23               Act of 1940, as amended by this Act, but serves as  
 24               a director of multiple registered investment compa-  
 25               nies, or receives substantial compensation from the

1 investment adviser of any such company, should be  
2 considered an “interested person” for purposes of  
3 section 2 of the Investment Company Act of 1940.

4 (b) REPORT.—Not later than 1 year after the date  
5 of enactment of this Act, the Commission shall submit a  
6 report regarding the study conducted under subsection (a)  
7 to—

8 (1) the Committee on Banking, Housing, and  
9 Urban Affairs of the Senate; and

10 (2) the Committee on Financial Services of the  
11 House of Representatives.

12 **SEC. 112. FIDUCIARY DUTIES OF DIRECTORS.**

13 Section 10 of the Investment Company Act of 1940  
14 (15 U.S.C. 80a–10), as amended by this Act, is amended  
15 by adding at the end the following:

16 “(j) FIDUCIARY DUTY OF DIRECTORS.—

17 “(1) IN GENERAL.—The members of the board  
18 of directors of a registered investment company shall  
19 have a fiduciary duty to act with loyalty and care,  
20 in the best interests of the shareholders.

21 “(2) RULEMAKING.—The Commission shall  
22 promulgate rules to clarify the scope of the fiduciary  
23 duty under paragraph (1), which rules shall, at a  
24 minimum, require the directors of a registered in-  
25 vestment company to—

1           “(A) determine the extent to which inde-  
2           pendent and reliable sources of information are  
3           sufficient to discharge director responsibilities;

4           “(B) negotiate management and advisory  
5           fees with due regard for the actual cost of such  
6           services, including economies of scale;

7           “(C) evaluate the totality of fees with ref-  
8           erence to the interests of shareholders;

9           “(D) evaluate the quality of the manage-  
10          ment of the company and potentially superior  
11          alternatives;

12          “(E) evaluate the quality, comprehensive-  
13          ness, and clarity of disclosures to shareholders  
14          regarding costs;

15          “(F) evaluate any distribution or mar-  
16          keting plan of the company, including its costs  
17          and benefits;

18          “(G) evaluate the size of the portfolio of  
19          the company and its suitability to the interests  
20          of shareholders;

21          “(H) implement and monitor policies to  
22          ensure compliance with applicable securities  
23          laws; and

24          “(I) implement and monitor policies with  
25          respect to predatory trading practices.”.

1 **SEC. 113. FIDUCIARY DUTY OF INVESTMENT ADVISER.**

2 Section 36 of the Investment Company Act of 1940  
3 (15 U.S.C. 80a-35(b)) is amended—

4 (1) by redesignating subsection (c) as sub-  
5 section (d); and

6 (2) by inserting after subsection (b) the fol-  
7 lowing:

8 “(c) DUTIES WITH RESPECT TO COMPENSATION  
9 AND PROVISION OF INFORMATION.—For purposes of sub-  
10 sections (a) and (b), the fiduciary duty of an investment  
11 adviser—

12 “(1) with respect to any compensation received,  
13 may require reasonable reference to the actual costs  
14 of the adviser and economies of scale; and

15 “(2) shall include a duty to supply such mate-  
16 rial information as is necessary for the independent  
17 directors of a registered investment company with  
18 whom the adviser is employed to review and govern  
19 such company.”.

20 **SEC. 114. TERMINATION OF FUND ADVISER.**

21 The Commission shall promulgate such rules as it de-  
22 termines necessary in the public interest or for the protec-  
23 tion of investors to facilitate the process through which  
24 the independent directors of a registered investment com-  
25 pany may terminate the services of the investment adviser  
26 of such company in the good faith exercise of their fidu-

1 ciary duties, without undue exposure to financial or litiga-  
2 tion risk.

3 **SEC. 115. INDEPENDENT ACCOUNTING AND AUDITING.**

4 (a) AMENDMENTS.—Section 32 of the Investment  
5 Company Act of 1940 (15 U.S.C. 80a–31) is amended—

6 (1) in subsection (a)—

7 (A) by striking paragraphs (1) and (2) and  
8 inserting the following:

9 “(1) such accountant shall have been selected  
10 at a meeting held within 30 days before or after the  
11 beginning of the fiscal year or before the annual  
12 meeting of stockholders in that year by the vote,  
13 cast in person, of a majority of the members of the  
14 audit committee of such registered investment com-  
15 pany;

16 “(2) such selection shall have been submitted  
17 for ratification or rejection at the next succeeding  
18 annual meeting of stockholders if such meeting be  
19 held, except that any vacancy occurring between an-  
20 nual meetings, due to the death or resignation of the  
21 accountant, may be filled by the vote of a majority  
22 of the members of the audit committee of such reg-  
23 istered company, cast in person at a meeting called  
24 for the purpose of voting on such action;” and

1 (B) by adding at the end the following:

2 “The Commission, by rule, regulation, or order,  
3 may exempt a registered management company  
4 or registered face-amount certificate company  
5 otherwise subject to this subsection from the re-  
6 quirement in paragraph (1) that the votes by  
7 the members of the audit committee be cast at  
8 a meeting in person, when such a requirement  
9 is impracticable, subject to such conditions as  
10 the Commission may require.”; and

11 (2) by adding at the end the following:

12 “(d) AUDIT COMMITTEE REQUIREMENTS.—

13 “(1) REQUIREMENTS AS PREREQUISITE TO FIL-  
14 ING FINANCIAL STATEMENTS.—Any registered man-  
15 agement company or registered face-amount certifi-  
16 cate company that files with the Commission any fi-  
17 nancial statement signed or certified by an inde-  
18 pendent public accountant shall comply with the re-  
19 quirements of paragraphs (2) through (6) of this  
20 subsection and any rule or regulation of the Com-  
21 mission issued thereunder.

