111TH CONGRESS
2d Session

HOUSE OF REPRESENTATIVES

REPT. 111–687
Part 1

INVESTOR PROTECTION ACT OF 2009

DECEMBER 16, 2010.—Ordered to be printed

Mr. FRANK of Massachusetts, from the Committee on Financial Services, submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 3817]

[Including cost estimate of the Congressional Budget Office]

The Committee on Financial Services, to whom was referred the bill (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, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

CONTENTS

99–006

AMENDMENT

The amendment is as follows:
Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

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

SEC. 2. TABLE OF CONTENTS.

The table of contents for this Act is as follows:

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—

“(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 subsections:

“(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.”.

SEC. 103. ESTABLISHMENT OF A FIDUCIARY DUTY FOR BROKERS, DEALERS, AND INVESTMENT ADVISERS, AND HARMONIZATION OF REGULATION.

(a) IN GENERAL.—

(1) SECURITIES EXCHANGE ACT OF 1934.—Section 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) STANDARD 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, when providing personalized investment advice about securities 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 Advisers Act of 1940. The receipt of compensation based on commission or other standard compensation for the sale of securities shall not, in and of itself, be considered a violation of such standard applied to a broker or dealer.

“(2) DISCLOSURE OF RANGE OF PRODUCTS OFFERED.—Where a broker or dealer sells only proprietary or other limited range of products, as determined by the Commission, the Commission shall by rule require that such broker or dealer provide notice to each retail customer and obtain the consent or acknowledgment of the customer. The sale of only proprietary or other limited range of products by a broker or dealer shall not, in and of itself, be considered a violation of the standard set forth in paragraph (1).

“(3) RETAIL CUSTOMER DEFINED.—For purposes of this subsection, the term ‘retail customer’ means a natural person, or the legal representative of such natural person, who—

“(A) receives personalized investment advice about securities 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, including any material conflicts of interest; and

"(2) examine and, where appropriate, promulgate rules prohibiting or restricting certain sales practices, conflicts of interest, and compensation schemes for brokers, dealers, and investment advisers that the Commission deems contrary to the public interest and the protection 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 subsections:

"(f) STANDARD OF CONDUCT.—

"(1) IN GENERAL.—The Commission shall promulgate rules to provide that the standard of conduct for all brokers, dealers, and investment advisers, when providing personalized investment advice about securities 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. In accordance with such rules, any material conflicts of interest shall be disclosed and may be consented to by the customer. Such rules shall provide that such standard of conduct shall be no less stringent than the standard applicable to investment advisers under section 206(1) and (2) of this Act when providing personalized investment advice about securities, except the Commission shall not ascribe a meaning to the term 'customer' that would include an investor in a private fund managed by an investment adviser, where such private fund has entered into an advisory contract with such adviser. The receipt of compensation based on commission or fees shall not, in and of itself, be considered a violation of such standard applied to a broker, dealer, or investment adviser.

"(2) RETAIL CUSTOMER DEFINED.—For purposes of this subsection, the term 'retail customer' means a natural person, or the legal representative of such natural person, who—

"(A) receives personalized investment advice about securities 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, including any material conflicts of interest; and

"(2) examine and, where appropriate, promulgate rules prohibiting or restricting certain sales practices, conflicts of interest, and compensation schemes for brokers, dealers, and investment advisers that the Commission deems contrary to the public interest and the protection of investors.".

(b) HARMONIZATION OF ENFORCEMENT.—

(1) SECURITIES EXCHANGE ACT OF 1934.—Section 15 of the Securities Exchange Act of 1934, as amended by subsection (a)(1), is further amended by adding at the end the following new subsection:

"(m) HARMONIZATION OF ENFORCEMENT.—The enforcement authority of the Commission with respect to violations of the standard of conduct applicable to a broker or dealer providing personalized investment advice about securities to a retail customer shall include—

"(1) the enforcement authority of the Commission with respect to such violations provided under this Act, and

"(2) the enforcement authority of the Commission with respect to violations of the standard of conduct applicable to an investment advisor under the Investment Advisers Act of 1940, including the authority to impose sanctions for such violations, and

the Commission shall seek to prosecute and sanction violators of the standard of conduct applicable to a broker or dealer providing personalized investment advice about securities to a retail customer under this Act to same extent as the Commission prosecutes and sanctions violators of the standard of conduct applicable to an investment advisor under the Investment Advisers Act of 1940.".

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

"(h) HARMONIZATION OF ENFORCEMENT.—The enforcement authority of the Commission with respect to violations of the standard of conduct applicable to an investment adviser shall include—

"(1) the enforcement authority of the Commission with respect to such violations provided under this Act, and

"(2) the enforcement authority of the Commission with respect to violations of the standard of conduct applicable to a broker or dealer providing personalized investment advice about securities to a retail customer under the Securities Exchange Act of 1934, including the authority to impose sanctions for such violations, and

the Commission shall seek to prosecute and sanction violators of the standard of conduct applicable to an investment advisor under this Act to same extent as the Commission prosecutes and sanctions violators of the standard of conduct applicable to a broker or dealer providing personalized investment advice about securities to a retail customer under the Securities Exchange Act of 1934.".

SEC. 104. COMMISSION STUDY ON DISCLOSURE TO RETAIL CUSTOMERS BEFORE PURCHASE OF PRODUCTS OR SERVICES.

(a) STUDY REQUIRED.—Prior to proposing any rules or regulations pursuant to subsection (b)(1) regarding the manner in which investment products or services are sold or provided in the United States to retail customers or the information that must be provided to retail customers prior to the purchase of such products or services, and within 180 days after the date of the enactment of this Act, the Securities and Exchange Commission shall publish a study that examines—

(1) the nature of a "retail customer", taking into consideration the definition in section 15(k) of the Securities Exchange Act of 1934 (15 U.S.C. 78o), as amended by section 103 of this Act;

(2) the range of products and services sold or provided to retail customers, and the sellers or providers of such products and services, that are within the Commission's jurisdiction;

(3) how such products and services are sold or provided to retail customers, the fees charged for such products and services, and the conflicts of interest that may arise during the sales process or provision of services;

(4) information that retail customers should receive prior to purchasing each product or service, and the appropriate person or entity to provide such information; and

(5) ways to ensure that, where possible, reasonably similar products and services are subject to similar regulatory treatment, including with respect to information that must be provided to retail customers prior to the purchase of such products or services and how such information is provided.

(b) RULEMAKING.—

(1) Notwithstanding any other provision of the Securities Act of 1933 (15 U.S.C. 77a et seq.) or the Investment Company Act of 1940 (15 U.S.C. 80a–1 et seq.), following completion of the study required by subsection (a), the Commission is authorized to promulgate rules to require that the appropriate persons or entities provide designated documents or information to retail customers prior to the purchase of identified investment products or services. Any such rules shall—

(A) take into account the findings of the study conducted pursuant to subsection (a);

(B) take into consideration, to the extent possible, the need for such documents and information to be consistent and comparable across investment products or services sold or provided to retail customers; and

(C) reduce, to the extent possible, disruptions to the purchase process for investment products and services sold or provided to retail customers, by means such as permitting required disclosures to be made via the Internet.

(2) Notwithstanding paragraph (1), the Commission is authorized to promulgate rules in connection with—

(A) the implementation of section 103; and

(B) disclosure to retail customers other than in connection with the purchase of investment products or services.

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 registered 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 16(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78p(a)) is amended—

(1) in paragraph (1), by striking "(and, if such security is registered on a national securities exchange, also with the exchange)"; and

(2) in paragraph (2)(B), by inserting after "officer" 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 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.

"(2) 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 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.".

SEC. 107. STUDY ON ENHANCING INVESTMENT ADVISOR EXAMINATIONS.

(a) STUDY REQUIRED.—

(1) IN GENERAL.—The Commission shall review and analyze the need for enhanced examination and enforcement resources for investment advisers.

(2) AREAS OF CONSIDERATION.—The study required by this subsection shall examine—

(A) the number and frequency of examinations of investment advisers by the Commission over the 5 years preceding the date of the enactment of this Act;

(B) the extent to which having Congress authorize the Commission to designate one or more self-regulatory organizations to augment the Commission's efforts in overseeing investment advisers would improve the frequency of examinations of investment advisers; and

(C) current and potential approaches to examining the investment advisory activities of dually registered broker-dealers and investment advisers or affiliated broker-dealers and investment advisers.

(b) REPORT REQUIRED.—The Commission shall report its findings to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate, not later than 180 days after the date of enactment of this Act, and shall use such findings to revise its rules and regulations, as necessary. The report shall include a discussion of regulatory or legislative steps that are recommended or that may be necessary to address concerns identified in the study.

SEC. 108. GAO STUDY OF FINANCIAL PLANNING.

(a) STUDY REQUIRED.—The Comptroller General of the United States shall conduct a study on the regulation and oversight of financial planning. The study shall consider—

(1) the unique role of financial planners in providing comprehensive advice in investment planning, income tax planning, education planning, retirement planning, estate planning, risk management, and other areas with respect to the management of financial resources; and

(2) any gaps in the regulation of financial planners given existing State and Federal regulation of financial planning activities and the need to provide related consumer protections for such financial planning activities.

(b) REPORT.—Not later than the end of the 180-day period beginning on the date of the enactment of this Act, the Comptroller General of the United States shall submit to the Congress a report containing the findings and determinations made by the Comptroller General in carrying out the study required under subsection (a), including recommendations for the appropriate regulation of, or standards for, financial planners as a profession and how such regulations or standards should be established.

TITLE II—ENFORCEMENT AND REMEDIES

SEC. 201. AUTHORITY TO RESTRICT MANDATORY PRE-DISPUTE 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 subsection:

"(n) 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, the rules and regulations thereunder, 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, the rules and regulations thereunder, 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. COMPTROLLER GENERAL STUDY TO REVIEW SECURITIES ARBITRATION SYSTEM.

(a) STUDY.—The Comptroller General of the United States shall conduct a study to review—

(1) the costs to parties of an arbitration proceeding using the arbitration system operated by the Financial Industry Regulatory Authority and overseen by the Securities and Exchange Commission as compared to litigation;

(2) the percentage of recovery of the total amount of a claim in an arbitration proceeding using the arbitration system operated by the Financial Industry Regulatory Authority and overseen by the Securities and Exchange Commission; and

(3) other additional issues as may be raised during the course of the study conducted under this subsection.

(b) REPORT.—Not later than 1 year after the date of enactment of this Act, the Comptroller General of the United States shall submit to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate a report on the results of the study required by subsection (a), including in such report recommendations for improvements to the arbitration system referenced in such subsection.

