H. R. 3817

To provide the Securities and Exchange Commission with additional authorities to protect investors from violations of the securities laws, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 15, 2009

Mr. KANJORSKI introduced the following bill; which was referred to the Committee on Financial Services

A BILL

To provide the Securities and Exchange Commission with additional authorities to protect investors from violations of the securities laws, and for other purposes.

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

SECTION 1. SHORT TITLE.

This Act may be cited as the “Investor Protection Act of 2009.”

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TITLE I—DISCLOSURE

SEC. 101. INVESTOR ADVISORY COMMITTEE ESTABLISHED.

The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by adding after section 4C the following new section:

“SEC. 4D. INVESTOR ADVISORY COMMITTEE.

“(a) Establishment and Purpose.—There is established an Investor Advisory Committee (in this section referred to as the ‘Committee’) to advise and consult with the Commission on—

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“(1) regulatory priorities and issues regarding new products, trading strategies, fee structures and the effectiveness of disclosures;

“(2) initiatives to protect investor interest; and

“(3) initiatives to promote investor confidence in the integrity of the marketplace.

“(b) MEMBERSHIP.—

“(1) APPOINTMENT.—The Chairman of the Commission shall appoint the members of the Committee, which members shall—

“(A) represent the interests of individual investors;

“(B) represent the interests of institutional investors; and

“(C) use a wide range of investment approaches.

“(2) MEMBERS NOT COMMISSION EMPLOYEES.—Members shall not be considered employees or agents of the Commission solely because of membership on the Committee.

“(c) MEETINGS.—The Committee shall meet from time to time at the call of the Commission, but, at a minimum, shall meet at least twice each year.
“(d) Compensation and Travel Expenses.— Members of the Committee who are not full-time employees of the United States shall—

“(1) be entitled to receive compensation at a rate fixed by the Commission while attending meetings of the Committee, including travel time; and

“(2) be allowed travel expenses, including transportation and subsistence, while away from their homes or regular places of business.

“(e) Committee Findings.—Nothing in this section requires the Commission to accept, agree, or act upon the findings or recommendations of the Committee.

“(f) Authorization of Appropriations.—There is authorized to be appropriated to the Commission such sums as are necessary for the activities of the Committee.”.

SEC. 102. CLARIFICATION OF THE COMMISSION’S AUTHORITY TO ENGAGE IN CONSUMER TESTING.

(a) Amendment to Securities Act of 1933.—Section 19 of the Securities Act of 1933 (15 U.S.C. 77s) is amended by adding at the end the following new subsection:

“(e) For the purposes of evaluating its rules and programs and for considering, proposing, adopting, or engaging in rules or programs, the Commission is authorized
to gather information, communicate with investors or other members of the public, and engage in such temporary or experimental programs as the Commission in its discretion determines is in the public interest or for the protection of investors. The Commission may delegate to its staff some or all of the authority conferred by this subsection.”.

(b) Amendment to Securities Exchange Act of 1934.—Section 23 of the Securities Exchange Act of 1934 (15 U.S.C. 78w) is amended by redesignating subsections (b), (c), and (d) as subsections (c), (d), and (e), respectively, and inserting after subsection (a) the following:

“(b) For the purposes of evaluating its rules and programs and for considering proposing, adopting, or engaging in rules or programs, the Commission is authorized to gather information, communicate with investors or other members of the public, and engage in such temporary or experimental programs as the Commission in its discretion determines is in the public interest or for the protection of investors. The Commission may delegate to its staff some or all of the authority conferred by this subsection.”.

(c) Amendment to Investment Company Act of 1940.—Section 38 of the Investment Company Act of
1940 (15 U.S.C. 80a–38) is amended by adding at the end the following new subsection:

“(d) GATHERING INFORMATION.—For the purposes of evaluating its rules and programs and for considering proposing, adopting, or engaging in rules or programs, the Commission is authorized to gather information, communicate with investors or other members of the public, and engage in such temporary or experimental programs as the Commission in its discretion determines is in the public interest or for the protection of investors. The Commission may delegate to its staff some or all of the authority conferred by this subsection.”

(d) AMENDMENT TO THE INVESTMENT ADVISERS ACT OF 1940.—Section 211 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–11) is amended by adding at the end the following new subsection:

“(e) For the purposes of evaluating its rules and programs and for considering proposing, adopting, or engaging in rules or programs, the Commission is authorized to gather information, communicate with investors or other members of the public, and engage in such temporary or experimental programs as the Commission in its discretion determines is in the public interest or for the protection of investors. The Commission may delegate to
its staff some or all of the authority conferred by this sub-
section.”.

SEC. 103. ESTABLISHMENT OF A FIDUCIARY DUTY FOR
BROKERS, DEALERS, AND INVESTMENT AD-
VISERS, AND HARMONIZATION OF REGULA-
TION.

(a) IN GENERAL.—

(1) SECURITIES EXCHANGE ACT OF 1934.—Sec-
tion 15 of the Securities Exchange Act of 1934 (15
U.S.C. 78o) is amended—

(A) by redesignating the second subsection
(i) as subsection (j); and

(B) by adding at the end the following new
subsections:

“(k) STANDARDS OF CONDUCT.—

“(1) IN GENERAL.—Notwithstanding any other
provision of this Act or the Investment Advisers Act
of 1940, the Commission shall promulgate rules to
provide that, with respect to a broker or dealer that
is providing investment advice to a retail customer
(and such other customers as the Commission may
by rule provide), the standard of conduct for such
broker or dealer with respect to such customer shall
be the same as the standard of conduct applicable
to an investment adviser under the Investment Ad-

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visers Act of 1940. The receipt of compensation based on commission shall not, in and of itself, be considered a violation of such standard applied to a broker or dealer.

“(2) RETAIL CUSTOMER DEFINED.—For purposes of this subsection, the term ‘retail customer’ means an individual, or the legal representative of such individual, who—

“(A) receives personalized investment advice from a broker or dealer; and

“(B) uses such advice primarily for personal, family, or household purposes.

“(l) OTHER MATTERS.—The Commission shall—

“(1) facilitate the provision of simple and clear disclosures to investors regarding the terms of their relationships with brokers, dealers, and investment advisers; and

“(2) examine and, where appropriate, promulgate rules prohibiting sales practices, conflicts of interest, and compensation schemes for financial intermediaries (including brokers, dealers, and investment advisers) that it deems contrary to the public interest and the interests of investors.”.

(2) INVESTMENT ADVISERS ACT OF 1940.—Section 211 of the Investment Advisers Act of 1940, as
amended by section 102(d), is further amended by adding at the end the following new subsection:

“(f) STANDARDS OF CONDUCT.—

“(1) IN GENERAL.—Notwithstanding any other provision of this Act or the Securities Exchange Act of 1934, the Commission shall promulgate rules to provide that the standards of conduct for all brokers, dealers, and investment advisers, in providing investment advice to retail customers (and such other customers as the Commission may by rule provide), shall be to act in the best interest of the customer without regard to the financial or other interest of the broker, dealer, or investment adviser providing the advice.

“(2) RETAIL CUSTOMER DEFINED.—For purposes of this subsection, the term ‘retail customer’ means an individual, or the legal representative of such individual, who—

“(A) receives personalized investment advice from a broker, dealer, or investment adviser; and

“(B) uses such advice primarily for personal, family, or household purposes.

“(g) OTHER MATTERS.—The Commission shall—
“(1) facilitate the provision of simple and clear disclosures to investors regarding the terms of their relationships with brokers, dealers, and investment advisers; and

“(2) examine and, where appropriate, promulgate rules prohibiting sales practices, conflicts of interest, and compensation schemes for financial intermediaries (including brokers, dealers, and investment advisers) that it deems contrary to the public interest and the interests of investors.”.

(b) HARMONIZATION OF ENFORCEMENT AND REMEDY REGULATIONS.—Section 15 of the Securities Exchange Act of 1934, as amended by subsection (a), is further amended by adding at the end the following new subsection:

“(m) HARMONIZATION OF ENFORCEMENT AND REMEDY REGULATIONS.—The Commission shall issue regulations to ensure, to the extent practicable, that the enforcement options and remedies available for violations of the standard of conduct applicable to a broker or dealer providing investment advice to a retail customer are commensurate with those enforcement options and remedies available for violations of the standard of conduct applicable to investment advisers under the Investment Advisers Act of 1940.”.
SEC. 104. CLARIFICATION OF COMMISSION AUTHORITY TO REQUIRE INVESTOR DISCLOSURES BEFORE PURCHASE OF INVESTMENT COMPANY SHARES.

Section 24 of the Investment Company Act of 1940 (15 U.S.C. 80a–24) is amended by adding at the end the following new subsection:

“(h) TIMING OF DISCLOSURE.—Notwithstanding any other provision of this Act or the Securities Act of 1933, the Commission is authorized to promulgate rules designating documents or information that must precede a sale to a purchaser of securities issued by a registered investment company.”.

SEC. 105. BENEFICIAL OWNERSHIP AND SHORT-SWING PROFIT REPORTING.

(a) BENEFICIAL OWNERSHIP REPORTING.—Section 13 of the Securities Exchange Act of 1934 (15 U.S.C. 78m) is amended—

(1) in subsection (d)(1)—

(A) by inserting after “within ten days after such acquisition” the following: “or within such shorter time as the Commission may establish by rule”; and

(B) by striking “send to the issuer of the security at its principal executive office, by reg-
istered or certified mail, send to each exchange
where the security is traded, and’’;
(2) in subsection (d)(2)—
   (A) by striking ‘‘in the statements to the
issuer and the exchange, and’’; and
   (B) by striking ‘‘shall be transmitted to
the issuer and the exchange and’’;
(3) in subsection (g)(1), by striking ‘‘shall send
to the issuer of the security and’’; and
(4) in subsection (g)(2)—
   (A) by striking ‘‘sent to the issuer and’’;
   and
   (B) by striking ‘‘shall be transmitted to
the issuer and’’.
(b) Short-swing Profit Reporting.—Section
78p(a)) is amended—
(1) in paragraph (1), by striking ‘‘(and, if such
security is registered on a national securities ex-
change, also with the exchange)’’; and
(2) in paragraph (2)(B), by inserting after ‘‘of-
fi cer’’ the following: ‘‘, or within such shorter time
as the Commission may establish by rule’’.
SEC. 106. REVISION TO RECORDKEEPING RULES.

(a) Investment Company Act of 1940 Amendments.—Section 31 of the Investment Company Act of 1940 (15 U.S.C. 80a–30) is amended—

(1) in subsection (a)(1), by adding at the end the following: “Each person with custody or use of a registered investment company’s securities, deposits, or credits shall maintain and preserve all records that relate to the person’s custody or use of the registered investment company’s securities, deposits, or credits for such period or periods as the Commission, by rules and regulations, may prescribe as necessary or appropriate in the public interest or for the protection of investors.”; and

(2) in subsection (b), by adding at the end the following new paragraph:

“(4) Records of Persons with Custody or Use.—

“(A) In General.—Notwithstanding paragraph (1), records of persons with custody or use of a registered investment company’s securities, deposits, or credits, that relate to such custody or use, are subject at any time, or from time to time, to such reasonable periodic, special, or other examinations and other information and document requests by representatives
of the Commission as the Commission deems necessary or appropriate in the public interest or for the protection of investors.

“(B) CERTAIN PERSONS SUBJECT TO OTHER REGULATION.—Persons subject to regulation and examination by a Federal financial institution regulatory agency (as such term is defined under section 212(c)(2) of title 18, United States Code) may satisfy any examination request, information request, or document request described under subparagraph (A), by providing the Commission with a detailed listing, in writing, of the registered investment company’s securities, deposits, or credits within such person’s custody or use.”.

(b) INVESTMENT ADVISERS ACT OF 1940 AMENDMENT.—Section 204 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–4) is amended by adding at the end the following new subsection:

“(d) RECORDS OF PERSONS WITH CUSTODY OR USE.—

“(1) IN GENERAL.—Records of persons with custody or use of a client’s securities, deposits, or credits, that relate to such custody or use, are subject at any time, or from time to time, to such rea-
sonable periodic, special, or other examinations and
other information and document requests by rep-
resentatives of the Commission as the Commission
deems necessary or appropriate in the public interest
or for the protection of investors.

“(2) CERTAIN PERSONS SUBJECT TO OTHER
REGULATION.—Persons subject to regulation and ex-
amination by a Federal financial institution regu-
latory agency (as such term is defined under section
212(c)(2) of title 18, United States Code) may sat-
ify any examination request, information request,
or document request described under paragraph (1),
by providing the Commission with a detailed listing,
in writing, of the client’s securities, deposits, or
credits within such person’s custody or use.”.

