Public Law 101-432
101st Congress

An Act

To amend the Securities Exchange Act of 1934 to strengthen regulatory oversight of the United States securities markets, improve supervision of financial market participants, and improve the safety and efficiency of market mechanisms, and for other purposes.

Oct. 16, 1990
[H.R. 3657]

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

Market Reform Act of 1990. Brokers. 15 USC 78a note.

SECTION 1. SHORT TITLE.

This Act may be cited as the "Market Reform Act of 1990".

SEC. 2. EMERGENCY AUTHORITY; TRADING HALTS.

15 USC 78*l*.

Section 12(k) of the Securities Exchange Act of 1934 (15 U.S.C. 781(k)) is amended to read as follows:

"(k) TRADING SUSPENSIONS; EMERGENCY AUTHORITY.—

"(1) TRADING SUSPENSIONS.—If in its opinion the public interest and the protection of investors so require, the Commission is authorized by order—

"(A) summarily to suspend trading in any security (other than an exempted security) for a period not exceeding 10 business days, and

"(B) summarily to suspend all trading on any national securities exchange or otherwise, in securities other than exempted securities, for a period not exceeding 90 calendar days.

The action described in subparagraph (B) shall not take effect unless the Commission notifies the President of its decision and the President notifies the Commission that the President does not disapprove of such decision.

"(2) EMERGENCY ORDERS.—(A) The Commission, in an emergency, may by order summarily take such action to alter, supplement, suspend, or impose requirements or restrictions with respect to any matter or action subject to regulation by the Commission or a self-regulatory organization under this title, as the Commission determines is necessary in the public interest and for the protection of investors—

"(i) to maintain or restore fair and orderly securities markets (other than markets in exempted securities); or

"(ii) to ensure prompt, accurate, and safe clearance and settlement of transactions in securities (other than exempted securities).

"(B) An order of the Commission under this paragraph (2) shall continue in effect for the period specified by the Commission, and may be extended, except that in no event shall the Commission's action continue in effect for more than 10 business days, including extensions. In exercising its authority under this paragraph, the Commission shall not be required to comply with the provisions of section 553 of title 5, United States Code, or with the provisions of section 19(c) of this title.

"(3) TERMINATION OF EMERGENCY ACTIONS BY PRESIDENT.—The President may direct that action taken by the Commission

49-139 O - 90 (432)

AUTHENTICATED U.S. GOVERNMENT INFORMATION GPO

under paragraph (1)(B) or paragraph (2) of this subsection shall not continue in effect.

"(4) COMPLIANCE WITH ORDERS.—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 contravention of an order of the Commission under this subsection unless such order has been stayed, modified, or set aside as provided in paragraph (5) of this subsection or has ceased to be effective upon direction of the President as provided in paragraph (3).

"(5) LIMITATIONS ON REVIEW OF ORDERS.—An order of the Commission pursuant to this subsection shall be subject to review only as provided in section 25(a) of this title. Review shall be based on an examination of all the information before the Commission at the time such order was issued. The reviewing court shall not enter a stay, writ of mandamus, or similar relief unless the court finds, after notice and hearing before a panel of the court, that the Commission's action is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

"(6) DEFINITION OF EMERGENCY.—For purposes of this subsection, the term 'emergency' means a major market disturbance characterized by or constituting—

"(A) sudden and excessive fluctuations of securities prices generally, or a substantial threat thereof, that threaten fair and orderly markets, or

"(B) a substantial disruption of the safe or efficient operation of the national system for clearance and settlement of securities, or a substantial threat thereof.".

SEC. 3. LARGE TRADER REPORTING.

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

"(h) LARGE TRADER REPORTING.—

"(1) IDENTIFICATION REQUIREMENTS FOR LARGE TRADERS.—For the purpose of monitoring the impact on the securities markets of securities transactions involving a substantial volume or a large fair market value or exercise value and for the purpose of otherwise assisting the Commission in the enforcement of this title, each large trader shall—

"(A) provide such information to the Commission as the Commission may by rule or regulation prescribe as necessary or appropriate, identifying such large trader and all accounts in or through which such large trader effects such transactions; and

"(B) identify, in accordance with such rules or regulations as the Commission may prescribe as necessary or appropriate, to any registered broker or dealer by or through whom such large trader directly or indirectly effects securities transactions, such large trader and all accounts directly or indirectly maintained with such broker or dealer by such large trader in or through which such transactions are effected.

