

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

# H. R. 617

To amend the Securities Exchange Act of 1934 to protect investors in limited partnerships in rollup transactions, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

JANUARY 26, 1993

Mr. MARKEY (for himself, Mr. FIELDS of Texas, Mr. DINGELL, Mr. SYNAR, Mr. WYDEN, Mr. SLATTERY, Mr. COOPER, Mr. MORAN, and Mr. NEAL of Massachusetts) introduced the following bill; which was referred to the Committee on Energy and Commerce

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## A BILL

To amend the Securities Exchange Act of 1934 to protect investors in limited partnerships in rollup transactions, 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 “Limited Partnership  
5 Rollup Reform Act of 1993”.

1 **SEC. 2. REVISION OF PROXY SOLICITATION RULES WITH**  
2 **RESPECT TO LIMITED PARTNERSHIP ROLLUP**  
3 **TRANSACTIONS.**

4 (a) AMENDMENT.—Section 14 of the Securities and  
5 Exchange Act of 1934 (15 U.S.C. 78n) is amended by  
6 adding at the end the following new subsection:

7 “(h) PROXY SOLICITATIONS AND TENDER OFFERS  
8 IN CONNECTION WITH LIMITED PARTNERSHIP ROLLUP  
9 TRANSACTIONS.—

10 “(1) PROXY RULES TO CONTAIN SPECIAL PRO-  
11 VISIONS.—It shall be unlawful for any person to so-  
12 licit any proxy, consent, or authorization concerning  
13 a limited partnership rollup transaction, or to make  
14 any tender offer in furtherance of a limited partner-  
15 ship rollup transaction, unless such transaction is  
16 conducted in accordance with rules prescribed by the  
17 Commission under subsections (a) and (d) as re-  
18 quired by this subsection. Such rules shall—

19 “(A) permit any holder of a security that  
20 is the subject of the proposed limited partner-  
21 ship rollup transaction to engage in preliminary  
22 communications for the purposes of determining  
23 whether to solicit proxies, consents, or author-  
24 izations in opposition to the proposed trans-  
25 action, without regard to whether any such  
26 communication would otherwise be considered a

1 solicitation of proxies, and without being re-  
2 quired to file soliciting material with the Com-  
3 mission prior to making that determination, ex-  
4 cept that nothing in this subparagraph shall be  
5 construed to limit the application of any provi-  
6 sion of this title prohibiting, or reasonably de-  
7 signed to prevent, fraudulent, deceptive, or ma-  
8 nipulative acts or practices under this title;

9 “(B) require the issuer to provide to hold-  
10 ers of the securities that are the subject of the  
11 transaction such list of the holders of the issu-  
12 er’s securities as the Commission may deter-  
13 mine in such form and subject to such terms  
14 and conditions as the Commission may specify;

15 “(C) prohibit compensating any person so-  
16 liciting proxies, consents, or authorizations di-  
17 rectly from security holders concerning such a  
18 transaction—

19 “(i) on the basis of whether the solici-  
20 ited proxies, consents, or authorizations ei-  
21 ther approve or disapprove the proposed  
22 transaction; or

23 “(ii) contingent on the transaction’s  
24 approval, disapproval, or completion;

1           “(D) set forth disclosure requirements for  
2           soliciting material distributed in connection  
3           with a limited partnership rollup transaction,  
4           including requirements for clear, concise, and  
5           comprehensible disclosure with respect to—

6                   “(i) any changes in the business plan,  
7                   voting rights, form of ownership interest or  
8                   the general partner’s compensation in the  
9                   proposed limited partnership rollup trans-  
10                  action from each of the original limited  
11                  partnerships;

12                  “(ii) the conflicts of interest, if any, of  
13                  the general partner;

14                  “(iii) whether it is expected that there  
15                  will be a significant difference between the  
16                  exchange values of the limited partnerships  
17                  and the trading price of the securities to  
18                  be issued in the limited partnership rollup  
19                  transaction;

20                  “(iv) the valuation of the limited part-  
21                  nerships and the method used to determine  
22                  the value of limited partners’ interests to  
23                  be exchanged for the securities in the lim-  
24                  ited partnership rollup transaction;

1           “(v) the differing risks and effects of  
2           the transaction for investors in different  
3           limited partnerships proposed to be in-  
4           cluded, and the risks and effects of com-  
5           pleting the transaction with less than all  
6           limited partnerships;

7           “(vi) a statement by the general part-  
8           ner as to whether the proposed limited  
9           partnership rollup transaction is fair or  
10          unfair to investors in each limited partner-  
11          ship, a discussion of the basis for that con-  
12          clusion, and the general partner’s evalua-  
13          tion, and a description, of alternatives to  
14          the limited partnership rollup transaction,  
15          such as liquidation; and

16          “(vii) such other matters deemed nec-  
17          essary or appropriate by the Commission.

