

107TH CONGRESS
1ST SESSION

S. 143

To amend the Securities Act of 1933 and the Securities Exchange Act of 1934, to reduce securities fees in excess of those required to fund the operations of the Securities and Exchange Commission, to adjust compensation provisions for employees of the Commission, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JANUARY 22, 2001

Mr. GRAMM (for himself, Mr. SCHUMER, Mr. HAGEL, Mr. ENZI, Mr. BENNETT, Mr. BUNNING, Mr. BOND, Mr. TORRICELLI, Mr. ALLARD, and Mr. CRAPO) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

A BILL

To amend the Securities Act of 1933 and the Securities Exchange Act of 1934, to reduce securities fees in excess of those required to fund the operations of the Securities and Exchange Commission, to adjust compensation provisions for employees of the Commission, and for other purposes.

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; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Competitive Market Supervision Act of 2001”.

1 (b) TABLE OF CONTENTS.—The table of contents for
 2 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Reduction in registration fee rates; elimination of general revenue component.
- Sec. 3. Reduction in merger and tender fee rates; reclassification as offsetting collections.
- Sec. 4. Reduction in transaction fees; elimination of general revenue component.
- Sec. 5. Adjustments to fee rates.
- Sec. 6. Comparability provisions.
- Sec. 7. Effective date.

3 **SEC. 2. REDUCTION IN REGISTRATION FEE RATES; ELIMI-**
 4 **NATION OF GENERAL REVENUE COMPONENT.**

5 Section 6(b) of the Securities Act of 1933 (15 U.S.C.
 6 77f(b)) is amended—

7 (1) by striking paragraph (2) and inserting the
 8 following:

9 “(2) FEE PAYMENT REQUIRED.—At the time of
 10 filing a registration statement, the applicant shall
 11 pay to the Commission a fee that shall be equal to
 12 the amount determined under the rate established by
 13 paragraph (3). The Commission shall publish in the
 14 Federal Register notices of the fee rate applicable
 15 under this section for each fiscal year.”;

16 (2) by striking paragraph (3);

17 (3) by redesignating paragraphs (4) and (5) as
 18 paragraphs (3) and (4), respectively;

19 (4) in paragraph (3), as redesignated—

1 (A) by striking subparagraph (A) and in-
 2 serting the following:

3 “(A) IN GENERAL.—Except as provided in
 4 subparagraphs (B) and (C), the rate deter-
 5 mined under this paragraph is a rate equal to
 6 the following amount per \$1,000,000 of the
 7 maximum aggregate price at which the securi-
 8 ties are proposed to be offered:

9 “(i) \$67 for each of fiscal years 2002
 10 through 2006.

11 “(ii) \$33 for fiscal year 2007 and
 12 each fiscal year thereafter.”; and

13 (B) in subparagraph (B), by striking “this
 14 paragraph (4)” and inserting “this paragraph”;
 15 and

16 (5) by striking paragraph (4), as redesignated,
 17 and inserting the following:

18 “(4) PRO RATA APPLICATION OF RATE.—The
 19 rate required by this subsection shall be applied pro
 20 rata to amounts and balances equal to or less than
 21 \$1,000,000.”.

1 **SEC. 3. REDUCTION IN MERGER AND TENDER FEE RATES;**
 2 **RECLASSIFICATION AS OFFSETTING COLLEC-**
 3 **TIONS.**

4 (a) SECTION 13.—Section 13(e)(3) of the Securities
 5 Exchange Act of 1934 (15 U.S.C. 78m(e)(3)) is amended
 6 to read as follows:

7 “(3) FEES.—

8 “(A) IN GENERAL.—At the time of the fil-
 9 ing of any statement that the Commission may
 10 require by rule pursuant to paragraph (1), the
 11 person making the filing shall pay to the Com-
 12 mission a fee equal to—

13 “(i) \$67 for each \$1,000,000 of the
 14 value of the securities proposed to be pur-
 15 chased, for each of fiscal years 2002
 16 through 2006; and

17 “(ii) \$33 for each \$1,000,000 of the
 18 value of securities proposed to be pur-
 19 chased, for fiscal year 2007 and each fiscal
 20 year thereafter.

