[DISCUSSION DRAFT]

116TH CONGRESS 1ST SESSION  H. R. _____

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

IN THE HOUSE OF REPRESENTATIVES

Ms. Waters 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 rigorous, fair, and public process for waiving bad actor disqualifications in the securities laws.

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

2 SECTION 1. SHORT TITLE.

3 This Act may be cited as the “Bad Actor Disqualification Act of 2019”.

4 SEC. 2. SENSE OF CONGRESS.

5 It is the sense of Congress that:
(1) The automatic disqualification provisions in the securities laws are valuable tools that protect investors, the markets, and the public by deterring misconduct, reducing recidivism, promoting market integrity, and removing bad actors from the market.

(2) These tools are inappropriately underutilized and waivers of the automatic disqualification provisions are disproportionately granted to the largest financial institutions on Wall Street, many of which are recidivists. Between July, 2003, and December, 2014, large financial firms received the vast majority of waivers of sanctions, about 82 percent of 201 total waivers.

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

SEC. 3. INCREASING TRANSPARENCY AND ACCOUNTABILITY IN WAIVING BAD ACTOR DISQUALIFICATIONS.

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

“(d) Waiver Procedure and Identification of Bad Actors.—

“(1) Waiver procedure.—
“(A) Temporary waiver.—

“(i) Petition for waiver.—A person may petition the Commission for a temporary waiver of a disqualification or pending disqualification described under subparagraphs (A) through (G) of paragraph (3).

“(ii) Grant of waiver.—With respect to a petition made by a person under clause (i), when such person becomes an ineligible person, the Commission may vote to provide such person with a single 180-day temporary waiver, by order, if the Commission determines that such person has demonstrated immediate irreparable injury.

“(iii) Publication of petition.—The Commission shall publish any petition for a temporary waiver along with the order containing an explanation for any Commission determination immediately following the related vote under clause (ii).

“(B) General waiver.—Following the 180-day period provided under subparagraph (A), the Commission, by vote during a meeting
open to the public, may not waive any disqualifica-
tion described under subparagraphs (A) through (G) of paragraph (3), unless the Com-
mission determines, without regard to the direct
costs to the ineligible person associated with a
denial, that such waiver—

“(i) is in the public interest;

“(ii) is necessary for the protection of

investors; and

“(iii) promotes market integrity.

“(C) FEDERAL REGISTER NOTICE; PUBLIC

HEARING.—Before making a determination
under subparagraph (B), the Commission shall
publish adequate notice in the Federal Register
of the pendency of the waiver determination
and shall afford the public and interested per-
sons an opportunity to present their views, in-
cluding at a public hearing.

“(D) PROHIBITION ON ADVANCE AD-
VICE.—Commission staff may not advise any
person of the recommendation of staff to the
Commission or on the likelihood of a waiver
being granted or denied under this paragraph
for such person.
“(E) Recordkeeping Requirement.—

The Commission shall keep a public record of all requests for a waiver under this paragraph that are later withdrawn.

“(2) Database of Ineligible Persons.—The Commission shall establish, and maintain, a public database of all ineligible persons that the Commission has voted against providing a waiver under this subsection or that have indicated their ineligibility in any disclosure to the Commission.

“(3) Ineligible Person Defined.—For purposes of this subsection, the term ‘ineligible person’ means any person that—

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

“(B) is not eligible to make use of an exemption provided for certain Regulation D private offerings under section 230.505 or 230.506 of title 17, Code of Federal Regulations;

“(C) is not eligible for any safe harbor for forward-looking statements provided for under section 27A(e) of the Securities Act of 1933;
“(D) is not eligible for any safe harbor for forward-looking statements provided for under section 21E(c) of the Securities Exchange Act of 1934;

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

“(F) is not eligible to make use of an exemption provided for certain Regulation A offerings under section 230.262 of title 17, Code of Federal Regulations; or

“(G) is not eligible to make use of an exemption provided for certain Regulation E offerings under section 230.602 of title 17, Code of Federal Regulations.”.

SEC. 4. GAO STUDY.

(a) Study.—The Comptroller General of the United States shall carry out a study of the Securities and Exchange Commission’s existing waiver process, and the standard used by the Commission in granting an application for an exemption, under section 9(e) of the Investment Company Act of 1940.
(b) REPORT.—Not later than the end of the 180-day period beginning on the date of the enactment of this Act, the Comptroller General shall issue a report to the Congress containing—

(1) all findings and determinations made in carrying out the study required under subsection (a);

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

(3) recommendations on how to increase transparency and opportunity for public participation in the waiver process under section 9(e) of the Investment Company Act of 1940 and ensure that the disqualification and waiver process used by the Commission under such section 9(e) is protective of investors, the markets, and the public and deters misconduct, reduces recidivism, promotes market integrity, and removes bad actors from the market.