Public Law 101-550
101st Congress

An Act

To amend the Federal securities laws in order to facilitate cooperation between the United States and foreign countries in securities law enforcement.

Nov. 15, 1990
[H.R. 1396]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Securities Acts Amendments of 1990.
15 USC 78a note.

SECTION 1. SHORT TITLE.

This Act may be cited as the "Securities Acts Amendments of 1990".

TITLE I—AUTHORIZATION

Securities and Exchange Commission Authorization Act of 1990.

SEC. 101. SHORT TITLE.

This title may be cited as the "Securities and Exchange Commission Authorization Act of 1990".

SEC. 102. AUTHORIZATION OF APPROPRIATIONS.

Section 35 of the Securities Exchange Act of 1934 (15 U.S.C. 78kk) is amended to read as follows:

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 35. There are authorized to be appropriated to carry out the functions, powers, and duties of the Commission—

"(1) $178,023,000 for the fiscal year ending September 30, 1990; and

"(2) $212,609,000 for the fiscal year ending September 30, 1991.".

SEC. 103. LEASING AUTHORITY OF SECURITIES AND EXCHANGE COMMISSION.

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

(1) by striking "(b)" and inserting the following:

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

"(1) APPOINTMENT AND COMPENSATION.—"; and

(2) by adding the end the following new paragraph:

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

Real property acquisition.

SEC. 104. CONFORMING AMENDMENTS.

(a) THE PUBLIC UTILITY HOLDING COMPANY ACT OF 1935.—Section 31 of the Public Utility Holding Company Act of 1935 (15 U.S.C. 79z-5) is amended to read as follows:

AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

"HIRING AND LEASING AUTHORITY OF THE COMMISSION

"SEC. 31. The provisions of section 4(b) of the Securities Exchange Act of 1934 shall be applicable with respect to the power of the Commission—

"(1) to appoint and fix the compensation of such employees as may be necessary for carrying out its functions under this title, and

"(2) to lease and allocate such real property as may be necessary for carrying out its functions under this title.".

(b) THE TRUST INDENTURE ACT OF 1939.—Section 321(d) of the Trust Indenture Act of 1939 (15 U.S.C. 77uuu(d) is amended to read as follows:

"(d) The provisions section 4(b) of the Securities Exchange Act of 1934 shall be applicable with respect to the power of the Commission—

"(1) to appoint and fix the compensation of such employees as may be necessary for carrying out its functions under this title, and

"(2) to lease and allocate such real property as may be necessary for carrying out its functions under this title.".

(c) THE INVESTMENT COMPANY ACT OF 1940.—Section 46(b) of the Investment Company Act of 1940 (15 U.S.C. 80a-45(b)) is amended to read as follows:

"(b) The provisions of section 4(b) of the Securities Exchange Act of 1934 shall be applicable with respect to the power of the Commission—

"(1) to appoint and fix the compensation of such employees as may be necessary for carrying out its functions under this title, and

"(2) to lease and allocate such real property as may be necessary for carrying out its functions under this title.".

(d) THE INVESTMENT ADVISERS ACT OF 1940.—Section 218 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-18) is amended to read as follows:

"HIRING AND LEASING AUTHORITY OF THE COMMISSION

"SEC. 218. The provisions of section 4(b) of the Securities Exchange Act of 1934 shall be applicable with respect to the power of the Commission—

"(1) to appoint and fix the compensation of such other employees as may be necessary for carrying out its functions under this title, and

"(2) to lease and allocate such real property as may be necessary for carrying out its functions under this title.".

International Securities Enforcement Cooperation Act of 1990.
15 USC 78a note.

TITLE II—INTERNATIONAL SECURITIES LAW ENFORCEMENT

SEC. 201. SHORT TITLE.

This title may be cited as the "International Securities Enforcement Cooperation Act of 1990".

SEC. 202. RELEASE OF RECORDS BY THE COMMISSION.

(a) IN GENERAL.—Section 24 of the Securities Exchange Act of 1934 (15 U.S.C. 78x) is amended—

(1) in subsection (b), by striking "Nothing in this subsection shall authorize the Commission to withhold information from the Congress."; and

(2) by adding at the end thereof the following new subsections:

"(c) CONFIDENTIAL DISCLOSURES.—The Commission may, in its discretion and upon a showing that such information is needed, provide all 'records' (as defined in subsection (a)) and other information in its possession to such persons, both domestic and foreign, as the Commission by rule deems appropriate if the person receiving such records or information provides such assurances of confidentiality as the Commission deems appropriate.

"(d) RECORDS OBTAINED FROM FOREIGN SECURITIES AUTHORITIES.—Except as provided in subsection (e), the Commission shall not be compelled to disclose records obtained from a foreign securities authority if (1) the foreign securities authority has in good faith determined and represented to the Commission that public disclosure of such records would violate the laws applicable to that foreign securities authority, and (2) the Commission obtains such records pursuant to (A) such procedure as the Commission may authorize for use in connection with the administration or enforcement of the securities laws, or (B) a memorandum of understanding. For purposes of section 552 of title 5, United States Code, this subsection shall be considered a statute described in subsection (b)(3)(B) of such section 552.

"(e) SAVINGS PROVISIONS.—Nothing in this section shall—

"(1) alter the Commission's responsibilities under the Right to Financial Privacy Act (12 U.S.C. 3401 et seq.), as limited by section 21(h) of this Act, with respect to transfers of records covered by such statutes, or

"(2) authorize the Commission to withhold information from the Congress or prevent the Commission from complying with an order of a court of the United States in an action commenced by the United States or the Commission.".

(b) CONFORMING AMENDMENTS.—

(1) INVESTMENT COMPANY ACT OF 1940.—Section 45(a) of the Investment Company Act of 1940 (15 U.S.C. 80a-44) is amended by striking "It shall be unlawful" and inserting "Except as provided in section 24(c) of the Securities Exchange Act of 1934, it shall be unlawful".

