

107TH CONGRESS
2^D SESSION

S. 1969

To amend title I of the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1986 to provide additional protections to participants and beneficiaries in individual account plans from excessive investment in employer securities and to promote the provision of retirement investment advice to workers managing their retirement income assets, and to amend the Securities Exchange Act of 1934 to prohibit insider trades during any suspension of the ability of plan participants or beneficiaries to direct investment away from equity securities of the plan sponsor.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 26, 2002

Mr. HUTCHINSON (for himself, Mr. LOTT, and Mr. GREGG) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To amend title I of the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1986 to provide additional protections to participants and beneficiaries in individual account plans from excessive investment in employer securities and to promote the provision of retirement investment advice to workers managing their retirement income assets, and to amend the Securities Exchange Act of 1934 to prohibit insider trades during any suspension of the ability of plan participants or beneficiaries to direct investment away from equity securities of the plan sponsor.

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 “Pension Security Act
 5 of 2002”.

6 **SEC. 2. IMPROVED DISCLOSURE OF PENSION BENEFIT IN-**
 7 **FORMATION BY INDIVIDUAL ACCOUNT**
 8 **PLANS.**

9 (a) PENSION BENEFIT STATEMENTS REQUIRED ON
 10 PERIODIC BASIS.—

11 (1) IN GENERAL.—Subsection (a) of section
 12 105 of the Employee Retirement Income Security
 13 Act of 1974 (29 U.S.C. 1025) is amended by insert-
 14 ing “and, in the case of an applicable individual ac-
 15 count plan, shall furnish at least quarterly to each
 16 plan participant (and to each beneficiary with a
 17 right to direct investments),” after “who so requests
 18 in writing,”.

19 (2) INFORMATION REQUIRED FROM INDIVIDUAL
 20 ACCOUNT PLANS.—Section 105 of such Act (29
 21 U.S.C. 1025) is amended by adding at the end the
 22 following new subsection:

23 “(e)(1) The quarterly statements required under sub-
 24 section (a) shall include (together with the information re-
 25 quired in subsection (a)) the following:

1 “(A) the value of investments allocated to the
2 individual account, including the value of any assets
3 held in the form of employer securities, without re-
4 gard to whether such securities were contributed by
5 the plan sponsor or acquired at the direction of the
6 plan or of the participant or beneficiary, and an ex-
7 planation of any limitations or restrictions on the
8 right of the participant or beneficiary to direct an
9 investment; and

10 “(B) an explanation, written in a manner cal-
11 culated to be understood by the average plan partici-
12 pant, of the importance, for the long-term retire-
13 ment security of participants and beneficiaries, of a
14 well-balanced and diversified investment portfolio,
15 including a discussion of the risk of holding substan-
16 tial portions of a portfolio in the security of any one
17 entity, such as employer securities.”.

18 (3) DEFINITION OF APPLICABLE INDIVIDUAL
19 ACCOUNT PLAN.—Section 3 of such Act (29 U.S.C.
20 1002) is amended by adding at the end the following
21 new subsection:

22 “(42) The term ‘applicable individual account plan’
23 means any individual account plan, except that such term
24 does not include an employee stock ownership plan (within
25 the meaning of section 4975(e)(7) of the Internal Revenue

1 Code of 1986) unless there are any contributions to such
2 plan (or earnings thereunder) held within such plan that
3 are subject to subsection (k)(3) or (m)(2) of section 401
4 of the Internal Revenue Code of 1986.”.

5 (b) CIVIL PENALTIES FOR FAILURE TO PROVIDE
6 QUARTERLY BENEFIT STATEMENTS.—Section 502 of
7 such Act (29 U.S.C. 1132) is amended—

8 (1) in subsection (a)(6), by striking “(5), or
9 (6)” and inserting “(5), (6), or (7)”;

10 (2) by redesignating paragraph (7) of sub-
11 section (c) as paragraph (8); and

12 (3) by inserting after paragraph (6) of sub-
13 section (c) the following new paragraph:

14 “(7) The Secretary may assess a civil penalty against
15 any plan administrator of up to \$1,000 a day from the
16 date of such plan administrator’s failure or refusal to pro-
17 vide participants or beneficiaries with a benefit statement
18 on at least a quarterly basis in accordance with section
19 105(a).”.

1 **SEC. 3. PROTECTION FROM SUSPENSIONS, LIMITATIONS,**
2 **OR RESTRICTIONS ON ABILITY OF PARTICI-**
3 **PANT OR BENEFICIARY TO DIRECT OR DI-**
4 **VERSIFY PLAN ASSETS.**

5 (a) IN GENERAL.—Section 101 of the Employee Re-
6 tirement Income Security Act of 1974 (29 U.S.C. 1021)
7 is amended—

8 (1) by redesignating the second subsection (h)
9 as subsection (j); and

10 (2) by inserting after the first subsection (h)
11 the following new subsection:

12 “(i) NOTICE OF SUSPENSION, LIMITATION, OR RE-
13 STRICTION ON ABILITY OF PARTICIPANT OR BENEFICIARY
14 TO DIRECT INVESTMENTS IN INDIVIDUAL ACCOUNT
15 PLAN.—

16 “(1) IN GENERAL.—In the case of an applicable
17 individual account plan, the administrator shall no-
18 tify participants and beneficiaries of any action that
19 would have the affect of suspending, limiting, or re-
20 stricting the ability of participants or beneficiaries to
21 direct or diversify assets credited to their accounts.

