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94TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT  
1st Session } } No. 94-123

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## SECURITIES REFORM ACT OF 1975

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APRIL 7, 1975.—Committed to the Committee of the Whole House on the  
State of the Union and ordered to be printed

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Mr. STAGGERS, from the Committee on Interstate and Foreign  
Commerce, submitted the following

### REPORT

together with

### MINORITY VIEWS

[To accompany H.R. 4111]

The Committee on Interstate and Foreign Commerce, to whom was referred the bill (H.R. 4111) to amend the Securities Exchange Act of 1934 to remove barriers to competition, to foster the development of a national securities market system and a national clearance and settlement system, to make uniform the Securities and Exchange Commission's authority over securities industry regulatory organizations, 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 out all after the enacting clause and insert in lieu thereof the following:

That this Act may be cited as the "Securities Reform Act of 1975".

#### TITLE I—REGULATION OF EXCHANGES AND ASSOCIATIONS

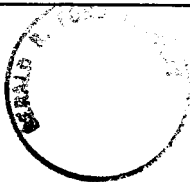
SEC. 101. (a) Section 3(a)(3) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(3)) is amended to read as follows:

"(3) The term 'member' when used with respect to a national securities exchange or national securities association means any person who agrees to be regulated by an exchange or association and with respect to whom the exchange or association undertakes to enforce compliance with its rules and with the provisions of this title, and any amendment thereto and any rule or regulation made or to be made thereunder."

(b) Section 3(a)(21) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(21)) is amended to read as follows:

"(21) The term 'person associated with a member' with respect to a member of a national securities exchange or national securities association means any partner, officer, director, or branch manager of such member (or any person

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SECURITIES ACTS AMENDMENTS OF 1975



REPORT

OF THE

COMMITTEE ON

BANKING, HOUSING AND URBAN AFFAIRS

UNITED STATES SENATE

TO ACCOMPANY

S. 249



APRIL 14, 1975.—Ordered to be printed



U.S. GOVERNMENT PRINTING OFFICE

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## SECURITIES ACTS AMENDMENTS OF 1975

MAY 19, 1975.—Ordered to be printed

Mr. STAGGERS, from the committee of conference,  
submitted the following

### CONFERENCE REPORT

[To accompany S. 249]

The committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 249) to amend the Securities Exchange Act of 1934, and for other purposes, having met, and after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its disagreement to the amendment of the House to the text of the bill and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the House amendment insert the following:

*That this Act may be cited as the "Securities Acts Amendments of 1975".*

*SEC. 2. Section 2 of the Securities Exchange Act of 1934 (15 U.S.C. 78b) is amended by inserting immediately before the phrase "and to impose requirements necessary to make such regulation and control reasonably complete and effective," the following: "to remove impediments to and perfect the mechanisms of a national market system for securities and a national system for the clearance and settlement of securities transactions and the safeguarding of securities and funds related thereto,".*

*SEC. 3. Section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c) is amended as follows:*

*(1) Paragraph (3) of subsection (a) thereof is amended to read as follows:*

*"(3) (A) The term 'member' when used with respect to a national securities exchange means (i) any natural person permitted to effect transactions on the floor of the exchange without the services of another person acting as broker, (ii) any registered broker or dealer with which such a natural person is associated, (iii) any registered broker*

or dealer permitted to designate as a representative such a natural person, and (iv) any other registered broker or dealer which agrees to be regulated by such exchange and with respect to which the exchange undertakes to enforce compliance with the provisions of this title, the rules and regulations thereunder, and its own rules. For purposes of sections 6(b)(1), 6(b)(4), 6(b)(6), 6(b)(7), 6(d), 17(d), 19(d), 19(e), 19(g), 19(h), and 21 of this title, the term 'member' when used with respect to a national securities exchange also means, to the extent of the rules of the exchange specified by the Commission, any person required by the Commission to comply with such rules pursuant to section 6(f) of this title.

"(B) The term 'member' when used with respect to a registered securities association means any broker or dealer who agrees to be regulated by such association and with respect to whom the association undertakes to enforce compliance with the provisions of this title, the rules and regulations thereunder, and its own rules."

(2) Paragraph (9) thereof is amended to read as follows:

"(9) The term 'person' means a natural person, company, government, or political subdivision, agency, or instrumentality of a government."

(3) Paragraph (12) of subsection (a) thereof is amended to read as follows:

"(12) The term 'exempted security' or 'exempted securities' includes securities which are direct obligations of, or obligations guaranteed as to principal or interest by, the United States; such securities issued or guaranteed by corporations in which the United States has a direct or indirect interest as shall be designated for exemption by the Secretary of the Treasury as necessary or appropriate in the public interest or for the protection of investors; municipal securities, as defined in section 3(a)(29) of this title: Provided, however, That municipal securities shall not be deemed to be 'exempted securities' for purposes of sections 15, 15A (except subsections (b)(6), (b)(11), and (g)(2) thereof), and 17A of this title; any interest or participation in any common trust fund or similar fund maintained by a bank exclusively for the collective investment and reinvestment of assets contributed thereto by such bank in its capacity as trustee, executor, administrator, or guardian; any interest or participation in a collective trust fund maintained by a bank or in a separate account maintained by an insurance company which interest or participation is issued in connection with (A) a stock bonus, pension, or profit-sharing plan which meets the requirements for qualification under section 401 of the Internal Revenue Code of 1954, or (B) an annuity plan which meets the requirements for the deduction of the employer's contribution under section 404(a)(2) of such Code, other than any plan described in clause (A) or (B) of this paragraph which covers employees some or all of whom are employees within the meaning of section 401(c)(1) of such Code, and such other securities (which may include, among others, unregistered securities, the market in which is predominantly intrastate) as the Commission may, by such rules and regulations as it deems consistent with the public interest and the protection of investors, either unconditionally or upon specified terms and conditions or for stated periods, exempt from the operation of any one or more

provisions of this title which by their terms do not apply to an 'exempted security' or to 'exempted securities'."

(4) Paragraphs (17), (18), and (19) of subsection (a) thereof are amended to read as follows:

"(17) The term 'interstate commerce' means trade, commerce, transportation, or communication among the several States, or between any foreign country and any State, or between any State and any place or ship outside thereof. The term also includes intrastate use of (A) any facility of a national securities exchange or of a telephone or other interstate means of communication, or (B) any other interstate instrumentality.

"(18) The term 'person associated with a broker or dealer' or 'associated person of a broker or dealer' means any partner, officer, director, or branch manager of such broker or dealer (or any person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with such broker or dealer, or any employee of such broker or dealer, except that any person associated with a broker or dealer whose functions are solely clerical or ministerial shall not be included in the meaning of such term for purposes of section 15(b) of this title (other than paragraph (6) thereof).

"(19) The terms 'investment company', 'affiliated person', 'insurance company', 'separate account', and 'company' have the same meanings as in the Investment Company Act of 1940."

(5) Paragraph (21) of subsection (a) thereof is amended to read as follows:

"(21) The term 'person associated with a member' or 'associated person of a member' when used with respect to a member of a national securities exchange or registered securities association means any partner, officer, director, or branch manager of such member (or any person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with such member, or any employee of such member."

(6) Subsection (a) thereof is further amended by adding at the end thereof the following new paragraphs:

"(22) (A) The term 'securities information processor' means any person engaged in the business of (i) collecting, processing, or preparing for distribution or publication, or assisting, participating in, or coordinating the distribution or publication of, information with respect to transactions in or quotations for any security (other than an exempted security) or (ii) distributing or publishing (whether by means of a ticker tape, a communications network, a terminal display device, or otherwise) on a current and continuing basis, information with respect to such transactions or quotations. The term 'securities information processor' does not include any bona fide newspaper, news magazine, or business or financial publication of general and regular circulation, any self-regulatory organization, any bank, broker, dealer, building and loan, savings and loan, or homestead association, or cooperative bank, if such bank, broker, dealer, association, or cooperative bank would be deemed to be a securities information processor solely by reason of functions performed by such institutions as part of customary banking, brokerage, dealing, association, or cooperative

bank activities, or any common carrier, as defined in section 3(h) of the Communications Act of 1934, subject to the jurisdiction of the Federal Communications Commission or a State commission, as defined in section 3(t) of that Act, unless the Commission determines that such carrier is engaged in the business of collecting, processing, or preparing for distribution or publication, information with respect to transactions in or quotations for any security.

“(B) The term ‘exclusive processor’ means any securities information processor or self-regulating organization which, directly or indirectly, engages on an exclusive basis on behalf of any national securities exchange or registered securities association or any national securities exchange or registered securities association which engages on an exclusive basis on its own behalf in collecting, processing, or preparing for distribution or publication any information with respect to (i) transactions or quotations on or effected or made by means of any facility of such exchange or (ii) quotations distributed or published by means of any electronic system operated or controlled by such association.

“(23) (A) The term ‘clearing agency’ means any person who acts as an intermediary in making payments or deliveries or both in connection with transactions in securities or who provides facilities for comparison of data respecting the terms of settlement of securities transactions, to reduce the number of settlements of securities transactions, or for the allocation of securities settlement responsibilities. Such term also means any person, such as a securities depository, who (i) acts as a custodian of securities in connection with a system for the central handling of securities whereby all securities of a particular class or series of any issuer deposited within the system are treated as fungible and may be transferred, loaned, or pledged by bookkeeping entry without physical delivery of securities certificates, or (ii) otherwise permits or facilitates the settlement of securities transactions or the hypothecation or lending of securities without physical delivery of securities certificates.

“(B) The term ‘clearing agency’ does not include (i) any Federal Reserve bank, Federal home loan bank, or Federal land bank; (ii) any national securities exchange or registered securities association solely by reason of its providing facilities for comparison of data respecting the terms of settlement of securities transactions effected on such exchange or by means of any electronic system operated or controlled by such association; (iii) any bank, broker, dealer, building and loan, savings and loan, or homestead association, or cooperative bank if such bank, broker, dealer, association, or cooperative bank would be deemed to be a clearing agency solely by reason of functions performed by such institution as part of customary banking, brokerage, dealing, association, or cooperative banking activities, or solely by reason of acting on behalf of a clearing agency or a participant therein in connection with the furnishing by the clearing agency of services to its participants or the use of services of the clearing agency by its participants, unless the Commission, by rule, otherwise provides as necessary or appropriate to assure the prompt and accurate clearance and settlement of securities transactions or to prevent evasion of this title; (iv) any life insurance company, its registered separate accounts, or a sub-

sidary of such insurance company solely by reason of functions commonly performed by such entities in connection with variable annuity contracts or variable life policies issued by such insurance company or its separate accounts; (v) any registered open-end investment company or unit investment trust solely by reason of functions commonly performed by it in connection with shares in such registered open-end investment company or unit investment trust, or (vi) any person solely by reason of its performing functions described in paragraph 25(E) of this subsection.

“(24) The term ‘participant’ when used with respect to a clearing agency means any person who uses a clearing agency to clear or settle securities transactions or to transfer, pledge, lend, or hypothecate securities. Such term does not include a person whose only use of a clearing agency is (A) through another person who is a participant or (B) as a pledgee of securities.

“(25) The term ‘transfer agent’ means any person who engages on behalf of an issuer of securities or on behalf of itself as an issuer of securities in (A) countersigning such securities upon issuance; (B) monitoring the issuance of such securities with a view to preventing unauthorized issuance, a function commonly performed by a person called a registrar; (C) registering the transfer of such securities; (D) exchanging or converting such securities; or (E) transferring record ownership of securities by bookkeeping entry without physical issuance of securities certificates. The term ‘transfer agent’ does not include any insurance company or separate account which performs such functions solely with respect to variable annuity contracts or variable life policies which it issues or any registered clearing agency which performs such functions solely with respect to options contracts which it issues.

“(26) The term ‘self-regulatory organization’ means any national securities exchange, registered securities association, or registered clearing agency, or (solely for purposes of sections 19(b), 19(c), and 23(b) of this title) the Municipal Securities Rulemaking Board established by section 15B of this title.

“(27) The term ‘rules of an exchange’, ‘rules of an association’, or ‘rules of a clearing agency’ means the constitution, articles of incorporation, bylaws, and rules, or instruments corresponding to the foregoing, of an exchange, association of brokers and dealers, or clearing agency, respectively, and such of the stated policies, practices, and interpretations of such exchange, association, or clearing agency as the Commission, by rule, may determine to be necessary or appropriate in the public interest or for the protection of investors to be deemed to be rules of such exchange, association, or clearing agency.

“(28) The term ‘rules of a self-regulatory organization’ means the rules of an exchange which is a national securities exchange, the rules of an association of brokers and dealers which is a registered securities association, the rules of a clearing agency which is a registered clearing agency, or the rules of the Municipal Securities Rulemaking Board.

“(29) The term ‘municipal securities’ means securities which are direct obligations of, or obligations guaranteed as to principal or interest by, a State or any political subdivision thereof, or any agency or



instrumentality of a State or any political subdivision thereof, or any municipal corporate instrumentality of one or more States, or any security which is an industrial development bond (as defined in section 103(c)(2) of the Internal Revenue Code of 1954) the interest on which is excludable from gross income under section 103(a)(1) of such Code if, by reason of the application of paragraph (4) or (6) of section 103(c) of such Code (determined as if paragraphs (4)(A), (5), and (7) were not included in such section 103(c)), paragraph (1) of such section 103(c) does not apply to such security.

“(30) The term ‘municipal securities dealer’ means any person (including a separately identifiable department or division of a bank) engaged in the business of buying and selling municipal securities for his own account, through a broker or otherwise, but does not include—

“(A) any person insofar as he buys or sells such securities for his own account, either individually or in some fiduciary capacity, but not as a part of a regular business; or

“(B) a bank, unless the bank is engaged in the business of buying and selling municipal securities for its own account other than in a fiduciary capacity, through a broker or otherwise: Provided, however, That if the bank is engaged in such business through a separately identifiable department or division (as defined by the Municipal Securities Rulemaking Board in accordance with section 15B(b)(2)(H) of this title), the department or division and not the bank itself shall be deemed to be the municipal securities dealer.

“(31) The term ‘municipal securities broker’ means a broker engaged in the business of effecting transactions in municipal securities for the account of others.

“(32) The term ‘person associated with a municipal securities dealer’ when used with respect to a municipal securities dealer which is a bank or a division or department of a bank means any person directly engaged in the management, direction, supervision, or performance of any of the municipal securities dealer’s activities with respect to municipal securities, and any person directly or indirectly controlling such activities or controlled by the municipal securities dealer in connection with such activities.

“(33) The term ‘municipal securities investment portfolio’ means all municipal securities held for investment and not for sale as part of a regular business by a municipal securities dealer or by a person, directly or indirectly, controlling, controlled by, or under common control with a municipal securities dealer.

“(34) The term ‘appropriate regulatory agency’ means—

“(A) When used with respect to a municipal securities dealer:

“(i) the Comptroller of the Currency, in the case of a national bank or a bank operating under the Code of Law for the District of Columbia, or a subsidiary or a department or division of any such bank;

“(ii) the Board of Governors of the Federal Reserve System, in the case of a State member bank of the Federal Reserve System, a subsidiary or a department or division thereof, a bank holding company, a subsidiary of a bank holding company which is a bank other than a bank specified in clause

(i) or (iii) of this subparagraph, or a subsidiary or a department or division of such subsidiary;

“(iii) the Federal Deposit Insurance Corporation, in the case of a bank insured by the Federal Deposit Insurance Corporation (other than a member of the Federal Reserve System), or a subsidiary or department or division thereof; and

“(iv) the Commission in the case of all other municipal securities dealers.

“(B) When used with respect to a clearing agency or transfer agent:

“(i) the Comptroller of the Currency, in the case of a national bank or a bank operating under the Code of Law for the District of Columbia, or a subsidiary of any such bank;

“(ii) the Board of Governors of the Federal Reserve System, in the case of a State member bank of the Federal Reserve System, a subsidiary thereof, a bank holding company, or a subsidiary of a bank holding company which is a bank other than a bank specified in clause (i) or (iii) of this subparagraph;

“(iii) the Federal Deposit Insurance Corporation, in the case of a bank insured by the Federal Deposit Insurance Corporation (other than a member of the Federal Reserve System), or a subsidiary thereof; and

“(iv) the Commission in the case of all other clearing agencies and transfer agents.

“(C) When used with respect to a participant or applicant to become a participant in a clearing agency or a person requesting or having access to services offered by a clearing agency;

“(i) the Comptroller of the Currency, in the case of a national bank or a bank operating under the Code of Law for the District of Columbia when the appropriate regulatory agency for such clearing agency is not the Commission;

“(ii) the Board of Governors of the Federal Reserve System in the case of a state member bank of the Federal Reserve System, a bank holding company, or a subsidiary of a bank holding company which is a bank other than a bank specified in clause (i) or (iii) of this subparagraph when the appropriate regulatory agency for such clearing agency is not the Commission;

“(iii) the Federal Deposit Insurance Corporation, in the case of a bank insured by the Federal Deposit Insurance Corporation (other than a member of the Federal Reserve System) when the appropriate regulatory agency for such clearing agency is not the Commission; and

“(iv) the Commission in all other cases.

“(D) When used with respect to an institutional investment manager which is a bank the deposits of which are insured in accordance with the Federal Deposit Insurance Act:

“(i) the Comptroller of the Currency, in the case of a national bank or a bank operating under the Code of Law for the District of Columbia;

"(ii) the Board of Governors of the Federal Reserve System, in the case of any other member bank of the Federal Reserve System; and

"(iii) the Federal Deposit Insurance Corporation, in the case of any other insured bank.

"(E) When used with respect to a national securities exchange or registered securities association, member thereof, person associated with a member thereof, applicant to become a member thereof or to become associated with a member thereof, or person requesting or having access to services offered by such exchange or association or member thereof, or the Municipal Securities Rulemaking Board, the Commission.

"(F) When used with respect to a person exercising investment discretion with respect to an account:

"(i) the Comptroller of the Currency, in the case of a national bank or a bank operating under the Code of Law for the District of Columbia;

"(ii) the Board of Governors of the Federal Reserve System in the case of any other member bank of the Federal Reserve System;

"(iii) the Federal Deposit Insurance Corporation, in the case of any other bank the deposits of which are insured in accordance with the Federal Deposit Insurance Act; and

"(iv) the Commission in the case of all other such persons.

As used in this paragraph, the terms 'bank holding company' and 'subsidiary of a bank holding company' have the meanings given them in section 2 of the Bank Holding Company Act of 1956.

"(35) A person exercises 'investment discretion' with respect to an account if, directly or indirectly, such person (A) is authorized to determine what securities or other property shall be purchased or sold by or for the account, (B) makes decisions as to what securities or other property shall be purchased or sold by or for the account even though some other person may have responsibility for such investment decisions, or (C) otherwise exercises such influence with respect to the purchase and sale of securities or other property by or for the account as the Commission, by rule, determines, in the public interest or for the protection of investors, should be subject to the operation of the provisions of this title and the rules and regulations thereunder.

"(36) A class of persons or markets is subject to 'equal regulation' if no member of the class has a competitive advantage over any other member thereof resulting from a disparity in their regulation under this title which the Commission determines is unfair and not necessary or appropriate in furtherance of the purposes of this title.

"(37) The term 'records' means accounts, correspondence, memorandums, tapes, discs, papers, books, and other documents or transcribed information of any type, whether expressed in ordinary or machine language.

"(38) The term 'market maker' means any specialist permitted to act as a dealer, any dealer acting in the capacity of block positioner, and any dealer who, with respect to a security, holds himself out (by entering quotations in an inter-dealer communications system or other-

wise) as being willing to buy and sell such security for his own account on a regular or continuous basis.

"(39) A person is subject to a 'statutory disqualification' with respect to membership or participation in, or association with a member of, a self-regulatory organization, if such person—

"(A) has been and is expelled or suspended from membership or participation in, or barred or suspended from being associated with a member of, any self-regulatory organization;

"(B) is subject to an order of the Commission denying, suspending for a period not exceeding twelve months, revoking his registration as a broker, dealer, or municipal securities dealer, or barring his being associated with a broker, dealer, or municipal securities dealer;

"(C) by his conduct while associated with a broker, dealer, or municipal securities dealer, has been found to be a cause of any effective suspension, expulsion, or order of the character described in subparagraph (A) or (B) of this paragraph, and in entering such a suspension, expulsion, or order, the Commission or any such self-regulatory organization shall have jurisdiction to find whether or not any person was a cause thereof;

"(D) has associated with him any person who is known, or in the exercise of reasonable care should be known, to him to be a person described by subparagraph (A), (B), or (C) of this paragraph; or

"(E) has committed or omitted any act enumerated in subparagraph (D) or (E) of paragraph (4) of section 15(b) of this title, has been convicted of any offense specified in subparagraph (B) of such paragraph (4) within ten years of the date of the filing of an application for membership or participation in, or to become associated with a member of, such self-regulatory organization, is enjoined from any action, conduct, or practice specified in subparagraph (C) of such paragraph (4), has willfully made or caused to be made in any application for membership or participation in, or to become associated with a member of, a self-regulatory organization, report required to be filed with a self-regulatory organization, or proceeding before a self-regulatory organization, any statement which was at the time, and in the light of the circumstances under which it was made, false or misleading with respect to any material fact, or has omitted to state in any such application, report, or proceeding any material fact which is required to be stated therein."

(7) Subsection (b) thereof is amended to read as follows:

"(b) The Commission and the Board of Governors of the Federal Reserve System, as to matters within their respective jurisdictions, shall have power by rules and regulations to define technical, trade, accounting, and other terms used in this title, consistently with the provisions and purposes of this title."

(8) The section is further amended by adding at the end thereof the following new subsection:

"(d) No issuer of municipal securities or officer or employee thereof acting in the course of his official duties as such shall be deemed to be

a 'broker', 'dealer', or 'municipal securities dealer' solely by reason of buying, selling, or effecting transactions in the issuer's securities."

SEC. 4. Section 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f) is amended to read as follows:

"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.

"(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 a registered or is not, 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 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 (A) limit 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 (4) of this section, 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) Until December 31, 1976, the Commission, on a regular basis, shall file with the Speaker of the House and the President of the Senate information concerning the effect on the public interest, protection of investors, and maintenance of fair and orderly markets of the absence of any schedule or fixed rates of commissions, allowances, discounts, or other fees to be charged by members of any national securities exchange for effecting transactions on such exchange.

“(4) (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 fixes rates of commissions, allowances, discounts, or other fees, if the Court finds

“(1) a Commission determination under paragraph (4) (A) that an interested person is not entitled to conduct cross-examination or make rebuttal submissions, or

“(2) a Commission rule or ruling under paragraph (4) (B) 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.”

SEC. 5. Section 8 of the Securities Exchange Act of 1934 (15 U.S.C. 78h) is amended as follows:

(1) The first sentence thereof is amended by striking out the phrase “any member of a national securities exchange, or any broker or dealer



who transacts a business in securities through the medium of any such member" and by inserting in lieu thereof the phrase "any registered broker or dealer, member of a national securities exchange, or broker or dealer who transacts a business in securities through the medium of any member of a national securities exchange".

(2) The section is further amended by striking out subsection (b), redesignating subsections (c) and (d) thereof as subsections (b) and (c) respectively, and amending redesignated subsection (c) to read as follows:

"(c) To lend or arrange for the lending of any securities carried for the account of any customer without the written consent of such customer or in contravention of such rules and regulations as the Commission shall prescribe for the protection of investors."

SEC. 6. Section 11 of the Securities Exchange Act of 1934 (15 U.S.C. 78k) is amended as follows:

(1) The title is amended to read: "TRADING BY MEMBERS OF EXCHANGES, BROKERS, AND DEALERS".

(2) Subsections (a) and (b) thereof are amended to read as follows:

"(a) (1) It shall be unlawful for any member of a national securities exchange to effect any transaction on such exchange for its own account, the account of an associated person, or an account with respect to which it or an associated person thereof exercises investment discretion: Provided, however, That this paragraph shall not make unlawful—

"(A) any transaction by a dealer acting in the capacity of market maker;

"(B) any transaction for the account of an odd-lot dealer in a security in which he is so registered;

"(C) any stabilizing transaction effected in compliance with rules under section 10(b) of this title to facilitate a distribution of a security in which the member effecting such transaction is participating;

"(D) any bona fide arbitrage transaction, any bona fide hedge transaction involving a long or short position in an equity security and a long or short position in a security entitling the holder to acquire or sell such equity security, or any risk arbitrage transaction in connection with a merger, acquisition, tender offer, or similar transaction involving a recapitalization;

"(E) any transaction for the account of a natural person, the estate of a natural person, or a trust (other than an investment company) created by a natural person for himself or another natural person;

"(F) any transaction to offset a transaction made in error;

"(G) any other transaction for a member's own account provided that (i) such member is primarily engaged in the business of underwriting and distributing securities issued by other persons, selling securities to customers, and acting as broker, or any one or more of such activities, and whose gross income normally is derived principally from such business and related activities and (ii) such transaction is effected in compliance with rules of the Commission which, as a minimum, assure that the transaction is not inconsistent with the maintenance of fair and orderly

markets and yields priority, parity, and precedence in execution to orders for the account of persons who are not members or associated with members of the exchange; and

"(H) any other transaction of a kind which the Commission, by rule, determines is consistent with the purposes of this paragraph, the protection of investors, and the maintenance of fair and orderly markets.

"(2) The Commission, by rule, 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 of exchange markets and markets occurring otherwise than on an exchange, may regulate or prohibit:

"(A) transactions on a national securities exchange not unlawful under paragraph (1) of this subsection effected by any member thereof for its own account (unless such member is acting in the capacity of market maker or odd-lot dealer), the account of an associated person, or an account with respect to which such member or an associated person thereof exercises investment discretion;

"(B) transactions otherwise than on a national securities exchange effected by use of the mails or any means or instrumentality of interstate commerce by any member of a national securities exchange, broker, or dealer for the account of such member, broker, or dealer (unless such member, broker, or dealer is acting in the capacity of a market maker) the account of an associated person, or an account with respect to which such member, broker, or dealer or associated person thereof exercises investment discretion; and

"(C) transactions on a national securities exchange effected by any broker or dealer not a member thereof for the account of such broker or dealer (unless such broker or dealer is acting in the capacity of market maker), the account of an associated person, or an account with respect to which such broker or dealer or associated person thereof exercises investment discretion.

"(3) The provisions of paragraph (1) of this subsection insofar as they apply to transactions on a national securities exchange effected by a member thereof who was a member on May 1, 1975 shall not become effective until May 1, 1978. Nothing in this paragraph shall be construed to impair or limit the authority of the Commission to regulate or prohibit such transactions prior to May 1, 1978, pursuant to paragraph (2) of this subsection.