Regulations.

"(2) RECORDKEEPING AND REPORTING REQUIREMENTS FOR BROKERS AND DEALERS.—Every registered broker or dealer shall make and keep for prescribed periods such records as the

Commission by rule or regulation prescribes as necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this title, with respect to securities transactions that equal or exceed the reporting activity level effected directly or indirectly by or through such registered broker or dealer of or for any person that such broker or dealer knows is a large trader, or any person that such broker or dealer has reason to know is a large trader on the basis of transactions in securities effected by or through such broker or dealer. Such records shall be available for reporting to the Commission, or any self-regulatory organization that the Commission shall designate to receive such reports, on the morning of the day following the day the transactions were effected, and shall be reported to the Commission or a self-regulatory organization designated by the Commission immediately upon request by the Commission or such a self-regulatory organization. Such records and reports shall be in a format and transmitted in a manner prescribed by the Commission (including, but not limited to, machine readable form).

"(3) AGGREGATION RULES.—The Commission may prescribe rules or regulations governing the manner in which transactions and accounts shall be aggregated for the purpose of this subsection, including aggregation on the basis of common ownership or control.

"(4) EXAMINATION OF BROKER AND DEALER RECORDS.—All records required to be made and kept by registered brokers and dealers pursuant to this subsection with respect to transactions effected by large traders 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, for the protection of investors, or otherwise in furtherance of the purposes of this title.

"(5) FACTORS TO BE CONSIDERED IN COMMISSION ACTIONS.—In exercising its authority under this subsection, the Commission shall take into account—

"(A) existing reporting systems;

"(B) the costs associated with maintaining information with respect to transactions effected by large traders and reporting such information to the Commission or self-regulatory organizations; and

"(C) the relationship between the United States and international securities markets.

"(6) EXEMPTIONS.—The Commission, by rule, regulation, or order, consistent with the purposes of this title, may exempt any person or class of persons or any transaction or class of transactions, either conditionally or upon specified terms and conditions or for stated periods, from the operation of this subsection, and the rules and regulations thereunder.

"(7) AUTHORITY OF COMMISSION TO LIMIT DISCLOSURE OF INFORMATION.—Notwithstanding any other provision of law, the Commission shall not be compelled to disclose any information required to be kept or reported under this subsection. Nothing in this subsection shall authorize the Commission to withhold information from Congress, or prevent the Commission from complying with a request for information from any other Fed-

eral department or agency requesting information for purposes within the scope of its jurisdiction, or complying with an order of a court of the United States in an action brought by the United States or the Commission. 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.

"(8) DEFINITIONS.—For purposes of this subsection—

"(A) the term 'large trader' means every person who, for his own account or an account for which he exercises investment discretion, effects transactions for the purchase or sale of any publicly traded security or securities by use of any means or instrumentality of interstate commerce or of the mails, or of any facility of a national securities exchange, directly or indirectly by or through a registered broker or dealer in an aggregate amount equal to or in excess of the identifying activity level;

"(B) the term 'publicly traded security' means any equity security (including an option on individual equity securities, and an option on a group or index of such securities) listed, or admitted to unlisted trading privileges, on a national securities exchange, or quoted in an automated interdealer quotation system;

"(C) the term 'identifying activity level' means transactions in publicly traded securities at or above a level of volume, fair market value, or exercise value as shall be fixed from time to time by the Commission by rule or regulation, specifying the time interval during which such transactions shall be aggregated;

"(D) the term 'reporting activity level' means transactions in publicly traded securities at or above a level of volume, fair market value, or exercise value as shall be fixed from time to time by the Commission by rule, regulation, or order, specifying the time interval during which such transactions shall be aggregated; and

"(E) the term 'person' has the meaning given in section 3(a)(9) of this title and also includes two or more persons acting as a partnership, limited partnership, syndicate, or other group, but does not include a foreign central bank.".

SEC. 4. RISK ASSESSMENT FOR HOLDING COMPANY SYSTEMS.