18          “(E) provide that such soliciting materials  
19          contain or be accompanied by an opinion on the  
20          fairness of the proposed transaction to holders  
21          of each security which is subject to the pro-  
22          posed transaction that—

23          “(i) includes such information, rep-  
24          resentations, and undertakings with re-  
25          spect to the analysis of the transaction,

1 scope of review, preparation of the opinion,  
2 and basis for and methods of arriving at  
3 conclusions as the Commission may require  
4 in such rules; and

5 “(ii) is prepared by a person—

6 “(I) who does not receive any  
7 compensation that is contingent on  
8 the transaction’s approval or comple-  
9 tion;

10 “(II) who meets such additional  
11 standards of independence from the  
12 person or persons proposing the rollup  
13 transaction as shall be required in the  
14 rules prescribed by the Commission;

15 “(III) who has been given access  
16 by the issuer to its personnel and  
17 premises and relevant books and  
18 records; and

19 “(IV) who has represented to  
20 have undertaken an independent anal-  
21 ysis of the fairness of the proposed  
22 rollup transaction to holders based  
23 upon the information obtained  
24 through such access and upon other  
25 independently obtained information.

1           “(F) require that the soliciting material in-  
2           clude a clear and concise summary of the lim-  
3           ited partnership rollup transaction (including a  
4           summary of the matters referred to in clauses  
5           (i) through (vi) of subparagraph (D) and a  
6           summary of the matter referred to in subpara-  
7           graph (E)), with the risks of the limited part-  
8           nership rollup transaction set forth prominently  
9           in the forepart thereof;

10           “(G) provide that any solicitation or offer-  
11           ing period with respect to any proxy sollicita-  
12           tion, tender offer, or information statement in  
13           a limited partnership rollup transaction shall be  
14           for not less than the lesser of 60 calendar days  
15           or the maximum number of days permitted  
16           under applicable State law; and

17           “(H) contain such other provisions as the  
18           Commission determines to be necessary or ap-  
19           propriate for the protection of investors in lim-  
20           ited partnership rollup transactions.

21           “(2) EXEMPTIONS.—The Commission may, con-  
22           sistent with the public interest, the protection of in-  
23           vestors, and the purposes of this Act, exempt by rule  
24           or order any security or class of securities, any  
25           transaction or class of transactions, or any person or

1 class of persons, in whole or in part, conditionally or  
2 unconditionally, from the requirements imposed pur-  
3 suant to paragraph (1) or, from the definition con-  
4 tained in paragraph (4).

5 “(3) EFFECT ON COMMISSION AUTHORITY.—  
6 Nothing in this subsection limits the authority of the  
7 Commission under subsection (a) or (d) or any other  
8 provision of this title or precludes the Commission  
9 from imposing, under subsection (a) or (d) or any  
10 other provision of this title, a remedy or procedure  
11 required to be imposed under this subsection.

12 “(4) DEFINITION.—As used in this subsection,  
13 the term ‘limited partnership rollup transaction’  
14 means, except as provided in paragraph (5), a trans-  
15 action involving—

16 “(A) the combination or reorganization of  
17 limited partnerships, directly or indirectly, in  
18 which some or all investors in the limited part-  
19 nerships receive new securities or securities in  
20 another entity, other than a transaction—

21 “(i) in which—

22 “(I) the investors’ limited part-  
23 nership securities are reported under  
24 a transaction reporting plan declared  
25 effective before January 1, 1991, by



1 the Commission under section 11A;  
2 and

3 “(II) the investors receive new  
4 securities or securities in another en-  
5 tity that are reported under a trans-  
6 action reporting plan declared effec-  
7 tive before January 1, 1991, by the  
8 Commission under section 11A.