SEC. 203. WHISTLEBLOWER PROTECTION.

(a) IN GENERAL.—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 success 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, the Public Company Accounting Oversight Board, 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.

"(c) 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 established in the Treasury of the United States a fund to be known as the 'Securities and Exchange Commission Investor Protection Fund' (referred to in this section as the 'Fund').

"(2) USE OF FUND.—The Fund shall be available to the Commission, without further appropriation or fiscal year limitation, for the following purposes:

"(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 administrative action brought by the Commission under the securities laws that is not added to a disgorgement fund or other fund pursuant to section 308 of the Sarbanes-Oxley Act of 2002 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 or other fund pursuant to section 308 of the Sarbanes-Oxley Act of 2002 that is not distributed to the victims for whom the disgorgement fund or other 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 maturities suitable to the needs of the Fund as determined by the Commission.

"(C) INTEREST AND PROCEEDS CREDITED.—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 Representatives a report on—

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

"(B) investor education initiatives described in paragraph (2)(B) that were funded by the Fund during the preceding fiscal year;

"(C) the balance of the Fund at the beginning 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.

"(iii) 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 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) the Public Company Accounting Oversight Board,

"(v) State attorneys general in connection with any criminal investigation, and

"(vi) 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) PROVISION OF FALSE INFORMATION.—Any whistleblower who knowingly and willfully makes any false, fictitious, or fraudulent statement or representation, or makes or uses any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry, shall not be entitled to an award under this section and shall be subject to prosecution under section 1001 of title 18, United States Code.

"(i) 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.

"(j) 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, unless the whistleblower is the initial source of the information; 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 or other 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.".

(b) ADMINISTRATION AND ENFORCEMENT.—The Securities and Exchange Commission shall establish a separate office within the Commission to administer and enforce the provisions of section 21F of the Securities Exchange Act of 1934, as added by subsection (a). Such office shall report annually to Congress on its activities, whistleblower complaints, and the response of the Commission to such complaints.

SEC. 204. 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":

(1) Section 20(d)(3)(A) of the Securities Act of 1933 (15 U.S.C. 77t(d)(3)(A)).

(2) Section 42(e)(3)(A) of the Investment Company Act of 1940 (15 U.S.C. 80a–41(e)(3)(A)).

(3) Section 209(e)(3)(A) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–9(e)(3)(A)).

(b) SECURITIES EXCHANGE ACT.—The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended—

(1) in section 21(d)(3)(C)(i) (15 U.S.C. 78u(d)(3)(C)(i)), by inserting "and section 21F of this title" 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. 205. 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 accordance 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. 206. 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. 207. AIDING AND ABETTING AUTHORITY UNDER THE SECURITIES ACT AND THE INVESTMENT COMPANY 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 inserting "(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 section 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 1940 (15 U.S.C. 80a–48) is amended by redesignating subsection (b) as subsection (c) and inserting after subsection (a) the following:

"(b) For purposes of any action brought by the Commission under subsection (d) or (e) of section 42, 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.".

SEC. 208. AUTHORITY TO IMPOSE PENALTIES FOR AIDING AND ABETTING VIOLATIONS OF THE INVESTMENT 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 subsections:

"(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 extent as the person that committed such violation.

"(g) ENFORCEMENT BY NATIONAL SECURITIES ASSOCIATIONS.—The Commission may permit or require a national securities association registered under the Securities Exchange Act of 1934 to enforce compliance by its members and persons associated with its members with the provisions of this Act, the rules and regulations thereunder, and to adopt such rules (subject to any rule or order of the Commission pursuant to the Securities Exchange Act of 1934) as the association may deem necessary and in the public interest to further the purposes of this Act.".

SEC. 209. DEADLINE FOR COMPLETING EXAMINATIONS, INSPECTIONS 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 ENFORCEMENT INVESTIGATIONS AND COMPLIANCE EXAMINATIONS AND INSPECTIONS.

"(a) ENFORCEMENT INVESTIGATIONS.—

"(1) IN GENERAL.—Not later than 180 days after the date on which Commission staff provide a written Wells notification to any person, the Commission staff shall either file an action against such person or provide notice to the Director of the Division of Enforcement of its intent to not file an action.

"(2) EXCEPTIONS FOR CERTAIN COMPLEX ACTIONS.—Notwithstanding paragraph (1), if the head of any division or office within the Commission or his designee determines that a particular enforcement investigation is sufficiently complex such that a determination regarding the filing of an action against a person cannot be completed within the deadline specified in paragraph (1), the head of any division or office within the Commission or his designee may, after providing notice to the Chairman of the Commission, extend such deadline as needed for one additional 180-day period. If after the additional 180-day period the head of any division or office within the Commission or his designee determines that a particular enforcement investigation is sufficiently complex such that a determination regarding the filing of an action against a person cannot be completed within the additional 180-day period, the head of any division or office within the Commission or his designee may, after providing notice to and receiving approval of the Commission, extend such deadline as needed for one or more additional successive 180-day periods.

"(b) COMPLIANCE EXAMINATIONS AND INSPECTIONS.—

"(1) IN GENERAL.—Not later than 180 days after the date on which Commission staff completes the on-site portion of its compliance examination or inspection or receives all records requested from the entity being examined or inspected, whichever is later, Commission staff shall provide the entity being examined or inspected with written notification indicating either that the examination or inspection has concluded without findings or that the staff requests the entity undertake corrective action.

"(2) EXCEPTION FOR CERTAIN COMPLEX ACTIONS.—Notwithstanding paragraph (1), if the head of any division or office within the Commission or his designee determines that a particular compliance examination or inspection is sufficiently complex such that a determination regarding concluding the examination or inspection or regarding the staff requests the entity undertake corrective action cannot be completed within the deadline specified in paragraph (1), the head of any division or office within the Commission or his designee may, after providing notice to the Chairman of the Commission, extend such deadline as needed for one additional 180-day period.".

SEC. 210. 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 to compel the attendance of witnesses or the production of documents or tangible things (or both) at a hearing or trial may be served at any place within the United States.".

(b) SECURITIES EXCHANGE ACT OF 1934.—Section 27 of the Securities Exchange Act of 1934 (15 U.S.C. 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 to compel the attendance of witnesses or the production of documents or tangible things (or both) at a hearing or trial may be served at any place within the United States.".

(c) 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 to compel the attendance of witnesses or the production of documents or tangible things (or both) at a hearing or trial may be served at any place within the United States.".

(d) INVESTMENT ADVISERS ACT OF 1940.—Section 214 of the Investment Advisers Act of 1940 (15 U.S.C. 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 to compel the attendance of witnesses or the production of documents or tangible things (or both) at a hearing or trial may be served at any place within the United States.".

SEC. 211. 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 subparagraphs and the matter following such subparagraphs 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 person—

"(A) is violating or has violated any provision 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 regulation 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 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 (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. 212. 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 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 a registered public accounting firm; and

"(ii) the authority to commence a 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 conduct occurring while such person was associated or seeking to become associated with a registered public accounting firm; or

"(II) non-cooperation as described in section 105(b)(3) with respect to a demand in a Board investigation for testimony, documents, or other information relating to a period when such person was associated or seeking to become associated with a registered public accounting firm.".

(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"; and

(2) 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 associated person".

(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. 213. SHARING PRIVILEGED INFORMATION WITH OTHER AUTHORITIES.

Section 24 of the Securities Exchange Act of 1934 (15 U.S.C. 78x) is amended—

(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)"; and

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

"(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) the Public Company Accounting Oversight Board;

"(D) any self-regulatory organization;

"(E) any foreign law enforcement authority; or

"(F) 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.—

"(A) IN GENERAL.—Federal agencies, State securities and law enforcement authorities, self-regulatory organizations, and the Public Company Accounting Oversight Board 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 the Commission.

"(B) EXCEPTION WITH RESPECT TO CERTAIN ACTIONS.—The provisions of subparagraph (A) shall not apply to a self-regulatory organization or the Public Company Accounting Oversight Board with respect to information used by the Commission in an action against such organization.

"(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. 214. 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. 215. 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. 216. EXTRATERRITORIAL JURISDICTION OF THE ANTIFRAUD 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, 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.".

(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 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 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.".

(c) 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 violation, even if the violation is committed by a foreign adviser and involves only foreign investors; or

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

SEC. 217. FIDELITY BONDING.

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

"(g) FIDELITY BONDING.—

"(1) IN GENERAL.—The Commission is authorized to require that a registered management company provide and maintain a fidelity bond against loss as to any officer or employee who has access to securities or funds of the company, either directly or through authority to draw upon such funds or to direct generally the disposition of such securities (unless the officer or employee has such access solely through his position as an officer or employee of a bank), 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 subsection:

"(A) MANAGEMENT COMPANY.—The term 'management company' has the meaning given such term under section 4 of the Investment Company Act of 1940.

"(B) OFFICER OR EMPLOYEE.—The term 'officer or employee' means—

"(i) any officer or employee of the management company; and;

"(ii) any officer or employee of any investment adviser to the management company, or of any affiliated company of any such investment adviser, as the Commission may prescribe by rule, regulation, or order for the protection of investors.

"(C) OTHER DEFINITIONS.—The terms 'affiliated company' and 'investment adviser' shall have the meaning given such terms under section 2 of the Investment Company Act of 1940.".

SEC. 218. 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)), as amended by section 106(a)(2), is further amended by adding at the end the following new paragraph:

"(5) 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), as amended by section 106(b), is further amended by adding at the end the following new subsection:

"(e) 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. 219. 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. 220. 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. 221. ENHANCED APPLICATION OF ANTI-FRAUD PROVISIONS.

The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended—

(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" 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".

SEC. 222. SEC AUTHORITY TO ISSUE RULES ON PROXY ACCESS.

Section 14(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78n(a)) is amended—

(1) by inserting "(1)" after "(a)"; and

(2) by adding at the end the following:

"(2) The authority of the Commission to prescribe rules and regulations under paragraph (1) includes rules and regulations that require the inclusion and set procedures relating to the inclusion, in a solicitation of a proxy or consent or authorization by or on behalf of an issuer, of a nominee or nominees submitted by shareholders to serve on the issuer's board of directors.".

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, promulgate rules pursuant to which it may 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 objective factors such as—

"(A) the investment adviser's size;

"(B) the number of clients 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 examinations 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 examinations 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 required 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.

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

(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)(2)—

(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))" 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 90-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 and the operations of capital markets to examine the internal operations, structure, funding, and the need for comprehensive reform of the SEC, as well as the SEC's relationship with the reliance on self-regulatory organizations and other entities relevant to the regulation of securities and the protection of securities investors that are under the SEC's oversight.

