

MAIN STREET GROWTH ACT

JULY 10, 2018.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. HENSARLING, from the Committee on Financial Services,
submitted the following

R E P O R T

[To accompany H.R. 5877]

The Committee on Financial Services, to whom was referred the bill (H.R. 5877) to amend the Securities Exchange Act of 1934 to allow for the registration of venture exchanges, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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 “Main Street Growth Act”.

SEC. 2. VENTURE EXCHANGES.

(a) SECURITIES EXCHANGE ACT OF 1934.—Section 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f) is amended by adding at the end the following:

“(m) VENTURE EXCHANGE.—

“(1) REGISTRATION.—

“(A) IN GENERAL.—A person may register himself (and a national securities exchange may register a listing tier of such exchange) as a national securities exchange solely for the purposes of trading venture securities by filing an application with the Commission pursuant to subsection (a) and the rules and regulations thereunder.

“(B) PUBLICATION OF NOTICE.—The Commission shall, upon the filing of an application under subparagraph (A), publish notice of such filing and afford interested persons an opportunity to submit written data, views, and arguments concerning such application.

“(C) APPROVAL OR DENIAL.—

“(i) IN GENERAL.—Within 90 days of the date of publication of a notice under subparagraph (B) (or within such longer period as to which the applicant consents), the Commission shall—

“(I) by order grant such registration; or

“(II) institute a denial proceeding under clause (ii) to determine whether registration should be denied.

“(ii) DENIAL PROCEEDING.—A proceeding under clause (i)(II) shall include notice of the grounds for denial under consideration and opportunity for hearing and shall be concluded within 180 days of the date

of the publication of a notice under subparagraph (B). At the conclusion of such proceeding the Commission, by order, shall grant or deny such registration. The Commission may extend the time for conclusion of such proceeding for up to 90 days if the Commission finds good cause for such extension and publishes the Commission's reasons for so finding or for such longer period as to which the applicant consents.

“(iii) CRITERIA FOR APPROVAL OR DENIAL.—The Commission shall grant a registration under this paragraph if the Commission finds that the requirements of this title and the rules and regulations thereunder with respect to the applicant are satisfied. The Commission shall deny such registration if it does not make such finding.

“(2) POWERS AND RESTRICTIONS.—In addition to the powers and restrictions otherwise applicable to a national securities exchange, a venture exchange—

“(A) may only constitute, maintain, or provide a market place or facilities for bringing together purchasers and sellers of venture securities;

“(B) may not extend unlisted trading privileges to any venture security;

“(C) may only, if the venture exchange is a listing tier of another national securities exchange, allow trading in securities that are registered under section 12(b) on a national securities exchange other than a venture exchange; and

“(D) may, subject to the rule filing process under section 19(b)—

“(i) determine the increment to be used for quoting and trading venture securities on the exchange; and

“(ii) choose to carry out periodic auctions for the sale of a venture security instead of providing continuous trading of the venture security.

“(3) TREATMENT OF CERTAIN EXEMPTED SECURITIES.—A security that is exempt from registration pursuant to section 3(b) of the Securities Act of 1933 shall be exempt from section 12(a) of this title to the extent such securities are traded on a venture exchange, if the issuer of such security is in compliance with—

“(A) all disclosure obligations of such section 3(b) and the regulations issued under such section; and

“(B) ongoing disclosure obligations of the applicable venture exchange that are similar to those provided by an issuer under tier 2 of Regulation A (17 C.F.R. 230.251 et seq).

“(4) VENTURE SECURITIES TRADED ON VENTURE EXCHANGES MAY NOT TRADE ON NON-VENTURE EXCHANGES.—A venture security may not be traded on a national securities exchange that is not a venture exchange during any period in which the venture security is being traded on a venture exchange.

“(5) RULE OF CONSTRUCTION.—Nothing in this subsection may be construed as requiring transactions in venture securities to be effected on a national securities exchange.

“(6) COMMISSION AUTHORITY TO LIMIT CERTAIN TRADING.—The Commission may limit transactions in venture securities that are not effected on a national securities exchange as appropriate to promote efficiency, competition, capital formation, and to protect investors.

“(7) DISCLOSURES TO INVESTORS.—The Commission shall issue regulations to ensure that persons selling or purchasing venture securities on a venture exchange are provided disclosures sufficient to understand—

“(A) the characteristics unique to venture securities; and

“(B) in the case of a venture exchange that is a listing tier of another national securities exchange, that the venture exchange is distinct from the other national securities exchange.

“(8) DEFINITIONS.—For purposes of this subsection:

“(A) EARLY-STAGE, GROWTH COMPANY.—

“(i) IN GENERAL.—The term ‘early-stage, growth company’ means an issuer—

“(I) that has not made any registered initial public offering of any securities of the issuer; and

“(II) with a public float of less than or equal to the value of public float required to qualify as a large accelerated filer under section 240.12b-2 of title 17, Code of Federal Regulations.

“(ii) TREATMENT WHEN PUBLIC FLOAT EXCEEDS THRESHOLD.—An issuer shall not cease to be an early-stage, growth company by reason of the public float of such issuer exceeding the threshold specified in clause (i)(II) until the later of the following:

“(I) The end of the period of 24 consecutive months during which the public float of the issuer exceeds \$2,000,000,000 (as such amount is indexed for inflation every 5 years by the Commission to reflect the change in the Consumer Price Index for All Urban

Consumers published by the Bureau of Labor Statistics, setting the threshold to the nearest \$1,000,000).

“(II) The end of the 1-year period following the end of the 24-month period described under subclause (I), if the issuer requests such 1-year extension from a venture exchange and the venture exchange elects to provide such extension.

“(B) PUBLIC FLOAT.—With respect to an issuer, the term ‘public float’ means the aggregate worldwide market value of the voting and non-voting common equity of the issuer held by non-affiliates.

“(C) VENTURE SECURITY.—

“(i) IN GENERAL.—The term ‘venture security’ means—

“(I) securities of an early-stage, growth company that are exempt from registration pursuant to section 3(b) of the Securities Act of 1933;

“(II) securities of an emerging growth company; or

“(III) securities registered under section 12(b) and listed on a venture exchange (or, prior to listing on a venture exchange, listed on a national securities exchange) where—

“(aa) the issuer of such securities has a public float less than or equal to the value of public float required to qualify as a large accelerated filer under section 240.12b–2 of title 17, Code of Federal Regulations; or

“(bb) the average daily trade volume is 75,000 shares or less during a continuous 60-day period.

“(ii) TREATMENT WHEN PUBLIC FLOAT EXCEEDS THRESHOLD.—Securities shall not cease to be venture securities by reason of the public float of the issuer of such securities exceeding the threshold specified in clause (i)(III)(aa) until the later of the following:

“(I) The end of the period of 24 consecutive months beginning on the date—

“(aa) the public float of such issuer exceeds \$2,000,000,000; and

“(bb) the average daily trade volume of such securities is 100,000 shares or more during a continuous 60-day period.

“(II) The end of the 1-year period following the end of the 24-month period described under subclause (I), if the issuer of such securities requests such 1-year extension from a venture exchange and the venture exchange elects to provide such extension.”.

(b) SECURITIES ACT OF 1933.—Section 18 of the Securities Act of 1933 (15 U.S.C. 77r) is amended—

(1) by redesignating subsection (d) as subsection (e); and

(2) by inserting after subsection (c) the following:

“(d) TREATMENT OF SECURITIES LISTED ON A VENTURE EXCHANGE.—Notwithstanding subsection (b), a security is not a covered security pursuant to subsection (b)(1)(A) if the security is only listed, or authorized for listing, on a venture exchange (as defined under section 6(m) of the Securities Exchange Act of 1934).”.