(a) AMENDMENT.—Section 17 of the Securities Exchange Act of 1934 (15 U.S.C. 78q) is amended by adding at the end the following:

"(h) RISK ASSESSMENT FOR HOLDING COMPANY SYSTEMS.—

"(1) OBLIGATIONS TO OBTAIN, MAINTAIN, AND REPORT INFORMATION.—Every person who is (A) a registered broker or dealer, or (B) a registered municipal securities dealer for which the Commission is the appropriate regulatory agency, shall obtain such information and make and keep such records as the Commission by rule prescribes concerning the registered person's policies, procedures, or systems for monitoring and controlling financial and operational risks to it resulting from the activities of any of its associated persons, other than a natural person. Such records shall describe, in the aggregate, each of the financial and securities activities conducted by, and the customary sources of capital and funding of, those of its associated persons whose business activities are reasonably likely to have a material impact on the financial or operational

condition of such registered person, including its net capital, its liquidity, or its ability to conduct or finance its operations. The Commission, by rule, may require summary reports of such information to be filed with the Commission no more frequently than quarterly.

"(2) AUTHORITY TO REQUIRE ADDITIONAL INFORMATION.—If, as a result of adverse market conditions or based on reports provided to the Commission pursuant to paragraph (1) of this subsection or other available information, the Commission reasonably concludes that it has concerns regarding the financial or operational condition of (A) any registered broker or dealer, or (B) any registered municipal securities dealer, government securities broker, or government securities dealer for which the Commission is the appropriate regulatory agency, the Commission may require the registered person to make reports concerning the financial and securities activities of any of such person's associated persons, other than a natural person, whose business activities are reasonably likely to have a material impact on the financial or operational condition of such registered person. The Commission, in requiring reports pursuant to this paragraph, shall specify the information required, the period for which it is required, the time and date on which the information must be furnished, and whether the information is to be furnished directly to the Commission or to a self-regulatory organization with primary responsibility for examining the registered person's financial and operational condition.

"(3) SPECIAL PROVISIONS WITH RESPECT TO ASSOCIATED PERSONS SUBJECT TO FEDERAL BANKING AGENCY REGULATION.—

"(A) COOPERATION IN IMPLEMENTATION.—In developing and implementing reporting requirements pursuant to paragraph (1) of this subsection with respect to associated persons subject to examination by or reporting requirements of a Federal banking agency, the Commission shall consult with and consider the views of each such Federal banking agency. If a Federal banking agency comments in writing on a proposed rule of the Commission under this subsection that has been published for comment, the Commission shall respond in writing to such written comment before adopting the proposed rule. The Commission shall, at the request of the Federal banking agency, publish such comment and response in the Federal Register at the time of publishing the adopted rule.

Federal Register, publication.

"(B) USE OF BANKING AGENCY REPORTS.—A registered broker, dealer, or municipal securities dealer shall be in compliance with any recordkeeping or reporting requirement adopted pursuant to paragraph (1) of this subsection concerning an associated person that is subject to examination by or reporting requirements of a Federal banking agency if such broker, dealer, or municipal securities dealer utilizes for such recordkeeping or reporting requirement copies of reports filed by the associated person with the Federal banking agency pursuant to section 5211 of the Revised Statutes, section 9 of the Federal Reserve Act, section 7(a) of the Federal Deposit Insurance Act, section 10(b) of the Home Owners' Loan Act, or section 8 of the Bank Holding Company Act of 1956. The Commission may, however, by rule adopted pursuant to paragraph (1), require

any broker, dealer, or municipal securities dealer filing such reports with the Commission to obtain, maintain, or report supplemental information if the Commission makes an explicit finding that such supplemental information is necessary to inform the Commission regarding potential risks to such broker, dealer, or municipal securities dealer. Prior to requiring any such supplemental information, the Commission shall first request the Federal banking agency to expand its reporting requirements to include such information.

"(C) PROCEDURE FOR REQUIRING ADDITIONAL INFORMATION.—Prior to making a request pursuant to paragraph (2) of this subsection for information with respect to an associated person that is subject to examination by or reporting requirements of a Federal banking agency, the Commission shall—

"(i) notify such agency of the information required with respect to such associated person; and

"(ii) consult with such agency to determine whether the information required is available from such agency and for other purposes, unless the Commission determines that any delay resulting from such consultation would be inconsistent with ensuring the financial and operational condition of the broker, dealer, municipal securities dealer, government securities broker, or government securities dealer or the stability or integrity of the securities markets.