(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 effect of high-frequency trading and other technological advances on the market and what the SEC requires to monitor the effect of such trading and advances on the market;

(E) the SEC's hiring authorities, workplace 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 diversity of skill sets of SEC employees and whether the present skill set diversity efficiently and effectively fosters the SEC's mission of investor protection; and

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

(F) whether the SEC's oversight and reliance on self-regulatory organizations promotes efficient and effective governance for the securities markets; and

(G) whether adjusting the SEC's reliance on self-regulatory organizations is necessary to promote more efficient and effective governance for the securities markets.

(b) CONSULTANT REPORT.—Not later than the end of the 150-day period after being retained, 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 required under subsection (a)(1);

(2) recommendations for legislative, regulatory, or administrative action that the consultant determines 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.

SEC. 305. CAPITAL MARKETS SAFETY BOARD.

There is established within the Securities and Exchange Commission an office to be known as the Capital Markets Safety Board whose purpose shall be to conduct investigations, at the direction of the Commission, of failed institutions registered with the Commission, to determine what caused such institutions to fail. Upon the conclusion of an investigation, the Board shall make available on the Commission's website a report of its findings, including recommendations regarding how others can avoid similar mistakes. No information that may compromise an ongoing Federal investigation shall be made available in any such report.

SEC. 306. REPORT ON IMPLEMENTATION OF "POST-MADOFF REFORMS".

(a) IN GENERAL.—Not later than 6 months after the date of the enactment of this Act, the Securities and Exchange Commission shall provide to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate a report describing the implementation of reforms outlined by the Commission in the wake of the discovery of fraud by Bernie Madoff.

(b) CONTENTS OF REPORT.—The report required by subsection (a) shall include an analysis of—

(1) how many of the post-Madoff reforms have been implemented and to what extent; and

(2) whether there is overlap between any of the Commission's reform proposals and those recommended by the Inspector General of the Commission.

(c) PUBLICATION OF REPORT.—The Commission and the Committees referred to in subsection (a) shall publish the report required by such subsection on their Web sites.

SEC. 307. JOINT ADVISORY COMMITTEE.

The Securities and Exchange Commission and the Commodities Futures Trading Commission may jointly form and operate a joint advisory committee composed of members of each Commission and industry experts and participants. The purposes of such an advisory committee include—

(1) considering and developing solutions to emerging and ongoing issues of common interest in the futures and securities markets;

(2) identifying emerging regulatory risks and assess and quantify their implications for investors and other market participants, and provide recommendations for solutions;

(3) serving as a vehicle for discussion and communication on regulatory issues of mutual concerns affecting each Commission, the regulated markets, and the industry generally; and

(4) reporting regularly to each Commission and to Congress on its activities.

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)(1) To effect, accept, or facilitate 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.

"(2) Nothing in paragraph (1) shall be construed to limit the authority of an appropriate Federal banking agency (as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813(q))), the National Credit Union Administration, or any other Federal department or agency identified under law as having a systemic risk responsibility from prescribing rules or regulations to impose restrictions on transactions involving the loan or borrowing of securities in order to protect the safety and soundness of a financial institution or to protect the financial system from systemic risk.".

SEC. 402. LOST AND STOLEN SECURITIES.

Section 17(f)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78q(f)(1)) is amended—

(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.

Section 17(f)(2) of the Securities Exchange Act of 1934 (15 U.S.C. 78q(f)(2)) is amended—

(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".

SEC. 406. CONFORMING AMENDMENTS FOR THE REPEAL OF THE PUBLIC UTILITY HOLDING COMPANY ACT OF 1935.

(a) SECURITIES EXCHANGE ACT OF 1934.—The Securities Exchange Act of 1934 (15 U.S.C. 78 et seq.) is amended—

(1) in section 3(a)(47) (15 U.S.C. 78c(a)(47)), by striking "the Public Utility Holding Company Act of 1935 (15 U.S.C. 79a et seq.),"; and

(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.";

(2) in section 308 (15 U.S.C. 77hhh), by striking "Securities Act of 1933, the Securities Exchange Act of 1934, or the Public Utility Holding Company Act of 1935" each place it appears and inserting "Securities Act of 1933 or the Securities Exchange Act of 1934";

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

(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

(6) in section 326 (15 U.S.C. 77zzz), 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".

(c) 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)(44) (15 U.S.C. 80a–2(a)(44)), by striking "'Public Utility Holding Company Act of 1935',";

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

"(8) [Repealed]";

(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 striking "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 REPORTING.

(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 accounting, 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 COMPLEXITY IN FINANCIAL REPORTING.—The Securities and Exchange Commission, the Public Company Accounting Oversight Board, and the standard setting body designated pursuant to section 19(b) of the Securities Act of 1933 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 Committee on Financial Services of the House of Representatives on their efforts to reduce the complexity in financial reporting to provide more accurate and clear financial information 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 17(j) of the Securities Exchange Act of 1934 (15 U.S.C. 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, surveillance, or risk assessment 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 or self-regulatory organization 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, the Public Company Accounting Oversight Board, 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, surveillance, or risk assessment 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)), as amended by sections 106(a)(2) and 218(b)(4), is further amended by adding at the end the following new paragraph:

"(6) CONFIDENTIALITY.—

"(A) 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, surveillance, or risk assessment 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, or the Public Company Accounting Oversight Board 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 described 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), as amended by sections 106(b) and 218(c), is further amended by adding at the end the following new subsection:

"(f) 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, the Public Company Accounting Oversight Board, or a 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.".

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 the matter following paragraph (5) of section 11(a), by striking "earning statement" and inserting "earnings statement".

(3) in section 18(b)(1)(C) (15 U.S.C. 77r(b)(1)(C)), by striking "is a security" and inserting "a security";

(4) in section 18(c)(2)(B)(i) (15 U.S.C. 77r(c)(2)(B)(i)), by striking "State, or" and inserting "State or";

(5) 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

(6) in section 27A(c)(1)(B)(ii) (15 U.S.C. 77z–2(c)(1)(B)(ii)), by striking "business entity;" and inserting "business entity,".

(b) SECURITIES EXCHANGE ACT OF 1934.—The Securities Exchange Act of 1934 (15 U.S.C. 78 et seq.) is amended—

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

(2) in section 3(a)(55)(A) (15 U.S.C. 78c(a)(55)(A)), by striking "section 3(a)(12) of the Securities Exchange Act of 1934" and inserting "section 3(a)(12) of this Act";

(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";

(4) in section 10A(i)(1)(B)(i) (15 U.S.C. 78j–1(i)(1)(B)(i)), by striking "nonaudit" and inserting "non-audit";

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

(6) in section 15(b)(1) (15 U.S.C. 78o(b)(1))—

(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 15C(a)(2) (15 U.S.C. 78o–5(a)(2))—

(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.";

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

(9) 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

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

(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 (b) of section 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)(B) (15 U.S.C. 80a–2(a)(19)(B)) 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";

(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

(7) in section 61(a)(3)(B)(iii) (15 U.S.C. 80a–60(a)(3)(B)(iii))—

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

(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(c) (15 U.S.C. 80b–3(c)(1)(A), 80b–3(k)(4)(B), 80b–13(a), 80b–18a(b), and 80b–18a(c)); 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) Not later than October 1, 2010, 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 independent 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 of municipal securities brokers and municipal securities dealers. 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 establish minimum knowledge, experience, and other appropriate qualifications for individuals to serve as public representatives, which may include, among other things, prior work experience in the securities, municipal finance, or municipal securities industries;

"(iv) shall specify the term members shall serve; and

"(v) 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.

Section 2(a)(19)(A) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(19)(A)) is amended—

(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 affiliated 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 REDEEMING 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 illiquid securities or other illiquid property.".

SEC. 414. STUDY ON SEC REVOLVING DOOR.

(a) GOVERNMENT ACCOUNTABILITY OFFICE STUDY.—The Comptroller General of the United States shall conduct a study that will—

(1) review the number of employees who leave the Securities and Exchange Commission to work for financial institutions regulated by such Commission;

(2) determine how many employees who leave the Securities and Exchange Commission worked on cases that involved financial institutions regulated by such Commission;

(3) review the length of time employees work for the Securities and Exchange Commission before leaving to be employed by financial institutions regulated by such Commission;

(4) review existing internal controls and make recommendations on strengthening such controls to ensure that employees of the Securities and Exchange Commission who are later employed by financial institutions did not assist such institutions in violating any rules or regulations of the Commission during the course of their employment with such Commission;

(5) determine if greater post-employment restrictions are necessary to prevent employees of the Securities and Exchange Commission from being employed by financial institutions after employment with such Commission;

(6) determine if the volume of employees of the Securities and Exchange Commission who are later employed by financial institutions has led to inefficiencies in enforcement;

(7) determine if employees of the Securities and Exchange Commission who are later employed by financial institutions have engaged in information sharing or assisted such institutions in circumventing Federal rules and regulations while employed by such Commission;

(8) review any information that may address the volume of employees of the Securities and Exchange Commission who are later employed by financial institutions, and make recommendations to Congress; and

(9) review other additional issues as may be raised during the course of the study conducted under this subsection.

(b) REPORT.—Not later than 1 year after the date of the enactment of this Act, the Comptroller General of the United States shall submit to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate a report on the results of the study required by subsection (a).

SEC. 415. STUDY ON INTERNAL CONTROL EVALUATION AND REPORTING COST BURDENS ON SMALLER ISSUERS.

(a) STUDY REQUIRED.—The Government Accountability Office and the Securities and Exchange Commission shall each conduct a study evaluating the costs and benefits of complying with section 404(b) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. § 7262(b)) on issuers who are not accelerated or large accelerated filers as defined by Commission Rule 12b–2. The study shall—

(1) include recommendations, administrative reforms, and legislative proposals on implementation steps that could be taken to reduce compliance burdens on these issuers; and

(2) determine the efficacy of the Securities and Exchange Commission's measures to limit the cost of compliance on smaller issuers.

(b) REPORTS REQUIRED.—On or before June 1, 2010, the Government Accountability Office and the Securities and Exchange Commission shall submit separate reports to Congress containing the findings and conclusions of the studies required under subsection (a), together with such recommendations for regulatory, legislative, or administrative action as may be appropriate.

(c) EFFECTIVE DATE CONTINGENT ON REPORTS.—Requirements under section 404(b) of the Sarbanes-Oxley Act of 2002 on issuers described under subsection (a) shall not become effective until the results of the report are delivered, but in no case before June 1, 2011.