(c) SENSE OF CONGRESS.—It is the sense of the Congress that the Securities and Exchange Commission should—

(1) when necessary or appropriate in the public interest and consistent with the protection of investors, make use of the Commission’s general exemptive authority under section 36 of the Securities Exchange Act of 1934 (15 U.S.C. 78mm) with respect to the provisions added by this section; and

(2) if the Commission determines appropriate, create an Office of Venture Exchanges within the Commission’s Division of Trading and Markets.

(d) RULE OF CONSTRUCTION.—Nothing in this section or the amendments made by this section shall be construed to impair or limit the construction of the antifraud provisions of the securities laws (as defined in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a))) or the authority of the Securities and Exchange Commission under those provisions.

(e) EFFECTIVE DATE FOR TIERS OF EXISTING NATIONAL SECURITIES EXCHANGES.—In the case of a securities exchange that is registered as a national securities exchange under section 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f) on the date of the enactment of this Act, any election for a listing tier of such exchange to be treated as a venture exchange under subsection (m) of such section shall not take effect before the date that is 180 days after such date of enactment.

PURPOSE AND SUMMARY

On June 19, 2018, Representative Tom Emmer introduced H.R. 5877, the “Main Street Growth Act”. As modified by an amendment in the nature of a substitute, the Main Street Growth Act allows for the creation and registration of venture exchanges with the U.S. Securities and Exchange Commission (SEC). Under the bill, securities eligible to trade on a venture exchange are “venture securities,” which must be an exempted transaction under Section 3(b) of the Securities Act of 1933 from an “early-stage, growth company,” a security offered by an emerging growth company (EGC) as defined by the Jumpstart our Business Startups (JOBS) Act (P.L. 112–106), or a security whose issuer’s public float is less than that which would qualify it as a large accelerated filer or whose securities have an Average Daily Trade Volume (ADTV) of less than 75,000 shares over a 60-day period. To concentrate and enhance liquidity, the legislation prohibits venture exchanges from extending Unlisted Trading Privileges (UTP) to any venture security, which ensures venture securities only are traded on the exchange on which it is listed. Venture exchanges also would be exempt from decimalization.

BACKGROUND AND NEED FOR LEGISLATION

Currently, the trading environment for many small and midsize issuers is less liquid and fragmented as compared to the overall equity market. This market structure inhibits the secondary trading of such issuers, and it hinders the ability of other small and midsize companies from ever accessing the capital markets. The goal of H.R. 5877 is to help smaller issuers have greater access to investment and equity capital by creating venture exchanges that can help concentrate liquidity. As Edward Knight from NASDAQ noted in his May 23, 2018 testimony before the Subcommittee on Capital Markets, Securities, and Investment, “This liquidity dilemma stems from a long-term trend towards fragmentation, where liquidity has spread across an increasing number of trading venues. As recently as 15 years ago, more than 90% of liquidity was often concentrated in a single market with the small remainder spread over an additional eight to ten other exchanges and electronic communications networks. Today, liquidity is spread thinly across fifty or more venues.”

Under H.R. 5877, the securities eligible to trade on venture exchanges qualify as “venture securities.” To qualify as a “venture security,” a security must either be an exempted transaction under Section 3(b) of the Securities Act of 1933 from an “early-stage, growth company,” a security offered by an EGC, or a security whose issuer’s public float is less than that which would qualify it as a large accelerated filer or whose securities have an ADTV of less than 75,000 shares over a 60 day period.

The bill also expresses the sense of Congress that the SEC should use its general exemptive authority (15 U.S.Code §78mm) to respond to unforeseen circumstances and that the SEC should create an Office of Venture Exchanges, if appropriate. The Main Street Growth Act includes a rule of construction providing that the Act does not itself impair or limit the application of the anti-

fraud provisions of the Federal securities laws or the SEC's authority under such antifraud provisions.

A recent whitepaper by SEC staff discussed trading in the shares of small public companies. The whitepaper found that during 2013 U.S.-listed, U.S.-domiciled small cap stocks with market capitalizations below \$1 billion were much less liquid than stocks with capitalizations between \$1 billion and \$5 billion. Small cap stocks had larger quoted and effective spreads and traded much lower volumes than mid-cap stocks. According to the whitepaper, liquidity improved with market capitalization: for example, the smallest stocks with capitalizations below \$100 million exhibited the least liquidity, whereas mid-cap stocks with capitalizations between \$2 billion and \$5 billion exhibited the greatest liquidity.

Further, according to an April 20, 2018 SEC Staff report by the Office of Analytics and Research at the Division of Trading and Markets, approximately half of the more than 8,500 stocks in the National Market System have an Average Daily Volume of less than 100,000 shares, but collectively these stocks make up just under 2% of all daily share volume.

This data suggests that a one-size-fits all regulatory model for equity market structure needs to be retailored, and in fulfilling its capital formation mandate, the SEC needs to account for the varying nature and size of companies to ensure all equities have the ability to be liquid. In a speech at the Equity Market Structure Symposium, SEC Chairman Jay Clayton remarked, "Today, we have a single equity market structure for all companies, large and small, liquid and illiquid. I believe we should examine whether the current market structure meets the needs of all types of companies that have the potential to be public companies. For example, should a stock with only 30,000 shares of daily volume be regulated and traded in the same way as a company with 9.6 million shares of daily volume?"

Venture exchanges offer one possible solution to the liquidity and capital access challenges faced by smaller issuers. A venture exchange construct could expand access to capital for entrepreneurs, enable earlier public participation in the company's life-cycle, and attract post-issuance support to include research, sales and capital commitments by market makers. The legislation provides options to smaller companies to find a market that suits its needs and the needs of its investors. Further, the creation of a venture exchange, a company's decision to list on a venture exchange, or an investor's decision to invest in venture securities all are completely optional.

HEARINGS

The Committee on Financial Services and the Subcommittee on Capital Markets, Securities, and Investment held hearings examining matters relating to H.R. 5877 on April 26, 2017, April 27, 2017, and May 23, 2018.

COMMITTEE CONSIDERATION

The Committee on Financial Services met in open session on June 7, 2018, and ordered H.R. 5877 to be reported favorably to the House as amended by a recorded vote of 56 yeas to 0 nays (recorded vote no. FC-181), a quorum being present. Before the mo-

tion to report was offered, the Committee adopted an amendment in the nature of a substitute offered by Mr. Emmer by voice vote.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. The sole recorded vote was on a motion by Chairman Hensarling to report the bill favorably to the House as amended by a recorded vote of 56 yeas to 0 nays (recorded vote no. FC-181), a quorum being present.

Record vote no. FC-181

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Hensarling	X			Ms. Maxine Waters (CA)	X		
Mr. McHenry	X			Mrs. Carolyn B. Maloney (NY) ..	X		
Mr. King	X			Ms. Velázquez	X		
Mr. Royce (CA)	X			Mr. Sherman	X		
Mr. Lucas	X			Mr. Meeks	X		
Mr. Pearce	X			Mr. Capuano	X		
Mr. Posey	X			Mr. Clay			
Mr. Luetkemeyer	X			Mr. Lynch			
Mr. Huizenga	X			Mr. David Scott (GA)	X		
Mr. Duffy	X			Mr. Al Green (TX)	X		
Mr. Stivers	X			Mr. Cleaver	X		
Mr. Hultgren	X			Ms. Moore	X		
Mr. Ross	X			Mr. Ellison	X		
Mr. Pittenger	X			Mr. Perlmutter	X		
Mrs. Wagner	X			Mr. Himes	X		
Mr. Barr	X			Mr. Foster	X		
Mr. Rothfus	X			Mr. Kildee	X		
Mr. Messer	X			Mr. Delaney	X		
Mr. Tipton	X			Ms. Sinema	X		
Mr. Williams	X			Mrs. Beatty			
Mr. Poliquin	X			Mr. Heck	X		
Mrs. Love	X			Mr. Vargas			
Mr. Hill	X			Mr. Gottheimer	X		
Mr. Emmer	X			Mr. Gonzalez (TX)	X		
Mr. Zeldin	X			Mr. Crist	X		
Mr. Trott	X			Mr. Kihuen	X		
Mr. Loudermilk	X						
Mr. Mooney (WV)	X						
Mr. MacArthur	X						
Mr. Davidson	X						
Mr. Budd	X						
Mr. Kustoff (TN)	X						
Ms. Tenney	X						
Mr. Hollingsworth	X						

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the findings and recommendations of the Committee based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee states that H.R. 5877 will help to expand access to capital for entrepreneurs, enable earlier public participation in the company's life-cycle, and attract post-issuance support to include research, sales and capital commitments by market-makers by allowing for the creation and registration of venture exchanges.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

The Committee has not received an estimate of new budget authority contained in the cost estimate prepared by the Director of the Congressional Budget Office pursuant to Sec. 402 of the Congressional Budget Act of 1974. In compliance with clause 3(c)(2) of rule XIII of the Rules of the House, the Committee opines that H.R. 5877 will not establish any new budget or entitlement authority or create any tax expenditures.