(2) INVESTMENT ADVISERS ACT OF 1940.—Section 210(b) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-10(b)) is amended by striking "subsections (c) and (e) of section 209" and inserting "subsections (c) and (d) of section 209 of this title and section 24(c) of the Securities Exchange Act of 1934".

SEC. 203. SANCTIONS AGAINST BROKER OR DEALER, ASSOCIATED PERSONS, OR PERSONS SEEKING ASSOCIATION.

(a) AUTHORITY OF THE COMMISSION TO SANCTION BROKERS AND DEALERS FOR FOREIGN VIOLATIONS.—Section 15(b) (15 U.S.C. 78o(b)) of the Securities Exchange Act of 1934 is amended—

(1) in paragraph (4)(B), by inserting after "misdemeanor" the following: "or of a substantially equivalent crime by a foreign court of competent jurisdiction";

(2) in paragraph (4)(B)(i), by inserting after "burglary," the following: "any substantially equivalent activity however denominated by the laws of the relevant foreign government,";

(3) in paragraph (4)(B)(ii)—

(A) by inserting after "transfer agent," the following: "foreign person performing a function substantially equivalent to any of the above,";

(B) by inserting after "(7 U.S.C. 1 et seq.)" the following: "or any substantially equivalent foreign statute or regulation";

(4) in paragraph (4)(B)(iii), by inserting after "securities" the following: ", or substantially equivalent activity however denominated by the laws of the relevant foreign government";

(5) in paragraph (4)(B)(iv), by inserting after "United States Code" the following: ", or a violation of a substantially equivalent foreign statute";

(6) in paragraph (4)(C)—

(A) by inserting after "transfer agent," the following: "foreign person performing a function substantially equivalent to any of the above,";

(B) by inserting after "Commodity Exchange Act" each time it appears the following: "or any substantially equivalent foreign statute or regulation"; and

(C) by inserting after "insurance company," the following: "foreign entity substantially equivalent to any of the above,"; and

(7) by inserting after subparagraph (F) of paragraph (4) the following:

"(G) has been found by a foreign financial regulatory authority to have—

"(i) made or caused to be made in any application for registration or report required to be filed with a foreign financial regulatory authority, or in any proceeding before a foreign financial regulatory authority with respect to registration, any statement that 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 application or report to the foreign financial regulatory authority any material fact that is required to be stated therein;

"(ii) violated any foreign statute or regulation regarding transactions in securities, or contracts of sale of a commodity for future delivery, traded on or subject to the rules of a contract market or any board of trade;

"(iii) aided, abetted, counseled, commanded, induced, or procured the violation by any person of any provision of any statutory provisions enacted by a foreign government, or rules or regulations thereunder, empowering a foreign financial regulatory authority regarding transactions in securities, or contracts of sale of a commodity for future delivery, traded on or subject to the rules of a contract market or any board of trade, or has been found, by a foreign financial regulatory authority, to have failed reasonably to supervise, with a view to preventing violations of such statutory provisions, rules, and regulations, another person who commits such a violation, if such other person is subject to his supervision.".

(b) EXTENSION OF DEFINITION OF STATUTORY DISQUALIFICATION TO INCLUDE FOREIGN VIOLATIONS.—Section 3(a)(39) of such Act (15 U.S.C. 78c(a)(39)) is amended—

(1) in subparagraph (A)—

(A) by inserting after "self-regulatory organization," the following: "foreign equivalent of a self-regulatory organization, foreign or international securities exchange,";

(B) by inserting after both "(7 U.S.C. 7)," and "(7 U.S.C. 21),", the following: "or any substantially equivalent foreign statute or regulation,"; and

(C) by inserting after "contract market", the following: "or foreign equivalent";

(2) by striking subparagraph (B) and inserting the following: "(B) is subject to—

"(i) an order to the Commission, other appropriate regulatory agency, or foreign financial regulatory authority—

"(I) denying, suspending for a period not exceeding 12 months, or revoking his registration as a broker, dealer, municipal securities dealer, government securities broker, or government securities dealer or limiting his activities as a foreign person performing a function substantially equivalent to any of the above; or

"(II) barring or suspending for a period not exceeding 12 months his being associated with a broker, dealer, municipal securities dealer, government securities broker, government securities dealer, or foreign person performing a function substantially equivalent to any of the above;

"(ii) an order of the Commodity Futures Trading Commission denying, suspending, or revoking his registration under the Commodity Exchange Act (7 U.S.C. 1 et seq.); or

"(iii) an order by a foreign financial regulatory authority denying, suspending, or revoking the person's authority to engage in transactions in contracts of sale of a commodity for future delivery or other instruments traded on or subject to the rules of a contract market, board of trade, or foreign equivalent thereof;";

(3) by redesignating subparagraphs (D) and (E) as subparagraphs (E) and (F), respectively;

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

"(D) by his conduct while associated with any broker, dealer, municipal securities dealer, government securities broker, government securities dealer, or any other entity engaged in transactions in securities, or while associated with an entity engaged in transactions in contracts of sale of a commodity for future delivery or other instruments traded on or subject to the rules of a contract market, board of trade, or foreign equivalent thereof, has been found to be a cause of any effective suspension, expulsion, or order by a foreign or international securities exchange or foreign financial regulatory authority empowered by a foreign government to administer or enforce its laws relating to financial transactions as described in subparagraph (A) or (B) of this paragraph;";

(5) in subparagraph (E) (as redesignated by paragraph (3) of this subsection) by striking "(A), (B), or (C)" and inserting "(A), (B), (C), or (D)"; and

(6) in subparagraph (F) (as redesignated) by striking "(D) or (E)" and inserting "(D), (E), or (G)" and by inserting after "such paragraph (4)" the first place it appears the following: "or any other felony".

