

112TH CONGRESS
2D SESSION

S. 3416

To enhance civil penalties under the Federal securities laws, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 23, 2012

Mr. REED (for himself and Mr. GRASSLEY) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

A BILL

To enhance civil penalties under the Federal securities laws, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Stronger Enforcement
5 of Civil Penalties Act of 2012”.

6 **SEC. 2. UPDATED CIVIL MONEY PENALTIES FOR SECURI-**
7 **TIES LAWS VIOLATIONS.**

8 (a) SECURITIES ACT OF 1933.—

1 (1) MONEY PENALTIES IN ADMINISTRATIVE AC-
2 TIONS.—Section 8A(g)(2) of the Securities Act of
3 1933 (15 U.S.C. 77h–1(g)(2)) is amended—

4 (A) in subparagraph (A)—

5 (i) by striking “\$7,500” and inserting
6 “\$10,000”; and

7 (ii) by striking “\$75,000” and insert-
8 ing “\$100,000”;

9 (B) in subparagraph (B)—

10 (i) by striking “\$75,000” and insert-
11 ing “\$100,000”; and

12 (ii) by striking “\$375,000” and in-
13 serting “\$500,000”; and

14 (C) by amending subparagraph (C) to read
15 as follows:

16 “(C) THIRD TIER.—Notwithstanding sub-
17 paragraphs (A) and (B), the amount of penalty
18 for each such act or omission shall not exceed
19 the greater of—

20 “(i) \$1,000,000 for a natural person
21 or \$10,000,000 for any other person;

22 “(ii) 3 times the gross amount of pe-
23 cuniary gain to the person who committed
24 the act or omission; or

1 “(iii) the amount of losses incurred by
 2 victims as a result of the act or omission,
 3 if—

4 “(I) the act or omission described
 5 in paragraph (1) involved fraud, de-
 6 ceit, manipulation, or deliberate or
 7 reckless disregard of a regulatory re-
 8 quirement; and

9 “(II) such act or omission di-
 10 rectly or indirectly resulted in—

11 “(aa) substantial losses or
 12 created a significant risk of sub-
 13 stantial losses to other persons;
 14 or

15 “(bb) substantial pecuniary
 16 gain to the person who com-
 17 mitted the act or omission.”.

18 (2) MONEY PENALTIES IN CIVIL ACTIONS.—

19 Section 20(d)(2) of the Securities Act of 1933 (15
 20 U.S.C. 77t(d)(2)) is amended—

21 (A) in subparagraph (A)—

22 (i) by striking “\$5,000” and inserting
 23 “\$10,000”; and

24 (ii) by striking “\$50,000” and insert-
 25 ing “\$100,000”;

1 (B) in subparagraph (B)—

2 (i) by striking “\$50,000” and insert-
3 ing “\$100,000”; and

4 (ii) by striking “\$250,000” and in-
5 serting “\$500,000”; and

6 (C) in subparagraph (C), by striking
7 “greater of (i) \$100,000 for a natural person or
8 \$500,000 for any other person, or (ii) the gross
9 amount of pecuniary gain to such defendant as
10 a result of the violation” and inserting the fol-
11 lowing: “greater of—

12 “(i) \$1,000,000 for a natural person
13 or \$10,000,000 for any other person;

14 “(ii) 3 times the gross amount of pe-
15 cuniary gain to such defendant as a result
16 of the violation; or

17 “(iii) the amount of losses incurred by
18 victims as a result of the violation”.

