

Union Calendar No. 10

103D CONGRESS
1ST SESSION

H. R. 617

[Report No. 103-21]

A BILL

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

FEBRUARY 25, 1993

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

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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

FEBRUARY 25, 1993

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

[For text of introduced bill, see copy of bill as introduced on January 26, 1993]

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,*

1 **SECTION 1. SHORT TITLE.**

2 *This Act may be cited as the “Limited Partnership*
3 *Rollup Reform Act of 1993”.*

4 **SEC. 2. REVISION OF PROXY SOLICITATION RULES WITH**
5 **RESPECT TO LIMITED PARTNERSHIP ROLLUP**
6 **TRANSACTIONS.**

7 (a) *AMENDMENT.*—Section 14 of the Securities Ex-
8 *change Act of 1934 (15 U.S.C. 78n) is amended by adding*
9 *at the end the following new subsection:*

10 *“(h) PROXY SOLICITATIONS AND TENDER OFFERS IN*
11 *CONNECTION WITH LIMITED PARTNERSHIP ROLLUP*
12 *TRANSACTIONS.—*

13 *“(1) PROXY RULES TO CONTAIN SPECIAL PROVI-*
14 *SIONS.—It shall be unlawful for any person to solicit*
15 *any proxy, consent, or authorization concerning a*
16 *limited partnership rollup transaction, or to make*
17 *any tender offer in furtherance of a limited partner-*
18 *ship rollup transaction, unless such transaction is*
19 *conducted in accordance with rules prescribed by the*
20 *Commission under subsections (a) and (d) as required*
21 *by this subsection. Such rules shall—*

22 *“(A) permit any holder of a security that is*
23 *the subject of the proposed limited partnership*
24 *rollup transaction to engage in preliminary*
25 *communications for the purposes of determining*
26 *whether to solicit proxies, consents, or authoriza-*

1 *tions in opposition to the proposed transaction,*
2 *without regard to whether any such communica-*
3 *tion would otherwise be considered a solicitation*
4 *of proxies, and without being required to file so-*
5 *liciting material with the Commission prior to*
6 *making that determination, except that nothing*
7 *in this subparagraph shall be construed to limit*
8 *the application of any provision of this title pro-*
9 *hibiting, or reasonably designed to prevent,*
10 *fraudulent, deceptive, or manipulative acts or*
11 *practices under this title;*

12 *“(B) require the issuer to provide to holders*
13 *of the securities that are the subject of the trans-*
14 *action such list of the holders of the issuer’s secu-*
15 *rities as the Commission may determine in such*
16 *form and subject to such terms and conditions as*
17 *the Commission may specify;*

18 *“(C) prohibit compensating any person so-*
19 *liciting proxies, consents, or authorizations di-*
20 *rectly from security holders concerning such a*
21 *transaction—*

22 *“(i) on the basis of whether the solici-*
23 *ted proxies, consents, or authorizations ei-*
24 *ther approve or disapprove the proposed*
25 *transaction; or*

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

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

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

14 “(ii) the conflicts of interest, if any, of
15 the general partner;

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

22 “(iv) the valuation of the limited part-
23 nerships and the method used to determine
24 the value of limited partners’ interests to be

1 *exchanged for the securities in the limited*
2 *partnership rollup transaction;*

3 “(v) *the differing risks and effects of*
4 *the transaction for investors in different*
5 *limited partnerships proposed to be in-*
6 *cluded, and the risks and effects of complet-*
7 *ing the transaction with less than all lim-*
8 *ited partnerships;*

9 “(vi) *a statement by the general part-*
10 *ner as to whether the proposed limited part-*
11 *nership rollup transaction is fair or unfair*
12 *to investors in each limited partnership, a*
13 *discussion of the basis for that conclusion,*
14 *and the general partner’s evaluation, and a*
15 *description of alternatives to the limited*
16 *partnership rollup transaction, such as liq-*
17 *uidation; and*

18 “(vii) *such other matters deemed nec-*
19 *essary or appropriate by the Commission.*

