

SEC DISCLOSURE EFFECTIVENESS TESTING ACT

—————
JUNE 20, 2019.—Committed to the Committee of the Whole House on the State of
the Union and ordered to be printed
—————

Ms. MAXINE WATERS of California, from the Committee on
Financial Services, submitted the following

R E P O R T

together with

MINORITY VIEWS

[To accompany H.R. 1815]

[Including cost estimate of the Congressional Budget Office]

The Committee on Financial Services, to whom was referred the bill (H.R. 1815) to require the Securities and Exchange Commission, when developing rules and regulations about disclosures to retail investors, to conduct investor testing, including a survey and interviews of retail investors, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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The amendment is as follows:
Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “SEC Disclosure Effectiveness Testing Act”.

SEC. 2. DISCLOSURE TESTING.

(a) IN GENERAL.—Section 23(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78w(a)) is amended by adding at the end the following:

“(4) INVESTOR TESTING.—

“(A) IN GENERAL.—The Commission shall engage in investor testing prior to issuing any rule or regulation which designates documents or information to be disclosed under the securities laws, if such documents or information—

“(i) are primarily used by retail investors, as determined by the Commission; and

“(ii) are intended to be used by retail investors to make informed investment decisions or to understand the investments held by the retail investor.

“(B) CONTENTS.—Investor testing conducted pursuant to subparagraph (A) shall include the following:

“(i) Qualitative testing in the form of one-on-one cognitive interviews of retail investors about documents or information, or samples of such documents or information, to be provided.

“(ii) A nationwide survey of retail investors, designed to complement the interviews under clause (i), on—

“(I) the usefulness of such documents or information, or samples of such documents or information;

“(II) the proposed format of such documents or information, or samples of such documents or information; and

“(III) delivery preferences of such documents or information, or samples of such documents or information.

“(iii) Analysis and publication in the Federal Register of the results of the survey and interviews.

“(iv) An opportunity for the public to comment on such results published in the Federal Register.

“(C) SUBSTANTIVE CHANGES.—If the Commission, in the period between engaging in investor testing and publishing a final rule, makes substantive changes to such rule that the Commission determines would have a significant impact on retail investors, the Commission shall again engage in investor testing.

“(D) PUBLIC AVAILABILITY OF RETAIL TESTING RESULTS.—The Commission shall make the data and results of any investor testing performed pursuant to this paragraph available to the public.”

(b) PARTICIPATION OF INVESTOR ADVOCATE.—Section 4(g) of the Securities Exchange Act of 1934 (15 U.S.C. 78d(g)) is amended—

(1) in paragraph (4)—

(A) in subparagraph (D)(ii), by striking “and” at the end;

(B) by redesignating subparagraph (E) as subparagraph (F); and

(C) by inserting after subparagraph (D) the following:

“(E) engage in investor testing—

“(i) as necessary to carry out the functions of the Office; and

“(ii) under section 23(a)(4), if the Commission determines it appropriate; and”;

(2) by adding at the end the following:

“(9) PUBLICATION OF DATA AND RESULTS OF INVESTOR TESTING.—With respect to any investor testing carried out by the Investor Advocate pursuant to paragraph (4)(E), the Investor Advocate may make the data and results of such investor testing available to the public, and without further review or editing by the Commission.”

(c) PRIOR RULES.—

(1) IN GENERAL.—For any final rule or regulation issued by the Securities and Exchange Commission (in this subsection referred to as the “Commission”) before the date of the enactment of this Act that would be subject to investor testing under section 23(a)(4) of the Securities Exchange Act of 1934, had such rule been issued on or after the date of enactment of this Act, the Commission shall perform investor testing with respect to such rule or regulation that includes the contents described in such section 23(a)(4).

(2) SCHEDULE.—The Commission shall, not later than 6 months after the date of the enactment of this Act, establish a schedule for completing any investor testing required under paragraph (1) that prioritizes testing of any final rules

and regulations that designate documents or information central to retail investor decision making.

(3) REPORT.—The Commission shall issue a report to Congress each year containing the following:

- (A) The status of any investor testing required under paragraph (1).
- (B) The results of any investor testing completed under paragraph (1).
- (C) Any priorities the Commission has, based on results of investor testing required by paragraph (1), for—
 - (i) revising or eliminating any final rule or regulation designating documents or information to be provided to retail investors; and
 - (ii) revising any other final rule or regulation to supplement revised or eliminated rules designating documents or information to be provided to retail investors.

PURPOSE AND SUMMARY

H.R. 1815, the SEC Disclosure Effectiveness Testing Act, would build on efforts by the Securities and Exchange Commission (SEC) to engage in investor testing by requiring the SEC to conduct usability testing of new disclosures that are primarily used by retail investors and are intended to help them make investment decisions or understand their investments. It would also require the SEC to review and test the usability of its existing disclosures for retail investors, such as mutual fund disclosures. Such reviews and tests would be required prior to the SEC adopting a final rule-making. The bill would also provide the SEC’s Investor Advocate with the authority to conduct investor testing and allow such testing to meet the requirements of the bill. The Investor Advocate would be able to make the testing results and data public.

BACKGROUND AND NEED FOR LEGISLATION

On April 18, 2018 the SEC proposed a three-part regulatory package, consisting of: (1) a “best interest” standard of conduct for brokers pursuant to Section 913(f) of Dodd-Frank (“Regulation Best Interest” or “Reg BI”); (2) guidance on the fiduciary standard of conduct for investment advisers; and, (3) a relationship disclosure document for brokers and investment advisers (“Form CRS”).¹ Form CRS is a 5-page document designed to inform retail investors about the relationships and services the brokerage firm or investment adviser offers, the standard of conduct and costs associated with those services, specific conflicts of interest, and whether the firm and its financial professionals have reportable legal or disciplinary events. The SEC then engaged in investor testing of proposed Form CRS, which consisted of a nationwide online survey of 1,800 individuals and 31 qualitative in-depth interviews in Denver and Pittsburgh.

¹SEC, Form CRS Relationship Summary; Amendments to Form ADV; Required Disclosures in Retail Communications and Restrictions on the use of Certain Names or Titles, 83 Fed. Reg. 21416 (Apr. 18, 2018) (to be codified at 17 C.F.R. pt. 240, *available* at: <https://www.federalregister.gov/documents/2018/05/09/2018-08583/form-crs-relationship-summary-amendments-to-form-adv-required-disclosures-in-retail-communications>; SEC, Proposed Commission Interpretation Regarding Standard of Conduct for Investment Advisers; Request for Comment on Enhancing Investment Adviser Regulation, 83 Fed. Reg. 21203 (Apr. 18, 2018) (to be codified at 17 C.F.R. pt. 275), *available* at: <https://www.federalregister.gov/documents/2018/05/09/2018-08679/proposed-commission-interpretation-regarding-standard-of-conduct-for-investment-advisers-request-for>; SEC, Regulation Best Interest, 83 Fed. Reg. 21574 (Apr. 18, 2018) (to be codified at 17 C.F.R. pt. 240), *available* at: <https://www.federalregister.gov/documents/2018/05/09/2018-08582/regulation-best-interest>.