TITLE II—ENFORCEMENT AND
REMEDIES

SEC. 201. AUTHORITY TO RESTRICT MANDATORY PRE-DIS-
PUTE ARBITRATION.

(a) AMENDMENT TO SECURITIES EXCHANGE ACT OF
1934.—Section 15 of the Securities Exchange Act of 1934
(15 U.S.C. 78o), as amended by section 103) is further
amended by adding at the end the following new sub-
section:
“(m) Authority To Restrict Mandatory Pre-dispute Arbitration.—The Commission, by rule, may prohibit, or impose conditions or limitations on the use of, agreements that require customers or clients of any broker, dealer, or municipal securities dealer to arbitrate any future dispute between them arising under the Federal securities laws or the rules of a self-regulatory organization if it finds that such prohibition, imposition of conditions, or limitations are in the public interest and for the protection of investors.”.

(b) Amendment To Investment Advisers Act of 1940.—Section 205 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–5) is amended by adding at the end the following new subsection:

“(f) Authority To Restrict Mandatory Pre-dispute Arbitration.—The Commission, by rule, may prohibit, or impose conditions or limitations on the use of, agreements that require customers or clients of any investment adviser to arbitrate any future dispute between them arising under the Federal securities laws or the rules of a self-regulatory organization if it finds that such prohibition, imposition of conditions, or limitations are in the public interest and for the protection of investors.”.
SEC. 202. WHISTLEBLOWER PROTECTION.

The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by adding after section 21E the following new section:

“SEC. 21F. SECURITIES WHISTLEBLOWER INCENTIVES AND PROTECTION.

“(a) IN GENERAL.—In any judicial or administrative action brought by the Commission under the securities laws that results in monetary sanctions exceeding $1,000,000, the Commission, under regulations prescribed by the Commission and subject to subsection (b), may pay an award or awards not exceeding an amount equal to 30 percent, in total, of the monetary sanctions imposed in the action or related actions to one or more whistleblowers who voluntarily provided original information to the Commission that led to the successful enforcement of the action. Any amount payable under the preceding sentence shall be paid from the fund described in subsection (f).

“(b) DETERMINATION OF AMOUNT OF AWARD; DENIAL OF AWARD.—

“(1) DETERMINATION OF AMOUNT OF AWARD.—The determination of the amount of an award, within the limit specified in subsection (a), shall be in the sole discretion of the Commission. The Commission may take into account the significance of the whistleblower’s information to the suc-
cess of the judicial or administrative action described in subsection (a), the degree of assistance provided by the whistleblower and any legal representative of the whistleblower in such action, the Commission’s programmatic interest in deterring violations of the securities laws by making awards to whistleblowers who provide information that leads to the successful enforcement of such laws, and such additional factors as the Commission may establish by rules or regulations.

“(2) **Denial of Award.**—No award under subsection (a) shall be made—

“(A) to any whistleblower who is, or was at the time he or she acquired the original information submitted to the Commission, a member, officer, or employee of any appropriate regulatory agency, the Department of Justice, or a self-regulatory organization;

“(B) to any whistleblower who is convicted of a criminal violation related to the judicial or administrative action for which the whistleblower otherwise could receive an award under this section; or
“(C) to any whistleblower who fails to submit information to the Commission in such form as the Commission may, by rule, require.

“(e) Representation.—

“(1) Permitted representation.—Any whistleblower who makes a claim for an award under subsection (a) may be represented by counsel.

“(2) Required representation.—Any whistleblower who makes a claim for an award under subsection (a) must be represented by counsel if the whistleblower submits the information upon which the claim is based anonymously. Prior to the payment of an award, the whistleblower must disclose his or her identity and provide such other information as the Commission may require.

“(d) No Contract Necessary.—No contract with the Commission is necessary for any whistleblower to receive an award under subsection (a), unless the Commission, by rule or regulation, so requires.

“(e) Appeals.—Any determinations under this section, including whether, to whom, or in what amounts to make awards, shall be in the sole discretion of the Commission, and any such determinations shall be final and not subject to judicial review.

“(f) Investor Protection Fund.—
“(1) FUND ESTABLISHED.—There is estab-
lished in the Treasury of the United States a fund
to be known as the ‘Securities and Exchange Com-
mission Investor Protection Fund’ (referred to in
this section as the ‘Fund’).

“(2) USE OF FUND.—The Fund shall be avail-
able to the Commission, without further appropria-
tion or fiscal year limitation, for the following pur-
poses:

“(A) Paying awards to whistleblowers as
provided in subsection (a).

“(B) Funding investor education initiatives
designed to help investors protect themselves
against securities fraud or other violations of
the securities laws, or the rules and regulations
thereunder.

“(3) DEPOSITS AND CREDITS.—There shall be
deposited into or credited to the Fund—

“(A) any monetary sanction collected by
the Commission in any judicial or administra-
tive action brought by the Commission under
the securities laws that is not added to a
disgorgement fund pursuant to section 308 of
the Sarbanes-Oxley Act of 2002 or other fund
or otherwise distributed to victims of a violation
of the securities laws, or the rules and regulations thereunder, underlying such action, unless the balance of the Fund at the time the monetary sanction is collected exceeds $100,000,000;

“(B) any monetary sanction added to a disgorgement fund pursuant to section 308 of the Sarbanes-Oxley Act of 2002 or other fund that is not distributed to the victims for whom the disgorgement fund was established, unless the balance of the Fund at the time the determination is made not to distribute the monetary sanction to such victims exceeds $100,000,000; and

“(C) all income from investments made under paragraph (4).

“(4) INVESTMENTS.—

“(A) Amounts in Fund may be invested.—The Commission may request the Secretary of the Treasury to invest the portion of the Fund that is not, in the Commission’s judgment, required to meet the current needs of the Fund.

“(B) Eligible investments.—Investments shall be made by the Secretary of the Treasury in obligations of the United States or
obligations that are guaranteed as to principal
and interest by the United States, with matur-
ities suitable to the needs of the Fund as de-
termined by the Commission.

“(C) INTEREST AND PROCEEDS CRED-
ITED.—The interest on, and the proceeds from
the sale or redemption of, any obligations held
in the Fund shall be credited to, and form a
part of, the Fund.

“(5) REPORTS TO CONGRESS.—Not later than
October 30 of each year, the Commission shall
transmit to the Committee on Banking, Housing,
and Urban Affairs of the Senate, and the Committee
on Financial Services of the House of Representa-
tives a report on—

“(A) the Commission’s whistleblower
award program under this section, including a
description of the number of awards granted
and the types of cases in which awards granted
during the preceding fiscal year;

“(B) investor education initiatives de-
scribed in paragraph (2)(B) that were funded
by the Fund during the preceding fiscal year;

“(C) the balance of the Fund at the begin-
ning of the preceding fiscal year;
“(D) the amounts deposited into or credited to the Fund during the preceding fiscal year;

“(E) the amount of earnings on investments of amounts in the Fund during the preceding fiscal year;

“(F) the amount paid from the Fund during the preceding fiscal year to whistleblowers pursuant to subsection (a);

“(G) the amount paid from the Fund during the preceding fiscal year for investor education initiatives described in paragraph (1)(B);

“(H) the balance of the Fund at the end of the preceding fiscal year; and

“(I) a complete set of audited financial statements, including a balance sheet, income statement, and cash flow analysis.

“(g) PROTECTION OF WHISTLEBLOWERS.—

“(1) PROHIBITION AGAINST RETALIATION.—

“(A) IN GENERAL.—No employer may discharge, demote, suspend, threaten, harass, or in any other manner discriminate against an employee, contractor, or agent in the terms and conditions of employment because of any lawful act done by the employee, contractor, or agent
in providing information to the Commission in accordance with subsection (a), or in assisting in any investigation or judicial or administrative action of the Commission based upon or related to such information.

“(B) ENFORCEMENT.—

“(i) CAUSE OF ACTION.—An individual who alleges discharge or other discrimination in violation of subparagraph (A) may bring an action under this subsection in the appropriate district court of the United States for the relief provided in subparagraph (C).

“(ii) SUBPOENAS.—A subpoena requiring the attendance of a witness at a trial or hearing conducted under this section may be served at any place in the United States.

“(ii) STATUTE OF LIMITATIONS.—An action under this subsection may not be brought more than 6 years after the date on which the violation of subparagraph (A) occurred, or more than 3 years after the date when facts material to the right of action are known or reasonably should have
been known by the employee alleging a violation of subparagraph (A), but in no event after 10 years after the date on which the violation occurs.

“(C) RELIEF.—An employee, contractor, or agent prevailing in any action brought under subparagraph (B) shall be entitled to all relief necessary to make that employee, contractor, or agent whole, including reinstatement with the same seniority status that the employee, contractor, or agent would have had, but for the discrimination, 2 times the amount of back pay, with interest, and compensation for any special damages sustained as a result of the discrimination, including litigation costs, expert witness fees, and reasonable attorneys’ fees.

“(2) CONFIDENTIALITY.—

“(A) IN GENERAL.—Except as provided in subparagraph (B), all information provided to the Commission by a whistleblower shall be confidential and privileged as an evidentiary matter (and shall not be subject to civil discovery or other legal process) in any proceeding in any Federal or State court or administrative agency, and shall be exempt from disclosure, in the
hands of an agency or establishment of the Federal Government, under the Freedom of Information Act (5 U.S.C. 552), or otherwise, unless and until required to be disclosed to a defendant or respondent in connection with a public proceeding instituted by the Commission or any entity described in subparagraph (B). For purposes of section 552 of title 5, United States Code, this paragraph shall be considered a statute described in subsection (b)(3)(B) of such section 552. Nothing herein is intended to limit the Attorney General’s ability to present such evidence to a grand jury or to share such evidence with potential witnesses or defendants in the course of an ongoing criminal investigation.

“(B) AVAILABILITY TO GOVERNMENT AGENCIES.—Without the loss of its status as confidential and privileged in the hands of the Commission, all information referred to in subparagraph (A) may, in the discretion of the Commission, when determined by the Commission to be necessary to accomplish the purposes of this Act and protect investors, be made available to—
“(i) the Attorney General of the United States,
“(ii) an appropriate regulatory authority,
“(iii) a self-regulatory organization,
“(iv) State attorneys general in connection with any criminal investigation, and
“(v) any appropriate State regulatory authority,

each of which shall maintain such information as confidential and privileged, in accordance with the requirements in subparagraph (A).

“(3) RIGHTS RETAINED.—Nothing in this section shall be deemed to diminish the rights, privileges, or remedies of any whistleblower under any Federal or State law, or under any collective bargaining agreement.

“(h) RULEMAKING AUTHORITY.—The Commission shall have the authority to issue such rules and regulations as may be necessary or appropriate to implement the provisions of this section.

“(i) DEFINITIONS.—For purposes of this section, the following terms have the following meanings:
“(1) ORIGINAL INFORMATION.—The term ‘original information’ means information that—

“(A) is based on the direct and independent knowledge or analysis of a whistleblower;

“(B) is not known to the Commission from any other source; and

“(C) is not based on allegations in a judicial or administrative hearing, in a governmental report, hearing, audit, or investigation, or from the news media, unless the whistleblower is the initial source of the information that resulted in the judicial or administrative hearing, governmental report, hearing, audit, or investigation, or the news media’s report on the allegations.

“(2) MONETARY SANCTIONS.—The term ‘monetary sanctions,’ when used with respect to any judicial or administrative action, means any monies, including but not limited to penalties, disgorgement, and interest, ordered to be paid, and any monies deposited into a disgorgement fund pursuant to section 308(b) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7246(b)), as a result of such action or any settlement of such action.
“(3) RELATED ACTION.—The term ‘related action,’ when used with respect to any judicial or administrative action brought by the Commission under the securities laws, means any judicial or administrative action brought by an entity described in subsection (g)(2)(B) that is based upon the same original information provided by a whistleblower pursuant to subsection (a) that led to the successful enforcement of the Commission action.

“(4) WHISTLEBLOWER.—The term ‘whistleblower’ means an individual, or two or more individuals acting jointly, who submit information to the Commission as provided in this section.”.

SEC. 203. CONFORMING AMENDMENTS FOR WHISTLEBLOWER PROTECTION.

(a) IN GENERAL.—Each of the following provisions is amended by inserting “and section 21F of the Securities Exchange Act of 1934” after “the Sarbanes-Oxley Act of 2002”:  


(2) in section 21A(d)(1) (15 U.S.C. 78u–1(d)(1))—

(A) by striking “(subject to subsection (e))”; and

(B) by inserting “and section 21F of this title” after “the Sarbanes-Oxley Act of 2002”;

and

(3) in section 21A, by striking subsection (e) and redesignating subsections (f) and (g) as subsection (e) and (f), respectively.