19 (b) SECURITIES EXCHANGE ACT OF 1934.—

20 (1) MONEY PENALTIES IN CIVIL ACTIONS.—

21 Section 21(d)(3)(B) of the Securities Exchange Act
22 of 1934 (15 U.S.C. 78u(d)(3)(B)) is amended—

23 (A) in clause (i)—

24 (i) by striking “\$5,000” and inserting
25 “\$10,000”; and

1 (ii) by striking “\$50,000” and insert-
2 ing “\$100,000”;

3 (B) in clause (ii)—

4 (i) by striking “\$50,000” and insert-
5 ing “\$100,000”; and

6 (ii) by striking “\$250,000” and in-
7 serting “\$500,000”; and

8 (C) in clause (iii), by striking “greater of
9 (I) \$100,000 for a natural person or \$500,000
10 for any other person, or (II) the gross amount
11 of pecuniary gain to such defendant as a result
12 of the violation” and inserting the following:

13 “greater of—

14 “(I) \$1,000,000 for a natural
15 person or \$10,000,000 for any other
16 person;

17 “(II) 3 times the gross amount of
18 pecuniary gain to such defendant as a
19 result of the violation; or

20 “(III) the amount of losses in-
21 curred by victims as a result of the
22 violation”.

23 (2) MONEY PENALTIES IN ADMINISTRATIVE AC-
24 TIONS.—Section 21B(b) of the Securities Exchange
25 Act of 1934 (15 U.S.C. 78u-2(b)) is amended—

1 (A) in paragraph (1)—

2 (i) by striking “\$5,000” and inserting
3 “\$10,000”; and

4 (ii) by striking “\$50,000” and insert-
5 ing “\$100,000”;

6 (B) in paragraph (2)—

7 (i) by striking “\$50,000” and insert-
8 ing “\$100,000”; and

9 (ii) by striking “\$250,000” and in-
10 sserting “\$500,000”; and

11 (C) by amending paragraph (3) to read as
12 follows:

13 “(3) THIRD TIER.—Notwithstanding para-
14 graphs (1) and (2), the amount of penalty for each
15 such act or omission shall not exceed the greater
16 of—

17 “(A) \$1,000,000 for a natural person or
18 \$10,000,000 for any other person;

19 “(B) 3 times the gross amount of pecu-
20 niary gain to the person who committed the act
21 or omission; or

22 “(C) the amount of losses incurred by vic-
23 tims as a result of the act or omission, if—

24 “(i) the act or omission described in
25 subsection (a) involved fraud, deceit, ma-

1 nipulation, or deliberate or reckless dis-
2 regard of a regulatory requirement; and

3 “(ii) such act or omission directly or
4 indirectly resulted in substantial losses or
5 created a significant risk of substantial
6 losses to other persons or resulted in sub-
7 stantial pecuniary gain to the person who
8 committed the act or omission.”.

9 (c) INVESTMENT COMPANY ACT OF 1940.—

10 (1) MONEY PENALTIES IN ADMINISTRATIVE AC-
11 TIONS.—Section 9(d)(2) of the Investment Company
12 Act of 1940 (15 U.S.C. 80a-9(d)(2)) is amended—

13 (A) in subparagraph (A)—

14 (i) by striking “\$5,000” and inserting
15 “\$10,000”; and

16 (ii) by striking “\$50,000” and insert-
17 ing “\$100,000”;

18 (B) in subparagraph (B)—

19 (i) by striking “\$50,000” and insert-
20 ing “\$100,000”; and

21 (ii) by striking “\$250,000” and in-
22 serting “\$500,000”; and

23 (C) by amending subparagraph (C) to read
24 as follows:

1 “(C) THIRD TIER.—Notwithstanding sub-
2 paragraphs (A) and (B), the amount of penalty
3 for each such act or omission shall not exceed
4 the greater of—

5 “(i) \$1,000,000 for a natural person
6 or \$10,000,000 for any other person;

7 “(ii) 3 times the gross amount of pe-
8 cuniary gain to the person who committed
9 the act or omission; or

10 “(iii) the amount of losses incurred by
11 victims as a result of the act or omission,
12 if—

13 “(I) the act or omission described
14 in paragraph (1) involved fraud, de-
15 ceit, manipulation, or deliberate or
16 reckless disregard of a regulatory re-
17 quirement; and

18 “(II) such act or omission di-
19 rectly or indirectly resulted in sub-
20 stantial losses or created a significant
21 risk of substantial losses to other per-
22 sons or resulted in substantial pecu-
23 niary gain to the person who com-
24 mitted the act or omission.”.