On November 7, 2018, the SEC’s Investor Advocate issued a report on the testing conducted by the RAND Corporation.² According to the report, “[n]early 90 percent of survey respondents opined that the [Form CRS] would help them make more informed decisions about investment accounts and services.”³ However, “interview discussions revealed that there were areas of confusion for participants, including differences between types of accounts or financial professionals.”⁴

Also, on November 7, 2018, the SEC’s Investor Advisory Committee (IAC) issued recommendations on the SEC proposed Reg BI, advisor guidance, and Form CRS. Among other things, the IAC recommended that the SEC conduct usability testing of the disclosures in Form CRS “and, if necessary, revise them to ensure that they enable investors to make an informed choice among different types of providers and accounts.”⁵ The IAC also noted that the extensive feedback it had received and the comment letters to the SEC suggested that “Form CRS, as currently proposed, is unlikely to achieve its intended purpose of reducing investor confusion and supporting informed decisions.”⁶

On September 12, 2018, AARP, the Financial Planning Coalition, and Consumer Federation of America sent a letter to SEC Chairman Clayton detailing the results of their own independent usability testing.⁷ Their testing consisted of 90-minute, one-on-one interviews with 16 investors from three geographically diverse locations. The key findings of the testing were that: (1) “The overall level of comprehension was poor;” (2) “Participants did not understand key differences in the nature of services provided;” (3) “Most participants did not understand disclosures regarding legal obligations;” (4) “Participants were deeply confused by the disclosure of fees and costs;” and, (5) “Participants understood the existence, but not the import, of conflicts of interest.”

The SEC Disclosure Effectiveness Testing Act would build on efforts to engage in investor testing by requiring the SEC to conduct usability testing of any new disclosure if they are primarily used by retail investors or intended to be used by retail investors to make informed investment decisions or understand their investments. It would also require the SEC to review and test the usability of its existing disclosures for retail investors, such as mutual fund disclosures. Such reviews and tests would be required prior to the SEC adopting a final rulemaking.

During a March 14, 2019 hearing before the Subcommittee on Investor Protection, Entrepreneurship, and Capital Markets, witnesses from the Certified Financial Planning Board of Standards (CFP Board) and CFA expressed strong support for the SEC Disclosure Effectiveness Testing Act. Former SEC Chairman Harvey Pitt testified that the SEC had already conducted investor testing, mak-

²RAND Relationship Summary, *supra* note 11.

³RAND Relationship Summary, *supra* note 11, at 36.

⁴RAND Relationship Summary, *supra* note 11, at 42.

⁵Sec. & Exch. Comm’n, Recommendation of the Investor as Purchaser Subcommittee Regarding Proposed Regulation Best Interest, Form CRS, and Investment Advisers Act Fiduciary Guidance, *available* at: <https://www.sec.gov/spotlight/investor-advisory-committee-2012/iac110718-investor-as-purchaser-subcommittee-recommendation.pdf> [hereinafter SEC Recommendation].

⁶SEC Recommendation, *supra* note 20.

⁷Letter from the AARP et al., to the SEC, Sept. 12, 2018, *available* at: <https://consumerfed.org/wp-content/uploads/2018/09/letter-to-sec-from-aarp-cfa-fpc-regarding-crs-testing.pdf>.

ing the bill “superfluous” and “would likely be used by those with different objectives to hamstring almost any rulemaking effort involving investor disclosures that the Commission may consider.” Mr. Lee Baker, President of AARP Georgia, testified that the SEC’s test results suggest that “there’s more work to be done.”

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

This section states that the title of the bill is the SEC Disclosure Effectiveness Testing Act.

Section 2. Disclosure testing

Subsection (a) requires the SEC to engage in investor testing prior to making any rule or regulation which designates documents or information to be disclosed if they are primarily used by retail investors or intended to be used by retail investors to make informed investment decisions or understand their investments. Such testing must include: qualitative testing in the form of one-on-one cognitive interviews of retail investors about documents or information, or samples of such documents or information, to be provided; a nationwide survey of retail investors, designed to complement the interviews; analysis and publication in the Federal Register of the results of the survey and interviews; and an opportunity for the public to comment on such results published in the Federal Register. Subsection (a) also requires the SEC to retest any substantive changes that would have a significant impact on investors.

Subsection (b) provides the SEC’s Investor Advocate with the authority to conduct investor testing and allows such testing to meet the requirements of the bill. The Investor Advocate would be able to make the testing results and data public.

Subsection (c) requires the SEC to perform investor testing of existing rules and regulations as of the date of this Act which designates documents or information to be provided to a retail investor. The SEC must establish a schedule for completing this investor testing and report to Congress annually on its progress.

HEARINGS

For the purposes of section 103(i) of H. Res. 6 for the 116th Congress, the Subcommittee on Investor Protection, Entrepreneurship, and Capital Markets of the Committee on Financial Services held a hearing to consider H.R. 1815 entitled “Putting Investors First? Examining the SEC’s Best Interest Rule” on Thursday, March 14, 2019. Testifying before the Subcommittee was Susan MacMichael John, CFP President, Financial Focus, Inc.; Dina Isola, Investment Advisor Representative, Ritholtz Wealth Management; Barbara Roper, Director of Investor Protection, Consumer Federation of America; Lee Baker, President, AARP Georgia State; and the Honorable Harvey L. Pitt, Chief Executive Officer, Kalorama Partners.

COMMITTEE CONSIDERATION

The Committee on Financial Services met in open session on March 26–28, 2019, and ordered H.R. 1815 to be reported favorably

to the House with an amendment in the nature of a substitute by a vote of 33 yeas and 26 nays, a quorum being present.

COMMITTEE VOTES AND ROLL CALL VOTES

In compliance with clause 3(b) of Rule XIII of the Rules of the House of Representatives, the Committee advises that the following roll call votes occurred during the Committee's consideration of H.R. 1815.