"(D) EXCLUSION FOR EXAMINATION REPORTS.—Nothing in this subsection shall be construed to permit the Commission to require any registered broker or dealer, or any registered municipal securities dealer, government securities broker, or government securities dealer for which the Commission is the appropriate regulatory agency, to obtain, maintain, or furnish any examination report of any Federal banking agency or any supervisory recommendations or analysis contained therein.

"(E) CONFIDENTIALITY OF INFORMATION PROVIDED.—No information provided to or obtained by the Commission from any Federal banking agency pursuant to a request by the Commission under subparagraph (C) of this paragraph regarding any associated person which is subject to examination by or reporting requirements of a Federal banking agency may be disclosed to any other person (other than a self-regulatory organization), without the prior written approval of the Federal banking agency. Nothing in this subsection shall authorize the Commission to withhold information from Congress, or prevent the Commission from complying with a request for information from any other Federal department or agency requesting the information for purposes within the scope of its jurisdiction, or complying with an order of a court of the United States in an action brought by the United States or the Commission.

"(F) NOTICE TO BANKING AGENCIES CONCERNING FINANCIAL AND OPERATIONAL CONDITION CONCERNS.—The Commission shall notify the Federal banking agency of any concerns of the Commission regarding significant financial or oper-

ational risks resulting from the activities of any registered broker or dealer, or any registered municipal securities dealer, government securities broker, or government securities dealer for which the Commission is the appropriate regulatory agency, to any associated person thereof which is subject to examination by or reporting requirements of the Federal banking agency.

"(G) DEFINITION.—For purposes of this paragraph, the term 'Federal banking agency' shall have the same meaning as the term 'appropriate Federal bank agency' in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)).

"(4) EXEMPTIONS.—The Commission by rule or order may exempt any person or class of persons, under such terms and conditions and for such periods as the Commission shall provide in such rule or order, from the provisions of this subsection, and the rules thereunder. In granting such exemptions, the Commission shall consider, among other factors—

"(A) whether information of the type required under this subsection is available from a supervisory agency (as defined in section 1101(6) of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3401(6))), a State insurance commission or similar State agency, the Commodity Futures Trading Commission, or a similar foreign regulator;

"(B) the primary business of any associated person;

"(C) the nature and extent of domestic or foreign regulation of the associated person's activities;

"(D) the nature and extent of the registered person's securities activities; and

"(E) with respect to the registered person and its associated persons, on a consolidated basis, the amount and proportion of assets devoted to, and revenues derived from, activities in the United States securities markets.

"(5) AUTHORITY TO LIMIT DISCLOSURE OF INFORMATION.—Notwithstanding any other provision of law, the Commission shall not be compelled to disclose any information required to be reported under this subsection, or any information supplied to the Commission by any domestic or foreign regulatory agency that relates to the financial or operational condition of any associated person of a registered broker, dealer, government securities broker, government securities dealer, or municipal securities dealer. Nothing in this subsection shall authorize the Commission to withhold information from Congress, or prevent the Commission from complying with a request for information from any other Federal department or agency requesting the information for purposes within the scope of its jurisdiction, or complying with an order of a court of the United States in an action brought by the United States or the Commission. 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. In prescribing regulations to carry out the requirements of this subsection, the Commission shall designate information described in or obtained pursuant to subparagraph (B) or (C) of paragraph (3) of this subsection as confidential information for purposes of section 24(b)(2) of this title.". Regulations.

15 USC 78o-5.

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

(1) by redesignating paragraphs (2) through (5) as paragraphs (3) through (6), respectively; and

(2) by inserting after paragraph (1) the following new paragraph:

"(2) RISK ASSESSMENT FOR HOLDING COMPANY SYSTEMS.—

Records.

"(A) OBLIGATIONS TO OBTAIN, MAINTAIN, AND REPORT INFORMATION.—Every person who is registered as a government securities broker or government securities dealer under this section shall obtain such information and make and keep such records as the Secretary by rule prescribes concerning the registered person's policies, procedures, or systems for monitoring and controlling financial and operational risks to it resulting from the activities of any of its associated persons, other than a natural person. Such records shall describe, in the aggregate, each of the financial and securities activities conducted by, and customary sources of capital and funding of, those of its associated persons whose business activities are reasonably likely to have a material impact on the financial or operational condition of such registered person, including its capital, its liquidity, or its ability to conduct or finance its operations. The Secretary, by rule, may require summary reports of such information to be filed with the registered person's appropriate regulatory agency no more frequently than quarterly.

