

103<sup>D</sup> CONGRESS  
1<sup>ST</sup> SESSION

# H. R. 3447

To amend the Federal securities laws to equalize the regulatory treatment of participants in the securities industry, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 4, 1993

Mr. DINGELL (for himself, Mr. MOORHEAD, Mr. MARKEY, and Mr. FIELDS of Texas) introduced the following bill; which was referred to the Committee on Energy and Commerce

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## A BILL

To amend the Federal securities laws to equalize the regulatory treatment of participants in the securities industry, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Securities Regulatory  
5 Equality Act of 1993”.

1 **TITLE I—REGULATION OF SECURITIES ACTIVITIES OF DEPOSITORY INSTITUTIONS**

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4 **PART A—BROKER-DEALER PROVISIONS**

5 **SEC. 101. DEFINITION OF BROKER.**

6 Section 3(a)(4) of the Securities Exchange Act of  
7 1934 (15 U.S.C. 78c(a)(4)) is amended to read as follows:

8 “(4)(A) The term ‘broker’ means any person  
9 engaged in the business of effecting transactions in  
10 securities for the account of others.

11 “(B) A bank shall not be deemed to be a  
12 ‘broker’ because it engages in one or more of the fol-  
13 lowing activities:

14 “(i) Engages in fiduciary activities (includ-  
15 ing effecting transactions in the course of such  
16 fiduciary activities) permissible for national  
17 banks under the first section of the Act of Sep-  
18 tember 28, 1962 (12 U.S.C. 92a), or for State  
19 banks under relevant State trust law, except  
20 that a bank shall be deemed a broker if, in the  
21 conduct of such fiduciary activities, it—

22 “(I) publicly solicits brokerage busi-  
23 ness; or

24 “(II) is compensated for such business  
25 by the payment of commissions or similar

1 remuneration based on effecting trans-  
2 actions in securities (excluding fees cal-  
3 culated as percentage of assets under man-  
4 agement).

5 “(ii) Effects transactions in exempted se-  
6 curities, other than municipal securities, or in  
7 commercial paper, bankers’ acceptances, or  
8 commercial bills.”.

9 **SEC. 102. DEFINITION OF DEALER.**

10 Section 3(a)(5) of the Securities Exchange Act of  
11 1934 (15 U.S.C. 78c(a)(5)) is amended to read as follows:

12 “(5)(A) The term ‘dealer’ means any person en-  
13 gaged in the business of buying and selling securities  
14 for his own account through a broker or otherwise.

15 “(B) Such term does not include—

16 “(i) any person insofar as he buys or sells  
17 securities for his own account, either individ-  
18 ually or in some fiduciary capacity, but not as  
19 part of a regular business; or

20 “(ii) any bank insofar as the bank (I) buys  
21 and sells commercial paper, bankers’ accept-  
22 ances, or commercial bills, or exempted securi-  
23 ties other than municipal securities; or (II)  
24 buys and sells securities for investment pur-  
25 poses for the bank or for accounts in which the

1 bank, acting as trustee, is authorized to deter-  
2 mine the securities to be purchased or sold.”.

3 **SEC. 103. POWER TO EXEMPT FROM THE DEFINITIONS OF**  
4 **BROKER AND DEALER.**

5 Section 3 of the Securities Exchange Act of 1934 (15  
6 U.S.C. 78c) is amended by adding at the end the follow-  
7 ing:

8 “(e) The Commission, by rule, regulation, or order,  
9 upon its own motion or upon application, may condi-  
10 tionally or unconditionally exempt any person or class of  
11 persons from the definitions of ‘broker’ or ‘dealer,’ if the  
12 Commission finds that such exemption is consistent with  
13 the public interest, the protection of investors, and the  
14 purposes of this title.”.