Present	Representatives	Ayes	Nays
	Ms. Waters, <i>Chairwoman</i>	X	
	Mrs. Maloney	X	
	Ms. Velázquez	X	
	Mr. Sherman	X	
	Mr. Meeks	X	
	Mr. Clay	X	
	Mr. Scott	X	
	Mr. Green	X	
	Mr. Cleaver	X	
	Mr. Perlmutter	X	
	Mr. Himes		
	Mr. Foster	X	
	Mrs. Beatty	X	
	Mr. Heck	X	
	Mr. Vargas	X	
	Mr. Gottheimer	X	
	Mr. Gonzalez (TX)	X	
	Mr. Lawson	X	
	Mr. San Nicolas	X	
	Ms. Tlaib	X	
	Ms. Porter	X	
	Ms. Axne	X	
	Mr. Casten	X	
	Ms. Pressley	X	
	Mr. McAdams	X	
	Ms. Ocasio-Cortez	X	
	Ms. Wexton	X	
	Mr. Lynch	X	
	Ms. Gabbard	X	
	Ms. Adams	X	
	Ms. Dean	X	
	Mr. Garcia (IL)	X	
	Ms. Garcia (TX)	X	
	Mr. Phillips	X	
34			
	Mr. McHenry, <i>Ranking Member</i>		X
	Ms. Wagner		X
	Mr. King		X
	Mr. Lucas		X
	Mr. Posey		X
	Mr. Luetkemeyer		X
	Mr. Huizenga		X
	Mr. Duff		X
	Mr. Stivers		X
	Mr. Barr		X
	Mr. Tipton		X
	Mr. Williams		X
	Mr. Hill		X
	Mr. Emmer		X
	Mr. Zeldin		X
	Mr. Loudermilk		X
	Mr. Mooney		X
	Mr. Davidson		X
	Mr. Budd		X
	Mr. Kustoff		X
	Mr. Hollingsworth		X
	Mr. Gonzalez (OH)		X
	Mr. Rose		X
	Mr. Steil		X
	Mr. Gooden		X
	Mr. Riggleman		X
26			

Committee on Financial Services
Full Committee
116th Congress (1st Session)

Date: 3/27/2019

Measure: Final passage of H.R. 11815, as amended

Agreed To	Yes	No	Prsnt	Wdm
	X			
Voice Vote	Ayes		Nays	

Record Vote	FC
	33 Ayes - 26 Noes

STATEMENT OF OVERSIGHT FINDINGS AND RECOMMENDATIONS OF
THE COMMITTEE

In compliance with clause 3(c)(1) of rule XIII and clause 2(b)(1) of rule X of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in the descriptive portions of this report.

STATEMENT OF PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause (3)(c) of rule XIII of the Rules of the House of Representatives, the goals of H.R. 1815 are to ensure that the SEC implements usability testing of new disclosures that are primarily used by retail investors.

NEW BUDGET AUTHORITY AND CBO COST ESTIMATE

Pursuant to clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the *Congressional Budget Act of 1974*, and pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the *Congressional Budget Act of 1974*, the Committee has received the following estimate for H.R. 1815 from the Director of the Congressional Budget Office:

COMMITTEE COST ESTIMATE

Clause 3(d)(1) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison of the costs that would be incurred in carrying out H.R. 1815. However, clause 3(d)(2)(B) of that rule provides that this requirement does not apply when the committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the *Congressional Budget Act*.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, June 19, 2019.

Hon. MAXINE WATERS,
*Chairwoman, Committee on Financial Services,
House of Representatives, Washington, DC.*

DEAR MADAM CHAIRWOMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1815, the SEC Disclosure Effectiveness Testing Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is David Hughes.

Sincerely,

PHILLIP L. SWAGEL,
Director.

Enclosure.

At a Glance			
H.R. 1815, SEC Disclosure Effectiveness Testing Act			
As ordered reported by the House Committee on Financial Services on March 28, 2019			
By Fiscal Year, Millions of Dollars	2019	2019-2024	2019-2029
Direct Spending (Outlays)	0	0	0
Revenues	0	0	0
Deficit Effect	0	0	0
Spending Subject to Appropriation (Outlays)	0	-8	n.e.
Statutory pay-as-you-go procedures apply?	No	Mandate Effects	
Increases on-budget deficits in any of the four consecutive 10-year periods beginning in 2030?	No	Contains intergovernmental mandate?	No
		Contains private-sector mandate?	Yes, Under Threshold
n.e. = not estimated.			
The bill would			
<ul style="list-style-type: none"> • Require the Securities and Exchange Commission (SEC) to test the usability of proposed and currently mandated disclosures that financial professionals such as broker-dealers and investment advisors are required to provide to retail investors • Raise the cost of an existing mandate on private entities required to pay assessments to the SEC 			
Estimated budgetary effects would primarily stem from			
<ul style="list-style-type: none"> • Hiring full time employees and contractors to test the usability of more than 100 proposed and currently mandated disclosures 			
Detailed estimate begins on the next page.			

Bill summary: Financial professionals such as broker-dealers and investment advisors are required by the Securities and Exchange Commission (SEC) to disclose a variety of documents and other information to retail investors.¹ Disclosures are designed to educate retail investors about financial choices, standards of care, fiduciary relationships, and other aspects of investing.² H.R. 1815 would require the SEC to test the usability of any disclosure that it mandates through a final rule to be provided to retail investors by broker dealers or investment advisors. Those usability tests would be required before the SEC adopts final rules governing such disclosures. If proposed disclosures undergo substantive changes before the final rule is promulgated, an additional usability test would be required. Disclosures previously mandated before of the bill's enactment also would require a usability test.

Each usability test would include the following:

- One-on-one interviews with retail investors to assess their understanding of the disclosure in question;

¹ Retail investors are individuals without advanced investment knowledge who buy and sell securities, exchange traded funds, or mutual funds, frequently with the advice of broker-dealers and investment advisors.

² For example, the SEC recently adopted a final rule mandating that broker-dealers and investment advisors disclose their financial services they offered, standards of conduct, fees and costs, conflicts of interest, and disciplinary history to retail investors. Under the rule, retail investors are entitled to a disclosure at the beginning of the relationship and an additional disclosure following a material change to the relationship. See Form CRS Relationship Summary; Amendments to Form ADV, 17 C.F.R. § 200, 240, 249, 275, and 279 (June 5, 2019).

- A nationwide survey of retail investors to assess the usefulness of the disclosure;
- An analysis of the interview and survey results, which would be published in the *Federal Register*; and
- An opportunity for public comment on those published results.

Estimated Federal cost: The estimated budgetary effect of H.R. 1815 is shown in Table 1. The costs of the legislation fall within budget function 370 (commerce and housing credit).

Basis of estimate: CBO estimates that implementing H.R. 1815 would have a gross cost to the SEC of \$156 million over the 2019–2024 period. However, the SEC is authorized to collect fees each year to offset its annual appropriation. Assuming appropriation actions consistent with that authority, CBO expects that implementing H.R. 1815 would lead to a net decrease in spending of \$8 million because the collection of fees would initially outpace spending on usability testing.

