

**AMENDMENT TO THE AMENDMENT IN THE
NATURE OF A SUBSTITUTE TO H.R. 2179
OFFERED BY MR. GILLMOR**

Disclosure responsibilities at contract renewal

After section 8 insert the following new section (and redesignate the succeeding sections accordingly):

1 **SEC. 9. DISCLOSURE RESPONSIBILITIES AT CONTRACT RE-**
2 **NEWAL.**

3 Subsection (c) of section 15 of the Investment Com-
4 pany Act of 1940 (15 U.S.C. 80a-15(e)) is amended to
5 read as follows:

6 “(c) PROCESS FOR CONTRACT RENEWAL.—

7 “(1) APPROVAL BY MAJORITY OF INDE-
8 PENDENT DIRECTORS.—In addition to the require-
9 ments of subsections (a) and (b) of this section, it
10 shall be unlawful for any registered investment com-
11 pany having a board of directors to enter into,
12 renew, or perform any contract or agreement, writ-
13 ten or oral, whereby a person undertakes regularly
14 to serve or act as investment adviser of or principal
15 underwriter for such company, unless the terms of
16 such contract or agreement and any renewal thereof
17 have been approved by the vote of a majority of di-



1 rectors, who are not parties to such contract or
2 agreement or interested persons of any such party,
3 cast in person at a meeting called for the purpose
4 of voting on such approval.

5 “(2) INFORMATION DISCLOSURES AND EVALUA-
6 TIONS.—

7 “(A) IN GENERAL.—It shall be the duty of
8 the directors of a registered investment com-
9 pany to request and evaluate, and the duty of
10 an investment adviser or principal underwriter
11 of such company to furnish, such information
12 as may reasonably be necessary to evaluate the
13 terms of any contract whereby a person under-
14 takes regularly to serve or act as investment
15 adviser or principal underwriter of such com-
16 pany.

17 “(B) INVESTMENT ADVISER DUTY.—In ad-
18 dition to the investment adviser’s duty under
19 subparagraph (A), when entering into or renew-
20 ing a contract or agreement, it shall be the duty
21 of the investment adviser—

22 “(i) to provide the independent direc-
23 tors of a registered investment company
24 with all material information about any of
25 its business practices, or the business prac-



1 tices of any of its affiliated persons, that
2 may conflict with the best interests of the
3 shareholders of the registered investment
4 company; and

5 “(ii) to specify and commit to imple-
6 ment procedures that are reasonably de-
7 signed to ensure services are provided in
8 the best interests of such shareholders.

9 “(C) PRINCIPAL UNDERWRITER DUTY.—In
10 addition to the principal underwriter’s duty
11 under subparagraph (A), when entering into or
12 renewing a contract or agreement, it shall be
13 the duty of the principal underwriter—

14 “(i) to provide the independent direc-
15 tors of a registered investment company
16 with all material information about any of
17 its business practice that may conflict with
18 the best interests of the shareholders of
19 the registered investment company; and

20 “(ii) to specify and commit to imple-
21 ment procedures that are reasonably de-
22 signed to ensure services are provided in
23 the best interests of such shareholders.

24 “(D) INDEPENDENT DIRECTORS DUTY.—
25 In addition to the independent directors’ duty



1 under subparagraph (A), it shall be the duty of
2 the independent directors to determine whether
3 the specified procedures of the investment ad-
4 viser and the principal underwriter offer a rea-
5 sonable likelihood of protecting the best inter-
6 ests of the shareholders of the registered invest-
7 ment company.

8 “(3) LIMITATION ON CONSIDERATIONS.—It
9 shall be unlawful for the directors of a registered in-
10 vestment company, in connection with their evalua-
11 tion of the terms of any contract whereby a person
12 undertakes regularly to serve or act as investment
13 adviser of such company, to take into account the
14 purchase price or other consideration any person
15 may have paid in connection with a transaction of
16 the type referred to in paragraph (1), (3), or (4) of
17 subsection (f).”.