(c) CONFORMING AMENDMENTS.—The Securities Exchange Act of 1944 (15 U.S.C. 78a et seq.) is amended—

15 USC 78o, 78o-4, 78o-5, 78q-1.

(1) in sections 15(b)(6), 15B(c)(2), 15B(c)(4), 15C(c)(1)(A), 15C(c)(1)(C), 17A(c)(3)(A), and 17A(c)(4)(C), by striking "(A), (D), or (E)" and inserting "(A), (D), (E), or (G)"; and

(2) in section 15C(f)(2), by striking "or the rules or regulations under any such other provision" and inserting "the rules or regulations under any such other provision, or investigations pursuant to section 21(a)(2) of this title to assist a foreign securities authority".

SEC. 204. DEFINITION OF FOREIGN FINANCIAL REGULATORY AUTHORITY.

Section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)) is amended by adding at the end thereof the following new paragraph:

"(51) The term 'foreign financial regulatory authority' means any (A) foreign securities authority, (B) other governmental body or foreign equivalent of a self-regulatory organization empowered by a foreign government to administer or enforce its laws relating to the regulation of fiduciaries, trusts, commercial lending, insurance, trading in contracts of sale of a commodity for future delivery, or other instruments traded on or subject to the rules of a contract market, board of trade, or foreign equivalent, or other financial activities, or (C) membership organization a function of which is to regulate participation of its members in activities listed above.".

SEC. 205. SANCTIONS AGAINST INVESTMENT ADVISERS OR PERSONS ASSOCIATED OR SEEKING ASSOCIATION WITH A REGISTERED INVESTMENT ADVISER OR INVESTMENT COMPANY.

(a) INVESTMENT COMPANY ACT OF 1940.—Section 9(b) of the Investment Company Act of 1940 (15 U.S.C. 80a-9(b)) is amended—

(1) by striking "or" at the end of paragraphs (1) and (2);

(2) by striking the period at the end of paragraph (3) and inserting a semicolon; and

(3) by inserting after paragraph (3) the following:

"(4) has been found by a foreign financial regulatory authority to have—

"(A) made or caused to be made in any application for registration or report required to be filed with a foreign securities authority, or in any proceeding before a foreign securities authority with respect to registration, any statement that was at the time and in 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 application or report to a foreign securities authority any material fact that is required to be stated therein;

"(B) violated any foreign statute or regulation regarding transactions in securities or contracts of sale of a commodity for future delivery traded on or subject to the rules of a contract market or any board of trade;

"(C) aided, abetted, counseled, commanded, induced, or procured the violation by any other person of any foreign statute or regulation regarding transactions in securities or contracts of sale of a commodity for future delivery traded on or subject to the rules of a contract market or any board of trade;

"(5) within 10 years has been convicted by a foreign court of competent jurisdiction of a crime, however denominated by the laws of the relevant foreign government, that is substantially equivalent to an offense set forth in paragraph (1) of subsection (a); or

"(6) by reason of any misconduct, is temporarily or permanently enjoined by any foreign court of competent jurisdiction from acting in any of the capacities, set forth in paragraph (2) of subsection (a), or a substantially equivalent foreign capacity, 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.".

(b) INVESTMENT ADVISERS ACT OF 1940.—Section 203(e) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-3(e)) is amended—

(1) in paragraph (2) by inserting after "misdemeanor" the following: "or of a substantially equivalent crime by a foreign court of competent jurisdiction";

(2) in paragraph (2)(A), by inserting after "burglary," the following: "any substantially equivalent activity however denominated by the laws of the relevant foreign government,";

(3) in paragraphs (2)(B) and (3)—

(A) by inserting after "transfer agent," the following: "foreign person performing a function substantially equivalent to any of the above,"; and

(B) after "Commodity Exchange Act" each place it appears, the following: "or any substantially equivalent statute or regulation";

(4) in paragraph (2)(C), by inserting after "securities" the following: "or substantially equivalent activity however denominated by the laws of the relevant foreign government";

(5) in paragraph (2)(D) by inserting after "United States Code" the following: ", or a violation of substantially equivalent foreign statute";

(6) in paragraph (3)—

(A) by inserting after "court of competent jurisdiction" the following: ", including any foreign court of competent jurisdiction,"; and

(B) by inserting after "insurance company," the following: "foreign entity substantially equivalent to any of the above,";

(7) in paragraph (5), by inserting after "this title," the following: "the Commodity Exchange Act,"; and

(8) by inserting after paragraph (6) the following new paragraph:

"(7) has been found by a foreign financial regulatory authority to have—

"(A) made or caused to be made in any application for registration or report required to be filed with a foreign securities authority, or in any proceeding before a foreign securities authority with respect to registration, any statement that was at the time and in 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 application or report to a foreign securities authority any material fact that is required to be stated therein;

"(B) violated any foreign statute or regulation regarding transactions in securities or contracts of sale of a commodity for future delivery traded on or subject to the rules of a contract market or any board of trade;

"(C) aided, abetted, counseled, commanded, induced, or procured the violation by any other person of any foreign statute or regulation regarding transactions in securities or contracts of sale of a commodity for future delivery traded on or subject to the rules of a contract market or any board of trade, or has been found, by the foreign finanical regulatory authority, to have failed reasonably to supervise, with a view to preventing violations of statutory provisions, and rules and regulations promulgated thereunder, another person who commits such a violation, if such other person is subject to his supervision.".

(c) CONFORMING AMENDMENT.—Section 203(f) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-3(f)) is amended by striking "paragraph (1), (4), or (5)" and inserting "paragraph (1), (4), (5), or (7)".

SEC. 206. DEFINITION OF FOREIGN SECURITIES AUTHORITY AND FOREIGN FINANCIAL REGULATORY AUTHORITY.

(a) INVESTMENT COMPANY ACT OF 1940.—Section 2(a) of the Investment Company Act of 1940 (15 U.S.C. 80a-2(a)) is amended by inserting after paragraph (48) the following:

"(49) 'Foreign securities authority' means any foreign government or any governmental body or regulatory organization empowered by a foreign government to administer or enforce its laws as they relate to securities matters.