21 “(B) REDUCTION.—The fee required by
 22 this paragraph shall be reduced with respect to
 23 securities in an amount equal to any fee paid
 24 with respect to any securities issued in connec-
 25 tion with the proposed transaction under sec-
 26 tion 6(b) of the Securities Act of 1933, or the

1 fee paid under that section shall be reduced in
 2 an amount equal to the fee paid to the Commis-
 3 sion in connection with such transaction under
 4 this paragraph.

5 “(C) LIMITATION; DEPOSIT OF FEES.—

6 “(i) LIMITATION.—Except as provided
 7 in subparagraph (D), no amounts shall be
 8 collected pursuant to this paragraph for
 9 any fiscal year, except to the extent pro-
 10 vided in advance in appropriations Acts.

11 “(ii) DEPOSIT OF FEES.—Fees col-
 12 lected during any fiscal year pursuant to
 13 this paragraph shall be deposited and cred-
 14 ited as offsetting collections in accordance
 15 with appropriations Acts.

16 “(D) LAPSE OF APPROPRIATIONS.—If, on
 17 the first day of a fiscal year, a regular appro-
 18 priation to the Commission has not been en-
 19 acted for that fiscal year, the Commission shall
 20 continue to collect fees (as offsetting collec-
 21 tions) under this paragraph at the rate in effect
 22 during the preceding fiscal year, until such a
 23 regular appropriation is enacted.

24 “(E) PRO RATA APPLICATION OF RATE.—

25 The rate required by this paragraph shall be

1 applied pro rata to amounts and balances equal
 2 to or less than \$1,000,000.”.

3 (b) SECTION 14.—

4 (1) PRELIMINARY PROXY SOLICITATIONS.—Sec-
 5 tion 14(g)(1) of the Securities Exchange Act of
 6 1934 (15 U.S.C. 78n(g)(1)) is amended—

7 (A) in subparagraph (A), by striking
 8 “Commission the following fees” and all that
 9 follows through the end of the subparagraph
 10 and inserting “Commission—

11 “(i) for preliminary proxy solicitation
 12 material involving an acquisition, merger,
 13 or consolidation, if there is a proposed pay-
 14 ment of each or transfer of securities or
 15 property to shareholders, a fee equal to—

16 “(I) \$67 for each \$1,000,000 of
 17 such proposed payment, or of the
 18 value of such securities or other prop-
 19 erty proposed to be transferred, for
 20 each of fiscal years 2002 through
 21 2006; and

22 “(II) \$33 for each \$1,000,000 of
 23 such proposed payment, or of the
 24 value of such securities or other prop-
 25 erty proposed to be transferred, for

1 fiscal year 2007 and each fiscal year
2 thereafter; and

3 “(ii) for preliminary proxy solicitation
4 material involving a proposed sale or other
5 disposition of substantially all of the assets
6 of a company, a fee equal to—

7 “(I) \$67 for each \$1,000,000 of
8 the cash or of the value of any securi-
9 ties or other property proposed to be
10 received upon such sale or disposition,
11 for each of fiscal years 2002 through
12 2006; and

13 “(II) \$33 for each \$1,000,000 of
14 the cash or of the value of any securi-
15 ties or other property proposed to be
16 received upon such sale or disposition,
17 for fiscal year 2007 and each fiscal
18 year thereafter.”;

19 (B) in subparagraph (B), by inserting
20 “REDUCTION.—” before “The fee”; and

21 (C) by adding at the end the following:

22 “(C) LIMITATION; DEPOSIT OF FEES.—

23 “(i) LIMITATION.—Except as provided
24 in subparagraph (D), no amounts shall be
25 collected pursuant to this paragraph for

any fiscal year, except to the extent provided in advance in appropriations Acts.

“(ii) DEPOSIT OF FEES.—Fees collected during any fiscal year pursuant to this paragraph shall be deposited and credited as offsetting collections in accordance with appropriations Acts.

“(D) LAPSE OF APPROPRIATIONS.—If, on the first day of a fiscal year, a regular appropriation to the Commission has not been enacted for that fiscal year, the Commission shall continue to collect fees (as offsetting collections) under this paragraph at the rate in effect during the preceding fiscal year, until such a regular appropriation is enacted.