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

1 “(i) includes such information, rep-
2 resentations, and undertakings with respect
3 to the analysis of the transaction, scope of
4 review, preparation of the opinion, and
5 basis for and methods of arriving at conclu-
6 sions as the Commission may require in
7 such rules; and

8 “(ii) is prepared by a person—

9 “(I) who does not receive any
10 compensation that is contingent on the
11 transaction’s approval or completion;

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

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

21 “(IV) who has represented to have
22 undertaken an independent analysis of
23 the fairness of the proposed rollup
24 transaction to holders based upon the
25 information obtained through such ac-

1 *cess and upon other independently ob-*
2 *tained information;*

3 *“(F) require that the soliciting material in-*
4 *clude a clear and concise summary of the limited*
5 *partnership rollup transaction (including a sum-*
6 *mary of the matters referred to in clauses (i)*
7 *through (vi) of subparagraph (D) and a sum-*
8 *mary of the matter referred to in subparagraph*
9 *(E)), with the risks of the limited partnership*
10 *rollup transaction set forth prominently in the*
11 *forepart thereof;*

12 *“(G) provide that any solicitation or offer-*
13 *ing period with respect to any proxy solicitation,*
14 *tender offer, or information statement in a lim-*
15 *ited partnership rollup transaction shall be for*
16 *not less than the lesser of 60 calendar days or the*
17 *maximum number of days permitted under ap-*
18 *plicable State law; and*

19 *“(H) contain such other provisions as the*
20 *Commission determines to be necessary or appro-*
21 *priate for the protection of investors in limited*
22 *partnership rollup transactions.*

23 *“(2) EXEMPTIONS.—The Commission may, con-*
24 *sistent with the public interest, the protection of in-*
25 *vestors, and the purposes of this Act, exempt by rule*

1 *or order any security or class of securities, any trans-*
2 *action or class of transactions, or any person or class*
3 *of persons, in whole or in part, conditionally or un-*
4 *conditionally, from the requirements imposed pursu-*
5 *ant to paragraph (1) or from the definition contained*
6 *in paragraph (4).*

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

14 “(4) *DEFINITION OF LIMITED PARTNERSHIP*
15 *ROLLUP TRANSACTION.—As used in this subsection,*
16 *the term ‘limited partnership rollup transaction’*
17 *means, except as provided in paragraph (5), a trans-*
18 *action involving—*

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

24 “(i) *in which—*

1 “(I) the investors’ limited part-
2 nership securities are reported under a
3 transaction reporting plan declared ef-
4 fective before January 1, 1991, by the
5 Commission under section 11A; and

6 “(II) the investors receive new se-
7 curities or securities in another entity
8 that are reported under a transaction
9 reporting plan declared effective before
10 January 1, 1991, by the Commission
11 under section 11A;

12 “(ii) involving only issuers that are
13 not required to register or report under sec-
14 tion 12 both before and after the trans-
15 action;

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

20 “(iv) which will result in no signifi-
21 cant adverse change to investors in any of
22 the limited partnerships with respect to vot-
23 ing rights, the term of existence of the en-
24 tity, management compensation, or invest-
25 ment objectives; or

1 “(v) where each investor is provided an
2 option to receive or retain a security under
3 substantially the same terms and conditions
4 as the original issue; or

5 “(B) the reorganization of a single limited
6 partnership in which some or all investors in the
7 limited partnership receive new securities or se-
8 curities in another entity, and—

9 “(i) transactions in the security issued
10 are reported under a transaction reporting
11 plan declared effective before January 1,
12 1991, by the Commission under section 11A;

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

18 “(iii) the issuer is required to register
19 or report under section 12, both before and
20 after the transaction, or the securities to be
21 issued or exchanged are required to be or
22 are registered under the Securities Act of
23 1933;

24 “(iv) there are significant adverse
25 changes to security holders in voting rights,

1 *the term of existence of the entity, manage-*
2 *ment compensation, or investment objec-*
3 *tives; and*