1 (2) MONEY PENALTIES IN CIVIL ACTIONS.—
2 Section 42(e)(2) of the Investment Company Act of
3 1940 (15 U.S.C. 80a-41(e)(2)) is amended—

4 (A) in subparagraph (A)—

5 (i) by striking “\$5,000” and inserting
6 “\$10,000”; and

7 (ii) by striking “\$50,000” and insert-
8 ing “\$100,000”;

9 (B) in subparagraph (B)—

10 (i) by striking “\$50,000” and insert-
11 ing “\$100,000”; and

12 (ii) by striking “\$250,000” and in-
13 serting “\$500,000”; and

14 (C) in subparagraph (C), by striking
15 “greater of (i) \$100,000 for a natural person or
16 \$500,000 for any other person, or (ii) the gross
17 amount of pecuniary gain to such defendant as
18 a result of the violation” and inserting the fol-
19 lowing: “greater of—

20 “(i) \$1,000,000 for a natural person
21 or \$10,000,000 for any other person;

22 “(ii) 3 times the gross amount of pe-
23 cuniary gain to such defendant as a result
24 of the violation; or

1 “(iii) the amount of losses incurred by
2 victims as a result of the violation”.

3 (d) INVESTMENT ADVISERS ACT OF 1940.—

4 (1) MONEY PENALTIES IN ADMINISTRATIVE AC-
5 TIONS.—Section 203(i)(2) of the Investment Advis-
6 ers Act of 1940 (15 U.S.C. 80b-3(i)(2)) is amend-
7 ed—

8 (A) in subparagraph (A)—

9 (i) by striking “\$5,000” and inserting
10 “\$10,000”; and

11 (ii) by striking “\$50,000” and insert-
12 ing “\$100,000”;

13 (B) in subparagraph (B)—

14 (i) by striking “\$50,000” and insert-
15 ing “\$100,000”; and

16 (ii) by striking “\$250,000” and in-
17 serting “\$500,000”; and

18 (C) by amending subparagraph (C) to read
19 as follows:

20 “(C) THIRD TIER.—Notwithstanding sub-
21 paragraphs (A) and (B), the amount of penalty
22 for each such act or omission shall not exceed
23 the greater of—

24 “(i) \$1,000,000 for a natural person
25 or \$10,000,000 for any other person;

1 “(ii) 3 times the gross amount of pe-
2 cuniary gain to the person who committed
3 the act or omission; or

4 “(iii) the amount of losses incurred by
5 victims as a result of the act or omission,
6 if—

7 “(I) the act or omission described
8 in paragraph (1) involved fraud, de-
9 ceit, manipulation, or deliberate or
10 reckless disregard of a regulatory re-
11 quirement; and

12 “(II) such act or omission di-
13 rectly or indirectly resulted in sub-
14 stantial losses or created a significant
15 risk of substantial losses to other per-
16 sons or resulted in substantial pecu-
17 niary gain to the person who com-
18 mitted the act or omission.”.

19 (2) MONEY PENALTIES IN CIVIL ACTIONS.—
20 Section 209(e)(2) of the Investment Advisers Act of
21 1940 (15 U.S.C. 80b-9(e)(2)) is amended—

22 (A) in subparagraph (A)—

23 (i) by striking “\$5,000” and inserting
24 “\$10,000”; and

1 (ii) by striking “\$50,000” and insert-
2 ing “\$100,000”;

3 (B) in subparagraph (B)—

4 (i) by striking “\$50,000” and insert-
5 ing “\$100,000”; and

6 (ii) by striking “\$250,000” and in-
7 serting “\$500,000”; and

8 (C) in subparagraph (C), by striking
9 “greater of (i) \$100,000 for a natural person or
10 \$500,000 for any other person, or (ii) the gross
11 amount of pecuniary gain to such defendant as
12 a result of the violation” and inserting the fol-
13 lowing: “greater of—

14 “(i) \$1,000,000 for a natural person
15 or \$10,000,000 for any other person;

16 “(ii) 3 times the gross amount of pe-
17 cuniary gain to such defendant as a result
18 of the violation; or

19 “(iii) the amount of losses incurred by
20 victims as a result of the violation”.