"(B) AUTHORITY TO REQUIRE ADDITIONAL INFORMATION.—If, as a result of adverse market conditions or based on reports provided pursuant to subparagraph (A) of this paragraph or other available information, the appropriate regulatory agency reasonably concludes that it has concerns regarding the financial or operational condition of any government securities broker or government securities dealer registered under this section, such agency may require the registered person to make reports concerning the financial and securities activities of any of such person's associated persons, other than a natural person, whose business activities are reasonably likely to have a material impact on the financial or operational condition of such registered person. The appropriate regulatory agency, in requiring reports pursuant to this subparagraph, shall specify the information required, the period for which it is required, the time and date on which the information must be furnished, and whether the information is to be furnished directly to the appropriate regulatory agency or to a self-regulatory organization with primary responsibility for examining the registered person's financial and operational condition.

"(C) SPECIAL PROVISIONS WITH RESPECT TO ASSOCIATED PERSONS SUBJECT TO FEDERAL BANKING AGENCY REGULATION.—

"(i) COOPERATION IN IMPLEMENTATION.—In developing and implementing reporting requirements pursuant to subparagraph (A) of this paragraph with respect to associated persons subject to examination by or reporting requirements of a Federal banking agency, the Secretary shall consult with and consider the views of each such Federal banking agency. If a Federal banking agency comments in writing on a proposed rule of the Secretary under this paragraph that has been published for comment, the Secretary shall respond in writing to such written comment

before adopting the proposed rule. The Secretary shall, at the request of a Federal banking agency, publish such comment and response in the Federal Register at the time of publishing the adopted rule.

Federal Register, publication.

"(ii) USE OF BANKING AGENCY REPORTS.—A registered government securities broker or government securities dealer shall be in compliance with any recordkeeping or reporting requirement adopted pursuant to subparagraph (A) of this paragraph concerning an associated person that is subject to examination by or reporting requirements of a Federal banking agency if such government securities broker or government securities dealer utilizes for such recordkeeping or reporting requirement copies of reports filed by the associated person with the Federal banking agency pursuant to section 5211 of the Revised Statutes, section 9 of the Federal Reserve Act, section 7(a) of the Federal Deposit Insurance Act, section 10(b) of the Home Owners' Loan Act, or section 8 of the Bank Holding Company Act of 1956. The Secretary may, however, by rule adopted pursuant to subparagraph (A), require any registered government securities broker or government securities dealer filing such reports with the appropriate regulatory agency to obtain, maintain, or report supplemental information if the Secretary makes an explicit finding, based on information provided by the appropriate regulatory agency, that such supplemental information is necessary to inform the appropriate regulatory agency regarding potential risks to such government securities broker or government securities dealer. Prior to requiring any such supplemental information, the Secretary shall first request the Federal banking agency to expand its reporting requirements to include such information.

"(iii) PROCEDURE FOR REQUIRING ADDITIONAL INFORMATION.—Prior to making a request pursuant to subparagraph (B) of this paragraph for information with respect to an associated person that is subject to examination by or reporting requirements of a Federal banking agency, the appropriate regulatory agency shall—

"(I) notify such banking agency of the information required with respect to such associated person; and

"(II) consult with such agency to determine whether the information required is available from such agency and for other purposes, unless the appropriate regulatory agency determines that any delay resulting from such consultation would be inconsistent with ensuring the financial and operational condition of the government securities broker or government securities dealer or the stability or integrity of the securities markets.

"(iv) EXCLUSION FOR EXAMINATION REPORTS.—Nothing in this subparagraph shall be construed to permit the Secretary or an appropriate regulatory agency to require any registered government securities broker or government securities dealer to obtain, maintain, or furnish any examination report of any Federal banking agency or any supervisory recommendations or analysis contained therein.