TABLE 1—ESTIMATED INCREASES IN SPENDING SUBJECT TO APPROPRIATION UNDER H.R. 1815

	By fiscal year, millions of dollars—						
	2019	2020	2021	2022	2023	2024	2019–2024
Testing of Proposed Documents							
Estimated Authorization	0	27	28	29	30	31	145
Estimated Outlays	0	20	28	29	30	31	138
Testing of Prior Documents							
Estimated Authorization	0	*	4	5	5	5	19
Estimated Outlays	0	*	3	5	5	5	18
Additional Fee Collections							
Estimated Authorization	0	–27	–32	–34	–35	–36	–164
Estimated Outlays	0	–27	–32	–34	–35	–36	–165
Total Changes							
Estimated Authorization	0	0	0	0	0	0	0
Estimated Outlays	0	–7	–1	0	0	0	–8

* = between -\$500,000 and \$500,000.

Using information from the SEC on the quantity of proposed rules that involve disclosures to retail investors, CBO estimates that the agency would test the usability of an average of 18 disclosures each year over the 2020–2024 period. Each test would require the work of three employees, at a cost of \$250,000 per employee, and contractor support at a cost of \$600,000. CBO estimates that some retesting would be required because of substantive changes to proposed disclosures before final promulgation. In total, CBO estimates, the SEC would conduct 95 investor tests over the next five years, at a gross cost of \$138 million, including the cost of publishing data and results.

Under H.R. 1815, the SEC would establish a schedule in 2020 to test disclosures mandated by final rules in place before the bill’s enactment. Testing on those disclosures would probably begin in 2021. CBO estimates that three such disclosures would be tested each year from 2021 to 2024, at a gross cost of \$18 million over the 2020–2024 period.

Pay-As-You Go considerations: None.

Increase in Long-Term deficits: None.

Mandates: If the SEC increased fees to offset the costs of implementation, H.R. 1815 would raise the cost of an existing mandate on private entities required to pay those assessments. CBO esti-

mates that, on average, the annual incremental cost of the mandate would be less than \$35 million—well below the annual threshold established in the Unfunded Mandates Reform Act for private-sector mandates (\$164 million in 2019, adjusted annually for inflation).

Estimate prepared by: Federal costs: David Hughes; Mandates: Rachel Austin.

Estimate reviewed by: Kim Cawley, Chief, Natural and Physical Resources Cost Estimates Unit; Susan Willie, Chief, Mandates Unit; H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis; Theresa Gullo, Assistant Director for Budget Analysis.

UNFUNDED MANDATE STATEMENT

Pursuant to Section 423 of the *Congressional Budget and Impoundment Control Act* (as amended by Section 101(a)(2) of the *Unfunded Mandates Reform Act*, Pub. L. 104–4), the Committee adopts as its own the estimate of federal mandates regarding H.R. 1815, as amended, prepared by the Director of the Congressional Budget Office.

ADVISORY COMMITTEE

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

APPLICATION OF LAW TO THE LEGISLATIVE BRANCH

Pursuant to section 102(b)(3) of the *Congressional Accountability Act*, Pub. L. No. 104–1, H.R. 1815, as amended, does not apply to terms and conditions of employment or to access to public services or accommodations within the legislative branch.

EARMARK STATEMENT

In accordance with clause 9 of rule XXI of the Rules of the House of Representatives, H.R. 1815 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as described in clauses 9(e), 9(f), and 9(g) of rule XXI.

DUPLICATION OF FEDERAL PROGRAMS

Pursuant to clause 3(c)(5) of rule XIII of the Rules of the House of Representatives, the Committee states that no provision of H.R. 1815 establishes or reauthorizes a program of the Federal Government known to be duplicative of another federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

CHANGES TO EXISTING LAW

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, H.R. 1815, as reported, are shown as follows:

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

SECURITIES EXCHANGE ACT OF 1934

TITLE I—REGULATION OF SECURITIES EXCHANGES

* * * * *

SECURITIES AND EXCHANGE COMMISSION

SEC. 4. (a) There is hereby established a Securities and Exchange Commission (hereinafter referred to as the "Commission") to be composed of five commissioners to be appointed by the President by and with the advice and consent of the Senate. Not more than three of such commissioners shall be members of the same political party, and in making appointments members of different political parties shall be appointed alternately as nearly as may be practicable. No commissioner shall engage in any other business, vocation, or employment than that of serving as commissioner, nor shall any commissioner participate, directly or indirectly, in any stock-market operations or transactions of a character subject to regulation by the Commission pursuant to this title. Each commissioner shall hold office for a term of five years and until his successor is appointed and has qualified, except that he shall not so continue to serve beyond the expiration of the next session of Congress subsequent to the expiration of said fixed term of office, and except (1) any commissioner appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term, and (2) the terms of office of the commissioners first taking office after the enactment of this title shall expire as designated by the President at the time of nomination, one at the end of one year, one at the end of two years, one at the end of three years, one at the end of four years, and one at the end of five years, after the date of the enactment of this title.

(b) APPOINTMENT AND COMPENSATION OF STAFF AND LEASING AUTHORITY.—

(1) APPOINTMENT AND COMPENSATION.—The Commission shall appoint and compensate officers, attorneys, economists, examiners, and other employees in accordance with section 4802 of title 5, United States Code.

(2) REPORTING OF INFORMATION.—In establishing and adjusting schedules of compensation and benefits for officers, attorneys, economists, examiners, and other employees of the Commission under applicable provisions of law, the Commission shall inform the heads of the agencies referred to under section 1206 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 1833b) and Congress of such compensation and benefits and shall seek to maintain com-

parability with such agencies regarding compensation and benefits.

(3) LEASING AUTHORITY.—Notwithstanding any other provision of law, the Commission is authorized to enter directly into leases for real property for office, meeting, storage, and such other space as is necessary to carry out its functions, and shall be exempt from any General Services Administration space management regulations or directives.

(c) Notwithstanding any other provision of law, in accordance with regulations which the Commission shall prescribe to prevent conflicts of interest, the Commission may accept payment and reimbursement, in cash or in kind, from non-Federal agencies, organizations, and individuals for travel, subsistence, and other necessary expenses incurred by Commission members and employees in attending meetings and conferences concerning the functions or activities of the Commission. Any payment or reimbursement accepted shall be credited to the appropriated funds of the Commission. The amount of travel, subsistence, and other necessary expenses for members and employees paid or reimbursed under this subsection may exceed per diem amounts established in official travel regulations, but the Commission may include in its regulations under this subsection a limitation on such amounts.

(d) Notwithstanding any other provision of law, former employers of participants in the Commission's professional fellows programs may pay such participants their actual expenses for relocation to Washington, District of Columbia, to facilitate their participation in such programs, and program participants may accept such payments.

(e) Notwithstanding any other provision of law, whenever any fee is required to be paid to the Commission pursuant to any provision of the securities laws or any other law, the Commission may provide by rule that such fee shall be paid in a manner other than in cash and the Commission may also specify the time that such fee shall be determined and paid relative to the filing of any statement or document with the Commission.