"(50) 'Foreign financial regulatory authority' means any (A) foreign securities authority, (B) other governmental body or foreign equivalent of a self-regulatory organization empowered by a foreign government to administer or enforce its laws relating to the regulation of fiduciaries, trusts, commercial lending, insurance, trading in contracts of sale of a commodity for future delivery, or other instruments traded on or subject to the rules of a contract market, board of trade or foreign equivalent, or other financial activities, or (C) membership organization a function of which is to regulate the participation of its members in activities listed above.".

15 USC 80b-2.

(b) INVESTMENT ADVISERS ACT OF 1940.—Section 202(a) of the Investment Advisers Act of 1940 (15 U.S.C. 80B-2(a)) is amended by inserting after paragraph (22) the following:

"(23) 'Foreign securities authority' means any foreign government, or any governmental body or regulatory organization empowered by a foreign government to administer or enforce its laws as they relate to securities matters.

"(24) 'Foreign financial regulatory authority' means any (A) foreign securities authority, (B) other governmental body or foreign equivalent of a self-regulatory organization empowered by a foreign government to administer or enforce its laws relating to the regulation of fiduciaries, trusts, commercial lending, insurance, trading in contracts of sale of a commodity

for future delivery, or other instruments traded on or subject to the rules of a contract market, board of trade or foreign equivalent, or other financial activities, or (C) membership organization a function of which is to regulate the participation of its members in activities listed above.".

SEC. 207. REIMBURSEMENT OF EXPENSES INCURRED IN PROVIDING ASSISTANCE TO A FOREIGN SECURITIES AUTHORITY.

Section 4 of the Securities Exchange Act of 1934 (15 U.S.C. 78d) is amended by adding at the end thereof the following new subsection:

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

TITLE III—SHAREHOLDER COMMUNICATIONS

Shareholder Communications Improvement Act of 1990. 15 USC 78a note.

SEC 301. SHORT TITLE.

This title may be cited as the "Shareholder Communications Improvement Act of 1990".

SEC. 302. AMENDMENTS TO 1934 ACT.

(a) SECTION 14(b).—Section 14(b)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78n(b)(1)) is amended by—

(1) striking "section 12 of this title" and inserting "section 12 of this title, or any security issued by an investment company registered under the Investment Company Act of 1940,"; and

(2) striking "or authorization" and inserting "authorization, or information statement".

(b) SECTION 14(c).—Section 14(c) of the Securities Exchange Act of 1934 (15 U.S.C. 78n(c)) is amended by striking "title" and inserting "title, or a security issued by an investment company registered under the Investment Company Act of 1940,".

SEC. 303. EFFECTIVE DATE.

15 USC 78n note.

The amendments made by section 302 of this title shall take effect upon the expiration of 180 days after the date of enactment of this Act.

TITLE IV—TRUST INDENTURE ACT OF 1939

Trust Indenture Reform Act of 1990. 15 USC 77aaa note.

SEC. 401. SHORT TITLE.

This title may be cited as the "Trust Indenture Reform Act of 1990".

SEC. 402. DEFINITION.

Section 303(8) of the Trust Indenture Act of 1939 (15 U.S.C. 77ccc(8)) is amended by inserting "section 305 or" after "provided for in".

SEC. 403. EXEMPTION FROM QUALIFICATION.

Section 304 of the Trust Indenture Act of 1939 (15 U.S.C. 77ddd) is amended—

(1) in subsection (a)—

(A) by striking paragraph (3) and inserting "(3)."; and

(B) in paragraph (4)(A), by striking ", as heretofore amended,"; and

(2) by striking subsection (d) and inserting the following:

"(d) The Commission may, by rules or regulations upon its own motion, or by order on application by an interested person, exempt conditionally or unconditionally any person, registration statement, indenture, security or transaction, or any class or classes of persons, registration statements, indentures, securities, or transactions, from any one or more of the provisions of this title, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by this title. The Commission shall by rules and regulations determine the procedures under which an exemption under this subsection shall be granted, and may, in its sole discretion, decline to entertain any application for an order of exemption under this subsection.".

SEC. 404. SECURITIES REQUIRED TO BE REGISTERED UNDER THE SECURITIES ACT.

Section 305 of the Trust Indenture Act of 1939 (15 U.S.C. 77eee) is amended—

(1) in subsection (a)(1), by striking "or has a conflicting interest as defined in subsection (b) of section 310";

(2) in subsection (b)—

(A) by striking "The Commission shall issue" and inserting "(1) Except as may be permitted by paragraph (2) of this subsection, the Commission shall issue";

(B) by redesignating paragraph (1) as subparagraph (A);

(C) by inserting "or" at the end thereof;

(D) by striking paragraph (2);

(E) redesignating paragraph (3) as subparagraph (B);

(F) in such subparagraph (B), by striking "or has any conflicting interest as defined in subsection (b) of section 310"; and

(G) by adding at the end of subsection (b) the following new paragraph:

"(2) In the case of securities registered under the Securities Act of 1933, which securities are eligible to be issued, offered, or sold on a delayed basis by or on behalf of the registrant, the Commission shall not be required to issue an order pursuant to paragraph (1) of subsection (b) of section 305 for failure to designate a trustee eligible to act under subsection (a) of section 310 if, in accordance with such rules and regulations as may be prescribed by the Commission, the issuer of such securities files an application for the purpose of determining such trustee's eligibility under subsection (a) of section 310. The Commission shall issue an order prior to the effective date of such application refusing to permit the application to become

effective, if it finds that any person designated as trustee under such indenture is not eligible to act as such under subsection (a) of section 310, but no order shall be issued except after notice and opportunity for hearing within the periods and in the manner required with respect to refusal orders pursuant to section 8(b) of the Securities Act of 1933. If after notice and opportunity for hearing the Commission issues an order under this provision, the obligor shall within 5 calendar days appoint a trustee meeting the requirements of subsection (a) of section 310. No such appointment shall be effective and such refusal order shall not be rescinded by the Commission until a person eligible to act as trustee under subsection (a) of section 310 has been appointed. If no order is issued, an application filed pursuant to this paragraph shall be effective the tenth day after filing thereof or such earlier date as the Commission may determine, having due regard to the adequacy of information provided therein, the public interest, and the protection of investors.".

