

[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 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 2019”.

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 of the automatic disqualification
8 provisions are disproportionately granted to the larg-
9 est financial institutions on Wall Street, many of
10 which are recidivists. Between July, 2003, and De-
11 cember, 2014, large financial firms received the vast
12 majority of waivers of sanctions, about 82 percent of
13 201 total waivers.

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

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

20 Section 36 of the Securities Exchange Act of 1934
21 (15 U.S.C. 78mm) is amended by adding at the end the
22 following:

23 “(d) WAIVER PROCEDURE AND IDENTIFICATION OF
24 BAD ACTORS.—

25 “(1) WAIVER PROCEDURE.—

1 “(A) TEMPORARY WAIVER.—

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

8 “(ii) GRANT OF WAIVER.—With re-
9 spect to a petition made by a person under
10 clause (i), when such person becomes an
11 ineligible person, the Commission may vote
12 to provide such person with a single 180-
13 day temporary waiver, by order, if the
14 Commission determines that such person
15 has demonstrated immediate irreparable
16 injury.

17 “(iii) PUBLICATION OF PETITION.—
18 The Commission shall publish any petition
19 for a temporary waiver along with the
20 order containing an explanation for any
21 Commission determination immediately fol-
22 lowing the related vote under clause (ii).

23 “(B) GENERAL WAIVER.—Following the
24 180-day period provided under subparagraph
25 (A), the Commission, by vote during a meeting

1 open to the public, may not waive any disquali-
2 fication described under subparagraphs (A)
3 through (G) of paragraph (3), unless the Com-
4 mission determines, without regard to the direct
5 costs to the ineligible person associated with a
6 denial, that such waiver—

7 “(i) is in the public interest;

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

10 “(iii) promotes market integrity.

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

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

1 “(E) RECORDKEEPING REQUIREMENT.—

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

5 “(2) DATABASE OF INELIGIBLE PERSONS.—The
6 Commission shall establish, and maintain, a public
7 database of all ineligible persons that the Commis-
8 sion has voted against providing a waiver under this
9 subsection or that have indicated their ineligibility in
10 any disclosure to the Commission.

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

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

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

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

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

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

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

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

18 **SEC. 4. GAO STUDY.**

19 (a) STUDY.—The Comptroller General of the United
20 States shall carry out a study of the Securities and Ex-
21 change Commission’s existing waiver process, and the
22 standard used by the Commission in granting an applica-
23 tion for an exemption, under section 9(c) of the Invest-
24 ment Company Act of 1940.

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

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

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

13 (3) recommendations on how to increase trans-
14 parency and opportunity for public participation in
15 the waiver process under section 9(c) of the Invest-
16 ment Company Act of 1940 and ensure that the dis-
17 qualification and waiver process used by the Com-
18 mission under such section 9(c) is protective of in-
19 vestors, the markets, and the public and deters mis-
20 conduct, reduces recidivism, promotes market integ-
21 rity, and removes bad actors from the market.