SECTION 416. ANALYSIS OF RULE REGARDING SMALLER REPORTING COMPANIES.

(a) FINDINGS.—Congress finds the following:

(1) Many small businesses in cutting-edge technology sectors require significant capital investment to develop new technologies related to clean energy, drug treatments for terminal diseases and food production in hunger-stricken areas of the World.

(2) Many technology companies conducting research do not meet the definition of "smaller reporting company" under the Securities and Exchange Commission's Rule 12b–2 due to unusually high public floats despite low or zero revenue.

(3) The Final Report of the Advisory Committee on Smaller Public Companies to the Securities and Exchange Commission recommended that a company with a market capitalization of less than about $787,000,000 be considered a smallcap company and that the Commission provide exemptions from section 404(b) of the Sarbanes-Oxley Act to companies with less than $250,000,000 in annual revenues.

(b) STUDY OF USING REVENUE AS CRITERIA TO DEFINE SMALLER REPORTING COMPANY.—The Securities and Exchange Commission shall conduct a study of the inclusion of revenue as a criteria used in defining smaller reporting company as defined under the Commission's Rule 12b–2 to account for smaller public companies with public floats less than $700,000,000 and revenues less than $250,000,000. Not later than 180 days after the date of enactment of this Act, the Commission shall provide the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing and Urban Affairs of the Senate a report of the findings of the study.

SEC. 417. FINANCIAL REPORTING FORUM.

(a) ESTABLISHMENT.—There is hereby established a Financial Reporting Forum (hereinafter referred to as the "Forum"), which shall consist of—

(1) the Chairman of the Securities Exchange Commission (hereinafter referred to as the "SEC");

(2) the head of the Financial Accounting Standards Board;

(3) the Chairman of the Public Company Accounting Oversight Board;

(4) the head of each appropriate Federal banking agency, as such term is defined under section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q));

(5) the Administrator of the National Credit Union Administration;

(6) the Secretary of the Treasury;

(7) a representative of a non-financial institution, appointed by the SEC;

(8) a representative of a financial institution, appointed by the SEC;

(9) a representative of auditors, appointed by the SEC; and

(10) a representative of investors, appointed by the SEC.

(b) MEETINGS.—The Forum shall meet no less often than quarterly.

(c) DUTIES.—The Forum shall meet to discuss immediate and long-term issues critical to financial reporting.

(d) REPORTING.—The Forum shall issue an annual report to the Congress detailing any determinations or findings made by the Forum during the previous year, including any legislative recommendations the Forum may have related to financial reporting matters.

SEC. 418. INVESTMENT ADVISERS SUBJECT TO STATE AUTHORITIES.

Section 203A(a) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–3a(a)) is amended—

(1) by redesignating paragraph (2) as paragraph (3); and

(2) by inserting after paragraph (1) the following new paragraph:

"(2) TREATMENT OF CERTAIN MID-SIZED INVESTMENT ADVISERS.—Notwithstanding paragraph (1), an investment adviser that—

"(A) is regulated and examined, or required to be regulated and examined, by a State; and

"(B) has assets under management between—

"(i) the amount specified under subparagraph (A) of paragraph (1), as such amount may have been adjusted by the Commission pursuant to that subparagraph, and "(ii) $100,000,000, or such higher amount as the Commission may, by rule, deem appropriate in accordance with the purposes of this title,

shall register with, and be subject to examination by, such State. The Commission shall publish a list of the States that regulate and examine, or require regulation and examination of, investment advisers to which the requirements of this paragraph apply.".

SEC. 419. CUSTODIAL REQUIREMENTS.

Not later than 180 days after the date of the enactment of this Act, the Securities and Exchange Commission shall adopt a rule pursuant to its authority under section 211(a) of the Investment Advisers Act of 1940 making it unlawful under section 206(4) of such Act for an investment adviser registered under the Act to have custody of funds or securities of a client the value of which exceeds $10,000,000, subject to such exception the Commission determines in such rule are in the public interest and consistent with the protection of investors, unless—

(1) the funds and securities are maintained with a qualified custodian either in a separate account for each client under the client's name, or in accounts that contain only client funds and securities under the name of the investment adviser as agent or trustee for the client; and

(2) the qualified custodian does not directly or indirectly provide investment advice with respect to such funds or securities.

SEC. 420. OMBUDSMAN.

(a) APPOINTMENT.—Not later than 180 days after the date of the enactment of this Act, the Chairman of the Securities and Exchange Commission shall appoint an Ombudsman who shall report directly to the Chairman.

(b) DUTIES.—The Ombudsman appointed under subsection (a) shall—

(1) act as a liaison between the Commission and any affected person with respect to any problem such person may have in dealing with the Commission resulting from the regulatory activities of the Commission;

(2) review and make recommendations regarding Commission policies and procedures to encourage persons to present questions to the Commission regarding compliance with Federal securities laws; and

(3) maintain confidentiality of communications between such persons and the Ombudsman.

(c) LIMITATION.—In carrying out the duties under subsection (b), the Ombudsman shall utilize personnel of the Commission to the extent practicable. Nothing in this section shall be construed as replacing, altering, or diminishing the activities of any ombudsman or similar office in any other agency.

(d) REPORT.—Each year, the Ombudsman shall submit a report to the Commission for inclusion in the annual report that describes the activities and evaluates the effectiveness of the Ombudsman during the preceding year. In that report, the Ombudsman shall include solicited comments and evaluations from registrants in regards to the effectiveness of the Ombudsman.

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 Protection Act of 1970 (15 U.S.C. 78ddd(d)(1)(C)) is amended by striking "$150 per annum" and inserting the following: "0.02 percent of the gross revenues from the securities business of such member of SIPC".

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 "the lesser of $2,500,000,000 or the target amount of the SIPC Fund specified in the bylaws of SIPC".

SEC. 503. INCREASING THE CASH LIMIT OF PROTECTION.

Section 9 of the Securities Investor Protection Act of 1970 (15 U.S.C. 78fff–3) is amended—

(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 thereto), 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.

Section 5(b)(3) of the Securities Investor Protection Act of 1970 (15 U.S.C. 78eee(b)(3)) is amended—

(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," after "or net profits of the debtor,".

SEC. 506. ELIGIBILITY FOR DIRECT PAYMENT PROCEDURE.

Section 10(a)(4) of the Securities Investor Protection Act of 1970 (15 U.S.C. 78fff–4(a)(4)) is amended by striking "$250,000" and inserting "$850,000".

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. 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 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. The term 'customer' includes any person who has a claim against the debtor arising out of sales or conversions of such securities.

"(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;

"(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; or

"(iii) any person to the extent such person has a claim relating to any open repurchase or open reverse repurchase agreement.

For purposes of this paragraph, the term 'repurchase agreement' means the sale of a security at a specified price with a simultaneous agreement or obligation to repurchase the security at a specified price on a specified future date.";

(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 securities 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 Commission; 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 portfolio margining account pursuant to a portfolio margining program approved by the Commission, 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. 510. STUDY AND REPORT ON THE FEASIBILITY OF RISK-BASED ASSESSMENTS FOR SIPC MEMBERS.

(a) STUDY REQUIRED.—The Comptroller General of the United States shall conduct a study on whether the Securities Investor Protection Corporation (hereafter in this section referred to as "SIPC") should be required to impose assessments, on its member brokers and dealers, based on risk for the purpose of adequately maintaining the SIPC Fund.

(b) CONTENT.—The Comptroller General in conducting this study shall—

(1) identify and examine available approaches, including modeling, to measure broker and dealer operational risk;

(2) analyze whether the available approaches to measure broker and dealer operational risk can be used in managing the aggregate risk to the SIPC Fund;

(3) explore whether objective measures like the volume of assets of the SIPC member, previous enforcement and compliance actions taken by regulatory bodies against the SIPC member, or the number of years the SIPC member has been in operation, among other factors, can be used to assess the probability the fund will incur a loss with respect to the SIPC member;

(4) examine the impact that risk-based assessments could have on large and small brokers and dealers; and

(5) examine the impact that risk-based assessments could have on institutional and retail brokers and dealers.

(c) CONSULTATION.—The Comptroller General in planning and conducting this study shall consult with the Securities and Exchange Commission, the Federal Deposit Insurance Corporation, SIPC, the Financial Industry Regulatory Authority, and any other public or private sector organization that the Comptroller General considers appropriate.

(d) REPORT REQUIRED.—Not later than one year after the date of enactment of this Act, the Comptroller general shall submit a report of the results of the study required by this section to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives.

SEC. 511. 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 BROKERS AND DEALERS.

(a) DEFINITIONS.—(1) 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, procedures or controls, 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 purpose of expressing an opinion on such financial statements, reports, documents, procedures or controls, or notices.

"(2) AUDIT REPORT.—The term 'audit report' means a document, report, notice, or other record—

"(A) prepared following an audit performed 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 either—

"(i) sets forth the opinion of that firm regarding a financial statement, report, notice, other document, procedures, or controls; 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 setting 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. 78c(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. 78c(a)(26)).".

(2) The table of sections in section 1(b) of such Act is amended, by inserting after the item relating to section 109 the following new item:

"Sec. 110. Definitions.".

(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";

(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".

(c) REGISTRATION WITH THE BOARD.—Section 102 of such Act is amended—

(1) in subsection (a), 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) in subsection (b)(2)(A), 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".

(e) 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 at the end and inserting "; and"; 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) in the subparagraph heading, by inserting ", BROKER, OR DEALER" after "ISSUER";

(2) by striking "any issuer" each place it appears and inserting "any issuer, broker, or dealer"; and

(3) 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) in subsection (a)(1), by striking "issuer" and inserting "issuer, broker, or dealer"; and

(2) in subsection (a)(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 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 (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 compared to the total net capital of all brokers and dealer, in accordance with the rules of the Board.

"(2) OBLIGATION TO PAY.—Every broker or dealer shall pay the share of a reasonable annual accounting support fee or fees allocated to such broker or dealer under this section.".

(i) REFERRAL OF INVESTIGATIONS TO A SELF-REGULATORY 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 concerns an audit report for a broker or dealer 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.".

(c) 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 upon which a registered public accounting firm relies in the conduct of an audit or interim review, the foreign public accounting firm shall produce its audit work papers 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 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, or conducting an interim review, shall—

"(A) produce the foreign public accounting firm's audit work papers 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 (g); 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 public accounting firm that issues an audit report, performs audit work, performs interim reviews, or performs other material services upon which a registered public accounting firm relies in the conduct of an audit or interim review, 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.