15 **SEC. 104. REQUIREMENT THAT BANKS FALLING WITHIN**  
16 **THE DEFINITIONS OF BROKER OR DEALER**  
17 **PLACE THEIR SECURITIES ACTIVITIES IN A**  
18 **SEPARATE CORPORATE ENTITY.**

19 Section 15(a) of the Securities Exchange Act of 1934  
20 (15 U.S.C. 78o(a)) is amended to read as follows:

21 “SEC. 15. (a)(1) It shall be unlawful for any broker  
22 or dealer that is either a person other than a natural per-  
23 son or a natural person not associated with a broker or  
24 dealer that is a person other than a natural person (other  
25 than such a broker or dealer whose business is exclusively

1 intrastate and who does not make use of any facility of  
2 a national securities exchange) to make use of the mails  
3 or any means or instrumentality of interstate commerce  
4 to effect any transactions in, or to induce or attempt to  
5 induce the purchase or sale of, any security (other than  
6 an exempted security or commercial paper, bankers' ac-  
7 ceptances, or commercial bills) unless such broker or deal-  
8 er is registered in accordance with subsection (b) of this  
9 section.

10 “(2) It shall be unlawful for any bank to act as a  
11 broker or dealer, except in the course of an exclusively  
12 intrastate business.

13 “(3) The Commission, by rule or order, as it deems  
14 consistent with the public interest and the protection of  
15 investors, may conditionally or unconditionally exempt  
16 from paragraphs (1) and (2) of this subsection any broker  
17 or dealer or class of brokers or dealers specified in such  
18 rule or order.”.

19 **PART B—BANK-INVESTMENT COMPANY**  
20 **ACTIVITIES**

21 **SEC. 111. CUSTODY OF INVESTMENT COMPANY ASSETS BY**  
22 **AFFILIATED BANKS.**

23 (a) MANAGEMENT COMPANIES.—Section 17(f) of the  
24 Investment Company Act of 1940 (15 U.S.C. 80a-17(f))  
25 is amended—

1           (1) by redesignating clauses (1), (2), and (3) of  
2           the first sentence as clauses (A), (B), and (C), re-  
3           spectively;

4           (2) by designating the five sentences of such  
5           section as paragraphs (1) through (5), respectively;  
6           and

7           (3) by adding at the end thereof the following  
8           new paragraph:

9           “(6) Notwithstanding paragraph (1)(A) of this sub-  
10          section, if a bank described in such paragraph, or affili-  
11          ated person thereof, is an affiliated person of the reg-  
12          istered management company, such bank may not serve  
13          as custodian under this subsection unless permitted by  
14          such rules, regulations, or orders as the Commission pre-  
15          scribes consistent with the protection of investors.”.

16          (b) UNIT INVESTMENT TRUSTS.—Section 26(a)(1) of  
17          the Investment Company Act of 1940 (15 U.S.C. 80a-  
18          26(a)(1)) is amended by inserting after “bank” the follow-  
19          ing: “that is not an affiliated person of such principal un-  
20          derwriter or depositor and is not an affiliated person of  
21          an affiliated person of such principal underwriter or de-  
22          positor, unless permitted by such rules, regulations, or or-  
23          ders as the Commission prescribes consistent with the pro-  
24          tection of investors”.

1 **SEC. 112. AFFILIATED PERSONS AND TRANSACTIONS.**

2 (a) AFFILIATED PERSONS.—Section 2(a)(3) of the  
3 Investment Company Act of 1940 (15 U.S.C. 80a–  
4 2(a)(3)) is amended by—

5 (1) striking “thereof; and” and inserting in lieu  
6 thereof “thereof;”; and

7 (2) by inserting before the period at the end of  
8 clause (F) the following: “; and (G) if such other  
9 person is an investment company, any person or  
10 class of persons which the Commission by rule, regu-  
11 lation, or order shall have determined to be affiliated  
12 persons by reason of having had, at any time since  
13 the beginning of the last two completed fiscal years  
14 of such company, a material business or professional  
15 relationship with such company or with any person  
16 that is a principal underwriter for, or promoter or  
17 sponsor of, such company or any affiliated person  
18 (as described in clauses (A) through (F) of this  
19 paragraph) of such company”.