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

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

17 “(6) *DEFINITION OF PARTNERSHIP.*—The term
18 *‘partnership’ includes such other entity having a sub-*
19 *stantially economically equivalent form of ownership*
20 *instrument as the Commission determines, by rule*
21 *consistent with the purposes of this subsection, to in-*
22 *clude within this definition.”.*

23 “(b) *SCHEDULE FOR REGULATIONS.*—The Securities
24 *and Exchange Commission shall, not later than 12 months*
25 *after the date of enactment of this Act, conduct rulemaking*

1 *proceedings and prescribe final regulations under the Secu-*
2 *rities Act of 1933 and the Securities Exchange Act of 1934*
3 *to implement the requirements of section 14(h) of the Secu-*
4 *rities Exchange Act of 1934, as amended by subsection (a).*

5 **SEC. 3. RULES OF FAIR PRACTICE IN ROLLUP TRANS-**
6 **ACTIONS.**

7 (a) REGISTERED SECURITIES ASSOCIATION RULE.—
8 Section 15A(b) of the Securities Exchange Act of 1934 (15
9 U.S.C. 78o-3(b)) is amended by adding at the end the fol-
10 lowing new paragraph:

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

20 “(A) the right of dissenting limited partners
21 to the following: (i) an appraisal and compensa-
22 tion, or (ii) if the association finds that granting
23 the rights under clause (i) of this subparagraph
24 would be infeasible or not in the financial inter-
25 est of the dissenting limited partners, other com-

1 *parable rights designed to protect dissenting lim-*
2 *ited partners, which may include the rights set*
3 *forth in subparagraph (B);*

4 *“(B) when the association determines it to*
5 *be necessary to the protection of such rights, the*
6 *use of a committee that is independent, as deter-*
7 *mined in accordance with rules prescribed by the*
8 *association, of the general partner or sponsor*
9 *and that would have the authority to protect the*
10 *interest of limited partners, including (but not*
11 *limited to) the authority (but not the obligation)*
12 *to hire independent advisors to represent all lim-*
13 *ited partners at the partnership’s expense, to ne-*
14 *gotiate the proposed transaction with the general*
15 *partner or sponsor on behalf of the limited part-*
16 *ners, and to make a recommendation to the lim-*
17 *ited partners with respect to the proposed trans-*
18 *action, but not the authority to provide consents*
19 *or authorizations to the proposed transaction on*
20 *behalf of limited partners;*

21 *“(C) the right not to have their voting*
22 *power unfairly reduced or abridged;*

23 *“(D) the right not to bear an unfair portion*
24 *of the costs of a proposed rollup transaction that*
25 *is rejected; and*

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

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

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

22 “(9) The rules of the exchange prohibit the list-
23 ing of any security issued in a limited partnership
24 rollup transaction (as such term is defined in para-
25 graphs (4) and (5) of section 14(h)), unless such

1 *transaction was conducted in accordance with proce-*
2 *dures designed to protect the rights of limited part-*
3 *ners, including—*

4 *“(A) the right of dissenting limited partners*
5 *to the following: (i) an appraisal and compensa-*
6 *tion, or (ii) if the exchange finds that granting*
7 *the rights under clause (i) of this subparagraph*
8 *would be infeasible or not in the financial inter-*
9 *est of the dissenting limited partners, other com-*
10 *parable rights designed to protect dissenting lim-*
11 *ited partners, which may include the rights set*
12 *forth in subparagraph (B);*

13 *“(B) when the exchange determines it to be*
14 *necessary to the protection of such rights, the use*
15 *of a committee that is independent, as deter-*
16 *mined in accordance with rules prescribed by the*
17 *exchange, of the general partner or sponsor and*
18 *that would have the authority to protect the in-*
19 *terest of limited partners, including (but not*
20 *limited to) the authority (but not the obligation)*
21 *to hire independent advisors to represent all lim-*
22 *ited partners at the partnership’s expense, to ne-*
23 *gotiate the proposed transaction with the general*
24 *partner or sponsor on behalf of the limited part-*
25 *ners, and to make a recommendation to the lim-*