SEC. 405. WHEN QUALIFICATION BECOMES EFFECTIVE.

Section 309(b) of the Trust Indenture Act of 1939 (15 U.S.C. 77iii(b)) is amended by inserting after "such Act" the following: ", or the failure of the issuer to file an application as provided for by section 305(b)(2)".

SEC. 406. PERSONS ELIGIBLE FOR APPOINTMENT AS TRUSTEE.

Section 310(a) of the Trust Indenture Act of 1939 (15 U.S.C. 77jjj(a)) is amended—

(1) by inserting at the end of paragraph (1) the following: "The Commission may, pursuant to such rules and regulations as it may prescribe, or by order on application, permit a corporation or other person organized and doing business under the laws of a foreign government to act as sole trustee under an indenture qualified or to be qualified pursuant to this title, if such corporation or other person (i) is authorized under such laws to exercise corporate trust powers, and (ii) is subject to supervision or examination by authority of such foreign government or a political subdivision thereof substantially equivalent to supervision or examination applicable to United States institutional trustees. In prescribing such rules and regulations or making such order, the Commission shall consider whether under such laws, a United States institutional trustee is eligible to act as sole trustee under an indenture relating to securities sold within the jurisdiction of such foreign government.";

(2) by striking "The indenture to be qualified shall require that there shall" in paragraph (1) and inserting "There shall";

(3) by striking "thereunder" in paragraph (1) and inserting "under every indenture qualified or to be qualified pursuant to this title";

(4) by inserting "or a corporation or other person permitted to act as trustee by the Commission" before "(referred to" in paragraph (1);

(5) by striking "The indenture to be qualified shall require that such institution" in paragraph (2) and inserting "Such institution";

(6) by striking "such indenture shall provide that" in paragraph (3);

(7) by striking "the indenture to be qualified shall require that" in paragraph (4); and

(8) by inserting "shall" after "the indenture trustee or trustees" in paragraph (4).

SEC. 407. PERSONS INELIGIBLE FOR APPOINTMENT AS TRUSTEE.

Section 310(a) of the Trust Indenture Act of 1939 (15 U.S.C. 77jjj(a)) is amended by adding at the end thereof the following new paragraph:

"(5) No obligor upon the indenture securities or person directly or indirectly controlling, controlled by, or under common control with such obligor shall serve as trustee upon such indenture securities.".

SEC. 408. DISQUALIFICATION OF TRUSTEE.

Section 310(b) of the Trust Indenture Act of 1939 (15 U.S.C. 77jjj(b)) is amended to read as follows:

"(b) If any indenture trustee has or shall acquire any conflicting interest as hereinafter defined—

"(i) then, within 90 days after ascertaining that it has such conflicting interest, and if the default (as defined in the next sentence) to which such conflicting interest relates has not been cured or duly waived or otherwise eliminated before the end of such 90-day period, such trustee shall either eliminate such conflicting interest or, except as otherwise provided below in this subsection, resign, and the obligor upon the indenture securities shall take prompt steps to have a successor appointed in the manner provided in the indenture;

"(ii) in the event that such trustee shall fail to comply with the provisions of clause (i) of this subsection, such trustee shall, within 10 days after the expiration of such 90-day period, transmit notice of such failure to the indenture security holders in the manner and to the extent provided in subsection (c) of section 313; and

"(iii) subject to the provisions of subsection (e) of section 315, unless such trustee's duty to resign is stayed as provided below in this subsection, any security holder who has been a bona fide holder of indenture securities for at least six months may, on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the removal of such trustee, and the appointment of a successor, if such trustee fails, after written request thereof by such holder to comply with the provisions of clause (i) of this subsection.

"For the purposes of this subsection, an indenture trustee shall be deemed to have a conflicting interest if the indenture securities are in default (as such term is defined in such indenture, but exclusive of any period of grace or requirement of notice) and—

"(1) such trustee is trustee under another indenture under which any other securities, or certificates of interest or participation in any other securities, of an obligor upon the indenture securities are outstanding or is trustee for more than one outstanding series of securities, as hereafter defined, under a single indenture of an obligor, unless—

"(A) the indenture securities are collateral trust notes under which the only collateral consists of securities issued under such other indenture,

"(B) such other indenture is a collateral trust indenture under which the only collateral consists of indenture securities, or

"(C) such obligor has no substantial unmortgaged assets and is engaged primarily in the business of owning, or of owning and developing and/or operating, real estate, and the indenture to be qualified and such other indenture are secured by wholly separate and distinct parcels of real estate:

Provided, That the indenture to be qualified shall automatically be deemed (unless it is expressly provided therein that such provision is excluded) to contain a provision excluding from the operation of this paragraph other series under such indenture, and any other indenture or indentures under which other securities, or certificates of interest or participation in other securities, of such an obligor are outstanding, if—

"(i) the indenture to be qualified and any such other indenture or indentures (and all series of securities issuable thereunder) are wholly unsecured and rank equally, and such other indenture or indentures (and such series) are specifically described in the indenture to be qualified or are thereafter qualified under this title, unless the Commission shall have found and declared by order pursuant to subsection (b) of section 305 or subsection (c) of section 307 that differences exist between the provisions of the indenture (or such series) to be qualified and the provisions of such other indenture or indentures (or such series) which are so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify such trustee from acting as such under one of such indentures, or