SEC. 204. IMPLEMENTATION AND TRANSITION PROVISIONS FOR WHISTLEBLOWER PROTECTIONS.

(a) Implementing Rules.—The Securities and Exchange Commission shall issue final regulations implementing the provisions of section 21F of the Securities Exchange Act of 1934, as added by this title, no later than 270 days after the date of enactment of this Act.

(b) Original Information.—Information submitted to the Commission by a whistleblower in accord-
ance with regulations implementing the provisions of section 21F of the Securities Exchange Act of 1934, as added by this title, shall not lose its status as original information, as defined in subsection (i)(1) of such section, solely because the whistleblower submitted such information prior to the effective date of such regulations, provided such information was submitted after the date of enactment of this Act, or related to insider trading violations for which a bounty could have been paid at the time such information was submitted.

(c) AWARDS.—A whistleblower may receive an award pursuant to section 21F of the Securities Exchange Act of 1934, as added by this title, regardless of whether any violation of a provision of the securities laws, or a rule or regulation thereunder, underlying the judicial or administrative action upon which the award is based occurred prior to the date of enactment of this Act.

SEC. 205. COLLATERAL BARS.

(a) Section 15 of the Securities Exchange Act of 1934.—Section 15(b)(6)(A) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b)(6)(A)) is amended by striking “12 months, or bar such person from being associated with a broker or dealer,” and inserting “12 months, or bar any such person from being associated with a broker, dealer, investment adviser, municipal securities
dealer, transfer agent, or nationally recognized statistical rating organization.”.

(b) Section 15B of the Securities Exchange Act of 1934.—Section 15B(c)(4) of the Securities Exchange Act of 1934 (15 U.S.C. 78o–4(c)(4)) is amended by striking “twelve months or bar any such person from being associated with a municipal securities dealer,” and inserting “12 months or bar any such person from being associated with a broker, dealer, investment adviser, municipal securities dealer, transfer agent, or nationally recognized statistical rating organization,”.

(c) Section 17A of the Securities Exchange Act of 1934.—Section 17A(c)(4)(C) of the Securities Exchange Act of 1934 (15 U.S.C. 78q–1(c)(4)(C)) is amended by striking “twelve months or bar any such person from being associated with the transfer agent,” and inserting “12 months or bar any such person from being associated with any transfer agent, broker, dealer, investment adviser, municipal securities dealer, or nationally recognized statistical rating organization,”.

(d) Section 203 of the Investment Advisers Act of 1940.—Section 203(f) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–3(f)) is amended by striking “twelve months or bar any such person from being associated with an investment adviser,” and inserting “12
months or bar any such person from being associated with
an investment adviser, broker, dealer, municipal securities
dealer, transfer agent, or nationally recognized statistical
rating organization.”.

SEC. 206. AIDING AND ABETTING AUTHORITY UNDER THE
SECURITIES ACT AND THE INVESTMENT COM-
PANY ACT.

(a) UNDER THE SECURITIES ACT OF 1933.—Section
15 of the Securities Act of 1933 (15 U.S.C. 77o) is
amended—

(1) by striking “Every person who” and insert-
ing “(a) CONTROLLING PERSONS.—Every person
who”; and

(2) by adding at the end the following:

“(b) PROSECUTION OF PERSONS WHO AID AND
ABET VIOLATIONS.—For purposes of any action brought
by the Commission under subparagraph (b) or (d) of sec-
tion 20, any person that knowingly or recklessly provides
substantial assistance to another person in violation of a
provision of this Act, or of any rule or regulation issued
under this Act, shall be deemed to be in violation of such
provision to the same extent as the person to whom such
assistance is provided.”.

(c) UNDER THE INVESTMENT COMPANY ACT OF
1940.—Section 48 of the Investment Company Act of
1 1940 (15 U.S.C. 80a–48) is amended by redesignating
2 subsection (b) as subsection (c) and inserting after sub-
3 section (a) the following:
4 “(b) For purposes of any action brought by the Com-
5 mission under subsection (d) or (e) of section 42, any per-
6 son that knowingly or recklessly provides substantial as-
7 sistance to another person in violation of a provision of
8 this Act, or of any rule or regulation issued under this
9 Act, shall be deemed to be in violation of such provision
10 to the same extent as the person to whom such assistance
11 is provided.”.

SEC. 207. AUTHORITY TO IMPOSE PENALTIES FOR AIDING

AND ABETTING VIOLATIONS OF THE INVEST-

MENT ADVISERS ACT.

Section 209 of the Investment Advisers Act of 1940
(15 U.S.C. 80b–9) is amended by inserting at the end the
following new subsection:

“(f) AIDING AND ABETTING.—For purposes of any
action brought by the Commission under subsection (e),
any person that knowingly or recklessly has aided, abetted,
counseled, commanded, induced, or procured a violation
of any provision of this Act, or of any rule, regulation,
or order hereunder, shall be deemed to be in violation of
such provision, rule, regulation, or order to the same ex-
tent as the person that committed such violation.”.
SEC. 208. DEADLINE FOR COMPLETING EXAMINATIONS, INVESTIGATIONS AND ENFORCEMENT ACTIONS.

The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by inserting after section 4D (as added by section 101) the following new section:

“SEC. 4E. DEADLINE FOR COMPLETING EXAMINATIONS, INVESTIGATIONS AND ENFORCEMENT ACTIONS.

“(a) IN GENERAL.—The Commission shall complete any examination, investigations, or enforcement action initiated by the Commission not later than 180 days after the date on which such examination, inspection, or enforcement action is commenced.

“(b) EXCEPTION FOR CERTAIN COMPLEX ACTIONS.—Notwithstanding subsection (a), if the head of any division or office within the Commission determines that a particular examination, investigation, or enforcement action is sufficiently complex that it cannot be completed within the deadline provided under subsection (a), such head may, after providing notice to the Chairman of the Commission, extend such deadline by an additional 180 days.”.

SEC. 209. NATIONWIDE SERVICE OF SUBPOENAS.

(a) SECURITIES ACT OF 1933.—Section 22(a) of the Securities Act of 1933 (15 U.S.C. 77v(a)) is amended by inserting after the second sentence the following: “In any action or proceeding instituted by the Commission under
this title in a United States district court for any judicial
district, subpoenas issued by or on behalf of such court
to compel the attendance of witnesses or the production
of documents or tangible things (or both) may be served
in any other district. Such subpoenas may be served and
enforced without application to the court or a showing of
cause, notwithstanding the provisions of rule 45(b)(2),
(c)(3)(A)(ii), and (c)(3)(B)(iii) of the Federal Rules of
Civil Procedure.”.

(b) Securities Exchange Act of 1934.—Section

78aa) is amended by inserting after the third sentence the
following: “In any action or proceeding instituted by the
Commission under this title in a United States district
court for any judicial district, subpoenas issued by or on
behalf of such court to compel the attendance of witnesses
or the production of documents or tangible things (or
both) may be served in any other district. Such subpoenas
may be served and enforced without application to the
court or a showing of cause, notwithstanding the provi-
sions of rule 45(b)(2), (c)(3)(A)(ii), and (c)(3)(B)(iii) of
the Federal Rules of Civil Procedure.”.

(e) Investment Company Act of 1940.—Section

44 of the Investment Company Act of 1940 (15 U.S.C.
80a–43) is amended by inserting after the fourth sentence
the following: “In any action or proceeding instituted by
the Commission under this title in a United States district
court for any judicial district, subpoenas issued by or on
behalf of such court to compel the attendance of witnesses
or the production of documents or tangible things (or
both) may be served in any other district. Such subpoenas
may be served and enforced without application to the
court or a showing of cause, notwithstanding the provi-
sions of rule 45(b)(2), (c)(3)(A)(ii), and (c)(3)(B)(iii) of
the Federal Rules of Civil Procedure.”.

(d) INVESTMENT ADVISERS ACT OF 1940.—Section
80b–14) is amended by inserting after the third sentence
the following: “In any action or proceeding instituted by
the Commission under this title in a United States district
court for any judicial district, subpoenas issued by or on
behalf of such court to compel the attendance of witnesses
or the production of documents or tangible things (or
both) may be served in any other district. Such subpoenas
may be served and enforced without application to the
court or a showing of cause, notwithstanding the provi-
sions of rule 45(b)(2), (c)(3)(A)(ii), and (c)(3)(B)(iii) of
the Federal Rules of Civil Procedure.”.
SEC. 210. AUTHORITY TO IMPOSE CIVIL PENALTIES IN CEASE AND DESIST PROCEEDINGS.

(a) UNDER THE SECURITIES ACT OF 1933.—Section 8A of the Securities Act of 1933 (15 U.S.C. 77h–1) is amended by adding at the end the following new subsection:

“(g) AUTHORITY TO IMPOSE MONEY PENALTIES.—

“(1) GROUNDS FOR IMPOSING.—In any cease-and-desist proceeding under subsection (a), the Commission may impose a civil penalty on a person if it finds, on the record after notice and opportunity for hearing, that—

“(A) such person—

“(i) is violating or has violated any provision of this title, or any rule or regulation thereunder; or

“(ii) is or was a cause of the violation of any provision of this title, or any rule or regulation thereunder; and

“(B) such penalty is in the public interest.

“(2) MAXIMUM AMOUNT OF PENALTY.—

“(A) FIRST TIER.—The maximum amount of penalty for each act or omission described in paragraph (1) shall be $7,500 for a natural person or $75,000 for any other person.
“(B) SECOND TIER.—Notwithstanding paragraph (A), the maximum amount of penalty for each such act or omission shall be $75,000 for a natural person or $375,000 for any other person if the act or omission described in paragraph (1) involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement.

“(C) THIRD TIER.—Notwithstanding paragraphs (A) and (B), the maximum amount of penalty for each such act or omission shall be $150,000 for a natural person or $725,000 for any other person if—

“(i) the act or omission described in paragraph (1) involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement; and

“(ii) such act or omission directly or indirectly resulted in substantial losses or created a significant risk of substantial losses to other persons or resulted in substantial pecuniary gain to the person who committed the act or omission.

“(3) EVIDENCE CONCERNING ABILITY TO PAY.—In any proceeding in which the Commission
may impose a penalty under this section, a respondent may present evidence of the respondent's ability to pay such penalty. The Commission may, in its discretion, consider such evidence in determining whether such penalty is in the public interest. Such evidence may relate to the extent of such person's ability to continue in business and the collectability of a penalty, taking into account any other claims of the United States or third parties upon such person's assets and the amount of such person's assets.

(b) **UNDER THE SECURITIES EXCHANGE ACT OF 1934.**—Subsection (a) of section 21B of the Securities Exchange Act of 1934 (15 U.S.C. 78u–2(a)) is amended—

(1) by striking "(a) COMMISSION AUTHORITY TO ASSESS MONEY PENALTIES.—In any proceeding" and inserting the following:

"(a) COMMISSION AUTHORITY TO ASSESS MONEY PENALTIES.—

“(1) IN GENERAL.—In any proceeding”;

(2) by redesignating paragraphs (1) through (4) of such subsection as subparagraphs (A) through (D), respectively, and moving such redesignated sub-
paragraphs and the matter following such subpara-
graphs 2 ems to the right; and

(3) by adding at the end of such subsection the
following new paragraph:

“(2) CEASE-AND-DESIST PROCEEDINGS.—In
any proceeding instituted pursuant to section 21C of
this title against any person, the Commission may
impose a civil penalty if it finds, on the record after
notice and opportunity for hearing, that such per-
son—

“(A) is violating or has violated any provi-
sion of this title, or any rule or regulation
thereunder; or

“(B) is or was a cause of the violation of
any provision of this title, or any rule or regula-
tion thereunder.”.

(c) UNDER THE INVESTMENT COMPANY ACT OF
1940.—Paragraph (1) of section 9(d) of the Investment
Company Act of 1940 (15 U.S.C. 80a–9(d)(1)) is amend-
ed—

(1) by striking “(1) AUTHORITY OF COMMI-
SSION.—In any proceeding” and inserting the fol-
lowing:

“(1) AUTHORITY OF COMMISSION.—

“(A) IN GENERAL.—In any proceeding”;

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(2) by redesignating subparagraphs (A) through (C) of such paragraph as clauses (i) through (iii), respectively, and by moving such redesignated clauses and the matter following such subparagraphs 2 ems to the right; and

(3) by adding at the end of such paragraph the following new subparagraph:

“(B) CEASE-AND-DESIST PROCEEDINGS.—

In any proceeding instituted pursuant to subsection (f) against any person, the Commission may impose a civil penalty if it finds, on the record after notice and opportunity for hearing, that such person—

“(i) is violating or has violated any provision of this title, or any rule or regulation thereunder; or

“(ii) is or was a cause of the violation of any provision of this title, or any rule or regulation thereunder.”.