CONGRESSIONAL BUDGET OFFICE ESTIMATES

The cost estimate prepared by the Director of the Congressional Budget Office pursuant to Sec. 402 of the Congressional Budget Act of 1974 was not submitted timely to the Committee.

FEDERAL MANDATES STATEMENT

This information is provided in accordance with section 423 of the Unfunded Mandates Reform Act of 1995.

The Committee has determined that the bill does not contain Federal mandates on the private sector. The Committee has determined that the bill does not impose a Federal intergovernmental mandate on State, local, or tribal governments.

ADVISORY COMMITTEE STATEMENT

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

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of the section 102(b)(3) of the Congressional Accountability Act.

EARMARK IDENTIFICATION

With respect to clause 9 of rule XXI of the Rules of the House of Representatives, the Committee has carefully reviewed the pro-

visions of the bill and states that the provisions of the bill do not contain any congressional earmarks, limited tax benefits, or limited tariff benefits within the meaning of the rule.

DUPLICATION OF FEDERAL PROGRAMS

In compliance with clause 3(c)(5) of rule XIII of the Rules of the House of Representatives, the Committee states that no provision of the bill establishes or reauthorizes: (1) a program of the Federal Government known to be duplicative of another Federal program; (2) a program included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139; or (3) a program related to a program identified in the most recent Catalog of Federal Domestic Assistance, published pursuant to the Federal Program Information Act (Pub. L. No. 95–220, as amended by Pub. L. No. 98–169).

DISCLOSURE OF DIRECTED RULEMAKING

Pursuant to section 3(i) of H. Res. 5, (115th Congress), the following statement is made concerning directed rule makings: The Committee estimates that the bill requires 1 directed rulemaking within the meaning of such section. The Commission is directed to issue regulations to ensure that persons selling or purchasing venture securities on a venture exchange are provided disclosures sufficient to understand the characteristics unique to venture securities and in the case of a venture exchange that is a listing tier, that the venture exchange is distinct from the other national securities exchange.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

This Section cites H.R. 5877 as the “Main Street Growth Act”.

Section 2. Venture exchanges

This section allows for national securities exchanges to elect to be treated as a venture exchange. This section would define the securities eligible to trade on venture exchanges as “venture securities.” To qualify as a “venture security,” a security must either be an exempted transaction under Section 3(b) of the Securities Act of 1933 from an “early-stage, growth company,” a security offered by an emerging growth company as defined by the JOBS Act, or a security whose issuer’s public float is less than that which would qualify it as a large accelerated filer or whose securities have an ADTV of less than 75,000 shares over a 60 day period.

Venture exchanges would be prohibited from extending Unlisted Trading Privileges (UTP) to any venture security, which would prevent venture securities from trading on other exchanges other than the one that it is listed on in order to concentrate liquidity onto the venture exchange. In addition, venture exchanges would also be exempt from decimalization.

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):

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

* * * * *

NATIONAL SECURITIES EXCHANGES

SEC. 6. (a) An exchange may be registered as a national securities exchange under the terms and conditions hereinafter provided in this section and in accordance with the provisions of section 19(a) of this title, by filing with the Commission an application for registration in such form as the Commission, by rule, may prescribe containing the rules of the exchange and such other information and documents as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors.

(b) An exchange shall not be registered as a national securities exchange unless the Commission determines that—

(1) Such exchange is so organized and has the capacity to be able to carry out the purposes of this title and to comply, and (subject to any rule or order of the Commission pursuant to section 17(d) or 19(g)(2) of this title) to enforce compliance by its members and persons associated with its members, with the provisions of this title, the rules and regulations thereunder, and the rules of the exchange.

(2) Subject to the provisions of subsection (c) of this section, the rules of the exchange provide that any registered broker or dealer or natural person associated with a registered broker or dealer may become a member of such exchange and any person may become associated with a member thereof.

(3) The rules of the exchange assure a fair representation of its members in the selection of its directors and administration of its affairs and provide that one or more directors shall be representative of issuers and investors and not be associated with a member of the exchange, broker, or dealer.

(4) The rules of the exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities.

(5) The rules of the exchange are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling,

processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers, or to regulate by virtue of any authority conferred by this title matters not related to the purposes of this title or the administration of the exchange.

(6) The rules of the exchange provide that (subject to any rule or order of the Commission pursuant to section 17(d) or 19(g)(2) of this title) its members and persons associated with its members shall be appropriately disciplined for violation of the provisions of this title, the rules or regulations thereunder, or the rules of the exchange, by expulsion, suspension, limitation of activities, functions, and operations, fine, censure, being suspended or barred from being associated with a member, or any other fitting sanction.

(7) The rules of the exchange are in accordance with the provisions of subsection (d) of this section, and in general, provide a fair procedure for the disciplining of members and persons associated with members, the denial of membership to any person seeking membership therein, the barring of any person from becoming associated with a member thereof, and the prohibition or limitation by the exchange of any person with respect to access to services offered by the exchange or a member thereof.

(8) The rules of the exchange do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of this title.

(9)(A) The rules of the exchange prohibit the listing of any security issued in a limited partnership rollup transaction (as such term is defined in paragraphs (4) and (5) of section 14(h)), unless such transaction was conducted in accordance with procedures designed to protect the rights of limited partners, including—

(i) the right of dissenting limited partners to one of the following:

- (I) an appraisal and compensation;
- (II) retention of a security under substantially the same terms and conditions as the original issue;
- (III) approval of the limited partnership rollup transaction by not less than 75 percent of the outstanding securities of each of the participating limited partnerships;
- (IV) the use of a committee of limited partners that is independent, as determined in accordance with rules prescribed by the exchange, of the general partner or sponsor, that has been approved by a majority of the outstanding units of each of the participating limited partnerships, and that has such authority as is necessary to protect the interest of limited partners, including the authority to hire independent advisors, to negotiate with the general partner or sponsor on behalf of the limited partners, and to make a rec-

ommendation to the limited partners with respect to the proposed transaction; or

(V) other comparable rights that are prescribed by rule by the exchange and that are designed to protect dissenting limited partners;

(ii) the right not to have their voting power unfairly reduced or abridged;

(iii) the right not to bear an unfair portion of the costs of a proposed limited partnership rollup transaction that is rejected; and

(iv) restrictions on the conversion of contingent interests or fees into non-contingent interests or fees and restrictions on the receipt of a non-contingent equity interest in exchange for fees for services which have not yet been provided.

(B) As used in this paragraph, the term “dissenting limited partner” means a person who, on the date on which soliciting material is mailed to investors, is a holder of a beneficial interest in a limited partnership that is the subject of a limited partnership rollup transaction, and who casts a vote against the transaction and complies with procedures established by the exchange, except that for purposes of an exchange or tender offer, such person shall file an objection in writing under the rules of the exchange during the period during which the offer is outstanding.

