

110TH CONGRESS
2D SESSION

H. R. 5463

To protect investors by fostering transparency and accountability of attorneys
in private securities litigation.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 14, 2008

Mr. HENSARLING (for himself and Mr. ROYCE) introduced the following bill;
which was referred to the Committee on Financial Services, and in addition
to the Committee on the Judiciary, for a period to be subsequently
determined by the Speaker, in each case for consideration of such provisions
as fall within the jurisdiction of the committee concerned

A BILL

To protect investors by fostering transparency and
accountability of attorneys in private securities litigation.

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 “Securities Litigation
5 Attorney Accountability and Transparency Act”.

6 **SEC. 2. LOSING PLAINTIFF’S ATTORNEY PAYS.**

7 (a) SECURITIES EXCHANGE ACT OF 1934.—Section
8 21D(c) of the Securities Exchange Act of 1934 (15 U.S.C.

1 78u-4(c) is amended by adding at the end the following
2 new paragraph:

3 “(4) ASSESSMENT OF FEES AND EXPENSES.—

4 “(A) DETERMINATION REQUIRED.—If the
5 court in any private action arising under this
6 title enters a final judgment against a plaintiff
7 on the basis of a motion to dismiss, motion for
8 summary judgment, or a trial on the merits,
9 the court shall, upon motion by the defendant,
10 determine whether—

11 “(i) the position of the plaintiff was
12 not substantially justified;

13 “(ii) imposing fees and expenses on
14 the plaintiff’s attorney would be just; and

15 “(iii) the cost of such fees and ex-
16 penses to the defendant is substantially
17 burdensome or unjust.

18 “(B) AWARD.—If the court makes the de-
19 terminations described in clauses (i), (ii), and
20 (iii) of subparagraph (A), the court shall award
21 the defendant reasonable fees and other ex-
22 penses incurred by the defendant and impose
23 such fees and expenses on the plaintiff’s attor-
24 ney.

1 “(C) BASIS OF DETERMINATION REGARD-
2 ING POSITION; BURDEN OF PERSUASION.—The
3 determination of whether the position of the
4 plaintiff was substantially justified shall be
5 made on the basis of the record in the action
6 for which fees and other expenses are sought,
7 but the burden of persuasion shall be on the de-
8 fendant.”.

9 (b) SECURITIES ACT OF 1933.—Section 27(c) of the
10 Securities Act of 1933 (15 U.S.C. 77z–1(c)) is amended
11 by adding at the end the following new paragraph:

12 “(4) ASSESSMENT OF FEES AND EXPENSES.—

13 “(A) DETERMINATION REQUIRED.—If the
14 court in any private action arising under this
15 title enters a final judgment against a plaintiff
16 on the basis of a motion to dismiss, motion for
17 summary judgment, or a trial on the merits,
18 the court shall, upon motion by the defendant,
19 determine whether—

20 “(i) the position of the plaintiff was
21 not substantially justified;

22 “(ii) imposing fees and expenses on
23 the plaintiff’s attorney would be just; and

1 “(iii) the cost of such fees and ex-
2 penses to the defendant is substantially
3 burdensome or unjust.

4 “(B) AWARD.—If the court makes the de-
5 terminations described in clauses (i), (ii), and
6 (iii) of subparagraph (A), the court shall award
7 the defendant reasonable fees and other ex-
8 penses incurred by the defendant and impose
9 such fees and expenses on the plaintiff’s attor-
10 ney.

11 “(C) BASIS OF DETERMINATION REGARD-
12 ING POSITION; BURDEN OF PERSUASION.—The
13 determination of whether the position of the
14 plaintiff was substantially justified shall be
15 made on the basis of the record in the action
16 for which fees and other expenses are sought,
17 but the burden of persuasion shall be on the de-
18 fendant.”.

19 **SEC. 3. DISCLOSURES OF PAYMENTS, FEE ARRANGEMENTS,**
20 **CONTRIBUTIONS, AND OTHER POTENTIAL**
21 **CONFLICTS OF INTEREST BETWEEN PLAIN-**
22 **TIFF AND ATTORNEYS.**

23 (a) SECURITIES EXCHANGE ACT OF 1934.—Section
24 21D(a) of the Securities Exchange Act of 1934 (15 U.S.C.