(d) UNDER THE INVESTMENT ADVISERS ACT OF 1940.—Paragraph (1) of section 203(i) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–3(i)(1)) is amended—
(1) by striking “(1) AUTHORITY OF COMMISSION.—In any proceeding” and inserting the following:

“(1) AUTHORITY OF COMMISSION.—

“(A) IN GENERAL.—In any proceeding”;

(2) by redesignating subparagraphs (A) through (D) of such paragraph as clauses (i) through (iv), respectively, and moving such redesignated clauses and the matter following such subparagraphs 2 ems to the right; and

(3) by adding at the end of such paragraph the following new subparagraph:

“(B) CEASE-AND-DESIST PROCEEDINGS.—

In any proceeding instituted pursuant to subsection (k) against any person, the Commission may impose a civil penalty if it finds, on the record after notice and opportunity for hearing, that such person—

“(i) is violating or has violated any provision of this title, or any rule or regulation thereunder; or

“(ii) is or was a cause of the violation of any provision of this title, or any rule or regulation thereunder.”.
SEC. 211. FORMERLY ASSOCIATED PERSONS.

(a) Member or Employee of the Municipal Securities Rulemaking Board.—Section 15B(c)(8) of the Securities Exchange Act of 1934 (15 U.S.C. 78o–4(c)(8)) is amended by striking “any member or employee” and inserting “any person who is, or at the time of the alleged misconduct was, a member or employee”.

(b) Person Associated With a Government Securities Broker or Dealer.—Section 15C of the Securities Exchange Act of 1934 (15 U.S.C. 78o–5) is amended—

(1) in subsection (c)(1)(C), by striking “or seeking to become associated,” and inserting “seeking to become associated, or, at the time of the alleged misconduct, associated or seeking to become associated”;

(2) in subsection (c)(2)(A), by inserting “, seeking to become associated, or, at the time of the alleged misconduct, associated or seeking to become associated” after “any person associated”; and

(3) in subsection (c)(2)(B), by inserting “, seeking to become associated, or, at the time of the alleged misconduct, associated or seeking to become associated” after “any person associated”.

c) Person Associated With a Member of a National Securities Exchange or Registered Securities
ties association.—Section 21(a)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78u(a)(1)) is amended by inserting “, or, as to any act or practice, or omission to act, while associated with a member, formerly associated” after “member or a person associated”.

(d) Participant of a Registered Clearing Agency.—Section 21(a)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78u(a)(1)) is amended by inserting “or, as to any act or practice, or omission to act, while a participant, was a participant,” after “in which such person is a participant.”.

(e) Officer or Director of a Self-Regulatory Organization.—Section 19(h)(4) of the Securities Exchange Act of 1934 (15 U.S.C. 78s(h)(4)) is amended—

(1) by striking “any officer or director” and inserting “any person who is, or at the time of the alleged misconduct was, an officer or director”; and

(2) by striking “such officer or director” and inserting “such person”.

(f) Officer or Director of an Investment Company.—Section 36(a) of the Investment Company Act of 1940 (15 U.S.C. 80a–35(a)) is amended—

(1) by striking “a person serving or acting” and inserting “a person who is, or at the time of the alleged misconduct was, serving or acting”; and
(2) by striking “such person so serves or acts” and inserting “such person so serves or acts, or at the time of the alleged misconduct, so served or acted”.

(g) **Person Associated With a Public Accounting Firm.**—

(1) **Sarbanes-Oxley Act of 2002 Amendment.**—Section 2(a)(9) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7201(9)) is amended by adding at the end the following new subparagraph:

“(C) Investigative and Enforcement Authority.—For purposes of the provisions of sections 3(c), 101(c), 105, and 107(c) and Board or Commission rules thereunder, except to the extent specifically excepted by such rules, the terms defined in subparagraph (A) shall include any person associated, seeking to become associated, or formerly associated with a public accounting firm, except—

“(i) the authority to conduct an investigation of such person under section 105(b) shall apply only with respect to any act or practice, or omission to act, while such person was associated or seeking to become associated with that firm; and
“(ii) the authority to commence a disciplinary proceeding under section 105(c)(1), or impose disciplinary sanctions under section 105(c)(4), against such person shall apply only on—

“(I) the basis of misconduct occurring while such person was associated or seeking to become associated with that firm; or

“(II) on a violation of section 105(b).”.

(2) **Securities Exchange Act of 1934 Amendment.**—Section 21(a)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78u(a)(1)) is amended by striking “or a person associated with such a firm” and inserting “, a person associated with such a firm, or, as to any act, practice, or omission to act, while associated with such firm, a person formerly associated with such a firm”.

(h) **Supervisory Personnel of an Audit Firm.**—Section 105(c)(6) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7215(c)(6)) is amended—

(1) in subparagraph (A), by striking “the supervisory personnel” and inserting “any person who
is, or at the time of the alleged failure reasonably to supervise was, a supervisory person’’;

(2) in subparagraph (A)(i), by inserting after “failed reasonably to supervise” the following: “any person who is, or at the time of the alleged failure, was’’;

(3) in subparagraph (A)(ii), by striking “associated’’;

(4) in subparagraph (B)—

(A) by striking “No associated person’’ and inserting “No current or former supervisory person”; and

(B) by striking “any other person” and inserting “any current or former associated person”; and

(5) in subparagraph (B)(i), by striking “associated’’.

(i) MEMBER OF THE PUBLIC COMPANY ACCOUNTING OVERSIGHT BOARD.—Section 107(d)(3) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7217(d)(3)) is amended by striking “any member” and inserting “any person who is, or at the time of the alleged misconduct was, a member”.

SEC. 212. SHARING PRIVILEGED INFORMATION WITH OTHER AUTHORITIES.


(1) by redesignating subsections (d) and (e) as subsections (e) and (f), respectively;

(2) in subsection (e), as redesignated, by striking “as provided in subsection (e)” and inserting “as provided in subsection (f)”;

(3) by inserting after subsection (e) the following new subsection (d)—

“(d) SHARING PRIVILEGED INFORMATION WITH OTHER AUTHORITIES.—

“(1) PRIVILEGED INFORMATION PROVIDED BY THE COMMISSION.—The Commission shall not be deemed to have waived any privilege applicable to any information by transferring that information to or permitting that information to be used by—

“(A) any agency (as defined in section 6 of title 18, United States Code);

“(B) any foreign securities authority;

“(C) any foreign law enforcement authority; or

“(D) any State securities or law enforcement authority.
“(2) Non-disclosure of privileged information provided to the Commission.—Except as provided in subsection (f), the Commission shall not be compelled to disclose privileged information obtained from any foreign securities authority, or foreign law enforcement authority, if the authority has in good faith determined and represented to the Commission that the information is privileged.

“(3) Non-waiver of privileged information provided to the Commission.—No Federal agency or State securities or law enforcement authority shall be deemed to have waived any privilege applicable to any information by transferring that information to or permitting that information to be used by the Commission.

“(4) Definitions.—For purposes of this subsection:

“(A) The term ‘privilege’ includes any work-product privilege, attorney-client privilege, governmental privilege, or other privilege recognized under Federal, foreign, or State law.

“(B) The term ‘foreign law enforcement authority’ means any foreign authority that is empowered under foreign law to detect, investigate or prosecute potential violations of law.
“(C) The term ‘State securities or law enforcement authority’ means the authority of any State or territory that is empowered under State or territory law to detect, investigate or prosecute potential violations of law.”.

SEC. 213. EXPANDED ACCESS TO GRAND JURY MATERIAL.

(a) In General.—Title VI of the Sarbanes-Oxley Act of 2002 is amended by adding at the end the following new section:

“SEC. 605. ACCESS TO GRAND JURY INFORMATION.

“(a) Disclosure.—

“(1) In general.—Upon motion of an attorney for the government, a court may direct disclosure of matters occurring before a grand jury during an investigation of conduct that may constitute a violation of any provision of the securities laws to the Commission for use in relation to any matter within the jurisdiction of the Commission.

“(2) Substantial need required.—A court may issue an order under paragraph (1) only upon a finding of a substantial need in the public interest.

“(b) Use of matter.—A person to whom a matter has been disclosed under this section shall not use such matter other than for the purpose for which such disclosure was authorized.
“(c) DEFINITIONS.—As used in this section, the terms ‘attorney for the government’ and ‘grand jury information’ have the meanings given to those terms in section 3322 of title 18, United States Code.”.

(b) CONFORMING AMENDMENT.—The table of contents in section 1(b) of the Sarbanes-Oxley Act of 2002 is amended by inserting after the item relating to section 604 the following:

“Sec. 605. Access to grand jury information.”.

SEC. 214. AIDING AND ABETTING STANDARD OF KNOWLEDGE SATISFIED BY RECKLESSNESS.

Section 20(e) of the Securities Exchange Act of 1934 (15 U.S.C. 78t(e)) is amended by inserting “or recklessly” after “knowingly”.

SEC. 215. EXTRATERRITORIAL JURISDICTION OF THE ANTI-FRAUD PROVISIONS OF THE FEDERAL SECURITIES LAWS.

(a) UNDER THE SECURITIES ACT OF 1933.—Section 22 of the Securities Act of 1933 (15 U.S.C. 77v(a)) is amended by adding at the end the following new subsection:

“(c) EXTRATERRITORIAL JURISDICTION.—The jurisdiction of the district courts of the United States and the United States courts of any Territory described under subsection (a) includes violations of section 17(a), and all
suits in equity and actions at law under that section, involv-

“(1) conduct within the United States that constitutes significant steps in furtherance of the violation, even if the securities transaction occurs outside the United States and involves only foreign investors; or

“(2) conduct occurring outside the United States that has a foreseeable substantial effect within the United States.”.

(b) UNDER THE SECURITIES EXCHANGE ACT OF 1934.—Section 27 of the Securities Exchange Act of 1934 (15 U.S.C. 78aa) is amended—

(1) by striking “The district” and inserting the following:

“(a) IN GENERAL.—The district”; and

(2) by inserting at the end the following new subsection:

“(b) EXTRATERRITORIAL JURISDICTION.—The juris-
diction of the district courts of the United States and the United States courts of any Territory or other place sub-
ject to the jurisdiction of the United States described under subsection (a) includes violations of the antifraud provisions of this title, and all suits in equity and actions at law under those provisions, involving—
“(1) conduct within the United States that constitutes significant steps in furtherance of the violation, even if the securities transaction occurs outside the United States and involves only foreign investors; or

“(2) conduct occurring outside the United States that has a foreseeable substantial effect within the United States.”.

(e) Under the Investment Advisers Act of 1940.—Section 214 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–14) is amended—

(1) by striking “The district” and inserting the following:

“(a) IN GENERAL.—The district”; and

(2) by inserting at the end the following new subsection:

“(b) EXTRATERRITORIAL JURISDICTION.—The jurisdiction of the district courts of the United States and the United States courts of any Territory or other place subject to the jurisdiction of the United States described under subsection (a) includes violations of section 206, and all suits in equity and actions at law under that section, involving—

“(1) conduct within the United States that constitutes significant steps in furtherance of the viola-
tion, even if the securities transaction occurs outside
the United States and involves only foreign inves-
tors; or

“(2) conduct occurring outside the United
States that has a foreseeable substantial effect with-
in the United States.”.

SEC. 216. FIDELITY BONDING.

Section 17(g) of the Investment Company Act of
1940 (15 U.S.C. 80a–17(g)) is amended to read as fol-
lows:

“(g) FIDELITY BONDING.—

“(1) IN GENERAL.—The Commission is author-
ized to require that a registered management invest-
ment company provide and maintain a bond against
loss caused by any fraudulent act or theft committed
by any officer or employee of the company, either
alone or in collusion with others, in such form and
amount as the Commission may prescribe by rule,
regulation, or order for the protection of investors.

“(2) DEFINITIONS.—For purposes of this sub-
section, the term ‘officer or employee’ shall include
the officers and employees of the depositor, trustee,
investment adviser, or any other manager of the reg-
istered investment company, and any affiliated per-
son of any such person.”.
SEC. 217. ENHANCED SEC AUTHORITY TO CONDUCT SURVEILLANCE AND RISK ASSESSMENT.

(a) Securities Exchange Act of 1934 Amendments.—Section 17(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78q(b)) is amended by adding at the end the following new paragraph:

“(5) Surveillance and risk assessment.—All persons described in subsection (a) of this section are subject at any time, or from time to time, to such reasonable periodic, special, or other information and document requests by representatives of the Commission as the Commission by rule or order deems necessary or appropriate to conduct surveillance or risk assessments of the securities markets, persons registered with the Commission under this title, or otherwise in furtherance of the purposes of this title.”.