22 “(2) RESPONSIBILITY RELATING TO INDE-  
23 PENDENT PUBLIC ACCOUNTANTS.—The audit com-  
24 mittee of the registered investment company, in its  
25 capacity as a committee of the board of directors,

1 shall be directly responsible for the appointment,  
2 compensation, and oversight of the work of any inde-  
3 pendent public accountant employed by the reg-  
4 istered investment company (including resolution of  
5 disagreements between management and the auditor  
6 regarding financial reporting) for the purpose of pre-  
7 paring or issuing the audit report or related work,  
8 and each such independent public accountant shall  
9 report directly to the audit committee.

10 “(3) INDEPENDENCE.—

11 “(A) IN GENERAL.—Each member of the  
12 audit committee of the registered investment  
13 company shall be a member of the board of di-  
14 rectors of the company, and shall otherwise be  
15 independent.

16 “(B) CRITERIA.—In order to be considered  
17 to be independent for purposes of this para-  
18 graph, a member of an audit committee of a  
19 registered investment company may not, other  
20 than in his or her capacity as a member of the  
21 audit committee, the board of directors, or any  
22 other board committee—

23 “(i) accept any consulting, advisory,  
24 or other compensatory fee from the reg-  
25 istered investment company or the invest-

1                   ment adviser or principal underwriter of  
2                   the registered investment company; or

3                   “(ii) be an interested person of the  
4                   registered investment company.

5                   “(4) COMPLAINTS.—The audit committee of the  
6                   registered investment company shall establish proce-  
7                   dures for—

8                   “(A) the receipt, retention, and treatment  
9                   of complaints received by the registered invest-  
10                  ment company regarding accounting, internal  
11                  accounting controls, or auditing matters; and

12                  “(B) the confidential, anonymous submis-  
13                  sion by employees of the registered investment  
14                  company and its investment adviser or principal  
15                  underwriter of concerns regarding questionable  
16                  accounting or auditing matters.

17                  “(5) AUTHORITY TO ENGAGE ADVISERS.—The  
18                  audit committee of the registered investment com-  
19                  pany shall have the authority to engage independent  
20                  counsel and other advisers, as it determines nec-  
21                  essary to carry out its duties.

22                  “(6) FUNDING.—The registered investment  
23                  company shall provide appropriate funding, as deter-  
24                  mined by the audit committee, in its capacity as a

1 committee of the board of directors, for payment of  
2 compensation—

3 “(A) to the independent public accountant  
4 employed by the registered investment company  
5 for the purpose of rendering or issuing the  
6 audit report; and

7 “(B) to any advisers employed by the audit  
8 committee under paragraph (5).

9 “(7) AUDIT COMMITTEE.—For purposes of this  
10 subsection, the term ‘audit committee’ means—

11 “(A) a committee (or equivalent body) es-  
12 tablished by and amongst the board of directors  
13 of a registered investment company for the pur-  
14 pose of overseeing the accounting and financial  
15 reporting processes of the company and audits  
16 of the financial statements of the company; and

17 “(B) if no such committee exists with re-  
18 spect to a registered investment company, the  
19 entire board of directors of the company.”.

20 (b) CONFORMING AMENDMENT.—Section 10A(m) of  
21 the Securities Exchange Act of 1934 (15 U.S.C. 78j-  
22 1(m)) is amended by adding at the end the following:

23 “(7) EXEMPTION FOR INVESTMENT COMPA-  
24 NIES.—Effective one year after the date of enact-  
25 ment of the Mutual Fund Reform Act of 2004, for

1 purposes of this subsection, the term ‘issuer’ shall  
 2 not include any investment company that is reg-  
 3 istered under section 8 of the Investment Company  
 4 Act of 1940.”.

5 (c) IMPLEMENTATION.—The Commission shall issue  
 6 final regulations to carry out section 32(d) of the Invest-  
 7 ment Company Act of 1940, as added by subsection (a)  
 8 of this section.

9 **SEC. 116. PREVENTION OF FRAUD; INTERNAL COMPLIANCE**  
 10 **AND CONTROL PROCEDURES.**

11 (a) DETECTION AND PREVENTION OF FRAUD.—Sec-  
 12 tion 17(j) of the Investment Company Act of 1940 (15  
 13 U.S.C. 80a–17(j)) is amended to read as follows:

14 “(j) DETECTION AND PREVENTION OF FRAUD.—

15 “(1) COMMISSION RULES TO PROHIBIT FRAUD,  
 16 DECEPTION, AND MANIPULATION.—It shall be un-  
 17 lawful for any affiliated person of or principal under-  
 18 writer for a registered investment company or any  
 19 affiliated person of an investment adviser of or prin-  
 20 cipal underwriter for a registered investment com-  
 21 pany, to engage in any act, practice, or course of  
 22 business in connection with the purchase or sale, di-  
 23 rectly or indirectly, by such person of any security  
 24 held or to be acquired by such registered investment  
 25 company, or any security issued by such registered

1 investment company or by an affiliated registered in-  
2 vestment company, in contravention of such rules as  
3 the Commission may adopt to define, and prescribe  
4 means reasonably necessary to prevent, such acts,  
5 practices, or courses of business as are fraudulent,  
6 deceptive or manipulative.

7 “(2) CODES OF ETHICS.—The rules adopted  
8 under paragraph (1) shall include requirements for  
9 the adoption of codes of ethics by a registered in-  
10 vestment company and investment advisers of, and  
11 principal underwriters for, such investment compa-  
12 nies establishing such standards as are reasonably  
13 necessary to prevent such acts, practices, or courses  
14 of business. Such rules and regulations shall require  
15 each such registered investment company to disclose  
16 such codes of ethics (and any changes therein) in  
17 the periodic report to shareholders of such company,  
18 and to disclose such code of ethics and any waivers  
19 and material violations thereof on a readily acces-  
20 sible electronic public information facility of such  
21 company and in such additional form and manner as  
22 the Commission shall require by rule or regulation.