"(b) When not in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest and for the protection of investors, to maintain fair and orderly markets, or to remove impediments to and perfect the mechanism of a national market system, the rules of a national securities exchange may permit (1) a member to be registered as an odd-lot dealer and as such to buy and sell for his own account so far as may be reasonably necessary to carry on such odd-lot transactions, and (2) a member to be registered as a specialist. Under the rules and regulations of the Commission a specialist may be permitted to act as a broker and dealer or limited to acting as a broker or dealer. It shall

be unlawful for a specialist or an official of the exchange to disclose information in regard to orders placed with such specialist which is not available to all members of the exchange, to any person other than an official of the exchange, a representative of the Commission, or a specialist who may be acting for such specialist: Provided, however, That the Commission, by rule, may require disclosure to all members of the exchange of all orders placed with specialists, under such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors. It shall also be unlawful for a specialist permitted to act as a broker and dealer to effect on the exchange as broker any transaction except upon a market or limited price order."

(3) Subsection (e) thereof is repealed.

SEC. 7. The Securities Exchange Act of 1934 is amended by inserting after section 11 (15 U.S.C. 78k) the following new section:

**"NATIONAL MARKET SYSTEM FOR SECURITIES; SECURITIES INFORMATION PROCESSORS**

"SEC. 11A. (a) (1) The Congress finds that—

"(A) The securities markets are an important national asset which must be preserved and strengthened.

"(B) New data processing and communications techniques create the opportunity for more efficient and effective market operations.

"(C) It is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure—

"(i) economically efficient execution of securities transactions;

"(ii) fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets;

"(iii) the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities;

"(iv) the practicability of brokers executing investors' orders in the best market; and

"(v) an opportunity, consistent with the provisions of clauses (i) and (iv) of this subparagraph, for investors' orders to be executed without the participation of a dealer.

"(D) The linking of all markets for qualified securities through communication and data processing facilities will foster efficiency, enhance competition, increase the information available to brokers, dealers, and investors, facilitate the offsetting of investors' orders, and contribute to best execution of such orders.

"(2) The Commission is directed, therefore, having due regard for the public interest, the protection of investors, and the maintenance of fair and orderly markets, to use its authority under this title to facilitate the establishment of a national market system for securities (which may include subsystems for particular types of securities with unique trading characteristics) in accordance with the findings and to

carry out the objectives set forth in paragraph (1) of this subsection. The Commission, by rule, shall designate the securities or classes of securities qualified for trading in the national market system from among securities other than exempted securities. (Securities or classes of securities so designated hereinafter in this section referred to as 'qualified securities'.)

"(3) The Commission is authorized in furtherance of the directive in paragraph (2) of this subsection—

"(A) to create one or more advisory committees pursuant to the Federal Advisory Committee Act (which shall be in addition to the National Market Advisory Board established pursuant to subsection (d) of this section) and to employ one or more outside experts;

"(B) by rule or order, to authorize or require self-regulatory organizations to act jointly with respect to matters as to which they share authority under this title in planning, developing, operating, or regulating a national market system (or a subsystem thereof) or one or more facilities thereof; and

"(C) to conduct studies and make recommendations to the Congress from time to time as to the possible need for modifications of the scheme of self-regulation provided for in this title so as to adapt it to a national market system.

"(b) (1) Except as otherwise provided in this section, it shall be unlawful for any securities information processor unless registered in accordance with this subsection, directly or indirectly, to make use of the mails or any means or instrumentality of interstate commerce to perform the functions of a securities information processor. The Commission, by rule or order, upon its own motion or upon application, may conditionally or unconditionally exempt any securities information processor or class of securities information processors or security or class of securities from any provision of this section or the rules or regulations thereunder, if the Commission finds that such exemption is consistent with the public interest, the protection of investors, and the purposes of this section, including the maintenance of fair and orderly markets in securities and the removal of impediments to and perfection of the mechanism of a national market system: Provided, however, That a securities information processor not acting as the exclusive processor of any information with respect to quotations for or transactions in securities is exempt from the requirement to register in accordance with this subsection unless the Commission, by rule or order, finds that the registration of such securities information processor is necessary or appropriate in the public interest, for the protection of investors, or for the achievement of the purposes of this section.

"(2) A securities information processor may be registered by filing with the Commission an application for registration in such form as the Commission, by rule, may prescribe containing the address of its principal office, or offices, the names of the securities and markets for which it is then acting and for which it proposes to act as a securities information processor, and such other information and documents as the Commission, by rule, may prescribe with regard to performance capability, standards and procedures for the collection, processing, distribution, and publication of information with respect to quotations

for and transaction in securities, personnel qualifications, financial condition, and such other matters as the Commission determines to be germane to the provisions of this title and the rules and regulations thereunder, or necessary or appropriate in furtherance of the purposes of this section.

“(3) The Commission shall, upon the filing of an application for registration pursuant to paragraph (2) of this subsection, publish notice of the filing and afford interested persons an opportunity to submit written data, views, and arguments concerning such application. Within ninety days of the date of the publication of such notice (or within such longer period as to which the applicant consents) the Commission shall—

“(A) by order grant such registration, or

“(B) institute proceedings to determine whether registration should be denied. Such proceedings shall include notice of the grounds for denial under consideration and opportunity for hearing and shall be concluded within one hundred eighty days of the date of publication of notice of the filing of the application for registration. At the conclusion of such proceedings the Commission, by order, shall grant or deny such registration. The Commission may extend the time for the conclusion of such proceedings for up to sixty days if it finds good cause for such extension and publishes its reasons for so finding or for such longer periods as to which the applicant consents.

The Commission shall grant the registration of a securities information processor if the Commission finds that such securities information processor is so organized, and has the capacity, to be able to assure the prompt, accurate, and reliable performance of its functions as a securities information processor, comply with the provisions of this title and the rules and regulations thereunder, carry out its functions in a manner consistent with the purposes of this section, and, insofar as it is acting as an exclusive processor, operate fairly and efficiently. The Commission shall deny the registration of a securities information processor if the Commission does not make any such finding.

“(4) A registered securities information processor may, upon such terms and conditions as the Commission deems necessary or appropriate in the public interest or for the protection of investors, withdraw from registration by filing a written notice of withdrawal with the Commission. If the Commission finds that any registered securities information processor is no longer in existence or has ceased to do business in the capacity specified in its application for registration, the Commission, by order, shall cancel the registration.

“(5) (A) If any registered securities information processor prohibits or limits any person in respect of access to services offered, directly or indirectly, by such securities information processor, the registered securities information processor shall promptly file notice thereof with the Commission. 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. Any prohibition or limitation on access to services with respect to which a registered securities information processor is required by this paragraph to file notice shall be subject to review by the

Commission on its own motion, or upon application by any person aggrieved thereby filed within thirty days after such notice has been filed with the Commission and received by such aggrieved person, or within such longer period as the Commission may determine. Application to the Commission for review, or the institution of review by the Commission on its own motion, shall not operate as a stay of such prohibition or limitation, unless the Commission otherwise orders, summarily or after notice and opportunity for hearing on the question of a stay (which hearing may consist solely of the submission of affidavits or presentation of oral arguments). The Commission shall establish for appropriate cases an expedited procedure for consideration and determination of the question of a stay.

“(B) In any proceeding to review the prohibition or limitation of any person in respect of access to services offered by a registered securities information processor, if the Commission finds, after notice and opportunity for hearing, that such prohibition or limitation is consistent with the provisions of this title and the rules and regulations thereunder and that such person has not been discriminated against unfairly, the Commission, by order, shall dismiss the proceeding. If the Commission does not make any such finding or if it finds that such prohibition or limitation imposes any burden on competition not necessary or appropriate in furtherance of the purposes of this title, the Commission, by order, shall set aside the prohibition or limitation and require the registered securities information processor to permit such person access to services offered by the registered securities information processor.

“(6) The Commission, by order, may censure or place limitations upon the activities, functions, or operations of any registered securities information processor or suspend for a period not exceeding twelve months or revoke the registration of any such processor, if the Commission finds, on the record after notice and opportunity for hearing, that such censure, placing of limitations, suspension, or revocation is in the public interest, necessary or appropriate for the protection of investors or to assure the prompt, accurate, or reliable performance of the functions of such securities information processor, and that such securities information processor has violated or is unable to comply with any provision of this title or the rules or regulations thereunder.

“(c) (1) No self-regulatory organization, member thereof, securities information processor, broker, or dealer shall make use of the mails or any means or instrumentality of interstate commerce to collect, process, distribute, publish, or prepare for distribution or publication any information with respect to quotations for or transactions in any security other than an exempted security, to assist, participate in, or coordinate the distribution or publication of such information, or to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any such security in contravention of such rules and regulations as the Commission shall prescribe as necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this title to—

“(A) prevent the use, distribution, or publication of fraudulent, deceptive, or manipulative information with respect to quotations for and transactions in such securities;



“(B) assure the prompt, accurate, reliable, and fair collection, processing, distribution, and publication of information with respect to quotations for and transactions in such securities and the fairness and usefulness of the form and content of such information;

“(C) assure that all securities information processors may, for purposes of distribution and publication, obtain on fair and reasonable terms such information with respect to quotations for and transactions in such securities as is collected, processed, or prepared for distribution or publication by any exclusive processor of such information acting in such capacity;

“(D) assure that all exchange members, brokers, dealers, securities information processors, and, subject to such limitations as the Commission, by rule, may impose as necessary or appropriate for the protection of investors or maintenance of fair and orderly markets, all other persons may obtain on terms which are not unreasonably discriminatory such information with respect to quotations for and transactions in such securities as is published or distributed by any self-regulatory organization or securities information processor;

“(E) assure that all exchange members, brokers, and dealers transmit and direct orders for the purchase or sale of qualified securities in a manner consistent with the establishment and operation of a national market system; and

“(F) assure equal regulation of all markets for qualified securities and all exchange members, brokers, and dealers effecting transactions in such securities.

“(2) The Commission, by rule, as it deems necessary or appropriate in the public interest or for the protection of investors, may require any person who has effected the purchase or sale of any qualified security by use of the mails or any means or instrumentality of interstate commerce to report such purchase or sale to a registered securities information processor, national securities exchange, or registered securities association and require such processor, exchange, or association to make appropriate distribution and publication of information with respect to such purchase or sale.

“(3) (A) The Commission, by rule, is authorized to prohibit brokers and dealers from effecting transactions in securities registered pursuant to section 12(b) otherwise than on a national securities exchange, if the Commission finds, on the record after notice and opportunity for hearing, that—

“(i) as a result of transactions in such securities effected otherwise than on a national securities exchange the fairness or orderliness of the markets for such securities has been affected in a manner contrary to the public interest or the protection of investors;

“(ii) no rule of any national securities exchange unreasonably impairs the ability of any dealer to solicit or effect transactions in such securities for his own account or unreasonably restricts competition among dealers in such securities or between dealers acting in the capacity of market makers who are specialists in such

securities and such dealers who are not specialists in such securities, and

“(iii) the maintenance or restoration of fair and orderly markets in such securities may not be assured through other lawful means under this title.

The Commission may conditionally or unconditionally exempt any security or transaction or any class of securities or transactions from any such prohibition if the Commission deems such exemption consistent with the public interest, the protection of investors, and the maintenance of fair and orderly markets.

“(B) For the purposes of subparagraph (A) of this paragraph, the ability of a dealer to solicit or effect transactions in securities for his own account shall not be deemed to be unreasonably impaired by any rule of an exchange fairly and reasonably prescribing the sequence in which orders brought to the exchange must be executed or which has been adopted to effect compliance with a rule of the Commission promulgated under this title.

“(4) (A) The Commission is directed to review any and all rules of national securities exchanges which limit or condition the ability of members to effect transactions in securities otherwise than on such exchanges. On or before the ninetieth day following the day of enactment of the Securities Acts Amendments of 1975, the Commission shall (i) report to the Congress the results of its review, including the effects on competition of such rules, and (ii) commence a proceeding in accordance with the provisions of section 19(c) of this title to amend any such rule imposing a burden on competition which does not appear to the Commission to be necessary or appropriate in furtherance of the purposes of this title. The Commission shall conclude any such proceeding within ninety days of the date of publication of notice of its commencement.

“(B) Review pursuant to section 25(b) of this title of any rule promulgated by the Commission in accordance with any proceeding commenced pursuant to subparagraph (A) of this paragraph shall, except as to causes the court considers of greater importance, take precedence on the docket over all other causes and shall be assigned for consideration at the earliest practicable date and expedited in every way.

“(5) No national securities exchange or registered securities association may limit or condition the participation of any member in any registered clearing agency.

“(d) (1) Not later than one hundred eighty days after the date of enactment of the Securities Acts Amendments of 1975, the Commission shall establish a National Market Advisory Board (hereinafter in this section referred to as the “Advisory Board”) to be composed of fifteen members, not all of whom shall be from the same geographical area of the United States, appointed by the Commission for a term specified by the Commission of not less than two years or more than five years. The Advisory Board shall consist of persons associated with brokers and dealers (who shall be a majority) and persons not so associated who are representative of the public and, to the extent feasible, have knowledge of the securities markets of the United States.

"(2) It shall be the responsibility of the Advisory Board to formulate and furnish to the Commission its views on significant regulatory proposals made by the Commission or any self-regulatory organization concerning the establishment, operation, and regulation of the markets for securities in the United States.

"(3) (A) The Advisory Board shall study and make recommendations to the Commission as to the steps it finds appropriate to facilitate the establishment of a national market system. In so doing, the Advisory Board shall assume the responsibilities of any advisory committee appointed to advise the Commission with respect to the national market system which is in existence at the time of the establishment of the Advisory Board.

"(B) The Advisory Board shall study the possible need for modifications of the scheme of self-regulation provided for in this title so as to adapt it to a national market system, including the need for the establishment of a new self-regulatory organization (hereinafter in this section referred to as a 'National Market Regulatory Board' or 'Regulatory Board') to administer the national market system. In the event the Advisory Board determines a National Market Regulatory Board should be established, it shall make recommendations as to:

"(i) the point in time at which a Regulatory Board should be established;

"(ii) the composition of a Regulatory Board;

"(iii) the scope of the authority of a Regulatory Board;

"(iv) the relationship of a Regulatory Board to the Commission and to existing self-regulatory organizations; and

"(v) the manner in which a Regulatory Board should be funded.

The Advisory Board shall report to the Congress, on or before December 31, 1976, the results of such study and its recommendations, including such recommendations for legislation as it deems appropriate.

"(C) In carrying out its responsibilities under this paragraph, the Advisory Board shall consult with self-regulatory organizations, brokers, dealers, securities information processors, issuers, investors, representatives of Government agencies, and other persons interested or likely to participate in the establishment, operation, or regulation of the national market system.

"(e) The Commission is authorized and directed to make a study of the extent to which persons excluded from the definitions of "broker" and "dealer" maintain accounts on behalf of public customers for buying and selling securities registered under section 12 of this title and whether such exclusions are consistent with the protection of investors and the other purposes of this title. The Commission shall report to the Congress, on or before December 31, 1976, the results of its study together with such recommendations for legislation as it deems advisable."

SEC. 8. Section 12(f) of the Securities Exchange Act of 1934 (15 U.S.C. 781(f)) is amended as follows:

(1) Paragraphs (1) and (2) thereof are amended to read as follows:

"(f) (1) Notwithstanding the foregoing provisions of this section, any national securities exchange, subject to the terms and conditions hereinafter set forth—

"(A) may continue unlisted trading privileges to which a security had been admitted on such exchange prior to July 1, 1964;

"(B) upon application to and approval of such application by the Commission, may extend unlisted trading privileges to any security listed and registered on any other national securities exchange; and

"(C) upon application to and approval of such application by the Commission, may extend unlisted trading privileges to any security registered pursuant to section 12 of this title or which would be required to be so registered except for the exemption from registration provided in subsection (g) (2) (B) or (g) (2) (G) of that section.

If an extension of unlisted trading privileges to a security is based upon its listing and registration on another national securities exchange, such privileges shall continue in effect only so long as such security remains listed and registered on a national securities exchange.

"(2) No application pursuant to this subsection shall be approved unless the Commission finds, after notice and opportunity for hearing, that the extension of unlisted trading privileges pursuant to such application is consistent with the maintenance of fair and orderly markets and the protection of investors. In considering an application for the extension of unlisted trading privileges to a security not listed and registered on a national securities exchange, the Commission shall, among other matters, take account of the public trading activity in such security, the character of such trading, the impact of such extension on the existing markets for such securities, and the desirability of removing impediments to and the progress that has been made toward the development of a national market system and shall not grant any such application if any rule of the national securities exchange making application under this subsection would unreasonably impair the ability of any dealer to solicit or effect transactions in such security for his own account, or would unreasonably restrict competition among dealers in such security or between such dealers acting in the capacity of market makers who are specialists and such dealers who are not specialists."

(2) Paragraph (6) thereof is amended by striking out "section 19(b) of".

SEC. 9. Section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 781) is amended by adding at the end thereof the following new sections:

"(j) The Commission is authorized, by order, as it deems necessary or appropriate for the protection of investors to deny, to suspend the effective date of, to suspend for a period not exceeding twelve months, or to revoke the registration of a security, if the Commission finds, on the record after notice and opportunity for hearing, that the issuer of such security has failed to comply with any provision of this title or the rules and regulations thereunder. No member of a national securities exchange, broker, or dealer shall make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce the purchase or sale of, any security the registra-

tion of which has been and is suspended or revoked pursuant to the preceding sentence.

"(k) If in its opinion the public interest and the protection of investors so require, the Commission is authorized summarily to suspend trading in any security (other than an exempted security) for a period not exceeding ten days, or with the approval of the President, summarily to suspend all trading on any national securities exchange or otherwise, in securities other than exempted securities, for a period not exceeding ninety days. No member of a national securities exchange, broker, or dealer shall make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce the purchase or sale of, any security in which trading is so suspended.

"(l) It shall be unlawful for an issuer, any class of whose securities is registered pursuant to this section or would be required to be so registered except for the exemption from registration provided by subsection (g) (2) (B) or (g) (2) (G) of this section, by the use of any means or instrumentality of interstate commerce, or of the mails, to issue, either originally or upon transfer, any of such securities in a form or with a format which contravenes such rules and regulations as the Commission may prescribe as necessary or appropriate for the prompt and accurate clearance and settlement of transactions in securities. The provisions of this subsection shall not apply to variable annuity contracts or variable life policies issued by an insurance company or its separate accounts.

"(m) The Commission is authorized and directed to make a study and investigation of the practice of recording the ownership of securities in the records of the issuer in other than the name of the beneficial owner of such securities and to determine (1) whether such practice is consistent with the purposes of this title, with particular reference to subsection (g) of this section and sections 13, 14, 15 (d), 16, and 17A, and (2) whether steps can be taken to facilitate communications between issuers and the beneficial owners of their securities while at the same time retaining the benefits of such practice. The Commission shall report to the Congress its preliminary findings within six months after the date of enactment of the Securities Acts Amendments of 1975, and its final conclusions and recommendations within one year of such date."

Sec. 10. Section 13 of the Securities Exchange Act of 1934 (15 U.S.C. 78m) is amended by adding at the end thereof the following new subsection:

"(f) (1) Every institutional investment manager which uses the mails, or any means or instrumentality of interstate commerce in the course of its business as an institutional investment manager and which exercises investment discretion with respect to accounts holding equity securities of a class described in section 13 (d) (1) of this title having an aggregate fair market value on the last trading day in any of the preceding twelve months of at least \$100,000,000 or such lesser amount (but in no case less than \$10,000,000) as the Commission, by rule, may determine, shall file reports with the Commission in such form, for such periods, and at such times after the end of such periods as the Commission, by rule, may prescribe, but in no event shall such

reports be filed for periods longer than one year or shorter than one quarter. Such reports shall include for each such equity security held on the last day of the reporting period by accounts (in aggregate or by type as the Commission, by rule, may prescribe) with respect to which the institutional investment manager exercises investment discretion (other than securities held in amounts which the Commission, by rule, determines to be insignificant for purposes of this subsection), the name of the issuer and the title, class, CUSIP number, number of shares or principal amount, and aggregate fair market value of each such security. Such reports may also include for accounts (in aggregate or by type) with respect to which the institutional investment manager exercises investment discretion such of the following information as the Commission, by rule, prescribes—

"(A) the name of the issuer and the title, class, CUSIP number, number of shares or principal amount, and aggregate fair market value or cost or amortized cost of each other security (other than an exempted security) held on the last day of the reporting period by such accounts;

"(B) the aggregate fair market value or cost or amortized cost of exempted securities (in aggregate or by class) held on the last day of the reporting period by such accounts;

"(C) the number of shares of each equity security of a class described in section 13 (d) (1) of this title held on the last day of the reporting period by such accounts with respect to which the institutional investment manager possesses sole or shared authority to exercise the voting rights evidenced by such securities;

"(D) the aggregate purchases and aggregate sales during the reporting period of each security (other than an exempted security) effected by or for such accounts; and

"(E) with respect to any transaction or series of transactions having a market value of at least \$500,000 or such other amount as the Commission, by rule, may determine, effected during the reporting period by or for such accounts in any equity security of a class described in section 13 (d) (1) of this title—

"(i) the name of the issuer and the title, class, and CUSIP number of the security;

"(ii) the number of shares or principal amount of the security involved in the transaction;

"(iii) whether the transaction was a purchase or sale;

"(iv) the per share price or prices at which the transaction was effected;

"(v) the date or dates of the transaction;

"(vi) the date or dates of the settlement of the transaction;

"(vii) the broker or dealer through whom the transaction was effected;

"(viii) the market or markets in which the transaction was effected; and

"(ix) such other related information as the Commission, by rule, may prescribe.

"(2) The Commission, by rule or order, may exempt, conditionally or unconditionally, any institutional investment manager or security

or any class of institutional investment managers or securities from any or all of the provisions of this subsection or the rules thereunder.

"(3) The Commission shall make available to the public for a reasonable fee a list of all equity securities of a class described in section 13(d)(1) of this title, updated no less frequently than reports are required to be filed pursuant to paragraph (1) of this subsection. The Commission shall tabulate the information contained in any report filed pursuant to this subsection in a manner which will, in the view of the Commission, maximize the usefulness of the information to other Federal and State authorities and the public. Promptly after the filing of any such report, the Commission shall make the information contained therein conveniently available to the public for a reasonable fee in such form as the Commission, by rule, may prescribe, except that the Commission, as it determines to be necessary or appropriate in the public interest or for the protection of investors, may delay or prevent public disclosure of any such information in accordance with section 552 of title 5, United States Code. Notwithstanding the preceding sentence, any such information identifying the securities held by the account of a natural person or an estate or trust other than a business trust or investment company) shall not be disclosed to the public.

"(4) In exercising its authority under this subsection, the Commission shall determine (and so state) that its action is necessary or appropriate in the public interest and for the protection of investors or to maintain fair and orderly markets or, in granting an exemption, that its action is consistent with the protection of investors and the purposes of this subsection. In exercising such authority the Commission shall take such steps as are within its power, including consulting with the Comptroller General of the United States, the Director of the Office of Management and Budget, the appropriate regulatory agencies, Federal and State authorities which, directly or indirectly, require reports from institutional investment managers of information substantially similar to that called for by this subsection, national securities exchanges, and registered securities associations, (A) to achieve uniform, centralized reporting of information concerning the securities holdings of and transactions by or for accounts with respect to which institutional investment managers exercise investment discretion, and (B) consistently with the objective set forth in the preceding subparagraph, to avoid unnecessarily duplicative reporting by, and minimize the compliance burden on, institutional investment managers. Federal authorities which, directly or indirectly, require reports from institutional investment managers of information substantially similar to that called for by this subsection shall cooperate with the Commission in the performance of its responsibilities under the preceding sentence. An institutional investment manager which is a bank, the deposits of which are insured in accordance with the Federal Deposit Insurance Act, shall file with the appropriate regulatory agency a copy of every report filed with the Commission pursuant to this subsection.

"(5) (A) For purposes of this subsection the term 'institutional investment manager' includes any person, other than a natural person, investing in or buying and selling securities for its own account, and

any person exercising investment discretion with respect to the account of any other person.

"(B) The Commission shall adopt such rules as it deems necessary or appropriate to prevent duplicative reporting pursuant to this subsection by two or more institutional investment managers exercising investment discretion with respect to the same amount."

SEC. 11. Section 15 of the Securities Exchange Act of 1934 (15 U.S.C. 78o) is amended as follows:

(1) The title thereof is amended to read: "REGISTRATION AND REGULATION OF BROKERS AND DEALERS".

(2) Subsection (a) and (b) thereof are amended to read as follows:

"(a) (1) It shall be unlawful for any broker or dealer which is either a person other than a natural person or a natural person not associated with a broker or dealer which is a person other than a natural person (other than such a broker or dealer whose business is exclusively intrastate and who does not make use of any facility of a national securities exchange) to make use of the mails or any means or instrumentality of interstate commerce to effect any transactions in, or to induce or attempt to induce the purchase or sale of, any security (other than an exempted security or commercial paper, bankers' acceptances, or commercial bills) unless such broker or dealer is registered in accordance with subsection (b) of this section.

"(2) The Commission, by rule or order, as it deems consistent with the public interest and the protection of investors, may conditionally or unconditionally exempt from paragraph (1) of this subsection any broker or dealer or class of brokers or dealers specified in such rule or order.

"(b) (1) A broker or dealer may be registered by filing with the Commission an application for registration in such form and containing such information and documents concerning such broker or dealer and any persons associated with such broker or dealer as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors. Within forty-five days of the date of the filing of such application (or within such longer period as to which the applicant consents), the Commission shall—

"(A) by order grant registration, or

"(B) institute proceedings to determine whether registration should be denied. Such proceedings shall include notice of the grounds for denial under consideration and opportunity for hearing and shall be concluded within one hundred twenty days of the date of the filing of the application for registration. At the conclusion of such proceedings, the Commission, by order, shall grant or deny such registration. The Commission may extend the time for conclusion of such proceedings for up to ninety days if it finds good cause for such extension and publishes its reasons for so finding or for such longer period as to which the applicant consents.

The Commission shall grant such registration if the Commission finds that the requirements of this section are satisfied. The Commission shall deny such registration if it does not make such a finding or if it finds that if the applicant were so registered, its registration

would be subject to suspension or revocation under paragraph (4) of this subsection.

"(2) (A) An application for registration of a broker or dealer to be formed or organized may be made by a broker or dealer to which the broker or dealer to be formed or organized is to be the successor. Such application, in such form as the Commission, by rule, may prescribe, shall contain such information and documents concerning the applicant, the successor, and any persons associated with the applicant or the successor, as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors. The grant or denial of registration to such an applicant shall be in accordance with the procedures set forth in paragraph (1) of this subsection. If the Commission grants such registration, the registration shall terminate on the forty-fifth day after the effective date thereof, unless prior thereto the successor shall, in accordance with such rules and regulations as the Commission may prescribe, adopt the application for registration as its own.