(f) REIMBURSEMENT OF EXPENSES FOR ASSISTING FOREIGN SECURITIES AUTHORITIES.—Notwithstanding any other provision of law, the Commission may accept payment and reimbursement, in cash or in kind, from a foreign securities authority, or made on behalf of such authority, for necessary expenses incurred by the Commission, its members, and employees in carrying out any investigation pursuant to section 21(a)(2) of this title or in providing any other assistance to a foreign securities authority. Any payment or reimbursement accepted shall be considered a reimbursement to the appropriated funds of the Commission.

(g) OFFICE OF THE INVESTOR ADVOCATE.—

(1) OFFICE ESTABLISHED.—There is established within the Commission the Office of the Investor Advocate (in this subsection referred to as the "Office").

(2) INVESTOR ADVOCATE.—

(A) IN GENERAL.—The head of the Office shall be the Investor Advocate, who shall—

- (i) report directly to the Chairman; and
- (ii) be appointed by the Chairman, in consultation with the Commission, from among individuals having

experience in advocating for the interests of investors in securities and investor protection issues, from the perspective of investors.

(B) COMPENSATION.—The annual rate of pay for the Investor Advocate shall be equal to the highest rate of annual pay for other senior executives who report to the Chairman of the Commission.

(C) LIMITATION ON SERVICE.—An individual who serves as the Investor Advocate may not be employed by the Commission—

(i) during the 2-year period ending on the date of appointment as Investor Advocate; or

(ii) during the 5-year period beginning on the date on which the person ceases to serve as the Investor Advocate.

(3) STAFF OF OFFICE.—The Investor Advocate, after consultation with the Chairman of the Commission, may retain or employ independent counsel, research staff, and service staff, as the Investor Advocate deems necessary to carry out the functions, powers, and duties of the Office.

(4) FUNCTIONS OF THE INVESTOR ADVOCATE.—The Investor Advocate shall—

(A) assist retail investors in resolving significant problems such investors may have with the Commission or with self-regulatory organizations;

(B) identify areas in which investors would benefit from changes in the regulations of the Commission or the rules of self-regulatory organizations;

(C) identify problems that investors have with financial service providers and investment products;

(D) analyze the potential impact on investors of—

(i) proposed regulations of the Commission; and

(ii) proposed rules of self-regulatory organizations registered under this title; **[and]**

(E) engage in investor testing—

(i) as necessary to carry out the functions of the Office; and

(ii) under section 23(a)(4), if the Commission determines it appropriate; and

[(E)] (F) to the extent practicable, propose to the Commission changes in the regulations or orders of the Commission and to Congress any legislative, administrative, or personnel changes that may be appropriate to mitigate problems identified under this paragraph and to promote the interests of investors.

(5) ACCESS TO DOCUMENTS.—The Commission shall ensure that the Investor Advocate has full access to the documents of the Commission and any self-regulatory organization, as necessary to carry out the functions of the Office.

(6) ANNUAL REPORTS.—

(A) REPORT ON OBJECTIVES.—

(i) IN GENERAL.—Not later than June 30 of each year after 2010, the Investor Advocate shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial

Services of the House of Representatives a report on the objectives of the Investor Advocate for the following fiscal year.

(ii) CONTENTS.—Each report required under clause (i) shall contain full and substantive analysis and explanation.

(B) REPORT ON ACTIVITIES.—

(i) IN GENERAL.—Not later than December 31 of each year after 2010, the Investor Advocate shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report on the activities of the Investor Advocate during the immediately preceding fiscal year.

(ii) CONTENTS.—Each report required under clause (i) shall include—

(I) appropriate statistical information and full and substantive analysis;

(II) information on steps that the Investor Advocate has taken during the reporting period to improve investor services and the responsiveness of the Commission and self-regulatory organizations to investor concerns;

(III) a summary of the most serious problems encountered by investors during the reporting period;

(IV) an inventory of the items described in subclause (III) that includes—

(aa) identification of any action taken by the Commission or the self-regulatory organization and the result of such action;

(bb) the length of time that each item has remained on such inventory; and

(cc) for items on which no action has been taken, the reasons for inaction, and an identification of any official who is responsible for such action;

(V) recommendations for such administrative and legislative actions as may be appropriate to resolve problems encountered by investors; and

(VI) any other information, as determined appropriate by the Investor Advocate.

(iii) INDEPENDENCE.—Each report required under this paragraph shall be provided directly to the Committees listed in clause (i) without any prior review or comment from the Commission, any commissioner, any other officer or employee of the Commission, or the Office of Management and Budget.

(iv) CONFIDENTIALITY.—No report required under clause (i) may contain confidential information.

(7) REGULATIONS.—The Commission shall, by regulation, establish procedures requiring a formal response to all recommendations submitted to the Commission by the Investor Advocate, not later than 3 months after the date of such submission.

(8) OMBUDSMAN.—

(A) APPOINTMENT.—Not later than 180 days after the date on which the first Investor Advocate is appointed under paragraph (2)(A)(i), the Investor Advocate shall appoint an Ombudsman, who shall report directly to the Investor Advocate.

(B) DUTIES.—The Ombudsman appointed under subparagraph (A) shall—

(i) act as a liaison between the Commission and any retail investor in resolving problems that retail investors may have with the Commission or with self-regulatory organizations;

(ii) review and make recommendations regarding policies and procedures to encourage persons to present questions to the Investor Advocate regarding compliance with the securities laws; and

(iii) establish safeguards to maintain the confidentiality of communications between the persons described in clause (ii) and the Ombudsman.

(C) LIMITATION.—In carrying out the duties of the Ombudsman under subparagraph (B), the Ombudsman shall utilize personnel of the Commission to the extent practicable. Nothing in this paragraph shall be construed as replacing, altering, or diminishing the activities of any ombudsman or similar office of any other agency.

(D) REPORT.—The Ombudsman shall submit a semi-annual report to the Investor Advocate that describes the activities and evaluates the effectiveness of the Ombudsman during the preceding year. The Investor Advocate shall include the reports required under this section in the reports required to be submitted by the Inspector Advocate under paragraph (6).

(9) PUBLICATION OF DATA AND RESULTS OF INVESTOR TESTING.—*With respect to any investor testing carried out by the Investor Advocate pursuant to paragraph (4)(E), the Investor Advocate may make the data and results of such investor testing available to the public, and without further review or editing by the Commission.*

(h) EXAMINERS.—

(1) DIVISION OF TRADING AND MARKETS.—The Division of Trading and Markets of the Commission, or any successor organizational unit, shall have a staff of examiners who shall—

(A) perform compliance inspections and examinations of entities under the jurisdiction of that Division; and

(B) report to the Director of that Division.