23 “(3) ADDITIONAL COMPLIANCE PROCEDURES.—  
24 The rules adopted under paragraph (1) shall—

1           “(A) require each registered investment  
2 company and investment adviser to adopt and  
3 implement general policies and procedures rea-  
4 sonably designed to prevent violations of this  
5 title, the Securities Act of 1933 (15 U.S.C. 78a  
6 et seq.), the Securities Exchange Act of 1934  
7 (15 U.S.C. 78a et seq.), the Sarbanes-Oxley Act  
8 of 2002 (15 U.S.C. 7201 et seq.) and amend-  
9 ments made by that Act, the Trust Indenture  
10 Act of 1939 (15 U.S.C. 77aaa et seq.), the In-  
11 vestment Advisers Act of 1940 (15 U.S.C. 80b  
12 et seq.), the Securities Investor Protection Act  
13 of 1970 (15 U.S.C. 78aaa et seq.), subchapter  
14 II of chapter 53 of title 31, United States Code,  
15 chapter 2 of title I of Public Law 91–508 (12  
16 U.S.C. 1951 et seq.), or section 21 of the Fed-  
17 eral Deposit Insurance Act (12 U.S.C. 1829b);

18           “(B) require each registered investment  
19 company and registered investment adviser to  
20 review such policies and procedures annually for  
21 their adequacy and the effectiveness of their im-  
22 plementation; and

23           “(C) require each registered investment  
24 company to appoint a chief compliance officer

1 to be responsible for overseeing such policies  
2 and procedures—

3 “(i) whose compensation shall be ap-  
4 proved by the members of the board of di-  
5 rectors of the company who are not inter-  
6 ested persons of the company;

7 “(ii) who shall report directly to the  
8 members of the board of directors of the  
9 company who are not interested persons of  
10 such company, privately as such members  
11 request, but not less frequently than annu-  
12 ally; and

13 “(iii) whose report to such members  
14 shall include any violations or waivers of,  
15 and any other significant issues arising  
16 under, such policies and procedures.

17 “(4) CERTIFICATIONS.—The rules adopted  
18 under paragraph (1) shall require each senior execu-  
19 tive officer, or such officers designated by the Com-  
20 mission, of an investment adviser of a registered in-  
21 vestment company to certify in each periodic report  
22 to shareholders, or other appropriate disclosure doc-  
23 ument, that—

24 “(A) procedures are in place for verifying  
25 that the determination of current net asset

1 value of any redeemable security issued by the  
2 company used in computing periodically the  
3 current price for the purpose of purchase, re-  
4 demption, and sale complies with the require-  
5 ments of this title and the rules and regulations  
6 issued under this title, and the company is in  
7 compliance with such procedures;

8 “(B) procedures are in place to ensure  
9 that, if the shares of the company are offered  
10 as different classes of shares, such classes are  
11 designed in the interests of shareholders, and  
12 could reasonably be an appropriate investment  
13 option for a shareholder;

14 “(C) procedures are in place to ensure that  
15 information about the portfolio securities of the  
16 company is not disclosed in violation of the se-  
17 curities laws or the code of ethics of the com-  
18 pany;

19 “(D) the members of the board of directors  
20 who are not interested persons of the company  
21 have reviewed and approved the compensation  
22 of the portfolio manager of the company in con-  
23 nection with their consideration of the invest-  
24 ment advisory contract under section 15(c); and

1           “(E) the company has established and en-  
2           forces a code of ethics, as required by para-  
3           graph (2).”.

4           (b)     WHISTLEBLOWER     PROTECTION.—Section  
5     1514A(a) of title 18, United States Code, is amended by  
6     striking the matter preceding paragraph (1) and inserting  
7     the following:

8           “(a) WHISTLEBLOWER PROTECTION FOR EMPLOY-  
9     EES OF PUBLICLY TRADED COMPANIES AND REGISTERED  
10    INVESTMENT COMPANIES.—No company with a class of  
11    securities registered under section 12 of the Securities Ex-  
12    change Act of 1934 (15 U.S.C. 78l), or that is required  
13    to file reports under section 15(d) of the Securities and  
14    Exchange Act of 1934 (15 U.S.C. 78o(d)), or that is an  
15    investment adviser, principal underwriter, or significant  
16    service provider (as such terms are defined under section  
17    2(a) of the Investment Company Act of 1940 (15 U.S.C.  
18    80a-2(a)) of an investment company which is registered  
19    under section 8 of the Investment Company Act of 1940,  
20    or any officer, employee, contractor, subcontractor, or  
21    agent of such company, may discharge, demote, suspend,  
22    threaten, harass, or in any other manner discriminate  
23    against an employee in the terms and conditions of em-  
24    ployment because of any lawful act done by the em-  
25    ployee—”.

# 1 **TITLE II—FUND TRANSPARENCY**

## 2 **SEC. 210. COST CONSOLIDATION AND CLARITY.**

### 3 (a) **EXPENSE RATIO COMPUTATION.**—

4 (1) **IN GENERAL.**—The Commission shall, by  
5 rule, develop a standardized method of calculating  
6 the expense ratio of a registered investment com-  
7 pany that accounts for as many operating costs to  
8 shareholders of such companies as is practicable.

9 (2) **SEPARATE DISCLOSURES.**—In developing  
10 the method of calculation required under paragraph  
11 (1), if the Commission determines that the inclusion  
12 of certain costs in such calculation will lead to a sig-  
13 nificant risk of confusing or misleading shareholders,  
14 the Commission shall develop separate standardized  
15 methods for the calculation and disclosure of such  
16 costs.

17 (b) **TRANSACTION COST RATIO.**—The Commission  
18 shall, by rule, develop a standardized method of computing  
19 the transaction cost ratio of a registered investment com-  
20 pany that practicably and fairly accounts for actual trans-  
21 action costs to shareholders, including, at a minimum, bro-  
22 kerage commissions and bid-ask spread costs. Such com-  
23 putation, if necessary for ease of administration, may be  
24 based upon a fair method of estimation or a standardized  
25 derivation from easily ascertainable information.