"(ii) the issuer shall have sustained the burden of proving, on application to the Commission and after opportunity for hearing thereon, that trusteeship under the indenture to be qualified and such other indenture or under more than one outstanding series under a single indenture is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify such trustee from acting as such under one of such indentures or with respect to such series;

"(2) such trustee or any of its directors or executive officers is an underwriter for an obligor upon the indenture securities;

"(3) such trustee directly or indirectly controls or is directly or indirectly controlled by or is under direct or indirect common control with an underwriter for an obligor upon the indenture securities;

"(4) such trustee or any of its directors or executive officers is a director, officer, partner, employee, appointee, or representative of an obligor upon the indenture securities, or of an underwriter (other than the trustee itself) for such an obligor who is currently engaged in the business of underwriting, except that—

"(A) one individual may be a director and/or an executive officer of the trustee and a director and/or an executive officer of such obligor, but may not be at the same time an executive officer of both the trustee and of such obligor,

"(B) if and so long as the number of directors of the trustee in office is more than nine, one additional individual may be a director and/or an executive officer of the trustee and a director of such obligor, and

"(C) such trustee may be designated by any such obligor or by any underwriter for any such obligor, to act in the capacity of transfer agent, registrar, custodian, paying agent, fiscal agent, escrow agent, or depositary, or in any other similar capacity, or, subject to the provisions of paragraph (1) of this subsection, to act as trustee, whether under an indenture or otherwise;

"(5) 10 per centum or more of the voting securities of such trustee is beneficially owned either by an obligor upon the indenture securities or by any director, partner or executive officer thereof, or 20 per centum or more of such voting securities is beneficially owned, collectively by any two or more of such persons; or 10 per centum or more of the voting securities of such trustee is beneficially owned either by an underwriter for any such obligor or by any director, partner, or executive officer thereof, or is beneficially owned, collectively, by any two or more such persons;

"(6) such trustee is the beneficial owner of, or holds as collateral security for an obligation which is in default as hereinafter defined—

"(A) 5 per centum or more of the voting securities, or 10 per centum or more of any other class of security, of an obligor upon the indenture securities, not including indentures securities and securities issued under any other indenture under which such trustee is also trustee, or

"(B) 10 per centum or more of any class of security of an underwriter for any such obligor;

"(7) such trustee is the beneficial owner of, or holds as collateral security for an obligation which is in default as hereinafter defined, 5 per centum or more of the voting securities of any person who, to the knowledge of the trustee, owns 10 per centum or more of the voting securities of, or controls directly or indirectly or is under direct or indirect common control with, an obligor upon the indenture securities;

"(8) such trustee is the beneficial owner of, or holds as collateral security for an obligation which is in default as hereinafter defined, 10 per centum or more of any class of security of any person who, to the knowledge of the trustee, owns 50 per centum or more of the voting securities of an obligor upon the indenture securities;

"(9) such trustee owns, on the date of default upon the indenture securities (as such term is defined in such indenture but exclusive of any period of grace or requirement of notice) or any anniversary of such default while such default upon the indenture securities remains outstanding, in the capacity of executor, administrator, testamentary or inter vivos trustee, guardian, committee or conservator, or in any other similar capacity, an aggregate of 25 per centum or more of the voting securities, or of any class of security, of any person, the beneficial ownership of a specified percentage of which would have constituted a conflicting interest under paragraph (6), (7), or (8) of this subsection. As to any such securities of which the indenture trustee acquired ownership through becoming execu-

tor, administrator or testamentary trustee of an estate which include them, the provisions of the preceding sentence shall not apply for a period of not more than 2 years from the date of such acquisition, to the extent that such securities included in such estate do not exceed 25 per centum of such voting securities or 25 per centum of any such class of security. Promptly after the dates of any such default upon the indenture securities and annually in each succeeding year that the indenture securities remain in default the trustee shall make a check of its holding of such securities in any of the above-mentioned capacities as of such dates. If the obligor upon the indenture securities fails to make payment in full of principal or interest under such indenture when and as the same becomes due and payable, and such failure continues for 30 days thereafter, the trustee shall make a prompt check of its holdings of such securities in any of the above-mentioned capacities as of the date of the expiration of such 30-day period, and after such date, notwithstanding the foregoing provisions of this paragraph, all such securities so held by the trustee, with sole or joint control over such securities vested in it, shall be considered as though beneficially owned by such trustee, for the purposes of paragraphs (6), (7), and (8) of this subsection; or

"(10) except under the circumstances described in paragraphs (1), (3), (4), (5) or (6) of section 311(b) of this title, the trustee shall be or shall become a creditor of the obligor.

"For purposes of paragraph (1) of this subsection, and of section 316(a) of this title, the term 'series of securities' or 'series' means a series, class or group of securities issuable under an indenture pursuant to whose terms holders of one such series may vote to direct the indenture trustee, or otherwise take action pursuant to a vote of such holders, separately from holders of another such series: *Provided,* That 'series of securities' or 'series' shall not include any series of securities issuable under an indenture if all such series rank equally and are wholly unsecured.

"The specification of percentages in paragraphs (5) to (9), inclusive, of this subsection shall not be construed as indicating that the ownership of such percentages of the securities of a person is or is not necessary or sufficient to constitute direct or indirect control for the purposes of paragraph (3) or (7) of this subsection.

"For the purposes of paragraphs (6), (7), (8), and (9) of this subsection—

"(A) the terms 'security' and 'securities' shall include only such securities as are generally known as corporate securities, but shall not include any note or other evidence of indebtedness issued to evidence an obligation to repay moneys lent to a person by one or more banks, trust companies, or banking firms, or any certificate of interest or participation in any such note or evidence of indebtedness;

"(B) an obligation shall be deemed to be in default when a default in payment of principal shall have continued for thirty days or more, and shall not have been cured; and

"(C) the indenture trustee shall not be deemed the owner or holder of (i) any security which it holds as collateral security (as trustee or otherwise) for any obligation which is not in default as above defined, or (ii) any security which it holds as collateral security under the indenture to be qualified, irrespective of any default thereunder, or (iii) any security which it holds as agent

for collection, or as custodian, escrow agent or depositary, or in any similar representative capacity.