9 “(ii) involving only issuers that are  
10 not required to register or report under  
11 section 12 both before and after the trans-  
12 action;

13 “(iii) in which the securities to be is-  
14 sued or exchanged are not required to be  
15 and are not registered under the Securities  
16 Act of 1933;

17 “(iv) which will result in no signifi-  
18 cant adverse change to investors in any of  
19 the limited partnerships with respect to  
20 voting rights, the term of existence of the  
21 entity, management compensation, or in-  
22 vestment objectives; or

23 “(v) where each investor is provided  
24 an option to receive or retain a security

1 under substantially the same terms and  
2 conditions as the original issue; or

3 “(B) the reorganization of a single limited  
4 partnership in which some or all investors in  
5 the limited partnership receive new securities or  
6 securities in another entity, and—

7 “(i) transactions in the security issued  
8 are reported under a transaction reporting  
9 plan declared effective before January 1,  
10 1991, by the Commission under section  
11 11A;

12 “(ii) the investors’ limited partnership  
13 securities are not reported under a trans-  
14 action reporting plan declared effective be-  
15 fore January 1, 1991, by the Commission  
16 under section 11A;

17 “(iii) the issuer is required to register  
18 or report under section 12, both before and  
19 after the transaction, or the securities to  
20 be issued or exchanged are required to be  
21 or are registered under the Securities Act  
22 of 1933;

23 “(iv) there are significant adverse  
24 changes to security holders in voting  
25 rights, the term of existence of the entity,

1 management compensation, or investment  
2 objectives; and

3 “(v) investors are not provided an op-  
4 tion to receive or retain a security under  
5 substantially the same terms and condi-  
6 tions as the original issue.

7 “(5) EXCLUSION FROM DEFINITION.—As used  
8 in this subsection, the term ‘limited partnership roll-  
9 up transaction’ does not include a transaction that  
10 involves only a limited partnership or partnerships  
11 having an operating policy or practice of retaining  
12 cash available for distribution and reinvesting pro-  
13 ceeds from the sale, financing, or refinancing of as-  
14 sets in accordance with such criteria as the Commis-  
15 sion determines appropriate.”.

16 (b) SCHEDULE FOR REGULATIONS.—The Securities  
17 and Exchange Commission shall, not later than 12 months  
18 after the date of enactment of this Act, conduct rule-  
19 making proceedings and prescribe final regulations under  
20 the Securities Act of 1933 and the Securities Exchange  
21 Act of 1934 to implement the requirements of section  
22 14(h) of the Securities Exchange Act of 1934, as amended  
23 by subsection (a).

1 **SEC. 3. RULES OF FAIR PRACTICE IN ROLLUP TRANS-**  
2 **ACTIONS.**

3 (a) REGISTERED SECURITIES ASSOCIATION RULE.—  
4 Section 15A(b) of the Securities Exchange Act of 1934  
5 (15 U.S.C. 78o-3(b)) is amended by adding at the end  
6 the following new paragraph:

7 “(12) The rules of the association to promote  
8 just and equitable principles of trade, as required by  
9 paragraph (6), include rules to prevent members of  
10 the association from participating in any limited  
11 partnership rollup transaction (as such term is de-  
12 fined in paragraphs (4) and (5) of section 14(h)) un-  
13 less such transaction was conducted in accordance  
14 with procedures designed to protect the rights of  
15 limited partners, including—

16 “(A) the right of dissenting limited part-  
17 ners to the following: (i) an appraisal and com-  
18 pensation, or (ii) if the association finds that  
19 granting the rights under clause (i) of this sub-  
20 paragraph would be infeasible or not in the fi-  
21 nancial interest of the dissenting limited part-  
22 ners, other rights designed to protect dissenting  
23 limited partners;

24 “(B) the right not to have their voting  
25 power unfairly reduced or abridged;

1           “(C) the right not to bear an unfair por-  
2           tion of the costs of a proposed rollup trans-  
3           action that is rejected; and

4           “(D) restrictions on the conversion of con-  
5           tingent interests or fees into non-contingent in-  
6           terests or fees and restrictions on the receipt of  
7           a non-contingent equity interest in exchange for  
8           fees for services which have not yet been pro-  
9           vided.

10          As used in this paragraph, the term ‘dissenting lim-  
11          ited partner’ means a holder of a beneficial interest  
12          in a limited partnership that is the subject of a lim-  
13          ited partnership rollup transaction who casts a vote  
14          against the transaction and complies with proce-  
15          dures established by the association, except that for  
16          purposes of an exchange or tender offer, such term  
17          means any person who files an objection in writing  
18          under the rules of the association during the period  
19          in which the offer is outstanding and complies with  
20          such other procedures established by the associa-  
21          tion.”.