1           (c) DISCLOSURE OF EXPENSE RATIO AND TRANS-  
2 ACTION COST RATIO.—The Commission shall, by rule, re-  
3 quire the prominent disclosure of the expense ratio and  
4 the transaction cost ratio of a registered company, both  
5 separately and as a total investment cost ratio, in—

6           (1) each annual report of the registered invest-  
7 ment company;

8           (2) any prospectus of the registered investment  
9 company, as part of a fee table; and

10           (3) such other filings with the Commission as  
11 the Commission determines appropriate.

12           (d) ACTUAL COST DISCLOSURE.—The Commission  
13 shall, by rule, require, on at least an annual basis, the  
14 prominent disclosure in the shareholder account statement  
15 of a registered investment company of the actual dollar  
16 amount of the projected annual costs of each shareholder  
17 of the company, based upon the asset value of the share-  
18 holder at the time of the disclosure.

19           (e) DEFINITION OF FEES AND EXPENSES.—

20           (1) IN GENERAL.—The Commission shall, by  
21 rule, define all specific allowable types or categories  
22 of fees and expenses that may be borne by the  
23 shareholders of a registered investment company.

24           (2) NEW FEES AND EXPENSES.—No new fee or  
25 expense, other than any defined under paragraph

1 (1), shall be borne by the shareholders of a reg-  
2 istered investment company, unless the Commission  
3 finds that such new fee or expense fairly reflects the  
4 services provided to, or is in the best interests of the  
5 shareholders of—

6 (A) a particular registered investment com-  
7 pany;

8 (B) specific types or categories of reg-  
9 istered investment companies; or

10 (C) registered investment companies in  
11 general.

12 (f) COST STRUCTURES.—The Commission shall pro-  
13 mulgate such rules or regulations as are necessary—

14 (1) to promote the standardization and sim-  
15 plification of the disclosure of the cost structures of  
16 registered investment companies; and

17 (2) to ensure that the shareholders of such reg-  
18 istered investment companies receive all material in-  
19 formation regarding such costs—

20 (A) in a nonmisleading manner; and

21 (B) in such form and prominence as to fa-  
22 cilitate, to the extent practicable, ease of com-  
23 prehension and comparison of such costs.

24 (g) DESCRIPTIONS OF FEES, EXPENSES, AND  
25 COSTS.—The Commission shall, by rule, require—

1           (1) the disclosure, in any annual or periodic re-  
2           port filed with the Commission or any prospectus de-  
3           livered to the shareholders of a registered investment  
4           company, of all types of fees, expenses, or costs  
5           borne by shareholders;

6           (2) a clear definition of each such fee, expense,  
7           or cost; and

8           (3) information as to where shareholders may  
9           find out more information concerning such fees, ex-  
10          penses, or costs.

11 **SEC. 211. ADVISOR COMPENSATION AND OWNERSHIP OF**  
12 **FUND SHARES.**

13          (a) COMPENSATION OF INVESTMENT ADVISER.—The  
14 Commission shall, by rule, require—

15           (1) the disclosure to the shareholders of a reg-  
16 istered investment company of—

17           (A) the amount and structure of, or the  
18           method used to determine, the compensation  
19           paid by the registered investment company to  
20           the portfolio manager or portfolio management  
21           team of the investment adviser; and

22           (B) the ownership interest in such com-  
23           pany of the portfolio manager or portfolio man-  
24           agement team; and



1           “(i) the source and amount of any  
2           compensation received or to be received by  
3           the broker in connection with such trans-  
4           action; and

5           “(ii) such other information as the  
6           Commission determines appropriate.

7           “(B) TIMING OF DISCLOSURE.—The dis-  
8           closures required under subparagraph (A) shall  
9           be made at or before the time of the purchase  
10          transaction.

11          “(C) LIMITATION.—The disclosures re-  
12          quired under subparagraph (A) may not be  
13          made exclusively in—

14               “(i) a registration statement or pro-  
15               spectus of the registered investment com-  
16               pany; or

17               “(ii) any other filing of a registered  
18               investment company with the Commis-  
19               sion.”.

20   **SEC. 213. BREAKPOINT DISCOUNTS.**

21          The Commission, by rule, shall require the disclosure  
22          by any registered investment company, in any quarterly  
23          or other periodic report filed with the Commission, infor-  
24          mation concerning discounts on front-end sales loads for

1 which shareholders may be eligible, including the min-  
2 imum purchase amounts required for such discounts.

3 **SEC. 214. PORTFOLIO TURNOVER RATIO.**

4 The Commission, by rule, shall require the disclosure,  
5 by any registered investment company, in any quarterly  
6 or periodic report filed with the Commission, and in any  
7 prospectus delivered to the shareholders of such company,  
8 of the portfolio turnover ratio of the company, and an ex-  
9 planation of its meaning and implications for cost and per-  
10 formance. Such rules shall require the disclosures to be  
11 prominently displayed within the appropriate document.

12 **SEC. 215. PROXY VOTING POLICIES AND RECORD.**

13 Section 30 of the Investment Company Act of 1940  
14 (15 U.S.C. 80a-29) is amended by adding at the end the  
15 following:

16 “(k) PROXY VOTING DISCLOSURE.—

17 “(1) IN GENERAL.—Each registered investment  
18 company, other than a small business investment  
19 company, shall file with the Commission, not later  
20 than August 31 of each year, an annual report, on  
21 a form prescribed by the Commission by rule, con-  
22 taining the proxy voting record of the registrant and  
23 policies of the company with respect to the voting of  
24 such proxies for the most recent 12-month period  
25 ending on June 30.

1           “(2) NOTICE IN FINANCIAL STATEMENTS.—The  
2           financial statements of each registered investment  
3           company shall state that information regarding how  
4           the company voted proxies and proxy voting policies  
5           relating to portfolio securities during the most re-  
6           cent 12-month period ending on June 30 is avail-  
7           able—

8                   “(A) without charge, upon request, by call-  
9                   ing a specified toll-free (or collect) telephone  
10                  number; or on or through the company’s  
11                  website at a specified Internet address, or both;  
12                  and

13                   “(B) on the website of the Commission.”.