"(B) Any person who is a broker or dealer solely by reason of acting as municipal securities dealer or municipal securities broker, who so acts through a separately identifiable department or division, and who so acted in such a manner on the date of enactment of the Securities Acts Amendments of 1975, may, in accordance with such terms and conditions as the Commission, by rule, prescribes as necessary and appropriate in the public interest and for the protection of investors, register such separately identifiable department or division in accordance with this subsection. If any such department or division is so registered, the department or division and not such person himself shall be the broker or dealer for purposes of this title.

"(C) Within six months of the date of the granting of registration to a broker or dealer, the Commission, or upon the authorization and direction of the Commission, a registered securities association or national securities exchange of which such broker or dealer is a member, shall conduct an inspection of the broker or dealer to determine whether it is operating in conformity with the provisions of this title and the rules and regulations thereunder: Provided, however, That the Commission may delay such inspection of any class of brokers or dealers for a period not to exceed six months.

"(3) Any provision of this title (other than section 5 and subsection (a) of this section) which prohibits any act, practice, or course of business if the mails or any means or instrumentality of interstate commerce is used in connection therewith shall also prohibit any such act, practice, or course of business by any registered broker or dealer or any person acting on behalf of such a broker or dealer, irrespective of any use of the mails or any means or instrumentality of interstate commerce in connection therewith.

"(4) The Commission, by order, shall censure, place limitations on the activities, functions, or operations of, suspend for a period not exceeding twelve months, or revoke the registration of any broker or dealer if it finds, on the record after notice and opportunity for hearing, that such censure, placing of limitations, suspension, or revocation is in the public interest and that such broker or dealer, whether prior or subsequent to becoming such, or any person associated with

such broker or dealer, whether prior or subsequent to becoming so associated—

"(A) has willfully made or caused to be made in any application for registration or report required to be filed with the Commission under this title, or in any proceeding before the Commission with respect to registration, any statement which was at the time and in the light of the circumstances under which it was made false or misleading with respect to any material fact, or has omitted to state in any such application or report any material fact which is required to be stated therein.

"(B) has been convicted within ten years preceding the filing of any application for registration or at any time thereafter of any felony or misdemeanor which the Commission finds—

"(i) involves the purchase or sale of any security, the taking of a false oath, the making of a false report, bribery, perjury, burglary, or conspiracy to commit any such offense;

"(ii) arises out of the conduct of the business of a broker, dealer, municipal securities dealer, investment adviser, bank, insurance company, or fiduciary;

"(iii) involves the larceny, theft, robbery, extortion, forgery, counterfeiting, fraudulent concealment, embezzlement, fraudulent conversion, or misappropriation of funds or securities; or

"(iv) involves the violation of section 152, 1341, 1342, or 1343 or chapter 25 or 47 of title 18, United States Code.

"(C) is permanently or temporarily enjoined by order, judgment, or decree of any court of competent jurisdiction from acting as an investment adviser, underwriter, broker, dealer, or municipal securities dealer, or as an affiliated person or employee of any investment company, bank, or insurance company, or from engaging in or continuing any conduct or practice in connection with any such activity, or in connection with the purchase or sale of any security.

"(D) has willfully violated any provision of the Securities Act of 1933, the Investment Advisers Act of 1940, the Investment Company Act of 1940, this title, the rules or regulations under any of such statutes, or the rules of the Municipal Securities Rulemaking Board, or is unable to comply with any such provision.

"(E) has willfully aided, abetted, counseled, commanded, induced, or procured the violation by any other person of any provision of the Securities Act of 1933, the Investment Advisers Act of 1940, the Investment Company Act of 1940, this title, the rules or regulations under any of such statutes, or the rules of the Municipal Securities Rulemaking Board, or has failed reasonably to supervise, with a view to preventing violations of the provisions of such statutes, rules, and regulations, another person who commits such a violation, if such other person is subject to his supervision. For the purposes of this subparagraph (E) no person shall be deemed to have failed reasonably to supervise any other person, if—

"(i) there have been established procedures, and a system for applying such procedures, which would reasonably be



expected to prevent and detect, insofar as practicable, any such violation by such other person, and

"(ii) such person has reasonably discharged the duties and obligations incumbent upon him by reason of such procedures and system without reasonable cause to believe that such procedures and system were not being complied with.

"(F) is subject to an order of the Commission entered pursuant to paragraph (6) of this subsection (b) barring or suspending the right of such person to be associated with a broker or dealer.

"(5) Pending final determination whether any registration under this subsection shall be revoked, the Commission, by order, may suspend such registration, if such suspension appears to the Commission, after notice and opportunity for hearing, to be necessary or appropriate in the public interest or for the protection of investors. Any registered broker or dealer may, upon such terms and conditions as the Commission deems necessary or appropriate in the public interest or for the protection of investors, withdraw from registration by filing a written notice of withdrawal with the Commission. If the Commission finds that any registered broker or dealer is no longer in existence or has ceased to do business as a broker or dealer, the Commission, by order, shall cancel the registration of such broker or dealer.

"(6) The Commission, by order, shall censure or place limitations on the activities or functions of any person associated, or seeking to become associated, with a broker or dealer, or suspend for a period not exceeding twelve months or bar any such person from being associated with a broker or dealer, if the Commission finds, on the record after notice and opportunity for hearing, that such censure, placing of limitations, suspension, or bar is in the public interest and that such person has committed or omitted any act or omission enumerated in subparagraph (A), (D), or (E) of paragraph (4) of this subsection, has been convicted of any offense specified in subparagraph (B) of said paragraph (4) within ten years of the commencement of the proceedings under this paragraph, or is enjoined from any action, conduct, or practice specified in subparagraph (C) of said paragraph (4). It shall be unlawful for any person as to whom such an order suspending or barring him from being associated with a broker or dealer is in effect willfully to become, or to be, associated with a broker or dealer without the consent of the Commission, and it shall be unlawful for any broker or dealer to permit such a person to become, or remain, a person associated with him without the consent of the Commission, if such broker or dealer knew, or in the exercise of reasonable care should have known, of such order.

"(7) No registered broker or dealer shall effect any transaction in, or induce the purchase or sale of, any security unless such broker or dealer meets such standards of operational capability and such broker or dealer and all natural persons associated with such broker or dealer meet such standards of training, experience, competence, and such other qualifications as the Commission finds necessary or appropriate in the public interest or for the protection of investors. The Commission shall establish such standards by rules and regulations, which may—

"(A) specify that all or any portion of such standards shall be applicable to any class of brokers and dealers and persons associated with brokers and dealers;

"(B) require persons in any such class to pass tests prescribed in accordance with such rules and regulations, which tests shall, with respect to any class of partners, officers, or supervisory employees (which latter term may be defined by the Commission's rules and regulations and as so defined shall include branch managers of brokers or dealers) engaged in the management of the broker or dealer, include questions relating to bookkeeping, accounting, internal control over cash and securities, supervision of employees, maintenance of records, and other appropriate matters; and

"(C) provide that persons in any such class other than brokers and dealers and partners, officers, and supervisory employees of brokers or dealers, may be qualified solely on the basis of compliance with such standards of training and such other qualifications as the Commission finds appropriate.

The Commission, by rule, may prescribe reasonable fees and charges to defray its costs in carrying out this paragraph, including, but not limited to, fees for any test administered by it or under its direction. The Commission may cooperate with registered securities associations and national securities exchanges in devising and administering tests and may require registered brokers and dealers and persons associated with such brokers and dealers to pass tests administered by or on behalf of any such association or exchange and to pay such association or exchange reasonable fees or charges to defray the costs incurred by such association or exchange in administering such tests.

"(8) In addition to the fees and charges authorized by paragraph (7) of this subsection, each registered broker or dealer not a member of a registered securities association shall pay to the Commission such reasonable fees and charges as may be necessary to defray the costs of the additional regulatory duties required to be performed by the Commission because such broker or dealer effects transactions in securities otherwise than on a national securities exchange of which it is a member and is not a member of a registered securities association. The Commission, by rule, shall establish such fees and charges.

"(9) No broker or dealer subject to paragraph (8) of this subsection shall effect any transaction in, or induce the purchase or sale of, any security (otherwise than on a national securities exchange of which it is a member) in contravention of such rules and regulations as the Commission may prescribe designed to promote just and equitable principles of trade, 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.

"(10) For the purposes of determining whether a person is subject to a statutory disqualification under section 6(c) (2), 15A(g) (2), or 17A(b) (4) (B) of this title, the term 'Commission' in paragraph (4) (B) of this subsection shall mean 'exchange', 'association', or 'clearing agency', respectively."

(3) Paragraphs (1), (2), and (3) of subsection (c) thereof are amended to read as follows:

"(c) (1) No broker or dealer shall make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any security (other than commercial paper, bankers' acceptances, or commercial bills) otherwise than on a national securities exchange of which it is a member by means of any manipulative, deceptive, or other fraudulent device or contrivance, and no municipal securities dealer shall make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any municipal security by means of any manipulative, deceptive, or other fraudulent device or contrivance. The Commission shall, for the purposes of this paragraph, by rules and regulations define such devices or contrivances as are manipulative, deceptive, or otherwise fraudulent.

"(2) No broker or dealer shall make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any security (other than an exempted security or commercial paper, bankers' acceptances, or commercial bills) otherwise than on a national securities exchange of which it is a member, in connection with which such broker or dealer engages in any fraudulent, deceptive, or manipulative act or practice, or makes any fictitious quotation, and no municipal securities dealer shall make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any municipal security in connection with which such municipal securities dealer engages in any fraudulent, deceptive, or manipulative act or practice, or makes any fictitious quotation. The Commission shall, for the purposes of this paragraph, by rules and regulations define, and prescribe means reasonably designed to prevent, such acts and practices as are fraudulent, deceptive, or manipulative and such quotations as are fictitious.

"(3) No broker or dealer shall make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any security (other than an exempted security or commercial paper, bankers' acceptances, or commercial bills) in contravention of such rules and regulations as the Commission shall prescribe as necessary or appropriate in the public interest or for the protection of investors to provide safeguards with respect to the financial responsibility and related practices of brokers and dealers including, but not limited to, the acceptance of custody and use of customers' securities and the carrying and use of customers' deposits or credit balances. Such rules and regulations shall (A) require the maintenance of reserves with respect to customers' deposits or credit balances, and (B) no later than September 1, 1975, establish minimum financial responsibility requirements for all brokers and dealers."

(4) Paragraph (5) of subsection (c) thereof is amended to read as follows:

"(5) No dealer (other than a specialist registered on a national securities exchange) acting in the capacity of market maker or otherwise shall make use of the mails or any means or instrumentality of

interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any security (other than an exempted security or a municipal security) in contravention of such specified and appropriate standards with respect to dealing as the Commission, by rule, shall prescribe as necessary or appropriate in the public interest and for the protection of investors, to maintain fair and orderly markets, or to remove impediments to and perfect the mechanism of a national market system. Under the rules of the Commission a dealer in a security may be prohibited from acting as a broker in that security."

(5) Subsection (c) thereof is further amended by adding at the end thereof the following new paragraph:

"(6) No broker or dealer shall make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any security (other than an exempted security, municipal security, commercial paper, bankers' acceptances, or commercial bills) in contravention of such rules and regulations as the Commission shall prescribe as necessary or appropriate in the public interest and for the protection of investors or to perfect or remove impediments to a national system for the prompt and accurate clearance and settlement of securities transactions, with respect to the time and method of, and the form and format of documents used in connection with, making settlements of and payments for transactions in securities, making transfers and deliveries of securities, and closing accounts. Nothing in this paragraph shall be construed (A) to affect the authority of the Board of Governors of the Federal Reserve System, pursuant to section 7 of this title, to prescribe rules and regulations for the purpose of preventing the excessive use of credit for the purchase or carrying of securities, or (B) to authorize the Commission to prescribe rules or regulations for such purpose."

(6) The section is further amended by adding at the end thereof the following new subsection:

"(e) The Commission, by rule, as it deems necessary or appropriate in the public interest and for the protection of investors or to assure equal regulation, may require any member of a national securities exchange not required to register under section 15 of this title and any person associated with any such member to comply with any provision of this title (other than section 15(a)) or the rules or regulations thereunder which by its terms regulates or prohibits any act, practice, or course of business by a 'broker or dealer' or 'registered broker or dealer' or a 'person associated with a broker or dealer,' respectively."

SEC. 12. Section 15A of the Securities Exchange Act of 1934 (15 U.S.C. 78o-3) is amended as follows:

(1) The title thereof is amended to read: "REGISTERED SECURITIES ASSOCIATIONS".

(2) Subsections (a) and (b) thereof are amended to read as follows:

"(a) An association of brokers and dealers may be registered as a national securities association pursuant to subsection (b), or as an affiliated securities association pursuant to subsection (d), 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 Com-

mission, by rule, may prescribe containing the rules of the association 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 association of brokers and dealers shall not be registered as a national securities association unless the Commission determines that—

"(1) By reason of the number and geographical distribution of its members and the scope of their transactions, such association will be able to carry out the purposes of this section.

"(2) Such association 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, the rules of the Municipal Securities Rulemaking Board, and the rules of the association.

"(3) Subject to the provisions of subsection (g) of this section, the rules of the association provide that any registered broker or dealer may become a member of such association and any person may become associated with a member thereof.

"(4) The rules of the association 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 association, broker, or dealer.

"(5) The rules of the association provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system which the association operates or controls.

"(6) The rules of the association 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, to fix minimum profits, to impose any schedule or fix rates of commissions, allowances, discounts, or other fees to be charged by its members, 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 association.

"(7) The rules of the association 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 any provision of this title, the rules or regulations thereunder, the rules of the Municipal Securities Rulemaking Board, or the rules

of the association, 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.

"(8) The rules of the association are in accordance with the provisions of subsection (h) 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 association of any person with respect to access to services offered by the association or a member thereof.

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

"(10) The requirements of subsection (c), insofar as these may be applicable, are satisfied.

"(11) The rules of the association include provisions governing the form and content of quotations relating to securities sold otherwise than on a national securities exchange which may be distributed or published by any member or person associated with a member, and the persons to whom such quotations may be supplied. Such rules relating to quotations shall be designed to produce fair and informative quotations, to prevent fictitious or misleading quotations, and to promote orderly procedures for collecting, distributing, and publishing quotations."

(3) The section is amended by striking out subsections (e), (f), (g), (h), (j), (k), (l), and (n) thereof, redesignating subsections (i) and (m) thereof as subsections (e) and (f), respectively, and amending redesignated subsection (e) to read as follows:

"(e) (1) The rules of a registered securities association may provide that no member thereof shall deal with any nonmember professional (as defined in paragraph (2) of this subsection) except at the same prices, for the same commissions or fees, and on the same terms and conditions as are by such member accorded to the general public.

"(2) For the purposes of this subsection, the term 'nonmember professional' shall include (A) with respect to transactions in securities other than municipal securities, any registered broker or dealer who is not a member of any registered securities association, except such a broker or dealer who deals exclusively in commercial paper, bankers' acceptances, and commercial bills, and (B) with respect to transactions in municipal securities, any municipal securities dealer (other than a bank or division or department of a bank) who is not a member of any registered securities association and any municipal securities broker who is not a member of any such association.

"(3) Nothing in this subsection shall be so construed or applied as to prevent (A) any member of a registered securities association from granting to any other member of any registered securities association any dealer's discount, allowance, commission, or special terms, in connection with the purchase or sale of securities, or (B) any member of a registered securities association or any municipal securities dealer which is a bank or a division or department of a bank from



granting to any member of any registered securities association or any such municipal securities dealer any dealer's discount, allowance, commission, or special terms in connection with the purchase or sale of municipal securities: Provided, however, That the granting of any such discount, allowance, commission, or special terms in connection with the purchase or sale of municipal securities shall be subject to rules of the Municipal Securities Rulemaking Board adopted pursuant to section 15B (b) (2) (K) of this title."

(4) The section is further amended by adding at the end thereof the following new subsections:

"(g) (1) A registered securities association shall deny membership to any person who is not a registered broker or dealer.

"(2) A registered securities association 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, and bar from becoming associated with a member any person, who is subject to a statutory disqualification. A registered securities association shall file notice with the Commission not less than thirty days prior to admitting any registered broker or dealer to membership or permitting any person to become associated with a member, if the association knew, or in the exercise of reasonable care should have known, that such broker or dealer or 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 registered securities association 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 association or (ii) such broker or dealer or person associated with such broker or dealer has engaged and there is a reasonable likelihood he will again engage in acts or practices inconsistent with just and equitable principles of trade. A registered securities association 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 association.

"(B) A registered securities association may bar a natural person from becoming associated with a member or condition the 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 association or (ii) has engaged and there is a reasonable likelihood he will again engage in acts or practices inconsistent with just and equitable principles of trade. A registered securities association 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 association and require a natural person associated with a member, or any class of such nat-

ural persons, to be registered with the association in accordance with procedures so established.

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

"(4) A registered securities association may deny membership to a registered broker or dealer not engaged in a type of business in which the rules of the association require members to be engaged: Provided, however, That no registered securities association may deny membership to a registered broker or dealer by reason of the amount of such type of business done by such broker or dealer or the other types of business in which he is engaged.

"(h) (1) In any proceeding by a registered securities association 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 association 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 association 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, the rules of the Municipal Securities Rulemaking Board, or the rules of the association which any such act or practice, or omission to act, is deemed to violate; and

"(C) the sanction imposed and the reason therefor.

"(2) In any proceeding by a registered securities association 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 association or a member thereof (other than a summary proceeding pursuant to paragraph (3) of this subsection), the association 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 association 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 association 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 registered securities association 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 association 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 association, or (C) limit or prohibit any person with respect to access to services offered by the association 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 association 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 association. Any person aggrieved by any such summary action shall be promptly afforded an opportunity for a hearing by the association 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."

Sec. 13. The Securities Exchange Act of 1934 is amended by inserting after section 15A (15 U.S.C. 78o-3) the following new section:

"MUNICIPAL SECURITIES

"Sec. 15B. (a) (1) It shall be unlawful for any municipal securities dealer (other than one registered as a broker or dealer under section 15 of this title) to make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any municipal security unless such municipal securities dealer is registered in accordance with this subsection.

"(2) A municipal securities dealer may be registered by filing with the Commission an application for registration in such form and containing such information and documents concerning such municipal securities dealer and any persons associated with such municipal securities dealer as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors. Within forty-five days of the date of the filing of such application (or within such longer period as to which the applicant consents), the Commission shall—

"(A) by order grant registration, or

"(B) institute proceedings to determine whether registration should be denied. Such proceedings shall include notice of the grounds for denial under consideration and opportunity for hearing and shall be concluded within one hundred twenty days of the date of the filing of the application for registration. At the conclusion of such proceedings the Commission, by order, shall grant or deny such registration. The Commission may extend the time for the conclusion of such proceedings for up to ninety days if it finds good cause for such extension and publishes its reasons for so finding or for such longer period as to which the applicant consents.

The Commission shall grant the registration of a municipal securities dealer if the Commission finds that the requirements of this section are satisfied. The Commission shall deny such registration if it does not make such a finding or if it finds that if the applicant were so registered, its registration would be subject to suspension or revocation under subsection (c) of this section.

"(3) Any provision of this title (other than section 5 or paragraph (1) of this subsection) which prohibits any act, practice, or course of business if the mails or any means or instrumentality of interstate commerce is used in connection therewith shall also prohibit any such act, practice, or course of business by any registered municipal securities dealer or any person acting on behalf of such municipal securities dealer, irrespective of any use of the mails or any means or instrumentality of interstate commerce in connection therewith.

"(4) The Commission, by rule or order, upon its own motion or upon application, may conditionally or unconditionally exempt any broker, dealer, or municipal securities dealer or class of brokers, dealers, or municipal securities dealers from any provision of this section or the rules or regulations thereunder, if the Commission finds that such exemption is consistent with the public interest, the protection of investors, and the purposes of this section.

"(b) (1) Not later than one hundred twenty days after the date of enactment of the Securities Acts Amendments of 1975, the Commission shall establish a Municipal Securities Rulemaking Board (hereinafter in this section referred to as the 'Board'), to be composed initially of fifteen members appointed by the Commission, which shall perform the duties set forth in this section. The initial members of the Board shall serve as members for a term of two years, and shall consist of (A) five individuals who are not associated with any broker, dealer, or municipal securities dealer, at least one of whom shall be representative of investors in municipal securities, and at least one of whom shall be representative of issuers of municipal securities (which members are hereinafter referred to as 'public representatives'); (B) five individuals who are associated with and representative of municipal securities brokers and municipal securities dealers which are not banks or subsidiaries or departments or divisions of banks (which members are hereinafter referred to as 'broker-dealer representatives'); and (C) five individuals who are associated with and representative of municipal securities dealers which are banks or subsidiaries or departments or divisions of banks (which members are hereinafter referred to as 'bank representatives'). Prior to the expiration of the terms of office of the initial members of the Board, an election shall be held under rules adopted by the Board (pursuant to subsection (b) (2) (B) of this section) of the members to succeed such initial members.

"(2) The Board shall propose and adopt rules to effect the purposes of this title with respect to transactions in municipal securities effected by brokers, dealers, and municipal securities dealers. (Such rules are hereinafter collectively referred to in this title as 'rules of the Board'.) The rules of the Board, as a minimum, shall:

"(A) provide that no municipal securities broker or municipal securities dealer shall effect any transaction in, or induce or

attempt to induce the purchase or sale of, any municipal security unless such municipal securities broker or municipal securities dealer meets such standards of operational capability and such municipal securities broker or municipal securities dealer and every natural person associated with such municipal securities broker or municipal securities dealer meet such standards of training, experience, competence, and such other qualifications as the Board finds necessary or appropriate in the public interest or for the protection of investors. In connection with the definition and application of such standards the Board may—

“(i) appropriately classify municipal securities brokers and municipal securities dealers (taking into account relevant matters, including types of business done, nature of securities other than municipal securities sold, and character of business organization), and persons associated with municipal securities brokers and municipal securities dealers;

“(ii) specify that all or any portion of such standards shall be applicable to any such class;

“(iii) require persons in any such class to pass tests administered in accordance with subsection (c) (7) of this section; and

“(iv) provide that persons in any such class other than municipal securities brokers and municipal securities dealers and partners, officers, and supervisory employees of municipal securities brokers or municipal securities dealers, may be qualified solely on the basis of compliance with such standards of training and such other qualifications as the Board finds appropriate.

“(B) establish fair procedures for the nomination and election of members of the Board and assure fair representation in such nominations and elections of municipal securities brokers and municipal securities dealers. Such rules shall provide that the membership of the Board shall at all times be equally divided among public representatives, broker-dealer representatives, and bank representatives, and that the public representatives shall be subject to approval by the Commission to assure that no one of them is associated with any broker, dealer, or municipal securities dealer and that at least one is representative of investors in municipal securities and at least one is representative of issuers of municipal securities. Such rules shall also specify the term members shall serve and may increase the number of members which shall constitute the whole Board provided that such number is an odd number.

“(C) be 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 municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest; and not be designed to permit unfair discrimination between customers, issuers, municipal securities

brokers, or municipal securities dealers, to fix minimum profits, to impose any schedule or fix rates of commissions, allowances, discounts, or other fees to be charged by municipal securities brokers or municipal securities dealers, to regulate by virtue of any authority conferred by this title matters not related to the purposes of this title or the securities or the administration of the Board, or to impose any burden on competition not necessary or appropriate in furtherance of the purpose of this title.

“(D) if the Board deems appropriate, provide for the arbitration of claims, disputes, and controversies relating to transactions in municipal securities: Provided, however, That no person other than a municipal securities broker, municipal securities dealer, or person associated with such a municipal securities broker or municipal securities dealer may be compelled to submit to such arbitration except at his instance and in accordance with section 29 of this title.

“(E) provide for the periodic examination in accordance with subsection (c) (7) of this section of municipal securities brokers and municipal securities dealers to determine compliance with applicable provisions of this title, the rules and regulations thereunder, and the rules of the Board. Such rules shall specify the minimum scope and frequency of such examinations and shall be designed to avoid unnecessary regulatory duplication or undue regulatory burdens for any such municipal securities broker or municipal securities dealer.

“(F) include provisions governing the form and content of quotations relating to municipal securities which may be distributed or published by any municipal securities broker, municipal securities dealer, or person associated with such a municipal securities broker or municipal securities dealer, and the persons to whom such quotations may be supplied. Such rules relating to quotations shall be designed to produce fair and informative quotations, to prevent fictitious or misleading quotations, and to promote orderly procedures for collecting, distributing, and publishing quotations.

“(G) prescribe records to be made and kept by municipal securities brokers and municipal securities dealers and the periods for which such records shall be preserved.

“(H) define the term ‘separately identifiable department or division’, as that term is used in section 3(a) (30) of this title, in accordance with specified and appropriate standards to assure that a bank is not deemed to be engaged in the business of buying and selling municipal securities through a separately identifiable department or division unless such department or division is organized and administered so as to permit independent examination and enforcement of applicable provisions of this title, the rules and regulations thereunder, and the rules of the Board. A separately identifiable department or division of a bank may be engaged in activities other than those relating to municipal securities.

"(I) provide for the operation and administration of the Board, including the selection of a Chairman from among the members of the Board, the compensation of the members of the Board, and the appointment and compensation of such employees, attorneys, and consultants as may be necessary or appropriate to carry out the Board's functions under this section.

"(J) provide that each municipal securities broker and each municipal securities dealer shall pay to the Board such reasonable fees and charges as may be necessary or appropriate to defray the costs and expenses of operating and administering the Board. Such rules shall specify the amount of such fees and charges.

"(K) establish the terms and conditions under which any municipal securities dealer may sell, or prohibit any municipal securities dealer from selling, any part of a new issue of municipal securities to a municipal securities investment portfolio during the underwriting period.

"(3) Nothing in this section shall be construed to impair or limit the power of the Commission under this title.

"(c) (1) No broker, dealer, or municipal securities dealer shall make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any municipal security in contravention of any rule of the Board.

"(2) The Commission, by order, shall censure, place limitations on the activities, functions, or operations, suspend for a period not exceeding twelve months, or revoke the registration of any municipal securities dealer, if it finds, on the record after notice and opportunity for hearing, that such censure, placing of limitations, denial, suspension, or revocation, is in the public interest and that such municipal securities dealer has committed or omitted any act or omission enumerated in subparagraph (A), (D), or (E) of paragraph (4) of section 15(b) of this title, has been convicted of any offense specified in subparagraph (B) of such paragraph (4) within ten years of the commencement of the proceedings under this paragraph, or is enjoined from any action, conduct, or practice specified in subparagraph (C) of such paragraph (4).

"(3) Pending final determination whether any registration under this section shall be revoked, the Commission, by order, may suspend such registration, if such suspension appears to the Commission, after notice and opportunity for hearing, to be necessary or appropriate in the public interest or for the protection of investors. Any registered municipal securities dealer may, upon such terms and conditions as the Commission may deem necessary in the public interest or for the protection of investors, withdraw from registration by filing a written notice of withdrawal with the Commission. If the Commission finds that any registered municipal securities dealer is no longer in existence or has ceased to do business as a municipal securities dealer, the Commission, by order, shall cancel the registration of such municipal securities dealer.