21 **SEC. 3. PENALTIES FOR RECIDIVISTS.**

22 (a) SECURITIES ACT OF 1933.—

23 (1) CEASE-AND-DESIST PROCEEDINGS.—Section
24 8A(g)(2) of the Securities Act of 1933 (15 U.S.C.

1 77h-1(g)(2)) is amended by adding at the end the
2 following:

3 “(D) FOURTH TIER.—Notwithstanding
4 subparagraphs (A), (B), and (C), the maximum
5 amount of penalty for each such act or omission
6 shall be 3 times the otherwise applicable
7 amount in such subparagraphs if, within the 5-
8 year period preceding such act or omission, the
9 person who committed the act or omission was
10 criminally convicted for securities fraud or be-
11 came subject to a judgment or order imposing
12 monetary, equitable, or administrative relief in
13 any Commission action alleging fraud by that
14 person.”.

15 (2) INJUNCTIONS AND PROSECUTION OF OF-
16 FENSES.—Section 20(d)(2) of the Securities Act of
17 1933 (15 U.S.C. 77t(d)(2)) is amended by adding at
18 the end the following:

19 “(D) FOURTH TIER.—Notwithstanding
20 subparagraphs (A), (B), and (C), the maximum
21 amount of penalty for each such violation shall
22 be 3 times the otherwise applicable amount in
23 such subparagraphs if, within the 5-year period
24 preceding such violation, the defendant was
25 criminally convicted for securities fraud or be-

1 came subject to a judgment or order imposing
2 monetary, equitable, or administrative relief in
3 any Commission action alleging fraud by that
4 defendant.”.

5 (b) SECURITIES EXCHANGE ACT OF 1934.—

6 (1) CIVIL ACTIONS.—Section 21(d)(3)(B) of the
7 Securities Exchange Act of 1934 (15 U.S.C.
8 78u(d)(3)(B)) is amended by adding at the end the
9 following:

10 “(iv) FOURTH TIER.—Notwith-
11 standing clauses (i), (ii), and (iii), the
12 maximum amount of penalty for each such
13 violation shall be 3 times the otherwise ap-
14 plicable amount in such clauses if, within
15 the 5-year period preceding such violation,
16 the defendant was criminally convicted for
17 securities fraud or became subject to a
18 judgment or order imposing monetary, eq-
19 uitable, or administrative relief in any
20 Commission action alleging fraud by that
21 defendant.”.

22 (2) ADMINISTRATIVE PROCEEDINGS.—Section
23 21B(b) of the Securities Exchange Act of 1934 (15
24 U.S.C. 78u-2(b)) is amended by adding at the end
25 the following:

1 “(4) FOURTH TIER.—Notwithstanding para-
2 graphs (1), (2), and (3), the maximum amount of
3 penalty for each such act or omission shall be 3
4 times the otherwise applicable amount in such para-
5 graphs if, within the 5-year period preceding such
6 act or omission, the person who committed the act
7 or omission was criminally convicted for securities
8 fraud or became subject to a judgment or order im-
9 posing monetary, equitable, or administrative relief
10 in any Commission action alleging fraud by that per-
11 son.”.

12 (c) INVESTMENT COMPANY ACT OF 1940.—

13 (1) INELIGIBILITY OF CERTAIN UNDERWRITERS
14 AND AFFILIATES.—Section 9(d)(2) of the Invest-
15 ment Company Act of 1940 (15 U.S.C. 80a-9(d)(2))
16 is amended by adding at the end the following:

17 “(D) FOURTH TIER.—Notwithstanding
18 subparagraphs (A), (B), and (C), the maximum
19 amount of penalty for each such act or omission
20 shall be 3 times the otherwise applicable
21 amount in such subparagraphs if, within the 5-
22 year period preceding such act or omission, the
23 person who committed the act or omission was
24 criminally convicted for securities fraud or be-
25 came subject to a judgment or order imposing

1 monetary, equitable, or administrative relief in
2 any Commission action alleging fraud by that
3 person.”.