22 “(2) NOTICE REQUIREMENTS.—

23 “(A) IN GENERAL.—The notices described
24 in paragraph (1) shall—

25 “(i) be written in a manner calculated
26 to be understood by the average plan par-

1 participant and shall include the reasons for
2 the suspension, limitation, or restriction,
3 an identification of the investments af-
4 fected, and the expected period of the sus-
5 pension, limitation, or restriction, and

6 “(ii) be furnished at least 30 days in
7 advance of the action suspending, limiting,
8 or restricting the ability of the participants
9 or beneficiaries to direct or diversify as-
10 assets.

11 “(B) EXCEPTION TO 30-DAY NOTICE RE-
12 QUIREMENT.—In any case in which—

13 “(i) a fiduciary of the plan deter-
14 mines, in writing, that a deferral of the
15 suspension, limitation, or restriction would
16 violate the requirements of subparagraph
17 (A) or (B) of section 404(a)(1), or

18 “(ii) the inability to provide the 30-
19 day advance notice is due to circumstances
20 beyond the reasonable control of the plan
21 administrator,

22 subparagraph (A)(ii) shall not apply, and the
23 notice shall be furnished as soon as reasonably
24 possible under the circumstances.

1 “(3) CHANGES IN EXPECTED PERIOD OF SUS-
2 PENSION, LIMITATION, OR RESTRICTION.—If, fol-
3 lowing the furnishing of the notice pursuant to this
4 subsection, there is a change in the expected period
5 of the suspension, limitation, or restriction on the
6 right of a participant or beneficiary to direct or di-
7 versify assets, the administrator shall provide af-
8 fected participants and beneficiaries advance notice
9 of the change. Such notice shall meet the require-
10 ments of paragraph (2)(A)(i) in relation to the ex-
11 tended suspension, limitation, or restriction.”.

12 (b) CIVIL PENALTIES FOR FAILURE TO PROVIDE
13 NOTICE.—Section 502 of such Act (as amended by section
14 2(b)) is amended—

15 (1) in subsection (a)(6), by striking “(6), or
16 (7)” and inserting “(6), (7), or (8)”;

17 (2) by redesignating paragraph (8) of sub-
18 section (c) as paragraph (9); and

19 (3) by inserting after paragraph (7) of sub-
20 section (c) the following new paragraph:

21 “(8) The Secretary may assess a civil penalty against
22 any person of up to \$100 a day from the date of the per-
23 son’s failure or refusal to provide notice to participants
24 and beneficiaries in accordance with section 101(i). For
25 purposes of this paragraph, each violation with respect to

1 any single participant or beneficiary, shall be treated as
2 a separate violation.”.

3 (c) INAPPLICABILITY OF RELIEF FROM FIDUCIARY
4 LIABILITY DURING SUSPENSION OF ABILITY OF PARTICI-
5 PANT OR BENEFICIARY TO DIRECT INVESTMENTS.—Sec-
6 tion 404(c)(1) of such Act (29 U.S.C. 1104(c)(1)) is
7 amended—

8 (1) in subparagraph (B), by inserting before
9 the period the following: “, except that this subpara-
10 graph shall not apply for any period during which
11 the ability of a participant or beneficiary to direct
12 the investment of assets in his or her individual ac-
13 count is suspended by a plan sponsor or fiduciary”;
14 and

15 (2) by adding at the end the following:
16 “Any limitation or restriction that may govern the fre-
17 quency of transfers between investment vehicles shall not
18 be treated as a suspension referred to in subparagraph
19 (B) to the extent such limitation or restriction is disclosed
20 to participants or beneficiaries through the summary plan
21 description or materials describing specific investment al-
22 ternatives under the plan.”.

1 **SEC. 4. LIMITATIONS ON RESTRICTIONS OF INVESTMENTS**
2 **IN EMPLOYER SECURITIES.**

3 (a) AMENDMENTS TO THE EMPLOYEE RETIREMENT
4 INCOME SECURITY ACT OF 1974.—Section 407 of the
5 Employee Retirement Income Security Act of 1974 (29
6 U.S.C. 1107) is amended by adding at the end the fol-
7 lowing new subsection:

8 “(g)(1) An applicable individual account plan may
9 not acquire or hold any employer securities with respect
10 to which there is any restriction on divestment by a partici-
11 ipant or beneficiary on or after the date on which the par-
12 ticipant has completed 3 years of participation (as defined
13 in section 204(b)(4)) under the plan or (if the plan so
14 provides) 3 years of service (as defined in section
15 203(b)(2)) with the employer.