(b) Investment Company Act of 1940 Amendments.—Section 31(b) of the Investment Company Act of 1940 (15 U.S.C. 80a–30(b)) is amended by adding at the end the following new paragraph:

“(4) Surveillance and risk assessment.—All persons described in paragraph (1) are subject at any time, or from time to time, to such reasonable periodic, special, or other information and document requests by representatives of the Commission as the
Commission by rule or order deems necessary or appropriate to conduct surveillance or risk assessments of the securities markets, persons registered with the Commission under this title, or otherwise in furtherance of the purposes of this title.”.

(c) INVESTMENT ADVISERS ACT OF 1940 AMENDMENTS.—Section 204 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–4) is amended by adding at the end the following new subsection:

“(d) SURVEILLANCE AND RISK ASSESSMENT.—All persons described in subsection (a) are subject at any time, or from time to time, to such reasonable periodic, special, or other information and document requests by representatives of the Commission as the Commission by rule or order deems necessary or appropriate to conduct surveillance or risk assessments of the securities markets, persons registered with the Commission under this title, or otherwise in furtherance of the purposes of this title.”.

SEC. 218. INVESTMENT COMPANY EXAMINATIONS.

Section 31(b)(1) of the Investment Company Act of 1940 (15 U.S.C. 80a–30) is amended to read as follows:

“(1) IN GENERAL.—All records of each registered investment company, and each underwriter, broker, dealer, or investment adviser that is a majority-owned subsidiary of such a company, shall be
subject at any time, or from time to time, to such reasonable periodic, special, or other examinations by representatives of the Commission as the Commission deems necessary or appropriate in the public interest or for the protection of investors.”.

SEC. 219. CONTROL PERSON LIABILITY UNDER THE SECURITIES EXCHANGE ACT.

Section 20(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78t(a)) is amended by inserting after “controlled person is liable” the following: “including to the Commission in any action brought under paragraph (1) or (3) of section 21(d),”.

SEC. 220. ENHANCED APPLICATION OF ANTI-FRAUD PROVISIONS.


(1) in section 9—

(A) by striking “registered on a national securities exchange” each place it appears and inserting “other than a government security”;

(B) in subsection (b), by striking “by use of any facility of a national securities exchange,”; and
(C) in subsection (c), by inserting after “unlawful for any” the following: “broker, dealer, or”;

(2) in section 10(a)(1), by striking “registered on a national securities exchange” each place it appears and inserting “other than a government security”; and

(3) in section 15(c)(1)(A), by striking “otherwise than on a national securities exchange of which it is a member”.

TITLE III—COMMISSION FUNDING AND ORGANIZATION

SEC. 301. AUTHORIZATION OF APPROPRIATIONS.

Section 35 of the Securities Exchange Act of 1934 (15 U.S.C. 78kk) is amended to read as follows:

“SEC. 35. AUTHORIZATION OF APPROPRIATIONS.

“In addition to any other funds authorized to be appropriated to the Commission, there are authorized to be appropriated to carry out the functions, powers, and duties of the Commission—

“(1) for fiscal year 2010, $1,115,000,000;
“(2) for fiscal year 2011, $1,300,000,000;
“(3) for fiscal year 2012, $1,500,000,000;
“(4) for fiscal year 2013, $1,750,000,000;
“(5) for fiscal year 2014, $2,000,000,000; and
“(6) for fiscal year 2015, $2,250,000,000.”.

SEC. 302. INVESTMENT ADVISER REGULATION FUNDING.
Section 203 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–3) is amended by adding at the end the following new subsection:

“(l) ANNUAL ASSESSMENT.—

“(1) IN GENERAL.—The Commission shall, in accordance with this subsection, collect from investment advisers required to register with the Commission under this title, fees designed to help recover the cost of inspections and examinations of registered investment advisers conducted by the Commission pursuant to this title.

“(2) FEE PAYMENT REQUIRED.—An investment adviser shall, at the time of registration with the Commission, and each fiscal year thereafter during which such adviser is so registered, pay to the Commission a fair and reasonable fee determined by the Commission. In determining such fee, the Commission shall consider—

“(A) the investment adviser’s size;

“(B) the risk profile of the investment adviser;

“(C) the types of clients of the investment adviser; and
“(D) such other relevant factors as the
Commission determines to be appropriate.

“(3) AMOUNT AND USE OF FEES.—

“(A) MINIMUM AGGREGATE AMOUNT.—
The aggregate amount of fees determined by
the Commission under this subsection for any
fiscal year shall be greater than the amount the
Commission spent on inspections and examina-
tions of registered investment advisers during
the 2009 fiscal year.

“(B) EXCESS FEES.—The Commission
may retain any excess fees collected under this
subsection during a fiscal year for application
towards the costs of inspections and examina-
tions of investment advisers in future fiscal
years.

“(4) REVIEW AND ADJUSTMENT OF FEES.—
The Commission may review fee rates established
pursuant to this section before the end of any fiscal
year and make any appropriate adjustments prior to
collecting any such fee in the following fiscal year.

“(5) PENALTY FEE.—The Commission shall
prescribe by rule or regulation an additional fee to
be assessed as a penalty for late payment of fees re-
quired by this subsection.
“(6) JUDICIAL REVIEW.—Increases or decreases in fees made pursuant to this section shall not be subject to judicial review.”.

SEC. 303. AMENDMENTS TO SECTION 31 OF THE SECURITIES EXCHANGE ACT OF 1934.


(1) in subsection (e)(2), by striking “September 30” and inserting “September 25”;

(2) in subsection (g), by striking “April 30” and inserting “August 31”; and

(3) in subsection (j)—

(A) by striking “5 months” and inserting “4 months”; and

(B) by striking “(including fees collected during such 5-month period and assessments collected under subsection (d) of this section)” and inserting “(including fees estimated to be collected under subsections (b) and (c) prior to the effective date of the uniform adjusted rate and assessments estimated to be collected under subsection (d))”.

SEC. 304. COMMISSION ORGANIZATIONAL STUDY AND REFORM.

(a) Study Required.—
(1) IN GENERAL.—Not later than the end of the 60-day period beginning on the date of the enactment of this Act, the Securities and Exchange Commission (hereinafter in this section referred to as the “SEC”) shall hire an independent consultant of high caliber and with expertise in organizational restructuring to examine the internal operations, structure, funding, and need for comprehensive reform of the SEC, self-regulatory organizations, and other entities relevant to the regulation of securities and the protection of securities investors.

(2) SPECIFIC AREAS FOR STUDY.—The study required under paragraph (1) shall, at a minimum, include the study of—

(A) the possible elimination of unnecessary or redundant units at the SEC;

(B) improving communications between SEC offices and divisions;

(C) the need to put in place a clear chain of command structure, particularly for enforcement examinations and compliance inspections;

(D) the SEC’s hiring policies and personal practices, including—

(i) whether there is a need to further streamline hiring authorities for those who
are not lawyers, accountants, compliance
examiners, or economists;

(ii) whether there is a need for further
pay reforms;

(iii) the experiential mix of SEC em-
ployees and whether such mix efficiently
and effectively permits the SEC to protect
investors; and

(iv) the application of civil service
laws by the SEC; and

(E) the present self-regulatory organiza-
tional structure and a determination of whether
the present reliance on self-regulatory organiza-
tions promotes efficient and effective govern-
ance for the securities markets.

(b) CONSULTANT REPORT.—Not later than the end
of the 180-day period beginning on the date of the enact-
ment of this Act, the independent consultant hired pursuant
to subsection (a)(1) shall issue a report to the SEC
and the Congress containing—

(1) a detailed description of any findings and
conclusions made while carrying out the study re-
quired under subsection (a)(1);

(2) recommendations for legislative, regulatory,
or administrative action that the consultant deter-
mines appropriate to enable the SEC and other entities on which it reports to perform their statutorily or otherwise mandated missions.

(c) SEC REPORT.—Not later than the end of the 6-month period beginning on the date the consultant issues the report under subsection (b), and every 6-months thereafter during the 2-year period following the date on which the consultant issues such report, the SEC shall issue a report to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate describing the SEC’s implementation of the regulatory and administrative recommendations contained in the consultant’s report.

TITLE IV—ADDITIONAL COMMISSION REFORMS

SEC. 401. REGULATION OF SECURITIES LENDING.

Section 10 of the Securities Exchange Act of 1934 (15 U.S.C. 78j) is amended by adding at the end the following new subsection:

“(c) To effect or accept a transaction involving the loan or borrowing of securities in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.”.
SEC. 402. LOST AND STOLEN SECURITIES.


(1) in subparagraph (A), by striking “missing, lost, counterfeit, or stolen securities” and inserting “securities that are missing, lost, counterfeit, stolen, cancelled, or any other category of securities as the Commission, by rule, may prescribe”; and

(2) in subparagraph (B), by striking “or stolen” and inserting “stolen, cancelled, or reported in such other manner as the Commission, by rule, may prescribe”.

SEC. 403. FINGERPRINTING.


(1) by striking “and registered clearing agency,” and inserting “registered clearing agency, registered securities information processor, national securities exchange, and national securities association”; and

(2) by striking “or clearing agency,” and inserting “clearing agency, securities information processor, national securities exchange, or national securities association,”.
SEC. 404. EQUAL TREATMENT OF SELF-REGULATORY ORGANIZATION RULES.

Section 29(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78cc(a)) is amended by striking “an exchange required thereby” and inserting “a self-regulatory organization,”.

SEC. 405. CLARIFICATION THAT SECTION 205 OF THE INVESTMENT ADVISERS ACT OF 1940 DOES NOT APPLY TO STATE-REGISTERED ADVISERS.

Section 205(a) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–5(a)) is amended—

(1) by striking “, unless exempt from registration pursuant to section 203(b),” and inserting “registered or required to be registered with the Commission”; 

(2) by striking “make use of the mails or any means or instrumentality of interstate commerce, directly or indirectly, to”; and 

(3) by striking “to” after “in any way”.


(2) in section 12(k) (15 U.S.C. 78l(k)), by amending paragraph (7) to read as follows:

“(7) DEFINITION.—For purposes of this subsection, the term ‘emergency’ means—

“(A) a major market disturbance characterized by or constituting—

“(i) sudden and excessive fluctuations of securities prices generally, or a substantial threat thereof, that threaten fair and orderly markets; or

“(ii) a substantial disruption of the safe or efficient operation of the national system for clearance and settlement of transactions in securities, or a substantial threat thereof; or

“(B) a major disturbance that substantially disrupts, or threatens to substantially disrupt—

“(i) the functioning of securities markets, investment companies, or any other significant portion or segment of the securities markets; or
“(ii) the transmission or processing of securities transactions.”.

(3) in section 21(h)(2) (15 U.S.C. 78u(h)(2)), by striking “section 18(c) of the Public Utility Holding Company Act of 1935,”.

(b) TRUST INDENTURE ACT OF 1939.—The Trust Indenture Act of 1939 (15 U.S.C. 77aaa et seq.) is amended—

(1) in section 303 (15 U.S.C. 77ccc), by amending paragraph (17) to read as follows:

“(17) The terms ‘Securities Act of 1933’ and ‘Securities Exchange Act of 1934’ shall be deemed to refer, respectively, to such Acts, as amended, whether amended prior to or after the enactment of this title.”;


(3) in section 310 (15 U.S.C. 77jjj), by striking subsection (c) (including the preceding heading);

(4) in section 311 (15 U.S.C. 77kkk) by striking subsection (c);
(5) in section 323(b) (15 U.S.C. 77www(b)), by striking “Securities Act of 1933, or the Securities Exchange Act of 1934, or the Public Utility Holding Company Act of 1935” and inserting “Securities Act of 1933 or the Securities Exchange Act of 1934”; and


(c) INVESTMENT COMPANY ACT OF 1940.—The Investment Company Act of 1940 (15 U.S.C. 80a–1 et seq.) is amended—


(2) in section 3(c) (15 U.S.C. 80a–3(c)), by amending paragraph (8) to read as follows:

“(8) [Repealed]”; and

(3) in section 38(b) (15 U.S.C. 80a–37(b)), by striking “the Public Utility Holding Company Act of 1935,”; and
(4) in section 50 (15 U.S.C. 80a–49), by strik-
ing “the Public Utility Holding Company Act of
1935,”.

(d) INVESTMENT ADVISERS ACT OF 1940.—Section
202(a)(21) of the Investment Advisers Act of 1940 (15
U.S.C. 80b–2(a)(21)) is amended by striking “‘Public
Utility Holding Company Act of 1935’,”.