"(f) OTHER MEANS OF SATISFYING PRODUCTION OBLIGATIONS.—Notwithstanding any other provision of this section, the staff of the Commission or Board may allow foreign public accounting firms subject to this section to meet production obligations under this section though alternate means, such as through foreign counterparts of the Commission or Board.".

SEC. 604. CONFORMING AMENDMENT RELATED TO REGISTRATION.

Section 102(b)(3)(A) of the Sarbanes-Oxley Act of 2002 (15 U.S. Code 7212(b)(3)(A)) is amended by striking "by the Board" and inserting "by the Commission or the Board".

SEC. 605. 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, or such person agrees in settlement of any such action to such civil penalty, the amount of such civil penalty or settlement 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)"; and

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

(3) by striking subsection (e).

SEC. 606. EXEMPTION FOR NONACCELERATED FILERS.

(a) EXEMPTION.—Section 404 of the Sarbanes-Oxley Act of 2002 is amended by adding at the end the following:

"(c) EXEMPTION FOR SMALLER ISSUERS.—Subsection (b) shall not apply with respect to any audit report prepared for an issuer that is not an accelerated filer within the meaning Rule 12b–2 of the Commission (17 C.F.R. 240.12b–2).".

(b) STUDY.—The Securities and Exchange Commission and the Comptroller General shall jointly conduct a study to determine how the Commission could reduce the burden of complying with section 404(b) of the Sarbanes-Oxley Act of 2002 for companies whose market capitalization is between $75,000,000 and $250,000,000 for the relevant reporting period while maintaining investor protections for such companies. The study shall also consider whether any such methods of reducing the compliance burden or a complete exemption for such companies from compliance with such section would encourage companies to list on exchanges in the United States in their initial public offerings. Not later than 180 days after the date of the enactment of this Act, the Commission and the Comptroller General shall transmit a report of such study to Congress.

SEC. 607. WHISTLEBLOWER PROTECTION AGAINST RETALIATION BY A SUBSIDIARY OF AN ISSUER.

Section 1514A(a) 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)),".

SEC. 608. CONGRESSIONAL ACCESS TO INFORMATION.

Section 101 of the Sarbanes-Oxley Act of 2002 is amended by adding at the end the following:

"(i) CONGRESSIONAL ACCESS TO INFORMATION.—Nothing in this section shall—

"(1) affect the Boards obligations, if any, to provide access to records under the Right to Financial Privacy Act; or

"(2) authorize the Board to withhold information from Congress or prevent the Board from complying with an order of a court of the United States in an action commenced by the United States or the Board.".

SEC. 609. CREATION OF OMBUDSMAN FOR THE PCAOB.

(a) OMBUDSMAN.—Title I of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7211 et seq.), as amended by section 601(a)(1), is further amended by adding at the end the following new section:

"SEC. 111. OMBUDSMAN.

"(a) ESTABLISHMENT REQUIRED.—Not later than 180 days after the date of enactment of the Investor Protection Act, the Board shall appoint an ombudsman for the Board. The Ombudsman shall report directly to the Chairman.

"(b) DUTIES OF OMBUDSMAN.—The ombudsman appointed in accordance with subsection (a) for the Board shall—

"(1) act as a liaison between the Board and—

"(A) any registered public accounting firm or issuer with respect to issues or disputes concerning the preparation or issuance of any audit report with respect to that issuer; and

"(B) any affected registered public accounting firm or issuer with respect to—

"(i) any problem such firm or issuer may have in dealing with the Board resulting from the regulatory activities of the Board, particularly with regard to the implementation of section 404; and

"(ii) issues caused by the relationships of registered public accounting firms and issuers generally; and

"(2) assure that safeguards exist to encourage complainants to come forward and to preserve confidentiality; and

"(3) carry out such activities, and any other activities assigned by the Board, in accordance with guidelines prescribed by the Board.".

(b) CONFORMING AMENDMENT.—The table of sections in section 1(b) of such Act is amended, by inserting after the item relating to section 110 (as added by section 601(a)(2)) the following new item:

"Sec. 111. Ombudsman.".

SEC. 610. AUDITING OVERSIGHT BOARD.

The Sarbanes-Oxley Act of 2002 is amended—

(1) in section 2(a)(5), by striking "Public Company Accounting Oversight Board" and inserting "Auditing Oversight Board";

(2) in section 101(a), by striking "Public Company Accounting Oversight Board" and inserting "Auditing Oversight Board"; and

(3) in the heading of title I, by striking "**PUBLIC COMPANY ACCOUNTING OVERSIGHT BOARD**" and inserting "**AUDITING OVERSIGHT BOARD**".

TITLE VII—SENIOR INVESTMENT PROTECTION

SEC. 701. FINDINGS.

Congress finds that—

(1) many seniors are targeted by salespersons and advisers using misleading certifications and professional designations;

(2) many certifications and professional designations used by salespersons and advisers represent limited training or expertise, and may in fact be of no value with respect to advising seniors on financial and estate planning matters, and far too often, such designations are obtained simply by attending a weekend seminar and passing an open book, multiple choice test;

(3) many seniors have lost their life savings because salespersons and advisers holding a misleading designation have steered them toward products that were unsuitable for them, given their retirement needs and life expectancies;

(4) seniors have a right to clearly know whether they are working with a qualified adviser who understands the products and is working in their best interest or a self-interested salesperson or adviser advocating particular products; and

(5) many existing State laws and enforcement measures addressing the use of certifications, professional designations, and suitability standards in selling financial products to seniors are inadequate to protect senior investors from salespersons and advisers using such designations.

SEC. 702. DEFINITIONS.

For purposes of this title:

(1) MISLEADING DESIGNATION.—The term “misleading designation”—

(A) means the use of a purported certification, professional designation, or other credential, that indicates or implies that a salesperson or adviser has special certification or training in advising or servicing seniors; and

(B) does not include any legitimate certification, professional designation, license, or other credential, if—

(i) it has been offered by an academic institution having regional accreditation; or

(ii) it meets the standards for certifications, licenses, and professional designations outlined by the North American Securities Administrators Association (in this title referred to as the “NASAA”) Model Rule on the Use of Senior-Specific Certifications and Professional Designations, as in effect on the date of the enactment of this Act, or any successor thereto, or it was issued by or obtained from any State.

(2) FINANCIAL PRODUCT.—The term “financial product” means securities, insurance products (including insurance products which pay a return, whether fixed or variable), and bank and loan products.

(3) MISLEADING OR FRAUDULENT MARKETING.—The term “misleading or fraudulent marketing” means the use of a misleading designation when selling to or advising a senior about the sale of a financial product.

(4) SENIOR.—The term “senior” means any individual who has attained the age of 62 years or more.

(5) STATE.—The term “State” means each of the 50 States, the District of Columbia, and the unincorporated territories of Puerto Rico and the U.S. Virgin Islands.

SEC. 703. GRANTS TO STATES FOR ENHANCED PROTECTION OF SENIORS FROM BEING MISLEAD BY FALSE DESIGNATIONS.

(a) GRANT PROGRAM.—The Securities and Exchange Commission (in this title referred to as the “Commission”)—

(1) shall establish a program in accordance with this title to provide grants to States—

(A) to investigate and prosecute misleading and fraudulent marketing practices; or

(B) to develop educational materials and training aimed at reducing misleading and fraudulent marketing of financial products toward seniors; and

(2) may establish such performance objectives, reporting requirements, and application procedures for States and State agencies receiving grants under this title as the Commission determines are necessary to carry out and assess the effectiveness of the program under this title.

(b) USE OF GRANT AMOUNTS.—A grant under this title may be used (including through subgrants) by the State or the appropriate State agency designated by the State—

(1) to fund additional staff to identify, investigate, and prosecute (through civil, administrative, or criminal enforcement actions) cases involving misleading or fraudulent marketing of financial products to seniors;

(2) to fund technology, equipment, and training for regulators, prosecutors, and law enforcement in order to identify salespersons and advisers who target seniors through the use of misleading designations;

(3) to fund technology, equipment, and training for prosecutors to increase the successful prosecution of those targeting seniors with the use of misleading designations;

(4) to provide educational materials and training to regulators on the appropriateness of the use of designations by salespersons and advisers of financial products;

(5) to provide educational materials and training to seniors to increase their awareness and understanding of designations; and

(6) to develop comprehensive plans to combat misleading or fraudulent marketing of financial products to seniors.

(c) GRANT REQUIREMENTS.—

(1) MAXIMUM.—The amount of a grant under this title may not exceed $500,000 per fiscal year per State, if all requirements of paragraphs (2), (3), (4), and (5) are met. Such amount shall be limited to $100,000 per fiscal year per State in any case in which the State meets the requirements of—

(A) paragraphs (2) and (3), but not each of paragraphs (4) and (5); or

(B) paragraphs (4) and (5), but not each of paragraphs (2) and (3).

(2) STANDARD DESIGNATION RULES FOR SECURITIES.—A State shall have adopted rules on the appropriate use of designations in the offer or sale of securities or investment advice, which shall meet or exceed the minimum requirements of the NASAA Model Rule on the Use of Senior-Specific Certifications and Professional Designations, as in effect on the date of the enactment of this Act, or any successor thereto.

(3) SUITABILITY RULES FOR SECURITIES.—A State shall have adopted standard rules on the suitability requirements in the sale of securities, which shall, to the extent practicable, conform to the minimum requirements on suitability imposed by self-regulatory organization rules under the securities laws (as defined in section 3 of the Securities Exchange Act of 1934).

(4) STANDARD DESIGNATION RULES FOR INSURANCE PRODUCTS.—A State shall have adopted standard rules on the appropriate use of designations in the sale of insurance products, which shall, to the extent practicable, conform to the minimum requirements of the National Association of Insurance Commissioners Model Regulation on the Use of Senior-Specific Certifications and Professional Designations in the Sale of Life Insurance and Annuities, as in effect on the date of the enactment of this Act, or any successor thereto.

(5) SUITABILITY AND SUPERVISION RULES FOR ANNUITY PRODUCTS.—

(A) IN GENERAL.—A State shall have adopted rules governing insurer supervision of, suitability of, and insurer and insurance producer conduct relating to, the sale of annuity products, including fixed and index annuities.