(10)(A) The rules of the exchange prohibit any member that is not the beneficial owner of a security registered under section 12 from granting a proxy to vote the security in connection with a shareholder vote described in subparagraph (B), unless the beneficial owner of the security has instructed the member to vote the proxy in accordance with the voting instructions of the beneficial owner.

(B) A shareholder vote described in this subparagraph is a shareholder vote with respect to the election of a member of the board of directors of an issuer, executive compensation, or any other significant matter, as determined by the Commission, by rule, and does not include a vote with respect to the uncontested election of a member of the board of directors of any investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80b-1 et seq.).

(C) Nothing in this paragraph shall be construed to prohibit a national securities exchange from prohibiting a member that is not the beneficial owner of a security registered under section 12 from granting a proxy to vote the security in connection with a shareholder vote not described in subparagraph (A).

(c)(1) A national securities exchange shall deny membership to (A) any person, other than a natural person, which is not a registered broker or dealer or (B) any natural person who is not, or is not associated with, a registered broker or dealer.

(2) A national securities exchange may, and in cases in which the Commission, by order, directs as necessary or appropriate in the public interest or for the protection of investors shall, deny membership to any registered broker or dealer or natural person associated with a registered broker or dealer, and bar from becoming associated with a member any person, who is subject to a statutory

disqualification. A national securities exchange shall file notice with the Commission not less than thirty days prior to admitting any person to membership or permitting any person to become associated with a member, if the exchange knew, or in the exercise of reasonable care should have known, that such person was subject to a statutory disqualification. The notice shall be in such form and contain such information as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors.

(3)(A) A national securities exchange may deny membership to, or condition the membership of, a registered broker or dealer if (i) such broker or dealer does not meet such standards of financial responsibility or operational capability or such broker or dealer or any natural person associated with such broker or dealer does not meet such standards of training, experience, and competence as are prescribed by the rules of the exchange or (ii) such broker or dealer or person associated with such broker or dealer has engaged and there is a reasonable likelihood he may again engage in acts or practices inconsistent with just and equitable principles of trade. A national securities exchange may examine and verify the qualifications of an applicant to become a member and the natural persons associated with such an applicant in accordance with procedures established by the rules of the exchange.

(B) A national securities exchange may bar a natural person from becoming a member or associated with a member, or condition the membership of a natural person or association of a natural person with a member, if such natural person (i) does not meet such standards of training, experience, and competence as are prescribed by the rules of the exchange or (ii) has engaged and there is a reasonable likelihood he may again engage in acts or practices inconsistent with just and equitable principles of trade. A national securities exchange may examine and verify the qualifications of an applicant to become a person associated with a member in accordance with procedures established by the rules of the exchange and require any person associated with a member, or any class of such persons, to be registered with the exchange in accordance with procedures so established.

(C) A national securities exchange may bar any person from becoming associated with a member if such person does not agree (i) to supply the exchange with such information with respect to its relationship and dealings with the member as may be specified in the rules of the exchange and (ii) to permit the examination of its books and records to verify the accuracy of any information so supplied.

(4) A national securities exchange may limit (A) the number of members of the exchange and (B) the number of members and designated representatives of members permitted to effect transactions on the floor of the exchange without the services of another person acting as broker: *Provided, however,* That no national securities exchange shall have the authority to decrease the number of memberships in such exchange, or the number of members and designated representatives of members permitted to effect transactions on the floor of such exchange without the services of another person acting as broker, below such number in effect on May 1, 1975, or the date such exchange was registered with the Commission, whichever is

later: *And provided further*, That the Commission, in accordance with the provisions of section 19(c) of this title, may amend the rules of any national securities exchange to increase (but not to decrease) or to remove any limitation on the number of memberships in such exchange or the number of members or designated representatives of members permitted to effect transactions on the floor of the exchange without the services of another person acting as broker, if the Commission finds that such limitation imposes a burden on competition not necessary or appropriate in furtherance of the purposes of this title.

(d)(1) In any proceeding by a national securities exchange to determine whether a member or person associated with a member should be disciplined (other than a summary proceeding pursuant to paragraph (3) of this subsection), the exchange shall bring specific charges, notify such member or person of, and give him an opportunity to defend against, such charges, and keep a record. A determination by the exchange to impose a disciplinary sanction shall be supported by a statement setting forth—

(A) any act or practice in which such member or person associated with a member has been found to have engaged, or which such member or person has been found to have omitted;

(B) the specific provision of this title, the rules or regulations thereunder, or the rules of the exchange which any such act or practice, or omission to act, is deemed to violate; and

(C) the sanction imposed and the reasons therefor.

(2) In any proceeding by a national securities exchange to determine whether a person shall be denied membership, barred from becoming associated with a member, or prohibited or limited with respect to access to services offered by the exchange or a member thereof (other than a summary proceeding pursuant to paragraph (3) of this subsection), the exchange shall notify such person of, and give him an opportunity to be heard upon, the specific grounds for denial, bar, or prohibition or limitation under consideration and keep a record. A determination by the exchange to deny membership, bar a person from becoming associated with a member, or prohibit or limit a person with respect to access to services offered by the exchange or a member thereof shall be supported by a statement setting forth the specific grounds on which the denial, bar, or prohibition or limitation is based.

(3) A national securities exchange may summarily (A) suspend a member or person associated with a member who has been and is expelled or suspended from any self-regulatory organization or barred or suspended from being associated with a member of any self-regulatory organization, (B) suspend a member who is in such financial or operating difficulty that the exchange determines and so notifies the Commission that the member cannot be permitted to continue to do business as a member with safety to investors, creditors, other members, or the exchange, or (C) limit or prohibit any person with respect to access to services offered by the exchange if subparagraph (A) or (B) of this paragraph is applicable to such person or, in the case of a person who is not a member, if the exchange determines that such person does not meet the qualification requirements or other prerequisites for such access and such person cannot be permitted to continue to have such access with safety to investors, creditors, members, or the exchange.

Any person aggrieved by any such summary action shall be promptly afforded an opportunity for a hearing by the exchange in accordance with the provisions of paragraph (1) or (2) of this subsection. The Commission, by order, may stay any such summary action on its own motion or upon application by any person aggrieved thereby, if the Commission determines summarily or after notice and opportunity for hearing (which hearing may consist solely of the submission of affidavits or presentation of oral arguments) that such stay is consistent with the public interest and the protection of investors.

(e)(1) On and after the date of enactment of the Securities Acts Amendments of 1975, no national securities exchange may impose any schedule or fix rates of commissions, allowances, discounts, or other fees to be charged by its members: *Provided, however*, That until May 1, 1976, the preceding provisions of this paragraph shall not prohibit any such exchange from imposing or fixing any schedule of commissions, allowances, discounts, or other fees to be charged by its members for acting as broker on the floor of the exchange or as odd-lot dealer: *And provided further*, That the Commission, in accordance with the provisions of section 19(b) of this title as modified by the provisions of paragraph (3) of this subsection, may—

(A) permit a national securities exchange, by rule, to impose a reasonable schedule or fix reasonable rates of commissions, allowances, discounts, or other fees to be charged by its members for effecting transactions on such exchange prior to November 1, 1976, if the Commission finds that such schedule or fixed rates of commissions, allowances, discounts, or other fees are in the public interest; and

(B) permit a national securities exchange, by rule, to impose a schedule or fix rates of commissions, allowances, discounts, or other fees to be charged by its members for effecting transactions on such exchange after November 1, 1976, if the Commission finds that such schedule or fixed rates of commissions, allowances, discounts, or other fees (i) are reasonable in relation to the costs of providing the service for which such fees are charged (and the Commission publishes the standards employed in adjudging reasonableness) and (ii) do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of this title, taking into consideration the competitive effects of permitting such schedule or fixed rates weighed against the competitive effects of other lawful actions which the Commission is authorized to take under this title.