14 **SEC. 216. CUSTOMER INFORMATION FROM ACCOUNT**  
15 **INTERMEDIARIES.**

16           (a) IN GENERAL.—The Commission shall, by rule, re-  
17           quire that each account intermediary of a registered in-  
18           vestment company provide to such company, with respect  
19           to each account serviced by the intermediary, such infor-  
20           mation as is necessary for the company to enforce its in-  
21           vestment, trading, and fee policies.

22           (b) REQUIREMENTS.—The information provided by a  
23           registered investment company under subsection (a) shall  
24           include, at a minimum—

1           (1) the name under which the account is opened  
2           with the intermediary;

3           (2) the taxpayer identification number of such  
4           person;

5           (3) the mailing address of such person; and

6           (4) individual transaction data for all pur-  
7           chases, redemptions, transfers, and exchanges by or  
8           on behalf of such person.

9           (c) **PRIVACY OF INFORMATION.**—The information  
10          provided under subsection (a), and the use thereof, shall  
11          be subject to all Federal and State laws with regard to  
12          privacy and proprietary information.

13       **SEC. 217. ADVERTISING.**

14          (a) **PERFORMANCE ADVERTISING.**—The Commission  
15          shall promulgate such rules as the Commission determines  
16          necessary with respect to the advertising of a registered  
17          investment company regarding—

18               (1) unrepresentative short-term performance;

19               (2) performance based upon an undisclosed or  
20               improbable event; and

21               (3) performance based upon incomplete or mis-  
22               leading data.

23          (b) **DOLLAR AND TIME-WEIGHTED RETURNS.**—

24               (1) **IN GENERAL.**—Subject to paragraph (2),  
25               the Commission shall, by rule, require each reg-

1       istered investment company to disclose, in its annual  
2       report and any prospectus delivered to shareholders,  
3       dollar-weighted returns and time-weighted returns  
4       for each of—

5               (A) the preceding fiscal year;

6               (B) the preceding 5 fiscal years;

7               (C) the preceding 10 fiscal years; and

8               (D) the life of the company.

9               (2) EXCEPTION.—The Commission may omit or  
10       require additional disclosures required under para-  
11       graph (1) for such time periods as the Commission  
12       determines necessary.

13              (3) COMMISSION USE OF BENCHMARKS.—The  
14       Commission may require, in the interest of facili-  
15       tating non-misleading disclosures, that any perform-  
16       ance-related advertising by a registered investment  
17       company be accompanied by such benchmarks as the  
18       Commission may deem appropriate.

19              (c) SUBSIDIZED YIELDS.—The Commission shall, by  
20       rule, require that any registered investment company that  
21       discloses in any publication a subsidized yield to disclose  
22       in the same publication the amount and duration of such  
23       subsidy.

1     **TITLE III—FUND REGULATION**  
2                     **AND OVERSIGHT**

3     **SEC. 310. PROHIBITION OF ASSET-BASED DISTRIBUTION**  
4                     **EXPENSES.**

5             (a) REPEAL OF RULE 12b-1.—

6                     (1) IN GENERAL.—Beginning 180 days after  
7             the date of enactment of this Act (or such earlier  
8             time as the Commission may elect), as in effect on  
9             the date of enactment of this Act, section 270.12b-  
10            1 of chapter II of title 17 of the Code of Federal  
11            Regulations, promulgated under section 12 of the  
12            Investment Company Act of 1940 (15 U.S.C. 80a-  
13            12), is repealed, and shall have no force or effect.

14                    (2) PRESERVATION OF ACTIONS.—Paragraph  
15            (1) shall have no effect on any case pending or pen-  
16            alty imposed under section 270.12b-1 of the Code of  
17            Federal Regulations prior to the date of repeal  
18            under paragraph (1).

19             (b) PAYMENT OF DISTRIBUTION EXPENSES FROM  
20     MANAGEMENT FEE.—Section 12 of the Investment Com-  
21     pany Act of 1940 (15 U.S.C. 80a-12) is amended by add-  
22     ing at the end the following:

23                    “(h) PAYMENT OF DISTRIBUTION EXPENSES.—Not-  
24     withstanding any provision of subsection (b), or any rule  
25     or regulation promulgated thereunder, distribution ex-

1 penses incurred by an investment adviser may be paid out  
2 of the management fee received by the investment ad-  
3 viser.”.

4 (c) SUMS EXPENDED PROMOTING SALE OF SECURI-  
5 TIES.—The Commission shall, by rule—

6 (1) require that any sums expended by the in-  
7 vestment adviser of a registered investment company  
8 to promote or facilitate the sale of the securities of  
9 such company be disclosed to the board of directors  
10 of the company;

11 (2) require that such sums be accounted for  
12 and identified in the expense ratio of any such com-  
13 pany; and

14 (3) authorize the board of directors of any such  
15 company to prohibit its investment adviser from  
16 using any compensation received from the company  
17 for distribution expenses that the board determines  
18 not to be in the best interest of the shareholders of  
19 the company.

20 (d) PROHIBITION OF ASSET-BASED FEES.—Section  
21 12 of the Investment Company Act of 1940 (15 U.S.C.  
22 80a–12), as amended by subsection (a), is amended by  
23 adding at the end the following:

24 “(i) ASSET-BASED FEES.—

1           “(1) IN GENERAL.—It shall be unlawful for any  
2 registered investment company to pay asset-based  
3 fees to any broker or dealer in connection with the  
4 offer or sale of the securities of such investment  
5 company.

6           “(2) DEFINITION OF ASSET-BASED FEES.—The  
7 Commission shall, by rule, define the term ‘asset-  
8 based fees’ for purposes of this subsection.”.

