IIB

116TH CONGRESS
1ST SESSION

H. R. 1815

IN THE SENATE OF THE UNITED STATES

OCTOBER 21, 2019

Received; read twice and referred to the Committee on Banking, Housing, and Urban Affairs

AN ACT

To require the Securities and Exchange Commission, when developing rules and regulations about disclosures to retail investors, to conduct investor testing, including a survey and interviews of retail investors, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “SEC Disclosure Effectiveness Testing Act”.

SEC. 2. DISCLOSURE TESTING.

(a) IN GENERAL.—Section 23(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78w(a)) is amended by adding at the end the following:

“(4) INVESTOR TESTING.—

“(A) IN GENERAL.—The Commission shall engage in investor testing prior to issuing any rule or regulation which designates documents or information to be disclosed under the securities laws, if such documents or information are required to be delivered to, and are intended or substantially likely to be materially relied upon by, a retail investor when—

“(i) selecting a broker-dealer or investment adviser, evaluating their services and fees, or materially altering a brokerage or advisory relationship;

“(ii) assessing a securities recommendation or investment advice provided by a broker-dealer or investment adviser;

“(iii) making a decision to purchase or sell a security; or "(iv) such other circumstances as the Commission may, with input from the Investor Advocate, determine appropriate for the protection of retail investors.

"(B) EXEMPTION FOR CERTAIN DISCLOSURES.—This section shall not apply to—

"(i) disclosures made pursuant to Regulations S–K and S–X (including Industry Guides), Regulation 14A, Form N–PX, Form 10–K, Form 10–Q, Form 8–K, Form SD, Form N–PORT, Form PF, Regulation SBSR, disclosures mandated by or jointly with the Board of Governors of the Federal Reserve System or the Financial Stability Oversight Council, or successors thereto; or

"(ii) any other documents or information that the Commission, with input from the Investor Advocate, determines are outside the intended scope and purposes of this Act.

"(C) COMMISSION AUTHORITY TO CONDUCT ADDITIONAL TESTING.—This section shall not be construed to limit the Commission's ability to conduct any investor testing on any other documents or information not subject to this section 23(a), provided that any such investor testing shall not be subject to the requirements of this section 23(a).

"(D) CONTENTS.—Investor testing conducted pursuant to subparagraph (A) shall include the following:

"(i) Qualitative testing in the form of one-on-one cognitive interviews of retail investors about documents or information, or samples of such documents or information, to be provided.

"(ii) Such other forms of testing that the Commission, with input from the Investor Advocate, deems appropriate for evaluating the effectiveness of retail disclosures.

"(iii) Analysis and publication in the Federal Register of the results of the testing.

"(iv) An opportunity for the public to comment on such results published in the Federal Register.

"(v) A consideration of unique challenges faced by retail investors age 65 or older.

"(E) SUBSTANTIVE CHANGES.—If the Commission, in the period between engaging in investor testing and publishing a final rule, makes substantive changes to such rule that the Commission determines would have a significant impact on retail investors, and such changes were not already investor tested, the Commission shall again engage in investor testing related to such changes.

"(F) PUBLIC AVAILABILITY OF RETAIL TESTING RESULTS.—The Commission shall make the data and results of any investor testing performed pursuant to this paragraph available to the public.

"(G) RULES OF CONSTRUCTION.—

"(i) The determination that some or all of a document or information is deemed to be subject to this paragraph shall not forestall the determination that such document or information may also be used or relied upon by the public, market participants other than retail investors, or government agencies.

"(ii) The Commission may, in consultation with the Investor Advocate, determine which, if any, components of such document or information are substantially likely to be relied on by retail investors for the purposes outlined in paragraph (4)(A) above and focus testing under this paragraph on those components of the disclosure.

"(iii) Notwithstanding clause (ii) above, where any information subject to testing under this paragraph may be used or relied upon by the public, market participants other than retail investors, or government agencies, the results of testing made pursuant to this paragraph shall not provide grounds for reducing or eliminating (including any undermining of reliability of and accountability for) the information that existing or proposed regulation requires or would require be made available to the public, market participants other than retail investors, and government agencies, whether or not such information is delivered to retail investors.

"(H) RETAIL INVESTOR DEFINED.—For the purposes of this paragraph, the term 'retail investor' means any investor that is not an institutional investor.".

(b) PARTICIPATION OF INVESTOR ADVOCATE.—Section 4(g) of the Securities Exchange Act of 1934 (15 U.S.C. 78d(g)) is amended—

(1) in paragraph (4)—

(A) in subparagraph (D)(ii), by striking "and" at the end;

(B) by redesignating subparagraph (E) as subparagraph (F); and

(C) by inserting after subparagraph (D) the following:

"(E) engage in investor testing—

"(i) to carry out the functions of the Office; and

"(ii) pursuant to section 23(a)(4), as appropriate; and";

(2) by adding at the end the following:

"(9) PUBLICATION OF DATA AND RESULTS OF INVESTOR TESTING.—With respect to any investor testing carried out by the Investor Advocate pursuant to paragraph (4)(E), the Investor Advocate may make the data and results of such investor testing available to the public, without further review or editing by the Commission.

"(10) PERSONNEL.—If the Investor Advocate decides, within its sole discretion, to conduct testing under this section, the Investor Advocate may do so and the Commission shall provide the Office of the Investor Advocate with sufficient personnel and funding necessary to carry out such testing. Such testing may qualify as the testing covered by this section, provided that all requirements of the section are met.".

(c) PRIOR RULES.—

(1) IN GENERAL.—For any final rule or regulation issued by the Securities and Exchange Commission (in this subsection referred to as the "Commission") before the date of the enactment of this Act that would be subject to investor testing under section 23(a)(4) of the Securities Exchange Act of 1934, had such rule been issued on or after the date of enactment of this Act, the Commission shall perform investor testing with respect to such rule or regulation that includes the contents described in such section 23(a)(4).

(2) SCHEDULE.—The Commission shall, not later than 6 months after the date of the enactment of this Act, with input from the Investor Advocate, establish a schedule for completing any investor testing required under paragraph (1) that prioritizes testing of any final rules and regulations that designate documents or information central to retail investor decision making, and in particular prioritize the testing of documents or information required to be delivered to retail investors in the form of summary documents or summary sections of documents including for the purpose of determining whether and how such summary documents can achieve the goals of informed investor decision-making in the circumstances set forth in section 23(a)(4) of the Securities Exchange Act of 1934 while maintaining full accessibility by retail investors, the public, other market participants, and government regulators to the full range of documents and information that they may utilize or rely on, whether or not such documents or information are required to be delivered to retail investors.

(3) REPORT.—The Commission shall, with input from the Investor Advocate, issue a report to Congress each year containing the following:

(A) The status of any investor testing required under paragraph (1) initiated within the last year or otherwise ongoing.

(B) The results of any investor testing completed under paragraph (1) within the last year.

(C) Any priorities the Commission has, based on results of investor testing required by paragraph (1), for—

(i) revising any proposed or final rule or regulation based on the results of testing;

(ii) initiating any rulemaking or actions arising from the results of the testing; and

(iii) the Investor Advocate's views on the above priorities and any such other matters arising from the testing or results of testing.

Passed the House of Representatives October 17, 2019.

Attest: CHERYL L. JOHNSON,

Clerk.