(2) Notwithstanding the provisions of section 19(c) of this title, the Commission, by rule, may abrogate any exchange rule which imposes a schedule or fixes rates of commissions, allowances, discounts, or other fees, if the Commission determines that such schedule or fixed rates are no longer reasonable, in the public interest, or necessary to accomplish the purposes of this title.

(3)(A) Before approving or disapproving any proposed rule change submitted by a national securities exchange which would impose a schedule or fix rates of commissions, allowances, discounts, or other fees to be charged by its members for effecting transactions on such exchange, the Commission shall afford interested persons (i) an opportunity for oral presentation of data, views, and arguments and

(ii) with respect to any such rule concerning transactions effected after November 1, 1976, if the Commission determines there are disputed issues of material fact, to present such rebuttal submissions and to conduct (or have conducted under subparagraph (B) of this paragraph) such cross-examination as the Commission determines to be appropriate and required for full disclosure and proper resolution of such disputed issues of material fact.

(B) The Commission shall prescribe rules and make rulings concerning any proceeding in accordance with subparagraph (A) of this paragraph designed to avoid unnecessary costs or delay. Such rules or rulings may (i) impose reasonable time limits on each interested person's oral presentations, and (ii) require any cross-examination to which a person may be entitled under subparagraph (A) of this paragraph to be conducted by the Commission on behalf of that person in such manner as the Commission determines to be appropriate and required for full disclosure and proper resolution of disputed issues of material fact.

(C)(i) If any class of persons, the members of which are entitled to conduct (or have conducted) cross-examination under subparagraphs (A) and (B) of this paragraph and which have, in the view of the Commission, the same or similar interests in the proceeding, cannot agree upon a single representative of such interests for purposes of cross-examination, the Commission may make rules and rulings specifying the manner in which such interests shall be represented and such cross-examination conducted.

(ii) No member of any class of persons with respect to which the Commission has specified the manner in which its interests shall be represented pursuant to clause (i) of this subparagraph shall be denied, pursuant to such clause (i), the opportunity to conduct (or have conducted) cross-examination as to issues affecting his particular interests if he satisfies the Commission that he has made a reasonable and good faith effort to reach agreement upon group representation and there are substantial and relevant issues which would not be presented adequately by group representation.

(D) A transcript shall be kept of any oral presentation and cross-examination.

(E) In addition to the bases specified in subsection 25(a), a reviewing Court may set aside an order of the Commission under section 19(b) approving an exchange rule imposing a schedule or fixing rates of commissions, allowances, discounts, or other fees, if the Court finds—

(1) a Commission determination under subparagraph (A) of this paragraph that an interested person is not entitled to conduct cross-examination or make rebuttal submissions, or

(2) a Commission rule or ruling under subparagraph (B) of this paragraph limiting the petitioner's cross-examination or rebuttal submissions,

has precluded full disclosure and proper resolution of disputed issues of material fact which were necessary for fair determination by the Commission.

(f) The Commission, by rule or order, as it deems necessary or appropriate in the public interest and for the protection of investors, to maintain fair and orderly markets, or to assure equal regulation, may require—

(1) any person not a member or a designated representative of a member of a national securities exchange effecting transactions on such exchange without the services of another person acting as a broker, or

(2) any broker or dealer not a member of a national securities exchange effecting transactions on such exchange on a regular basis,

to comply with such rules of such exchange as the Commission may specify.

(g) NOTICE REGISTRATION OF SECURITY FUTURES PRODUCT EXCHANGES.—

(1) REGISTRATION REQUIRED.—An exchange that lists or trades security futures products may register as a national securities exchange solely for the purposes of trading security futures products if—

(A) the exchange is a board of trade, as that term is defined by the Commodity Exchange Act (7 U.S.C. 1a(2)), that has been designated a contract market by the Commodity Futures Trading Commission and such designation is not suspended by order of the Commodity Futures Trading Commission; and

(B) such exchange does not serve as a market place for transactions in securities other than—

(i) security futures products; or

(ii) futures on exempted securities or groups or indexes of securities or options thereon that have been authorized under section 2(a)(1)(C) of the Commodity Exchange Act.

(2) REGISTRATION BY NOTICE FILING.—

(A) FORM AND CONTENT.—An exchange required to register only because such exchange lists or trades security futures products may register for purposes of this section by filing with the Commission a written notice in such form as the Commission, by rule, may prescribe containing the rules of the exchange and such other information and documents concerning such exchange, comparable to the information and documents required for national securities exchanges under section 6(a), as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors. If such exchange has filed documents with the Commodity Futures Trading Commission, to the extent that such documents contain information satisfying the Commission's informational requirements, copies of such documents may be filed with the Commission in lieu of the required written notice.

(B) IMMEDIATE EFFECTIVENESS.—Such registration shall be effective contemporaneously with the submission of notice, in written or electronic form, to the Commission, except that such registration shall not be effective if such registration would be subject to suspension or revocation.

(C) TERMINATION.—Such registration shall be terminated immediately if any of the conditions for registration set forth in this subsection are no longer satisfied.

(3) PUBLIC AVAILABILITY.—The Commission shall promptly publish in the Federal Register an acknowledgment of receipt

of all notices the Commission receives under this subsection and shall make all such notices available to the public.

(4) EXEMPTION OF EXCHANGES FROM SPECIFIED PROVISIONS.—

(A) TRANSACTION EXEMPTIONS.—An exchange that is registered under paragraph (1) of this subsection shall be exempt from, and shall not be required to enforce compliance by its members with, and its members shall not, solely with respect to those transactions effected on such exchange in security futures products, be required to comply with, the following provisions of this title and the rules thereunder:

(i) Subsections (b)(2), (b)(3), (b)(4), (b)(7), (b)(9), (c), (d), and (e) of this section.

(ii) Section 8.

(iii) Section 11.

(iv) Subsections (d), (f), and (k) of section 17.

(v) Subsections (a), (f), and (h) of section 19.

(B) RULE CHANGE EXEMPTIONS.—An exchange that registered under paragraph (1) of this subsection shall also be exempt from submitting proposed rule changes pursuant to section 19(b) of this title, except that—

(i) such exchange shall file proposed rule changes related to higher margin levels, fraud or manipulation, recordkeeping, reporting, listing standards, or decimal pricing for security futures products, sales practices for security futures products for persons who effect transactions in security futures products, or rules effectuating such exchange's obligation to enforce the securities laws pursuant to section 19(b)(7);

(ii) such exchange shall file pursuant to sections 19(b)(1) and 19(b)(2) proposed rule changes related to margin, except for changes resulting in higher margin levels; and

(iii) such exchange shall file pursuant to section 19(b)(1) proposed rule changes that have been abrogated by the Commission pursuant to section 19(b)(7)(C).

(5) TRADING IN SECURITY FUTURES PRODUCTS.—

(A) IN GENERAL.—Subject to subparagraph (B), it shall be unlawful for any person to execute or trade a security futures product until the later of—

(i) 1 year after the date of the enactment of the Commodity Futures Modernization Act of 2000; or

(ii) such date that a futures association registered under section 17 of the Commodity Exchange Act has met the requirements set forth in section 15A(k)(2) of this title.

(B) PRINCIPAL-TO-PRINCIPAL TRANSACTIONS.—Notwithstanding subparagraph (A), a person may execute or trade a security futures product transaction if—

(i) the transaction is entered into—

(I) on a principal-to-principal basis between parties trading for their own accounts or as described in section 1a(18)(B)(ii) of the Commodity Exchange Act; and

(II) only between eligible contract participants (as defined in subparagraphs (A), (B)(ii), and (C) of such section 1a(18)) at the time at which the persons enter into the agreement, contract, or transaction; and

(ii) the transaction is entered into on or after the later of—

(I) 8 months after the date of the enactment of the Commodity Futures Modernization Act of 2000; or

(II) such date that a futures association registered under section 17 of the Commodity Exchange Act has met the requirements set forth in section 15A(k)(2) of this title.