"(4) The Commission, by order, shall censure any person associated, or seeking to become associated with, a municipal securities dealer or suspend for a period not exceeding twelve months or bar any such

person from being associated with a municipal securities dealer, if the Commission finds, on the record after notice and opportunity for hearing, that such censure, suspension, or bar is in the public interest and that such person has committed or omitted any act or omission enumerated in subparagraph (A), (D), or (E) of paragraph (4) of section 15(b) of this title, has been convicted of any offense specified in subparagraph (B) of such paragraph (4) within ten years of the commencement of the proceedings under this paragraph, or is enjoined from any action, conduct, or practice specified in subparagraph (C) of such paragraph (4). It shall be unlawful for any person as to whom an order entered pursuant to this paragraph or paragraph (5) of this subsection suspending or barring him from being associated with a municipal securities dealer is in effect willfully to become, or to be, associated with a municipal securities dealer without the consent of the Commission, and it shall be unlawful for any municipal securities dealer to permit such a person to become, or remain, a person associated with him without the consent of the Commission, if such municipal securities dealer knew, or, in the exercise of reasonable care should have known, of such order.

"(5) With respect to any municipal securities dealer for which the Commission is not the appropriate regulatory agency, the appropriate regulatory agency for such municipal securities dealer may sanction any such municipal securities dealer in the manner and for the reasons specified in paragraph (2) of this subsection and any person associated with such municipal securities dealer in the manner and for the reasons specified in paragraph (4) of this subsection. In addition, such appropriate regulatory agency may, in accordance with section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818) enforce compliance by such municipal securities dealer or any person associated with such municipal securities dealer with the provisions of this section, section 17 of this title, the rules of the Board, and the rules of the Commission pertaining to municipal securities dealers, persons associated with municipal securities dealers, and transactions in municipal securities. For purposes of the preceding sentence, any violation of any such provision shall constitute adequate basis for the issuance of any order under section 8(b) or 8(c) of the Federal Deposit Insurance Act, and the customers of any such municipal securities dealer shall be deemed to be 'depositors' as that term is used in section 8(c) of that Act. Nothing in this paragraph shall be construed to affect in any way the powers of such appropriate regulatory agency to proceed against such municipal securities dealer under any other provision of law.

"(6) (A) The Commission, prior to the entry of an order of investigation, or commencement of any proceedings, against any municipal securities dealer, or person associated with any municipal securities dealer, for which the commission is not the appropriate regulatory agency, for violation of any provision of this section, section 15(c) (1) or 15(c) (2) of this title, any rule or regulation under any such section, or any rule of the board, shall (i) give notice to the appropriate regulatory agency for such municipal securities dealer of the identity of such municipal securities dealer or person associated with such municipal securities dealer and the nature of and basis for such proposed ac-

tion and (ii) consult with such appropriate regulatory agency concerning the effect of such proposed action on sound banking practices and the feasibility and desirability of coordinating such action with any proceeding or proposed proceeding by such appropriate regulatory agency against such municipal securities dealer or associated person.

(B) The appropriate regulatory agency for a municipal securities dealer (if other than the Commission), prior to the entry of an order of investigation, or commencement of any proceedings, against such municipal securities dealer or person associated with such municipal securities dealer, for violation of any provision of this section, the rules of the Board, or the rules or regulations of the Commission pertaining to municipal securities dealers, persons associated with municipal securities dealers, or transactions in municipal securities shall (i) give notice to the Commission of the identity of such municipal securities dealer or person associated with such municipal securities dealer and the nature of and basis for such proposed action and (ii) consult with the Commission concerning the effect of such proposed action on the protection of investors and the feasibility and desirability of coordinating such action with any proceeding or proposed proceeding by the Commission against such municipal securities dealer or associated person.

(C) Nothing in this paragraph shall be construed to impair or limit (other than by the requirement of prior consultation) the power of the Commission or the appropriate regulatory agency for a municipal securities dealer to initiate any action of a class described in this paragraph or to affect in any way the power of the Commission or such appropriate regulatory agency to initiate any other action pursuant to this title or any other provision of law.

"(7) (A) Tests required pursuant to subsection (b) (2) (A) (iii) of this section shall be administered by or on behalf of and periodic examinations pursuant to subsection (b) (2) (E) of this section shall be conducted by—

"(i) a registered securities association, in the case of municipal securities brokers and municipal securities dealers who are members of such association; and

"(ii) the appropriate regulatory agency for any municipal securities broker or municipal securities dealer, in the case of all other municipal securities brokers and municipal securities dealers.

(B) A registered securities association shall make a report of any examination conducted pursuant to subsection (b) (2) (E) of this section and promptly furnish the Commission a copy thereof and any data supplied to it in connection with such examination. Subject to such limitations as the Commission, by rule, determines to be necessary or appropriate in the public interest or for the protection of investors, the Commission shall, on request, make available to the Board a copy of any report of an examination of a municipal securities broker or municipal securities dealer made by or furnished to the Commission pursuant to this paragraph or section 17(c) (3) of this title.

"(8) The Commission is authorized, by order, if in its opinion such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this

title, to remove from office or censure any member or employee of the Board, who, the Commission finds, on the record after notice and opportunity for hearing, has willfully (A) violated any provision of this title, the rules and regulations thereunder, or the rules of the Board or (B) abused his authority.

"(d) (1) Neither the Commission nor the Board is authorized under this title, by rule or regulation, to require any issuer of municipal securities, directly or indirectly through a purchaser or prospective purchaser of securities from the issuer, to file with the Commission or the Board prior to the sale of such securities by the issuer any application, report, or document in connection with the issuance, sale, or distribution of such securities.

"(2) The Board is not authorized under this title to require any issuer of municipal securities, directly or indirectly through a municipal securities broker or municipal securities dealer or otherwise, to furnish to the Board or to a purchaser or prospective purchaser of such securities any application, report, document, or information with respect to such issuer: Provided, however, That the Board may require municipal securities brokers and municipal securities dealers to furnish to the Board or purchasers or prospective purchasers of municipal securities applications, reports, documents, and information with respect to the issuer thereof which is generally available from a source other than such issuer. Nothing in this paragraph shall be construed to impair or limit the power of the Commission under any provision of this title."

SEC. 14. Section 17 of the Securities Exchange Act of 1934 (15 U.S.C. 78g) is amended by striking subsection (a), redesignating subsection (b) as subsection (g), and inserting the following as subsections (a), (b), (c), (d), (e), and (f):

"(a) (1) Every national securities exchange, member thereof, broker or dealer who transacts a business in securities through the medium of any such member, registered securities association, registered broker or dealer, registered municipal securities dealer, registered securities information processor, registered transfer agent, and registered clearing agency and the Municipal Securities Rule-making Board shall make and keep for prescribed periods such records, furnish such copies thereof, and make and disseminate such reports as the Commission, by rule, prescribes as necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this title.

"(2) Every registered clearing agency shall also make and keep for prescribed periods such records, furnish such copies thereof, and make and disseminate such reports, as the appropriate regulatory agency for such clearing agency, by rule, prescribes as necessary or appropriate for the safeguarding of securities and funds in the custody or control of such clearing agency or for which it is responsible.

"(3) Every registered transfer agent shall also make and keep for prescribed periods such records, furnish such copies thereof, and make such reports as the appropriate regulatory agency for such transfer agent, by rule, prescribes as necessary or appropriate in furtherance of the purposes of section 17A of this title.



“(b) All records of persons described in subsection (a) of this section are subject at any time, or from time to time, to such reasonable periodic, special, or other examinations by representatives of the Commission and the appropriate regulatory agency for such persons as the Commission or the appropriate regulatory agency for such persons deems necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this title: Provided, however, That the Commission shall, prior to conducting any such examination of a registered clearing agency, registered transfer agent, or registered municipal securities dealer for which it is not the appropriate regulatory agency, give notice to the appropriate regulatory agency for such clearing agency, transfer agent, or municipal securities dealer of such proposed examination and consult with such appropriate regulatory agency concerning the feasibility and desirability of coordinating such examination with examinations conducted by such appropriate regulatory agency with a view to avoiding unnecessary regulatory duplication or undue regulatory burdens for such clearing agency, transfer agent, or municipal securities dealer. Nothing in the proviso to the preceding sentence shall be construed to impair or limit (other than by the requirement of prior consultation) the power of the Commission under this subsection to examine any clearing agency, transfer agent, or municipal securities dealer or to affect in any way the power of the Commission under any other provision of this title or otherwise to inspect, examine, or investigate any such clearing agency, transfer agent, or municipal securities dealer.

“(c) (1) Every clearing agency, transfer agent, and municipal securities dealer for which the Commission is not the appropriate regulatory agency shall (A) file with the appropriate regulatory agency for such clearing agency, transfer agent, or municipal securities dealer a copy of any application, notice, proposal, report, or document filed with the Commission by reason of its being a clearing agency, transfer agent, or municipal securities dealer and (B) file with the Commission a copy of any application, notice, proposal, report, or document filed with such appropriate regulatory agency by reason of its being a clearing agency, transfer agent, or municipal securities dealer. The Municipal Securities Rulemaking Board shall file with each agency enumerated in section 3(a)(34)(A) of this title copies of every proposed rule change filed with the Commission pursuant to section 19(b) of this title.

“(2) The appropriate regulatory agency for a clearing agency, transfer agent, or municipal securities dealer for which the Commission is not the appropriate regulatory agency shall file with the Commission notice of the commencement of any proceeding and a copy of any order entered by such appropriate regulatory agency against such clearing agency, transfer agent, or municipal securities dealer, and the Commission shall file with such appropriate regulatory agency notice of the commencement of any proceeding and a copy of any order entered by the Commission against such clearing agency, transfer agent, or municipal securities dealer.

“(3) The Commission and the appropriate regulatory agency for a clearing agency, transfer agent, or municipal securities dealer for

which the Commission is not the appropriate regulatory agency shall each notify the other and make a report of any examination conducted by it of such clearing agency, transfer agent, or municipal securities dealer, and, upon request, furnish to the other a copy of such report and any data supplied to it in connection with such examination.

“(d) (1) The Commission, by rule or order, as it deems necessary or appropriate in the public interest and for the protection of investors, to foster cooperation and coordination among self-regulatory organizations, or to remove impediments to and foster the development of a national market system and national system for the clearance and settlement of securities transactions, may—

“(A) with respect to any person who is a member of or participant in more than one self-regulatory organization, relieve any such self-regulatory organization of any responsibility under this title (i) to receive regulatory reports from such person, (ii) to examine such person for compliance, or to enforce compliance by such person, with specified provisions of this title, the rules and regulations thereunder, and its own rules, or (iii) to carry out other specified regulatory functions with respect to such person, and

“(B) allocate among self-regulatory organizations the authority to adopt rules with respect to matters as to which, in the absence of such allocation, such self-regulatory organizations share authority under this title.

In making any such rule or entering any such order, the Commission shall take into consideration the regulatory capabilities and procedures of the self-regulatory organizations, availability of staff, convenience of location, unnecessary regulatory duplication, and such other factors as the Commission may consider germane to the protection of investors, cooperation and coordination among self-regulatory organizations, and the development of a national market system and a national system for the clearance and settlement of securities transactions. The Commission, by rule or order, as it deems necessary or appropriate in the public interest and for the protection of investors, may require any self-regulatory organization relieved of any responsibility pursuant to this paragraph, and any person with respect to whom such responsibility relates, to take such steps as are specified in any such rule or order to notify customers of, and persons doing business with, such person of the limited nature of such self-regulatory organization's responsibility for such person's acts, practices, and course of business.

“(2) A self-regulatory organization shall furnish copies of any report of examination of any person who is a member of or a participant in such self-regulatory organization to any other self-regulatory organization of which such person is a member or in which such person is a participant upon the request of such person, such other self-regulatory organization, or the Commission.

“(e) (1) (A) Every registered broker or dealer shall annually file with the Commission a balance sheet and income statement certified by an independent public accountant, prepared on a calendar or fiscal year basis, and such other financial statements (which shall, as the Commission specifies, be certified) and information concerning its fi-

nancial condition as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors.

"(B) Every registered broker and dealer shall annually send to its customers its certified balance sheet and such other financial statements and information concerning its financial condition as the Commission, by rule, may prescribe pursuant to subsection (a) of this section.

"(C) The Commission, by rule or order, may conditionally or unconditionally exempt any registered broker or dealer, or class of such brokers or dealers, from any provision of this paragraph if the Commission determines that such exemption is consistent with the public interest and the protection of investors.

"(2) The Commission, by rule, as it deems necessary or appropriate in the public interest or for the protection of investors, may prescribe the form and content of financial statements filed pursuant to this title and the accounting principles and accounting standards used in their preparation.

"(f) (1) Every national securities exchange, member thereof, registered securities association, broker, dealer, municipal securities dealer, registered transfer agent, registered clearing agency, participant therein, member of the Federal Reserve System, and bank whose deposits are insured by the Federal Deposit Insurance Corporation shall—

"(A) report to the Commission or other person designated by the Commission such information about missing, lost, counterfeit, or stolen securities, in such form and within such time as the Commission, by rule, determines is necessary or appropriate in the public interest or for the protection of investors; such information shall be available on request for a reasonable fee, to any such exchange, member, association, broker, dealer, municipal securities dealer, transfer agent, clearing agency, participants, member of the Federal Reserve System, or insured bank, and such other persons as the Commission, by rule, designates; and

"(B) make such inquiry with respect to information reported pursuant to this subsection as the Commission, by rule, prescribes as necessary or appropriate in the public interest or for the protection of investors, to determine whether securities in their custody or control, for which they are responsible, or in which they are effecting, clearing, or settling a transaction have been reported as missing, lost, counterfeit, or stolen.

"(2) Every member of a national securities exchange, broker, dealer, registered transfer agent, and registered clearing agency, shall require that each of its partners, directors, officers, and employees be fingerprinted and shall submit such fingerprints, or cause the same to be submitted, to the Attorney General of the United States for identification and appropriate processing. The Commission, by rule, may exempt from the provisions of this paragraph upon specified terms, conditions, and periods, any class of partners, directors, officers, or employees of any such member, broker, dealer, transfer agent, or clearing agency, if the Commission finds that such action is not inconsistent with the public interest or the protection of investors.

"(3) In order to carry out the authority under paragraphs (1) and (2) above, the Commission or its designee may enter into agreement with the Attorney General to use the facilities of the National Crime Information Center ("NCIC") to receive, store, and disseminate information in regard to missing, lost, counterfeit, or stolen securities and to permit direct inquiry access to NCIC's file on such securities for the financial community.

"(4) In regard to paragraphs (1), (2), and (3), above insofar as such paragraphs apply to any bank or member of the Federal Reserve System, the Commission may delegate its authority to:

"(A) the Comptroller of the Currency as to national banks and banks operating under the Code of Law for the District of Columbia;

"(B) the Federal Reserve Board in regard to any member of the Federal Reserve System which is not a national bank or a bank operating under the Code of Law for the District of Columbia; and

"(C) the Federal Deposit Insurance Corporation for any State bank which is insured by the Federal Deposit Insurance Corporation but which is not a member of the Federal Reserve System.

"(5) The Commission shall encourage the insurance industry to require their insured to report expeditiously instances of missing, lost, counterfeit, or stolen securities to the Commission or to such other person as the Commission may, by rule, designate to receive such information."

SEC. 15. The Securities Exchange Act of 1934 is amended by inserting after section 17 (15 U.S.C. 78q) the following new section:

"NATIONAL SYSTEM FOR CLEARANCE AND SETTLEMENT OF SECURITIES TRANSACTIONS

"SEC. 17A. (a) (1) The Congress finds that—

"(A) The prompt and accurate clearance and settlement of securities transactions, including the transfer of record ownership and the safeguarding of securities and funds related thereto, are necessary for the protection of investors and persons facilitating transactions by and acting on behalf of investors.

"(B) Inefficient procedures for clearance and settlement impose unnecessary costs on investors and persons facilitating transactions by and acting on behalf of investors.

"(C) New data processing and communications techniques create the opportunity for more efficient, effective, and safe procedures for clearance and settlement.

"(D) The linking of all clearance and settlement facilities and the development of uniform standards and procedures for clearance and settlement will reduce unnecessary costs and increase the protection of investors and persons facilitating transactions by and acting on behalf of investors.

"(2) The Commission is directed, therefore, having due regard for the public interest, the protection of investors, the safeguarding of securities and funds, and maintenance of fair competition among

brokers and dealers, clearing agencies, and transfer agents, to use its authority under this title to facilitate the establishment of a national system for the prompt and accurate clearance and settlement of transactions in securities (other than exempted securities) in accordance with the findings and to carry out the objectives set forth in paragraph (1) of this subsection. The Commission shall use its authority under this title to assure equal regulation under this title of registered clearing agencies and registered transfer agents.

“(b) (1) Except as otherwise provided in this section, it shall be unlawful for any clearing agency, unless registered in accordance with this subsection, directly or indirectly, to make use of the mails or any means or instrumentality of interstate commerce to perform the functions of a clearing agency with respect to any security (other than an exempted security). The Commission, by rule or order, upon its own motion or upon application, may conditionally or unconditionally exempt any clearing agency or security or any class of clearing agencies or securities from any provision of this section or the rules or regulations thereunder, if the Commission finds that such exemption is consistent with the public interest, the protection of investors, and the purposes of this section, including the prompt and accurate clearance and settlement of securities transactions and the safeguarding of securities and funds. A clearing agency or transfer agent shall not perform the functions of both a clearing agency and a transfer agent unless such clearing agency or transfer agent is registered in accordance with this subsection and subsection (c) of this section.

“(2) A clearing agency may be registered under the terms and conditions hereinafter provided in this subsection 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 clearing agency and such other information and documents as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the prompt and accurate clearance and settlement of securities transactions.

“(3) A clearing agency shall not be registered unless the Commission determines that—

“(A) Such clearing agency is so organized and has the capacity to be able to facilitate the prompt and accurate clearance and settlement of securities transactions for which it is responsible, to safeguard securities and funds in its custody or control or for which it is responsible, to comply with the provisions of this title and the rules and regulations thereunder, to enforce (subject to any rule or order of the Commission pursuant to section 17(d) or 19(g)(2) of this title) compliance by its participants with the rules of the clearing agency, and to carry out the purposes of this section.

“(B) Subject to the provisions of paragraph (4) of this subsection, the rules of the clearing agency provide that any (i) registered broker or dealer, (ii) other registered clearing agency, (iii) registered investment company, (iv) bank, (v) insurance company, or (vi) other person or class of persons as the Commission, by rule, may from time to time designate as appropriate

to the development of a national system for the prompt and accurate clearance and settlement of securities transactions may become a participant in such clearing agency.

“(C) The rules of the clearing agency assure a fair representation of its shareholders (or members) and participants in the selection of its directors and administration of its affairs. (The Commission may determine that the representation of participants is fair if they are afforded a reasonable opportunity to acquire voting stock of the clearing agency, directly or indirectly, in reasonable proportion to their use of such clearing agency.)

“(D) The rules of the clearing agency provide for the equitable allocation of reasonable dues, fees, and other charges among its participants.

“(E) The rules of the clearing agency do not impose any schedule of prices, or fix rates or other fees, for services rendered by its participants.

“(F) The rules of the clearing agency are designed to promote the prompt and accurate clearance and settlement of securities transactions, to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible, to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions, to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions, and, in general, to protect investors and the public interest; and are not designed to permit unfair discrimination in the admission of participants or among participants in the use of the clearing agency, or to regulate by virtue of any authority conferred by this title matters not related to the purposes of this section or the administration of the clearing agency.

“(G) The rules of the clearing agency provide that (subject to any rule or order of the Commission pursuant to section 17(d) or 19(g)(2) of this title) its participants shall be appropriately disciplined for violation of any provision of the rules of the clearing agency by expulsion, suspension, limitation of activities, functions, and operations, fine, censure, or any other fitting sanction.

“(H) The rules of the clearing agency are in accordance with the provisions of paragraph (5) of this subsection, and, in general, provide a fair procedure with respect to the disciplining of participants, the denial of participation to any person seeking participation therein, and the prohibition or limitation by the clearing agency of any person with respect to access to services offered by the clearing agency.

“(I) The rules of the clearing agency do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of this title.

“(4) (A) A registered clearing agency may, and in cases in which the Commission, by order, directs as appropriate in the public interest shall, deny participation to any person subject to a statutory disqualification. A registered clearing agency shall file notice with the Commission not less than thirty days prior to admitting any person



to participation, if the clearing agency 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.

"(B) A registered clearing agency may deny participation to, or condition the participation of, any person if such person does not meet such standards of financial responsibility, operational capability, experience, and competence as are prescribed by the rules of the clearing agency. A registered clearing agency may examine and verify the qualifications of an applicant to be a participant in accordance with procedures established by the rules of the clearing agency.

"(5) (A) In any proceeding by a registered clearing agency to determine whether a participant should be disciplined (other than a summary proceeding pursuant to subparagraph (C) of this paragraph), the clearing agency shall bring specific charges, notify such participant of, and give him an opportunity to defend against such charges, and keep a record. A determination by the clearing agency to impose a disciplinary sanction shall be supported by a statement setting forth—

"(i) any act or practice in which such participant has been found to have engaged, or which such participant has been found to have omitted;

"(ii) the specific provisions of the rules of the clearing agency which any such act or practice, or omission to act, is deemed to violate; and

"(iii) the sanction imposed and the reasons therefor.

"(B) In any proceeding by a registered clearing agency to determine whether a person shall be denied participation or prohibited or limited with respect to access to services offered by the clearing agency, the clearing agency shall notify such person of, and give him an opportunity to be heard upon, the specific grounds for denial or prohibition or limitation under consideration and keep a record. A determination by the clearing agency to deny participation or prohibit or limit a person with respect to access to services offered by the clearing agency shall be supported by a statement setting forth the specific grounds on which the denial or prohibition or limitation is based.

"(C) A registered clearing agency may summarily suspend and close the accounts of a participant who (i) has been and is expelled or suspended from any self-regulatory organization, (ii) is in default of any delivery of funds or securities to the clearing agency, or (iii) is in such financial or operating difficulty that the clearing agency determines and so notifies the appropriate regulatory agency for such participant that such suspension and closing of accounts are necessary for the protection of the clearing agency, its participants, creditors, or investors. A participant so summarily suspended shall be promptly afforded an opportunity for a hearing by the clearing agency in accordance with the provisions of subparagraph (A) of this paragraph. The appropriate regulatory agency for such participant, by order, may stay any such summary suspension on its own motion or upon application by any person aggrieved thereby, if such appropriate regulatory agency

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 protection of investors.

"(6) No registered clearing agency shall prohibit or limit access by any person to services offered by any participant therein.

"(c) (1) Except as otherwise provided in this section, it shall be unlawful for any transfer agent, unless registered in accordance with this section, directly or indirectly, to make use of the mails or any means or instrumentality of interstate commerce to perform the function of a transfer agent with respect to any security registered under section 12 of this title or which would be required to be registered except for the exemption from registration provided by subsection (g) (2) (B) or (g) (2) (G) of that section. The appropriate regulatory agency, by rule or order, upon its own motion or upon application, may conditionally or unconditionally exempt any person or security or class of persons or securities from any provision of this section or any rule or regulation prescribed under this section, if the appropriate regulatory agency finds (A) that such exemption is in the public interest and consistent with the protection of investors and the purposes of this section, including the prompt and accurate clearance and settlement of securities transactions and the safeguarding of securities and funds, and (B) the Commission does not object to such exemption.

"(2) A transfer agent may be registered by filing with the appropriate regulatory agency for such transfer agent an application for registration in such form and containing such information and documents concerning such transfer agent as such appropriate regulatory agency may prescribe as necessary or appropriate in furtherance of the purposes of this section. Except as hereinafter provided, such registration shall become effective thirty days after receipt of such application by such appropriate regulatory agency or within such shorter period of time as such appropriate regulatory agency may determine.

"(3) (A) The appropriate regulatory agency for a transfer agent, by order, shall deny registration to, censure, place limitations on the activities, functions, or operations of, suspend for a period not exceeding twelve months, or revoke the registration of such transfer agent, if such appropriate regulatory agency finds, on the record after notice and opportunity for hearing, that such denial, censure, placing of limitations, suspension, or revocation is in the public interest and that such transfer agent has willfully violated or is unable to comply with any provision of this section or section 17 of this title or the rules or regulations thereunder.

"(B) Pending final determination whether any registration by a transfer agent under this subsection shall be denied, the appropriate regulatory agency for such transfer agent, by order, may postpone the effective date of such registration for a period not to exceed fifteen days, but if, after notice and opportunity for hearing (which may consist solely of affidavits and oral arguments), it shall appear to such appropriate regulatory agency to be necessary or appropriate in the public interest or for the protection of investors to postpone the effective date of such registration until final determination, such appropriate regulatory agency shall so order. Pending final determination

whether any registration under this subsection shall be revoked, such appropriate regulatory agency, by order, may suspend such registration, if such suspension appears to such appropriate regulatory agency, after notice and opportunity for hearing, to be necessary or appropriate in the public interest or for the protection of investors.

“(C) A registered transfer agent may, upon such terms and conditions as the appropriate regulatory agency for such transfer agent deems necessary or appropriate in the public interest, for the protection of investors, or in furtherance of the purposes of this section, withdraw from registration by filing a written notice of withdrawal with such appropriate regulatory agency. If such appropriate regulatory agency finds that any transfer agent for which it is the appropriate regulatory agency, is no longer in existence or has ceased to do business as a transfer agent, such appropriate regulatory agency, by order, shall cancel or deny the registration.

“(d) (1) No registered clearing agency or registered transfer agent shall, directly or indirectly, engage in any activity as clearing agency or transfer agent in contravention of such rules and regulations (A) as the Commission may prescribe as necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this title, or (B) as the appropriate regulatory agency for such clearing agency or transfer agent may prescribe as necessary or appropriate for the safeguarding of securities and funds.

“(2) With respect to any clearing agency or transfer agent for which the Commission is not the appropriate regulatory agency, the appropriate regulatory agency for such clearing agency or transfer agent may, in accordance with section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818), enforce compliance by such clearing agency or transfer agent with the provisions of this section, sections 17 and 19 of this title, and the rules and regulations thereunder. For purposes of the preceding sentence, any violation of any such provision shall constitute adequate basis for the issuance of an order under section 8(b) or 8(c) of the Federal Deposit Insurance Act, and the participants in any such clearing agency and the persons doing business with any such transfer agent shall be deemed to be ‘depositors’ as that term is used in section 8(c) of that Act.