4 (2) ENFORCEMENT.—Section 42(e)(2) of the
5 Investment Company Act of 1940 (15 U.S.C. 80a–
6 41(e)(2)) is amended by adding at the end the fol-
7 lowing:

8 “(D) FOURTH TIER.—Notwithstanding
9 subparagraphs (A), (B), and (C), the maximum
10 amount of penalty for each such violation shall
11 be 3 times the otherwise applicable amount in
12 such subparagraphs if, within the 5-year period
13 preceding such violation, the defendant was
14 criminally convicted for securities fraud or be-
15 came subject to a judgment or order imposing
16 monetary, equitable, or administrative relief in
17 any Commission action alleging fraud by that
18 defendant.”.

19 (d) INVESTMENT ADVISERS ACT OF 1940.—The In-
20 vestment Advisers Act of 1940 (15 U.S.C. 80b–1 et seq.)
21 is amended—

22 (1) in section 203(i)(2) (15 U.S.C. 80b–
23 3(i)(2)), by adding at the end the following:

24 “(D) FOURTH TIER.—Notwithstanding
25 subparagraphs (A), (B), and (C), the maximum

1 amount of penalty for each such act or omission
2 shall be 3 times the otherwise applicable
3 amount in such subparagraphs if, within the 5-
4 year period preceding such act or omission, the
5 person who committed the act or omission was
6 criminally convicted for securities fraud or be-
7 came subject to a judgment or order imposing
8 monetary, equitable, or administrative relief in
9 any Commission action alleging fraud by that
10 person.”; and

11 (2) in section 209(e)(2) (15 U.S.C. 80b-
12 9(e)(2)) by adding at the end the following:

13 “(D) FOURTH TIER.—Notwithstanding
14 subparagraphs (A), (B), and (C), the maximum
15 amount of penalty for each such violation shall
16 be 3 times the otherwise applicable amount in
17 such subparagraphs if, within the 5-year period
18 preceding such violation, the defendant was
19 criminally convicted for securities fraud or be-
20 came subject to a judgment or order imposing
21 monetary, equitable, or administrative relief in
22 any Commission action alleging fraud by that
23 defendant.”.

1 **SEC. 4. VIOLATIONS OF INJUNCTIONS AND BARS.**

2 (a) SECURITIES ACT OF 1933.—Section 20(d) of the
3 Securities Act of 1933 (15 U.S.C. 77t(d)) is amended—

4 (1) in paragraph (1), by inserting after “the
5 rules or regulations thereunder,” the following: “a
6 Federal court injunction or a bar obtained or en-
7 tered by the Commission under this title,”; and

8 (2) by amending paragraph (4) to read as fol-
9 lows:

10 “(4) SPECIAL PROVISIONS RELATING TO A VIO-
11 LATION OF AN INJUNCTION OR CERTAIN ORDERS.—

12 “(A) IN GENERAL.—Each separate viola-
13 tion of an injunction or order described in sub-
14 paragraph (B) shall be a separate offense, ex-
15 cept that in the case of a violation through a
16 continuing failure to comply with such injunc-
17 tion or order, each day of the failure to comply
18 with the injunction or order shall be deemed a
19 separate offense.

20 “(B) INJUNCTIONS AND ORDERS.—Sub-
21 paragraph (A) shall apply with respect to any
22 action to enforce—

23 “(i) a Federal court injunction ob-
24 tained pursuant to this title;

25 “(ii) an order entered or obtained by
26 the Commission pursuant to this title that

1 bars, suspends, places limitations on the
2 activities or functions of, or prohibits the
3 activities of, a person; or

4 “(iii) a cease-and-desist order entered
5 by the Commission pursuant to section
6 8A.”.