(h) TRADING IN SECURITY FUTURES PRODUCTS.—

(1) TRADING ON EXCHANGE OR ASSOCIATION REQUIRED.—It shall be unlawful for any person to effect transactions in security futures products that are not listed on a national securities exchange or a national securities association registered pursuant to section 15A(a).

(2) LISTING STANDARDS REQUIRED.—Except as otherwise provided in paragraph (7), a national securities exchange or a national securities association registered pursuant to section 15A(a) may trade only security futures products that (A) conform with listing standards that such exchange or association files with the Commission under section 19(b) and (B) meet the criteria specified in section 2(a)(1)(D)(i) of the Commodity Exchange Act.

(3) REQUIREMENTS FOR LISTING STANDARDS AND CONDITIONS FOR TRADING.—Such listing standards shall—

(A) except as otherwise provided in a rule, regulation, or order issued pursuant to paragraph (4), require that any security underlying the security future, including each component security of a narrow-based security index, be registered pursuant to section 12 of this title;

(B) require that if the security futures product is not cash settled, the market on which the security futures product is traded have arrangements in place with a registered clearing agency for the payment and delivery of the securities underlying the security futures product;

(C) be no less restrictive than comparable listing standards for options traded on a national securities exchange or national securities association registered pursuant to section 15A(a) of this title;

(D) except as otherwise provided in a rule, regulation, or order issued pursuant to paragraph (4), require that the security future be based upon common stock and such other equity securities as the Commission and the Commodity Futures Trading Commission jointly determine appropriate;

(E) require that the security futures product is cleared by a clearing agency that has in place provisions for linked and coordinated clearing with other clearing agencies that clear security futures products, which permits the security

futures product to be purchased on one market and offset on another market that trades such product;

(F) require that only a broker or dealer subject to suitability rules comparable to those of a national securities association registered pursuant to section 15A(a) effect transactions in the security futures product;

(G) require that the security futures product be subject to the prohibition against dual trading in section 4j of the Commodity Exchange Act (7 U.S.C. 6j) and the rules and regulations thereunder or the provisions of section 11(a) of this title and the rules and regulations thereunder, except to the extent otherwise permitted under this title and the rules and regulations thereunder;

(H) require that trading in the security futures product not be readily susceptible to manipulation of the price of such security futures product, nor to causing or being used in the manipulation of the price of any underlying security, option on such security, or option on a group or index including such securities;

(I) require that procedures be in place for coordinated surveillance among the market on which the security futures product is traded, any market on which any security underlying the security futures product is traded, and other markets on which any related security is traded to detect manipulation and insider trading;

(J) require that the market on which the security futures product is traded has in place audit trails necessary or appropriate to facilitate the coordinated surveillance required in subparagraph (I);

(K) require that the market on which the security futures product is traded has in place procedures to coordinate trading halts between such market and any market on which any security underlying the security futures product is traded and other markets on which any related security is traded; and

(L) require that the margin requirements for a security futures product comply with the regulations prescribed pursuant to section 7(c)(2)(B), except that nothing in this subparagraph shall be construed to prevent a national securities exchange or national securities association from requiring higher margin levels for a security futures product when it deems such action to be necessary or appropriate.

(4) **AUTHORITY TO MODIFY CERTAIN LISTING STANDARD REQUIREMENTS.—**

(A) **AUTHORITY TO MODIFY.—**The Commission and the Commodity Futures Trading Commission, by rule, regulation, or order, may jointly modify the listing standard requirements specified in subparagraph (A) or (D) of paragraph (3) to the extent such modification fosters the development of fair and orderly markets in security futures products, is necessary or appropriate in the public interest, and is consistent with the protection of investors.

(B) **AUTHORITY TO GRANT EXEMPTIONS.—**The Commission and the Commodity Futures Trading Commission, by

order, may jointly exempt any person from compliance with the listing standard requirement specified in subparagraph (E) of paragraph (3) to the extent such exemption fosters the development of fair and orderly markets in security futures products, is necessary or appropriate in the public interest, and is consistent with the protection of investors.

(5) REQUIREMENTS FOR OTHER PERSONS TRADING SECURITY FUTURE PRODUCTS.—It shall be unlawful for any person (other than a national securities exchange or a national securities association registered pursuant to section 15A(a)) to constitute, maintain, or provide a marketplace or facilities for bringing together purchasers and sellers of security future products or to otherwise perform with respect to security future products the functions commonly performed by a stock exchange as that term is generally understood, unless a national securities association registered pursuant to section 15A(a) or a national securities exchange of which such person is a member—

(A) has in place procedures for coordinated surveillance among such person, the market trading the securities underlying the security future products, and other markets trading related securities to detect manipulation and insider trading;

(B) has rules to require audit trails necessary or appropriate to facilitate the coordinated surveillance required in subparagraph (A); and

(C) has rules to require such person to coordinate trading halts with markets trading the securities underlying the security future products and other markets trading related securities.

(6) DEFERRAL OF OPTIONS ON SECURITY FUTURES TRADING.—No person shall offer to enter into, enter into, or confirm the execution of any put, call, straddle, option, or privilege on a security future, except that, after 3 years after the date of the enactment of this subsection, the Commission and the Commodity Futures Trading Commission may by order jointly determine to permit trading of puts, calls, straddles, options, or privileges on any security future authorized to be traded under the provisions of this Act and the Commodity Exchange Act.

(7) DEFERRAL OF LINKED AND COORDINATED CLEARING.—

(A) Notwithstanding paragraph (2), until the compliance date, a national securities exchange or national securities association registered pursuant to section 15A(a) may trade a security futures product that does not—

(i) conform with any listing standard promulgated to meet the requirement specified in subparagraph (E) of paragraph (3); or

(ii) meet the criterion specified in section 2(a)(1)(D)(i)(IV) of the Commodity Exchange Act.

(B) The Commission and the Commodity Futures Trading Commission shall jointly publish in the Federal Register a notice of the compliance date no later than 165 days before the compliance date.

(C) For purposes of this paragraph, the term “compliance date” means the later of—

(i) 180 days after the end of the first full calendar month period in which the average aggregate comparable share volume for all security futures products based on single equity securities traded on all national securities exchanges, any national securities associations registered pursuant to section 15A(a), and all other persons equals or exceeds 10 percent of the average aggregate comparable share volume of options on single equity securities traded on all national securities exchanges and any national securities associations registered pursuant to section 15A(a); or

(ii) 2 years after the date on which trading in any security futures product commences under this title.

(i) Consistent with this title, each national securities exchange registered pursuant to subsection (a) of this section shall issue such rules as are necessary to avoid duplicative or conflicting rules applicable to any broker or dealer registered with the Commission pursuant to section 15(b) (except paragraph (11) thereof), that is also registered with the Commodity Futures Trading Commission pursuant to section 4f(a) of the Commodity Exchange Act (except paragraph (2) thereof), with respect to the application of—

(1) rules of such national securities exchange of the type specified in section 15(c)(3)(B) involving security futures products; and

(2) similar rules of national securities exchanges registered pursuant to section 6(g) and national securities associations registered pursuant to section 15A(k) involving security futures products.

(j) PROCEDURES AND RULES FOR SECURITY FUTURE PRODUCTS.—A national securities exchange registered pursuant to subsection (a) shall implement the procedures specified in section 6(h)(5)(A) of this title and adopt the rules specified in subparagraphs (B) and (C) of section 6(h)(5) of this title not later than 8 months after the date of receipt of a request from an alternative trading system for such implementation and rules.