16 “(2) For purposes of paragraph (1), the term ‘restricti-
17 on on divestment’ includes—

18 “(A) any failure to offer at least 3 diversified
19 investment options in which a participant or bene-
20 ficiary may direct the proceeds from the divestment
21 of employer securities, and

22 “(B) any restriction on the ability of a partici-
23 pant or beneficiary to choose from all otherwise
24 available investment options in which such proceeds
25 may be so directed.”.

1 (b) AMENDMENTS TO THE INTERNAL REVENUE
2 CODE OF 1986.—

3 (1) IN GENERAL.—Subsection (a) of section
4 401 of the Internal Revenue Code of 1986 (relating
5 to requirements for qualification) is amended by in-
6 sserting after paragraph (34) the following new para-
7 graph:

8 “(35) LIMITATIONS ON RESTRICTIONS UNDER
9 APPLICABLE DEFINED CONTRIBUTION PLANS ON IN-
10 VESTMENTS IN EMPLOYER SECURITIES.—

11 “(A) IN GENERAL.—A trust forming a
12 part of an applicable defined contribution plan
13 shall not constitute a qualified trust under this
14 subsection if the plan acquires or holds any em-
15 ployer securities with respect to which there is
16 any restriction on divestment by a participant
17 or beneficiary on or after the date on which the
18 participant has completed 3 years of participa-
19 tion (as defined in section 411(b)(4)) under the
20 plan or (if the plan so provides) 3 years of serv-
21 ice (as defined in section 411(a)(5)) with the
22 employer.

23 “(B) DEFINITIONS.—For purposes of sub-
24 paragraph (A)—

1 “(i) APPLICABLE DEFINED CONTRIBU-
2 TION PLAN.—The term ‘applicable defined
3 contribution plan’ means any defined con-
4 tribution plan, except that such term does
5 not include an employee stock ownership
6 plan (as defined in section 4975(e)(7)) un-
7 less there are any contributions to such
8 plan (or earnings thereunder) held within
9 such plan that are subject to subsections
10 (k)(3) or (m)(2).

11 “(ii) RESTRICTION ON DIVEST-
12 MENT.—The term ‘restriction on divest-
13 ment’ includes—

14 “(I) any failure to offer at least
15 3 diversified investment options in
16 which a participant or beneficiary may
17 direct the proceeds from the divest-
18 ment of employer securities, and

19 “(II) any restriction on the abil-
20 ity of a participant or beneficiary to
21 choose from all otherwise available in-
22 vestment options in which such pro-
23 ceeds may be so directed.”.

24 (2) CONFORMING AMENDMENT.—Section
25 401(a)(28)(B) of such Code (relating to diversifica-

1 tion of investments) is amended by adding at the
2 end the following new clause:

3 “(v) EXCEPTION.—This subparagraph
4 shall not apply to an applicable defined
5 contribution plan (as defined in paragraph
6 (35)(B)(i)).”.

7 **SEC. 5. PROHIBITED TRANSACTION EXEMPTION FOR THE**
8 **PROVISION OF INVESTMENT ADVICE.**

9 (a) AMENDMENTS TO THE EMPLOYEE RETIREMENT
10 INCOME SECURITY ACT OF 1974.—

11 (1) EXEMPTION FROM PROHIBITED TRANS-
12 ACTIONS.—Section 408(b) of the Employee Retirement
13 Income Security Act of 1974 (29 U.S.C.
14 1108(b)) is amended by adding at the end the fol-
15 lowing new paragraph:

16 “(14)(A) Any transaction described in subpara-
17 graph (B) in connection with the provision of invest-
18 ment advice described in section 3(21)(A)(ii), in any
19 case in which—

20 “(i) the investment of assets of the plan is
21 subject to the direction of plan participants or
22 beneficiaries,

23 “(ii) the advice is provided to the plan or
24 a participant or beneficiary of the plan by a fi-
25 duciary adviser in connection with any sale, ac-

1 quisition, or holding of a security or other prop-
2 erty for purposes of investment of plan assets,
3 and

4 “ (iii) the requirements of subsection (g)
5 are met in connection with the provision of the
6 advice.

7 “(B) The transactions described in this sub-
8 paragraph are the following:

9 “ (i) The provision of the advice to the
10 plan, participant, or beneficiary.

11 “ (ii) The sale, acquisition, or holding of a
12 security or other property (including any lend-
13 ing of money or other extension of credit associ-
14 ated with the sale, acquisition, or holding of a
15 security or other property) pursuant to the ad-
16 vice.

17 “ (iii) The direct or indirect receipt of fees
18 or other compensation by the fiduciary adviser
19 or an affiliate thereof (or any employee, agent,
20 or registered representative of the fiduciary ad-
21 viser or affiliate) in connection with the provi-
22 sion of the advice or in connection with a sale,
23 acquisition, or holding of a security or other
24 property pursuant to the advice.”.