7 (b) SECURITIES EXCHANGE ACT OF 1934.—Section
8 21(d)(3) of the Securities Exchange Act of 1934 (15
9 U.S.C. 78u(d)(3)) is amended—

10 (1) in subparagraph (A), by inserting after “the
11 rules or regulations thereunder,” the following: “a
12 Federal court injunction or a bar obtained or en-
13 tered by the Commission under this title,”; and

14 (2) by amending subparagraph (D) to read as
15 follows:

16 “(D) SPECIAL PROVISIONS RELATING TO A
17 VIOLATION OF AN INJUNCTION OR CERTAIN OR-
18 DERS.—

19 “(i) IN GENERAL.—Each separate vio-
20 lation of an injunction or order described
21 in clause (ii) shall be a separate offense,
22 except that in the case of a violation
23 through a continuing failure to comply
24 with such injunction or order, each day of

1 the failure to comply with the injunction or
2 order shall be deemed a separate offense.

3 “(ii) INJUNCTIONS AND ORDERS.—
4 Clause (i) shall apply with respect to an
5 action to enforce—

6 “(I) a Federal court injunction
7 obtained pursuant to this title;

8 “(II) an order entered or ob-
9 tained by the Commission pursuant to
10 this title that bars, suspends, places
11 limitations on the activities or func-
12 tions of, or prohibits the activities of,
13 a person; or

14 “(III) a cease-and-desist order
15 entered by the Commission pursuant
16 to section 21C.”.

17 (c) INVESTMENT COMPANY ACT OF 1940.—Section
18 42(e) of the Investment Company Act of 1940 (15 U.S.C.
19 80a–41(e)) is amended—

20 (1) in paragraph (1), by inserting after “the
21 rules or regulations thereunder,” the following: “a
22 Federal court injunction or a bar obtained or en-
23 tered by the Commission under this title,”; and

24 (2) by amending paragraph (4) to read as fol-
25 lows:

1 “(4) SPECIAL PROVISIONS RELATING TO A VIO-
2 LATION OF AN INJUNCTION OR CERTAIN ORDERS.—

3 “(A) IN GENERAL.—Each separate viola-
4 tion of an injunction or order described in sub-
5 paragraph (B) shall be a separate offense, ex-
6 cept that in the case of a violation through a
7 continuing failure to comply with such injunc-
8 tion or order, each day of the failure to comply
9 with the injunction or order shall be deemed a
10 separate offense.

11 “(B) INJUNCTIONS AND ORDERS.—Sub-
12 paragraph (A) shall apply with respect to any
13 action to enforce—

14 “(i) a Federal court injunction ob-
15 tained pursuant to this title;

16 “(ii) an order entered or obtained by
17 the Commission pursuant to this title that
18 bars, suspends, places limitations on the
19 activities or functions of, or prohibits the
20 activities of, a person; or

21 “(iii) a cease-and-desist order entered
22 by the Commission pursuant to section
23 9(f).”.

1 (d) INVESTMENT ADVISERS ACT OF 1940.—Section
2 209(e) of the Investment Advisers Act of 1940 (15 U.S.C.
3 80b–9(e)) is amended—

4 (1) in paragraph (1), by inserting after “the
5 rules or regulations thereunder,” the following: “a
6 Federal court injunction or a bar obtained or en-
7 tered by the Commission under this title,”; and

8 (2) by amending paragraph (4) to read as fol-
9 lows:

10 “(4) SPECIAL PROVISIONS RELATING TO A VIO-
11 LATION OF AN INJUNCTION OR CERTAIN ORDERS.—

12 “(A) IN GENERAL.—Each separate viola-
13 tion of an injunction or order described in sub-
14 paragraph (B) shall be a separate offense, ex-
15 cept that in the case of a violation through a
16 continuing failure to comply with such injunc-
17 tion or order, each day of the failure to comply
18 with the injunction or order shall be deemed a
19 separate offense.

20 “(B) INJUNCTIONS AND ORDERS.—Sub-
21 paragraph (A) shall apply with respect to any
22 action to enforce—

23 “(i) a Federal court injunction ob-
24 tained pursuant to this title;

1 “(ii) an order entered or obtained by
2 the Commission pursuant to this title that
3 bars, suspends, places limitations on the
4 activities or functions of, or prohibits the
5 activities of, a person; or

6 “(iii) a cease-and-desist order entered
7 by the Commission pursuant to section
8 203(k).”.

○