(k)(1) To the extent necessary or appropriate in the public interest, to promote fair competition, and consistent with the promotion of market efficiency, innovation, and expansion of investment opportunities, the protection of investors, and the maintenance of fair and orderly markets, the Commission and the Commodity Futures Trading Commission shall jointly issue such rules, regulations, or orders as are necessary and appropriate to permit the offer and sale of a security futures product traded on or subject to the rules of a foreign board of trade to United States persons.

(2) The rules, regulations, or orders adopted under paragraph (1) shall take into account, as appropriate, the nature and size of the markets that the securities underlying the security futures product reflect.

(l) SECURITY-BASED SWAPS.—It shall be unlawful for any person to effect a transaction in a security-based swap with or for a person that is not an eligible contract participant, unless such transaction is effected on a national securities exchange registered pursuant to subsection (b).

(m) VENTURE EXCHANGE.—

(1) REGISTRATION.—

(A) *IN GENERAL.*—A person may register themselves (and a national securities exchange may register a listing tier of such exchange) as a national securities exchange solely for the purposes of trading venture securities by filing an application with the Commission pursuant to subsection (a) and the rules and regulations thereunder.

(B) *PUBLICATION OF NOTICE.*—The Commission shall, upon the filing of an application under subparagraph (A), publish notice of such filing and afford interested persons an opportunity to submit written data, views, and arguments concerning such application.

(C) *APPROVAL OR DENIAL.*—

(i) *IN GENERAL.*—Within 90 days of the date of publication of a notice under subparagraph (B) (or within such longer period as to which the applicant consents), the Commission shall—

(I) by order grant such registration; or

(II) institute a denial proceeding under clause (ii) to determine whether registration should be denied.

(ii) *DENIAL PROCEEDING.*—A proceeding under clause (i)(II) shall include notice of the grounds for denial under consideration and opportunity for hearing and shall be concluded within 180 days of the date of the publication of a notice under subparagraph (B). At the conclusion of such proceeding the Commission, by order, shall grant or deny such registration. The Commission may extend the time for conclusion of such proceeding for up to 90 days if the Commission finds good cause for such extension and publishes the Commission's reasons for so finding or for such longer period as to which the applicant consents.

(iii) *CRITERIA FOR APPROVAL OR DENIAL.*—The Commission shall grant a registration under this paragraph if the Commission finds that the requirements of this title and the rules and regulations thereunder with respect to the applicant are satisfied. The Commission shall deny such registration if it does not make such finding.

(2) *POWERS AND RESTRICTIONS.*—In addition to the powers and restrictions otherwise applicable to a national securities exchange, a venture exchange—

(A) may only constitute, maintain, or provide a market place or facilities for bringing together purchasers and sellers of venture securities;

(B) may not extend unlisted trading privileges to any venture security;

(C) may only, if the venture exchange is a listing tier of another national securities exchange, allow trading in securities that are registered under section 12(b) on a national securities exchange other than a venture exchange; and

(D) may, subject to the rule filing process under section 19(b)—

(i) determine the increment to be used for quoting and trading venture securities on the exchange; and

(ii) choose to carry out periodic auctions for the sale of a venture security instead of providing continuous trading of the venture security.

(3) **TREATMENT OF CERTAIN EXEMPTED SECURITIES.**—A security that is exempt from registration pursuant to section 3(b) of the Securities Act of 1933 shall be exempt from section 12(a) of this title to the extent such securities are traded on a venture exchange, if the issuer of such security is in compliance with—

(A) all disclosure obligations of such section 3(b) and the regulations issued under such section; and

(B) ongoing disclosure obligations of the applicable venture exchange that are similar to those provided by an issuer under tier 2 of Regulation A (17 C.F.R. 230.251 et seq).

(4) **VENTURE SECURITIES TRADED ON VENTURE EXCHANGES MAY NOT TRADE ON NON-VENTURE EXCHANGES.**—A venture security may not be traded on a national securities exchange that is not a venture exchange during any period in which the venture security is being traded on a venture exchange.

(5) **RULE OF CONSTRUCTION.**—Nothing in this subsection may be construed as requiring transactions in venture securities to be effected on a national securities exchange.

(6) **COMMISSION AUTHORITY TO LIMIT CERTAIN TRADING.**—The Commission may limit transactions in venture securities that are not effected on a national securities exchange as appropriate to promote efficiency, competition, capital formation, and to protect investors.

(7) **DISCLOSURES TO INVESTORS.**—The Commission shall issue regulations to ensure that persons selling or purchasing venture securities on a venture exchange are provided disclosures sufficient to understand—

(A) the characteristics unique to venture securities; and

(B) in the case of a venture exchange that is a listing tier of another national securities exchange, that the venture exchange is distinct from the other national securities exchange.

(8) **DEFINITIONS.**—For purposes of this subsection:

(A) **EARLY-STAGE, GROWTH COMPANY.**—

(i) **IN GENERAL.**—The term “early-stage, growth company” means an issuer—

(I) that has not made any registered initial public offering of any securities of the issuer; and

(II) with a public float of less than or equal to the value of public float required to qualify as a large accelerated filer under section 240.12b-2 of title 17, Code of Federal Regulations.

(ii) **TREATMENT WHEN PUBLIC FLOAT EXCEEDS THRESHOLD.**—An issuer shall not cease to be an early-stage, growth company by reason of the public float of such issuer exceeding the threshold specified in clause (i)(II) until the later of the following:

(I) The end of the period of 24 consecutive months during which the public float of the issuer exceeds \$2,000,000,000 (as such amount is indexed for inflation every 5 years by the Commission to re-

flect the change in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics, setting the threshold to the nearest \$1,000,000).

(II) The end of the 1-year period following the end of the 24-month period described under subclause (I), if the issuer requests such 1-year extension from a venture exchange and the venture exchange elects to provide such extension.

(B) PUBLIC FLOAT.—With respect to an issuer, the term “public float” means the aggregate worldwide market value of the voting and non-voting common equity of the issuer held by non-affiliates.

(C) VENTURE SECURITY.—

(i) IN GENERAL.—The term “venture security” means—

(I) securities of an early-stage, growth company that are exempt from registration pursuant to section 3(b) of the Securities Act of 1933;

(II) securities of an emerging growth company;
or

(III) securities registered under section 12(b) and listed on a venture exchange (or, prior to listing on a venture exchange, listed on a national securities exchange) where—

(aa) the issuer of such securities has a public float less than or equal to the value of public float required to qualify as a large accelerated filer under section 240.12b-2 of title 17, Code of Federal Regulations; or

(bb) the average daily trade volume is 75,000 shares or less during a continuous 60-day period.

(ii) TREATMENT WHEN PUBLIC FLOAT EXCEEDS THRESHOLD.—Securities shall not cease to be venture securities by reason of the public float of the issuer of such securities exceeding the threshold specified in clause (i)(III)(aa) until the later of the following:

(I) The end of the period of 24 consecutive months beginning on the date—

(aa) the public float of such issuer exceeds \$2,000,000,000; and

(bb) the average daily trade volume of such securities is 100,000 shares or more during a continuous 60-day period.

(II) The end of the 1-year period following the end of the 24-month period described under subclause (I), if the issuer of such securities requests such 1-year extension from a venture exchange and the venture exchange elects to provide such extension.

* * * * *

SECURITIES ACT OF 1933

TITLE I—

* * * * *

SEC. 18. EXEMPTION FROM STATE REGULATION OF SECURITIES OFFERINGS.