1 (2) REQUIREMENTS.—Section 408 of such Act
2 is amended by adding at the end the following new
3 subsection:

4 “(g) REQUIREMENTS RELATING TO PROVISION OF
5 INVESTMENT ADVICE BY FIDUCIARY ADVISERS.—

6 “(1) IN GENERAL.—The requirements of this
7 subsection are met in connection with the provision
8 of investment advice referred to in section
9 3(21)(A)(ii), provided to an employee benefit plan or
10 a participant or beneficiary of an employee benefit
11 plan by a fiduciary adviser with respect to the plan
12 in connection with any sale, acquisition, or holding
13 of a security or other property for purposes of in-
14 vestment of amounts held by the plan, if—

15 “(A) in the case of the initial provision of
16 the advice with regard to the security or other
17 property by the fiduciary adviser to the plan,
18 participant, or beneficiary, the fiduciary adviser
19 provides to the recipient of the advice, at a time
20 reasonably contemporaneous with the initial
21 provision of the advice, a written notification
22 (which may consist of notification by means of
23 electronic communication)—

24 “(i) of all fees or other compensation
25 relating to the advice that the fiduciary ad-

1 viser or any affiliate thereof is to receive
2 (including compensation provided by any
3 third party) in connection with the provi-
4 sion of the advice or in connection with the
5 sale, acquisition, or holding of the security
6 or other property,

7 “(ii) of any material affiliation or con-
8 tractual relationship of the fiduciary ad-
9 viser or affiliates thereof in the security or
10 other property,

11 “(iii) of any limitation placed on the
12 scope of the investment advice to be pro-
13 vided by the fiduciary adviser with respect
14 to any such sale, acquisition, or holding of
15 a security or other property,

16 “(iv) of the types of services provided
17 by the fiduciary adviser in connection with
18 the provision of investment advice by the
19 fiduciary adviser, and

20 “(v) that the adviser is acting as a fi-
21 duciary of the plan in connection with the
22 provision of the advice,

23 “(B) the fiduciary adviser provides appro-
24 priate disclosure, in connection with the sale,
25 acquisition, or holding of the security or other

1 property, in accordance with all applicable secu-
2 rities laws,

3 “(C) the sale, acquisition, or holding oc-
4 curs solely at the direction of the recipient of
5 the advice,

6 “(D) the compensation received by the fi-
7 duciary adviser and affiliates thereof in connec-
8 tion with the sale, acquisition, or holding of the
9 security or other property is reasonable, and

10 “(E) the terms of the sale, acquisition, or
11 holding of the security or other property are at
12 least as favorable to the plan as an arm’s
13 length transaction would be.

14 “(2) STANDARDS FOR PRESENTATION OF IN-
15 FORMATION.—The notification required to be pro-
16 vided to participants and beneficiaries under para-
17 graph (1)(A) shall be written in a clear and con-
18 spicuous manner and in a manner calculated to be
19 understood by the average plan participant and shall
20 be sufficiently accurate and comprehensive to rea-
21 sonably apprise such participants and beneficiaries
22 of the information required to be provided in the no-
23 tification.

24 “(3) EXEMPTION CONDITIONED ON CONTINUED
25 AVAILABILITY OF REQUIRED INFORMATION ON RE-

1 QUEST FOR 1 YEAR.—The requirements of para-
2 graph (1)(A) shall be deemed not to have been met
3 in connection with the initial or any subsequent pro-
4 vision of advice described in paragraph (1) to the
5 plan, participant, or beneficiary if, at any time dur-
6 ing the provision of advisory services to the plan,
7 participant, or beneficiary, the fiduciary adviser fails
8 to maintain the information described in clauses (i)
9 through (iv) of subparagraph (A) in currently accu-
10 rate form and in the manner described in paragraph
11 (2) or fails—

12 “(A) to provide, without charge, such cur-
13 rently accurate information to the recipient of
14 the advice no less than annually,

15 “(B) to make such currently accurate in-
16 formation available, upon request and without
17 charge, to the recipient of the advice, or

18 “(C) in the event of a material change to
19 the information described in clauses (i) through
20 (iv) of paragraph (1)(A), to provide, without
21 charge, such currently accurate information to
22 the recipient of the advice at a time reasonably
23 contemporaneous to the material change in in-
24 formation.

1 “(4) MAINTENANCE FOR 6 YEARS OF EVIDENCE
2 OF COMPLIANCE.—A fiduciary adviser referred to in
3 paragraph (1) who has provided advice referred to in
4 such paragraph shall, for a period of not less than
5 6 years after the provision of the advice, maintain
6 any records necessary for determining whether the
7 requirements of the preceding provisions of this sub-
8 section and of subsection (b)(14) have been met. A
9 transaction prohibited under section 406 shall not
10 be considered to have occurred solely because the
11 records are lost or destroyed prior to the end of the
12 6-year period due to circumstances beyond the con-
13 trol of the fiduciary adviser.