9 **SEC. 311. PROHIBITION ON REVENUE SHARING, DIRECTED**  
10 **BROKERAGE, AND SOFT DOLLAR ARRANGE-**  
11 **MENTS.**

12       (a) IN GENERAL.—The Investment Company Act of  
13 1940 (15 U.S.C. 80a–1 et seq.) is amended by inserting  
14 after section 12 the following:

15 **“SEC. 12A. PROHIBITION ON REVENUE SHARING, DIRECTED**  
16 **BROKERAGE, AND SOFT DOLLAR ARRANGE-**  
17 **MENTS.**

18       “(a) REVENUE SHARING ARRANGEMENTS.—It shall  
19 be unlawful for any investment adviser to enter into a rev-  
20 enue sharing arrangement with any broker or dealer with  
21 respect to the securities of a registered investment com-  
22 pany.

23       “(b) DIRECTED BROKERAGE ARRANGEMENTS.—It  
24 shall be unlawful for any registered investment company,

1 or any affiliate of such company, to enter into a directed  
2 brokerage arrangement with a broker or dealer.

3 “(c) SOFT-DOLLAR ARRANGEMENTS.—It shall be un-  
4 lawful for any registered investment company or reg-  
5 istered investment adviser to enter into a soft-dollar ar-  
6 rangement with any broker or dealer.

7 “(d) REGULATIONS RESPECTING SECTION 28(E) OF  
8 THE SECURITIES EXCHANGE ACT OF 1934.—The Com-  
9 mission shall, by rule, narrow the soft-dollar safe harbor  
10 under section 28(e) of the Securities Exchange Act of  
11 1934 (15 U.S.C. 78bb(e)(1)) to promote such parity as  
12 the Commission determines appropriate, and in the best  
13 interests of shareholders of a registered investment com-  
14 pany, between registered investment companies governed  
15 by section 12A, and companies not covered by section 12A.

16 “(e) DEFINITIONS.—

17 “(1) IN GENERAL.—In this section—

18 “(A) the term ‘directed brokerage arrange-  
19 ment’ means the direction of discretionary bro-  
20 kerage by an investment company or an affil-  
21 iate of that company, to a broker or dealer in  
22 exchange for services other than trade execu-  
23 tions;

24 “(B) the term ‘revenue sharing arrange-  
25 ment’ means any direct or indirect payment

1 made by an investment adviser (or any affiliate  
2 of an investment adviser) to a broker or dealer  
3 for the purpose of promoting the sales of secu-  
4 rities of a registered investment company, other  
5 than any payment made directly by a share-  
6 holder as a commission for the purchase of such  
7 securities;

8 “(C) the term ‘soft-dollar arrangement’  
9 means payments to a broker or dealer for best  
10 trade executions in exchange for, or which gen-  
11 erate credits for, services or products other  
12 than trade executions; and

13 “(D) the term ‘trade executions’ has the  
14 meaning given that term by the Commission, by  
15 rule;

16 “(2) REGULATIONS.—The Commission may, by  
17 rule, refine the definitions under paragraph (1), de-  
18 fine such other terms as the Commission determines  
19 necessary, and otherwise tailor the proscriptions set  
20 forth under this section to achieve the purposes of—

21 “(A) protecting the best interests of share-  
22 holders of a registered investment company;

23 “(B) minimizing or eliminating conflicts  
24 with the best interests of shareholders of a reg-  
25 istered investment company;

1           “(C) enhancing market negotiation for and  
2 price competition in trade execution services,  
3 and products and services previously obtained  
4 under arrangements prohibited by this section;

5           “(D) ensuring the transparency of trans-  
6 actions for trade executions, and products and  
7 services previously obtained under arrange-  
8 ments prohibited by this section, and disclosure  
9 to shareholders of costs associated with trade  
10 executions, and products and services previously  
11 obtained under arrangements prohibited by this  
12 section, that is simplified, clear, and com-  
13 prehensible; and

14           “(E) providing reasonable safe harbors for  
15 conduct otherwise consistent with such pur-  
16 poses.”.

17       (b) TECHNICAL AND CONFORMING AMENDMENT.—  
18 Section 28(e)(1) of the Securities Exchange Act of 1934  
19 (15 U.S.C. 78bb(e)(1)) is amended by striking “This sec-  
20 tion is exclusive” and inserting “Except as provided under  
21 section 12A of the Investment Company Act of 1940, this  
22 section is exclusive”.

23 **SEC. 312. MARKET TIMING.**

24       (a) IN GENERAL.—The Commission shall, by rule, re-  
25 quire—

1           (1) the disclosure in any registration statement  
2           filed with the Commission by a registered investment  
3           company of the market timing policies of that com-  
4           pany and the procedures adopted to enforce such  
5           policies; and

6           (2) that any registered investment company  
7           that declines to adopt restrictions on market timing  
8           disclose such fact in the registration statement of  
9           the company, and in any advertising or other pub-  
10          licly available documents, as the Commission deter-  
11          mines necessary.

12          (b) **FUNDAMENTAL INVESTMENT POLICY.**—The poli-  
13          cies required to be disclosed under paragraph (1) shall be  
14          deemed “fundamental investment policies” for purposes of  
15          sections 8(b)(3) and 13(a)(3) of the Investment Company  
16          Act of 1940 (15 U.S.C. 80a–8(b)(3) and 80a–13(a)(3)).

17          **SEC. 313. ELIMINATION OF STALE PRICES.**

18          (a) **IN GENERAL.**—Not later than 90 days after the  
19          date of enactment of this Act, the Commission shall pre-  
20          scribe, by rule or regulation, standards concerning the ob-  
21          ligation of registered investment companies under the In-  
22          vestment Company Act of 1940, to apply and use fair  
23          value methods of determination of net asset value when  
24          market quotations are unavailable or do not accurately re-  
25          flect the fair market value of the portfolio securities of

1 such a company, in order to prevent dilution of the inter-  
 2 ests of long-term shareholders or as necessary in the pub-  
 3 lic interest or for the protection of shareholders.

4 (b) CONTENT.—The rule or regulation prescribed  
 5 under subsection (a) shall identify, in addition to signifi-  
 6 cant events, the conditions or circumstances from which  
 7 such an obligation will arise, such as the need to value  
 8 securities traded on foreign exchanges, and the methods  
 9 by which fair value methods shall be applied in such  
 10 events, conditions, and circumstances.