“(3) (A) With respect to any clearing agency or transfer agent for which the Commission is not the appropriate regulatory agency, the Commission and the appropriate regulatory agency for such clearing agency or transfer agent shall consult and cooperate with each other, and, as may be appropriate, with State banking authorities having supervision over such clearing agency or transfer agent toward the end that, to the maximum extent practicable, their respective regulatory responsibilities may be fulfilled and the rules and regulations applicable to such clearing agency or transfer agent may be in accord with both sound banking practices and a national system for the prompt and accurate clearance and settlement of securities transactions. In accordance with this objective—

“(i) the Commission and such appropriate regulatory agency shall, at least fifteen days prior to the issuance for public comment of any proposed rule or regulation or adoption of any rule

or regulation concerning such clearing agency or transfer agent, consult and request the views of the other; and

“(ii) such appropriate regulatory agency shall assume primary responsibility to examine and enforce compliance by such clearing agency or transfer agent with the provisions of this section and sections 17 and 19 of this title.

“(B) Nothing in the preceding subparagraph or elsewhere in this title shall be construed to impair or limit (other than by the requirement of notification) the Commission’s authority to make rules under any provision of this title or to enforce compliance pursuant to any provision of this title by any clearing agency or transfer agent with the provisions of this title and the rules and regulations thereunder.

“(4) Nothing in this section shall be construed to impair the authority of any State banking authority or other State or Federal regulatory authority having jurisdiction over a person registered as a clearing agency or transfer agent to make and enforce rules governing such person which are not inconsistent with this title and the rules and regulations thereunder.

“(e) The Commission shall use its authority under this title to end the physical movement of securities certificates in connection with the settlement among brokers and dealers of transactions in securities consummated by means of the mails or any means or instrumentalities of interstate commerce.”

SEC. 16. Section 19 of the Securities Exchange Act of 1934 (15 U.S.C. 78s) is amended to read as follows:

“REGISTRATION, RESPONSIBILITIES, AND OVERSIGHT OF SELF-REGULATORY ORGANIZATIONS

“SEC. 19. (a) (1) The Commission shall, upon the filing of an application for registration as a national securities exchange, registered securities association, or registered clearing agency, pursuant to section 6, 15A, or 17A of this title, respectively, publish notice of such filing and afford interested persons an opportunity to submit written data, views, and arguments concerning such application. Within ninety days of the date of publication of such notice (or within such longer period as to which the applicant consents), the Commission shall—

“(A) by order grant such registration, or

“(B) institute proceedings to determine whether registration should be denied. Such proceedings shall include notice of the grounds for denial under consideration and opportunity for hearing and shall be concluded within one hundred eighty days of the date of publication of notice of the filing of the application for registration. At the conclusion of such proceedings the Commission, by order, shall grant or deny such registration. The Commission may extend the time for conclusion of such proceedings for up to ninety days if it finds good cause for such extension and publishes its reasons for so finding or for such longer period as to which the applicant consents.

The Commission shall grant such registration if it 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) With respect to an application for registration filed by a clearing agency for which the Commission is not the appropriate regulatory agency—

"(A) The Commission shall not grant registration prior to the sixtieth day after the date of publication of notice of the filing of such application unless the appropriate regulatory agency for such clearing agency has notified the Commission of such appropriate regulatory agency's determination that such clearing agency is so organized and has the capacity to be able to safeguard securities and funds in its custody or control or for which it is responsible and that the rules of such clearing agency are designed to assure the safeguarding of such securities and funds.

"(B) The Commission shall institute proceedings in accordance with paragraph (1)(B) of this subsection to determine whether registration should be denied if the appropriate regulatory agency for such clearing agency notifies the Commission within sixty days of the date of publication of notice of the filing of such application of such appropriate regulatory agency's (i) determination that such clearing agency may not be so organized or have the capacity to be able to safeguard securities or funds in its custody or control or for which it is responsible or that the rules of such clearing agency may not be designed to assure the safeguarding of such securities and funds and (ii) reasons for such determination.

"(C) The Commission shall deny registration if the appropriate regulatory agency for such clearing agency notifies the Commission prior to the conclusion of proceedings instituted in accordance with paragraph (1)(B) of this subsection of such appropriate regulatory agency's (i) determination that such clearing agency is not so organized or does not have the capacity to be able to safeguard securities or funds in its custody or control or for which it is responsible or that the rules of such clearing agency are not designed to assure the safeguarding of such securities or funds and (ii) reasons for such determination.

"(3) A self-regulatory organization may, upon such terms and conditions as the Commission, by rule, deems necessary or appropriate in the public interest or for the protection of investors, withdraw from registration by filing a written notice of withdrawal with the Commission. If the Commission finds that any self-regulatory organization is no longer in existence or has ceased to do business in the capacity specified in its application for registration, the Commission, by order, shall cancel its registration. Upon the withdrawal of a national securities association from registration or the cancellation, suspension, or revocation of the registration of a national securities association, the registration of any association affiliated therewith shall automatically terminate.

"(b)(1) Each self-regulatory organization shall file with the Commission, in accordance with such rules as the Commission may prescribe, copies of any proposed rule or any proposed change in, addition to, or deletion from the rules of such self-regulatory organization

(hereinafter in this subsection collectively referred to as a 'proposed rule change') accompanied by a concise general statement of the basis and purpose of such proposed rule change. The Commission shall, upon the filing of any proposed rule change, publish notice thereof together with the terms of substance of the proposed rule change or a description of the subjects and issues involved. The Commission shall give interested persons an opportunity to submit written data, views, and arguments concerning such proposed rule change. No proposed rule change shall take effect unless approved by the Commission or otherwise permitted in accordance with the provisions of this subsection.

"(2) Within thirty-five days of the date of publication of notice of the filing of a proposed rule change in accordance with paragraph (1) of this subsection, or within such longer period as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall—

"(A) by order approve such proposed rule change, or

"(B) institute proceedings to determine whether the proposed rule change should be disapproved. Such proceedings shall include notice of the grounds for disapproval under consideration and opportunity for hearing and be concluded within one hundred eighty days of the date of publication of notice of the filing of the proposed rule change. At the conclusion of such proceedings the Commission, by order, shall approve or disapprove such proposed rule change. The Commission may extend the time for conclusion of such proceedings for up to sixty days if it finds good cause for such extension and publishes its reasons for so finding or for such longer period as to which the self-regulatory organization consents.

The Commission shall approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of this title and the rules and regulations thereunder applicable to such organization. The Commission shall disapprove a proposed rule change of a self-regulatory organization if it does not make such finding. The Commission shall not approve any proposed rule change prior to the thirtieth day after the date of publication of notice of the filing thereof, unless the Commission finds good cause for so doing and publishes its reasons for so finding.

"(3) (A) Notwithstanding the provisions of paragraph (2) of this subsection, a proposed rule change may take effect upon filing with the Commission if designated by the self-regulatory organization as (i) constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the self-regulatory organization, (ii) establishing or changing a due, fee, or other charge imposed by the self-regulatory organization, or (iii) concerned solely with the administration of the self-regulatory organization or other matters which the Commission, by rule, consistent with the public interest and the purposes of this subsection, may specify as without the provisions of such paragraph (2).

“(B) Notwithstanding any other provision of this subsection, a proposed rule change may be put into effect summarily if it appears to the Commission that such action is necessary for the protection of investors, the maintenance of fair and orderly markets, or the safeguarding of securities or funds. Any proposed rule change so put into effect shall be filed promptly thereafter in accordance with the provisions of paragraph (1) of this subsection.

“(C) Any proposed rule change of a self-regulatory organization which has taken effect pursuant to subparagraph (A) or (B) of this paragraph may be enforced by such organization to the extent it is not inconsistent with the provisions of this title, the rules and regulations thereunder, and applicable Federal and State law. At any time within sixty days of the date of filing of such a proposed rule change in accordance with the provisions of paragraph (1) of this subsection, the Commission summarily may abrogate the change in the rules of the self-regulatory organization made thereby and require that the proposed rule change be refiled in accordance with the provisions of paragraph (1) of this subsection and reviewed in accordance with the provisions of paragraph (2) of this subsection, if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this title. Commission action pursuant to the preceding sentence shall not affect the validity or force of the rule change during the period it was in effect and shall not be reviewable under section 25 of this title nor deemed to be ‘final agency action’ for purposes of section 704 of title 5, United States Code.

“(4) With respect to a proposed rule change filed by a registered clearing agency for which the Commission is not the appropriate regulatory agency—

“(A) The Commission shall not approve any such proposed rule change prior to the thirtieth day after the date of publication of notice of the filing thereof unless the appropriate regulatory agency for such clearing agency has notified the Commission of such appropriate regulatory agency’s determination that the proposed rule change is consistent with the safeguarding of securities and funds in the custody or control of such clearing agency or for which it is responsible.

“(B) The Commission shall institute proceedings in accordance with paragraph (2)(B) of this subsection to determine whether any such proposed rule change should be disapproved, if the appropriate regulatory agency for such clearing agency notifies the Commission within thirty days of the date of publication of notice of the filing of the proposed rule change of such appropriate regulatory agency’s (i) determination that the proposed rule change may be inconsistent with the safeguarding of securities or funds in the custody or control of such clearing agency or for which it is responsible and (ii) reasons for such determination.

“(C) The Commission shall disapprove any such proposed rule change if the appropriate regulatory agency for such clearing agency notifies the Commission prior to the conclusion of proceedings instituted in accordance with paragraph (2)(B) of

this subsection of such appropriate regulatory agency’s (i) determination that the proposed rule change is inconsistent with the safeguarding of securities or funds in the custody or control of such clearing agency or for which it is responsible and (ii) reasons for such determination.

“(D) The Commission shall abrogate any change in the rules of such a clearing agency made by a proposed rule change which has taken effect pursuant to paragraph (3) of this subsection, require that the proposed rule change be refiled in accordance with the provisions of paragraph (1) of this subsection, and reviewed in accordance with the provisions of paragraph (2) of this subsection, if the appropriate regulatory agency for such clearing agency notifies the Commission within thirty days of the date of filing of such proposed rule change of such appropriate regulatory agency’s (i) determination that the rules of such clearing agency as so changed may be inconsistent with the safeguarding of securities or funds in the custody or control of such clearing agency or for which it is responsible and (ii) reasons for such determination.

“(e) The Commission, by rule, may abrogate, add to, and delete from (hereinafter in this subsection collectively referred to as ‘amend’) the rules of a self-regulatory organization (other than a registered clearing agency) as the Commission deems necessary or appropriate to insure the fair administration of the self-regulatory organization, to conform its rules to requirements of this title and the rules and regulations thereunder applicable to such organization, or otherwise in furtherance of the purposes of this title, in the following manner:

“(1) The Commission shall notify the self-regulatory organization and publish notice of the proposed rulemaking in the Federal Register. The notice shall include the text of the proposed amendment to the rules of the self-regulatory organization and a statement of the Commission’s reasons, including any pertinent facts, for commencing such proposed rulemaking.

“(2) The Commission shall give interested persons an opportunity for the oral presentation of data, views, and arguments, in addition to an opportunity to make written submissions, a transcript shall be kept of any oral presentation.

“(3) A rule adopted pursuant to this subsection shall incorporate the text of the amendment to the rules of the self-regulatory organization and a statement of the Commission’s basis for and purpose in so amending such rules. This statement shall include an identification of any facts on which the Commission considers its determination so to amend the rules of the self-regulatory agency to be based, including the reasons for the Commission’s conclusions as to any of such facts which were disputed in the rulemaking.

“(4) (A) Except as provided in paragraphs (1) through (3) of this subsection, rulemaking under this subsection shall be in accordance with the procedures specified in section 553 of title 5, United States Code, for rulemaking not on the record.

“(B) Nothing in this subsection shall be construed to impair or limit the Commission’s power to make, or to modify or alter the



procedures the Commission may follow in making rules and regulations pursuant to any other authority under this title.

“(C) Any amendment to the rules of a self-regulatory organization made by the Commission pursuant to this subsection shall be considered for all purposes of this title to be part of the rules of such self-regulatory organization and shall not be considered to be a rule of the Commission.

“(d) (1) If any self-regulatory organization imposes any final disciplinary sanction on any member thereof or participant therein, denies membership or participation to any applicant, or prohibits or limits any person in respect to access to services offered by such organization or member thereof or if any self-regulatory organization (other than a registered clearing agency) imposes any final disciplinary sanction on any person associated with a member or bars any person from becoming associated with a member, the self-regulatory organization shall promptly file notice thereof with the appropriate regulatory agency for the self-regulatory organization and (if other than the appropriate regulatory agency for the self-regulatory organization) the appropriate regulatory agency for such member, participant, applicant, or other person. The notice shall be in such form and contain such information as the appropriate regulatory agency for the self-regulatory organization, by rule, may prescribe as necessary or appropriate in furtherance of the purposes of this title.

“(2) Any action with respect to which a self-regulatory organization is required by paragraph (1) of this subsection to file notice shall be subject to review by the appropriate regulatory agency for such member, participant, applicant, or other person, on its own motion, or upon application by any person aggrieved thereby filed within thirty days after the date such notice was filed with such appropriate regulatory agency and received by such aggrieved person, or within such longer period as such appropriate regulatory agency may determine. Application to such appropriate regulatory agency for review, or the institution of review by such appropriate regulatory agency on its own motion, shall not operate as a stay of such action unless such appropriate regulatory agency otherwise orders, summarily or after notice and opportunity for hearing on the question of a stay (which hearing may consist solely of submission of affidavits or presentation of oral arguments). Each appropriate regulatory agency shall establish for appropriate cases an expedited procedure for consideration and determination of the question of a stay.

“(e) (1) In any proceeding to review a final disciplinary sanction imposed by a self-regulatory organization on a member thereof or participant therein or a person associated with such a member, after notice and opportunity for hearing (which hearing may consist solely of consideration of the record before the self-regulatory organization and opportunity for the presentation of supporting reasons to affirm, modify, or set aside the sanction)—

“(A) if the appropriate regulatory agency for such member, participant, or person associated with a member finds that such member, participant, or person associated with a member has engaged in such acts or practices, or has omitted such acts, as the self-regulatory organization has found him to have engaged in or

omitted, that such acts or practices, or omissions to act, are in violation of such provisions of this title, the rules or regulations thereunder, the rules of the self-regulatory organization, or, in the case of a registered securities association, the rules of the Municipal Securities Rulemaking Board as have been specified in the determination of the self-regulatory organization, and that such provisions are, and were applied in a manner, consistent with the purposes of this title, such appropriate regulatory agency, by order, shall so declare and, as appropriate, affirm the sanction imposed by the self-regulatory organization, modify the sanction in accordance with paragraph (2) of this subsection, or remand to the self-regulatory organization for further proceedings; or

“(B) if such appropriate regulatory agency does not make any such finding it shall, by order, set aside the sanction imposed by the self-regulatory organization and, if appropriate, remand to the self-regulatory organization for further proceedings.

“(2) If the appropriate regulatory agency for a member, participant, or person associated with a member, having due regard for the public interest and the protection of investors, finds after a proceeding in accordance with paragraph (1) of this subsection that a sanction imposed by a self-regulatory organization upon such member, participant, or person associated with a member imposes any burden on competition not necessary or appropriate in furtherance of the purposes of this title or is excessive or oppressive, the appropriate regulatory agency may cancel, reduce, or require the remission of such sanction.

“(f) In any proceeding to review the denial of membership or participation in a self-regulatory organization to any applicant, the barring of any person from becoming associated with a member of a self-regulatory organization, or the prohibition or limitation by a self-regulatory organization of any person with respect to access to services offered by the self-regulatory organization or any member thereof, if the appropriate regulatory agency for such applicant or person, after notice and opportunity for hearing (which hearing may consist solely of consideration of the record before the self-regulatory organization and opportunity for the presentation of supporting reasons to dismiss the proceeding or set aside the action of the self-regulatory organization) finds that the specific grounds on which such denial, bar, or prohibition or limitation is based exist in fact, that such denial, bar, or prohibition or limitation is in accordance with the rules of the self-regulatory organization, and that such rules are, and were applied in a manner, consistent with the purposes of this title, such appropriate regulatory agency, by order, shall dismiss the proceeding. If such appropriate regulatory agency does not make any such finding or if it finds that such denial, bar, or prohibition or limitation imposes any burden on competition not necessary or appropriate in furtherance of the purposes of this title, such appropriate regulatory agency, by order, shall set aside the action of the self-regulatory organization and require it to admit such applicant to membership or participation, permit such person to become associated with a member, or grant such person access to services offered by the self-regulatory organization or member thereof.

"(g) (1) Every self-regulatory organization shall comply with the provisions of this title, the rules and regulations thereunder, and its own rules, and (subject to the provisions of section 17(d) of this title, paragraph (2) of this subsection, and the rules thereunder) absent reasonable justification or excuse enforce compliance—

"(A) in the case of a national securities exchange, with such provisions by its members and persons associated with its members;

"(B) in the case of a registered securities association, with such provisions and the provisions of the rules of the Municipal Securities Rulemaking Board by its members and persons associated with its members; and

"(C) in the case of a registered clearing agency, with its own rules by its participants.

"(2) The Commission, by rule, consistent with the public interest, the protection of investors, and the other purposes of this title, may relieve any self-regulatory organization of any responsibility under this title to enforce compliance with any specified provision of this title or the rules or regulations thereunder by any member of such organization or person associated with such a member, or any class of such members or persons associated with a member.

"(h) (1) The appropriate regulatory agency for a self-regulatory organization is authorized, by order, if in its opinion such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this title, to suspend for a period not exceeding twelve months or revoke the registration of such self-regulatory organization, or to censure or impose limitations upon the activities, functions, and operations of such self-regulatory organization, if such appropriate regulatory agency finds, on the record after notice and opportunity for hearing, that such self-regulatory organization has violated or is unable to comply with any provision of this title, the rules or regulations thereunder, or its own rules or without reasonable justification or excuse has failed to enforce compliance—

"(A) in the case of a national securities exchange, with any such provision by a member thereof or a person associated with a member thereof;

"(B) in the case of a registered securities association, with any such provision or any provision of the rules of the Municipal Securities Rulemaking Board by a member thereof or a person associated with a member thereof; or

"(C) in the case of a registered clearing agency, with any provision of its own rules by a participant therein.

"(2) The appropriate regulatory agency for a self-regulatory organization is authorized, by order, if in its opinion such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this title, to suspend for a period not exceeding twelve months or expel from such self-regulatory organization any member thereof or participant therein, if such member or participant is subject to an order of the Commission pursuant to section 15(b) (4) of this title or if such appropriate regulatory agency finds, on the record after notice and oppor-

tunity for hearing, that such member or participant has willfully violated or has effected any transaction for any other person who, such member or participant had reason to believe, was violating with respect to such transaction—

"(A) in the case of a national securities exchange, any provision of the Securities Act of 1933, the Investment Advisers Act of 1940, the Investment Company Act of 1940, this title, or the rules or regulations under any of such statutes;

"(B) in the case of a registered securities association, any provision of the Securities Act of 1933, the Investment Advisers Act of 1940, the Investment Company Act of 1940, this title, the rules or regulations under any of such statutes, or the rules of the Municipal Securities Rulemaking Board; or

"(C) in the case of a registered clearing agency, any provision of the rules of the clearing agency.

"(3) The appropriate regulatory agency for a national securities exchange or registered securities association is authorized, by order, if in its opinion such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this title, to suspend for a period not exceeding twelve months or to bar any person from being associated with a member of such national securities exchange or registered securities association, if such person is subject to an order of the Commission pursuant to section 15(b) (6) or if such appropriate regulatory agency finds, on the record after notice and opportunity for hearing, that such person has willfully violated or has effected any transaction for any other person who, such person associated with a member had reason to believe, was violating with respect to such transaction—

"(A) in the case of a national securities exchange, any provision of the Securities Act of 1933, the Investment Advisers Act of 1940, the Investment Company Act of 1940, this title, or the rules or regulations under any of such statutes; or

"(B) in the case of a registered securities association, any provision of the Securities Act of 1933, the Investment Advisers Act of 1940, the Investment Company Act of 1940, this title, the rules or regulations under any of the statutes, or the rules of the Municipal Securities Rulemaking Board.

"(4) The appropriate regulatory agency for a self-regulatory organization is authorized, by order, if in its opinion such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this title, to remove from office or censure any officer or director of such self-regulatory organization, if such appropriate regulatory agency finds, on the record after notice and opportunity for hearing, that such officer or director has willfully violated any provision of this title, the rules or regulations thereunder, or the rules of such self-regulatory organization, willfully abused his authority, or without reasonable justification or excuse has failed to enforce compliance—

"(A) in the case of a national securities exchange, with any such provision by any member or person associated with a member;

"(B) in the case of a registered securities association, with any such provision or any provision of the rules of the Municipal Securities Rulemaking Board by any member or person associated with a member; or

"(C) in the case of a registered clearing agency, with any provision of the rules of the clearing agency by any participant.

"(i) If a proceeding under subsection (h) (1) of this section results in the suspension or revocation of the registration of a clearing agency, the appropriate regulatory agency for such clearing agency may, upon notice to such clearing agency, apply to any court of competent jurisdiction specified in section 21(d) or 27 of this title for the appointment of a trustee. In the event of such an application, the court may, to the extent it deems necessary or appropriate, take exclusive jurisdiction of such clearing agency and the records and assets thereof, wherever located; and the court shall appoint the appropriate regulatory agency for such clearing agency or a person designated by such appropriate regulatory agency as trustee with power to take possession and continue to operate or terminate the operations of such clearing agency in an orderly manner for the protection of participants and investors, subject to such terms and conditions as the court may prescribe."

SEC. 17. Section 21 of the Securities Exchange Act of 1934 (15 U.S.C. 78u) is amended as follows:

(1) Subsection (a) thereof is amended to read as follows:

"(a) The Commission may, in its discretion, make such investigations as it deems necessary to determine whether any person has violated, is violating, or is about to violate any provision of this title, the rules or regulations thereunder, the rules of a national securities exchange or registered securities association of which such person is a member or a person associated with a member, the rules of a registered clearing agency in which such person is a participant, or the rules of the Municipal Securities Rulemaking Board, and may require or permit any person to file with it a statement in writing, under oath or otherwise as the Commission shall determine, as to all the facts and circumstances concerning the matter to be investigated. The Commission is authorized in its discretion, to publish information concerning any such violations, and to investigate any facts, conditions, practices, or matters which it may deem necessary or proper to aid in the enforcement of such provisions, in the prescribing of rules and regulations under this title, or in securing information to serve as a basis for recommending further legislation concerning the matters to which this title relates."

(2) Subsections (e) and (f) thereof are redesignated (d) and (e), respectively, and amended to read as follows:

"(d) Wherever it shall appear to the Commission that any person is engaged or is about to engage in acts or practices constituting a violation of any provision of this title, the rules or regulations thereunder, the rules of a national securities exchange or registered securities association of which such person is a member or a person associated with a member, the rules of a registered clearing agency in which such person is a participant, or the rules of the Municipal Securities Rulemaking Board, it may in its discretion bring

an action in the proper district court of the United States, the United States District Court for the District of Columbia, or the United States courts of any territory or other place subject to the jurisdiction of the United States, to enjoin such acts or practices, and upon a proper showing a permanent or temporary injunction or restraining order shall be granted without bond. The Commission may transmit such evidence as may be available concerning such acts or practices as may constitute a violation of any provision of this title or the rules or regulations thereunder to the Attorney General, who may, in his discretion, institute the necessary criminal proceedings under this title.

"(e) Upon application of the Commission the district courts of the United States, the United States District Court for the District of Columbia, and the United States courts of any territory or other place subject to the jurisdiction of the United States shall have jurisdiction to issue writs of mandamus, injunctions, and orders commanding (1) any person to comply with the provisions of this title, the rules, regulations, and orders thereunder, the rules of a national securities exchange or registered securities association of which such person is a member or person associated with a member, the rules of a registered clearing agency in which such person is a participant, the rules of the Municipal Securities Rulemaking Board, or any undertaking contained in a registration statement as provided in subsection (d) of section 15 of this title, (2) any national securities exchange or registered securities association to enforce compliance by its members and persons associated with its members with the provisions of this title, the rules, regulations, and orders thereunder, and the rules of such exchange or association, or (3) any registered clearing agency to enforce compliance by its participants with the provisions of the rules of such clearing agency."

(3) The section is further amended by adding at the end thereof the following new subsections:

"(f) Notwithstanding any other provision of this title, the Commission shall not bring any action pursuant to subsection (d) or (e) of this section against any person for violation of, or to command compliance with, the rules of a self-regulatory organization unless it appears to the Commission that (1) such self-regulatory organization is unable or unwilling to take appropriate action against such person in the public interest and for the protection of investors, or (2) such action is otherwise necessary or appropriate in the public interest or for the protection of investors.

"(g) Notwithstanding the provisions of section 1407(a) of title 28, United States Code, or any other provision of law, no action for equitable relief instituted by the Commission pursuant to the securities laws shall be consolidated or coordinated with other actions not brought by the Commission, even though such other actions may involve common questions of fact, unless such consolidation is consented to by the Commission. The term 'securities laws' as used herein includes the Securities Act of 1933 (15 U.S.C. 77 et seq.), the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.), the Public Utility Holding Company Act of 1935 (15 U.S.C. 79a et seq.), the Trust Indenture Act of 1939 (15 U.S.C. 77aaa et seq.), the Investment Company Act of

1940 (15 U.S.C. 80a-1 et seq.), the Investment Advisers Act of 1940 (15 U.S.C. 80b-1 et seq.), and the Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa et seq.).”

Sec. 18. Section 23 of the Securities Exchange Act of 1934 (15 U.S.C. 78w) is amended to read as follows:

**“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, 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, in making rules and regulations pursuant to any provision of this title, shall consider among other matters the impact any such rule or regulation would have on competition. The Commission 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 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 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, in making rules and regulations pursuant to any provision of this title, considering any application 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, keep in a public file and make available for copying all written statements filed with the Commission and all written communications between the Commission and any person relating to the proposed rule, regulation, application, or proposed rule change; Provided, however, That the Commission shall not be required to keep in a public file or make available for copying and 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.

“(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 such organization, any material recommendation presented as part of such activities to such organization for changes in its organization or rules, and any 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 recommendation;

“(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) beginning in 1975 and ending in 1980, information, data, and recommendations with respect to the development of a national system for the prompt and accurate clearance and settlement of securities transactions, including a summary of the regulatory activities, operational capabilities, financial resources, and plans of self-regulatory organizations and registered transfer agents with respect thereto;

“(D) beginning in 1975 and ending in 1980, a description of the steps taken, and an evaluation of the progress made, toward the establishment of a national market system, and recommendations for further legislation it considers advisable with respect to such system;

“(E) 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;



"(F) 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;

"(G) 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;

"(H) beginning in 1975 and ending in 1980, a description of the effect the absence of any schedule or fixed rates of commissions, allowances, discounts, or other fees to be charged by members for effecting transactions on a national securities exchange is having on the maintenance of fair and orderly markets and the development of a national market system for securities;

"(I) 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;

"(J) 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; and

"(K) 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.

"(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."