(B) ANNUITY PRODUCTS CRITERIA.—The rules required by subparagraph (A) shall, to the extent practicable, provide—

(i) that insurers, and insurance producers are responsible for, and liable for penalties for, the suitability of each recommended annuity transaction;

(ii) that insurers and insurance producers are required to apply a standard for determining the suitability of each recommended annuity transaction, including fixed and index annuities, that is at least as protective of the interests of the consumer as rule 2821(b) of the Financial Industry Regulatory Authority (in this paragraph referred to as "FINRA"), as in effect on the date of the enactment of this Act, or any successor to such rule;

(iii) that insurers and insurance producers are required to maintain a process for review of the suitability, and approval or disapproval, of each recommended annuity transaction that is at least as protective of the interests of the consumer as the principal review required under rule 2821(c) of FINRA, as in effect on the date of the enactment of this Act, or any successor to such rule;

(iv) that insurers and insurance producers are required to maintain processes for the supervision of direct annuity sales and insurance producer-recommended annuity sales (including procedures for the insurer to obtain and confirm consumer suitability information and for the insurer to confirm consumer understanding of the annuity transaction) that are at least as protective of the interests of the consumer as member broker and dealer supervision requirements of FINRA, as in effect on the date of the enactment of this Act, or any successor to such requirements;

(v) that insurers are required to verify that each insurance producer successfully completes, and each insurance producer is required to receive, training designed to ensure that the insurance producer is competent to recommend each class of annuity;

(vi) that insurers are required to verify that insurance producers receive, and insurance producers are required to receive, training regarding the features of each offered annuity product, to an extent that is at least as protective of the interests of the consumer as the FINRA firm element training requirements, as in effect on the date of the enactment of this Act, or any successor to such requirements;

(vii) for coordination of such rules with the rules of FINRA governing member brokers, dealers, and security representatives, to the extent appropriate, consistent with protecting the interests of consumers, for State insurance regulators to rely on, or to avoid duplication of FINRA rules; and

(viii) for exemption from such rules only if such exemption is consistent with the protection of consumers.

SEC. 704. APPLICATIONS.

To be eligible for a grant under this title, the State or appropriate State agency shall submit to the Commission a proposal to use the grant money to protect seniors from misleading or fraudulent marketing techniques in the offer and sale of financial products, which application shall—

(1) identify the scope of the problem;

(2) describe how the proposed program will help to protect seniors from misleading or fraudulent marketing in the sale of financial products, including, at a minimum—

(A) by proactively identifying senior victims of misleading and fraudulent marketing in the offer and sale of financial products;

(B) how the proposed program can assist in the investigation and prosecution of those using misleading or fraudulent marketing in the offer and sale of financial products to seniors; and

(C) how the proposed program can help discourage and reduce future cases of misleading or fraudulent marketing in the offer and sale of financial products to seniors; and

(3) describe how the proposed program is to be integrated with other existing State efforts.

SEC. 705. LENGTH OF PARTICIPATION.

A State receiving a grant under this title shall be provided assistance funds for a period of 3 years, after which the State may reapply for additional funding.

SEC. 706. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to carry out this title, $8,000,000 for each of the fiscal years 2011 through 2015.

TITLE VIII—REGISTRATION OF MUNICIPAL FINANCIAL ADVISORS

SEC. 801. MUNICIPAL FINANCIAL ADVISER REGISTRATION REQUIREMENT.

(a) IN GENERAL.—The Securities Exchange Act of 1934 is amended by inserting after section 15E (15 U.S.C. 78o–7) the following new section:

"SEC. 15F. MUNICIPAL FINANCIAL ADVISER REGISTRATION REQUIREMENT.

"(a)(1)(A) It shall be unlawful for any person to make use of the mails or any means or instrumentality of interstate commerce to act as a municipal financial adviser unless such person is registered as a municipal financial adviser in accordance with subsection (b).

"(B) Subparagraph (A) shall not apply to a natural person associated with a municipal financial adviser, as long as such adviser is registered in accordance with subsection (b) and is not a natural person.

"(2) The Commission, by rule or order, as it deems consistent with the public interest and the protection of investors, may conditionally or unconditionally exempt from paragraph (1) of this section any municipal financial adviser or class of municipal financial advisers specified in such rule or order.

"(b)(1) A municipal financial adviser may be registered by filing with the Commission an application for registration in such form and containing such information and documents concerning such municipal financial adviser and any persons associated with such municipal financial adviser as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors. Within 45 days of the date of the filing of such application (or within such longer period as to which the applicant consents), the Commission shall—

"(A) by order grant registration, or

"(B) institute proceedings to determine whether registration should be denied. Such proceedings shall include notice of the grounds for denial under consideration and opportunity for hearing and shall be concluded within 120 days of the date of the filing of the application for registration. At the conclusion of such proceedings, the Commission, by order, shall grant or deny such registration. The Commission may extend the time for conclusion of such proceedings for up to 90 days if it finds good cause for such extension and publishes its reasons for so finding or for such longer period as to which the applicant consents.

The Commission shall grant such registration if the Commission finds that the requirements of this section are satisfied. The Commission shall deny such registration if it does not make such a finding or if it finds that if the applicant were so registered, its registration would be subject to suspension or revocation under paragraph (4).

"(2) An application for registration of a municipal financial adviser to be formed or organized may be made by a municipal financial adviser to which the municipal financial adviser to be formed or organized is to be the successor. Such application, in such form as the Commission, by rule, may prescribe, shall contain such information and documents concerning the applicant, the successor, and any persons associated with the applicant or the successor, as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors. The grant or denial of registration to such an applicant shall be in accordance with the procedures set forth in paragraph (1) of this subsection. If the Commission grants such registration, the registration shall terminate on the 45th day after the effective date thereof, unless prior thereto the successor shall, in accordance with such rules and regulations as the Commission may prescribe, adopt the application for registration as its own.

"(3) Any provision of this title (other than section 5 and subsection (a) of this section) which prohibits any act, practice, or course of business if the mails or any means or instrumentality of interstate commerce is used in connection therewith shall also prohibit any such act, practice, or course of business by any registered municipal financial adviser or any person acting on behalf of such a municipal financial adviser, irrespective of any use of the mails or any means or instrumentality of interstate commerce in connection therewith.

"(4) The Commission, by order, shall censure, place limitations on the activities, functions, or operations of, suspend for a period not exceeding 12 months, or revoke the registration of any municipal financial adviser if it finds, on the record after notice and opportunity for hearing, that such censure, placing of limitations, suspension, or revocation is in the public interest and that such municipal financial adviser, whether prior or subsequent to becoming such, or any person associated with such municipal financial adviser, whether prior or subsequent to becoming so associated—

"(A) has willfully made or caused to be made in any application for registration or report required to be filed with the Commission or with any other appropriate regulatory agency under this title, or in any proceeding before the Commission with respect to registration, any statement which was at the time and in the light of the circumstances under which it was made false or misleading with respect to any material fact, or has omitted to state in any such application or report any material fact which is required to be stated therein;

"(B) has been convicted within 10 years preceding the filing of any application for registration or at any time thereafter of any felony or misdemeanor or of a substantially equivalent crime by a foreign court of competent jurisdiction which the Commission finds—

"(i) involves the purchase or sale of any security, the taking of a false oath, the making of a false report, bribery, perjury, burglary, any substantially equivalent activity however denominated by the laws of the relevant foreign government, or conspiracy to commit any such offense;

"(ii) arises out of the conduct of the business of a municipal financial adviser, broker, dealer, municipal securities dealer, government securities broker, government securities dealer, investment adviser, bank, insurance company, fiduciary, transfer agent, nationally recognized statistical rating organization, foreign person performing a function substantially equivalent to any of the above, or entity or person required to be registered under the Commodity Exchange Act (7 U.S.C. 1 et seq.) or any substantially equivalent foreign statute or regulation;

"(iii) involves the larceny, theft, robbery, extortion, forgery, counterfeiting, fraudulent concealment, embezzlement, fraudulent conversion, or misappropriation of funds, or securities, or substantially equivalent activity however denominated by the laws of the relevant foreign government; or

"(iv) involves the violation of section 152, 1341, 1342, or 1343 or chapter 25 or 47 of title 18, or a violation of a substantially equivalent foreign statute;

"(C) is permanently or temporarily enjoined by order, judgment, or decree of any court of competent jurisdiction from acting as a municipal financial adviser, investment adviser, underwriter, broker, dealer, municipal securities dealer, government securities broker, government securities dealer, transfer agent, nationally recognized statistical rating organization, foreign person performing a function substantially equivalent to any of the above, or entity or person required to be registered under the Commodity Exchange Act or any substantially equivalent foreign statute or regulation, or as an affiliated person or employee of any investment company, bank, insurance company, foreign entity substantially equivalent to any of the above, or entity or person required to be registered under the Commodity Exchange Act or any substantially equivalent foreign statute or regulation or from engaging in or continuing any conduct or practice in connection with any such activity, or in connection with the purchase or sale of any security;

"(D) has willfully violated any provision of the Securities Act of 1933, the Investment Advisers Act of 1940, the Investment Company Act of 1940, the Commodity Exchange Act, this title, the rules or regulations under any of such statutes, or is unable to comply with any such provision;

"(E) has willfully aided, abetted, counseled, commanded, induced, or procured the violation by any other person of any provision of the Securities Act of 1933, the Investment Advisers Act of 1940, the Investment Company Act of 1940, the Commodity Exchange Act, this title, the rules or regulations under any of such statutes, or has failed reasonably to supervise, with a view to preventing violations of the provisions of such statutes, rules, and regulations, another person who commits such a violation, if such other person is subject to his supervision. For the purposes of this subparagraph, no person shall be deemed to have failed reasonably to supervise any other person, if—

"(i) there have been established procedures, and a system for applying such procedures, which would reasonably be expected to prevent and detect, insofar as practicable, any such violation by such other person, and

"(ii) such person has reasonably discharged the duties and obligations incumbent upon him by reason of such procedures and system without reasonable cause to believe that such procedures and system were not being complied with;

"(F) is subject to any order of the Commission barring or suspending the right of the person to be associated with a municipal financial adviser;

"(G) has been found by a foreign financial regulatory authority to have—

"(i) made or caused to be made in any application for registration or report required to be filed with a foreign financial regulatory authority, or in any proceeding before a foreign financial regulatory authority with respect to registration, any statement that was at the time and in the light of the circumstances under which it was made false or misleading with respect to any material fact, or has omitted to state in any application or report to the foreign financial regulatory authority any material fact that is required to be stated therein;

"(ii) violated any foreign statute or regulation regarding transactions in securities, or contracts of sale of a commodity for future delivery, traded on or subject to the rules of a contract market or any board of trade; or

"(iii) aided, abetted, counseled, commanded, induced, or procured the violation by any person of any provision of any statutory provisions enacted by a foreign government, or rules or regulations thereunder, empowering a foreign financial regulatory authority regarding transactions in securities, or contracts of sale of a commodity for future delivery, traded on or subject to the rules of a contract market or any board of trade, or has been found, by a foreign financial regulatory authority, to have failed reasonably to supervise, with a view to preventing violations of such statutory provisions, rules, and regulations, another person who commits such a violation, if such other person is subject to his supervision; or

"(H) is subject to any final order of a State securities commission (or any agency or officer performing like functions), State authority that supervises or examines banks, savings associations, or credit unions, State insurance commission (or any agency or office performing like functions), an appropriate Federal banking agency (as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813(q))), or the National Credit Union Administration, that—

"(i) bars such person from association with an entity regulated by such commission, authority, agency, or officer, or from engaging in the business of securities, insurance, banking, savings association activities, or credit union activities; or

"(ii) constitutes a final order based on violations of any laws or regulations that prohibit fraudulent, manipulative, or deceptive conduct.

