

103D CONGRESS
1ST SESSION

S. 424

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 8, 1993

Referred to the Committee on Energy and Commerce

AN ACT

To amend the Securities Exchange Act of 1934 with respect to limited partnership rollups.

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”.

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

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

1 “(h) PROXY SOLICITATIONS AND TENDER OFFERS
2 IN CONNECTION WITH LIMITED PARTNERSHIP ROLLUP
3 TRANSACTIONS.—

4 “(1) PROXY RULES TO CONTAIN SPECIAL PRO-
5 VISIONS.—It shall be unlawful for any person to so-
6 licit any proxy, consent, or authorization concerning
7 a limited partnership rollup transaction, or to make
8 any tender offer in furtherance of a limited partner-
9 ship rollup transaction, unless such transaction is
10 conducted in accordance with rules prescribed by the
11 Commission under subsections (a) and (d). Such
12 rules shall—

13 “(A) permit any holder of a security that
14 is the subject of the proposed limited partner-
15 ship rollup transaction to engage in preliminary
16 communications for the purpose of determining
17 whether to solicit proxies, consents, or author-
18 izations in opposition to the proposed trans-
19 action, without regard to whether any such
20 communication would otherwise be considered a
21 solicitation of proxies, and without being re-
22 quired to file soliciting material with the Com-
23 mission prior to making that determination, ex-
24 cept that—

1 “(i) nothing in this subparagraph
2 shall be construed to limit the application
3 of any provision of this title prohibiting, or
4 reasonably designed to prevent, fraudulent,
5 deceptive, or manipulative acts or practices
6 under this title; and

7 “(ii) any holder of not less than 5 per-
8 cent of the outstanding securities that are
9 the subject of the proposed limited part-
10 nership rollup transaction who engages in
11 the business of buying and selling limited
12 partnership interests in the secondary mar-
13 ket shall be required to disclose such own-
14 ership interests and any potential conflicts
15 of interests in such preliminary commu-
16 nications;

17 “(B) require the issuer to provide to hold-
18 ers of the securities that are the subject of the
19 transaction such list of the holders of the issu-
20 er’s securities as the Commission may deter-
21 mine in such form and subject to such terms
22 and conditions as the Commission may specify;

23 “(C) prohibit compensating any person so-
24 liciting proxies, consents, or authorizations di-

1 rectly from security holders concerning such a
2 transaction—

3 “(i) on the basis of whether the solici-
4 ited proxy, consent, or authorization either
5 approves or disapproves the proposed lim-
6 ited partnership rollup transaction; or

7 “(ii) contingent on the approval, dis-
8 approval, or completion of the limited part-
9 nership rollup transaction;

10 “(D) set forth disclosure requirements for
11 soliciting material distributed in connection
12 with a limited partnership rollup transaction,
13 including requirements for clear, concise, and
14 comprehensible disclosure, with respect to—

15 “(i) any changes in the business plan,
16 voting rights, form of ownership interest,
17 or the compensation of the general partner
18 in the proposed limited partnership rollup
19 transaction from each of the original lim-
20 ited partnerships;

21 “(ii) the conflicts of interest, if any, of
22 the general partner;

23 “(iii) whether it is expected that there
24 will be a significant difference between the
25 exchange values of the limited partnerships

1 and the trading price of the securities to
2 be issued in the limited partnership rollup
3 transaction;

4 “(iv) the valuation of the limited part-
5 nerships and the method used to determine
6 the value of the interests of the limited
7 partners to be exchanged for the securities
8 in the limited partnership rollup trans-
9 action;

10 “(v) the differing risks and effects of
11 the transaction for investors in different
12 limited partnerships proposed to be in-
13 cluded, and the risks and effects of com-
14 pleting the transaction with less than all
15 limited partnerships;

16 “(vi) the statement by the general
17 partner required under subparagraph (E);