"For the purposes of this subsection, the term 'underwriter' when used with reference to an obligor upon the indenture securities means every person who, within one year prior to the time as of which the determination is made, was an underwriter of any security of such obligor outstanding at the time of the determination.

"Except in the case of a default in the payment of the principal of or interest on any indenture security, or in the payment of any sinking or purchase fund installment, the indenture trustee shall not be required to resign as provided by this subsection if such trustee shall have sustained the burden of proving, on application to the Commission and after opportunity for hearing thereon, that—

"(i) the default under the indenture may be cured or waived during a reasonable period and under the procedures described in such application, and

"(ii) a stay of the trustee's duty to resign will not be inconsistent with the interests of holders of the indenture securities. The filing of such an application shall automatically stay the performance of the duty to resign until the Commission orders otherwise.

"Any resignation of an indenture trustee shall become effective only upon the appointment of a successor trustee and such successor's acceptance of such an appointment.".

SEC. 409. PREFERENTIAL COLLECTION OF CLAIMS AGAINST OBLIGOR.

Section 311 of the Trust Indenture Act of 1939 (15 U.S.C. 77kkk) is amended—

(1) by striking "the indenture to be qualified shall provide that" in the first paragraph of subsection (a);

(2) by striking "The indenture to be qualified shall provide that, if" at the beginning of the third paragraph of subsection (a) and inserting "If";

(3) by striking "four months" and "four months'" each place they appear in subsection (a) and inserting "three months" and "three months' ", respectively;

(4) by inserting at the end of subsection (a) the following: "In any case commenced under the Bankruptcy Act of July 1, 1898, or any amendment thereto enacted prior to November 6, 1978, all references to periods of three months shall be deemed to be references to periods of four months."; and

(5) by striking "may" in the first line of subsection (b) and inserting "shall automatically be deemed (unless it is expressly provided therein that any such provision is excluded) to".

SEC. 410. BONDHOLDER LISTS.

Section 312 of the Trust Indenture Act of 1939 (15 U.S.C. 77*lll*) is amended—

(1) by striking "The indenture to be qualified shall contain provisions requiring each obligor" in subsection (a) and inserting "Each obligor";

(2) in subsection (a), by striking "indenture securities to" and inserting "indenture securities shall"; and

(3) by striking "The indenture to be qualified shall also contain provisions requiring that, within" in subsection (b) and inserting "Within".

SEC. 411. REPORTS BY INDENTURE TRUSTEE.

Section 313(a) of the Trust Indenture Act of 1939 (15 U.S.C. 77mmm(a)) is amended—

(1) by striking "The indenture to be qualified shall contain provisions requiring the indenture trustee to" and inserting "The indenture trustee shall";

(2) by inserting after "a brief report with respect to" the following: "any of the following events which may have occurred within the previous 12 months (but if no such event has occurred within such period no report need be transmitted):";

(3) by inserting after the paragraph designation at the beginning of paragraphs (1), (4), and (5) the following: "any change to";

(4) in paragraph (1) by striking ", or in lieu thereof, if to the best of its knowledge it has continued to be eligible and qualified under such section, a written statement to such effect"; and

(5)(A) by redesignating paragraphs (2) through (7) as paragraphs (3) through (8), respectively; and

(B) by inserting after paragraph (1) the following:

"(2) the creation of or any material change to a relationship specified in paragraph (1) through (10) of section 310(b);".

SEC. 412. BONDHOLDER COMMUNICATIONS.

Section 313 of the Trust Indenture Act of 1939 (15 U.S.C. 77mmm) is amended—

(1) by striking "The indenture to be qualified shall also contain provisions requiring the indenture trustee to" in subsection (b) and inserting "The indenture trustee shall";

(2) by striking "The indenture to be qualified shall also provide that reports" in subsection (c) and inserting "Reports"; and

(3) by striking "The indenture to be qualified shall also provide that a copy" in subsection (d) and inserting "A copy".

SEC. 413. REPORTS BY OBLIGOR; EVIDENCE OF COMPLIANCE WITH INDENTURE PROVISIONS.

Section 314 of the Trust Indenture Act of 1939 (15 U.S.C. 77nnn) is amended—

(1) by striking "The indenture to be qualified shall contain provisions requiring each" in subsection (a) and inserting "Each";

(2) by inserting "shall" after "thereby" in such subsection;

(3) by striking "to" after the paragraph designation at the beginning of paragraphs (1), (2), and (3) of subsection (a);

(4) by striking "and" at the end of paragraph (2) of subsection (a);

(5) by striking the period at the end of paragraph (3) of subsection (a) and inserting "; and";

(6) by adding at the end of subsection (a) the following new paragraph:

"(4) furnish to the indenture trustee, not less often than annually, a brief certificate from the principal executive officer, principal financial officer or principal accounting officer as to his or her knowledge of such obligor's compliance with all conditions and covenants under the indenture. For purposes of this paragraph, such compliance shall be determined without

regard to any period of grace or requirement of notice provided under the indenture.";

(7) by striking "such indenture shall contain provisions requiring" in subsection (b);

(8) by striking "securities to furnish" in subsection (b) and inserting "securities shall furnish";

(9) by striking "The indenture to be qualified shall contain provisions requiring the obligor" in subsection (c) and inserting "The obligor";

(10) by striking "securities to furnish" in subsection (c) and inserting "securities shall furnish";

(11) by striking "such indenture shall contain provisions" in subsection (d) and inserting "the obligor upon the indenture securities shall furnish to the indenture trustee a certificate or opinion of an engineer, appraiser, or other expert as to the fair value";

(12) by striking "requiring the obligor upon the indenture securities to furnish to the indenture trustee a certificate or opinion of an engineer, appraiser or other expert as to the fair value" in paragraphs (1), (2) and (3) of subsection (d);

(13) by striking "If the indenture to be qualified so provides," at the beginning of the penultimate sentence of subsection (d) and inserting "The indenture to be qualified shall automatically be deemed (unless it is expressly provided therein that such provision is excluded) to provide that";

(14) by striking "specified in the indenture" in the penultimate sentence of subsection (d) and inserting "duly authorized to make such certificate or opinion by the obligor from time to time"; and

(15) by inserting in subsection (e) "(other than certificates provided pursuant to subsection (a)(4) of this section)" after "indenture".