(a) SCOPE OF EXEMPTION.—Except as otherwise provided in this section, no law, rule, regulation, or order, or other administrative action of any State or any political subdivision thereof—

(1) requiring, or with respect to, registration or qualification of securities, or registration or qualification of securities transactions, shall directly or indirectly apply to a security that—

(A) is a covered security; or

(B) will be a covered security upon completion of the transaction;

(2) shall directly or indirectly prohibit, limit, or impose any conditions upon the use of—

(A) with respect to a covered security described in subsection (b), any offering document that is prepared by or on behalf of the issuer; or

(B) any proxy statement, report to shareholders, or other disclosure document relating to a covered security or the issuer thereof that is required to be and is filed with the Commission or any national securities organization registered under section 15A of the Securities Exchange Act of 1934, except that this subparagraph does not apply to the laws, rules, regulations, or orders, or other administrative actions of the State of incorporation of the issuer; or

(3) shall directly or indirectly prohibit, limit, or impose conditions, based on the merits of such offering or issuer, upon the offer or sale of any security described in paragraph (1).

(b) COVERED SECURITIES.—For purposes of this section, the following are covered securities:

(1) EXCLUSIVE FEDERAL REGISTRATION OF NATIONALLY TRADED SECURITIES.—A security is a covered security if such security is—

(A) a security designated as qualified for trading in the national market system pursuant to section 11A(a)(2) of the Securities Exchange Act of 1934 (15 U.S.C. 78k-1(a)(2)) that is listed, or authorized for listing, on a national securities exchange (or tier or segment thereof) basis of a petition) are substantially similar to the listing standards applicable to securities described in subparagraph (A); or

(B) a security of the same issuer that is equal in seniority or that is a senior security to a security described in subparagraph (A).

(2) EXCLUSIVE FEDERAL REGISTRATION OF INVESTMENT COMPANIES.—A security is a covered security if such security is a security issued by an investment company that is registered, or that has filed a registration statement, under the Investment Company Act of 1940.

(3) SALES TO QUALIFIED PURCHASERS.—A security is a covered security with respect to the offer or sale of the security

to qualified purchasers, as defined by the Commission by rule. In prescribing such rule, the Commission may define the term “qualified purchaser” differently with respect to different categories of securities, consistent with the public interest and the protection of investors.

(4) EXEMPTION IN CONNECTION WITH CERTAIN EXEMPT OFFERINGS.—A security is a covered security with respect to a transaction that is exempt from registration under this title pursuant to—

(A) paragraph (1) or (3) of section 4, and the issuer of such security files reports with the Commission pursuant to section 13 or 15(d) of the Securities Exchange Act of 1934;

(B) section 4(4);

(C) section 4(6);

(D) a rule or regulation adopted pursuant to section 3(b)(2) and such security is—

(i) offered or sold on a national securities exchange;

or

(ii) offered or sold to a qualified purchaser, as defined by the Commission pursuant to paragraph (3) with respect to that purchase or sale;

(E) section 3(a), other than the offer or sale of a security that is exempt from such registration pursuant to paragraph (4), (10), or (11) of such section, except that a municipal security that is exempt from such registration pursuant to paragraph (2) of such section is not a covered security with respect to the offer or sale of such security in the State in which the issuer of such security is located;

(F) Commission rules or regulations issued under section 4(2), except that this subparagraph does not prohibit a State from imposing notice filing requirements that are substantially similar to those required by rule or regulation under section 4(2) that are in effect on September 1, 1996; or

(G) section 4(a)(7).

(c) PRESERVATION OF AUTHORITY.—

(1) FRAUD AUTHORITY.—Consistent with this section, the securities commission (or any agency or office performing like functions) of any State shall retain jurisdiction under the laws of such State to investigate and bring enforcement actions, in connection with securities or securities transactions

(A) with respect to—

(i) fraud or deceit; or

(ii) unlawful conduct by a broker or dealer; and

(B) in connection to a transaction described under section 4(6), with respect to—

(i) fraud or deceit; or

(ii) unlawful conduct by a broker, dealer, funding portal, or issuer.

(2) PRESERVATION OF FILING REQUIREMENTS.—

(A) NOTICE FILINGS PERMITTED.—Nothing in this section prohibits the securities commission (or any agency or office performing like functions) of any State from requiring the filing of any document filed with the Commis-

sion pursuant to this title, together with annual or periodic reports of the value of securities sold or offered to be sold to persons located in the State (if such sales data is not included in documents filed with the Commission), solely for notice purposes and the assessment of any fee, together with a consent to service of process and any required fee.

(B) PRESERVATION OF FEES.—

(i) IN GENERAL.—Until otherwise provided by law, rule, regulation, or order, or other administrative action of any State or any political subdivision thereof, adopted after the date of enactment of the National Securities Markets Improvement Act of 1996, filing or registration fees with respect to securities or securities transactions shall continue to be collected in amounts determined pursuant to State law as in effect on the day before such date.

(ii) SCHEDULE.—The fees required by this subparagraph shall be paid, and all necessary supporting data on sales or offers for sales required under subparagraph (A), shall be reported on the same schedule as would have been applicable had the issuer not relied on the exemption provided in subsection (a).

(C) AVAILABILITY OF PREEMPTION CONTINGENT ON PAYMENT OF FEES.—

(i) IN GENERAL.—During the period beginning on the date of enactment of the National Securities Markets Improvement Act of 1996 and ending 3 years after that date of enactment, the securities commission (or any agency or office performing like functions) of any State may require the registration of securities issued by any issuer who refuses to pay the fees required by subparagraph (B).

(ii) DELAYS.—For purposes of this subparagraph, delays in payment of fees or underpayments of fees that are promptly remedied shall not constitute a refusal to pay fees.

(D) FEES NOT PERMITTED ON LISTED SECURITIES.—Notwithstanding subparagraphs (A), (B), and (C), no filing or fee may be required with respect to any security that is a covered security pursuant to subsection (b)(1), or will be such a covered security upon completion of the transaction, or is a security of the same issuer that is equal in seniority or that is a senior security to a security that is a covered security pursuant to subsection (b)(1).

(F) FEES NOT PERMITTED ON CROWDFUNDED SECURITIES.—Notwithstanding subparagraphs (A), (B), and (C), no filing or fee may be required with respect to any security that is a covered security pursuant to subsection (b)(4)(B), or will be such a covered security upon completion of the transaction, except for the securities commission (or any agency or office performing like functions) of the State of the principal place of business of the issuer, or any State in which purchasers of 50 percent or greater of the aggregate amount of the issue are residents, provided that for purposes of this subparagraph, the term

“State” includes the District of Columbia and the territories of the United States.

(3) ENFORCEMENT OF REQUIREMENTS.—Nothing in this section shall prohibit the securities commission (or any agency or office performing like functions) of any State from suspending the offer or sale of securities within such State as a result of the failure to submit any filing or fee required under law and permitted under this section.

(d) TREATMENT OF SECURITIES LISTED ON A VENTURE EXCHANGE.—*Notwithstanding subsection (b), a security is not a covered security pursuant to subsection (b)(1)(A) if the security is only listed, or authorized for listing, on a venture exchange (as defined under section 6(m) of the Securities Exchange Act of 1934).*

[(d)] (e) DEFINITIONS.—For purposes of this section, the following definitions shall apply:

(1) OFFERING DOCUMENT.—The term “offering document”—

(A) has the meaning given the term “prospectus” in section 2(a)(10), but without regard to the provisions of subparagraphs (a) and (b) of that section; and

(B) includes a communication that is not deemed to offer a security pursuant to a rule of the Commission.

(2) PREPARED BY OR ON BEHALF OF THE ISSUER.—Not later than 6 months after the date of enactment of the National Securities Markets Improvement Act of 1996, the Commission shall, by rule, define the term “prepared by or on behalf of the issuer” for purposes of this section.

(3) STATE.—The term “State” has the same meaning as in section 3 of the Securities Exchange Act of 1934.

(4) SENIOR SECURITY.—The term “senior security” means any bond, debenture, note, or similar obligation or instrument constituting a security and evidencing indebtedness, and any stock of a class having priority over any other class as to distribution of assets or payment of dividends.

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