(2) DIVISION OF INVESTMENT MANAGEMENT.—The Division of Investment Management of the Commission, or any successor organizational unit, shall have a staff of examiners who shall—

(A) perform compliance inspections and examinations of entities under the jurisdiction of that Division; and

(B) report to the Director of that Division.

(i) SECURITIES AND EXCHANGE COMMISSION RESERVE FUND.—

(1) RESERVE FUND ESTABLISHED.—There is established in the Treasury of the United States a separate fund, to be known as

the “Securities and Exchange Commission Reserve Fund” (referred to in this subsection as the “Reserve Fund”).

(2) RESERVE FUND AMOUNTS.—

(A) IN GENERAL.—Except as provided in subparagraph (B), any registration fees collected by the Commission under section 6(b) of the Securities Act of 1933 (15 U.S.C. 77f(b)) or section 24(f) of the Investment Company Act of 1940 (15 U.S.C. 80a-24(f)) shall be deposited into the Reserve Fund.

(B) LIMITATIONS.—For any 1 fiscal year—

(i) the amount deposited in the Fund may not exceed \$50,000,000; and

(ii) the balance in the Fund may not exceed \$100,000,000.

(C) EXCESS FEES.—Any amounts in excess of the limitations described in subparagraph (B) that the Commission collects from registration fees under section 6(b) of the Securities Act of 1933 (15 U.S.C. 77f(b)) or section 24(f) of the Investment Company Act of 1940 (15 U.S.C. 80a-24(f)) shall be deposited in the General Fund of the Treasury of the United States and shall not be available for obligation by the Commission.

(3) USE OF AMOUNTS IN RESERVE FUND.—The Commission may obligate amounts in the Reserve Fund, not to exceed a total of \$100,000,000 in any 1 fiscal year, as the Commission determines is necessary to carry out the functions of the Commission. Any amounts in the reserve fund shall remain available until expended. Not later than 10 days after the date on which the Commission obligates amounts under this paragraph, the Commission shall notify Congress of the date, amount, and purpose of the obligation.

(4) RULE OF CONSTRUCTION.—Amounts collected and deposited in the Reserve Fund shall not be construed to be Government funds or appropriated monies and shall not be subject to apportionment for the purpose of chapter 15 of title 31, United States Code, or under any other authority.

(j) OFFICE OF THE ADVOCATE FOR SMALL BUSINESS CAPITAL FORMATION.—

(1) OFFICE ESTABLISHED.—There is established within the Commission the Office of the Advocate for Small Business Capital Formation (hereafter in this subsection referred to as the “Office”).

(2) ADVOCATE FOR SMALL BUSINESS CAPITAL FORMATION.—

(A) IN GENERAL.—The head of the Office shall be the Advocate for Small Business Capital Formation, who shall—

(i) report directly to the Commission; and

(ii) be appointed by the Commission, from among individuals having experience in advocating for the interests of small businesses and encouraging small business capital formation.

(B) COMPENSATION.—The annual rate of pay for the Advocate for Small Business Capital Formation shall be equal to the highest rate of annual pay for other senior executives who report directly to the Commission.

(C) NO CURRENT EMPLOYEE OF THE COMMISSION.—An individual may not be appointed as the Advocate for Small Business Capital Formation if the individual is currently employed by the Commission.

(3) STAFF OF OFFICE.—The Advocate for Small Business Capital Formation, after consultation with the Commission, may retain or employ independent counsel, research staff, and service staff, as the Advocate for Small Business Capital Formation determines to be necessary to carry out the functions of the Office.

(4) FUNCTIONS OF THE ADVOCATE FOR SMALL BUSINESS CAPITAL FORMATION.—The Advocate for Small Business Capital Formation shall—

(A) assist small businesses and small business investors in resolving significant problems such businesses and investors may have with the Commission or with self-regulatory organizations;

(B) identify areas in which small businesses and small business investors would benefit from changes in the regulations of the Commission or the rules of self-regulatory organizations;

(C) identify problems that small businesses have with securing access to capital, including any unique challenges to minority-owned small businesses, women-owned small businesses, and small businesses affected by hurricanes or other natural disasters;

(D) analyze the potential impact on small businesses and small business investors of—

(i) proposed regulations of the Commission that are likely to have a significant economic impact on small businesses and small business capital formation; and

(ii) proposed rules that are likely to have a significant economic impact on small businesses and small business capital formation of self-regulatory organizations registered under this title;

(E) conduct outreach to small businesses and small business investors, including through regional roundtables, in order to solicit views on relevant capital formation issues;

(F) to the extent practicable, propose to the Commission changes in the regulations or orders of the Commission and to Congress any legislative, administrative, or personnel changes that may be appropriate to mitigate problems identified under this paragraph and to promote the interests of small businesses and small business investors;

(G) consult with the Investor Advocate on proposed recommendations made under subparagraph (F); and

(H) advise the Investor Advocate on issues related to small businesses and small business investors.

(5) ACCESS TO DOCUMENTS.—The Commission shall ensure that the Advocate for Small Business Capital Formation has full access to the documents and information of the Commission and any self-regulatory organization, as necessary to carry out the functions of the Office.

(6) ANNUAL REPORT ON ACTIVITIES.—

(A) IN GENERAL.—Not later than December 31 of each year after 2015, the Advocate for Small Business Capital Formation shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report on the activities of the Advocate for Small Business Capital Formation during the immediately preceding fiscal year.

(B) CONTENTS.—Each report required under subparagraph (A) shall include—

(i) appropriate statistical information and full and substantive analysis;

(ii) information on steps that the Advocate for Small Business Capital Formation has taken during the reporting period to improve small business services and the responsiveness of the Commission and self-regulatory organizations to small business and small business investor concerns;

(iii) a summary of the most serious issues encountered by small businesses and small business investors, including any unique issues encountered by minority-owned small businesses, women-owned small businesses, and small businesses affected by hurricanes or other natural disasters and their investors, during the reporting period;

(iv) an inventory of the items summarized under clause (iii) (including items summarized under such clause for any prior reporting period on which no action has been taken or that have not been resolved to the satisfaction of the Advocate for Small Business Capital Formation as of the beginning of the reporting period covered by the report) that includes—

(I) identification of any action taken by the Commission or the self-regulatory organization and the result of such action;

(II) the length of time that each item has remained on such inventory; and

(III) for items on which no action has been taken, the reasons for inaction, and an identification of any official who is responsible for such action;

(v) recommendations for such changes to the regulations, guidance and orders of the Commission and such legislative actions as may be appropriate to resolve problems with the Commission and self-regulatory organizations encountered by small businesses and small business investors and to encourage small business capital formation; and

(vi) any other information, as determined appropriate by the Advocate for Small Business Capital Formation.

(C) CONFIDENTIALITY.—No report required by subparagraph (A) may contain confidential information.