SEC. 414. DUTIES AND RESPONSIBILITIES OF THE TRUSTEE.

Section 315 of the Trust Indenture Act of 1939 (15 U.S.C. 77ooo) is amended—

(1) by striking "The indenture to be qualified may" in subsections (a) and (e) and inserting "The indenture to be qualified shall automatically be deemed (unless it is expressly provided therein that any such provision is excluded) to";

(2) by striking "such indenture shall contain provisions requiring the indenture trustee to examine" in subsection (a) and inserting "the indenture trustee shall examine";

(3) by striking "The indenture to be qualified shall contain provisions requiring the indenture trustee to" in subsections (b) and (c) and inserting "The indenture trustee shall";

(4) by striking "That such indenture may" in the proviso in subsection (b) and inserting "That such indenture shall automatically be deemed (unless it is expressly provided therein that such provision is excluded) to"; and

(5) by striking "such indenture may" in paragraphs (1), (2), and (3) of subsection (d) and inserting "such indenture shall automatically be deemed (unless it is expressly provided therein that any such provision is excluded) to".

SEC. 415. DIRECTIONS AND WAIVERS BY BONDHOLDERS; PROHIBITION OF IMPAIRMENT OF RIGHT TO PAYMENT; RECORD DATES.

Section 316 of the Trust Indenture Act of 1939 (15 U.S.C. 77ppp) is amended—

(1) by striking "may contain provisions" after "qualified" in subsection (a) and inserting "may contain provisions" before "authorizing the holders" in paragraph (2) of subsection (a);

(2) by inserting "shall automatically be deemed (unless it is expressly provided therein that any such provision is excluded) to contain provisions" before "authorizing the holders" in paragraph (1) of subsection (a);

(3) by inserting "or if expressly specified in such indenture, of any series of securities" after "principal amount of the indenture securities" in paragraphs (1) and (2) of subsection (a);

(4) by striking "The indenture to be qualified shall provide that, notwithstanding" in subsection (b) and inserting "Notwithstanding";

(5) by striking "thereof" in subsection (b) and inserting "of the indenture to be qualified"; and

(6) by adding at the end thereof the following new subsection:

"(c) The obligor upon any indenture qualified under this title may set a record date for purposes of determining the identity of indenture security holders entitled to vote or consent to any action by vote or consent authorized or permitted by subsection (a) of this section. Unless the indenture provides otherwise, such record date shall be the later of 30 days prior to the first solicitation of such consent or the date of the most recent list of holders furnished to the trustee pursuant to section 312 of this title prior to such solicitation.".

SEC. 416. SPECIAL POWERS OF TRUSTEE; DUTIES OF PAYING AGENTS.

Section 317 of the Trust Indenture Act of 1939 (15 U.S.C. 77qqq) is amended—

(1) by striking "to be qualified shall contain provisions" in subsection (a) and inserting "trustee shall be authorized";

(2) by striking "authorizing the indenture trustee" in paragraph (1);

(3) by striking "authorizing such trustee" from paragraph (2); and

(4) by striking "The indenture to be qualified shall provide that each" in subsection (b) and inserting "Each".

SEC. 417. EFFECT OF MANDATORY TERMS.

Section 318 of the Trust Indenture Act of 1939 (15 U.S.C. 77rrr) is amended—

(1) by striking subsection (a) and inserting the following:

"SEC. 318. (a) If any provision of the indenture to be qualified limits, qualifies, or conflicts with the duties imposed by operation of subsection (c) of this section, the imposed duties shall control.";

(2) by adding at the end thereof the following new subsection:

"(c) The provisions of sections 310 to and including 317 that impose duties on any person (including provisions automatically deemed included in an indenture unless the indenture provides that such provisions are excluded) are a part of and govern every qualified indenture, whether or not physically contained therein, shall be deemed retroactively to govern each indenture heretofore qualified, and prospectively to govern each indenture hereafter qualified under this title and shall be deemed retroactively to amend and

supersede inconsistent provisions in each such indenture heretofore qualified. The foregoing provisions of this subsection shall not be deemed to effect the inclusion (by retroactive amendment or otherwise) in the text of any indenture heretofore qualified of any of the optional provisions contemplated by section 310(b)(1), 311(b), 314(d), 315(a), 315(b), 315(d), 315(e), or 316(a)(1).".

SEC. 418. JURISDICTION OF OFFENSES AND SUITS.

Section 322(b) of the Trust Indenture Act of 1939 (15 U.S.C. 77vvv(b)) is amended by inserting "or duty" after "any liability".

Approved November 15, 1990.

LEGISLATIVE HISTORY—H.R. 1396 (S. 1712):

HOUSE REPORTS: No. 101-240 (Comm. on Energy and Commerce) and No. 101-924 (Comm. of Conference).
SENATE REPORTS: No. 101-155 accompanying S. 1712 (Comm. on Banking, Housing, and Urban Affairs).
CONGRESSIONAL RECORD:
Vol. 135 (1989): Sept. 25, considered and passed House.
Nov. 16, considered and passed Senate, amended, in lieu of S. 1712.
Vol. 136 (1990): Oct. 1, House concurred in Senate amendments with an amendment.
Oct. 25, Senate agreed to conference report.
Oct. 26, House agreed to conference report.