18 “(vii) any opinion (other than an
19 opinion of counsel), appraisal, or report re-
20 ceived by the general partner or sponsor
21 that is prepared by an outside party and
22 that is materially related to the limited
23 partnership rollup transaction and the
24 identity and qualifications of the party who
25 prepared the opinion, appraisal, or report,

1 the method of selection of such party, ma-
2 terial past, existing, or contemplated rela-
3 tionships between the party or any of its
4 affiliates and the general partner, sponsor,
5 successor, or any other affiliate, compensa-
6 tion arrangements, and the basis for ren-
7 dering and methods used in developing the
8 opinion, appraisal, or report; and

9 “(viii) such other matters deemed nec-
10 essary or appropriate by the Commission;

11 “(E) require a statement by the general
12 partner as to whether the proposed limited
13 partnership rollup transaction is fair or unfair
14 to investors in each limited partnership, a dis-
15 cussion of the basis for that conclusion, and an
16 evaluation and a description by the general
17 partner of alternatives to the limited partner-
18 ship rollup transaction, such as liquidation;

19 “(F) provide that any solicitation or offer-
20 ing period with respect to any proxy solicita-
21 tion, tender offer, or information statement in
22 a limited partnership rollup transaction shall be
23 for not less than the lesser of 60 calendar days
24 or the maximum number of days permitted
25 under applicable State law; and

1 “(G) contain such other provisions as the
2 Commission determines to be necessary or ap-
3 propriate for the protection of investors in lim-
4 ited partnership rollup transactions.

5 “(2) SUMMARY.—Disclosure requirements es-
6 tablished under paragraph (1)(D) shall require that
7 soliciting material include a clear and concise sum-
8 mary of the limited partnership rollup transaction
9 (including a summary of the matters referred to in
10 clauses (i) through (viii) of that subparagraph) with
11 the risks of the limited partnership rollup trans-
12 action set forth prominently in the forepart thereof.

13 “(3) EXEMPTIONS.—The Commission may, con-
14 sistent with the public interest, the protection of in-
15 vestors, and the purposes of this title, exempt by
16 rule or order any security or class of securities, any
17 transaction or class of transactions, or any person or
18 class of persons, in whole or in part, conditionally or
19 unconditionally, from the requirements imposed pur-
20 suant to paragraphs (1) and (2) or, from the defini-
21 tion contained in paragraph (5).

22 “(4) EFFECT ON COMMISSION AUTHORITY.—
23 Nothing in this subsection limits the authority of the
24 Commission under subsection (a) or (d) or any other
25 provision of this title or precludes the Commission

1 from imposing, under subsection (a) or (d) or any
2 other provision of this title, a remedy or procedure
3 required to be imposed under this subsection.

4 “(5) DEFINITION.—As used in this subsection
5 the term ‘limited partnership rollup transaction’
6 means a transaction involving—

7 “(A) the combination or reorganization of
8 limited partnerships, directly or indirectly, in
9 which some or all investors in the limited part-
10 nerships receive new securities or securities in
11 another entity, other than a transaction—

12 “(i) in which—

13 “(I) the investors’ limited part-
14 nership securities are reported under
15 a transaction reporting plan declared
16 effective before the date of enactment
17 of this subsection by the Commission
18 under section 11A; and

19 “(II) the investors receive new
20 securities or securities in another en-
21 tity that are reported under a trans-
22 action reporting plan declared effec-
23 tive before the date of enactment of
24 this subsection by the Commission
25 under section 11A;

1 “(ii) involving only issuers that are
2 not required to register or report under
3 section 12 both before and after the trans-
4 action;

5 “(iii) in which the securities to be is-
6 sued or exchanged are not required to be
7 and are not registered under the Securities
8 Act of 1933;

9 “(iv) which will result in no signifi-
10 cant adverse change to investors in any of
11 the limited partnerships with respect to
12 voting rights, the term of existence of the
13 entity, management compensation, or in-
14 vestment objectives; or