"(v) CONFIDENTIALITY OF INFORMATION PROVIDED.—No information provided to or obtained by an appropriate regu-

latory agency from any Federal banking agency pursuant to a request under clause (iii) of this subparagraph regarding any associated person which is subject to examination by or reporting requirements of a Federal banking agency may be disclosed to any other person (other than a self-regulatory organization), without the prior written approval of the Federal banking agency. Nothing in this clause shall authorize the Secretary or any appropriate regulatory agency to withhold information from Congress, or prevent the Secretary or any appropriate regulatory agency from complying with a request for information from any other Federal department or agency requesting the information for purposes within the scope of its jurisdiction, or complying with an order of a court of the United States in an action brought by the United States or the Commission.

"(vi) NOTICE TO BANKING AGENCIES CONCERNING FINANCIAL AND OPERATIONAL CONDITION CONCERNS.—The Secretary or appropriate regulatory agency shall notify the Federal banking agency of any concerns of the Secretary or the appropriate regulatory agency regarding significant financial or operational risks resulting from the activities of any government securities broker or government securities dealer to any associated person thereof which is subject to examination by or reporting requirements of the Federal banking agency.

"(vii) DEFINITION.—For purposes of this subparagraph, the term 'Federal banking agency' shall have the same meaning as the term 'appropriate Federal banking agency' in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)).

"(D) EXEMPTIONS.—The Secretary by rule or order may exempt any person or class of persons, under such terms and conditions and for such periods as the Secretary shall provide in such rule or order, from the provisions of this paragraph, and the rules thereunder. In granting such exemptions, the Secretary shall consider, among other factors—

"(i) whether information of the type required under this paragraph is available from a supervisory agency (as defined in section 1101(6) of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3401(6))), a State insurance commission or similar State agency, the Commodity Futures Trading Commission, or a similar foreign regulator;

"(ii) the primary business of any associated person;

"(iii) the nature and extent of domestic or foreign regulation of the associated person's activities;

"(iv) the nature and extent of the registered person's securities transactions; and

"(v) with respect to the registered person and its associated persons, on a consolidated basis, the amount and proportion of assets devoted to, and revenues derived from, activities in the United States securities markets.

"(E) CONFORMITY WITH REQUIREMENTS UNDER SECTION 17(h).—In exercising authority pursuant to subparagraph (A) of this paragraph concerning information with respect to associated persons of government securities brokers and government securities dealers who are also associated persons of registered

brokers or dealers reporting to the Commission pursuant to section 17(h) of this title, the requirements relating to such associated persons shall conform, to the greatest extent practicable, to the requirements under section 17(h).

"(F) AUTHORITY TO LIMIT DISCLOSURE OF INFORMATION.—Notwithstanding any other provision of law, the Secretary and any appropriate regulatory agency shall not be compelled to disclose any information required to be reported under this paragraph, or any information supplied to the Secretary or any appropriate regulatory agency by any domestic or foreign regulatory agency that relates to the financial or operational condition of any associated person of a registered government securities broker or a government securities dealer. Nothing in this paragraph shall authorize the Secretary or any appropriate regulatory agency to withhold information from Congress, or prevent the Secretary or any appropriate regulatory agency from complying with a request for information from any other Federal department or agency requesting the information for purposes within the scope of its jurisdiction, or complying with an order of a court of the United States in an action brought by the United States or the Commission. For purposes of section 552 of title 5, United States Code, this paragraph shall be considered a statute described in subsection (b)(3)(B) of such section 552.".

SEC. 5. COORDINATED CLEARING.

(a) AUTHORITY TO FACILITATE COORDINATED CLEARING MECHANISMS.—Section 17A(a)(2) of the Securities Exchange Act of 1934 (15 U.S.C. 78q-1) is amended to read as follows:

"(2)(A) 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—

"(i) to facilitate the establishment of a national system for the prompt and accurate clearance and settlement of transactions in securities (other than exempt securities); and

"(ii) to facilitate the establishment of linked or coordinated facilities for clearance and settlement of transactions in securities, securities options, contracts of sale for future delivery and options thereon, and commodity options;

in accordance with the findings and to carry out the objectives set forth in paragraph (1) of this subsection.

"(B) The Commission shall use its authority under this title to assure equal regulation under this title of registered clearing agencies and registered transfer agents. In carrying out its responsibilities set forth in subparagraph (A)(ii) of this paragraph, the Commission shall coordinate with the Commodity Futures Trading Commission and consult with the Board of Governors of the Federal Reserve System.".