"(5) Pending final determination whether any registration under this subsection shall be revoked, the Commission, by order, may suspend such registration, if such suspension appears to the Commission, after notice and opportunity for hearing, to be necessary or appropriate in the public interest or for the protection of investors. Any registered municipal financial adviser may, upon such terms and conditions as the Commission deems necessary or appropriate in the public interest or for the protection of investors, withdraw from registration by filing a written notice of withdrawal with the Commission. If the Commission finds that any registered municipal financial adviser is no longer in existence or has ceased to do business as a municipal financial adviser, the Commission, by order, shall cancel the registration of such municipal financial adviser.

"(6)(A) With respect to any person who is associated, who is seeking to become associated, or, at the time of the alleged misconduct, who was associated or was seeking to become associated with a municipal financial adviser, the Commission, by order, shall censure, place limitations on the activities or functions of such person, or suspend for a period not exceeding 12 months, or bar such person from being associated with a municipal financial adviser, if the Commission finds, on the record after notice and opportunity for a hearing, that such censure, placing of limitations, suspension, or bar is in the public interest and that such person—

"(i) has committed or omitted any act, or is subject to an order or finding, enumerated in subparagraph (A), (D), or (E) of paragraph (4) of this subsection;

"(ii) has been convicted of any offense specified in subparagraph (B) of such paragraph (4) within 10 years of the commencement of the proceedings under this paragraph; or

"(iii) is enjoined from any action, conduct, or practice specified in subparagraph (C) of such paragraph (4).

"(B) It shall be unlawful—

"(i) for any person as to whom an order under subparagraph (A) is in effect, without the consent of the Commission, willfully to become, or to be, associated with a municipal financial adviser in contravention of such order; or

"(ii) for any municipal financial adviser to permit such a person, without the consent of the Commission, to become or remain, a person associated with the municipal financial adviser in contravention of such order, if such municipal financial adviser knew, or in the exercise of reasonable care should have known, of such order.

"(7) No registered municipal financial adviser shall act as such unless it meets such standards of operational capability and such municipal financial adviser and all natural persons associated with such municipal financial adviser meet such standards of training, experience, competence, and such other qualifications as the Commission finds necessary or appropriate in the public interest or for the protection of investors. The Commission shall establish such standards by rules and regulations, which may—

"(A) specify that all or any portion of such standards shall be applicable to any class of municipal financial advisers and persons associated with municipal financial advisers;

"(B) require persons in any such class to pass tests prescribed in accordance with such rules and regulations, which tests shall, with respect to any class of partners, officers, or supervisory employees (which latter term may be defined by the Commission's rules and regulations) engaged in the management of the municipal financial adviser, include questions relating to bookkeeping, accounting, supervision of employees, maintenance of records, and other appropriate matters; and

"(C) provide that persons in any such class other than municipal financial advisers and partners, officers, and supervisory employees of municipal financial advisers, may be qualified solely on the basis of compliance with such standards of training and such other qualifications as the Commission finds appropriate.

The Commission, by rule, may prescribe reasonable fees and charges to defray its costs in carrying out this paragraph, including, but not limited to, fees for any test administered by it or under its direction.

"(c)(1)(A) No municipal financial adviser shall make use of the mails or any means or instrumentality of interstate commerce in connection with which such municipal financial adviser engages in any fraudulent, deceptive, or manipulative act or practice or violates such rules and regulations regarding conflicts of interest or fair practices, including but not limited to rules and regulations related to political contributions, as the Commission shall prescribe in the public interest or for the protection of investors or to maintain fair and orderly markets.

"(B) The Commission shall, for the purposes of this paragraph as the Commission finds necessary or appropriate in the public interest or for the protection of investors, by rules and regulations define, and prescribe means reasonably designed to prevent, such acts and practices as are fraudulent, deceptive, or manipulative.

"(2) If the Commission finds, after notice and opportunity for a hearing, that any person subject to the provisions of this section or any rule or regulation thereunder has failed to comply with any such provision, rule, or regulation in any material respect, the Commission may publish its findings and issue an order requiring such person, and any person who was a cause of the failure to comply due to an act or omission the person knew or should have known would contribute to the failure to comply, to comply, or to take steps to effect compliance, with such provision or such rule or regulation thereunder upon such terms and conditions and within such time as the Commission may specify in such order.

"(d) Every registered municipal financial adviser shall establish, maintain, and enforce written policies and procedures reasonably designed, taking into consideration the nature of such municipal financial adviser's business, to prevent the misuse in violation of this title, or the rules or regulations thereunder, of material, nonpublic information by such municipal financial adviser or any person associated with such municipal financial adviser. The Commission, as it deems necessary or appropriate in the public interest or for the protection of investors, shall adopt rules or regulations to require specific policies or procedures reasonably designed to prevent misuse in violation of this title (or the rules or regulations thereunder) of material, nonpublic information.

"(e) A municipal financial adviser and any person associated with such municipal financial adviser shall be deemed to have a fiduciary duty to any municipal securities issuer for whom such municipal financial adviser acts as a municipal financial adviser. A municipal financial adviser may not engage in any act, practice, or course of business which is not consistent with a municipal financial adviser's fiduciary duty. The Commission shall, for the purposes of this paragraph, by rules and regulations define, and prescribe means reasonably designed to prevent, such acts, practices, and courses of business as are not consistent with a municipal financial adviser's fiduciary duty to its clients.".

(b) DEFINITION.—Section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)) is amended by adding at the end the following new paragraphs:

"(65) MUNICIPAL FINANCIAL ADVISER.—

"(A) The term 'municipal financial adviser' means a person who, for compensation, engages in the business of—

"(i) providing advice to a municipal securities issuer with respect to—

"(I) the issuance or proposed issuance of securities, including any remarketing of municipal securities directly or indirectly by or on behalf of a municipal securities issuer;

"(II) the investment of proceeds from securities issued by such municipal securities issuer;

"(III) the hedging of any risks associated with subclauses (I) or (II), including advice as to swap agreements (as defined in section 206A of the Gramm-Leach-Bliley Act regardless of whether the counterparties constitute eligible contract participants); or

"(IV) preparation of disclosure documents in connection with the issuance, proposed issuance, or previous issuance of securities issued by a municipal securities issuer, including, without limitation, official statements and documents prepared in connection with a written agreement or contract for the benefit of holders of such securities described in section 240.15c2–12 of title 17, Code of Federal Regulations;

"(ii) assisting a municipal securities issuer in selecting or negotiating guaranteed investment contracts or other investment products; or

"(iii) assisting any municipal securities issuer in the primary offering of securities not involving a public offering.

"(B) Such term does not include—

"(i) an attorney, if the attorney is offering advice or providing services that are of a traditional legal nature;

"(ii) a nationally recognized statistical rating organization to the extent it is involved in the process of developing credit ratings;

"(iii) a registered broker-dealer when acting as an underwriter, as such term is defined in section 2(a)(11) of the Securities Act of 1933 (15 U.S.C. section 77b(a)(11)); or

"(iv) a State or any political subdivision thereof.

"(66) MUNICIPAL SECURITIES ISSUER.—The term 'municipal securities issuer' means—

"(A) any entity that has the ability to issue a security the interest on which is excludable from gross income under section 103 of the Internal Revenue Code of 1986 and the regulations thereunder; or

"(B) any person who receives the proceeds generated from the issuance of municipal securities.

"(67) PERSON ASSOCIATED WITH A MUNICIPAL FINANCIAL ADVISER; ASSOCIATED PERSON OF A MUNICIPAL FINANCIAL ADVISER.—The term 'person associated with a municipal financial adviser' or 'associated person of a municipal financial adviser' means any partner, officer, director, or branch manager of such municipal financial adviser (or any person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with such municipal financial adviser, or any employee of such municipal financial adviser, except that any person associated with a municipal financial adviser whose functions are solely clerical or ministerial shall not be included in the meaning of such term for purposes of section 15F(b) (other than paragraph (6) thereof).".

SEC. 802. CONFORMING AMENDMENTS.

(a) SECURITIES EXCHANGE ACT OF 1934.—The Securities Exchange Act of 1934 is amended—

(1) in section 15(b)(4)(B)(ii) (15 U.S.C. 78o(b)(4)(B)(ii)), by inserting "municipal finance adviser," after "nationally recognized statistical rating organization,";

(2) in section 15(b)(4)(C) (15 U.S.C. 78o(b)(4)(C)), by inserting "municipal finance adviser," after "nationally recognized statistical rating organization,"; and

(3) in section 17(a)(1) (15 U.S.C. 78q(a)(1)), by inserting "registered municipal financial adviser," after "nationally recognized statistical rating organization,".

(b) INVESTMENT COMPANY ACT OF 1940.—The Investment Company Act of 1940 is amended—

(1) in section 2(a) (15 U.S.C. 80a–2(a)), by inserting at the end the following new paragraph:

"(54) The term 'municipal finance adviser' has the same meaning as in section 3 of the Securities Exchange Act of 1934.";

(2) in section 9(a)(1) (15 U.S.C. 80a–9(a)(1)), by inserting "municipal finance adviser," after "credit rating agency,"; and

(3) in section 9(a)(2) (15 U.S.C. 80a–9(a)(2)), by inserting "municipal finance adviser," after "credit rating agency,".

(c) INVESTMENT ADVISERS ACT OF 1940.—The Investment Advisers Act of 1940 is amended—

(1) in section 202(a) (15 U.S.C. 80b–2(a)), by inserting at the end the following new paragraph:

"(29) The term 'municipal finance adviser' has the same meaning as in section 3 of the Securities Exchange Act of 1934.";

(2) in section 203(e)(2)(B) (15 U.S.C. 80b–3(e)(2)(B)), by inserting "municipal finance adviser," after "credit rating agency,"; and

(3) in section 203(e)(4) (15 U.S.C. 80b–3(e)(4)) is amended by inserting "municipal finance adviser," after "credit rating agency,".