14 “(5) EXEMPTION FOR PLAN SPONSOR AND CER-
15 TAIN OTHER FIDUCIARIES.—

16 “(A) IN GENERAL.—Subject to subpara-
17 graph (B), a plan sponsor or other person who
18 is a fiduciary (other than a fiduciary adviser)
19 shall not be treated as failing to meet the re-
20 quirements of this part solely by reason of the
21 provision of investment advice referred to in
22 section 3(21)(A)(ii) (or solely by reason of con-
23 tracting for or otherwise arranging for the pro-
24 vision of the advice), if—

1 “(i) the advice is provided by a fidu-
2 ciary adviser pursuant to an arrangement
3 between the plan sponsor or other fidu-
4 ciary and the fiduciary adviser for the pro-
5 vision by the fiduciary adviser of invest-
6 ment advice referred to in such section,

7 “(ii) the terms of the arrangement re-
8 quire compliance by the fiduciary adviser
9 with the requirements of this subsection,
10 and

11 “(iii) the terms of the arrangement
12 include a written acknowledgment by the
13 fiduciary adviser that the fiduciary adviser
14 is a fiduciary of the plan with respect to
15 the provision of the advice.

16 “(B) CONTINUED DUTY OF PRUDENT SE-
17 LECTION OF ADVISER AND PERIODIC REVIEW.—
18 Nothing in subparagraph (A) shall be construed
19 to exempt a plan sponsor or other person who
20 is a fiduciary from any requirement of this part
21 for the prudent selection and periodic review of
22 a fiduciary adviser with whom the plan sponsor
23 or other person enters into an arrangement for
24 the provision of advice referred to in section
25 3(21)(A)(ii). The plan sponsor or other person

1 who is a fiduciary has no duty under this part
2 to monitor the specific investment advice given
3 by the fiduciary adviser to any particular recipi-
4 ent of the advice.

5 “(C) AVAILABILITY OF PLAN ASSETS FOR
6 PAYMENT FOR ADVICE.—Nothing in this part
7 shall be construed to preclude the use of plan
8 assets to pay for reasonable expenses in pro-
9 viding investment advice referred to in section
10 3(21)(A)(ii).

11 “(6) DEFINITIONS.—For purposes of this sub-
12 section and subsection (b)(14)—

13 “(A) FIDUCIARY ADVISER.—The term ‘fi-
14 duciary adviser’ means, with respect to a plan,
15 a person who is a fiduciary of the plan by rea-
16 son of the provision of investment advice by the
17 person to the plan or to a participant or bene-
18 ficiary and who is—

19 “(i) registered as an investment ad-
20 viser under the Investment Advisers Act of
21 1940 (15 U.S.C. 80b–1 et seq.) or under
22 the laws of the State in which the fiduciary
23 maintains its principal office and place of
24 business,

1 “(ii) a bank or similar financial insti-
2 tution referred to in section 408(b)(4),

3 “(iii) an insurance company qualified
4 to do business under the laws of a State,

5 “(iv) a person registered as a broker
6 or dealer under the Securities Exchange
7 Act of 1934 (15 U.S.C. 78a et seq.),

8 “(v) an affiliate of a person described
9 in any of clauses (i) through (iv), or

10 “(vi) an employee, agent, or registered
11 representative of a person described in any
12 of clauses (i) through (v) who satisfies the
13 requirements of applicable insurance,
14 banking, and securities laws relating to the
15 provision of the advice.

16 “(B) AFFILIATE.—The term ‘affiliate’ of
17 another entity means an affiliated person of the
18 entity (as defined in section 2(a)(3) of the In-
19 vestment Company Act of 1940 (15 U.S.C.
20 80a-2(a)(3))).

21 “(C) REGISTERED REPRESENTATIVE.—
22 The term ‘registered representative’ of another
23 entity means a person described in section
24 3(a)(18) of the Securities Exchange Act of
25 1934 (15 U.S.C. 78c(a)(18)) (substituting the

1 entity for the broker or dealer referred to in
 2 such section) or a person described in section
 3 202(a)(17) of the Investment Advisers Act of
 4 1940 (15 U.S.C. 80b-2(a)(17)) (substituting
 5 the entity for the investment adviser referred to
 6 in such section).”.