SEC. 19. Section 24 of the Securities Exchange Act of 1934 (15 U.S.C. 78a) is amended to read as follows:

**"PUBLIC AVAILABILITY OF INFORMATION**

"SEC. 24. (a) For purposes of section 552 of title 5, United States Code, the term 'records' includes all applications, statements, reports, contracts, correspondence, notices, and other documents filed with or otherwise obtained by the Commission pursuant to this title or otherwise.

"(b) It shall be unlawful for any member, officer, or employee of the Commission to disclose to any person other than a member, officer, or employee of the Commission, or to use for personal benefit, any information contained in any application, statement, report, contract, correspondence, notice, or other document filed with or otherwise obtained by the Commission (1) in contravention of the rules and regulations of the Commission under section 552 of Title 5, United States Code, or (2) in circumstances where the Commission has determined pursuant to such rules to accord confidential treatment to such information. Nothing in this subsection shall authorize the Commission to withhold information from the Congress."

SEC. 20. Section 25 of the Securities Exchange Act of 1934 (15 U.S.C. 78y) is amended to read as follows:

**"COURT REVIEW OF ORDERS AND RULES**

"SEC. 25. (a) (1) A person aggrieved by a final order of the Commission entered pursuant to this title may obtain review of the order in the United States Court of Appeals for the circuit in which he resides or has his principal place of business, or for the District of Columbia Circuit, by filing in such court, within sixty days after the entry of the order, a written petition requesting that the order be modified or set aside in whole or in part.

"(2) A copy of the petition shall be transmitted forthwith by the clerk of the court to a member of the Commission or an officer designated by the Commission for that purpose. Thereupon the Commission shall file in the court the record on which the order complained of is entered, as provided in section 2112 of title 28, United States Code, and the Federal Rules of Appellate Procedure.

"(3) On the filing of the petition, the court has jurisdiction, which becomes exclusive on the filing of the record, to affirm or modify and enforce or to set aside the order in whole or in part.

"(4) The findings of the Commission as to the facts, if supported by substantial evidence, are conclusive.

"(5) If either party applies to the court for leave to adduce additional evidence and shows to the satisfaction of the court that the additional evidence is material and that there was reasonable ground for failure to adduce it before the Commission, the court may remand the case to the Commission for further proceedings, in whatever manner and on whatever conditions the court considers appropriate. If the case is remanded to the Commission, it shall file in the court a supplemental record containing any new evidence, any further or modified findings, and any new order.

"(b) (1) A person adversely affected by a rule of the Commission promulgated pursuant to section 6, 11, 11A, 15(c) (5) or (6), 15A, 17, 17A, or 19 of this title may obtain review of this rule in the United States Court of Appeals for the circuit in which he resides or has his principal place of business or for the District of Columbia Circuit, by filing in such court, within sixty days after the promulgation of the rule, a written petition requesting that the rule be set aside.

"(2) A copy of the petition shall be transmitted forthwith by the clerk of the court to a member of the Commission or an officer desig-

nated for that purpose. Thereupon, the Commission shall file in the court the rule under review and any documents referred to therein, the Commission's notice of proposed rulemaking and any documents referred to therein, all written submissions and the transcript of any oral presentations in the rulemaking, factual information not included in the foregoing that was considered by the Commission in the promulgation of the rule or proffered by the Commission as pertinent to the rule, the report of any advisory committee received or considered by the Commission in the rulemaking, and any other materials prescribed by the court.

"(3) On the filing of the petition, the court has jurisdiction, which becomes exclusive on the filing of the materials set forth in paragraph (2) of this subsection, to affirm and enforce or to set aside the rule.

"(4) The findings of the Commission as to the facts identified by the Commission as the basis, in whole or in part, of the rule, if supported by substantial evidence, are conclusive. The court shall affirm and enforce the rule unless the Commission's action in promulgating the rule is found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; contrary to constitutional right, power, privilege, or immunity; in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; or without observance of procedure required by law.

"(5) If proceedings have been instituted under this subsection in two or more courts of appeals with respect to the same rule, the Commission shall file the materials set forth in paragraph (2) of this subsection in that court in which a proceeding was first instituted. The other courts shall thereupon transfer all such proceedings to the court in which the materials have been filed. For the convenience of the parties in the interest of justice that court may thereafter transfer all the proceedings to any other court of appeals.

"(c) (1) No objection to an order or rule of the Commission, for which review is sought under this section, may be considered by the court unless it was urged before the Commission or there was reasonable ground for failure to do so.

"(2) The filing of a petition under this section does not operate as a stay of the Commission's order or rule. Until the court's jurisdiction becomes exclusive, the Commission may stay its order or rule pending judicial review if it finds that justice so requires. After the filing of a petition under this section, the court, on whatever conditions may be required and to the extent necessary to prevent irreparable injury, may issue all necessary and appropriate process to stay the order or rule or to preserve status or rights pending its review; but (notwithstanding section 705 of title 5, United States Code) no such process may be issued by the court before the filing of the record or the materials set forth in subsection (b) (2) of this section unless: (A) the Commission has denied a stay or failed to grant requested relief, (B) a reasonable period has expired since the filing of an application for a stay without a decision by the Commission, or (C) there was reasonable ground for failure to apply to the Commission.

"(3) When the same order or rule is the subject of one or more petitions for review filed under this section and an action for enforcement filed in a district court of the United States under section 21

(d) or (e) of this title, that court in which the petition or the action is first filed has jurisdiction with respect to the order or rule to the exclusion of any other court, and thereupon all such proceedings shall be transferred to that court; but, for the convenience of the parties in the interest of justice, that court may thereafter transfer all the proceedings to any other court of appeals or district court of the United States, whether or not a petition for review or an action for enforcement was originally filed in the transferee court. The scope of review by a district court under section 21 (d) or (e) of this title is in all cases the same as by a court of appeals under this section.

"(d) (1) For purposes of the preceding subsections of this section, the term 'Commission' includes the agencies enumerated in section 3(a) (34) of this title insofar as such agencies are acting pursuant to this title.

"(2) For purposes of subsection (a) (4) of this section and section 706 of title 5, United States Code, an order of the Commission pursuant to section 19(a) of this title denying registration to a clearing agency for which the Commission is not the appropriate regulatory agency or pursuant to section 19(b) of this title disapproving a proposed rule change by such a clearing agency shall be deemed to be an order of the appropriate regulatory agency for such clearing agency insofar as such order was entered by reason of a determination by such appropriate regulatory agency pursuant to section 19(a) (2) (C) or 19(b) (4) (C) of this title that such registration or proposed rule change would be inconsistent with the safeguarding of securities or funds."

SEC. 21. Section 28 of the Securities Exchange Act of 1934 (15 U.S.C. 78bb) is amended as follows:

(1) Subsection (b) thereof is amended to read as follows:

"(b) Nothing in this title shall be construed to modify existing law with regard to the binding effect (1) on any member of or participant in any self-regulatory organization of any action taken by the authorities of such organization to settle disputes between its members or participants, (2) on any municipal securities dealer or municipal securities broker of any action taken pursuant to a procedure established by the Municipal Securities Rulemaking Board to settle disputes between municipal securities dealers and municipal securities brokers, or (3) of any action described in paragraph (1) or (2) on any person who has agreed to be bound thereby."

(2) The section is further amended by adding at the end thereof the following new subsections:

"(c) The stay, setting aside, or modification pursuant to section 19(e) of this title of any disciplinary sanction imposed by a self-regulatory organization or a member thereof, person associated with a member, or participant therein, shall not affect the validity or force of any action taken as a result of such sanction by the self-regulatory organization prior to such stay, setting aside, or modification: Provided. That such action is not inconsistent with the provisions of this title or the rules or regulations thereunder. The rights of any person acting in good faith which arise out of any such action shall not be affected in any way by such stay, setting aside, or modification.

"(d) No State or political subdivision thereof shall impose any tax on any change in beneficial or record ownership of securities effected through the facilities of a registered clearing agency or registered transfer agent or any nominee thereof or custodian therefor or upon the delivery or transfer of securities to or through or receipt from such agency or agent or any nominee thereof or custodian therefor, unless such change in beneficial or record ownership or such transfer or delivery or receipt would otherwise be taxable by such State or political subdivision if the facilities of such registered clearing agency, registered transfer agent, or any nominee thereof or custodian therefor were not physically located in the taxing State or political subdivision. No State or political subdivision thereof shall impose any tax on securities which are deposited in or retained by a registered clearing agency, registered transfer agent, or any nominee thereof or custodian therefor, unless such securities would otherwise be taxable by such State or political subdivision if the facilities of such registered clearing agency, registered transfer agent, or any nominee thereof or custodian therefor were not physically located in the taxing State or political subdivision.

"(e) (1) No person using the mails, or any means or instrumentality of interstate commerce, in the exercise of investment discretion with respect to an account shall be deemed to have acted unlawfully or to have breached a fiduciary duty under State or Federal law unless expressly provided to the contrary by a law enacted by the Congress or any State subsequent to the date of enactment of the Securities Acts Amendments in 1975 solely by reason of his having caused the account to pay a member of an exchange, broker, or dealer an amount of commission for effecting a securities transaction in excess of the amount of commission another member of an exchange, broker, or dealer would have charged for effecting that transaction, if such person determined in good faith that such amount of commission was reasonable in relation to the value of the brokerage and research services provided by such member, broker, or dealer, viewed in terms of either that particular transaction or his overall responsibilities with respect to the accounts as to which he exercises investment discretion. This subsection is exclusive and plenary insofar as conduct is covered by the foregoing, unless otherwise expressly provided by contract: Provided, however, That nothing in this subsection shall be construed to impair or limit the power of the Commission under any other provision of this title or otherwise.

"(2) A person exercising investment discretion with respect to an account shall make such disclosure of his policies and practices with respect to commissions that will be paid for effecting securities transactions, at such times and in such manner, as the appropriate regulatory agency, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors.

"(3) For purposes of this subsection a person provides brokerage and research services insofar as he—

"(A) furnishes advice, either directly or through publications or writings, as to the value of securities, the advisability of investing in, purchasing, or selling securities, and the availability of securities or purchasers or sellers of securities;

"(B) furnishes analyses and reports concerning issuers, industries, securities, economic factors and trends, portfolio strategy, and the performance of accounts; or

"(C) effects securities transactions and performs functions incidental thereto (such as clearance, settlement, and custody) or required in connection therewith by rules of the Commission or a self-regulatory organization of which such person is a member or person associated with a member or in which such person is a participant."

SEC. 22. Section 31 of the Securities Exchange Act of 1934 (15 U.S.C. 78ee) is amended to read as follows:

#### "TRANSACTION FEES

"SEC. 31. Every national securities exchange shall pay to the Commission on or before March 15 of each calendar year a fee in an amount equal to one three-hundredths of 1 per centum of the aggregate dollar amount of the sales of securities (other than bonds, debentures, and other evidences of indebtedness) transacted on such national securities exchange during each preceding calendar year to which this section applies. Every registered broker and dealer shall pay to the Commission on or before March 15 of each calendar year a fee in an amount equal to one three-hundredths of 1 per centum of the aggregate dollar amount of the sales of securities registered on a national securities exchange (other than bonds, debentures, and other evidences of indebtedness) transacted by such broker or dealer otherwise than on such an exchange during each preceding calendar year: Provided, however, That no payment shall be required for any calendar year in which such payment would be less than one hundred dollars. The Commission, by rule, may exempt any sale of securities or any class of sales of securities from any fee imposed by this section, if the Commission finds that such exemption is consistent with the public interest, the equal regulation of markets and brokers and dealers, and the development of a national market system."

SEC. 23. Section 32 of the Securities Exchange Act of 1934 (15 U.S.C. 78ff) is amended as follows:

(1) Subsection (a) thereof is amended by inserting after the phrase "section 15 of this title" the following: "or by any self-regulatory organization in connection with an application for membership or participation therein or to become associated with a member thereof."

(2) Subsection (c) thereof is deleted.

SEC. 24. The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.), is amended by adding at the end thereof the following new section:

#### "AUTHORIZATION OF APPROPRIATIONS

"SEC. 35. There are hereby authorized to be appropriated to carry out the functions, powers, and duties of the Commission not to exceed \$51,000,000 for the fiscal year ending June 30, 1976 and not to exceed \$55,000,000 for the fiscal year ending September 30, 1977. For fiscal years succeeding the 1977 fiscal year, there may be appropriated such sums as the Congress may hereafter authorize by law."

SEC. 25. The Act entitled "An Act to authorize the Securities and Exchange Commission to delegate certain functions", approved August 20, 1962 (15 U.S.C. 78d-1(b)), is amended as follows:

(1) The last sentence of subsection (a) of the first section thereof is amended by striking the phrase "any rule, regulation, or order pursuant to section 19(b)" and inserting in lieu thereof "any rule pursuant to section 19(c)".

(2) Subsection (b) of the first section thereof is amended to read as follows:

"(b) With respect to the delegation of any of its functions, as provided in subsection (a) of this section, the Commission shall retain a discretionary right to review the action of any such division of the Commission, individual Commissioner, hearing examiner, employee, or employee board, upon its own initiative or upon petition of a party to or intervenor in such action, within such time and in such manner as the Commission, by rule, shall prescribe: Provided, however, That the vote of one member of the Commission shall be sufficient to bring any such action before the Commission for review: And provided further, That a person or party shall be entitled to review by the Commission if he or it is adversely affected by action at a delegated level which (1) denies any request for action pursuant to section 8(a) or section 8(c) of the Securities Act of 1933 or the first sentence of section 12(d) of the Securities Exchange Act of 1934; (2) suspends trading in a security pursuant to section 12(k) of the Securities Exchange Act of 1934; or (3) is pursuant to any provision of the Securities Exchange Act of 1934 in a case of adjudication, as defined in section 551 of title 5, United States Code, not required by that Act to be determined on the record after notice and opportunity for hearing (except to the extent there is involved a matter described in section 554(a)(1) through (6) of title 5, United States Code)."

SEC. 26. Section 9(c) of the Securities Investor Protection Act of 1970 (15 U.S.C. 78iii(c)) is amended to read as follows:

"(c) INSPECTIONS.—The self-regulatory organization of which a member of SIPC is a member shall inspect or examine such member for compliance with applicable financial responsibility rules, except that if a member of SIPC is a member of more than one self-regulatory organization, the Commission, pursuant to section 17(d) of the 1934 Act, shall designate one of such self-regulatory organizations as responsible for the examination of such member for compliance with applicable financial responsibility rules."

SEC. 27. (a) Section 24 of the Securities Act of 1933 (15 U.S.C. 77a) is amended by changing the figure "5,000" to "10,000".

(b) Section 32(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78ff(a)) is amended by changing the phrase "or imprisoned not more than two years" to read "or imprisoned not more than five years".

(c) Section 29 of the Public Utility Holding Company Act of 1935 (15 U.S.C. 79z-3) is amended by changing the phrase "or imprisoned not more than two years" to read "or imprisoned not more than five years".

(d) Section 325 of the Trust Indenture Act of 1939 (15 U.S.C. 77yyy) is amended by changing the figure "\$5,000" to "\$10,000".

(e) Section 49 of the Investment Company Act of 1940 (15 U.S.C. 80a-48) is amended by changing the phrase "or imprisoned not more than two years" to read "or imprisoned not more than five years".

(f) Section 217 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-17) is amended by changing the phrase "imprisoned for not more than two years" to read "imprisoned for not more than five years".

SEC. 28. The Investment Company Act of 1940 (15 U.S.C. 80a-15) is amended as follows:

(1) Section 15 thereof is amended by adding at the end thereof the following new subsection:

"(f) (1) An investment adviser, or a corporate trustee performing the functions of an investment adviser, of a registered investment company or an affiliated person of such investment adviser or corporate trustee may receive any amount or benefit in connection with a sale of securities of, or a sale of any other interest in, such investment adviser or corporate trustee which results in an assignment of an investment advisory contract with such company or the change in control of or identity of such corporate trustee, if—

"(A) for a period of three years after the time of such action, at least 75 per centum of the members of the board of directors of such registered company or such corporate trustee (or successor thereto, by reorganization or otherwise) are not (i) interested persons of the investment adviser of such company or such corporate trustee, or (ii) interested persons of the predecessor investment adviser or such corporate trustee; and

"(B) there is not imposed an unfair burden on such company as a result of such transaction or any express or implied terms, conditions, or understandings applicable thereto.

"(2) (A) For the purpose of paragraph (1) (A) of this subsection, interested persons of a corporate trustee shall be determined in accordance with section 2(a) (19) (B): Provided, That no person shall be deemed to be an interested person of a corporate trustee solely by reason of (i) his being a member of its board of directors or advisory board or (ii) his membership in the immediate family of any person specified in clause (i) of this subparagraph.

"(B) For the purpose of paragraph (1) (B) of this subsection, an unfair burden on a registered investment company includes any arrangement, during the two-year period after the date on which any such transaction occurs, whereby the investment adviser or corporate trustee or predecessor or successor investment advisers or corporate trustee or any interested person of any such adviser or any such corporate trustee receives or is entitled to receive any compensation directly or indirectly (i) from any person in connection with the purchase or sale of securities or other property to, from, or on behalf of such company, other than bona fide ordinary compensation as principal underwriter for such company, or (ii) from such company or its security holders for other than bona fide investment advisory or other services.

"(3) If—

"(A) an assignment of an investment advisory contract with a registered investment company results in a successor investment adviser to such company, or if there is a change in control of or identity of a corporate trustee of a registered investment com-

pany, and such adviser or trustee is then an investment adviser or corporate trustee with respect to other assets substantially greater in amount than the amount of assets of such company, or

“(B) as a result of a merger of, or a sale of substantially all the assets by, a registered investment company with or to another registered investment company with assets substantially greater in amount, a transaction occurs which would be subject to paragraph (1) (A) of this subsection,

such discrepancy in size of assets shall be considered by the Commission in determining whether or to what extent an application under section 6(c) for exemption from the provisions of paragraph (1) (A) should be granted.

“(4) Paragraph (1) (A) of this subsection shall not apply to a transaction in which a controlling block of outstanding voting securities of an investment adviser to a registered investment company or of a corporate trustee performing the functions of an investment adviser to a registered investment company is—

“(A) distributed to the public and in which there is, in fact, no change in the identity of the persons who control such investment adviser or corporate trustee, or

“(B) transferred to the investment adviser or the corporate trustee, or an affiliated person or persons of such investment adviser or corporate trustee, or is transferred from the investment adviser or corporate trustee to an affiliated person or persons of the investment adviser or corporate trustee: Provided, That (i) each transferee (other than such adviser or trustee) is a natural person and (ii) the transferees (other than such adviser or trustee) owned in the aggregate more than 25 per centum of such voting securities for a period of at least six months prior to such transfer.”

(2) Section 15(c) thereof is amended by adding at the end thereof a new sentence as follows: “It shall be unlawful for the directors of a registered investment company, in connection with their evaluation of the terms of any contract whereby a person undertakes regularly to serve or act as investment adviser of such company, to take into account the purchase price or other consideration any person may have paid in connection with a transaction of the type referred to in paragraph (1), (3), or (4) of subsection (f).”

(3) Section 16 thereof is amended as follows:

(A) in the first sentence of subsection (b) by striking out “The provisions of subsection (a) of this section” and inserting in lieu thereof “The foregoing provisions of this section”;

(B) by redesignating subsection (b) as subsection (c), striking out “this subsection (b)” therein, and inserting in lieu thereof “this subsection (c)”;

(C) by adding after subsection (a) thereof the following new subsection:

“(b) Any vacancy on the board of directors of a registered investment company which occurs in connection with compliance with section 15(f) (1) (A) and which must be filled by a person who is not an interested person of either party to a transaction subject to section 15(f) (1) (A) shall be filled only by a person (1) who has been selected and proposed for election by a majority of the directors of such com-

pany who are not such interested persons, and (2) who has been elected by the holders of the outstanding voting securities of such company, except that in the case of the death, disqualification, or bona fide resignation of a director selected and elected pursuant to clauses (1) and (2) of this subsection (b), the vacancy created thereby may be filled as provided in subsection (a).”

(4) Section 13(b), 15(d), 18(i), and 32(a) thereof are amended by striking out the phrases “subsection (b) of section 16” and “section 16(b)” wherever they occur and inserting in lieu thereof “section 16(c)”.

(5) Section 10(e) thereof is amended to read as follows:

“(e) If by reason of the death, disqualification, or bona fide resignation of any director or directors, the requirements of the foregoing provisions of this section or of section 15(f) (1) in respect of directors shall not be met by a registered investment company, the operation of such provision shall be suspended as to such registered company—

“(1) for a period of thirty days if the vacancy or vacancies may be filled by action of the board of directors;

“(2) for a period of sixty days if a vote of stockholders is required to fill the vacancy or vacancies; or

“(3) for such longer period as the Commission may prescribe, by rules and regulations upon its own motion or by order upon application, as not inconsistent with the protection of investors.”

(6) Section 9 thereof is amended by adding at the end thereof the following new subsection:

“(d) For the purposes of subsections (a) through (c) of this section, the term ‘investment adviser’ includes a corporate or other trustee performing the functions of an investment adviser.”

(7) Section 36 thereof is further amended by adding at the end thereof the following new subsection:

“(d) For the purposes of subsections (a) through (c) of this section, the term ‘investment adviser’ includes a corporate or other trustee performing the functions of an investment adviser.”

Sec. 29. The Investment Advisers Act of 1940 (15 U.S.C. 80b) is amended as follows:

(1) Subsection (c) of section 203 thereof is amended to read as follows:

“(c)(1) An investment adviser, or any person who presently contemplates becoming an investment adviser, may be registered by filing with the Commission an application for registration in such form and containing such of the following information and documents as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors:

“(A) the name and form of organization under which the investment adviser engages or intends to engage in business; the name of the State or other sovereign power under which such investment adviser is organized; the location of his or its principal business office and branch offices, if any; the names and addresses of his or its partners, officers, directors, and persons performing similar functions or, if such an investment adviser be an individual, of such individual; and the number of his or its employees;



"(B) the education, the business affiliations for the past ten years, and the present business affiliations of such investment adviser and of his or its partners, officers, directors, and persons performing similar functions and of any controlling person thereof;

"(C) the nature of the business of such investment adviser, including the manner of giving advice and rendering analyses or reports;

"(D) a balance sheet certified by an independent public accountant and other financial statements (which shall, as the Commission specifies, be certified);

"(E) the nature and scope of the authority of such investment adviser with respect to clients' funds and accounts;

"(F) the basis or bases upon which such investment adviser is compensated;

"(G) whether such investment adviser, or any person associated with such investment adviser, is subject to any disqualification which would be a basis for denial, suspension, or revocation of registration of such investment adviser under the provisions of subsection (e) of this section; and

"(H) a statement as to whether the principal business of such investment adviser consists or is to consist of acting as investment adviser and a statement as to whether a substantial part of the business of such investment adviser, consists or is to consist of rendering investment supervisory services.

"(2) Within forty-five days of the date of the filing of such application (or within such longer period as to which the applicant consents) the Commission shall—

"(A) by order grant such registration; or

"(B) institute proceedings to determine whether registration should be denied. Such proceedings shall include notice of the grounds for denial under consideration and opportunity for hearing and shall be concluded within one hundred twenty days of the date of the filing of the application for registration. At the conclusion of such proceedings the Commission, by order, shall grant or deny such registration. The Commission may extend the time for conclusion of such proceedings for up to ninety days if it finds good cause for such extension and publishes its reasons for so finding or for such longer period as to which the applicant consents.

The Commission shall grant such registration if the Commission finds that the requirements of this section are satisfied. The Commission shall deny such registration if it does not make such a finding or if it finds that if the applicant were so registered, its registration would be subject to suspension or revocation under subsection (e) of this section."

(2) Subsection (e) of section 203 thereof, is amended to read as follows:

"(e) The Commission, by order, shall censure, place limitations on the activities, functions, or operations of, suspend for a period not

exceeding twelve months, or revoke the registration of any investment adviser if it finds, on the record after notice and opportunity for hearing, that such censure, placing of limitations, suspension, or revocation is in the public interest and that such investment adviser, or any person associated with such investment adviser, whether prior to or subsequent to becoming so associated—

"(1) has willfully made or caused to be made in any application for registration or report required to be filed with the Commission under this title, or in any proceeding before the Commission with respect to registration, any statement which was at the time and in the light of the circumstances under which it was made false or misleading with respect to any material fact, or has omitted to state in any such application or report any material fact which is required to be stated therein.

"(2) has been convicted within ten years preceding the filing of any application for registration or at any time thereafter of any felony or misdemeanor which the Commission finds—

"(A) involves the purchase or sale of any security, the taking of a false oath, the making of a false report, bribery, perjury, burglary, or conspiracy to commit any such offense;

"(B) arises out of the conduct of the business of a broker, dealer, municipal securities dealer, investment adviser, bank, insurance company, or fiduciary;

"(C) involves the larceny, theft, robbery, extortion, forgery, counterfeiting, fraudulent concealment, embezzlement, fraudulent conversion, or misappropriation of funds or securities; or

"(D) involves the violation of section 152, 1341, 1342, or 1343 or chapter 25 or 47 of title 18, United States Code.

"(3) is permanently or temporarily enjoined by order, judgment, or decree of any court of competent jurisdiction from acting as an investment adviser, underwriter, broker, dealer, or municipal securities dealer, or as an affiliated person or employee of any investment company, bank, or insurance company, or from engaging in or continuing any conduct or practice in connection with any such activity, or in connection with the purchase or sale of any security.

"(4) has willfully violated any provision of the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Company Act of 1940, this title, or the rules or regulations under any such statutes or any rule of the Municipal Securities Rulemaking Board, or is unable to comply with any such provision.

"(5) has willfully aided, abetted, counseled, commanded, induced, or procured the violation by any other person of any provision of the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Company Act of 1940, this title, the rules or regulations under any of such statutes, or the rules of the Municipal Securities Rulemaking Board, or has failed reasonably to supervise, with a view to preventing violations of the provisions of such statutes, rules, and regulations, another person who com-

mits such a violation, if such other person is subject to his supervision. For the purposes of this paragraph (5) no person shall be deemed to have failed reasonably to supervise any person, if—

“(A) there have been established procedures, and a system for applying such procedures, which would reasonably be expected to prevent and detect, insofar as practicable, any such violation by such other person, and

“(B) such person has reasonably discharged the duties and obligations incumbent upon him by reason of such procedures and system without reasonable cause to believe that such procedures and system were not being complied with.

“(6) is subject to an order of the Commission entered pursuant to subsection (f) of this section barring or suspending the right of such person to be associated with an investment adviser which order is in effect with respect to such person.”