“(E) PRO RATA APPLICATION OF RATE.—The rate required by this paragraph shall be applied pro rata to amounts and balances equal to or less than \$1,000,000.”.

(2) OTHER FILINGS.—Section 14(g)(3) of the Securities Exchange Act of 1934 (15 U.S.C. 78n(g)(3)) is amended—

(A) by striking “At the time” and inserting the following: “OTHER FILINGS.—

“(A) FEE RATE.—At the time”;

(B) by striking “the Commission a fee of”
and all that follows through “The fee” and in-
serting the following: “the Commission a fee
equal to—

“(i) \$67 for each \$1,000,000 of the
aggregate amount of cash or of the value
of securities or other property proposed to
be offered, for each of fiscal years 2002
through 2006; and

“(ii) \$33 for each \$1,000,000 of the
aggregate amount of cash or of the value
of securities or other property proposed to
be offered, for fiscal year 2007 and each
fiscal year thereafter.

“(B) REDUCTION.—The fee required under
subparagraph (A)’”; and

(C) by adding at the end the following:

“(C) LIMITATION; DEPOSIT OF FEES.—

“(i) LIMITATION.—Except as provided
in subparagraph (D), no amounts shall be
collected pursuant to this paragraph for
any fiscal year, except to the extent pro-
vided in advance in appropriations Acts.

“(ii) DEPOSIT OF FEES.—Fees col-
lected during any fiscal year pursuant to

1 this paragraph shall be deposited and cred-
 2 ited as offsetting collections in accordance
 3 with appropriations Acts.

4 “(D) LAPSE OF APPROPRIATIONS.—If, on
 5 the first day of a fiscal year, a regular appro-
 6 priation to the Commission has not been en-
 7 acted for that fiscal year, the Commission shall
 8 continue to collect fees (as offsetting collec-
 9 tions) under this paragraph at the rate in effect
 10 during the preceding fiscal year, until such a
 11 regular appropriation is enacted.

12 “(E) PRO RATA APPLICATION OF RATE.—
 13 The rate required by this paragraph shall be
 14 applied pro rata to amounts and balances equal
 15 to or less than \$1,000,000.”.

16 **SEC. 4. REDUCTION IN TRANSACTION FEES; ELIMINATION**
 17 **OF GENERAL REVENUE COMPONENT.**

18 Section 31 of the Securities Exchange Act of 1934
 19 (15 U.S.C. 78ee) is amended—

20 (1) by striking subsections (b) through (d) and
 21 inserting the following:

22 “(b) TRANSACTION FEES.—

23 “(1) IN GENERAL.—Each national securities ex-
 24 change and national securities association shall pay
 25 to the Commission a fee at a rate equal to the trans-

1 action offsetting collection rate described in para-
 2 graph (2) of the aggregate dollar amount of sales of
 3 securities (other than bonds, debentures, and other
 4 evidences of indebtedness)—

5 “(A) transacted on such national securities
 6 exchange;

7 “(B) transacted by or through any member
 8 of such association otherwise than on a national
 9 securities exchange of securities registered on
 10 such an exchange; and

11 “(C) transacted by or through any member
 12 of such association otherwise than on a national
 13 securities exchange of securities that are subject
 14 to prompt last sale reporting pursuant to the
 15 rules of the Commission or a registered national
 16 securities association, excluding any sales for
 17 which a fee is paid under subparagraph (B).

18 “(2) FEE RATE.—

19 “(A) TRANSACTION OFFSETTING COLLEC-
 20 TION RATE.—For purposes of this subsection,
 21 the ‘transaction offsetting collection rate’ for a
 22 fiscal year—

23 “(i) is the uniform rate required to
 24 reach the transaction fee cap for that fiscal
 25 year; and

1 “(ii) shall become effective on the
2 later of the beginning of that fiscal year or
3 the date of enactment of appropriations
4 legislation setting such rate.