20 (b) PURCHASES OR ACQUISITIONS DURING UNDER-  
21 WRITING.—Section 10(f) of the Investment Company Act  
22 of 1940 (15 U.S.C. 80a–10(f)) is amended by—

23 (1) inserting “(1)” immediately before “a prin-  
24 cipal underwriter” the first place it appears; and

25 (2) inserting after “for the issuer” the follow-  
26 ing: “; or (2) the proceeds of which will be used to

1 retire any part of an indebtedness owed to a bank  
2 where the bank or an affiliated person thereof is an  
3 affiliated person of such registered company”.

4 **SEC. 113. PROHIBITION OF CONTROLLING INTEREST IN IN-**  
5 **VESTMENT COMPANY.**

6 Section 15 of the Investment Company Act of 1940  
7 (15 U.S.C. 80a-15) is amended by adding at the end the  
8 following new subsection:

9 “(g) PROHIBITION OF CONTROLLING INTEREST IN  
10 INVESTMENT COMPANY.—If any investment adviser to a  
11 registered investment company, or an affiliated person of  
12 such investment adviser, also holds shares of the invest-  
13 ment company in a fiduciary capacity, that investment ad-  
14 viser or affiliated person may own, directly or indirectly,  
15 a controlling interest in such registered investment com-  
16 pany—

17 “(1) if it passes through to the beneficial own-  
18 ers of the shares, including any person acting in a  
19 fiduciary capacity who is not an affiliated person of  
20 that investment adviser or any affiliated person  
21 thereof, the power to vote the shares of the invest-  
22 ment company;

23 “(2) if it votes the shares of the investment  
24 company held by it in the same proportion as shares



1 held by all other shareholders of the investment com-  
2 pany; or

3 “(3) as otherwise permitted under such rules,  
4 regulations, or orders as the Commission may pre-  
5 scribe for the protection of investors.”.

6 **SEC. 114. BORROWING FROM AN AFFILIATED BANK.**

7 Section 18(f) of the Investment Company Act of  
8 1940 (15 U.S.C. 80a-18(f)) is amended by adding at the  
9 end thereof the following new paragraph:

10 “(3) Notwithstanding the provisions of paragraph (1)  
11 of this subsection, it shall be unlawful for any registered  
12 investment company to borrow from any bank if such bank  
13 or any affiliated person thereof is an affiliated person of  
14 such company, except that the Commission may, by rule,  
15 regulation, or order, permit such borrowing which the  
16 Commission finds to be in the public interest and consist-  
17 ent with the protection of investors.”.

18 **SEC. 115. INDEPENDENT DIRECTORS.**

19 (a) DEFINITION OF INTERESTED PERSON.—Section  
20 2(a)(19)(A) of the Investment Company Act of 1940 (15  
21 U.S.C. 80a-2(a)(19)(A)) is amended—

22 (1) in clause (v), by striking out “1934 or any  
23 affiliated person of such a broker or dealer, and”  
24 and inserting in lieu thereof: “1934 or any person  
25 that, at any time during the last 6 months, has exe-

1 cuted any portfolio transactions for, engaged in any  
2 principal transactions with, or loaned money to, the  
3 investment company or any other investment com-  
4 pany having the same investment adviser, principal  
5 underwriter, sponsor, or promoter, or any affiliated  
6 person of such a broker, dealer, or person,”;

7 (2) by redesignating clause (vi) as clause (vii);  
8 and

9 (3) by inserting after clause (v) the following  
10 new clause:

11 “(vi) any employee of a bank that acts  
12 as custodian or transfer agent for such  
13 company, and”.

14 (b) BANK HOLDING COMPANIES.—Section 10(c) of  
15 the Investment Company Act of 1940 (15 U.S.C. 80a-  
16 10(c)) is amended by striking “bank, except” and insert-  
17 ing in lieu thereof: “bank (together with its subsidiaries)  
18 or any one bank holding company (together with its affili-  
19 ates and subsidiaries), as those terms are defined in the  
20 Bank Holding Company Act of 1956, except”.