(3) Subsection (f) of section 203 thereof is amended to read as follows:

“(f) The Commission, by order, shall censure or place limitations on the activities of any person associated or seeking to become associated with an investment adviser, or suspend for a period not exceeding twelve months or bar any such person from being associated with an investment adviser, if the Commission finds, on the record after notice and opportunity for hearing, that such censure, placing of limitations, suspension, or bar is in the public interest and that such person has committed or omitted any act or omission enumerated in paragraph (1), (4), or (5) of subsection (e) of this section or has been convicted of any offense specified in paragraph (2) of said subsection (e) within ten years of the commencement of the proceedings under this subsection, or is enjoined from any action, conduct, or practice specified in paragraph (3) of said subsection (e). It shall be unlawful for any person as to whom such an order suspending or barring him from being associated with an investment adviser is in effect willfully to become, or to be, associated with an investment adviser without the consent of the Commission, and it shall be unlawful for any investment adviser to permit such a person to become, or remain, a person associated with him without the consent of the Commission, if such investment adviser knew, or in the exercise of reasonable care, should have known, of such order.”

(4) Section 203 thereof is further amended by striking out subsection (g) thereof and redesignating subsections (h) and (i) thereof as subsections (g) and (h), respectively.

(5) Section 204 thereof is amended to read as follows:

“Sec. 204. Every investment adviser who makes use of the mails or of any means or instrumentality of interstate commerce in connection with his or its business as an investment adviser (other than one specifically exempted from registration pursuant to section 203(b) of this title), shall make and keep for prescribed periods such records (as defined in section 3(a)(37) of the Securities Exchange Act of 1934), furnish such copies thereof, and make and disseminate such reports as the Commission, by rule, may prescribe as necessary or

appropriate in the public interest or for the protection of investors. All records (as so defined) of such investment advisers are subject at any time, or from time to time, to such reasonable periodic, special, or other examinations by representatives of the Commission as the Commission deems necessary or appropriate in the public interest or for the protection of investors.”

SEC. 30. Section 4 of the Securities Act of 1933 (15 U.S.C. 77(d)) is amended by adding at the end thereof the following new paragraph:

“(5) (A) Transactions involving offers or sales of one or more promissory notes directly secured by a first lien on a single parcel of real estate upon which is located a dwelling or other residential or commercial structure, and participation interests in such notes—

“(i) where such securities are originated by a savings and loan association, savings bank, commercial bank, or similar banking institution which is supervised and examined by a Federal or State authority, and are offered and sold subject to the following conditions:

“(a) the minimum aggregate sales price per purchaser shall not be less than \$250,000;

“(b) the purchaser shall pay cash either at the time of the sale or within sixty days thereof; and

“(c) each purchaser shall buy for his own account only; or

“(ii) where such securities are originated by a mortgagee approved by the Secretary of Housing and Urban Development pursuant to sections 203 and 211 of the National Housing Act, and are offered or sold subject to the three conditions specified in subparagraph (A)(i) to any institution described in such subparagraph or to any insurance company subject to the supervision of the insurance commissioner, or any agency or officer performing like function, of any State or territory of the United States or the District of Columbia, or the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, or the Government National Mortgage Association.

“(B) Transactions between any of the entities described in subparagraph (A)(i) or (A)(ii) hereof involving non-assignable contracts to buy or sell the foregoing securities which are to be completed within two years, where the seller of the foregoing securities pursuant to any such contract is one of the parties described in subparagraph (A)(i) or (A)(ii) who may originate such securities and the purchaser of such securities pursuant to any such contract is any institution described in subparagraph (A)(i) or any insurance company described in subparagraph (A)(ii), the Federal Home Loan Mortgage Corporation, Federal National Mortgage Association, or the Government National Mortgage Association and where the foregoing securities are subject to the three conditions for sale set forth in subparagraphs (A)(i) (a) through (c).

“(C) The exemption provided by subparagraphs (A) and (B) hereof shall not apply to resales of the securities acquired pursuant thereto, unless each of the conditions for sale contained in subparagraphs (A)(i) (a) through (c) are satisfied.”

*SEC. 31. (a) This Act shall become effective on the date of its enactment except as hereinafter provided. The amendments made by this Act to sections 3(a)(12), 6 (a) through (d), 11A(b), 15(a), 15A, 15B(a), 17A (b) and (c), and 19(g) of the Securities Exchange Act of 1934 shall become effective one hundred eight days after the date of enactment of this Act, and the amendments made by this Act to section 31 of the Securities Exchange Act of 1934 shall become effective on January 1, 1976. Neither the provisions of section 3(a)(3), 6(b)(2), or 6(c)(1) of the Securities Exchange Act of 1934 (as amended by this Act) nor any rule or regulation thereunder shall apply so as to deprive any person of membership in any national securities exchange (or its successor) of which such person was, on the date of enactment of this Act, a member or a member firm as defined in the constitution of such exchange, or so as to deny membership in any such exchange (or its successor) to any natural person who is or becomes associated with such member or member firm.*

*(b) If it appears to the Commission at any time within one year of the effective date of any amendment made by this Act to the Securities Exchange Act of 1934 that the organization or rules of any national securities exchange or registered securities association registered with the Commission on the date of enactment of this Act do not comply with such Act as amended, the Commission shall so notify such exchange or association in writing, specifying the respects in which the exchange or associations is not in compliance with such Act. On and after the one hundred eightieth day following the date of receipt of such notice by a national securities exchange or registered securities association, the Commission, without regard to the provisions of section 19(h) of the Securities Exchange Act of 1934, as amended by this Act, is authorized by order, to suspend the registration of any such exchange or association or impose limitations on the activities, functions, and operations of any such exchange or association, if the Commission finds, after notice and opportunity for hearing, that the organization or rules of such exchange or association do not comply with such Act. Any such suspension or limitation shall continue in effect until the Commission, by order, declares that such exchange or association is in compliance with such requirements.*

And the House agree to the same.

That the Senate recede from its disagreement to the amendment of the House to the title of the Senate bill and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the amendment of the House to the title of the Senate bill, insert the following: "An Act to amend the Securities Exchange Act of 1934 to remove barriers to competition, to foster the development of a national securities market system and a national clearance and settlement system, to make uniform the Securities and Exchange Commission's authority over self-regulatory organizations, to provide for the regulation of brokers, dealers and banks trading in municipal securities, to facilitate the collection and public dissemination of information concern-

ing the holdings of and transactions in securities by institutional investment managers, and for other purposes."

And the House agree to the same.

HARLEY O. STAGGERS,  
JOHN E. MOSS,  
LIONEL VAN DEERLIN,  
W. S. (BILL) STUCKEY, JR.,  
BOB ECKHARDT,  
JOHN Y. MCCOLLISTER,  
JAMES T. BROYHILL,  
*Managers on the Part of the House.*  
WILLIAM PROXMIRE,  
HARRISON A. WILLIAMS, JR.,  
THOMAS J. MCINTYRE,  
JOHN TOWER,  
EDWARD W. BROOKE,  
*Managers on the Part of the Senate.*

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE  
OF CONFERENCE

The managers on the part of the House and Senate at the conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 249) to amend the Securities Exchange Act of 1934, and for other purposes, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The House amendment to the text of the bill struck out all of the Senate bill after the enacting clause and inserted a substitute text.

The Senate recedes from its disagreement to the amendment of the House with an amendment which is a substitute for the Senate bill and the House amendment. The differences between the Senate bill, the House amendment, and the substitute agreed to in conference are noted below, except for clerical corrections, conforming changes made necessary by agreements reached by the conferees, and minor drafting and clarifying changes.

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## INTRODUCTION

The securities markets of the United States are an important national asset. Under the system of Federal regulation established in the 1930's, these markets have flourished. They have provided a means for millions of Americans to share in the profits of our free enterprise system and have facilitated the raising of capital by new and growing businesses.

Growth and success, however, have brought problems in the wake. Unfortunately, the statutory and regulatory structure has not kept up with economic and technological changes or with shifts in public investment patterns. The result have been operational breakdowns and economic distortions which have impaired public confidence in the securities markets and have at times posed threats to the viability of our entire equity investment system.

Against this background, four years ago the Congress began the most searching reexamination of the competitive, statutory, and economic issues facing the securities markets, the securities industry, and, of course, public investors, since the 1930's. This legislation is the culmination of that effort. As such, it is designed to remedy past problems and regulatory and self-regulatory deficiencies. It is perhaps more important, in the conferees' view, that this legislation insure investors—both in this country and abroad—that our securities markets will remain vigorous and efficient in the years ahead.

The securities markets of the United States are indispensable to the growth and health of this country's and the world's economy. In order to raise the enormous sums of investment capital that will be needed in the years ahead and to assure that that capital is properly allocated among competing uses, these markets must continue to operate fairly and efficiently. The increasing tempo and magnitude of the changes that are occurring in our domestic and international economy make it clear that the securities markets are due to be tested as never before. Unless these markets adapt and respond to the demands placed upon them, there is a danger that America will lose ground as an international financial center and that the economic, financial and commercial interests of the Nation will suffer.

The rapid attainment of a national market system as envisaged by this bill is important, therefore, not simply to provide greater investor protection and bolster sagging investor confidence but also to assure that the country maintains a strong, effective and efficient capital raising and capital allocating system in the years ahead.

The basic goals of the Exchange Act remain salutatory and unchallenged: To provide fair and honest mechanisms for the pricing of securities, to assure that dealing in securities is fair and without undue preferences or advantages among investors, to ensure that securities can be purchased and sold at economically efficient transaction costs,

and to provide, to the maximum degree practicable, markets that are open and orderly. This bill is an important step in assuring that the securities markets and the regulation of the securities industry remain strong and capable of fostering these fundamental goals under changing economic and technological conditions.

#### A NATIONAL MARKET SYSTEM FOR SECURITIES

##### 1. Objectives of a national market system and SEC authority

After setting forth Congressional findings concerning the importance of establishing a national market system for trading qualified securities, both the Senate bill and the House amendment required the Commission to take affirmative action toward the creation of such a system.

The House amendment directed the Commission to establish a national market system for transactions in securities and, further, prescribed the basic elements of the system. These elements included a transactional reporting system, a composite quotation system, and a system of rules and regulations designed to provide fair competition between competitors within the system.

The Senate bill did not direct the Commission to create the national market system. Instead, it directed the Commission to facilitate the establishment of the system in accordance with enumerated Congressional findings and objectives. The Senate bill relied on an approach designed to provide maximum flexibility to the Commission and the securities industry in giving specific content to the general concept of the national market system.

The conference substitute adopts, with minor revisions, the provisions of the Senate bill. It is the intent of the conferees that the national market system evolve through the interplay of competitive forces as unnecessary regulatory restrictions are removed. The conferees expect, however, in those situations where competition may not be sufficient, such as the creation of a composite quotation system or a consolidated transactional reporting system, the Commission will use the powers granted to it in this bill to act promptly and effectively to insure that the essential mechanisms of an integrated secondary trading system are put into place as rapidly as possible.

The House amendment directed the SEC to prescribe rules providing for the fair and reasonable allocation of the costs associated with the development and operation of a national market system. The Senate bill contained no comparable provision. The House receded to the Senate, since it was generally felt by the conferees that the provisions of the conference substitute providing for the equitable allocation of dues, fees, and other charges levied by self-regulatory organizations would adequately resolve this matter.

The Senate bill specifically referred to the possibility of subsystems within the national market system. The conferees determined that such reference is desirable. Although the studies and hearings on which the bills are based were concerned almost exclusively with common stocks, it is the intention of both Houses that all securities, other than exempted securities, be eligible to be qualified for trading in the national market system. The unique characteristics of other securities,

however, may require treatment different from that for listed common stocks. For example, it has not been determined whether a transactional reporting system is appropriate for debt securities. Accordingly, the Commission should have the flexibility of establishing subsystems within the national market system which are tailored to the characteristics of the particular types of securities which are to be traded in each subsystem.

##### 2. Communication among and dissemination of information about securities markets

Since communications systems, particularly those designed to provide automated dissemination of last sale and quotation information with respect to securities, will form the heart of the national market system, they were addressed in each of the bills in conference. In both the Senate bill and House amendment, the SEC was given pervasive rulemaking power to regulate securities communications systems, e.g., securities information processors, thus bringing directly under the SEC's jurisdiction all organizations engaged in the business of collecting, processing, or publishing information relating to quotations for and transactions in securities.

The Senate bill required securities information processors which act as exclusive processors to register with the Commission and provided the Commission with the authority to require the registration of other categories of securities information processors. The reference to exclusive processors did not constitute a mandate for a single securities information processor at any stage in the processing of quotation or transactional data, but merely recognized that where a self-regulatory organization or organizations utilize an exclusive processor, that processor takes on certain of the characteristics of a public utility and should be regulated accordingly.

The Senate bill gave the SEC administrative authority to regulate and oversee the activities of registered securities information processors. For example, the Commission was authorized to censure or place limitations on the activities, functions, or operations of any registered securities information processor, or to suspend or revoke its registration for violations of the Securities Exchange Act or the rules or regulations thereunder. In addition, the Commission was authorized to review and set aside any exclusionary action by a registered securities information processor. The House amendment contained no comparable provisions. The House receded to the Senate.

Finally, the Senate bill and the House amendment required the Commission to assure that equal regulation, within the national market system, is achieved. Under the House amendment, the Commission was directed to promulgate rules and regulations applicable to specialists, market makers and certain other dealers who perform similar functions to assure that competition occurs within the context of equal regulatory requirements. Equal regulation was defined in competitive terms and would have been applicable only to dealers.

The Senate bill also defined "equal regulation" in competitive terms, but made it applicable generally to the regulation of the trading markets and the conduct of the securities industry. Equal regulation was applied in broader areas in the Senate bill, directing the Commission to

assure equal regulation not only of dealers, but also of all markets for qualified securities, exchange members, and brokers. The Senate provision was agreed upon in conference with a modification to make clear that it is the Commission, subject to appropriate judicial review, that is to decide whether any regulatory disparity is not necessary or appropriate in furtherance of the purposes of the Exchange Act. The conferees expect that Commission will act in these areas in an expeditious manner to remove unjustified disparities in regulation as may result in unfair competitive advantages.

### *3. Elimination of unnecessary regulatory restrictions*

Both the Senate bill and the House amendment contained provisions directing the elimination of restrictive rules and practices which prohibit brokers from searching out the best price for their customers or which limit or impede market making activities as inconsistent with the development of a national market system.

With respect to exchange rules which limit or condition a member's ability to transmit business or any other exchange or otherwise than on an exchange, the House bill specifically required their elimination after September 1, 1975, unless specifically reviewed and approved by the Commission. Upon review of such rules, the Commission would be required to find that (1) any limitation or condition imposed on the ability of an exchange or association member to select among competing markets was consistent with such member's agency obligation to his customer and (2) the restriction was otherwise necessary to accomplish the purposes of the Exchange Act.

The Senate bill did not attempt to eliminate specific enumerated barriers to competition. Rather, the Senate bill charged the SEC with an explicit and pervasive obligation to eliminate all present and future competitive restraints that could not be justified by the purposes of the Exchange Act. The Commission was directed to remove existing burdens on competition and to refrain from imposing, or permitting to be imposed, any new regulatory burden "not necessary or appropriate in furtherance of the purposes" of the Exchange Act. Thus, the Commission was obligated to review existing and proposed rules of the self-regulatory organizations and to abrogate any present rule, or to disapprove any proposed rule imposing a competitive restraint neither necessary nor appropriate in furtherance of a legitimate regulatory objective. Similarly, the Commission was empowered to review disciplinary actions of the self-regulatory organizations and to set aside any such action it found to impose a burden on competition determined by the Commission to be neither necessary nor appropriate in furtherance of the purposes of the Exchange Act. Further, the Commission was required to evaluate its own regulatory proposals in light of the fundamental national economic policy of furthering competition and was prohibited from promulgating any rule which imposed a burden on competition not necessary or appropriate to achieve the purposes of the Exchange Act. The Commission's responsibility under the Senate bill is to balance the perceived anticompetitive effects of a regulatory policy or decision (whether its own or that of a self-regulatory organization) against the purposes of the Exchange Act that are advanced thereby and the costs of doing so.

The conference substitute accepts the Senate provisions with respect to competitive standards. A specific provision is added, however, concerning exchange rules which limit or condition the ability of members to effect transactions in securities otherwise than on such exchanges. The Commission is directed to review such rules de novo in light of the specific competitive standards added by the Securities Acts Amendments of 1975 and, on or before the 90th day following the date of enactment of the Securities Acts Amendments of 1975, to (1) report to the Congress the results of its review, including the effects on competition of such rules, and (2) commence a proceeding if such rules do not meet these requirements in accordance with the provisions of new section 19(c) of the Exchange Act. Such proceeding must be concluded within 90 days of the date of its commencement. Should there be an appeal from any rule issued by the Commission at the conclusion of such proceeding, the court of appeals is directed to expedite any such appeal.

### *4. Regulation of market makers*

The Senate bill amended section 11(b) of the Exchange Act, concerning the Commission's broad powers over exchange specialists, to delete the existing negative obligation on specialist trading. The amendments to section 11(b) also made clear that the Commission may limit the activity of a specialist to that of a broker or dealer. The House amendment contained no comparable provisions. The House agreed to the Senate provisions.

The Senate bill and the House amendment both give the Commission authority to regulate the activities of market makers other than specialists. The Senate bill in addition gave the Commission the authority to prohibit a securities firm from acting as both broker and dealer in the same security. The House agreed to the Senate provision.

### *5. Unlisted trading privileges*

The Senate bill contained provisions permitting an exchange to commence trading in securities which are not listed on any exchange. Standards are provided to guide the Commission in considering applications for the extension of so-called unlisted trading privileges, including the public trading activity in the security, the impact on the extension on the existing markets for the security and on competition, and the progress that has been made toward the development of a national market system. The House amendment contained no comparable provisions. The House accepted the Senate provision with an amendment to make clear that unlisted trading privileges may not be granted if the effect would be to restrict rather than to increase competition.

### *6. Third market trading*

The Senate bill and House amendment contained provisions augmenting the Commission's general rulemaking powers to deal with any serious disruptions in the markets for listed securities caused by the trading of such securities otherwise than on a national securities exchange, e.g., in the third market. These provisions are generally referred to as "failsafe powers," reflecting the expectation that they are provisions which may only be used as regulatory powers of last resort.

The Senate bill directed the SEC to take all steps within its power to correct any adverse effect on the fairness or orderliness of the markets for listed securities caused by third market trading. The SEC was further authorized, after a hearing at which interested persons are provided the opportunity to make oral presentations, and upon prescribed findings, to confine trading in listed securities to national securities exchanges. The findings were first, that no rule of any exchange (other than an exchange rule fairly and reasonably prescribing the sequence for the execution of orders or adopted pursuant to a Commission rule under the Exchange Act) unreasonably impaired the ability of any dealer to solicit or effect transactions for his own account; and second, that no exchange rule unreasonably restricted competition among dealers generally or between any class of dealers and registered specialists.

Under the House amendment, the SEC's authority included the ability to prohibit any broker or dealer from purchasing or selling any listed security on a national securities exchange or otherwise than on a national securities exchange. In addition, the House amendment required the Commission to exercise its authority on the record, thus requiring the Commission to afford a full opportunity for cross examination and the presentation of evidence. Furthermore, the Commission would have had to find that (1) existing Commission rules are not sufficient to assure the protection of investors and the maintenance of a fair and orderly market and (2) the protection of investors and the maintenance of a fair and orderly market may not be assured through other lawful means.

The conference substitute reflects a blending of the provisions of the Senate bill and the House amendment. Thus, the Commission would be authorized to act only after an "on the record" proceeding as provided in the House amendment. The Commission's authority, however, would extend only to trading otherwise than on an exchange, as provided in the Senate bill. And in order to exercise its authority, the Commission would be required to make the findings contained in both the Senate bill and the House amendment.

#### *7. Governance of the national market system*

The Senate bill expressly authorized the Commission to (1) create advisory committees pursuant to the Federal Advisory Committee Act to assist it in carrying out its mandate to establish a national market system, (2) authorize or require self-regulatory organizations to act jointly in planning, developing, operating or regulating the national market system or facilities of that system, and (3) study the need to modify the scheme of self-regulation. The House amendment did not contain similar general provisions authorizing the formation of advisory committees. The House agreed to the Senate provisions

The Senate bill also authorized the establishment of a new self-regulatory organization, the National Market System Council, and prescribed the composition of the Council, as well as its authority to develop and govern the national market system.

The House amendment did not establish or authorize the establishment of a new governing body. The Commission was authorized and directed, however, to appoint a fifteen-member advisory committee,

called the National Market Board to perform three functions with respect to the national market system. The Board would have been empowered to (1) advise the Commission as to the development of the national market system; (2) furnish the Commission with its views on significant regulatory proposals filed with the SEC by national securities exchanges and registered securities associations; and (3) conduct a feasibility study of the need for a new self-regulatory body, entitled a National Market Regulatory Board, to administer the national market system, and report to the Congress its recommendations. The Commission was authorized to allocate the Board up to \$300,000 for this purpose.

The Senate receded to the House on the establishment of a new self-regulatory organization and accepted the House provisions on the National Market Board with two amendments. First, the \$300,000 authorization is eliminated. The Commission has in the past had the benefit of a number of advisory committee and none has had specific budget authorizations. Since the National Market Board will act in an advisory capacity, the conferees saw no reason for a separate budget authorization for this Board. The Commission may make available to the advisory committee such of its staff as it deems appropriate.

Second, the provision that the Board may have a majority of its members from the securities industry was amended to provide that a majority shall be from that industry. The provision specifically requires geographic dispersion among the appointees to the Board. In addition, the conferees expect that in making appointments the Commission will select persons from different segments of the industry.

In choosing nonindustry members to the Board, the conferees again expect adequate representation to be given, to the maximum extent practicable, to investors, both small and large, issuers, vendors, and other persons who will be affected by the national market system.

#### SELF-REGULATION AND SEC OVERSIGHT

##### *1. Concept of exchange membership*

Both the Senate bill and the House amendment required exchanges to admit to membership any registered broker or dealer meeting applicable capital and competency requirements. However, the authority of an exchange to continue to limit the number of its members was treated in different ways.

The Senate bill expressly authorized exchanges, by rule, to limit the number of its members, subject to the SEC's ability to abrogate or amend any such limitation as it deemed necessary or appropriate in the public interest, for the protection of investors, to insure the fair administration of the exchange, or otherwise in furtherance of the purposes of the Exchange Act.

The House amendment expressly prohibited exchanges from limiting the number of memberships, thus requiring "open membership". The House amendment provided that with respect to exchanges registered with the Commission on the date of enactment of the bill, the open membership provisions would not take effect until January 1, 1978, or one year later if the Commission found that the provisions could not be equitably and reasonably implemented by the earlier date.

The Commission was required to notify the Congress no later than June 30, 1977, whether those provisions could be equitably and reasonably implemented by January 1, 1978.

The substitute agreed to in conference gives qualified authority to a national securities exchange to limit both the number of members in absolute terms and the number of persons who may directly use its facilities without the services of another person acting as broker, subject to the following conditions. First, exchanges would not be permitted to decrease the number of members or the number of members and designated representatives permitted to effect transactions on the floor below the number in effect on May 1, 1975, or the date of its registration, whichever is later.

Second, in accordance with the Commission's authority to amend any rule of a national securities exchange, the conference substitute expressly empowers the SEC to require an exchange to increase (but not to decrease) the number of its members and the number of members and designated representatives permitted on the floor or to remove entirely any limitations in the event it determines that such provisions impose burdens on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

#### *2. Public representatives on the board of directors*

Both the Senate bill and the House amendment made substantial changes in the provisions of the Exchange Act dealing with the registration, regulation and responsibilities of national securities exchanges and registered securities associations. Among its provisions, the House amendment required that the board of directors of exchanges and associations include public representatives and further required an exchange or association to appropriate for the use of the public representatives reasonable sums to employ staff independent of the staff of the exchange or association. The Senate bill left these matters to the discretion of the exchange or association.

The Senate receded to the House with an amendment that the board of directors of an exchange or association must contain at least one individual who is not a broker, dealer, member, or person associated with a broker, dealer, or member. There is no requirement, however, as in the House amendment, for exchanges and associations to provide reasonable funds for a separate staff for such public representatives.

The conferees are aware that some exchanges, notably the New York and American stock exchanges, have structured their boards to balance their industry representatives with public governors. The conferees do not, by their decision to require only one or more public representatives on exchange boards, repudiate a balanced board concept, nor do the conferees suggest that existing exchanges should reduce the number of such governors for which provision has already been made.

#### *3. Criteria for registration of securities associations*

Since 1938, the Exchange Act has provided for the registration of more than one national securities association. To date, only one such association—the National Association of Securities Dealers, Inc.—has registered with the SEC.

The House amendment changed existing law by eliminating the provisions of the Exchange Act authorizing the Commission to approve

the registration of an association which is formed to regulate brokers and dealers engaging in a particular type of business or located in a particular geographic area. The Senate bill made no such change.

Under the conference substitute, a registered securities association would be permitted to deny membership to registered brokers and dealers who are not engaged in particular types of business specified in the association's rules. An association would be prohibited, however, from denying membership to a registered broker and dealer by reason of his being engaged in other lines of business not specified in the rules of the association or because of any mixture of specified and non-specified business. Thus, the substitute has the advantage of permitting specialized associations of broker and dealers to be formed and registered with the SEC, but assures that eligibility for membership will not be determined in an arbitrary or discriminatory manner. If such a specialized association is formed, the conferees believe the SEC has ample authority under amended section 17(d) and 19(g)(2) and elsewhere to tailor the association's statutory responsibilities to its specialized objectives.

#### *4. Commission review of proposed rule changes by self-regulatory organizations*

Both the Senate bill and the House amendment revised the procedures in the Exchange Act applicable to Commission review of proposed rule changes by self-regulatory organizations.

The Senate bill required the Commission, within thirty-five days of the date of publication of notice of a filing of a proposed self-regulatory rule change, or within a longer period of up to ninety days or for any other period to which a self-regulatory organization consented, either to approve the proposed rule change upon prescribed standards or institute further specified administrative proceedings. Such further proceedings must have been concluded and the proposed rule change approved or disapproved within one hundred and eighty days, although extensions of this period are permitted. Finally, no proposed rule change could have been approved within less than thirty days following publication of notice, unless the Commission found good cause and published its reasons.

Under the Senate bill, no proposed self-regulatory rule change could have become effective without prior SEC approval. However, certain self-regulatory rule changes were expressly permitted to take effect upon filing with the Commission if they (1) constituted a stated policy, practice or interpretation with respect to an existing rule, (2) established or changed a fee or other charge composed by the self-regulatory organization, or (3) applied solely to the administration of the organization, or other matters which the Commission determined to be consistent with the public interest. Finally, the Senate bill authorized the Commission to declare proposed self-regulatory rule changes effective summarily if such action is determined to be necessary for the protection of investors or the maintenance of fair and orderly markets.

Affirmative Commission action with respect to proposed self-regulatory changes was not required under the House amendment. Rather, the House amendment permitted proposed rule changes to become effective automatically on the forty-fifth day following publication



of notice by the Commission, unless the Commission, by order, disapproved such proposal as inconsistent with the purposes of the Exchange Act or otherwise inconsistent with the public interest. In addition, the Commission was authorized to extend the public comment period for up to one hundred and thirty days. The Commission was authorized to exempt from the public comment requirement (but not from the public notice requirement) and to accelerate the effectiveness of any proposed rule change, or any class thereof, on specified findings. Proposed rule changes which became effective upon filing with the Commission included only stated policies and practices relating to organization, membership and procedures.