(b) TRANSFER AND PLEDGE OF SECURITIES.—Section 17A of the Securities Exchange Act of 1934 (15 U.S.C. 78q-1) is amended by adding at the end the following:

"(f)(1) Notwithstanding any provision of State law, except as provided in paragraph (3), if the Commission makes each of the findings described in paragraph (2)(A), the Commission may adopt rules concerning—

"(A) the transfer of certificated or uncertificated securities (other than government securities issued pursuant to chapter 31 of title 31, United States Code, or securities otherwise processed within a book-entry system operated by the Federal Reserve banks pursuant to a Federal book-entry regulation) or limited interests (including security interests) therein; and

"(B) rights and obligations of purchasers, sellers, owners, lenders, borrowers, and financial intermediaries (including brokers, dealers, banks, and clearing agencies) involved in or affected by such transfers, and the rights of third parties whose interests in such securities devolve from such transfers.

"(2)(A) The findings described in this paragraph are findings by the Commission that—

"(i) such rule is necessary or appropriate for the protection of investors or in the public interest and is reasonably designed to promote the prompt, accurate, and safe clearance and settlement of securities transactions;

"(ii) in the absence of a uniform rule, the safe and efficient operation of the national system for clearance and settlement of securities transactions will be, or is, substantially impeded; and

"(iii) to the extent such rule will impair or diminish, directly or indirectly, rights of persons specified in paragraph (1)(B) under State law concerning transfers of securities (or limited interests therein), the benefits of such rule outweigh such impairment or diminution of rights.

"(B) In making the findings described in subparagraph (A), the Commission shall give consideration to the recommendations of the Advisory Committee established under paragraph (4), and it shall consult with and consider the views of the Secretary of the Treasury and the Board of Governors of the Federal Reserve System. If the Secretary of the Treasury objects, in writing, to any proposed rule of the Commission on the basis of the Secretary's view on the issues described in clauses (i), (ii), and (iii) of subparagraph (A), the Commission shall consider all feasible alternatives to the proposed rule, and it shall not adopt any such rule unless the Commission makes an explicit finding that the rule is the most practicable method for achieving safe and efficient operation of the national clearance and settlement system.

"(3) Any State may, prior to the expiration of 2 years after the Commission adopts a rule under this subsection, enact a statute that specifically refers to this subsection and the specific rule thereunder and establishes, prospectively from the date of enactment of the State statute, a provision that differs from that applicable under the Commission's rule.

"(4)(A) Within 90 days after the date of enactment of this subsection, the Commission shall (and at such times thereafter as the Commission may determine, the Commission may), after consultation with the Secretary of the Treasury and the Board of Governors of the Federal Reserve System, establish an advisory committee under the Federal Advisory Committee Act (5 U.S.C. App.). The Advisory Committee shall be directed to consider and report to the Commission on such matters as the Commission, after consultation with the Secretary of the Treasury and the Board of Governors of the Federal Reserve System, determines, including the areas, if any, in which State commercial laws and related Federal laws concerning the transfer of certificated or uncertificated securities, limited interests (including security interests) in such securities, or the

Reports.

creation or perfection of security interests in such securities do not provide the necessary certainty, uniformity, and clarity for purchasers, sellers, owners, lenders, borrowers, and financial intermediaries concerning their respective rights and obligations.

"(B) The Advisory Committee shall consist of 15 members, of which—

"(i) 11 shall be designated by the Commission in accordance with the Federal Advisory Committee Act; and

"(ii) 2 each shall be designated by the Board of Governors of the Federal Reserve System and the Secretary of the Treasury.

"(C) The Advisory Committee shall conduct its activities in accordance with the Federal Advisory Committee Act. Within 6 months of its designation, or such longer time as the Commission may designate, the Advisory Committee shall issue a report to the Commission, and shall cause copies of that report to be delivered to the Secretary of the Treasury and the Chairman of the Board of Governors of the Federal Reserve System.". Reports.

SEC. 6. LIMITATION ON PRACTICES WHICH RESULT IN VOLATILITY.