(D) INDEPENDENCE.—Each report required under subparagraph (A) shall be provided directly to the committees

of Congress listed in such subparagraph without any prior review or comment from the Commission, any commissioner, any other officer or employee of the Commission, or the Office of Management and Budget.

(7) REGULATIONS.—The Commission shall establish procedures requiring a formal response to all recommendations submitted to the Commission by the Advocate for Small Business Capital Formation, not later than 3 months after the date of such submission.

(8) GOVERNMENT-BUSINESS FORUM ON SMALL BUSINESS CAPITAL FORMATION.—The Advocate for Small Business Capital Formation shall be responsible for planning, organizing, and executing the annual Government-Business Forum on Small Business Capital Formation described in section 503 of the Small Business Investment Incentive Act of 1980 (15 U.S.C. 80c-1).

(9) RULE OF CONSTRUCTION.—Nothing in this subsection may be construed as replacing or reducing the responsibilities of the Investor Advocate with respect to small business investors.

* * * * *

RULES, REGULATIONS, AND ORDERS; ANNUAL REPORTS

SEC. 23. (a)(1) The Commission, the Board of Governors of the Federal Reserve System, and the other agencies enumerated in section 3(a)(34) of this title shall each have power to make such rules and regulations as may be necessary or appropriate to implement the provisions of this title for which they are responsible or for the execution of the functions vested in them by this title, and may for such purposes classify persons, securities, transactions, statements, applications, reports, and other matters within their respective jurisdictions, and prescribe greater, lesser, or different requirements for different classes thereof. No provision of this title imposing any liability shall apply to any act done or omitted in good faith in conformity with a rule, regulation, or order of the Commission, the Board of Governors of the Federal Reserve System, other agency enumerated in section 3(a)(34) of this title, or any self-regulatory organization, notwithstanding that such rule, regulation, or order may thereafter be amended or rescinded or determined by judicial or other authority to be invalid for any reason.

(2) The Commission and the Secretary of the Treasury, in making rules and regulations pursuant to any provisions of this title, shall consider among other matters the impact any such rule or regulation would have on competition. The Commission and the Secretary of the Treasury shall not adopt any such rule or regulation which would impose a burden on competition not necessary or appropriate in furtherance of the purposes of this title. The Commission and the Secretary of the Treasury shall include in the statement of basis and purpose incorporated in any rule or regulation adopted under this title, the reasons for the Commission's or the Secretary's determination that any burden on competition imposed by such rule or regulation is necessary or appropriate in furtherance of the purposes of this title.

(3) The Commission and the Secretary, in making rules and regulations pursuant to any provision of this title, considering any ap-

plication for registration in accordance with section 19(a) of this title, or reviewing any proposed rule change of a self-regulatory organization in accordance with section 19(b) of this title, shall keep in a public file and make available for copying all written statements filed with the Commission and the Secretary and all written communications between the Commission or the Secretary and any person relating to the proposed rule, regulation, application, or proposed rule change: *Provided, however,* That the Commission and the Secretary shall not be required to keep in a public file or make available for copying any such statement or communication which it may withhold from the public in accordance with the provisions of section 552 of title 5, United States Code.

(4) *INVESTOR TESTING.*—

(A) *IN GENERAL.*—*The Commission shall engage in investor testing prior to issuing any rule or regulation which designates documents or information to be disclosed under the securities laws, if such documents or information—*

(i) are primarily used by retail investors, as determined by the Commission; and

(ii) are intended to be used by retail investors to make informed investment decisions or to understand the investments held by the retail investor.

(B) *CONTENTS.*—*Investor testing conducted pursuant to subparagraph (A) shall include the following:*

(i) Qualitative testing in the form of one-on-one cognitive interviews of retail investors about documents or information, or samples of such documents or information, to be provided.

(ii) A nationwide survey of retail investors, designed to complement the interviews under clause (i), on—

(I) the usefulness of such documents or information, or samples of such documents or information;

(II) the proposed format of such documents or information, or samples of such documents or information;
and

(III) delivery preferences of such documents or information, or samples of such documents or information.

(iii) Analysis and publication in the Federal Register of the results of the survey and interviews.

(iv) An opportunity for the public to comment on such results published in the Federal Register.

(C) *SUBSTANTIVE CHANGES.*—*If the Commission, in the period between engaging in investor testing and publishing a final rule, makes substantive changes to such rule that the Commission determines would have a significant impact on retail investors, the Commission shall again engage in investor testing.*

(D) *PUBLIC AVAILABILITY OF RETAIL TESTING RESULTS.*—*The Commission shall make the data and results of any investor testing performed pursuant to this paragraph available to the public.*

(b)(1) The Commission, the Board of Governors of the Federal Reserve System, and the other agencies enumerated in section 3(a)(34) of this title shall each make an annual report to the Congress on its work for the preceding year, and shall include in each such report whatever information, data, and recommendations for

further legislation it considers advisable with regard to matters within its respective jurisdiction under this title.

(2) The appropriate regulatory agency for a self-regulatory organization shall include in its annual report to the Congress for each fiscal year, a summary of its oversight activities under this title with respect to such self-regulatory organization, including a description of any examination conducted as part of such activities of any organization, any material recommendation presented as part of such activities to such organization for changes in its organization or rules, and any such action by such organization in response to any such recommendation.

(3) The appropriate regulatory agency for any class of municipal securities dealers shall include in its annual report to the Congress for each fiscal year a summary of its regulatory activities pursuant to this title with respect to such municipal securities dealers, including the nature of and reason for any sanction imposed pursuant to this title against any such municipal securities dealer.

(4) The Commission shall also include in its annual report to the Congress for each fiscal year—

(A) a summary of the Commission's oversight activities with respect to self-regulatory organizations for which it is not the appropriate regulatory agency, including a description of any examination of any such organization, any material recommendation presented to any such organization for changes in its organization or rules, and any action by any such organization in response to any such recommendations;

(B) a statement and analysis of the expenses and operations of each self-regulatory organization in connection with the performance of its responsibilities under this title, for which purpose data pertaining to such expenses and operations shall be made available by such organization to the Commission at its request;

(C) the steps the Commission has taken and the progress it has made toward ending the physical movement of the securities certificate in connection with the settlement of securities transactions, and its recommendations, if any, for legislation to eliminate the securities certificate;

(D) the number of requests for exemptions from provisions of this title received, the number granted, and the basis upon which any such exemption was granted;

(E) a summary of the Commission's regulatory activities with respect to municipal securities dealers for which it is not the appropriate regulatory agency, including the nature of, and reason for, any sanction imposed in proceedings against such municipal securities dealers;

