

116TH CONGRESS  
1ST SESSION

# H. R. 1815

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## 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.

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 “SEC Disclosure Effec-  
3 tiveness Testing Act”.

4 **SEC. 2. DISCLOSURE TESTING.**

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

8 “(4) INVESTOR TESTING.—

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

17 “(i) selecting a broker-dealer or in-  
18 vestment adviser, evaluating their services  
19 and fees, or materially altering a brokerage  
20 or advisory relationship;

21 “(ii) assessing a securities rec-  
22 ommendation or investment advice pro-  
23 vided by a broker-dealer or investment ad-  
24 viser;

25 “(iii) making a decision to purchase  
26 or sell a security; or

1           “(iv) such other circumstances as the  
2           Commission may, with input from the In-  
3           vestor Advocate, determine appropriate for  
4           the protection of retail investors.

5           “(B) EXEMPTION FOR CERTAIN DISCLO-  
6           SURES.—This section shall not apply to—

7           “(i) disclosures made pursuant to  
8           Regulations S–K and S–X (including In-  
9           dustry Guides), Regulation 14A, Form N-  
10          PX, Form 10–K, Form 10–Q, Form 8–K,  
11          Form SD, Form N–PORT, Form PF,  
12          Regulation SBSR, disclosures mandated by  
13          or jointly with the Board of Governors of  
14          the Federal Reserve System or the Finan-  
15          cial Stability Oversight Council, or succes-  
16          sors thereto; or

17          “(ii) any other documents or informa-  
18          tion that the Commission, with input from  
19          the Investor Advocate, determines are out-  
20          side the intended scope and purposes of  
21          this Act.

22          “(C) COMMISSION AUTHORITY TO CON-  
23          DUCT ADDITIONAL TESTING.—This section shall  
24          not be construed to limit the Commission’s abil-  
25          ity to conduct any investor testing on any other

1 documents or information not subject to this  
2 section 23(a), provided that any such investor  
3 testing shall not be subject to the requirements  
4 of this section 23(a).

5 “(D) CONTENTS.—Investor testing con-  
6 ducted pursuant to subparagraph (A) shall in-  
7 clude the following:

8 “(i) Qualitative testing in the form of  
9 one-on-one cognitive interviews of retail in-  
10 vestors about documents or information, or  
11 samples of such documents or information,  
12 to be provided.

13 “(ii) Such other forms of testing that  
14 the Commission, with input from the In-  
15 vestor Advocate, deems appropriate for  
16 evaluating the effectiveness of retail disclo-  
17 sures.

18 “(iii) Analysis and publication in the  
19 Federal Register of the results of the test-  
20 ing.

21 “(iv) An opportunity for the public to  
22 comment on such results published in the  
23 Federal Register.

1           “(v) A consideration of unique chal-  
2           lenges faced by retail investors age 65 or  
3           older.

4           “(E) SUBSTANTIVE CHANGES.—If the  
5           Commission, in the period between engaging in  
6           investor testing and publishing a final rule,  
7           makes substantive changes to such rule that the  
8           Commission determines would have a signifi-  
9           cant impact on retail investors, and such  
10          changes were not already investor tested, the  
11          Commission shall again engage in investor test-  
12          ing related to such changes.

13          “(F) PUBLIC AVAILABILITY OF RETAIL  
14          TESTING RESULTS.—The Commission shall  
15          make the data and results of any investor test-  
16          ing performed pursuant to this paragraph avail-  
17          able to the public.

18          “(G) RULES OF CONSTRUCTION.—

19                 “(i) The determination that some or  
20                 all of a document or information is deemed  
21                 to be subject to this paragraph shall not  
22                 forestall the determination that such docu-  
23                 ment or information may also be used or  
24                 relied upon by the public, market partici-

1 pants other than retail investors, or gov-  
2 ernment agencies.

