

[DISCUSSION DRAFT]

114TH CONGRESS
1ST SESSION

H. R. _____

To increase accountability of the Securities and Exchange Commission and to require the Commission to implement a more rigorous, fair, and public process for waiving bad actor disqualifications in the securities laws.

IN THE HOUSE OF REPRESENTATIVES

Ms. MAXINE WATERS of California introduced the following bill; which was referred to the Committee on _____

A BILL

To increase accountability of the Securities and Exchange Commission and to require the Commission to implement a more rigorous, fair, and public process for waiving bad actor disqualifications in the securities laws.

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 “Bad Actor Disquali-
5 fication Act of 2015”.

6 **SEC. 2. SENSE OF CONGRESS.**

7 It is the sense of Congress that:

1 (1) The automatic disqualification provisions in
2 the securities laws are valuable tools that protect in-
3 vestors, the markets, and the public by deterring
4 misconduct, reducing recidivism, promoting market
5 integrity, and removing bad actors from the market.

6 (2) These tools are inappropriately underuti-
7 lized and waivers are disproportionately granted to
8 the largest financial institutions. Between July,
9 2003, and December, 2014, large financial firms re-
10 ceived the vast majority of waivers of sanctions,
11 about 82 percent.

12 (3) Waivers of these automatic sanctions should
13 be granted sparingly and only through an open and
14 transparent process.

15 **SEC. 3. INCREASING TRANSPARENCY AND ACCOUNT-**
16 **ABILITY IN WAIVING BAD ACTOR DISQUALI-**
17 **FICATIONS.**

18 Section 36 of the Securities Exchange Act of 1934
19 (15 U.S.C. 78mm) is amended by adding at the end the
20 following:

21 “(c) WAIVER PROCEDURE AND IDENTIFICATION OF
22 BAD ACTORS.—

23 “(1) WAIVER PROCEDURE.—

24 “(A) TEMPORARY WAIVER.—

1 “(i) PETITION FOR WAIVER.—A per-
2 son may petition the Commission for a
3 temporary waiver of a disqualification or
4 pending disqualification described under
5 subparagraphs (A) through (G) of para-
6 graph (3).

7 “(ii) GRANT OF WAIVER.—With re-
8 spect to a petition made by a person under
9 clause (i), when such person becomes an
10 ineligible person, the Commission may vote
11 to provide such person with a single 60-
12 day temporary waiver if the Commission
13 determines that such person has provided
14 good cause for why such temporary waiver
15 should be granted.

16 “(iii) PUBLICATION OF PETITION.—
17 The Commission shall publish any petition
18 for a temporary waiver along with an ex-
19 planation for any Commission determina-
20 tion immediately following the related vote
21 under clause (ii).

22 “(B) GENERAL WAIVER.—Following the
23 60-day period provided under subparagraph
24 (A), the Commission, by vote during a meeting
25 open to the public, may waive any disqualifica-

1 tion described under subparagraphs (A)
2 through (G) of paragraph (3), if the Commis-
3 sion determines, without regard to the direct
4 costs to the ineligible person associated with a
5 denial, that such waiver—

6 “(i) is in the public interest;

7 “(ii) is necessary for the protection of
8 investors; and

9 “(iii) promotes market integrity.

10 “(C) FEDERAL REGISTER NOTICE; PUBLIC
11 HEARING.—Before making a determination
12 under subparagraph (B), the Commission shall
13 publish adequate notice in the Federal Register
14 of the pendency of the waiver determination
15 and shall afford the public and interested per-
16 sons an opportunity to present their views, in-
17 cluding at a public hearing.

18 “(D) PROHIBITION ON ADVANCE AD-
19 VICE.—Prior to any vote by the Commission
20 under this paragraph, Commission staff may
21 not advise any person of the recommendation of
22 staff to the Commission or on the likelihood of
23 a waiver being granted or denied under this
24 paragraph for such person.

1 “(E) RECORDKEEPING REQUIREMENT.—
2 The Commission shall keep a public record of
3 all communications with ineligible persons or
4 persons who are communicating under the be-
5 lief that they will become ineligible persons, in-
6 cluding information regarding requests for a
7 waiver under this paragraph that are later with-
8 drawn.

9 “(2) DATABASE OF INELIGIBLE PERSONS.—The
10 Commission shall establish, and maintain, a public
11 database of all ineligible persons.

12 “(3) INELIGIBLE PERSON DEFINED.—For pur-
13 poses of this subsection, the term ‘ineligible person’
14 means any person that—

15 “(A) is an ineligible issuer and not eligible
16 to qualify as a well-known seasoned issuer (as
17 such terms are defined under section 230.405
18 of title 17, Code of Federal Regulations);

19 “(B) is not eligible to make use of an ex-
20 emption provided for certain Regulation D pri-
21 vate offerings under section 230.505 or
22 230.506 of title 17, Code of Federal Regula-
23 tions;

1 “(C) is not eligible for any safe harbor for
2 forward-looking statements provided for under
3 section 27A(c) of the Securities Act of 1933;

4 “(D) is not eligible for any safe harbor for
5 forward-looking statements provided for under
6 section 21E(c) of the Securities Exchange Act
7 of 1934;

8 “(E) is disqualified from receiving a cash
9 fee, directly or indirectly, from an investment
10 adviser with respect to solicitation activities, as
11 described under section 275.206(4)-3 of title
12 17, Code of Federal Regulations;

13 “(F) is not eligible to make use of an ex-
14 emption provided for certain Regulation A of-
15 ferings under section 230.262 of title 17, Code
16 of Federal Regulations; or

17 “(G) is not eligible to make use of an ex-
18 emption provided for certain Regulation E of-
19 ferings under section 230.602 of title 17, Code
20 of Federal Regulations.”.

21 **SEC. 4. GAO STUDY.**

22 (a) STUDY.—The Comptroller General of the United
23 States shall carry out a study of—

24 (1) the Security and Exchange Commission’s
25 waiver process; and

1 (2) the standard used by the Commission in
2 granting an application for an exemption under sec-
3 tion 9(c) of the Investment Company Act of 1940.

4 (b) REPORT.—Not later than the end of the 180-day
5 period beginning on the date of the enactment of this Act,
6 the Comptroller General shall issue a report to the Con-
7 gress containing—

8 (1) all findings and determinations made in car-
9 rying out the study required under subsection (a);

10 (2) a comparison of the Commission’s standard
11 used in granting an application for an exemption
12 under section 9(c) of the Investment Company Act
13 of 1940 with the standard used to grant a waiver
14 under section 36(c) of the Securities Exchange Act
15 of 1934, as added by this Act; and

16 (3) recommendations on how to increase trans-
17 parency and opportunity for public participation in
18 the waiver process and ensure that the disqualifica-
19 tion and waiver process used by the Commission is
20 protective of investors, the markets, and the public
21 and deters misconduct, reduces recidivism, promotes
22 market integrity, and removes bad actors from the
23 market.