15 “(v) where each investor is provided
16 an option to receive or retain a security
17 under substantially the same terms and
18 conditions as the original issue; or

19 “(B) the reorganization of a single limited
20 partnership, directly or indirectly, in which
21 some or all investors in the limited partnership
22 receive new securities or securities in another
23 entity, and—

24 “(i) transactions in the security issued
25 are reported under a transaction reporting

1 plan declared effective before the date of
2 enactment of this subsection by the Com-
3 mission under section 11A;

4 “(ii) the investors’ limited partnership
5 securities are not reported under a trans-
6 action reporting plan declared effective be-
7 fore the date of enactment of this sub-
8 section by the Commission under section
9 11A;

10 “(iii) the issuer is required to register
11 or report under section 12, both before and
12 after the transaction, or the securities to
13 be issued or exchanged are required to be
14 or are registered under the Securities Act
15 of 1933;

16 “(iv) there are significant adverse
17 changes to security holders in voting
18 rights, the term of existence of the entity,
19 management compensation, or investment
20 objectives; and

21 “(v) investors are not provided an op-
22 tion to receive or retain a security under
23 substantially the same terms and condi-
24 tions as the original issue.

1 “(6) EXCLUSIONS.—For purposes of this sub-
2 section, a limited partnership rollup transaction does
3 not include—

4 “(A) a transaction that involves only a lim-
5 ited partnership or partnerships having an op-
6 erating policy or practice of retaining cash
7 available for distribution and reinvesting pro-
8 ceeds from the sale, financing, or refinancing of
9 assets in accordance with such criteria as the
10 Commission determines appropriate;

11 “(B) the combination or reorganization of
12 limited partnerships or the reorganization of a
13 single limited partnership—

14 “(i) in which a non-affiliated party
15 succeeds to the interests of a general part-
16 ner or sponsor, if—

17 “(I) such action is approved by
18 not less than $66\frac{2}{3}$ percent of the out-
19 standing units of each of the partici-
20 pating limited partnerships; and

21 “(II) as a result of the trans-
22 action, the existing general partners
23 are entitled to receive only compensa-
24 tion expressly provided for in the pre-

1 existing limited partnership agree-
2 ments; or

3 “(ii) involving only limited partner-
4 ships wherein the interests of the limited
5 partners are repurchased, recalled, or ex-
6 changed pursuant to the terms of the pre-
7 existing limited partnership agreements for
8 securities in an operating company specifi-
9 cally identified at the time of the formation
10 of the original limited partnership; or

11 “(C) a transaction in which the securities
12 offered to investors are securities of another en-
13 tity that are reported under a transaction re-
14 porting plan declared effective before the date
15 of enactment of this subsection by the Commis-
16 sion under section 11A, if—

17 “(i) such other entity was formed, and
18 such class of securities was reported, not
19 less than 12 months before the date on
20 which soliciting material is mailed to inves-
21 tors; and

22 “(ii) the securities of that entity is-
23 sued to investors in the transaction do not
24 exceed 20 percent of the total outstanding
25 securities of the entity.”.

1 (b) SCHEDULE FOR REGULATIONS.—The Securities
2 and Exchange Commission shall promulgate final regula-
3 tions under the Securities Act of 1933 and the Securities
4 Exchange Act of 1934 which shall become effective not
5 later than 12 months after the date of enactment of this
6 Act to implement the requirements of section 14(h) of the
7 Securities Exchange Act of 1934, as added by subsection
8 (a).