3 “(ii) The Commission may, in con-  
4 sultation with the Investor Advocate, deter-  
5 mine which, if any, components of such  
6 document or information are substantially  
7 likely to be relied on by retail investors for  
8 the purposes outlined in paragraph (4)(A)  
9 above and focus testing under this para-  
10 graph on those components of the disclo-  
11 sure.

12 “(iii) Notwithstanding clause (ii)  
13 above, where any information subject to  
14 testing under this paragraph may be used  
15 or relied upon by the public, market par-  
16 ticipants other than retail investors, or  
17 government agencies, the results of testing  
18 made pursuant to this paragraph shall not  
19 provide grounds for reducing or elimi-  
20 nating (including any undermining of reli-  
21 ability of and accountability for) the infor-  
22 mation that existing or proposed regulation  
23 requires or would require be made avail-  
24 able to the public, market participants  
25 other than retail investors, and government

1 agencies, whether or not such information  
2 is delivered to retail investors.

3 “(H) RETAIL INVESTOR DEFINED.—For  
4 the purposes of this paragraph, the term ‘retail  
5 investor’ means any investor that is not an in-  
6 stitutional investor.”.

7 (b) PARTICIPATION OF INVESTOR ADVOCATE.—Sec-  
8 tion 4(g) of the Securities Exchange Act of 1934 (15  
9 U.S.C. 78d(g)) is amended—

10 (1) in paragraph (4)—

11 (A) in subparagraph (D)(ii), by striking  
12 “and” at the end;

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

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

17 “(E) engage in investor testing—

18 “(i) to carry out the functions of the  
19 Office; and

20 “(ii) pursuant to section 23(a)(4), as  
21 appropriate; and”;

22 (2) by adding at the end the following:

23 “(9) PUBLICATION OF DATA AND RESULTS OF  
24 INVESTOR TESTING.—With respect to any investor  
25 testing carried out by the Investor Advocate pursu-

1 ant to paragraph (4)(E), the Investor Advocate may  
2 make the data and results of such investor testing  
3 available to the public, without further review or ed-  
4 iting by the Commission.

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

14 (c) PRIOR RULES.—

15 (1) IN GENERAL.—For any final rule or regula-  
16 tion issued by the Securities and Exchange Commis-  
17 sion (in this subsection referred to as the “Commis-  
18 sion”) before the date of the enactment of this Act  
19 that would be subject to investor testing under sec-  
20 tion 23(a)(4) of the Securities Exchange Act of  
21 1934, had such rule been issued on or after the date  
22 of enactment of this Act, the Commission shall per-  
23 form investor testing with respect to such rule or  
24 regulation that includes the contents described in  
25 such section 23(a)(4).



1           (2) SCHEDULE.—The Commission shall, not  
2 later than 6 months after the date of the enactment  
3 of this Act, with input from the Investor Advocate,  
4 establish a schedule for completing any investor test-  
5 ing required under paragraph (1) that prioritizes  
6 testing of any final rules and regulations that des-  
7 ignate documents or information central to retail in-  
8 vestor decision making, and in particular prioritize  
9 the testing of documents or information required to  
10 be delivered to retail investors in the form of sum-  
11 mary documents or summary sections of documents  
12 including for the purpose of determining whether  
13 and how such summary documents can achieve the  
14 goals of informed investor decision-making in the  
15 circumstances set forth in section 23(a)(4) of the  
16 Securities Exchange Act of 1934 while maintaining  
17 full accessibility by retail investors, the public, other  
18 market participants, and government regulators to  
19 the full range of documents and information that  
20 they may utilize or rely on, whether or not such doc-  
21 uments or information are required to be delivered  
22 to retail investors.

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

1           (A) The status of any investor testing re-  
2           quired under paragraph (1) initiated within the  
3           last year or otherwise ongoing.

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

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

10                   (i) revising any proposed or final rule  
11                   or regulation based on the results of test-  
12                   ing;

13                   (ii) initiating any rulemaking or ac-  
14                   tions arising from the results of the test-  
15                   ing; and

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

Passed the House of Representatives October 17,  
2019.

Attest:

*Clerk.*



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