1 78u-4(a)) is amended by adding at the end the following
2 new paragraphs:

3 “(10) DISCLOSURES REGARDING PAYMENTS.—

4 “(A) SWORN CERTIFICATIONS RE-
5 QUIRED.—In any private action arising under
6 this title, each plaintiff and any attorney for
7 such plaintiff shall provide sworn certifications,
8 which shall be personally signed by such plain-
9 tiff and such attorney, respectively, and filed
10 with the complaint, that identify any direct or
11 indirect payment, or promise of any payment,
12 by such attorney, or any person affiliated with
13 such attorney, to such plaintiff, or any person
14 affiliated with such plaintiff, beyond the plain-
15 tiff’s pro rata share of any recovery, except as
16 ordered or approved by the court in accordance
17 with paragraph (4). Upon disclosure of any
18 such payment or promise of payment, the court
19 shall disqualify the attorney from representing
20 the plaintiff.

21 “(B) DEFINITION.—For purposes of this
22 paragraph, the term ‘payment’ shall include the
23 transfer of money and any other thing of value,
24 including the provision of services, other than

1 representation of the plaintiff in the private ac-
2 tion arising under this title.

3 “(11) DISCLOSURES REGARDING LEGAL REP-
4 RESENTATIONS.—In any private action arising
5 under this title, each plaintiff and any attorney for
6 such plaintiff shall provide sworn certifications,
7 which shall be personally signed by such plaintiff
8 and such attorney, respectively, and filed with the
9 complaint, that identifies the nature and terms of
10 any legal representation provided by such attorney,
11 or any person affiliated with such attorney, to such
12 plaintiff, or any person affiliated with such plaintiff
13 other than the representation of the plaintiff in the
14 private action arising under this title. The court may
15 allow such certifications to be made under seal. The
16 court shall make a determination whether the nature
17 or terms of the fee arrangement for any other mat-
18 ter influenced the selection and retention of counsel
19 in any private action arising under this title and, if
20 the court so finds, shall disqualify the attorney from
21 representing the plaintiff in any such action.

22 “(12) DISCLOSURES REGARDING CONTRIBU-
23 TIONS.—In any private action arising under this
24 title, each plaintiff and any attorney for such plain-
25 tiff shall provide sworn certifications, which shall be

1 personally signed by such plaintiff and such attorney,
2 respectively, and filed with the complaint, that
3 identifies any contribution made within five years
4 prior to the filing of the complaint by such attorney,
5 any person affiliated with such attorney, or any political
6 action committee controlled by such attorney,
7 to any elected official with authority to retain counsel
8 for such plaintiff or to select or appoint, influence
9 the selection or appointment of, or oversee any
10 individual or group of individuals with that authority.
11

12 “(13) DISCLOSURE REGARDING OTHER CON-
13 Flicts OF INTEREST.—In any private action arising
14 under this title, each plaintiff and any attorney for
15 such plaintiff shall provide sworn certifications,
16 which shall be personally signed by such plaintiff
17 and such attorney, respectively, and filed with the
18 complaint, that identifies any other conflict of interest
19 (other than one specified in paragraphs (10)
20 through (12)) between such attorney and such plaintiff.
21 The court shall make a determination of whether
22 such conflict is sufficient to disqualify the attorney
23 from representing the plaintiff.”

1 (b) SECURITIES ACT OF 1933.—Section 27(a) of the
2 Securities Act of 1933 (15 U.S.C. 77z-1(a)) is amended
3 by adding at the end the following new paragraph:

4 “(10) DISCLOSURES REGARDING PAYMENTS.—

5 “(A) SWORN CERTIFICATIONS RE-
6 QUIRED.—In any private action arising under
7 this title, each plaintiff and any attorney for
8 such plaintiff shall provide sworn certifications,
9 which shall be personally signed by such plain-
10 tiff and such attorney, respectively, and filed
11 with the complaint, that identify any direct or
12 indirect payment, or promise of any payment,
13 by such attorney, or any person affiliated with
14 such attorney, to such plaintiff, or any person
15 affiliated with such plaintiff, beyond the plain-
16 tiff’s pro rata share of any recovery, except as
17 ordered or approved by the court in accordance
18 with paragraph (4). Upon disclosure of any
19 such payment or promise of payment, the court
20 shall disqualify the attorney from representing
21 the plaintiff.

22 “(B) DEFINITION.—For purposes of this
23 paragraph, the term ‘payment’ shall include the
24 transfer of money and any other thing of value,
25 including the provision of services, other than

1 representation of the plaintiff in the private ac-
2 tion arising under this title.