9 **SEC. 3. RULES OF FAIR PRACTICE IN ROLLUP TRANS-**
10 **ACTIONS.**

11 (a) REGISTERED SECURITIES ASSOCIATION RULE.—
12 Section 15A(b) of the Securities Exchange Act of 1934
13 (15 U.S.C. 78o-3(b)) is amended by adding at the end
14 the following new paragraph:

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

24 “(A) the right of dissenting limited part-
25 ners to one of the following—

1 “(i) an appraisal and compensation;

2 “(ii) retention of a security under sub-
3 stantially the same terms and conditions as
4 the original issue;

5 “(iii) approval of the limited partner-
6 ship rollup transaction by not less than 75
7 percent of the outstanding units of each of
8 the participating limited partnerships; or

9 “(iv) other rights designed to protect
10 dissenting 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 person who, on the date on
24 which soliciting material is mailed to investors, is a
25 holder of a beneficial interest in a limited partner-

1 ship that is the subject of a limited partnership roll-
2 up transaction, and who casts a vote against the
3 transaction and complies with procedures established
4 by the association, except that for purposes of an ex-
5 change or tender offer, such person shall file an ob-
6 jection in writing under the rules of the association
7 during the period in which the offer is outstand-
8 ing.”.

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

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

20 “(A) the right of dissenting limited part-
21 ners to one of the following—

22 “(i) an appraisal and compensation;

23 “(ii) retention of a security under sub-
24 stantially the same terms and conditions as
25 the original issue;

1 “(iii) approval of the limited partner-
2 ship rollup transaction by not less than 75
3 percent of the outstanding units of each of
4 the participating limited partnerships; or

5 “(iv) other rights designed to protect
6 dissenting limited partners;

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

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

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

18 As used in this paragraph, the term ‘dissenting lim-
19 ited partner’ means a person who, on the date on
20 which soliciting material is mailed to investors, is a
21 holder of a beneficial interest in a limited partner-
22 ship that is the subject of a limited partnership roll-
23 up transaction, and who casts a vote against the
24 transaction and complies with procedures established
25 by the exchange, except that for purposes of an ex-

1 change or tender offer, such person shall file an ob-
2 jection in writing under the rules of the exchange
3 during the period in which the offer is outstand-
4 ing.”.

5 (c) STANDARDS FOR AUTOMATED QUOTATION SYS-
6 TEMS.—Section 15A(b) of the Securities Exchange Act of
7 1934 (15 U.S.C. 78o-3(b)) is amended by adding at the
8 end the following new paragraph:

9 “(13) The rules of the association prohibit the
10 authorization for quotation on an automated
11 interdealer quotation system sponsored by the asso-
12 ciation of any security designated by the Commis-
13 sion as a national market system security resulting
14 from a limited partnership rollup transaction (as
15 such term is defined in paragraphs (5) and (6) of
16 section 14(h)), unless such transaction was con-
17 ducted in accordance with procedures designed to
18 protect the rights of limited partners, including—

19 “(A) the right of dissenting limited part-
20 ners to one of the following—

21 “(i) an appraisal and compensation;

22 “(ii) retention of a security under sub-
23 stantially the same terms and conditions as
24 the original issue;

1 “(iii) approval of the limited partner-
2 ship rollup transaction by not less than 75
3 percent of the outstanding units of each of
4 the participating limited partnerships; or

5 “(iv) other rights designed to protect
6 dissenting limited partners;

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

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

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

18 As used in this paragraph, the term ‘dissenting lim-
19 ited partner’ means a person who, on the date on
20 which soliciting material is mailed to investors, is a
21 holder of a beneficial interest in a limited partner-
22 ship that is the subject of a limited partnership roll-
23 up transaction, and who casts a vote against the
24 transaction and complies with procedures established
25 by the association, except that for purposes of an ex-

1 change or tender offer such person shall file an ob-
2 jection in writing under the rules of the association
3 during the period during which the offer is outstand-
4 ing.”.

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

14 (e) EFFECTIVE DATE.—The amendments made by
15 this section shall become effective 12 months after the
16 date of enactment of this Act.

17 **SEC. 4. REVIEW OF FILINGS PRIOR TO EFFECTIVE DATE.**

18 Prior to the effective date of regulations adopted pur-
19 suant to this Act, the Securities and Exchange Commis-
20 sion shall continue to review and declare effective registra-
21 tion statements and amendments thereto relating to lim-