SEC. 407. PROMOTING TRANSPARENCY IN FINANCIAL RE-
PORTING.

(a) FINDINGS.—Congress finds the following:

(1) Transparent and clear financial reporting is
integral to the continued growth and strength of our
capital markets and the confidence of investors.

(2) The increasing detail and volume of ac-
counting, auditing, and reporting guidance pose a
major challenge.

(3) The complexity of accounting and auditing
standards in the United States has added to the
costs and effort involved in financial reporting.

(b) TESTIMONY REQUIRED ON REDUCING COM-
plexity in Financial Reporting.—The Securities and
Exchange Commission, the Financial Accounting Stand-
ards Board, and the Public Company Accounting Over-
sight Board shall annually provide oral testimony by their
respective Chairpersons or a designee of the Chairperson,
beginning in 2010, and for 5 years thereafter, to the Com-
mittee on Financial Services of the House of Representa-
tives on their efforts to reduce the complexity in financial 
reporting to provide more accurate and clear financial in-
formation to investors, including—

(1) reassessing complex and outdated accounting 
standards;

(2) improving the understandability, consistency, and overall usability of the existing accounting 
and auditing literature;

(3) developing principles-based accounting 
standards;

(4) encouraging the use and acceptance of 
interactive data; and

(5) promoting disclosures in “plain English”.

SEC. 408. UNLAWFUL MARGIN LENDING.

Section 7(c)(1)(A) of the Securities Exchange Act of 
1934 (15 U.S.C. 78g(c)(1)(A)) is amended by striking “; 
and” and inserting “; or”.

SEC. 409. PROTECTING CONFIDENTIALITY OF MATERIALS 

SUBMITTED TO THE COMMISSION.

(a) Securities Exchange Act of 1934.—Section 
78q(j)) is amended to read as follows:
“(j) Authority To Limit Disclosure of Information.—

“(1) In General.—Notwithstanding any other provision of law, the Commission shall not be compelled to disclose any information, documents, records, or reports that relate to an examination of a person subject to or described in this section, including subsection (i)(5)(A), or the financial or operational condition of such persons, or any information supplied to the Commission by any domestic or foreign regulatory agency that relates to the financial or operational condition of such persons, of any associated person of such persons, or any affiliate of an investment bank holding company.

“(2) Certain Exceptions.—Nothing in this subsection shall authorize the Commission to withhold information from the Congress, prevent the Commission from complying with a request for information from any other Federal department or agency or any self-regulatory organization requesting the information for purposes within the scope of its jurisdiction, or prevent the Commission from complying with an order of a court of the United States in an action brought by the United States or the Commission against a person subject to or described
in this section to produce information, documents, records, or reports relating directly to the examination of that person or the financial or operational condition of that person or an associated or affiliated person of that person.

“(3) Treatment under section 552 of Title 5, United States Code.—For purposes of section 552 of title 5, United States Code, this subsection shall be considered a statute described in subsection (b)(3)(B) of that section.

“(4) Certain information to be confidential.—In prescribing regulations to carry out the requirements of this subsection, the Commission shall designate information described in or obtained pursuant to subparagraphs (A), (B), and (C) of subsection (i)(3) as confidential information for purposes of section 24(b)(2) of this title.”.

(b) Investment Company Act of 1940.—Section 31(b) of the Investment Company Act of 1940 (15 U.S.C. 80a–30(b)) is amended by adding at the end the following new paragraph:

“(4) Confidentiality.—

“(A) In general.—Notwithstanding any other provision of law, the Commission shall not be compelled to disclose any information, docu-
ments, records, or reports that relate to an examination of a person subject to or described in this section.

“(B) CERTAIN EXCEPTIONS.—Nothing in this subsection shall authorize the Commission to withhold information from the Congress, prevent the Commission from complying with a request for information from any other Federal department or agency requesting the information for purposes within the scope of its jurisdiction, or prevent the Commission from complying with an order of a court of the United States in an action brought by the United States or the Commission against a person subject to or described in this section to produce information, documents, records, or reports relating directly to the examination of that person or the financial or operational condition of that person or an associated or affiliated person of that person.

“(C) TREATMENT UNDER SECTION 552 OF TITLE 5, UNITED STATES CODE.—For purposes of section 552 of title 5, United States Code, this subsection shall be considered a statute de-
scribed in subsection (b)(3)(B) of that section.”.

(c) INVESTMENT ADVISERS ACT OF 1940.—Section 204 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–4) is amended by adding at the end the following new subsection:

“(d) CONFIDENTIALITY.—

“(1) IN GENERAL.—Notwithstanding any other provision of law, the Commission shall not be compelled to disclose any information, documents, records, or reports that relate to an examination of a person subject to or described in this section.

“(2) CERTAIN EXCEPTIONS.—Nothing in this subsection shall authorize the Commission to withhold information from Congress, prevent the Commission from complying with a request for information from any other Federal department or agency requesting the information for purposes within the scope of its jurisdiction, or prevent the Commission from complying with an order of a court of the United States in an action brought by the United States or the Commission against a person subject to or described in this section to produce information, documents, records, or reports relating directly to the examination of that person or the financial or
operational condition of that person or an associated
or affiliated person of that person.

“(3) TREATMENT UNDER SECTION 552 OF
TITLE 5, UNITED STATES CODE.—For purposes of
section 552 of title 5, United States Code, this sub-
section shall be considered a statute described in
subsection (b)(3)(B) of that section.”.

SEC. 410. TECHNICAL CORRECTIONS.

(a) SECURITIES ACT OF 1933.—The Securities Act
of 1933 (15 U.S.C. 77a et seq.) is amended—

(1) in section 3(a)(4) (15 U.S.C. 77c(a)(4)), by
striking “individual;” and inserting “individual,”;

(2) in section 18(b)(1)(C) (15 U.S.C.
77r(b)(1)(C)), by striking “is a security” and insert-
ing “a security”;

77r(e)(2)(B)(i)), by striking “State, or” and insert-
ing “State or”;

(4) in section 19(d)(6)(A) (15 U.S.C.
77s(d)(6)(A)), by striking “in paragraph (1) of (3)”
and inserting “in paragraph (1) or (3)”; and

2(e)(1)(B)(ii)), by striking “business entity;” and in-
serting “business entity,”.

(1) in section 2(1)(a) (15 U.S.C. 78b(1)(a)), by striking “affected” and inserting “effected”;


(3) in section 3(g) (15 U.S.C. 78c(g)), by striking “company, account person, or entity” and inserting “company, account, person, or entity”;


(5) in section 13(b)(1) (15 U.S.C. 78m(b)(1)), by striking “earning statement” and inserting “earnings statement”;


(A) by striking the sentence beginning “The order granting” and ending “from such membership.” in subparagraph (B); and

(B) by inserting such sentence in the matter following such subparagraph after “are satisfied.”;
(7) in section 15 (15 U.S.C. 78o), by redesignating subsection (i), as added by section 303(f) of the Commodity Futures Modernization Act of 2000 (114 Stat. 2763A–455), as subsection (j);


   (A) by redesignating clauses (i) and (ii) as subparagraphs (A) and (B), respectively;

   (B) by striking the sentence beginning “The order granting” and ending “from such membership.” in such subparagraph (B), as redesignated; and

   (C) by inserting such sentence in the matter following such redesignated subparagraph after “are satisfied.”;

(9) in section 16(a)(2)(C) (15 U.S.C. 78p(a)(2)(C)), by striking “section 206(b)” and inserting “section 206B”;

(10) in section 17(b)(1)(B) (15 U.S.C. 78q(b)(1)(B)), by striking “15A(k) gives” and inserting “15A(k), give”; and

(11) in section 21C(c)(2) (15 U.S.C. 78u–3(c)(2)), by striking “paragraph (1) subsection” and inserting “Paragraph (1)”.

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(c) Trust Indenture Act of 1939.—The Trust Indenture Act of 1939 (15 U.S.C. 77aaa et seq.) is amended—

(1) in section 304(b) (15 U.S.C. 77ddd(b)), by striking “section 2 of such Act” and inserting “section 2(a) of such Act”;

(2) in section 313(a)(4) (15 U.S.C. 77mmm(a)(4)) by striking “subsection 311” and inserting “section 311(b)”; and

(3) in section 317(a)(1) (15 U.S.C. 77qqq(a)(1)), by striking “(1),” and inserting “(1)”.

(d) Investment Company Act of 1940.—The Investment Company Act of 1940 (15 U.S.C. 80a–1 et seq.) is amended—

(1) in section 2(a)(19) (15 U.S.C. 80a–2(a)(19)) by striking “clause (vi)” both places it appears in the last two sentences and inserting “clause (vii)”;

(2) in section 9(b)(4)(B) (15 U.S.C. 80a–9(b)(4)(B)), by inserting “or” after the semicolon at the end;

(3) in section 12(d)(1)(J) (15 U.S.C. 80a–12(d)(1)(J)), by striking “any provision of this subsection” and inserting “any provision of this paragraph”;

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(4) in section 13(a)(3) (15 U.S.C. 80a–13(a)(3)), by inserting “or” after the semicolon at the end;

(5) in section 17(f)(4) (15 U.S.C. 80a–17(f)(4)), by striking “No such member” and inserting “No member of a national securities exchange”; 

(6) in section 17(f)(6) (15 U.S.C. 80a–17(f)(6)), by striking “company may serve” and inserting “company, may serve”; and 


(A) by striking “paragraph (1) of section 205” and inserting “section 205(a)(1)”;

(B) by striking “clause (A) or (B) of that section” and inserting “section 205(b)(1) or (2)”.

(e) INVESTMENT ADVISERS ACT OF 1940.—The Investment Advisers Act of 1940 (15 U.S.C. 80b–1 et seq.) is amended—

(1) in each of the following sections, by striking “principal business office” or “principal place of business” (whichever and wherever it appears) and inserting “principal office and place of business”: sections 203(c)(1)(A), 203(k)(4)(B), 213(a), 222(b), and 222(e) (15 U.S.C. 80b–3(c)(1)(A), 80b–
3(k)(4)(B), 80b–13(a), 80b–18a(b), and 80b–18a(e)); and

(2) in section 206(3) (15 U.S.C. 80b–6(3)), by inserting “or” after the semicolon at the end.

SEC. 411. MUNICIPAL SECURITIES.

Section 15B(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78o–4(b)) is amended—

(1) by amending paragraph (1) to read as follows:

“(1) COMPOSITION OF THE MUNICIPAL SECURITIES RULEMAKING BOARD.—Not later than the end of the 120-day period beginning on the date of the enactment of this paragraph, the Municipal Securities Rulemaking Board (hereinafter in this section referred to as the ‘Board’), shall be composed of members which shall perform the duties set forth in this section and shall consist of—

“(A) a majority of public representatives, at least one of whom shall be representative of investors in municipal securities and at least one of whom shall be representative of issuers of municipal securities (which members are hereinafter referred to as ‘public representatives’);
“(B) at least one individual who is representative of municipal securities brokers and municipal securities dealers which are not banks or subsidiaries or departments or divisions of banks (which members are hereinafter referred to as ‘broker-dealer representatives’); and

“(C) at least one individual who is representative of municipal securities dealers which are banks or subsidiaries or departments or divisions of banks (which members are hereinafter referred to as ‘bank representatives’);”;

and

(2) by amending paragraph (2)(B) to read as follows:

“(B) Establish fair procedures for the nomination and election of members of the Board and assure fair representation in such nominations and elections. Such rules—

“(i) shall establish requirements regarding the independence of public representatives;

“(ii) shall provide that the number of public representatives of the Board shall at all times exceed the total number of
broker-dealer representatives and bank representatives;

“(iii) shall specify the term members shall serve; and

“(iv) may increase or decrease the number of members which shall constitute the whole Board, but in no case may such number be an even number.”.

SEC. 412. INTERESTED PERSON DEFINITION.


(1) by striking clauses (v) and (vi);

(2) by inserting after clause (iv) the following new clause:

“(v) any natural person who is a member of a class of persons who the Commission, by rule or regulation, determines are unlikely to exercise an appropriate degree of independence as a result of—

“(I) a material business or professional relationship with such company or any affiliated person of such company; or
“(II) a close familial relationship
with any natural person who is an af-
filiated person of such company;”;

(3) by redesignating clause (vii) as clause (vi);
and

(4) in clause (vi), as redesignated, by striking
“two completed fiscal years” and inserting “five
completed fiscal years”.

SEC. 413. RULEMAKING AUTHORITY TO PROTECT REDEEM-
ING INVESTORS.