7 (b) AMENDMENTS TO THE INTERNAL REVENUE
 8 CODE OF 1986.—

9 (1) EXEMPTION FROM PROHIBITED TRANS-
 10 ACTIONS.—Subsection (d) of section 4975 of the In-
 11 ternal Revenue Code of 1986 (relating to exemptions
 12 from tax on prohibited transactions) is amended—

13 (A) in paragraph (14), by striking “or” at
 14 the end;

15 (B) in paragraph (15), by striking the pe-
 16 riod at the end and inserting “; or”; and

17 (C) by adding at the end the following new
 18 paragraph:

19 “(16) any transaction described in subsection
 20 (f)(7)(A) in connection with the provision of invest-
 21 ment advice described in subsection (e)(3)(B), in
 22 any case in which—

23 “(A) the investment of assets of the plan
 24 is subject to the direction of plan participants
 25 or beneficiaries,

1 “(B) the advice is provided to the plan or
2 a participant or beneficiary of the plan by a fi-
3 diciary adviser in connection with any sale, ac-
4 quisition, or holding of a security or other prop-
5 erty for purposes of investment of plan assets,
6 and

7 “(C) the requirements of subsection
8 (f)(7)(B) are met in connection with the provi-
9 sion of the advice.”.

10 (2) ALLOWED TRANSACTIONS AND REQUIRE-
11 MENTS.—Subsection (f) of such section 4975 (relat-
12 ing to other definitions and special rules) is amended
13 by adding at the end the following new paragraph:

14 “(7) PROVISIONS RELATING TO INVESTMENT
15 ADVICE PROVIDED BY FIDUCIARY ADVISERS.—

16 “(A) TRANSACTIONS ALLOWABLE IN CON-
17 NECTION WITH INVESTMENT ADVICE PROVIDED
18 BY FIDUCIARY ADVISERS.—The transactions re-
19 ferred to in subsection (d)(16), in connection
20 with the provision of investment advice by a fi-
21 diciary adviser, are the following:

22 “(i) the provision of the advice to the
23 plan, participant, or beneficiary;

24 “(ii) the sale, acquisition, or holding
25 of a security or other property (including

1 any lending of money or other extension of
2 credit associated with the sale, acquisition,
3 or holding of a security or other property)
4 pursuant to the advice; and

5 “(iii) the direct or indirect receipt of
6 fees or other compensation by the fiduciary
7 adviser or an affiliate thereof (or any em-
8 ployee, agent, or registered representative
9 of the fiduciary adviser or affiliate) in con-
10 nection with the provision of the advice or
11 in connection with a sale, acquisition, or
12 holding of a security or other property pur-
13 suant to the advice.

14 “(B) REQUIREMENTS RELATING TO PROVI-
15 SION OF INVESTMENT ADVICE BY FIDUCIARY
16 ADVISERS.—The requirements of this subpara-
17 graph (referred to in subsection (d)(16)(C)) are
18 met in connection with the provision of invest-
19 ment advice referred to in subsection (e)(3)(B),
20 provided to a plan or a participant or bene-
21 ficiary of a plan by a fiduciary adviser with re-
22 spect to the plan in connection with any sale,
23 acquisition, or holding of a security or other
24 property for purposes of investment of amounts
25 held by the plan, if—

1 “(i) in the case of the initial provision
2 of the advice with regard to the security or
3 other property by the fiduciary adviser to
4 the plan, participant, or beneficiary, the fi-
5 duciary adviser provides to the recipient of
6 the advice, at a time reasonably contem-
7 poraneous with the initial provision of the
8 advice, a written notification (which may
9 consist of notification by means of elec-
10 tronic communication)—

11 “(I) of all fees or other com-
12 pensation relating to the advice that
13 the fiduciary adviser or any affiliate
14 thereof is to receive (including com-
15 pensation provided by any third
16 party) in connection with the provi-
17 sion of the advice or in connection
18 with the sale, acquisition, or holding
19 of the security or other property,

20 “(II) of any material affiliation
21 or contractual relationship of the fidu-
22 ciary adviser or affiliates thereof in
23 the security or other property,

24 “(III) of any limitation placed on
25 the scope of the investment advice to

1 be provided by the fiduciary adviser
2 with respect to any such sale, acquisi-
3 tion, or holding of a security or other
4 property,

5 “(IV) of the types of services
6 provided by the fiduciary adviser in
7 connection with the provision of in-
8 vestment advice by the fiduciary ad-
9 viser, and

10 “(V) that the adviser is acting as
11 a fiduciary of the plan in connection
12 with the provision of the advice,

13 “(ii) the fiduciary adviser provides ap-
14 propriate disclosure, in connection with the
15 sale, acquisition, or holding of the security
16 or other property, in accordance with all
17 applicable securities laws,

18 “(iii) the sale, acquisition, or holding
19 occurs solely at the direction of the recipi-
20 ent of the advice,

21 “(iv) the compensation received by the
22 fiduciary adviser and affiliates thereof in
23 connection with the sale, acquisition, or
24 holding of the security or other property is
25 reasonable, and

1 “(v) the terms of the sale, acquisition,
2 or holding of the security or other property
3 are at least as favorable to the plan as an
4 arm’s length transaction would be.

5 “(C) STANDARDS FOR PRESENTATION OF
6 INFORMATION.—The notification required to be
7 provided to participants and beneficiaries under
8 subparagraph (B)(i) shall be written in a clear
9 and conspicuous manner and in a manner cal-
10 culated to be understood by the average plan
11 participant and shall be sufficiently accurate
12 and comprehensive to reasonably apprise such
13 participants and beneficiaries of the information
14 required to be provided in the notification.