5 “(B) TRANSACTION FEE CAP.—For pur-
6 poses of this paragraph, the ‘transaction fee
7 cap’ shall be equal to—

8 “(i) \$497,000,000 for fiscal year
9 2002;

10 “(ii) \$607,000,000 for fiscal year
11 2003;

12 “(iii) \$706,000,000 for fiscal year
13 2004;

14 “(iv) \$896,000,000 for fiscal year
15 2005;

16 “(v) \$1,094,000,000 for fiscal year
17 2006;

18 “(vi) \$554,000,000 for fiscal year
19 2007;

20 “(vii) \$580,000,000 for fiscal year
21 2008;

22 “(viii) \$719,000,000 for fiscal year
23 2009; and

24 “(ix) \$884,000,000 for fiscal year
25 2010 and each fiscal year thereafter.

1 “(c) LIMITATION; DEPOSIT OF FEES.—

2 “(1) LIMITATION.—Except as provided in sub-
3 section (d), no amount may be collected pursuant to
4 subsection (b) for any fiscal year, except to the ex-
5 tent provided in advance in appropriation Acts.

6 “(2) DEPOSIT OF FEES.—Fees collected during
7 any fiscal year pursuant to this section shall be de-
8 posited and credited as offsetting collections in ac-
9 cordance with appropriations Acts.

10 “(d) LAPSE OF APPROPRIATIONS.—If, on the first
11 day of a fiscal year, a regular appropriation to the Com-
12 mission has not been enacted for that fiscal year, the Com-
13 mission shall continue to collect fees (as offsetting collec-
14 tions) under this section at the rate in effect during the
15 preceding fiscal year (prior to adjustments, if any, under
16 subsections (b) and (c) of section 5 of the Competitive
17 Market Supervision Act), until such a regular appropria-
18 tion is enacted.”;

19 (2) in subsection (e), by striking “subsections
20 (b), (c), and (d)” and inserting “subsection (b)”;
21 and

22 (3) in subsection (g), by striking “rates” and
23 inserting “rate”.

24 **SEC. 5. ADJUSTMENTS TO FEE RATES.**

25 (a) ESTIMATES OF COLLECTIONS.—

1 (1) FEE PROJECTIONS.—The Securities and
 2 Exchange Commission (hereafter in this Act referred
 3 to as the “Commission”) shall, 1 month after sub-
 4 mission of its initial report under subsection (e)(1)
 5 and on a monthly basis thereafter, project the aggre-
 6 gate amount of fees from all sources likely to be col-
 7 lected by the Commission during the current fiscal
 8 year.

9 (2) SUBMISSION OF INFORMATION.—Each na-
 10 tional securities exchange and national securities as-
 11 sociation shall file with the Commission, not later
 12 than 10 days after the end of each month—

13 (A) an estimate of the fee required to be
 14 paid pursuant to section 31 of the Securities
 15 Exchange Act of 1934 by such national securi-
 16 ties exchange or national securities association
 17 for transactions and sales occurring during
 18 such month; and

19 (B) such other information and documents
 20 as the Commission may require, as necessary or
 21 appropriate to project the aggregate amount of
 22 fees pursuant to paragraph (1).

23 (b) FLOOR FOR TOTAL FEE COLLECTIONS.—If, at
 24 any time after the end of the first half of the fiscal year,
 25 the Commission projects under subsection (a) that the ag-

1 gregate amount of fees collected by the Commission will,
2 during that fiscal year, fall below an amount equal to the
3 floor for total fee collections, the Commission may by
4 order, subject to subsection (e), increase the fee rate es-
5 tablished under section 31 of the Securities Exchange Act
6 of 1934 to the extent necessary to bring estimated collec-
7 tions to an amount equal to the floor for total fee collec-
8 tions. Such increase shall apply only to transactions and
9 sales occurring on or after the effective date specified in
10 such order through August 31 of that fiscal year. Such
11 increase shall not affect the obligation of each national
12 securities exchange and national securities association to
13 pay the Commission the fee required by section 31 of the
14 Securities Exchange Act of 1934 at the fee rate in effect
15 prior to the effective date of such order for transactions
16 and sales occurring prior to the effective date of such
17 order. In exercising its authority under this subsection, the
18 Commission shall not be required to comply with the provi-
19 sions of section 553 of title 5, United States Code.