11 **SEC. 314. PROHIBITION OF SHORT TERM TRADING; MANDA-**  
 12 **TORY REDEMPTION FEES.**

13 (a) SHORT-TERM TRADING PROHIBITED.—Section  
 14 17 of the Investment Company Act of 1940 (15 U.S.C.  
 15 80a–17) is amended by adding at the end the following:

16 “(k) SHORT-TERM TRADING PROHIBITED.—

17 “(1) PROHIBITION.—It shall be unlawful for  
 18 any officer, director, partner, or employee of a reg-  
 19 istered investment company, any affiliated person,  
 20 investment adviser, or principal underwriter of such  
 21 company, or any officer, director, partner, or em-  
 22 ployee of such an affiliated person, investment ad-  
 23 viser, or principal underwriter, to engage in any  
 24 short-term transaction, in any securities issued by  
 25 such company, or any affiliate of such company.

1           “(2) LIMITATION.—This subsection does not  
2           prohibit any transaction in a money market fund, or  
3           in funds, the investment policy of which expressly  
4           permits short-term transactions, or such other cat-  
5           egory of registered investment company as the Com-  
6           mission shall specify, by rule.

7           “(3) DEFINITION.—For purposes of this sub-  
8           section, the term ‘short-term transaction’ has the  
9           meaning given that term by the Commission, by  
10          rule.”.

11          (b) MANDATORY REDEMPTION FEES.—The Commis-  
12          sion shall, by rule, require any registered investment com-  
13          pany that does not allow for market timing practices to  
14          charge a redemption fee upon the short-term redemption  
15          of any securities of such company. In determining the ap-  
16          plication of mandatory redemption fees, shares shall be  
17          considered in the reverse order of their purchase.

18          (c) INCREASED REDEMPTION FEES PERMITTED FOR  
19          SHORT-TERM TRADING.—Not later than 90 days after the  
20          date of enactment of this Act, the Commission shall per-  
21          mit a registered investment company to charge redemption  
22          fees in excess of 2 percent upon the redemption of any  
23          securities of such company that are redeemed within such  
24          period after their purchase as the Commission specifies

1 in such rule to deter short term trading that is unfair to  
2 the shareholders of such company.

3 (d) DEADLINE FOR RULES.—The Commission shall  
4 prescribe rules to implement section 17(k) of the Invest-  
5 ment Company Act of 1940, as added by subsection (a)  
6 of this section, not later than 90 days after the date of  
7 enactment of this Act.

8 **SEC. 315. PREVENTION OF AFTER-HOURS TRADING.**

9 (a) ADDITIONAL RULES REQUIRED.—The Commis-  
10 sion shall issue rules to prevent transactions in the securi-  
11 ties of any registered investment company in violation of  
12 section 22 of the Investment Company Act of 1940 (15  
13 U.S.C. 80a–22), including after-hours trades that are exe-  
14 cuted at a price based on a net asset value that was deter-  
15 mined as of a time prior to the actual execution of the  
16 transaction.

17 (b) TRADES COLLECTED BY INTERMEDIARIES.—The  
18 Commission shall determine the circumstances under  
19 which to permit, subject to rules of the Commission and  
20 an annual independent audit of such trades, the execution  
21 of after-hours trades that are provided to a registered in-  
22 vestment company by a broker, dealer, retirement plan ad-  
23 ministrator, insurance company, or other intermediary,  
24 after the time as of which the net asset value was deter-  
25 mined.

1 **SEC. 316. BAN ON JOINT MANAGEMENT OF MUTUAL FUNDS**  
2 **AND HEDGE FUNDS.**

3 (a) AMENDMENT.—Section 15 of the Investment  
4 Company Act of 1940 (15 U.S.C. 80a–15) is amended by  
5 adding at the end the following:

6 “(h) BAN ON JOINT MANAGEMENT OF MUTUAL  
7 FUNDS AND HEDGE FUNDS.—

8 “(1) PROHIBITION OF JOINT MANAGEMENT.—It  
9 shall be unlawful for any individual to serve or act  
10 as the portfolio manager or investment adviser of a  
11 registered open-end investment company if such in-  
12 dividual also serves or acts as the portfolio manager  
13 or investment adviser of an investment company  
14 that is not registered or of such other categories of  
15 companies as the Commission shall prescribe by rule  
16 in order to prohibit conflicts of interest, such as con-  
17 flicts in the selection of the portfolio securities.

18 “(2) EXCEPTIONS.—Notwithstanding para-  
19 graph (1), the Commission may, by rule, regulation,  
20 or order, permit joint management by a portfolio  
21 manager in exceptional circumstances when nec-  
22 essary to protect the interest of shareholders, pro-  
23 vided that such rule, regulation, or order requires—

24 “(A) enhanced disclosure by the registered  
25 open-end investment company to shareholders

1 of any conflicts of interest raised by such joint  
2 management; and

3 “(B) fair and equitable policies and proce-  
4 dures for the allocation of securities to the port-  
5 folios of the jointly managed companies, and  
6 certification by the members of the board of di-  
7 rectors who are not interested persons of such  
8 registered open-end investment company, in the  
9 periodic report to shareholders, or other appro-  
10 priate disclosure document, that such policies  
11 and procedures of such company are fair and  
12 equitable.

13 “(3) DEFINITION.—For purposes of this sub-  
14 section, the term ‘portfolio manager’ means the indi-  
15 vidual or individuals who are designated as respon-  
16 sible for decision-making in connection with the se-  
17 curities purchased and sold on behalf of a registered  
18 open-end investment company, but shall not include  
19 individuals who participate only in making research  
20 recommendations or executing transactions on behalf  
21 of such company.”.

22 (b) DEADLINE FOR RULES.—The Commission shall  
23 prescribe rules to implement section 15(h) of the Invest-  
24 ment Company Act of 1940, as added by subsection (a)

1 of this section, not later than 90 days after the date of  
2 enactment of this Act.