22          (b) LISTING STANDARDS OF NATIONAL SECURITIES  
23          EXCHANGES.—Section 6(b) of the Securities Exchange  
24          Act of 1934 (15 U.S.C. 78f(b)) is amended by adding at  
25          the end the following:

1           “(9) The rules of the exchange prohibit the list-  
2           ing of any security issued in a limited partnership  
3           rollup transaction (as such term is defined in para-  
4           graphs (4) and (5) of section 14(h)), unless such  
5           transaction was conducted in accordance with proce-  
6           dures designed to protect the rights of limited part-  
7           ners, including—

8                   “(A) the right of dissenting limited part-  
9                   ners to the following: (i) an appraisal and com-  
10                  pensation, or (ii) if the exchange finds that  
11                  granting the rights under clause (i) of this sub-  
12                  paragraph would be infeasible or not in the fi-  
13                  nancial interest of the dissenting limited part-  
14                  ners, other rights designed to protect dissenting  
15                  limited partners;

16                  “(B) the right not to have their voting  
17                  power unfairly reduced or abridged;

18                  “(C) the right not to bear an unfair por-  
19                  tion of the costs of a proposed rollup trans-  
20                  action that is rejected; and

21                  “(D) restrictions on the conversion of con-  
22                  tingent interests or fees into non-contingent in-  
23                  terests or fees and restrictions on the receipt of  
24                  a non-contingent equity interest in exchange for

1 fees for services which have not yet been pro-  
2 vided.

3 As used in this paragraph, the term ‘dissenting lim-  
4 ited partner’ means a holder of a beneficial interest  
5 in a limited partnership that is the subject of a lim-  
6 ited partnership transaction who casts a vote against  
7 the transaction and complies with procedures estab-  
8 lished by the exchange, except that for purposes of  
9 an exchange or tender offer, such term means any  
10 person who files an objection in writing under the  
11 rules of the exchange during the period in which the  
12 offer is outstanding.’.

13 (c) STANDARDS FOR AUTOMATED QUOTATION SYS-  
14 TEMS.—Section 15A(b) of the Securities Exchange Act of  
15 1934 (15 U.S.C. 78o-3(b)) is amended by adding at the  
16 end the following new paragraph:

17 “(13) The rules of the association prohibit the  
18 authorization for quotation on an automated  
19 interdealer quotation system sponsored by the asso-  
20 ciation of any security designated by the Commis-  
21 sion as a national market system security resulting  
22 from a limited partnership rollup transaction (as  
23 such term is defined in paragraphs (4) and (5) of  
24 section 14(h)), unless such transaction was con-

1 ducted in accordance with procedures designed to  
2 protect the rights of limited partners, including—

3 “(A) the right of dissenting limited part-  
4 ners to the following: (i) an appraisal and com-  
5 pensation, or (ii) if the association finds that  
6 granting the rights under clause (i) of this sub-  
7 paragraph would be infeasible or not in the fi-  
8 nancial interest of the dissenting limited part-  
9 ners, other rights designed to protect dissenting  
10 limited partners;

11 “(B) the right not to have their voting  
12 power unfairly reduced or abridged;

13 “(C) the right not to bear an unfair por-  
14 tion of the costs of a proposed rollup trans-  
15 action that is rejected; and

16 “(D) restrictions on the conversion of con-  
17 tingent interests or fees into non-contingent in-  
18 terests or fees and restrictions on the receipt of  
19 a non-contingent equity interest in exchange for  
20 fees for services which have not yet been pro-  
21 vided.

22 As used in this paragraph, the term ‘dissenting lim-  
23 ited partner’ means a holder of a beneficial interest  
24 in a limited partnership that is the subject of a lim-  
25 ited partnership transaction who casts a vote against



1 the transaction and complies with procedures estab-  
2 lished by the association, except that for purposes of  
3 an exchange or tender offer such term means any  
4 person who files an objection in writing under the  
5 rules of the association during the period during  
6 which the offer is outstanding.”.

7 (d) EFFECT ON EXISTING AUTHORITY.—The amend-  
8 ments made by this section shall not limit the authority  
9 of the Securities and Exchange Commission, a registered  
10 securities association, or a national securities exchange  
11 under any provision of the Securities Exchange Act of  
12 1934, or preclude the Commission or such association or  
13 exchange from imposing, under any other such provision,  
14 a remedy or procedure required to be imposed under such  
15 amendments.

16 (e) EFFECTIVE DATE.—The amendments made by  
17 this section shall become effective 18 months after the  
18 date of enactment of this Act and shall apply to any secu-  
19 rity resulting from a partnership rollup transaction (as  
20 such term is defined in section 14(h)(4) of the Securities  
21 Exchange Act of 1934) that is issued on or after the date  
22 of enactment of this Act.

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