1 *ited partners with respect to the proposed trans-*
2 *action, but not the authority to provide consents*
3 *or authorizations to the proposed transaction on*
4 *behalf of limited partners;*

5 *“(C) the right not to have their voting*
6 *power unfairly reduced or abridged;*

7 *“(D) the right not to bear an unfair portion*
8 *of the costs of a proposed rollup transaction that*
9 *is rejected; and*

10 *“(E) restrictions on the conversion of con-*
11 *tingent interests or fees into non-contingent in-*
12 *terests or fees and restrictions on the receipt of*
13 *a non-contingent equity interest in exchange for*
14 *fees for services which have not yet been pro-*
15 *vided.*

16 *As used in this paragraph, the term ‘dissenting lim-*
17 *ited partner’ means a holder of a beneficial interest*
18 *in a limited partnership that is the subject of a lim-*
19 *ited partnership transaction who casts a vote against*
20 *the transaction and complies with procedures estab-*
21 *lished by the exchange, except that for purposes of an*
22 *exchange or tender offer, such term means any person*
23 *who files an objection in writing under the rules of*
24 *the exchange during the period in which the offer is*
25 *outstanding.”.*

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

5 “(13) *The rules of the association prohibit the*
6 *authorization for quotation on an automated*
7 *interdealer quotation system sponsored by the associa-*
8 *tion of any security designated by the Commission as*
9 *a national market system security resulting from a*
10 *limited partnership rollup transaction (as such term*
11 *is defined in paragraphs (4) and (5) of section 14(h)),*
12 *unless such transaction was conducted in accordance*
13 *with procedures designed to protect the rights of lim-*
14 *ited partners, including—*

15 “(A) *the right of dissenting limited partners*
16 *to the following: (i) an appraisal and compensa-*
17 *tion, or (ii) if the association finds that granting*
18 *the rights under clause (i) of this subparagraph*
19 *would be infeasible or not in the financial inter-*
20 *est of the dissenting limited partners, other com-*
21 *parable rights designed to protect dissenting lim-*
22 *ited partners, which may include the rights set*
23 *forth in subparagraph (B);*

24 “(B) *when the association determines it to*
25 *be necessary to the protection of such rights, the*

1 *use of a committee that is independent, as deter-*
2 *mined in accordance with rules prescribed by the*
3 *association, of the general partner or sponsor*
4 *and that would have the authority to protect the*
5 *interest of limited partners, including (but not*
6 *limited to) the authority (but not the obligation)*
7 *to hire independent advisors to represent all lim-*
8 *ited partners at the partnership's expense, to ne-*
9 *gotiate the proposed transaction with the general*
10 *partner or sponsor on behalf of the limited part-*
11 *ners, and to make a recommendation to the lim-*
12 *ited partners with respect to the proposed trans-*
13 *action, but not the authority to provide consents*
14 *or authorizations to the proposed transaction on*
15 *behalf of limited partners;*

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

18 *“(D) the right not to bear an unfair portion*
19 *of the costs of a proposed rollup transaction that*
20 *is rejected; and*

21 *“(E) 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 association, except that for purposes of*
9 *an exchange or tender offer such term means any per-*
10 *son who files an objection in writing under the rules*
11 *of the association during the period during which the*
12 *offer is outstanding.’.*

13 *(d) EFFECT ON EXISTING AUTHORITY.—The amend-*
14 *ments made by this section shall not limit the authority*
15 *of the Securities and Exchange Commission, a registered*
16 *securities association, or a national securities exchange*
17 *under any provision of the Securities Exchange Act of 1934,*
18 *or preclude the Commission or such association or exchange*
19 *from imposing, under any other such provision, a remedy*
20 *or procedure required to be imposed under such amend-*
21 *ments.*

22 *(e) EFFECTIVE DATE.—The amendments made by this*
23 *section shall become effective 18 months after the date of*
24 *enactment of this Act and shall apply to any security re-*
25 *sulting from a partnership rollup transaction (as such term*

1 *is defined in section 14(h)(4) of the Securities Exchange*
2 *Act of 1934) that is issued on or after the date of enactment*
3 *of this Act.*

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