20 (c) CAP ON TOTAL FEE COLLECTIONS.—If, at any
21 time after the end of the first half of the fiscal year, the
22 Commission projects under subsection (a) that the aggre-
23 gate amount of fees collected by the Commission will ex-
24 ceed the cap on total fee collections by more than 5 per-
25 cent during any fiscal year, the Commission shall by order,

1 subject to subsection (e), decrease the fee rate or suspend
 2 collection of fees under section 31 of the Securities Ex-
 3 change Act of 1934 to the extent necessary to bring esti-
 4 mated collections to an amount equal to the cap on total
 5 fee collections. Such decrease or suspension shall apply
 6 only to transactions and sales occurring on or after the
 7 effective date specified in such order through August 31
 8 of that fiscal year. Such decrease or suspension shall not
 9 affect the obligation of each national securities exchange
 10 and national securities association to pay the Commission
 11 the fee required by section 31 of the Securities Exchange
 12 Act of 1934 at the fee rate in effect prior to the effective
 13 date of such order for transactions and sales occurring
 14 prior to the effective date of such order. In exercising its
 15 authority under this subsection, the Commission shall not
 16 be required to comply with the provisions of section 553
 17 of title 5, United States Code.

18 (d) DEFINITIONS.—For purposes of this section—

19 (1) the term “floor for total fee collections”
 20 means the greater of—

21 (A) the total amount appropriated to the
 22 Commission for fiscal year 2002 (adjusted an-
 23 nually, based on the annual percentage change,
 24 if any, in the Consumer Price Index for all

1 urban consumers, as published by the Depart-
 2 ment of Labor); or

3 (B) the amount authorized for the Com-
 4 mission pursuant to section 35 of the Securities
 5 Exchange Act of 1934 (15 U.S.C. 78kk), if ap-
 6 plicable; and

7 (2) the term “cap on total fee collections”
 8 means—

9 (A) for fiscal years 2002 through 2010,
 10 the baseline amount for aggregate offsetting
 11 collections for such fiscal year under section
 12 6(b) of the Securities Act of 1933 and section
 13 31 of the Securities Exchange Act of 1934, as
 14 projected for such fiscal year by the Congres-
 15 sional Budget Office pursuant to section 257 of
 16 the Balanced Budget and Emergency Deficit
 17 Control Act of 1985 in its most recently pub-
 18 lished report of its baseline projection before
 19 the date of enactment of this Act; and

20 (B) for fiscal years 2011 and thereafter,
 21 the amount authorized for the Commission pur-
 22 suant to section 35 of the Securities Exchange
 23 Act of 1934 (15 U.S.C. 78kk).

24 (e) REPORTS TO CONGRESS; JUDICIAL REVIEW; NO-
 25 TICE.—

1 (1) INITIAL REPORT.—Not later than 90 days
2 after the date of enactment of this Act, the Commis-
3 sion shall report to the Committee on Banking,
4 Housing, and Urban Affairs of the Senate and the
5 Committee on Financial Services of the House of
6 Representatives to explain the methodology used by
7 the Commission to make projections under sub-
8 section (a). Not later than 30 days after the begin-
9 ning of each fiscal year, the Commission may report
10 to the Committee on Banking, Housing, and Urban
11 Affairs of the Senate and the Committee on Finan-
12 cial Services of the House of Representatives on re-
13 visions to the methodology used by the Commission
14 to make projections under subsection (a) for such
15 fiscal year and subsequent fiscal years.

16 (2) JUDICIAL REVIEW; REPORTS OF INTENT TO
17 ACT.—The determinations made and the actions
18 taken by the Commission under this subsection shall
19 not be subject to judicial review. Not later than 45
20 days before taking action under subsection (b) or
21 (c), the Commission shall report to the Committee
22 on Banking, Housing, and Urban Affairs of the Sen-
23 ate and the Committee on Financial Services of the
24 House of Representatives on its intent to take such
25 action.

1 (3) NOTICE.—Not later than 30 days before
 2 taking action under subsection (b) or (c), the Com-
 3 mission shall notify each national securities ex-
 4 change and national securities association of its in-
 5 tent to take such action.