3 “(11) DISCLOSURES REGARDING LEGAL REP-
4 RESENTATIONS.—In any private action arising
5 under this title, each plaintiff and any attorney for
6 such plaintiff shall provide sworn certifications,
7 which shall be personally signed by such plaintiff
8 and such attorney, respectively, and filed with the
9 complaint, that identifies the nature and terms of
10 any legal representation provided by such attorney,
11 or any person affiliated with such attorney, to such
12 plaintiff, or any person affiliated with such plaintiff
13 other than the representation of the plaintiff in the
14 private action arising under this title. The court may
15 allow such certifications to be made under seal. The
16 court shall make a determination whether the nature
17 or terms of the fee arrangement for any other mat-
18 ter influenced the selection and retention of counsel
19 in any private action arising under this title and, if
20 the court so finds, shall disqualify the attorney from
21 representing the plaintiff in any such action.

22 “(12) DISCLOSURES REGARDING CONTRIBU-
23 TIONS.—In any private action arising under this
24 title, each plaintiff and any attorney for such plain-
25 tiff shall provide sworn certifications, which shall be

1 personally signed by such plaintiff and such attorney,
2 respectively, and filed with the complaint, that
3 identifies any contribution made within five years
4 prior to the filing of the complaint by such attorney,
5 any person affiliated with such attorney, or any political
6 action committee controlled by such attorney,
7 to any elected official with authority to retain counsel
8 for such plaintiff or to select or appoint, influence
9 the selection or appointment of, or oversee any
10 individual or group of individuals with that authority.
11

12 “(13) DISCLOSURE REGARDING OTHER CON-
13 Flicts OF INTEREST.—In any private action arising
14 under this title, each plaintiff and any attorney for
15 such plaintiff shall provide sworn certifications,
16 which shall be personally signed by such plaintiff
17 and such attorney, respectively, and filed with the
18 complaint, that identifies any other conflict of interest
19 (other than one specified in paragraphs (10)
20 through (12)) between such attorney and such plaintiff.
21 The court shall make a determination of whether
22 such conflict is sufficient to disqualify the attorney
23 from representing the plaintiff.”

1 **SEC. 4. SELECTION OF LEAD COUNSEL.**

2 (a) SECURITIES EXCHANGE ACT OF 1934.—Section
3 21D(a)(3)(B)(v) of the Securities Exchange Act of 1934
4 (15 U.S.C. 78u-4(a)(3)(B)(v)) is amended by adding at
5 the end the following: “In exercising the discretion of the
6 court over the approval of lead counsel, the court shall
7 employ a competitive bidding process as one of the criteria
8 in the selection and retention of counsel for the most ade-
9 quate plaintiff, unless the court determines on the record
10 that such a process is not feasible.”.

11 (b) SECURITIES ACT OF 1933.—Section
12 27(a)(3)(B)(v) of the Securities Act of 1933 (15 U.S.C.
13 77z-1(a)(3)(B)(v)) is amended by adding at the end the
14 following: “In exercising the discretion of the court over
15 the approval of lead counsel, the court shall employ a com-
16 petitive bidding process as one of the criteria in the selec-
17 tion and retention of counsel for the most adequate plain-
18 tiff, unless the court determines on the record that such
19 a process is not feasible.”.

20 **SEC. 5. STUDY OF AVERAGE HOURLY FEES IN SECURITIES**
21 **CLASS ACTIONS.**

22 (a) STUDY AND REVIEW REQUIRED.—The Comp-
23 troller General of the United States shall conduct a study
24 and review of fee awards to lead counsel in securities class
25 actions over the five years preceding the date of enactment

1 of this Act to determine the effective average hourly rate
2 for lead counsel in such actions.

3 (b) REPORT REQUIRED.—Not later than 1 year after
4 the date of enactment of this Act, the Comptroller General
5 shall submit a report to the Committee on Banking, Hous-
6 ing, and Urban Affairs of the Senate and the Committee
7 on Financial Services of the House of Representatives on
8 the results of the study and review required by this sec-
9 tion. The Comptroller General shall submit an updated
10 study every three years thereafter.

11 (c) DEFINITION.—For purposes of this section, the
12 term “securities class action” means a private class action
13 arising under the Securities Act of 1933 (15 U.S.C. 77
14 et seq.) or the Securities Exchange Act of 1934 (15 U.S.C.
15 78 et seq.) that is brought as a plaintiff class action pur-
16 suant to the Federal Rules of Civil Procedure.

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