3 **SEC. 317. SELECTIVE DISCLOSURES.**

4 (a) IN GENERAL.—The Commission shall promulgate  
5 such rules as the Commission determines necessary to pre-  
6 vent the selective disclosure by a registered investment  
7 company of material information relating to the portfolio  
8 of securities held by such company.

9 (b) REQUIREMENTS.—The rules promulgated under  
10 subsection (a) shall treat selective disclosures of material  
11 information by a registered investment company in sub-  
12 stantially the same manner as selective disclosures by  
13 issuers of securities registered under section 12 of the Se-  
14 curities Exchange Act of 1934 under the rules of the Com-  
15 mission.

16 **TITLE IV—STUDIES**

17 **SEC. 410. STUDY OF ADVISER CONFLICT OF INTEREST.**

18 (a) IN GENERAL.—The Commission shall conduct a  
19 study of—

20 (1) the consequences of the inherent conflicts of  
21 interest confronting investment advisers employed by  
22 registered investment companies;

23 (2) the extent to which legislative or regulatory  
24 measures could minimize such conflicts of interest;  
25 and

1           (3) the extent to which legislative or regulatory  
2           measures could incentivize internal management of a  
3           registered investment company.

4           (b) REPORT.—Not later than 1 year after the date  
5           of enactment of this Act, the Commission shall submit a  
6           report on the results of the study required under sub-  
7           section (a) to—

8           (1) the Committee on Banking, Housing, and  
9           Urban Affairs of the Senate; and

10           (2) the Committee on Financial Services of the  
11           House of Representatives.

12 **SEC. 411. STUDY OF COORDINATION OF ENFORCEMENT EF-**  
13 **FORTS.**

14           (a) IN GENERAL.—The Comptroller General of the  
15           United States, with the cooperation of the Commission,  
16           shall conduct a study of the coordination of enforcement  
17           efforts between—

18           (1) the headquarters of the Commission;

19           (2) the regional offices of the Commission; and

20           (3) State regulatory and law enforcement agen-  
21           cies.

22           (b) REPORT.—Not later than 1 year after the date  
23           of enactment of this Act, the Commission shall submit a  
24           report on the results of the study required under sub-  
25           section (a) to—

1           (1) the Committee on Banking, Housing, and  
2           Urban Affairs of the Senate; and

3           (2) the Committee on Financial Services of the  
4           House of Representatives.

5 **SEC. 412. STUDY OF COMMISSION ORGANIZATIONAL**  
6           **STRUCTURE.**

7           (a) IN GENERAL.—The Comptroller General of the  
8           United States, with the cooperation of the Commission,  
9           shall conduct a study of—

10           (1) the current organizational structure of the  
11           Commission with respect to the regulation of invest-  
12           ment companies;

13           (2) whether the organizational structure and re-  
14           sources of the Commission sufficiently credit the im-  
15           portance of oversight of investment companies to the  
16           95 million investors in such companies within the  
17           United States;

18           (3) whether certain organizational features of  
19           that structure, such as the separation of regulatory  
20           and enforcement functions, are sufficient to promote  
21           the optimal understanding of the current practices  
22           of investment companies; and

23           (4) whether a separate regulatory entity would  
24           improve or impair effective oversight.

1 (b) REPORT.—Not later than 1 year after the date  
2 of enactment of this Act, the Comptroller General shall  
3 submit a report on the results of the study required under  
4 subsection (a) to—

5 (1) the Committee on Banking, Housing, and  
6 Urban Affairs of the Senate; and

7 (2) the Committee on Financial Services of the  
8 House of Representatives.

9 **SEC. 413. TRENDS IN ARBITRATION CLAUSES.**

10 (a) IN GENERAL.—The Commission shall conduct a  
11 study on the trends in arbitration clauses between brokers,  
12 dealers, and investors since December 31, 1995, and alter-  
13 native means to avert the filing of claims in Federal or  
14 State courts.

15 (b) REPORT.—Not later than 1 year after the date  
16 of enactment of this Act, the Commission shall submit a  
17 report on the results of the study required under sub-  
18 section (a) to—

19 (1) the Committee on Banking, Housing, and  
20 Urban Affairs of the Senate; and

21 (2) the Committee on Financial Services of the  
22 House of Representatives.

23 **SEC. 414. HEDGE FUND REGULATION.**

24 (a) IN GENERAL.—The Commission shall conduct a  
25 study of whether additional regulation of alternative in-

1 vestment vehicles, such as hedge funds, is appropriate to  
2 deter the recurrence of trading abuses, manipulation of  
3 registered investment companies by unregistered invest-  
4 ment companies, or other distortions that may harm inves-  
5 tors in registered investment companies.

6 (b) REPORT.—Not later than 1 year after the date  
7 of enactment of this Act, the Commission shall submit a  
8 report on the results of the study required under sub-  
9 section (a) to—

10 (1) the Committee on Banking, Housing, and  
11 Urban Affairs of the Senate; and

12 (2) the Committee on Financial Services of the  
13 House of Representatives.

14 **SEC. 415. INVESTOR EDUCATION AND THE INTERNET.**

15 (a) IN GENERAL.—The Commission shall conduct a  
16 study of—

17 (1) the means of enhancing the role of the  
18 Internet in educating investors and providing timely  
19 information regarding laws, regulations, enforcement  
20 proceedings, and individual registered investment  
21 companies;

22 (2) the feasibility of mandating that each reg-  
23 istered investment company maintain a website on  
24 which shall be posted filings of the registered invest-  
25 ment company with the Commission and any other

1 material information related to the registered invest-  
2 ment company; and

3 (3) the means of ensuring that the EDGAR  
4 database maintained by the Commission is user-  
5 friendly and contains a search engine that facilitates  
6 the expeditious location of material information.

7 (b) REPORT.—Not later than 1 year after the date  
8 of enactment of this Act, the Commission shall submit a  
9 report on the results of the study required under sub-  
10 section (a) to—

11 (1) the Committee on Banking, Housing, and  
12 Urban Affairs of the Senate; and

13 (2) the Committee on Financial Services of the  
14 House of Representatives.

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