

**AMENDMENT TO THE AMENDMENT IN THE
NATURE OF A SUBSTITUTE TO H.R. 4130
OFFERED BY MS. Waters**

Add at the end the following:

1 **SEC. 3. MODERNIZATION OF “HELD OF RECORD” TO PRE-**
2 **VENT NOMINEE AND POOLING-VEHICLE COM-**
3 **PRESSION.**

4 (a) BENEFICIAL OWNERS TREATED AS HOLDERS OF
5 RECORD FOR PURPOSES OF SECTION 12(G).—Section
6 12(g) of the Securities Exchange Act of 1934 (15 U.S.C.
7 78l(g)) is amended—

8 (1) in paragraph (5)—

9 (A) by striking “(5) For the purposes” and
10 inserting the following:

11 “(5) DEFINITIONS; RULEMAKING.—

12 “(A) IN GENERAL.—For the purposes”;
13 and

14 (B) by striking “For purposes of deter-
15 mining whether an issuer is required to register
16 a security with the Commission pursuant to
17 paragraph (1), the definition of ‘held of record’
18 shall not include securities held by persons who
19 received the securities pursuant to an employee

1 compensation plan in transactions exempted
2 from the registration requirements of section 5
3 of the Securities Act of 1933.” and inserting
4 the following:

5 “(B) HELD OF RECORD RULEMAKING.—

6 For purposes of determining whether an issuer
7 is required to register a security with the Com-
8 mission pursuant to paragraph (1), the Com-
9 mission shall, by rule, define the term ‘held of
10 record’ to be determined by reference to bene-
11 ficial ownership, and shall provide that—

12 “(i) in the case of any class of equity
13 security held directly or indirectly through
14 a broker, dealer, bank, custodian, nominee,
15 clearing agency, transfer agent, or other
16 securities intermediary, each person for
17 whose account such security is held shall
18 be treated as a holder of record; and

19 “(ii) in the case of any class of equity
20 security held directly or indirectly by a cov-
21 ered pooling vehicle, each person that di-
22 rectly or indirectly owns an interest in
23 such covered pooling vehicle shall be treat-
24 ed as a holder of record with respect to
25 such class of equity security, as the Com-

1 mission shall prescribe by rule, including
2 with respect to multi-tiered entities or ar-
3 rangements.

4 “(C) EXCLUSION FOR CERTAIN EMPLOYEE
5 COMPENSATION PLAN SECURITIES.—The Com-
6 mission’s rules under this paragraph shall
7 specify that the term ‘held of record’ does not
8 include securities held by persons who received
9 the securities pursuant to an employee com-
10 pensation plan in transactions exempted from
11 the registration requirements of section 5 of the
12 Securities Act of 1933 (15 U.S.C. 77e).

13 “(D) COVERED POOLING VEHICLE DE-
14 FINED.—In this paragraph, the term ‘covered
15 pooling vehicle’—

16 “(i) means any partnership, limited li-
17 ability company, trust, corporation, special
18 purpose vehicle, or other entity or arrange-
19 ment—

20 “(I) that holds (directly or indi-
21 rectly) securities of a single issuer;
22 and

23 “(II) that issues (directly or indi-
24 rectly) any equity, partnership, mem-
25 bership, or similar interest primarily

1 to provide investors economic expo-
2 sure (in whole or in material part) to
3 such issuer's securities or the pro-
4 ceeds thereof; and

5 “(ii) does not include a registered in-
6 vestment company or business development
7 company, or such other entities or arrange-
8 ments as the Commission determines ap-
9 propriate, solely where exclusion would not
10 facilitate evasion of paragraph (1).

11 “(E) ANTI-EVASION.—The Commission's
12 rules under this paragraph shall prevent evasion
13 through contracts, options, swaps, profit-shar-
14 ing arrangements, tiered entities, nominees, or
15 other devices designed to avoid counting bene-
16 ficial owners.”.

17 (b) CONFORMING REGULATIONS.—

18 (1) IN GENERAL.—Not later than 270 days
19 after the date of enactment of this Act, the Securi-
20 ties and Exchange Commission shall revise Rule
21 12g5-1 (17 CFR 240.12g5-1) and any other related
22 rules as necessary to carry out the amendments
23 made by subsection (a).

1 (2) INFORMATION ACCESS; ISSUER RELIANCE.—

2 In revising rules pursuant to paragraph (1), the
3 Commission shall provide that—

4 (A) each securities intermediary and each
5 covered pooling vehicle holding a class of equity
6 security shall, upon request of the issuer (or the
7 issuer's transfer agent), provide the information
8 reasonably necessary to determine the number
9 of holders of record as defined in section
10 12(g)(5) of the Securities Exchange Act of
11 1934 (15 U.S.C. 78l(g)(5)), in such form, fre-
12 quency, and manner as the Commission may
13 prescribe; and

14 (B) an issuer may rely in good faith on in-
15 formation obtained pursuant to such rules for
16 purposes of determining whether the issuer has
17 exceeded the thresholds described in section
18 12(g)(1) of the Securities Exchange Act of
19 1934 (15 U.S.C. 78l(g)(1)).



