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RULES COMMITTEE PRINT 116-34
TEXT OF H.R. 1815, SEC DISCLOSURE
EFFECTIVENESS TESTING ACT

[Showing the text of H.R. 1815, as reported by the Committee
on Financial Services, with modifications.]

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “SEC Disclosure Effec-
3 tiveness Testing Act”.

4 **SEC. 2. DISCLOSURE TESTING.**

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

8 “(4) INVESTOR TESTING.—

9 “(A) IN GENERAL.—The Commission shall
10 engage in investor testing prior to issuing any
11 rule or regulation which designates documents
12 or information to be disclosed under the securi-
13 ties laws, if such documents or information are
14 required to be delivered to, and are intended or
15 substantially likely to be materially relied upon
16 by, a retail investor when—

17 “(i) selecting a broker-dealer or in-
18 vestment adviser, evaluating their services

1 and fees, or materially altering a brokerage
2 or advisory relationship;

3 “(ii) assessing a securities rec-
4 ommendation or investment advice pro-
5 vided by a broker- dealer or investment ad-
6 viser;

7 “(iii) making a decision to purchase
8 or sell a security; or

9 “(iv) such other circumstances as the
10 Commission may, with input from the In-
11 vestor Advocate, determine appropriate for
12 the protection of retail investors.

13 “(B) EXEMPTION FOR CERTAIN DISCLO-
14 SURES.—This section shall not apply to—

15 “(i) disclosures made pursuant to
16 Regulations S-K and S-X (including Indus-
17 try Guides), Regulation 14A, Form N-PX,
18 Form 10-K, Form 10-Q, Form 8-K, Form
19 SD, Form N-PORT, Form PF, Regulation
20 SBSR, disclosures mandated by or jointly
21 with the Board of Governors of the Fed-
22 eral Reserve System or the Financial Sta-
23 bility Oversight Council, or successors
24 thereto; or

1 “(ii) any other documents or informa-
2 tion that the Commission, with input from
3 the Investor Advocate, determines are out-
4 side the intended scope and purposes of
5 this Act.

6 “(C) COMMISSION AUTHORITY TO CON-
7 DUCT ADDITIONAL TESTING.—This section shall
8 not be construed to limit the Commission’s abil-
9 ity to conduct any investor testing on any other
10 documents or information not subject to this
11 section 23(a), provided that any such investor
12 testing shall not be subject to the requirements
13 of this section 23(a).

14 “(D) CONTENTS.—Investor testing con-
15 ducted pursuant to subparagraph (A) shall in-
16 clude the following:

17 “(i) Qualitative testing in the form of
18 one-on-one cognitive interviews of retail in-
19 vestors about documents or information, or
20 samples of such documents or information,
21 to be provided.

22 “(ii) Such other forms of testing that
23 the Commission, with input from the In-
24 vestor Advocate, deems appropriate for

1 evaluating the effectiveness of retail disclo-
2 sures.

3 “(iii) Analysis and publication in the
4 Federal Register of the results of the test-
5 ing.

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

9 “(E) SUBSTANTIVE CHANGES.—If the
10 Commission, in the period between engaging in
11 investor testing and publishing a final rule,
12 makes substantive changes to such rule that the
13 Commission determines would have a signifi-
14 cant impact on retail investors, and such
15 changes were not already investor tested, the
16 Commission shall again engage in investor test-
17 ing related to such changes.

18 “(F) PUBLIC AVAILABILITY OF RETAIL
19 TESTING RESULTS.—The Commission shall
20 make the data and results of any investor test-
21 ing performed pursuant to this paragraph avail-
22 able to the public.

23 “(G) RULES OF CONSTRUCTION.—

24 “(i) The determination that some or
25 all of a document or information is deemed

1 to be subject to section 2 shall not forestall
2 the determination that such document or
3 information may also be used or relied
4 upon by the public, market participants
5 other than retail investors, or government
6 agencies.

7 “(ii) The Commission may, in con-
8 sultation with the Investor Advocate, deter-
9 mine which, if any, components of such
10 document or information are substantially
11 likely to be relied on by retail investors for
12 the purposes outlined in paragraph 4(A)
13 above and focus testing under section 2 on
14 those components of the disclosure.