(a) IN GENERAL.—Section 9 of the Securities Exchange Act of 1934 (15 U.S.C. 78i) is amended by adding at the end thereof the following new subsection:

"(h) LIMITATIONS ON PRACTICES THAT AFFECT MARKET VOLATILITY.—It shall be unlawful for any person, by the use of the mails or any means or instrumentality of interstate commerce or of any facility of any national securities exchange, to use or employ any act or practice in connection with the purchase or sale of any equity security in contravention of such rules or regulations as the Commission may adopt, consistent with the public interest, the protection of investors, and the maintenance of fair and orderly markets—

"(1) to prescribe means reasonably designed to prevent manipulation of price levels of the equity securities market or a substantial segment thereof; and

"(2) to prohibit or constrain, during periods of extraordinary market volatility, any trading practice in connection with the purchase or sale of equity securities that the Commission determines (A) has previously contributed significantly to extraordinary levels of volatility that have threatened the maintenance of fair and orderly markets; and (B) is reasonably certain to engender such levels of volatility if not prohibited or constrained.

In adopting rules under paragraph (2), the Commission shall, consistent with the purposes of this subsection, minimize the impact on the normal operations of the market and a natural person's freedom to buy or sell any equity security.".

(b) CONFORMING AMENDMENT.—Section 25(b)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78y(b)(1)) is amended by inserting "9(h)(2)," after "section 6,".

SEC. 7. NOTIFICATION OF SEC CONCERNING RISKS TO SECURITIES SUBSIDIARY.

The Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.) is amended by adding at the end the following new section:

12 USC 1831*l*.

"SEC. 35. COORDINATION OF RISK ANALYSIS BETWEEN SEC AND FEDERAL BANKING AGENCIES.

"Any appropriate Federal banking agency shall notify the Securities and Exchange Commission of any concerns of the agency regarding significant financial or operational risks to any registered broker or dealer, or any registered municipal securities dealer, government securities broker, or government securities dealer for which the Commission is the appropriate regulatory agency (as defined in section 3 of the Securities Exchange Act of 1934), resulting from the activities of any insured depository institution, any depository institution holding company, or any affiliate of any such institution or company if such broker, dealer, municipal securities dealer, government securities broker, or government securities dealer is an affiliate of any such institution, company, or affiliate.".

15 USC 78b note.

SEC. 8. REPORTS TO CONGRESS.

(a) INTERMARKET COORDINATION.—The Secretary of the Treasury, the Chairman of the Board of Governors of the Federal Reserve System, the Chairman of the Securities and Exchange Commission, and the Chairman of the Commodity Futures Trading Commission, shall report to the Congress not later than May 31, 1991, and annually thereafter until May 31, 1995, on the following:

(1) the efforts their respective agencies have made relating to the coordination of regulatory activities to ensure the integrity and competitiveness of United States financial markets;

(2) the efforts their respective agencies have made to formulate coordinated mechanisms across marketplaces to protect the payments and market systems during market emergencies;

(3) the views of their respective agencies with respect to the adequacy of margin levels and use of leverage by market participants; and

(4) such other issues and concerns relating to the soundness, stability, and integrity of domestic and international capital markets as may be appropriate.

The agencies shall cooperate in the development of their reports, and prior to submitting its report to Congress, each agency shall provide copies to the other agencies.

15 USC 78q-1 note.

(b) CLEARANCE AND SETTLEMENT.—The Securities and Exchange Commission, in consultation with the Commodity Futures Trading Commission, the Board of Governors of the Federal Reserve System, and other relevant regulatory authorities, shall examine progress toward establishing linked or coordinated facilities for clearance and settlement of transactions in securities, securities options, contracts of sale for future delivery and options thereon, and commodity options, and shall submit to the Committees on Energy and Commerce and Agriculture of the House of Representatives and the

Committees on Banking, Housing, and Urban Affairs and Agriculture, Nutrition, and Forestry of the Senate, not later than 2 years from the date of enactment of this section, a report detailing and evaluating such progress.

Approved October 16, 1990.

LEGISLATIVE HISTORY—H.R. 3657 (S. 648):

HOUSE REPORTS: No. 101-524 (Comm. on Energy and Commerce).
SENATE REPORTS: No. 101-300 accompanying S. 648 (Comm. on Banking, Housing, and Urban Affairs).
CONGRESSIONAL RECORD, Vol. 136 (1990):
June 5, considered and passed House.
Aug. 4, S. 648 considered and passed Senate.
Sept. 25, H.R. 3657 considered and passed Senate, amended.
Sept. 28, House concurred in Senate amendments.
WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 26 (1990):
Oct. 16, Presidential statement.