The House receded to the Senate in these matters.

##### 5. *Judicial review*

Both the House amendment and Senate bills provided special procedures for direct review of certain Commission actions in the Federal courts of appeal. The judicial review provisions of the Senate bill applied to Commission rules promulgated under specific sections of the Exchange Act which related to the operation or regulation of the national market system, a national clearing system, or the SEC's oversight of the self-regulatory organizations. The House amendment made direct court of appeal review procedure available only in circumstances where the Commission abrogated, altered or supplemented the rules of a self-regulatory organization. The House agreed to the Senate provision.

The Senate bill required a petition for court of appeals review to be filed within 60 days of the time the Commission promulgated the rule for which review is sought. The House amendment required the petition to be filed within 120 days. The House receded to the Senate. It is clear under the provisions agreed to that after the prescribed time period, rights to judicial review would continue to be governed as they are at present by any other available legal remedies.

In expanding the scope of direct judicial review of SEC decisions, the conferees are cognizant of the potential conflict with collateral antitrust attacks on actions by self-regulatory organizations. For example, a self-regulatory organization's rule, after approval by the SEC, is reviewable in a court of appeals under the standard of the Exchange Act, i.e., whether it imposes a burden on competition which is neither necessary nor appropriate in furtherance of the purposes of the Exchange Act. The Court in such a case would be required to assess the justification for the balance the Commission has struck between the preceived anticompetitive effects of the regulatory policy at issue and the purposes of the Exchange Act that would be advanced thereby and the costs of doing so. The same self-regulatory rule, however, could also be challenged in a Federal district court under the antitrust laws where a somewhat different standard might be applied.

The conferees are confident that the courts can avoid actual conflicts by a flexible use of existing precedents. The Congress will watch closely the implementation of these statutory provisions by the courts, and in particular will await the decision of the Supreme Court in *Gordon v. New York Stock Exchange* which involves the relationship of self-regulatory actions to the antitrust laws. If the courts cannot appropriately reconcile regulatory and competitive fac-

tors in the stock markets under current procedures, then the Congress will certainly undertake the consideration of further legislation on this subject.

#### REGULATION OF THE MUNICIPAL SECURITIES INDUSTRY; MUNICIPAL SECURITIES RULEMAKING BOARD

The Senate bill extended the basic coverage of the Securities Exchange Act of 1934 to provide a comprehensive pattern for the registration and regulation of securities firms and banks which underwrite and trade securities issued by States and municipalities. Municipal securities dealers were required to register with the Commission and comply with rules concerning just and equitable principles of trade and other matters prescribed by a new self-regulatory organization, the Municipal Securities Rulemaking Board, established by the bill and delegated responsibility for formulating rules relating to the activities of all municipal securities dealers. The exemption for issuers of municipal securities from the basic regulatory requirements of the Federal securities laws was continued.

The House amendment contained no similar provision. The House receded to the Senate with an amendment enlarging the size of the Municipal Securities Rulemaking Board from nine members, as provided in the Senate bill, to fifteen. Changes in the procedures for the registration of municipal securities dealers were also made to conform to the broker and dealer registration provisions contained in the House amendment to which the Senate receded.

Under the provisions of the conference substitute, brokers and dealers trading exclusively in municipal securities would for the first time be required to register under section 15 of the Exchange Act. Unless their business is exclusively intrastate brokers and dealers as opposed to banks, must register under section 15 rather than new section 15(B). As a result of their registration, such firms will automatically become members of the Securities Investor Protection Corporation ("SIPC") and subject to SIPC assessments. The conferees believe such firms should come under SIPC for two basic reasons. First, the fundamental policy underlying the Securities Investor Protection Act is that all members of the securities industry should contribute to the fund protecting public customers. Indeed, firms doing an exclusively municipal business generally carry accounts of public customers and such customers are subject to the same risks as are customers dealing in other types of securities. Second, the SIPC assessment levied against brokers and dealers conducting a general securities business is calculated on the basis of their total business, including their dealings in municipal securities. To exempt firms doing an exclusively municipal business from SIPC would give such firms an unjustifiable competitive advantage over other firms.

The conferees are aware that the entire question of who should be subject to SIPC assessments will be raised in connection with consideration of the Securities Investor Protection Act Amendments of 1975. At that time, it will be appropriate to consider the justification for the existing exceptions as well as whether it is appropriate to provide new exemptions for firms doing limited types of securities business.

## SEC ENFORCEMENT POWERS

1. *SEC injunctive actions*

Section 21(e) of the Exchange Act authorizes the SEC to seek injunctive relief in the Federal courts in appropriate cases to protect the public interest from securities laws violations. This section was amended by the Senate bill in several respects, two of which require special mention. Section 21(e) was amended (i) by adding the words "has engaged" to the present statutory language "is engaged or is about to engaged in \* \* \* a violation," and (ii) by changing the present statutory phrase "proper" showing to "*such*" showing. The House amendment contained no similar provision.

The conference substitute does not make the noted Senate proposed changes in existing law. The Senate language is dropped without prejudice, the conferees believing that existing law does not require clarification in these respects.

2. *Consolidation of SEC enforcement actions*

Both the Senate bill and House amendment contained provisions exempting SEC enforcement actions from the multidistrict panel provisions of section 1407 of title 28, United States Code. The House amendment, and the conference substitute, refer to enforcement actions "for equitable relief".

## CLEARING AGENCIES, SECURITIES DEPOSITORIES, AND TRANSFER AGENTS

1. *General provisions*

The Senate bill and the House amendment amended the Securities Exchange Act to establish a system for effective regulation and centralized decisionmaking extending to every facet of the securities handling process in the United States—clearing agencies, securities depositories, corporate issuers, and transfer agents.

To assure the development of a modern, nationwide system for the safe and efficient handling of securities transactions in a manner which best serves the financial community and the investing public, the Senate bill and the House amendment directed the Commission to facilitate the establishment of the system and centralized in the Commission the authority and responsibility to regulate, coordinate and direct the operations of all persons involved in the securities handling process.

A central difference between the Senate bill and the House amendment concerned the authority and the responsibility of the bank regulatory agencies. Although each bill established a basic regulatory pattern in which the Commission had general rulemaking and policy oversight responsibility for all clearing agencies and transfer agents, the bills differed in allocating authority and responsibility to the Federal bank agencies.

The House receded to the Senate in these areas with the following two amendments.

First, with respect to the allocation of examination and inspection authority, the Senate bill limited the Commission's authority to examine entities for which it is not the appropriate regulatory agency, i.e., which are banks, in accordance with specified conditions. Examina-

tion by the Commission (other than pursuant to section 21 of the Exchange Act) of registered bank clearing agencies was permitted only if the Commission found that the examination was germane to an application for registration of a proposed rule change, or the promulgating of a Commission rule, and necessary or appropriate for the proper performance of the Commission's responsibilities under this title. Examinations were limited to matters pertinent to such application, rule change or rulemaking. The conference substitute deletes the enumeration of circumstances in which the SEC may conduct such examinations. Primary responsibility for the conduct of such examinations would continue to rest with the appropriate bank regulatory agency. The conference substitute retains the provisions of the Senate bill which would, however, require the Commission to give prior notice to and consult with the appropriate regulatory agency concerning the feasibility and desirability of coordinating, to the maximum extent practicable, any Commission examination with any examination, proposed or planned, by the bank agency.

Second, with respect to the establishment of recordkeeping and reporting requirements for transfer agents organized as banks, or their subsidiaries, the Senate bill authorized the appropriate regulatory agencies to set the standards. The authority to set minimum reporting and recordkeeping standards for all other transfer agents rested with the Commission. The House amendment authorized the bank regulatory agencies to impose recordkeeping requirements for bank transfer agents which are in addition to those required by the SEC, provided the authority is exercised in a manner consistent with the rules of the Commission.

The conference substitute makes clear that both the Commission and the bank regulatory agencies would have authority to prescribe rules with respect to the maintenance of books and records and the making and dissemination of reports by transfer agents which are banks.

2. *Lost, stolen, and counterfeit securities*

The Senate bill and the House amendment contained provisions authorizing the Commission to require all persons involved in the handling of securities transactions to (1) report information about missing, lost, counterfeit or stolen securities, (2) authenticate securities used in certain financial transactions, and (3) be fingerprinted and to submit such fingerprints to the Attorney General of the United States for identification and appropriate processing.

The requirement in the Senate bill applied to any insured bank or member of the Federal Reserve System. The House amendment contains no comparable provision. The House receded to the Senate.

The Senate bill expressly authorized the Commission to enter into an agreement to use the facilities of the National Crime Information Center to receive, store and disseminate information about missing, lost, counterfeit, or stolen securities and directed the Commission to encourage the insurance industry to require their insured to report promptly instances of missing, lost, counterfeit or stolen securities. The House amendment contained no comparable provisions. The House receded to the Senate.

In exercising its rulemaking authority with respect to the duty to inquire as to lost, stolen or counterfeit securities, the Commission is expected to focus on those instances where the circumstances are or appear to be suspicious and where, in the exercise of good judgment, appropriate inquiry should be made. The Commission should carefully weigh the benefits of mandating inquiry in any specific situation against the costs and effect on efficient business practices and take into consideration the need to avoid requirements which may affect the legal status of a bona fide purchaser in a manner which would unjustifiably disrupt the course of normal commercial transactions.

With respect to Section 17(f)(4), the conferees expect that the Commission will carefully consider the appropriateness of delegating its authority under the subsection to the bank regulatory agencies. The objective of the paragraph is to assure that the maintenance of records with respect to lost and stolen securities and fingerprints is kept in the most efficient and effective manner, and, as may be consistent with this overall objective, the conferees believe that the Commission should consider whether banks should be required to make their filings with their normal regulatory agencies.

#### REGISTRATION AND REGULATION OF BROKERS AND DEALERS

##### 1. *Registration procedures; inspections*

The House amendment with respect to the broker-dealer registration provisions of the Exchange Act required affirmative action by the Commission before a broker or dealer's registration becomes effective. Thus, the House amendment provided that within 45 days of the filing of the application, the Commission shall either issue an order granting such registration or institute appropriate administrative action to determine whether the application should be denied. The Commission was required to conclude such administrative action within 120 days and reach its determination, but the Commission could have extended that time for an additional ninety days if it found good cause for extending the period. The Senate bill contained no comparable provisions. The Senate receded to the House.

The House amendment required that within six months of the granting of an application for registration the Commission, or a self-regulatory organization designated by the Commission, conduct an inspection of a broker or dealer to determine whether such broker or dealer is operating in conformity with the provision of the Securities Exchange Act and the rules and regulations thereunder. Also, the Commission was authorized to delay such inspection for a period not to exceed 6 months for specified classes. The Senate bill contained no comparable provisions. The Senate receded to the House.

##### 2. *Uniform capital rules*

The House amendment directed the Commission to promulgate rules no later than September 1, 1975, establishing minimum capital requirements for all brokers and dealers. The Commission would, of course, have its authority under amended section 23 to classify brokers and dealers and prescribe greater, lesser, or different requirements for different classes. The Senate bill contained no such directive. The Senate receded to the House.

##### 3. *Commission authority to prescribe minimum training, experience, and competence standards for all registered brokers and dealers*

The House amendment granted the Commission the authority to prescribe uniform standards for persons engaged in the securities industry, and to require partners, officers and supervisory employees, or specified classes thereof, to pass examinations including questions relating to bookkeeping, accounting, internal control over cash and securities, proper supervision of employees, proper maintenance of records, and other similar matters.

The Senate bill contained no comparable provision. The Senate receded to the House.

##### 4. *Financial statements of brokers and dealers*

The Senate bill contained a provision authorizing the Commission, by rule, to prescribe the form and content of financial statements filed pursuant to the Exchange Act and the principles and standards to be used in the preparation of such statements. The House amendment also gave the Commission rulemaking authority to prescribe uniformity in accounting procedures and systems for brokers and dealers. The conference substitute adopts the Senate formulation, which encompasses the uniform system of account authority found in the House amendment.

#### REGULATION OF TRADING BY MEMBERS OF A NATIONAL SECURITIES EXCHANGE

The Senate bill and the House amendment contained provisions regulating trading by members of national securities exchanges. Each prohibited members of national securities exchanges from effecting transactions on their respective exchanges for their own accounts, the account of any affiliated or associated person, or for a managed account.

In several respects, however, the approach of the Senate bill and House amendment differed in providing exceptions from the foregoing general prohibitions on members' trading. The Senate bill contained a provision which specifically exempted proprietary exchange transactions effected by a member. The House amendment contained no comparable exemption for proprietary accounts. The conference substitute provides that an exchange member primarily engaged in the securities business and related activities, as defined in section 3(c)(2) of the Investment Company Act of 1940, may continue to effect transactions on the exchange for its own account subject to such rules as the SEC may prescribe to assure that, as a minimum, members' trading is not inconsistent with the maintenance of fair and orderly markets and yields priority, parity and precedence to transactions for public customers.

Section 11(a) prohibits an exchange member from effecting any transaction for the account of an associated person. Accordingly, a member firm would be prohibited from effecting any transaction for the account of a parent or sister corporation, regardless of the economic interests of the parent or sister corporation in the account. For example, a parent of a member firm would be prohibited from main-

taining an omnibus account with the member even though it effects through that account only trades for public customers. The conferees believe, however, that members' trading for accounts of associated persons may under proper circumstances be consistent with the purposes of this section if such persons have no economic interest in such accounts. The SEC therefore should give careful consideration to granting an exemption from the blanket prohibition of section 11(a) to members' trading for all accounts carried in the name of an associated person but in which no associated person has an economic interest and over which no associated person exercises investment discretion.

In addition, while both the Senate bill and the House amendment exempted affiliated individual accounts from the provisions requiring the separation of money management and brokerage, the House amendment authorized the SEC to exempt from the general prohibition transactions by a member for a managed account of a person (other than an affiliate) with respect to which a member or an affiliated person performed only certain enumerated functions and which are effected pursuant to standards prescribed by the SEC to assure that the transactions are reviewed by a person with investment experience who is not an affiliate of the member. The Senate bill contained no comparable exemption. The House receded to the Senate.

While these new provisions would give the Commission authority to regulate or prohibit transactions by members which are in addition to those banned under the statute, the Commission would not have the authority to prohibit any transaction on any national securities exchange by a member for its own account, the account of an associated person, or an account with respect to which the member or an associated person exercises investment discretion simply because of the type of business done or the type, amount, or mix of transactions effected on such exchange by such member, associated person, or account. Most particularly, the conferees caution that any Commission action which had the effect of limiting exchange membership to firms with an 80-20 business mix such as is contained in SEC Rule 19b-2, would violate both the letter and the spirit of the Exchange Act. Any attempt by the Commission to use the authority in amended section 11(a) to allow member firms exemptions from the statutory prohibitions unrelated to the market impact of the specific transactions at issue would be inconsistent with, and a violation of, Congressional intent. Accordingly, while the bill makes clear that the Commission has authority to exempt any transactions of any kind from the prohibitions if it determines such exemption is not inconsistent with the protection of investors and the public interest, it makes equally clear that such exemptive authority can be exercised only in a manner consistent with the purposes of the general prohibition and these expressions of Congressional intent.

The phase-in provisions of the prohibition in the Senate bill and House amendment also differed. The Senate bill allowed two successive twelve-month periods following the date of enactment. During the first of these periods, exchange members were permitted to effect transactions for the account of an associated person, or an account with

respect to which it or an affiliate exercised investment discretion to the extent of 20 per centum of their total exchange transactions. During the second twelve month period, exchange members were permitted to effect 10 per centum of their business with such accounts. Following this two-year period, the provisions of the bill become fully applicable. The House amendment provided a three-year grace period for exchange members who were members prior to January 16, 1973.

The conference substitute provides that the statutory prohibitions on the combination of brokerage and money management would not apply for three years to trading by exchange members who were members on May 1, 1975. During this grace period exchange members would be permitted to continue previously established relationships with managed accounts as well as to establish new ones. The Commission would continue to have authority to regulate such trading by exchange members as it deems necessary or appropriate in the public interest, for the protection of investors, or to maintain fair and orderly markets during this period. But it would be inappropriate and inconsistent with the Congressional purposes, for an institution to acquire an exchange membership during this period solely for the purpose of using that membership to effect transactions for its own account. The Commission has ample power under section 11(a)(2) to insure that this does not occur.

The conferees believe that the Department of Labor and the Internal Revenue Service in administering the Employee Retirement Income Security Act ("ERISA"), should provide an exemption from the prohibited transactions provisions of that statute to permit securities firms to continue to provide brokerage services to accounts with respect to which they exercise investment discretion until May 1, 1978. Such an exemption would conform that statute and the provisions of this bill, thus permitting securities firms to phase out this combination of businesses in an orderly way. Similarly, the conferees hope that the Department of Labor and the Internal Revenue Service will, to the maximum degree consistent with the policies of ERISA, conform the prohibitions in that statute applicable to securities firms and municipal securities dealers to the provisions and policies of this bill.

#### COMMISSION RATES

Both the Senate bill and the House amendment contained provisions concerning the Commission's authority to reinstate fixed commission rates.

The House amendment codified a rule adopted by the SEC which required the elimination of fixed minimum commission rates for public customers on May 1, 1975, and for intra-member transactions on May 1, 1976. Moreover, the House amendment authorized the Commission, until October 1, 1976, to continue, establish or reestablish fixed rates of commission for transactions involving amounts of up to \$300,000, provided the SEC determined the public interest so required the continuation, establishment, or re-establishment of fixed rates. After October 1, 1976, fixed rates could only be continued, established or reestablished by order of the Commission after a hearing on the record and

determination by the Commission that the fixed rate is (1) reasonable and (2) required to accomplish the purposes of the Exchange Act and to assure the maintenance of fair and orderly markets in securities, taking into consideration the competitive effects of fixed rates weighed against the competitive effects of other lawful action the Commission is authorized to take under the Exchange Act.

The Senate bill left intact the existing provisions of the Exchange Act and the Commission's authority to control the level and extent of fixed rates of commission imposed on transactions effected on a national securities exchange, but provided that if the Commission permitted fixed rates after November 1, 1976 it must (1) find that the rates are reasonable in relation to the cost of providing the service for which such fees are charged and (2) publish the standards employed in adjudging reasonableness.

The conference substitute prohibits fixed commission rates on and after the date of enactment of the Securities Acts Amendments of 1975 except that rates charged by members acting as brokers on the floor of an exchange for other members or as an odd-lot dealer may be fixed until May 1, 1976. Under the conference substitute, the SEC may reimpose fixed rates prior to November 1, 1976, by rule, if the Commission finds that such fixed rates are in the public interest. After November 1, 1976, the Commission may allow the continuance or the reimposition of fixed rates only after a procedure comparable to that provided for in Section 18 of the Federal Trade Commission Act, 15 U.S.C. 58, which is more formal than normal notice and comment rulemaking under Section 553 of title 5 U.S.C. but less formal than "on the record" procedure under Section 556 and 557 of title 5 U.S.C. In addition the Commission would be required to make the findings contained in both the Senate bill and the House amendment.

Both the Senate bill and the House amendment contained provisions protecting money managers against a claim they have breached their fiduciary responsibilities solely because they have caused a managed account to pay more than the lowest available price for execution and research services. Although the two provisions were nearly identical, the Senate version more clearly preempted both statutory and common law. The House receded to the Senate on this point.

The conferees analyzed the possibility that the fiduciary provision would be asserted as a shield behind which the give-ups and reciprocal practices which were so notorious during the late 1960's could be reinstated. The conferees believe the new language would not permit such a result. The provision agreed to provide that a money manager may pay a broker or dealer an amount of commission, for *that* broker or dealer's executing a transaction, if the money manager determines that the services it receives from *that* broker or dealer justify the payment. The provisions have no application whatsoever to a situation in which payment is made by a money manager to one broker or dealer for services rendered by another broker or dealer. The give-up was a regrettable chapter in the history of the securities industry and the limited definition of fiduciary responsibility added to the law by this bill will in no way permit its return.

## DISCLOSURE BY INSTITUTIONAL INVESTORS

The Senate bill and the House amendment contained provisions requiring institutional investment managers which exercised investment discretion over accounts holding certain levels of specified securities to make periodic public disclosures of significant portfolio holdings and transactions. For jurisdictional purposes, the Senate bill used as a point of reference equity securities of a class described in section 13 (d) (1) of the Exchange Act. The House amendment computed the jurisdictional level with reference to equity securities. The House receded to the Senate.

The Senate bill authorized the Commission to determine the frequency of reports required to be filed by institutional investment managers who satisfied the jurisdictional tests, but stated explicitly that the Commission could not require reports less frequently than annually, or more frequently than quarterly. The House amendment contained no qualifications on the Commission's authority to prescribe the frequency of reports. The House receded to the Senate.

The Senate bill contained an exception to the reporting requirements insofar as investment discretion is exercised outside the United States with respect to accounts held outside the United States, unless otherwise provided by the Commission. The House amendment contained no such exception. The Senate receded to the House with the understanding that the Commission could exercise its exemptive power to accomplish the same results if this is determined to be consistent with the purposes of this section.

## MISCELLANEOUS

### 1. *Uniform criminal penalties under the Federal Securities Laws*

The House amendment contained provisions to make uniform the criminal penalties which may be imposed for violation of the six statutes administered by the Commission. The Senate bill contained no comparable provisions. The Senate receded to the House.

### 2. *Registration provisions of the Investment Advisers Act of 1940*

Various provisions of the Investment Advisers Act of 1940 were amended by the House amendment to conform those provisions to similar provisions in the Exchange Act, as amended. No comparable provisions are contained in the Senate bill. The Senate receded to the House.

### 3. *Annual reports*

The House amendment required the Commission to include in its annual reports to Congress information detailing the Commission's administration of the Freedom of Information Act, in addition to information concerning the effects its rules and regulations are having on the viability of small brokers and dealers, its attempts to reduce any unnecessary reporting burden on such brokers and dealers, and its efforts to help to assure the continued participation of small brokers and dealers in the United States securities markets. The Senate bill contained no comparable provisions. The Senate receded to the House.



#### 4. *Transaction fees*

Section 31 of the Exchange Act requires every national securities exchange to pay annually a fee based on the aggregate dollar amount of the sales of securities, other than government securities, transacted on such exchange during the calendar year. Both the Senate bill and the House amendment extended the payment of the fee to transactions in listed securities which occur in the over-the-counter market. However, the House amendment also raised the fee from one penny per five hundred dollars to one penny per one hundred dollars. The substitute agreed to in conference raised the fee to one penny per three hundred dollars but excluded all debt securities from the calculation of the fee.

#### 5. *Capital Requirements*

The House amendment revised section 8 of the Exchange Act to eliminate a subsection relating to financial responsibility requirements which were found to be duplicative and potentially in conflict with provisions of section 15(c)(3) of that Act. The Senate, whose bill did not contain comparable provisions, receded to the House.

#### 6. *Regulation of lending of customers' securities*

The House amendment authorized the Commission to promulgate rules concerning the lending by brokers and dealers of securities carried for the account of their customers. The Senate bill had no comparable provision. The Senate receded to the House.

#### 7. *Exemptions from the Securities Act of 1933*

The Senate bill provided a limited exemption from the registration provisions of the Securities Act of 1933 for transactions involving the offer or sale of certain mortgages and participation interests in such mortgages. The House amendment contained no comparable provision. The House receded to the Senate.

#### 8. *Study of securities activities of persons who are not brokers or dealers*

The House amendment authorized the Commission to conduct a study of the securities activities of persons excluded from the definitions of "broker" and "dealer" contained in the Exchange Act to determine the extent of such persons' securities-related activities. Specifically, the Commission was directed to study the desirability of greater uniformity of regulation, the effects of such activities on the process of raising and allocating capital, and the propriety of continuing the exclusion from the definitions of "broker" and "dealer" from the standpoint of the administration of the Exchange Act. The results of the study, including any recommendations for legislation, must be reported to the Congress, on or before December 31, 1976. The Senate bill contained no similar provision.

The conference substitute authorizes and directs the Commission to make a study of the extent to which such persons maintain accounts on behalf of public customers for buying and selling publicly traded securities and whether such exclusions from the definition of "broker" and "dealer" are consistent with the protection of investors and the other purposes of the Exchange Act. The provisions of this section

direct the Commission to study the adequacy of the regulation of such persons insofar as they engage in securities activities. These provisions do not authorize the Commission to study or make recommendations with respect to whether these activities are or should remain permissible under the Banking Act of 1933. This matter is the subject of a planned investigation by the Senate Committee on Banking, Housing and Urban Affairs.

#### 9. *SEC budget authorizations*

The House amendment added a new section to the Exchange Act authorizing SEC appropriations for fiscal years 1976, 1977 and 1978 in the amounts of \$54,000,000, \$62,600,000 and \$71,200,000, respectively. For fiscal years after 1978, only such sums could be appropriated as were subsequently authorized by law. The Senate bill contained no comparable provision.

The conference substitute authorizes SEC appropriations in the amount of \$51,000,000 for fiscal year 1976 and \$55,000,000 for fiscal year 1977.

#### 10. *Conformity with the Exchange Act*

The House amendment provided a procedure by which the Commission could, for a limited period of time, suspend the registration of an exchange or registered association if its rules did not comply with the provisions of the Exchange Act, as amended by this bill, such suspension to continue in effect until the Commission issued an order declaring that the rules of the exchange or association did comply with such requirements. The Senate bill contained no comparable provisions. The Senate receded to the House. This provision, however, does not limit the Commission to suspending an exchange's or association's registration if an exchange or association rule does not comply with applicable requirements. Rather, the Commission may, should it choose, institute a proceeding pursuant to new section 19(c) with respect to the rule or rules in question.

#### 11. *Arbitration proceedings*

The Senate bill amended section 28 of the Securities Exchange Act of 1934 with respect to arbitration proceedings between self-regulatory organizations and their participants, members, or persons dealing with members or participants. The House amendment contained no comparable provision. The House receded to the Senate. It was the clear understanding of the conferees that this amendment did not change existing law, as articulated in *Wilko v. Swan*, 346 U.S. 427 (1953), concerning the effect of arbitration proceeding provisions in agreements entered into by persons dealing with members and participants of self-regulatory organizations.

The Senate bill provided the following title:

"An Act to amend the Securities Exchange Act of 1934, and for other purposes."

The House amended the title.

The substitute title agreed to in conference is as follows:

An Act to amend the Securities Exchange Act of 1934 to remove barriers to competition, to foster the development of a national secur-

ities market system and a national clearance and settlement system, to make uniform the Securities and Exchange Commission's authority over self-regulatory organizations, to provide for the regulation of brokers, dealers and banks trading in municipal securities, to facilitate the collection and public dissemination of information concerning the holdings of and transactions in securities by institutional investment managers, and for other purposes.

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