21 (c) EFFECTIVE DATE.—The provisions of subsection  
22 (a) of this section shall become effective one year after  
23 the date of enactment of this Act.

1 **SEC. 116. PROHIBITION AGAINST USE OF A BANK'S NAME**  
2 **BY AN AFFILIATED INVESTMENT COMPANY.**

3 Section 35(d) of the Investment Company Act of  
4 1940 (15 U.S.C. 80a-35(d)) is amended by inserting after  
5 the first sentence thereof the following: "It shall be decep-  
6 tive and misleading for any registered investment company  
7 which has as an investment adviser or distributor a bank  
8 or affiliated person thereof, to adopt, as part of the name,  
9 title, or logo of such company, or of any security of which  
10 it is the issuer, any word or design which is the same as  
11 or similar to, or a variation of, the name, title, or logo  
12 of such bank."

13 **SEC. 117. DEFINITION OF BROKER.**

14 Section 2(a)(6) of the Investment Company Act of  
15 1940 (15 U.S.C. 80a-2(a)(6)) is amended to read as fol-  
16 lows:

17 "(6) 'Broker' has the same meaning as in the  
18 Securities Exchange Act of 1934, but does not in-  
19 clude any person solely by reason of the fact that  
20 such person is an underwriter for one or more in-  
21 vestment companies."

22 **SEC. 118. DEFINITION OF DEALER.**

23 Section 2(a)(11) of the Investment Company Act of  
24 1940 (15 U.S.C. 80a-2(a)(11)) is amended to read as fol-  
25 lows:

1           “(11) ‘Dealer’ has the same meaning as in the  
2           Securities Exchange Act of 1934, but does not in-  
3           clude an insurance company or investment com-  
4           pany.”.

5   **SEC. 119. TREATMENT OF PUBLICLY ADVERTISED COMMON**  
6                           **TRUST FUNDS.**

7           (a) SECURITIES ACT OF 1933.—Section 3(a)(2) of  
8           the Securities Act of 1933 (15 U.S.C. 77c(a)(2)) is  
9           amended—

10           (1) by inserting “that is” after “common trust  
11           fund or similar fund”; and

12           (2) by inserting after “administrator, or guard-  
13           ian” the following: “, and that is not offered to the  
14           general public”.

15           (b) SECURITIES EXCHANGE ACT OF 1934.—Section  
16           3(a)(12)(A)(iii) of the Securities Exchange Act of 1934  
17           (15 U.S.C. 78c(a)(12)(A)(iii)) is amended—

18           (1) by inserting “that is” after “common trust  
19           fund or similar fund”; and

20           (2) by inserting after “administrator, or guard-  
21           ian” the following: “, and that is not offered to the  
22           general public”.

23           (c) INVESTMENT COMPANY ACT OF 1940.—Section  
24           3(c)(3) of the Investment Company Act of 1940 (15  
25           U.S.C. 80a-3(c)(3)) is amended—

1 (1) by inserting “that is” after “common trust  
2 fund or similar fund”; and

3 (2) by inserting after “administrator, or guard-  
4 ian” the following: “, and that is not offered to the  
5 general public”.

6 **SEC. 120. REMOVAL OF THE EXCLUSION FROM THE DEFINI-**  
7 **TION OF INVESTMENT ADVISER FOR BANKS**  
8 **THAT ADVISE INVESTMENT COMPANIES.**

9 Section 202(a)(11)(A) of the Investment Advisers  
10 Act of 1940 (15 U.S.C. 80b-2(a)(11)(A)) is amended by  
11 striking out “investment company” and inserting in lieu  
12 thereof “investment company, except that the term ‘in-  
13 vestment adviser’ includes any bank or bank holding com-  
14 pany to the extent that such bank or bank holding com-  
15 pany acts as an investment adviser to a registered invest-  
16 ment company”.

17 **SEC. 121. DEFINITION OF BROKER.**

18 Section 202(a)(3) of the Investment Advisers Act of  
19 1940 (15 U.S.C. 80b-2(a)(3)) is amended to read as fol-  
20 lows:

21 “(3) ‘Broker’ has the same meaning as in the  
22 Securities Exchange Act of 1934.”.