6 **SEC. 6. COMPARABILITY PROVISIONS.**

7 (a) SECURITIES AND EXCHANGE COMMISSION EM-
 8 PLOYEES.—

9 (1) IN GENERAL.—Section 4(b) of the Securi-
 10 ties Exchange Act of 1934 (15 U.S.C. 78d(b)) is
 11 amended—

12 (A) by striking paragraphs (1) and (2) and
 13 inserting the following:

14 “(1) APPOINTMENT AND COMPENSATION.—

15 “(A) IN GENERAL.—The Commission may
 16 appoint and fix the compensation of such offi-
 17 cers, attorneys, economists, examiners, and
 18 other employees as may be necessary for car-
 19 rying out its functions under this Act.

20 “(B) RATES OF PAY.—Rates of basic pay
 21 for all employees of the Commission may be set
 22 and adjusted by the Commission without regard
 23 to the provisions of chapter 51 or subchapter
 24 III of chapter 53 of title 5, United States Code.

1 “(C) COMPARABILITY.—The Commission
2 may provide additional compensation and bene-
3 fits to employees of the Commission if the same
4 type of compensation or benefits are then being
5 provided by any agency referred to under sec-
6 tion 1206(a) of the Financial Institutions Re-
7 form, Recovery, and Enforcement Act of 1989
8 (12 U.S.C. 1833b) or, if not then being pro-
9 vided, could be provided by such an agency
10 under applicable provisions of law, rule, or reg-
11 ulation. In setting and adjusting the total
12 amount of compensation and benefits for em-
13 ployees, the Commission shall consult with, and
14 seek to maintain comparability with, the agen-
15 cies referred to under section 1206(a) of the Fi-
16 nancial Institutions Reform, Recovery, and En-
17 forcement Act of 1989 (12 U.S.C. 1833b).”;
18 and

19 (B) by redesignating paragraph (3) as
20 paragraph (2).

21 (2) EMPLOYEES REPRESENTED BY LABOR OR-
22 GANIZATIONS.—To the extent that any employee of
23 the Commission is represented by a labor organiza-
24 tion with exclusive recognition in accordance with
25 chapter 71 of title 5, United States Code, no reduc-

1 tion in base pay of such employee shall be made by
2 reason of enactment of this subsection.

3 (b) REPORTING ON INFORMATION BY THE COMMIS-
4 SION.—Section 1206 of the Financial Institutions Reform,
5 Recovery, and Enforcement Act of 1989 (12 U.S.C.
6 1833b) is amended—

7 (1) by inserting “(a) IN GENERAL.—” before
8 “‘The Federal Deposit”;

9 (2) by striking “the Thrift Depositor Protection
10 Oversight Board of the Resolution Trust Corpora-
11 tion”; and

12 (3) by adding at the end the following:

13 “(b) In establishing and adjusting schedules of com-
14 pensation and benefits for employees of the Securities and
15 Exchange Commission under applicable provisions of law,
16 the Commission shall inform the heads of the agencies re-
17 ferred to under subsection (a) and Congress of such com-
18 pensation and benefits and shall seek to maintain com-
19 parability with such agencies regarding compensation and
20 benefits.”.

21 (c) TECHNICAL AMENDMENTS.—

22 (1) Section 3132(a)(1) of title 5, United States
23 Code, is amended—

24 (A) in subparagraph (C), by striking “or”
25 after the semicolon;

1 (B) in subparagraph (D), by inserting
 2 “or” after the semicolon; and

3 (C) by adding at the end the following:

4 “(E) the Securities and Exchange Commis-
 5 sion.”.

6 (2) Section 5373(a) of title 5, United States
 7 Code, is amended—

8 (A) in paragraph (2), by striking “or”
 9 after the semicolon;

10 (B) in paragraph (3), by striking the pe-
 11 riod and inserting “; or”; and

12 (C) by adding at the end the following:

13 “(4) section 4(b) of the Securities Exchange
 14 Act of 1934.”.

15 **SEC. 7. EFFECTIVE DATE.**

16 (a) IN GENERAL.—Subject to subsection (b), this Act
 17 and the amendments made by this Act shall become effec-
 18 tive on October 1, 2001.

19 (b) EXCEPTIONS.—The authorities provided by sec-
 20 tion 13(e)(3)(D), section 14(g)(1)(D), section
 21 14(g)(3)(D), and section 31(d) of the Securities Exchange
 22 Act of 1934, as so designated by this Act, shall not apply
 23 until October 1, 2002.

○