15 “(D) EXEMPTION CONDITIONED ON MAK-
16 ING REQUIRED INFORMATION AVAILABLE ANNU-
17 ALLY, ON REQUEST, AND IN THE EVENT OF MA-
18 TERIAL CHANGE.—The requirements of sub-
19 paragraph (B)(i) shall be deemed not to have
20 been met in connection with the initial or any
21 subsequent provision of advice described in sub-
22 paragraph (B) to the plan, participant, or bene-
23 ficiary if, at any time during the provision of
24 advisory services to the plan, participant, or
25 beneficiary, the fiduciary adviser fails to main-

1 tain the information described in subclauses (I)
2 through (IV) of subparagraph (B)(i) in cur-
3 rently accurate form and in the manner re-
4 quired by subparagraph (C), or fails—

5 “(i) to provide, without charge, such
6 currently accurate information to the re-
7 cipient of the advice no less than annually,

8 “(ii) to make such currently accurate
9 information available, upon request and
10 without charge, to the recipient of the ad-
11 vice, or

12 “(iii) in the event of a material
13 change to the information described in
14 subclauses (I) through (IV) of subpara-
15 graph (B)(i), to provide, without charge,
16 such currently accurate information to the
17 recipient of the advice at a time reasonably
18 contemporaneous to the material change in
19 information.

20 “(E) MAINTENANCE FOR 6 YEARS OF EVI-
21 DENCE OF COMPLIANCE.—A fiduciary adviser
22 referred to in subparagraph (B) who has pro-
23 vided advice referred to in such subparagraph
24 shall, for a period of not less than 6 years after
25 the provision of the advice, maintain any

1 records necessary for determining whether the
2 requirements of the preceding provisions of this
3 paragraph and of subsection (d)(16) have been
4 met. A transaction prohibited under subsection
5 (e)(1) shall not be considered to have occurred
6 solely because the records are lost or destroyed
7 prior to the end of the 6-year period due to cir-
8 cumstances beyond the control of the fiduciary
9 adviser.

10 “(F) EXEMPTION FOR PLAN SPONSOR AND
11 CERTAIN OTHER FIDUCIARIES.—A plan sponsor
12 or other person who is a fiduciary (other than
13 a fiduciary adviser) shall not be treated as fail-
14 ing to meet the requirements of this section
15 solely by reason of the provision of investment
16 advice referred to in subsection (e)(3)(B) (or
17 solely by reason of contracting for or otherwise
18 arranging for the provision of the advice), if—

19 “(i) the advice is provided by a fidu-
20 ciary adviser pursuant to an arrangement
21 between the plan sponsor or other fidu-
22 ciary and the fiduciary adviser for the pro-
23 vision by the fiduciary adviser of invest-
24 ment advice referred to in such section,

1 “(ii) the terms of the arrangement re-
2 quire compliance by the fiduciary adviser
3 with the requirements of this paragraph,

4 “(iii) the terms of the arrangement
5 include a written acknowledgment by the
6 fiduciary adviser that the fiduciary adviser
7 is a fiduciary of the plan with respect to
8 the provision of the advice, and

9 “(iv) the requirements of part 4 of
10 subtitle B of title I of the Employee Re-
11 tirement Income Security Act of 1974 are
12 met in connection with the provision of
13 such advice.

14 “(G) DEFINITIONS.—For purposes of this
15 paragraph and subsection (d)(16)—

16 “(i) FIDUCIARY ADVISER.—The term
17 ‘fiduciary adviser’ means, with respect to a
18 plan, a person who is a fiduciary of the
19 plan by reason of the provision of invest-
20 ment advice by the person to the plan or
21 to a participant or beneficiary and who
22 is—

23 “(I) registered as an investment
24 adviser under the Investment Advisers
25 Act of 1940 (15 U.S.C. 80b–1 et seq.)

1 or under the laws of the State in
2 which the fiduciary maintains its prin-
3 cipal office and place of business,

4 “(II) a bank or similar financial
5 institution referred to in subsection
6 (d)(4),

7 “(III) an insurance company
8 qualified to do business under the
9 laws of a State,

10 “(IV) a person registered as a
11 broker or dealer under the Securities
12 Exchange Act of 1934 (15 U.S.C. 78a
13 et seq.),

14 “(V) an affiliate of a person de-
15 scribed in any of subclauses (I)
16 through (IV), or

17 “(VI) an employee, agent, or reg-
18 istered representative of a person de-
19 scribed in any of subclauses (I)
20 through (V) who satisfies the require-
21 ments of applicable insurance, bank-
22 ing, and securities laws relating to the
23 provision of the advice.

24 “(ii) AFFILIATE.—The term ‘affiliate’
25 of another entity means an affiliated per-

1 son of the entity (as defined in section
 2 2(a)(3) of the Investment Company Act of
 3 1940 (15 U.S.C. 80a-2(a)(3))).