(F) a statement of the time elapsed between the filing of reports pursuant to section 13(f) of this title and the public availability of the information contained therein, the costs involved in the Commission's processing of such reports and tabulating such information, the manner in which the Commission uses such information, and the steps the Commission has taken and the progress it has made toward requiring such reports to be filed and such information to be made available to the public in machine language;

(G) information concerning (i) the effects its rules and regulations are having on the viability of small brokers and dealers; (ii) its attempts to reduce any unnecessary reporting burden on such brokers and dealers; and (iii) its efforts to help to assure the continued participation of small brokers and dealers in the United States securities markets;

(H) a statement detailing its administration of the Freedom of Information Act, section 552 of title 5, United States Code, including a copy of the report filed pursuant to subsection (d) of such section; and

(I) the steps that have been taken and the progress that has been made in promoting the timely public dissemination and availability for analytical purposes (on a fair, reasonable, and nondiscriminatory basis) of information concerning government securities transactions and quotations, and its recommendations, if any, for legislation to assure timely dissemination of (i) information on transactions in regularly traded government securities sufficient to permit the determination of the prevailing market price for such securities, and (ii) reports of the highest published bids and lowest published offers for government securities (including the size at which persons are willing to trade with respect to such bids and offers).

(c) The Commission, by rule, shall prescribe the procedure applicable to every case pursuant to this title of adjudication (as defined in section 551 of title 5, United States Code) not required to be determined on the record after notice and opportunity for hearing. Such rules shall, as a minimum, provide that prompt notice shall be given of any adverse action or final disposition and that such notice and the entry of any order shall be accompanied by a statement of written reasons.

(d) CEASE-AND-DESIST PROCEDURES.—Within 1 year after the date of enactment of this subsection, the Commission shall establish regulations providing for the expeditious conduct of hearings and rendering of decisions under section 21C of this title, section 8A of the Securities Act of 1933, section 9(f) of the Investment Company Act of 1940, and section 203(k) of the Investment Advisers Act of 1940.

* * * * *

MINORITY VIEWS

H.R. 1815, the *SEC Disclosure Effectiveness Testing Act*, is a deliberate effort to delay the Securities and Exchange Commission's (SEC) proposed rulemaking package that includes Regulation Best Interest ("Reg BI") and a new short-form client relationship summary disclosure ("Form CRS"), despite the SEC having already conducted investor testing on the proposed Form CRS. Instead of explicitly targeting Reg BI and Form CRS through narrowly tailored language, H.R. 1815 would apply to all rules and regulations that "designate documents or information to be provided to a retail investor." In the absence of a definition of "documents or information" for retail investors, H.R. 1815 would apply to virtually any investor disclosure, report, or form under the SEC's jurisdiction. In a March 2019 letter written by former SEC Chairman Harvey Pitt and former SEC Commissioners Paul Atkins and Dan Gallagher, the signatories noted that "all of the SEC's corporate disclosure rules" and many rules issued by self-regulatory organizations (SROs) overseen by the SEC would be subject to investor testing under this "overly broad" bill. As such, these former SEC officials warn that the bill "underestimates the sheer number of rules" relating to disclosures for retail investors.

Moreover, H.R. 1815 includes a look-back provision applicable to existing disclosure rules which requires the SEC to conduct investor testing on similar disclosure rulemakings finalized before enactment of the bill. Requiring investor testing on all existing disclosure rulemakings "would truly be a monumental undertaking that would distract the SEC from its core mission," as stated in the letter from the former SEC commissioners and chairman.

Additionally, under H.R. 1815, if substantive changes are made to a rule following investor testing, the SEC must then perform additional investor testing on those changes. Such a requirement is extremely problematic and unreasonable, as it would entangle the SEC in a virtually infinite loop of changes to proposed rulemakings followed by subsequent investor testing. By creating a never-ending bureaucratic loop on such a wide array of rulemakings, H.R. 1815 has the real possibility of harming investors by preventing the SEC from finalizing investor protection rulemakings as well as diverting the SEC's resources from enforcement actions.

The investor testing required under H.R. 1815 would consist of one-on-one cognitive interviews with retail investors about the disclosures or information to be provided under the rulemaking, a nationwide survey of retail investors on the usefulness of such documents and the proposed format, and analysis and publication of the results of the survey and interviews. While establishing the exact methods to be employed for the SEC's investor testing efforts may seem useful, it only serves to underscore the uselessness of H.R. 1815, as the investor testing the SEC already conducted for Form

CRS utilized the same processes and methods outlined in this bill. Following the release of the proposed rulemaking package and in connection with the SEC's efforts to help address investor confusion about the nature of their relationships with investment advisers and broker-dealers, in November of 2018 the SEC published a report on investor testing conducted in conjunction with the RAND Corporation. The investor testing collected feedback on a sample Form CRS as would be used under the proposed rulemaking package. The investor testing consisted of a nationwide online survey of over 1,800 retail investors and qualitative in-depth interviews of 31 retail investors in Denver and Pittsburgh. Nearly 90% of survey respondents found that the Relationship Summary would help them make more informed decisions about investment accounts and services according to the report. Thankfully, the SEC did not need to wait on Congress to advise the Commission on how to conduct effective and sound investor testing. To the contrary, by prescribing the same methods that the SEC applied to their investor testing of Form CRS, H.R. 1815 demonstrates implicit approval of the SEC's investor testing for Form CRS.

Committee Republicans believe investor testing is an effective tool for designing smart and workable regulatory frameworks. The SEC was forward thinking in conducting investor testing for Form CRS. Committee Republicans are confident the SEC will devote the necessary attention and consideration to the findings of their investor testing, the input from the seven retail investor roundtables, and the feedback from the 6,000 comment letters as they work to finalize Reg BI and Form CRS. Thus, H.R. 1815 is completely unnecessary.

Reg BI and Form CRS are significant improvements on the status quo for Mom and Pop investors. Any delay to this important rulemaking package—an all but certain result under H.R. 1815—is problematic, as it would only hurt retail investors by not providing them with a heightened standard of care for broker-dealers as well as not providing them with an informative Form CRS.

BARRY LOUDERMILK.
 TED BUDD.
 BRYAN STEIL.
 JOHN W. ROSE.
 DENVER RIGGLEMAN.
 ANDY BARR.
 LEE M. ZELDIN.
 ANN WAGNER.
 BILL HUIZENGA.
 BILL POSEY.
 TOM EMMER.
 SCOTT R. TIPTON.
 SEAN P. DUFFY.
 ROGER WILLIAMS.
 FRENCH J. HILL.
 WARREN DAVIDSON.
 ANTHONY GONZALEZ.
 ALEXANDER X. MOONEY.
 FRANK D. LUCAS.
 STEVE STIVERS.

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BLAINE LUETKEMEYER.
PATRICK T. MCHENRY.
DAVID KUSTOFF.
PETE T. KING.
LANCE GOODEN.