Section 22(e) of the Investment Company Act of
1940 (15 U.S.C. 80a–22(e)) is amended by adding at the
end the following: “The Commission may, by rules and
regulations, limit the extent to which a registered open-
end investment company may own, hold, or invest in il-
liquid securities or other illiquid property”.

TITLE V—SECURITIES INVESTOR
PROTECTION ACT AMENDMENTS

SEC. 501. INCREASING THE MINIMUM ASSESSMENT PAID BY
SIPC MEMBERS.

Section 4(d)(1)(C) of the Securities Investor Protec-
by striking “$150 per annum” and inserting the following:
“0.02 percent of the gross revenues of such member of
SIPC”.

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SEC. 502. INCREASING THE BORROWING LIMIT ON TREASURY LOANS.

Section 4(h) of the Securities Investor Protection Act of 1970 (15 U.S.C. 78ddd(h)) is amended by striking “of not to exceed $1,000,000,000” and inserting “not to exceed $2,500,000,000”.

SEC. 503. INCREASING THE CASH LIMIT OF PROTECTION.


(1) in subsection (a)(1), by striking “$100,000 for each such customer” and inserting “the standard maximum cash advance amount for each such customer, as determined in accordance with subsection (d)”; and

(2) by adding the following new subsections:

“(d) STANDARD MAXIMUM CASH ADVANCE AMOUNT DEFINED.—For purposes of this section, the term ‘standard maximum cash advance amount’ means $250,000, as such amount may be adjusted after March 31, 2010, as provided under subsection (e).

“(e) INFLATION ADJUSTMENT.—

“(1) IN GENERAL.—No later than April 1, 2010, and every 5 years thereafter, and subject to the approval of the Commission as provided under section 3(e)(2), the Board of Directors of SIPC shall determine whether an inflation adjustment to the
standard maximum cash advance amount is appropriate. If the Board of Directors of SIPC determines such an adjustment is appropriate, then the standard maximum cash advance amount shall be an amount equal to—

“(A) $250,000 multiplied by,

“(B) the ratio of the annual value of the Personal Consumption Expenditures Chain-Type Price Index (or any successor index there-to), published by the Department of Commerce, for the calendar year preceding the year in which such determination is made, to the published annual value of such index for the calendar year preceding the year in which this subsection was enacted.

The index values used in calculations under this paragraph shall be, as of the date of the calculation, the values most recently published by the Department of Commerce.

“(2) Rounding.—If the standard maximum cash advance amount determined under paragraph (1) for any period is not a multiple of $10,000, the amount so determined shall be rounded down to the nearest $10,000.
“(3) **Publication and report to the Congress.**—Not later than April 5 of any calendar year in which a determination is required to be made under paragraph (1)—

“(A) the Commission shall publish in the Federal Register the standard maximum cash advance amount; and

“(B) the Board of Directors of SIPC shall submit a report to the Congress containing stating the standard maximum cash advance amount.

“(4) **Implementation period.**—Any adjustment to the standard maximum cash advance amount shall take effect on January 1 of the year immediately succeeding the calendar year in which such adjustment is made.

“(5) **Inflation adjustment considerations.**—In making any determination under paragraph (1) to increase the standard maximum cash advance amount, the Board of Directors of SIPC shall consider—

“(A) the overall state of the fund and the economic conditions affecting members of SIPC;
“(B) the potential problems affecting members of SIPC; and

“(C) such other factors as the Board of Directors of SIPC may determine appropriate.”.

SEC. 504. SIPC AS TRUSTEE IN SIPA LIQUIDATION PROCEEDINGS.


(1) by striking “SIPC has determined that the liabilities of the debtor to unsecured general creditors and to subordinated lenders appear to aggregate less than $750,000 and that”; and

(2) by striking “five hundred” and inserting “five thousand”.

SEC. 505. INSIDERS INELIGIBLE FOR SIPC ADVANCES.

Section 9(a)(4) of the Securities Investor Protection Act of 1970 (15 U.S.C. 78fff–3(a)(4)) is amended by inserting “an insider (as such term is defined under section 101(31) of title 11, United States Code),” after “or net profits of the debtor,”.

SEC. 506. ELIGIBILITY FOR DIRECT PAYMENT PROCEDURE.


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SEC. 507. INCREASING THE FINE FOR PROHIBITED ACTS UNDER SIPA.

Section 14(c) of the Securities Investor Protection Act of 1970 (15 U.S.C. 78jjj(c)) is amended—

(1) in paragraph (1), by striking “$50,000” and inserting “$250,000”; and

(2) in paragraph (2), by striking “$50,000” and inserting “$250,000”.

SEC. 508. PENALTY FOR MISREPRESENTATION OF SIPC MEMBERSHIP OR PROTECTION.

Section 14 of the Securities Investor Protection Act of 1970 (15 U.S.C. 78jjj) is amended by adding at the end the following new subsection:

“(d) MISREPRESENTATION OF SIPC MEMBERSHIP OR PROTECTION.—

“(1) IN GENERAL.—Any person who falsely represents by any means (including, without limitation, through the Internet or any other medium of mass communication), with actual knowledge of the falsity of the representation and with an intent to deceive or cause injury to another, that such person, or another person, is a member of SIPC or that any person or account is protected or is eligible for protection under this Act or by SIPC, shall be liable for any damages caused thereby and shall be fined not
more than $250,000 or imprisoned for not more than five years.

“(2) INTERNET SERVICE PROVIDERS.—Any Internet service provider that, on or through a system or network controlled or operated by the Internet service provider, transmits, routes, provides connections for, or stores any material containing any misrepresentation of the kind prohibited in paragraph (1) shall be liable for any damages caused thereby, including damages suffered by SIPC, if the Internet service provider—

“(A) has actual knowledge that the material contains a misrepresentation of the kind prohibited in paragraph (1), or

“(B) in the absence of actual knowledge, is aware of facts or circumstances from which it is apparent that the material contains a misrepresentation of the kind prohibited in paragraph (1), and

upon obtaining such knowledge or awareness, fails to act expeditiously to remove, or disable access to, the material.

“(3) INJUNCTIONS.—Any court having jurisdiction of a civil action arising under this Act may grant temporary injunctions and final injunctions on
such terms as the court deems reasonable to prevent or restrain any violation of paragraph (1) or (2). Any such injunction may be served anywhere in the United States on the person enjoined, shall be operative throughout the United States, and shall be enforceable, by proceedings in contempt or otherwise, by any United States court having jurisdiction over that person. The clerk of the court granting the injunction shall, when requested by any other court in which enforcement of the injunction is sought, transmit promptly to the other court a certified copy of all papers in the case on file in such clerk’s office.”.

SEC. 509. LIMITATIONS ON CUSTOMER STATUS.

Section 16(2) of the Securities Investor Protection Act of 1970 (15 U.S.C. 78lll(2)) is amended—

(1) in subparagraph (A), by striking “or”;

(2) in subparagraph (B), by striking the period at the end and inserting “; or”; and

(3) by adding at the end the following new sub-

paragraph:

“(C) any person to the extent such person has a claim for cash or securities arising out of a repurchase agreement or reverse repurchase agreement (as such terms are defined under section 47 of title 11, United States Code).”.
SEC. 510. FUTURES HELD IN A PORTFOLIO MARGIN SECURITIES ACCOUNT PROTECTION.

(a) SIPC ADVANCES.—Section 9(a)(1) of the Securities Investor Protection Act of 1970 (15 U.S.C. 78fff–3(a)(1)) is amended by inserting “or options on commodity futures contracts” after “claim for securities”.

(b) DEFINITIONS.—Section 16 of such Act (15 U.S.C. 78lll) is amended—

(1) by amending paragraph (2) to read as follows:

“(2) CUSTOMER.—

“(A) IN GENERAL.—The term ‘customer’ of a debtor means any person (including any person with whom the debtor deals as principal or agent) who has a claim on account of securities received, acquired, or held by the debtor in the ordinary course of its business as a broker or dealer from or for the securities accounts of such person for safekeeping, with a view to sale, to cover consummated sales, pursuant to purchases, as collateral, security, or for purposes of effecting transfer.

“(B) INCLUDED PERSONS.—The term ‘customer’ includes—
“(i) any person who has deposited cash with the debtor for the purpose of purchasing securities; and

“(ii) any person who has a claim against the debtor for, or a claim against the debtor arising out of sales or conversions of, cash, securities, futures contracts, or options on futures contracts received, acquired, or held in a portfolio margining account carried as a securities account pursuant to a portfolio margining program approved by the Commission.

“(C) EXCLUDED PERSONS.—The term ‘customer’ does not include—

“(i) any person to the extent that the claim of such person arises out of transactions with a foreign subsidiary of a member of SIPC; or

“(ii) any person to the extent that such person has a claim for cash or securities which by contract, agreement, or understanding, or by operation of law, is part of the capital of the debtor, or is subordinated to the claims of any or all creditors of the debtor, notwithstanding that some
ground exists for declaring such contract, agreement, or understanding void or voidable in a suit between the claimant and the debtor.”;

(2) in paragraph (4), by inserting after the first sentence the following new sentence: “In the case of portfolio margining accounts of customers that are carried as securities accounts pursuant to a portfolio margining program approved by the Commission, such term shall also include futures contracts and options on futures contracts received, acquired, or held by or for the account of a debtor from or for such accounts, and the proceeds thereof.”;

(3) in paragraph (9), by inserting before “Such term” in the matter following subparagraph (L) the following: “The term includes revenues earned by a broker or dealer in connection with transactions in customers’ portfolio margining accounts carried as securities accounts pursuant to a portfolio margining program approved by the Commission.”; and

(4) in paragraph (11)—

(A) by amending subparagraph (A) to read as follows:

“(A) calculating the sum which would have been owed by the debtor to such customer if the
debtor had liquidated, by sale or purchase on
the filing date—

“(i) all securities positions of such
customer (other than customer name secu-
rities reclaimed by such customer); and

“(ii) all positions in futures contracts
and options on futures contracts held in a
portfolio margining account carried as a
securities account pursuant to a portfolio
margining program approved by the Com-
mission; minus”; and

(B) by inserting before “In determining”
in the matter following subparagraph (C) the
following: “A claim for a commodity futures
contract received, acquired, or held in a port-
folio margining account pursuant to a portfolio
margining program approved by the Commiss-
ion, or a claim for a security futures contract,
shall be deemed to be a claim for the mark-to-
market (variation) payments due with respect
to such contract as of the filing date, and such
claim shall be treated as a claim for cash.”.
SEC. 511. RISK-BASED PREMIUMS.

Section 4(c) of the Securities Investor Protection Act of 1970 (15 U.S.C. 78ddd(c)) is amended by adding at the end the following new paragraph:

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(4) RISK-BASED ASSESSMENT SYSTEM.—

(A) IN GENERAL.—Assessments made pursuant to paragraph (2) shall be made using a risk-based assessment system.

(B) RISK-BASED ASSESSMENT SYSTEM DEFINED.—For purposes of this paragraph, the term ‘risk-based assessment system’ means a system for calculating a member’s assessment based on—

(i) the probability that the fund will incur a loss with respect to the member, taking into consideration the risks attributable to—

(I) the size of the member;

(II) the number of enforcement and compliance actions taken against such member during the previous 5-year period by SIPC, the Commission, State securities regulators, and other Federal and State financial regulators;
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“(III) the number of years such member has been in operation; and

“(IV) any other factors SIPC determines are relevant to assessing such probability;

“(ii) the likely amount of any such loss; and

“(iii) the revenue needs of the fund.

“(C) SEPARATE ASSESSMENT SYSTEMS.—SIPC may establish separate risk-based assessment systems for large and small members of SIPC.

“(D) MODIFICATIONS TO THE RISK-BASED ASSESSMENT SYSTEM ALLOWED ONLY AFTER NOTICE AND COMMENT.—In revising or modifying the risk-based assessment system at any time after the date of the enactment of this paragraph, SIPC may implement such revisions or modification in final form only after notice and opportunity for comment.”.

SEC. 512. BUDGETARY TREATMENT OF COMMISSION LOANS TO SIPC.

Section 4(g) of the Securities Investor Protection Act of 1970 (15 U.S.C. 78ddd(g)) is amended by adding at the end the following: “Any loan made by the Commission
to SIPC under this subsection shall not be considered to result in a new direct loan obligation or a new loan guarantee commitment for purposes of section 504 of the Federal Credit Reform Act of 1990.”