1 **SEC. 122. DEFINITION OF DEALER.**

2 Section 202(a)(7) of the Investment Advisers Act of  
3 1940 (15 U.S.C. 80b-2(a)(7)) is amended to read as fol-  
4 lows:

5 “(7) ‘Dealer’ has the same meaning as in the  
6 Securities Exchange Act of 1934, but does not in-  
7 clude an insurance company or investment com-  
8 pany.”.

9 **TITLE II—ADMINISTRATION OF**  
10 **SECURITIES LAWS WITH RE-**  
11 **SPECT TO SECURITIES OF DE-**  
12 **POSITORY INSTITUTIONS**

13 **PART A—AMENDMENTS TO THE SECURITIES ACT**  
14 **OF 1933**

15 **SEC. 201. BANK-ISSUED SECURITIES.**

16 Section 3(a)(2) of the Securities Act of 1933 (15  
17 U.S.C. 77c(a)(2)) is amended—

18 (1) by striking “or any security issued or guar-  
19 anteed by any bank”, and

20 (2) by striking “For purposes of this para-  
21 graph, a security issued or guaranteed by a bank  
22 shall not include any interest or participation in any  
23 collective trust fund maintained by a bank; and”,  
24 and inserting in lieu thereof “For purposes of this  
25 title,”.

1 **SEC. 202. SAVINGS ASSOCIATION-ISSUED SECURITIES.**

2 Section 3(a)(5) of the Securities Act of 1933 (15  
3 U.S.C. 77c(a)(5)) is amended to read as follows:

4 “(5) Any security issued by—

5 “(A) a farmer’s cooperative organization  
6 exempt from tax under section 521 of the Inter-  
7 nal Revenue Code of 1986,

8 “(B) a corporation described in section  
9 501(c)(16) of such Code and exempt from tax  
10 under section 501(a) of such Code, or

11 “(C) a corporation described in section  
12 501(c)(2) of such Code which is exempt for tax  
13 under section 501(a) of such Code and is orga-  
14 nized for the exclusive purpose of holding title  
15 to property, collecting income therefrom, and  
16 turning over the entire amount thereof, less ex-  
17 penses, to an organization or corporation de-  
18 scribed in subparagraph (A) or (C).”.

19 **SEC. 203. EXEMPTION TO PERMIT TRANSITION TO HOLD-**  
20 **ING COMPANY STRUCTURES.**

21 Section 3(a)(9) of the Securities Act of 1933 (15  
22 U.S.C. 77c(a)(9)) is amended to read as follows:

23 “(9) Except with respect to a security ex-  
24 changed in a case under title 11 of the United  
25 States Code—

1           “(A) any security exchanged by the issuer  
2 with its existing security holders exclusively  
3 where no commission or other remuneration is  
4 paid or given directly or indirectly for soliciting  
5 such exchange; or

6           “(B) any security issued or exchanged in  
7 connection with a transaction solely involving  
8 exchanges or substitutions of securities as part  
9 of a reorganization of a corporation into a hold-  
10 ing company, if—

11           “(i) as part of the reorganization, the  
12 security holders exchange their securities  
13 of the corporation for securities of a newly  
14 formed holding company with no signifi-  
15 cant assets other than securities of the cor-  
16 poration and its existing subsidiaries, and  
17 receive securities of the same class evidenc-  
18 ing the same proportional share or debt in-  
19 terests in the holding company as they  
20 held in the corporation prior to the trans-  
21 action, except for changes resulting from  
22 lawful elimination of fractional interests  
23 and the exercise of dissenting shareholder  
24 rights under applicable law;



1           “(ii) the rights and interests of secu-  
2           rity holders in the holding company are  
3           substantially the same as those in the cor-  
4           poration prior to the transaction other  
5           than as may be required by law; and

6           “(iii) the holding company has sub-  
7           stantially the same assets and liabilities as  
8           the corporation had prior to the trans-  
9           action.”.