4 “(iii) REGISTERED REPRESENTA-
 5 TIVE.—The term ‘registered representa-
 6 tive’ of another entity means a person de-
 7 scribed in section 3(a)(18) of the Securi-
 8 ties Exchange Act of 1934 (15 U.S.C.
 9 78c(a)(18)) (substituting the entity for the
 10 broker or dealer referred to in such sec-
 11 tion) or a person described in section
 12 202(a)(17) of the Investment Advisers Act
 13 of 1940 (15 U.S.C. 80b-2(a)(17)) (sub-
 14 stituting the entity for the investment ad-
 15 viser referred to in such section).”.

16 **SEC. 6. INSIDER TRADES DURING PENSION PLAN SUSPEN-**
 17 **SION PERIODS PROHIBITED.**

18 Section 16 of the Securities Exchange Act of 1934
 19 (15 U.S.C. 78p) is amended by adding at the end the fol-
 20 lowing new subsection:

21 “(h) INSIDER TRADES DURING PENSION PLAN SUS-
 22 PENSION PERIODS PROHIBITED.—

23 “(1) PROHIBITION.—It shall be unlawful for
 24 any such beneficial owner, director, or officer of an
 25 issuer, directly or indirectly, to purchase (or other-

1 wise acquire) or sell (or otherwise transfer) any equity security of such issuer (other than an exempted security), during any pension plan suspension period with respect to such equity security.

5 “(2) REMEDY.—Any profit realized by such beneficial owner, director, or officer from any purchase (or other acquisition) or sale (or other transfer) in violation of this subsection shall inure to and be recoverable by the issuer irrespective of any intention on the part of such beneficial owner, director, or officer in entering into the transaction.

12 “(3) RULEMAKING PERMITTED.—The Commission may issue rules to clarify the application of this subsection, to ensure adequate notice to all persons affected by this subsection, and to prevent evasion thereof.

17 “(4) DEFINITIONS.—For purposes of this subsection—

19 “(A) PENSION PLAN SUSPENSION PERIOD.—The term ‘pension plan suspension period’ means, with respect to an equity security, any period during which the ability of a participant or beneficiary under an applicable individual account plan maintained by the issuer to direct the investment of assets in his or her in-

1 dividual account away from such equity security
2 is suspended by the issuer or a fiduciary of the
3 plan. Such term does not include any limitation
4 or restriction that may govern the frequency of
5 transfers between investment vehicles to the ex-
6 tent such limitation and restriction is disclosed
7 to participants and beneficiaries through the
8 summary plan description or materials describ-
9 ing specific investment alternatives under the
10 plan.

11 “(B) APPLICABLE INDIVIDUAL ACCOUNT
12 PLAN.—The term ‘applicable individual account
13 plan’ has the meaning provided such term in
14 section 3(42) of the Employee Retirement In-
15 come Security Act of 1974.”.

16 **SEC. 7. EFFECTIVE DATES AND RELATED RULES.**

17 (a) IN GENERAL.—Except as provided in subsection
18 (b), the amendments made by sections 2, 3, 4, and 6 shall
19 apply with respect to plan years beginning on or after Jan-
20 uary 1, 2003.

21 (b) SPECIAL RULE FOR COLLECTIVELY BARGAINED
22 PLANS.—In the case of a plan maintained pursuant to 1
23 or more collective bargaining agreements between em-
24 ployee representatives and 1 or more employers ratified
25 on or before the date of the enactment of this Act, sub-

1 section (a) shall be applied to benefits pursuant to, and
2 individuals covered by, any such agreement by substituting
3 for “January 1, 2003” the date of the commencement of
4 the first plan year beginning on or after the earlier of—

5 (1) the later of—

6 (A) January 1, 2004, or

7 (B) the date on which the last of such col-
8 lective bargaining agreements terminates (de-
9 termined without regard to any extension there-
10 of after the date of the enactment of this Act),

11 or

12 (2) January 1, 2005.

13 (c) PLAN AMENDMENTS.—If the amendments made
14 by sections 2, 3, and 4 of this Act require an amendment
15 to any plan, such plan amendment shall not be required
16 to be made before the first plan year beginning on or after
17 January 1, 2005, if—

18 (1) during the period after such amendments
19 made by this Act take effect and before such first
20 plan year, the plan is operated in accordance with
21 the requirements of such amendments made by this
22 Act, and

23 (2) such plan amendment applies retroactively
24 to the period after such amendments made by this
25 Act take effect and before such first plan year.

1 (d) AMENDMENTS RELATING TO INVESTMENT AD-
2 VICE.—The amendments made by section 5 shall apply
3 with respect to advice referred to in section 3(21)(A)(ii)
4 of the Employee Retirement Income Security Act of 1974
5 or section 4975(c)(3)(B) of the Internal Revenue Code of
6 1986 provided on or after January 1, 2003.

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