15 “(iii) Notwithstanding clause (ii)
16 above, where any information subject to
17 testing under section 2 may be used or re-
18 lied upon by the public, market partici-
19 pants other than retail investors, or gov-
20 ernment agencies, the results of testing
21 made pursuant to section 2 shall not pro-
22 vide grounds for reducing or eliminating
23 (including any undermining of reliability of
24 and accountability for) the information
25 that existing or proposed regulation re-

1 quires or would require be made available
2 to the public, market participants other
3 than retail investors, and government
4 agencies, whether or not such information
5 is delivered to retail investors.”.

6 (b) PARTICIPATION OF INVESTOR ADVOCATE.—Sec-
7 tion 4(g) of the Securities Exchange Act of 1934 (15
8 U.S.C. 78d(g)) is amended—

9 (1) in paragraph (4)—

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

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

14 (C) by inserting after subparagraph (D)
15 the following: “(E) engage in investor testing—

16 “(i) to carry out the functions of the
17 Office; and

18 “(ii) pursuant to section 23(a)(4), as
19 appropriate; and”;

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

21 “(9) PUBLICATION OF DATA AND RESULTS OF
22 INVESTOR TESTING.—With respect to any investor
23 testing carried out by the Investor Advocate pursu-
24 ant to paragraph (4)(E), the Investor Advocate may
25 make the data and results of such investor testing

1 available to the public, without further review or ed-
2 iting by the Commission.

3 “(10) PERSONNEL.—If the Investor Advocate
4 decides, within its sole discretion, to conduct testing
5 under this Section, the Investor Advocate may do so
6 and the Commission shall provide the Office of the
7 Investor Advocate with sufficient personnel and
8 funding necessary to carry out such testing. Such
9 testing may qualify as the testing covered by this
10 section, provided that all requirements of the section
11 are met.”.

12 (c) PRIOR RULES.—

13 (1) IN GENERAL.—For any final rule or regula-
14 tion issued by the Securities and Exchange Commis-
15 sion (in this subsection referred to as the “Commis-
16 sion”) before the date of the enactment of this Act
17 that would be subject to investor testing under sec-
18 tion 23(a)(4) of the Securities Exchange Act of
19 1934, had such rule been issued on or after the date
20 of enactment of this Act, the Commission shall per-
21 form investor testing with respect to such rule or
22 regulation that includes the contents described in
23 such section 23(a)(4).

24 (2) SCHEDULE.—The Commission shall, not
25 later than 6 months after the date of the enactment

1 of this Act, with input from the Investor Advocate,
2 establish a schedule for completing any investor test-
3 ing required under paragraph (1) that prioritizes
4 testing of any final rules and regulations that des-
5 ignate documents or information central to retail in-
6 vestor decision making, and in particular prioritize
7 the testing of documents or information required to
8 be delivered to retail investors in the form of sum-
9 mary documents or summary sections of documents
10 including for the purpose of determining whether
11 and how such summary documents can achieve the
12 goals of informed investor decision-making in the
13 circumstances set forth in paragraph 4(A) above
14 while maintaining full accessibility by retail inves-
15 tors, the public, other market participants, and gov-
16 ernment regulators to the full range of documents
17 and information that they may utilize or rely on,
18 whether or not such documents or information are
19 required to be delivered to retail investors.

20 (3) REPORT.—The Commission shall, with
21 input from the Investor Advocate, issue a report to
22 Congress each year containing the following:

23 (A) The status of any investor testing re-
24 quired under paragraph (1) initiated within the
25 last year or otherwise ongoing.

1 (B) The results of any investor testing
2 completed under paragraph (1) within the last
3 year.

4 (C) Any priorities the Commission has,
5 based on results of investor testing required by
6 paragraph (1), for—

7 (i) revising any proposed or final rule
8 or regulation based on the results of test-
9 ing pursuant to section 2;

10 (ii) initiating any rulemaking or ac-
11 tions to arising from the results of the
12 testing pursuant to section 2; and

13 (iii) the Investor Advocate's views on
14 the above priorities and any such other
15 matters arising from the testing or results
16 of testing pursuant to section 2.