10 **SEC. 204. TREATMENT OF CERTAIN BANK AND SAVINGS AS-**  
11 **SOCIATION INSTRUMENTS.**

12           Section 3 of the Securities Act of 1933 (15 U.S.C.  
13 77c) is amended by adding at the end thereof the following  
14 new subsection:

15           “(d)(1) Except as hereinafter expressly provided, in  
16 those circumstances in which an interest in any of the fol-  
17 lowing is otherwise deemed to be a ‘security’ within the  
18 meaning of section 2, the provisions of this Act shall not  
19 apply to—

20           “(A) a deposit account, savings account, certifi-  
21           cate of deposit, or other deposit instrument issued  
22           by a bank or savings association;

23           “(B) a share account issued by a savings asso-  
24           ciation if such account is insured by the Federal De-  
25           posit Insurance Corporation;

1           “(C) a banker’s acceptance;

2           “(D) a letter of credit issued by a bank or sav-  
3           ings association; or

4           “(E) a debit account at a bank or savings asso-  
5           ciation arising from a credit card or other similar  
6           arrangement.

7 This paragraph shall not exempt from the provisions of  
8 this Act any participation in such an interest, account,  
9 certificate, instrument, acceptance, or letter other than a  
10 participation that is a direct obligation of a bank or sav-  
11 ings association.

12         “(2) For purposes of this subsection, the term ‘de-  
13         posit’ means the unpaid balance of money or its equivalent  
14         received or held by a bank or savings association in the  
15         usual course of business—

16                 “(A) for which it has given or is obligated to  
17                 give credit, either conditionally or unconditionally, to  
18                 a commercial, checking, savings, time, or thrift ac-  
19                 count;

20                 “(B) which is evidenced by its certificate of de-  
21                 posit, a check or draft drawn against a deposit ac-  
22                 count and certified by a bank or savings association,  
23                 a letter of credit or a traveler’s check, or by any  
24                 other similar instrument on which a bank or savings  
25                 association is liable;

1           “(C) which consists of nonpooled assets of indi-  
2           vidual trust funds received or held by bank or sav-  
3           ings association whether held in the trust depart-  
4           ment or deposited in any other department of such  
5           bank or savings association; or

6           “(D) which is received or held by a bank or sav-  
7           ings association for a special or specific  
8           noninvestment purpose, including, without being lim-  
9           ited to, escrow funds, funds held as security for any  
10          obligation due to the bank or savings association or  
11          others (including funds held as dealers’ reserves) or  
12          for securities loaned by the bank or savings associa-  
13          tion, funds deposited by a debtor to meet maturing  
14          subscriptions to United States Government securi-  
15          ties, funds held to meet its acceptances or letters of  
16          credit, and withheld taxes.

17          “(3) For purposes of this subsection, the term ‘sav-  
18          ings association’ shall have the meaning given in section  
19          3 of the Federal Deposit Insurance Act, as amended (12  
20          U.S.C. 1813).”.

21       **SEC. 205. TECHNICAL AMENDMENT.**

22          Section 12(2) of the Securities Act of 1933 (15  
23          U.S.C. 771(2)) is amended by inserting “or subsection  
24          (d)” after “subsection (a)”.

1           **PART B—SECURITIES EXCHANGE ACT**  
2                           **ADMINISTRATION TRANSFER**  
3 **SEC. 211. AMENDMENT TO THE SECURITIES EXCHANGE**  
4                           **ACT OF 1934.**

5           Subsection (i) of section 12 of the Securities Ex-  
6 change Act of 1934 (15 U.S.C. 781(i)) is repealed.

7           **PART C—MISCELLANEOUS PROVISION**

8 **SEC. 221. TECHNICAL AMENDMENT.**

9           Section 304(a)(4) of the Trust Indenture Act of 1939  
10 (15 U.S.C. 77ddd(a)(4)) is amended by inserting “or by  
11 section 3(d)” after “section 3(a)”.

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