**TITLE VI—SARBANES-OXLEY ACT AMENDMENTS**

**SEC. 601. PUBLIC COMPANY ACCOUNTING OVERSIGHT BOARD OVERSIGHT OF AUDITORS OF NON-PUBLIC BROKERS AND DEALERS.**

(a) **DEFINITIONS.**—Title I of the Sarbanes-Oxley Act of 2002 is amended by adding at the end the following new section:

“**SEC. 110. DEFINITIONS.**

“For the purposes of this title, and notwithstanding section 2:

“(1) **AUDIT.**—The term ‘audit’ means an examination of the financial statements, reports, documents, or notices, of any issuer, broker, or dealer by an independent public accounting firm in accordance with the rules of the Board or the Commission (or, for the period preceding the adoption of applicable rules of the Board under section 103, in accordance with then-applicable generally accepted auditing and related standards for such purposes), for the pur-
pose of expressing an opinion on such financial
statements, reports, documents, or notices.

“(2) Audit report.—The term ‘audit report’
means a document, report, notice, or other record—

“(A) prepared following an audit per-
formed for purposes of compliance by an issuer,
broker, or dealer with the requirements of the
securities laws; and

“(B) in which a public accounting firm ei-
ther—

“(i) sets forth the opinion of that firm
regarding a financial statement, report, no-
tice, other document, procedures, or con-
trols; or

“(ii) asserts that no such opinion can
be expressed.

“(3) Professional standards.—The term
‘professional standards’ means—

“(A) accounting principles that are—

“(i) established by the standard set-
ting body described in section 19(b) of the
Securities Act of 1933, as amended by this
Act, or prescribed by the Commission
under section 19(a) of that Act (15 U.S.C.
17a(s)) or section 13(b) of the Securities
Exchange Act of 1934 (15 U.S.C. 78a(m));

and

“(ii) relevant to audit reports for particular issuers, brokers, or dealers, or dealt with in the quality control system of a particular registered public accounting firm;

and

“(B) auditing standards, standards for attestation engagements, quality control policies and procedures, ethical and competency standards, and independence standards (including rules implementing title II) that the Board or the Commission determines—

“(i) relate to the preparation or issuance of audit reports for issuers, brokers, or dealers; and

“(ii) are established or adopted by the Board under section 103(a), or are promulgated as rules of the Commission.

“(4) BROKER.—The term ‘broker’ means a broker (as such term is defined in section 3(a)(4) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(4))) that is required to file a balance sheet, income statement, or other financial statement under section 17(e)(1)(A) of such Act (15 U.S.C.
78q(e)(1)(A)), where such balance sheet, income statement, or financial statement is required to be certified by a registered public accounting firm.

“(5) DEALER.—The term ‘dealer’ means a dealer (as such term is defined in section 3(a)(5) of the Securities Exchange Act of 1934 (15 U.S.C. 78e(a)(5))) that is required to file a balance sheet, income statement, or other financial statement under section 17(e)(1)(A) of such Act (15 U.S.C. 78q(e)(1)(A)), where such balance sheet, income statement, or financial statement is required to be certified by a registered public accounting firm.

“(6) SELF-REGULATORY ORGANIZATION.—The term ‘self-regulatory organization’ has the same meaning as in section 3(a)(26) of the Securities Exchange Act of 1934 (15 U.S.C. 78e(a)(26)).”.

(b) ESTABLISHMENT AND ADMINISTRATION OF THE PUBLIC COMPANY ACCOUNTING OVERSIGHT BOARD.—Section 101 of such Act is amended—

(1) by striking “issuers” each place it appears and inserting “issuers, brokers, and dealers”; and

(2) in subsection (a), by striking “public companies” and inserting “companies”; and
(3) in subsection (a), by striking “for companies the securities of which are sold to, and held by and for, public investors”.

(e) Registration With the Board.—Section 102 of such Act is amended—

(1) by striking “Beginning 180 days after the date of the determination of the Commission under section 101(d), it” and inserting “It”;

(2) in subsections (a) and (b)(2)(G), by striking “issuer” each place it appears and inserting “issuer, broker, or dealer”; and

(3) by striking “issuers” and inserting “issuers, brokers, and dealers”.

(d) Auditing and Independence.—Section 103(a) of such Act is amended—

(1) in paragraph (1), by striking “and such ethics standards” and inserting “such ethics standards, and such independence standards”;

(2) in paragraph (2)(A)(iii), by striking “describe in each audit report” and inserting “in each audit report for an issuer, describe”; and

(3) in paragraph (2)(B)(i), by striking “issuers” and inserting “issuers, brokers, and dealers”.
(c) Inspections of Registered Public Accounting Firms.—Section 104 of such Act is amended—

(1) in subsection (a), by striking “issuers” and inserting “issuers, brokers, and dealers”;

(2) in subsection (b)(1)(A)—

(A) by striking “audit reports” and inserting “audit reports on annual financial statements”; and

(B) by striking “and”;

(3) in subsection (b)(1)(B)—

(A) by striking “audit reports” and inserting “audit reports on annual financial statements”; and

(B) by striking the period on the end and inserting “; and”;

(4) by adding at the end of subsection (b)(1)

the following new subparagraph:

“(C) with respect to each registered public accounting firm that regularly provides audit reports and is not described under subparagraph (A) or (B), on a basis to be determined by the Board, by rule, consistent with the public interest and protection of investors.”.
(f) Investigations and Disciplinary Proceedings.—Section 105(c)(7)(B) of such Act is amended—

(1) by striking “any issuer” each place it appears and inserting “any issuer, broker, or dealer”;

and

(2) by striking “an issuer under this subsection” and inserting “a registered public accounting firm under this subsection”.

(g) Foreign Public Accounting Firms.—Section 106 of such Act is amended—

(1) by striking “issuer” and inserting “issuer, broker, or dealer”; and

(2) by striking “issuers” and inserting “issuers, brokers, or dealers”.

(h) Funding.—Section 109 of such Act is amended—

(1) in subsection (c)(2), by striking “subsection (i)” and inserting “subsection (j)”;

(2) in subsection (d)(2), by striking “allowing for differentiation among classes of issuers, as appropriate” and inserting “and among brokers and dealers that are not issuers, in accordance with subsection (h), and allowing for differentiation among...
classes of issuers and brokers and dealers, as appropriate’’;

(3) in subsection (d), by inserting at the end the following new paragraph:

“(3) Brokers and Dealers.—The rules of the Board under paragraph (1) shall provide that the allocation, assessment, and collection by the Board (or an agent appointed by the Board) of the fee established under paragraph (1) with respect to brokers and dealers shall not begin until the first day of the first full fiscal year beginning after the date of the enactment of this paragraph.”;

(4) by redesignating subsections (h), (i), and (j) as subsections (i), (j), and (k), respectively; and

(5) by inserting after subsection (g) the following new subsection:

“(h) Allocation of Accounting Support Fees Among Brokers and Dealers.—

“(1) In General.—Any amount due from brokers and dealers that are not issuers (or a particular class of such brokers and dealers) under this section to fund the budget of the Board shall be allocated among and payable by such brokers and dealers (or such brokers and dealers in a particular class, as applicable). A broker or dealer’s allocation shall be in
proportion to the broker or dealer’s net capital com-
pared to the total net capital of all brokers and deal-
ers that are not issuers, in accordance with the rules
of the Board.

“(2) Obligation to pay.—Every broker or
dealer shall pay the share of a reasonable annual ac-
counting support fee or fees allocated to such broker
or dealer under this section.”.

(i) Referral of Investigations to a Self-regu-
latory Organization.—Section 105(b)(4)(B) of the
Sarbanes-Oxley Act of 2002 is amended—

(1) by redesignating clauses (ii) and (iii) as
clauses (iii) and (iv), respectively; and

(2) by inserting after clause (i) the following
new clause:

“(ii) to a self-regulatory organization,
in the case of an investigation that con-
cerns an audit report for a broker or deal-
er that is subject to the jurisdiction of
such self-regulatory organization;”.

(j) Use of Documents Related to an Inspection
or Investigation.—Section 105(b)(5)(B)(ii) of
such Act is amended—

(1) in subclause (III), by striking “and”;
(2) in subclause (IV), by striking the comma and inserting “; and”; and

(3) by inserting after subclause (IV) the following new subclause:

“(V) a self-regulatory organization, with respect to an audit report for a broker or dealer that is subject to the jurisdiction of such self-regulatory organization,”.

SEC. 602. FOREIGN REGULATORY INFORMATION SHARING.

(a) Definition.—Section 2(a) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7201(a)) is amended by inserting after paragraph (16) the following:

“(17) Foreign auditor oversight authority.—The term ‘foreign auditor oversight authority’ means any governmental body or other entity empowered by a foreign government to conduct inspections of public accounting firms or otherwise to administer or enforce laws related to the regulation of public accounting firms.”.

(b) Availability To Share Information.—Section 105(b)(5) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7215(b)(5)) is amended by adding at the end the following:
“(C) Availability to foreign oversight authorities.—When in the Board’s discretion it is necessary to accomplish the purposes of this Act or to protect investors, and without the loss of its status as confidential and privileged in the hands of the Board, all information referred to in subparagraph (A) that relates to a public accounting firm within the inspection authority, or other regulatory or law enforcement jurisdiction, of a foreign auditor oversight authority may be made available to the foreign auditor oversight authority if the foreign auditor oversight authority provides such assurances of confidentiality as the Board determines appropriate.”.

(e) Conforming Amendment.—Section 105(b)(5)(A) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7215(b)(5)(A)) is amended by striking “subparagraph (B)” and inserting “subparagraphs (B) and (C)”.

SEC. 603. EXPANSION OF AUDIT INFORMATION TO BE PRODUCED AND EXCHANGED WITH FOREIGN COUNTERPARTS.

Section 106 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7216) is amended—
(1) by amending subsection (b) to read as follows:

“(b) PRODUCTION OF DOCUMENTS.—

“(1) PRODUCTION BY FOREIGN FIRMS.—If a foreign public accounting firm issues an audit report, performs audit work, conducts interim reviews, or performs material services, with respect to any issuer or its subsidiaries, the foreign public accounting firm shall produce its audit documentation and all other documents related to any such audit work or interim review to the Commission or the Board when requested by the Commission or the Board in connection with any investigation and the foreign public accounting firm shall be subject to the jurisdiction of the courts of the United States for purposes of enforcement of any request of such documents.

“(2) OTHER PRODUCTION.—Any registered public accounting firm that relies, in whole or in part, on the work of a foreign public accounting firm in issuing an audit report, performing audit work, conducting an interim review, or performing material services, with respect to any issuer or its subsidiaries, shall—
“(A) produce the foreign public accounting firm’s audit documentation and all other documents related to any such work in response to a request for production by the Commission or the Board; and

“(B) secure the agreement of any foreign public accounting firm to such production, as a condition of its reliance on the work of that foreign public accounting firm.”;

(2) by redesignating subsection (d) as subsection (f); and

(3) by inserting after subsection (c) the following new subsections:

“(d) SERVICE OF REQUESTS OR PROCESS.—Any foreign public accounting firm that performs work for a domestic registered public accounting firm shall furnish to the domestic firm a written irrevocable consent and power of attorney that designates the domestic firm as an agent upon whom may be served any process, pleadings, or other papers in any action brought to enforce this section. Any foreign firm that issues an audit report, performs audit work, performs interim reviews, or performs material services, shall designate to the Commission or the Board an agent in the United States upon whom may be served any process, pleading, or other papers in any action brought
to enforce this section or any request by the Commission or the Board under this section.

“(e) SANCTIONS.—A willful refusal to comply, in whole in or in part, with any request by the Commission or the Board under this section, shall be a violation of this Act.”.

SEC. 604. FAIR FUND AMENDMENTS.

Section 308 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7246(a)) is amended—

(1) by amending subsection (a) to read as follows:

“(a) CIVIL PENALTIES TO BE USED FOR THE RELIEF OF VICTIMS.—If in any judicial or administrative action brought by the Commission under the securities laws (as such term is defined in section 3(a)(47) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(47)), the Commission obtains a civil penalty against any person for a violation of such laws or the rules and regulations thereunder, the amount of such civil penalty shall, on the motion or at the direction of the Commission, be added to and become part of a disgorgement fund or other fund established for the benefit of the victims of such violation.”;

(2) in subsection (b), by—
(A) striking “for a disgorgement fund described in subsection (a)” and inserting “for a disgorgement fund or other fund described in subsection (a)”;

(B) striking “in the disgorgement fund” and inserting “in such fund”; and

(3) by striking subsection (e).

SEC. 605. WHISTLEBLOWER PROTECTION AGAINST RETALIATION BY A SUBSIDIARY OF AN ISSUER.

Section 1514A of title 18, United States Code, is amended by inserting “including any subsidiary or affiliate whose financial information is included in the consolidated financial statements of such company,” after “(15 U.S.C. 78o(d)),”.