SEC. 803. EFFECTIVE DATES.

(a) IN GENERAL.—The amendments made by this title shall take effect 30 days after the date of the enactment of this Act.

(b) EFFECTIVE DATE AND REQUIREMENTS FOR REGULATIONS.—Notwithstanding subsection (a), the Securities and Exchange Commission shall, within 120 days after the date of the enactment of this Act, publish for notice and public comment such regulations as are initially required to implement this title, and shall take final action with respect to such regulations not later than 270 days after the date of enactment of this Act.

(c) REGISTRATION DATE.—No person may continue to act as a municipal financial adviser, as such term is defined in section 3(a)(65) of the Securities Exchange Act of 1934 (as added by this title), after 30 days after the date the regulations described in subsection (b) become effective unless such person has been registered as required by the amendment made by section 701 of this title.

PURPOSE AND SUMMARY

H.R. 3817, the Investor Protection Act of 2009, generally aims to strengthen the oversight of U.S. securities markets, close regulatory loopholes, and better safeguard investors. Among its key reforms, the bill establishes a common fiduciary standard to apply to both broker-dealers and investment advisers in order to ensure that securities professionals place customers' interests first when offering investment advice. The legislation also provides the U.S. Securities and Exchange Commission (SEC) with the authority to restrict mandatory pre-dispute arbitration clauses in securities contracts.

Additionally, H.R. 3817 enhances the SEC's enforcement powers, remedies, and rulemaking authorities in a number of ways. Principally, the bill establishes a whistleblower bounty program to reward individuals whose tips about securities wrongdoing lead to successful enforcement actions by the SEC. The bill also facilitates the ability of the SEC to bring actions against those individuals who aid and abet securities fraud.

H.R. 3817 further clarifies the ability of the SEC to issue rules regarding the nomination by shareholders of individuals to serve on the boards of public companies. These provisions regarding proxy access will enhance democratic participation in corporate governance.

Moreover, H.R. 3817 modifies the SEC's funding and structure. In this regard, the legislation doubles the SEC's authorized budget over five years and provides a new funding stream to support the agency's operations via assessments on investor advisers. The bill also provides for an expeditious, independent, comprehensive study of the securities regulatory regime by a high caliber body with expertise in organizational restructuring to identify reforms and ensure that the SEC and other regulatory entities put in place further improvements designed to provide superior investor protection.

H.R. 3817 additionally contains numerous reforms not only aimed at revising and bolstering the authorities of the Securities Investor Protection Corporation (SIPC), but also improving the effectiveness of the Public Company Accounting Oversight Board (PCAOB), especially its ability to take enforcement actions against the auditors of broker-dealers and its capacity to coordinate with foreign regulatory bodies. The bill further amends the Sarbanes-Oxley Act to improve whistleblower protections and to exempt public companies with less than $75 million in market capitalization from the law's external audit of internal control requirements, as well.

Finally, H.R. 3817 creates a grant program to provide funding to the States for the enhanced protection of senior citizens from securities fraudsters. The legislation also requires the registration of municipal financial advisers to safeguard a sizable segment of the U.S. securities markets.

Background and Need for Legislation

During the 110th Congress, the Financial Services Committee developed H.R. 6513, the Securities Act of 2008. The House ultimately passed the bipartisan investor protection package in September 2008, but the bill did not become law.

The financial crisis that erupted in late 2008 further exposed vulnerabilities in the U.S. regulatory system and highlighted the lack of adequate safeguards for investors in the global capital markets. Without sufficient protections, investors lost confidence, and confidence among investors is the predicate for a healthy, functional securities marketplace.

The massive Madoff and Stanford Financial investment fraud schemes that also came to light during the height of the crisis exhibited, in large part at least, the need to improve investor protection. They also demonstrated deficiencies in the existing securities regulatory structure. The freezing up of the auction-rate securities markets and "breaking the buck" by a prominent money-market fund provided two other, if less extreme, examples of problematic securities regulation.

In response, the House Financial Services Committee worked in the 111th Congress to reconsider and augment the reforms contained in H.R. 6513 from the 110th Congress. This product became known as the Investor Protection Act, which Congressman Paul E. Kanjorski, the Chairman of the Financial Services Subcommittee on Capital Markets, Insurance, and Government Sponsored Enterprises, introduced as H.R. 3817 on October 15, 2009.

In general, H.R. 3817 addresses many recently identified investor protection problems by reforming the SEC to strengthen and update its powers, better safeguard investors, and efficiently and effectively regulate the capital markets. By doubling the SEC's authorized funding and providing dozens of new enforcement powers and regulatory authorities, the bill enhances the SEC's effectiveness and provides the agency with the tools needed to police today's complex securities markets.

In addition to the specific statutory reforms included in H.R. 3817, the legislation provides for an expeditious, independent, comprehensive study of the securities regulatory regime by a high caliber body. This study will identify organizational reforms in order to ensure that the SEC and the other regulatory entities that monitor our securities markets put in place further improvements designed to ensure superior investor protection.

H.R. 3817 also builds on the reforms previously passed by the House as part of H.R. 6513 in the 110th Congress. In addition to incorporating the vast majority of the provisions of H.R. 6513, H.R. 3817 includes reforms proposed by the Obama Administration as part of its comprehensive white paper entitled *Financial Regulatory Reform: A New Foundation*. H.R. 3817 also contains numerous reforms first recommended by the SEC, the PCAOB, and SIPC, among others.

Among its chief reforms, H.R. 3817 establishes that every financial intermediary who provides investment advice to customers will have a fiduciary duty to the investor. Through this harmonized standard of care, both broker-dealers and investment advisers will place customers' interests first.

Regulators and practitioners have become increasingly concerned that investors are confused by the legal distinction between broker-dealers and investment advisers. The two groups owe investors different standards of care, even though their services and marketing have become increasingly indistinguishable to retail investors.

In September 2006, the SEC commissioned a study by the RAND Corporation on the state of regulation for the investment advisory and brokerage industries. The RAND study found that this marketplace had become "very heterogeneous" in terms of the size, services and dual affiliations of many broker-dealers and investment advisers. The report also determined that a small number of extremely large firms, providing a full range of services, dominate the market.

Moreover, the study concluded that investors do not fully understand the distinction between broker-dealers and investment advisers, including the duties they owe customers, the titles they use, the services they offer, and their compensation schemes. Even after the RAND study presented investors with plain language explanations of the distinct legal duties owed to customers by these two securities professional groups, focus-group participants could not understand the differences between the varying standards of care. Furthermore, even after investors learned that current laws held investment advisers to a higher standard of care, investors expressed doubt that any actual difference existed in practice.

But under the law, the distinction is very real. On the one hand, investment advisers owe a fiduciary duty to their customers, the highest duty available under the law and one that requires them to completely subordinate their personal interests to those of their clients. On the other hand, broker-dealers remain subject to a "suitability" requirement, a lower standard of care, when advising customers.

A suitability standard allows broker-dealers to consider factors besides the client's best interests when offering investment advice. Unlike an investment adviser, who must recommend the best possible investment alternative, regardless of fees, the broker-dealer may recommend the security that generates the highest fee for the broker-dealer, if the security is "suitable" for the individual's investment goals, even if another security would better serve the needs of the customer. Moreover, the law does not subject a broker-dealer to an ongoing duty to disclose these conflicts of interest.

Because of investor confusion and because the two professions have increasingly become interlinked, many investor advocates and securities regulators have contended that when brokerages give personalized advice to a customer they should face the same accountability that the fiduciary standard imposes on investment advisers. In October 2009, for example, the Financial Services Committee received testimony on this subject from Texas State Securities Commissioner Denise Voigt Crawford. Commissioner Crawford's statement echoes the RAND study's findings, noting that:

> The migration of stockbrokers into the advisory arena through the marketing of brokers as "trusted advisers" and "financial advisors" over the years has fueled confusion among investors as to the services provided by stockbrokers and investment advisers as well as the level of protection.

Additionally, Commissioner Crawford observed the importance of imposing on broker-dealers the traditional fiduciary duty emanating from the 1963 U.S. Supreme Court case known as *SEC* v. *Capital Gains Research Bureau*. A traditional fiduciary duty includes an affirmative duty of care, loyalty and honesty; an affirmative duty to act in good faith; and a duty to act in the best interests of the client.

Commissioner Crawford also testified that several groups had proposed variations on this traditional duty, but she warned that these proposals "would potentially supplant longstanding principles of fiduciary law embodied in decades of common law" and might not require the up-front disclosures mandated by a traditional fiduciary standard. H.R. 3817 seeks to respect this existing body of case law in imposing a fiduciary duty standard on broker-dealers without altering the existing fiduciary standards of investment advisers.

The RAND study further raised an important issue regarding field testing and outreach to investors. The RAND study obtained very precise results about investors' understanding of the brokerage and investment advisory businesses. It achieved these results by surveying more than 600 U.S households and conducting a number of focus groups.

RAND also field tested plain language disclosures to assess whether they improved investor knowledge. Importantly, RAND learned that disclosures they deemed as "plain language" did not clarify investor understanding. Such field testing is an integral part of social science research, program design, and market assessment, but the SEC does not practice it. H.R. 3817 works to address this situation by clarifying the SEC's authority to engage in consumer testing.

For too long, securities industry practices have deprived investors of a choice when seeking dispute settlement, too. In particular, pre-dispute mandatory arbitration clauses inserted into contracts have limited the ability of defrauded investors to seek redress. Brokerage firms contend that arbitration is fair and efficient as a dispute resolution mechanism.

Critics of mandatory arbitration clauses, however, maintain that the brokerage firms hold powerful advantages over investors. Brokerages often hide mandatory arbitration clauses in dense contract language. Moreover, arbitration settlements generally remain secret, preventing other investors from learning about the performance of a particular brokerage firm.

If arbitration truly offers investors the opportunity to efficiently and fairly settle disputes, then investors will choose that option. But investors should also have the choice to pursue remedies in court, should they view that option as superior to arbitration. For these reasons, H.R. 3817 provides the SEC with the authority to limit, prohibit or place conditions on mandatory arbitration clauses in securities contracts.

A myriad of problems presently confronts the SEC, perhaps none more urgent than the need for adequate resources. SEC Chairman Mary L. Schapiro and others have repeatedly stressed the need to increase the funding to ensure that the agency has the ability to keep pace with technological advances in the securities markets, hire staff with industry expertise, and fulfill one of its core missions: the protection of investors.

To assist the agency in accomplishing these goals and achieving its other objectives, H.R. 3817 doubles the SEC's authorized funding from $1.115 billion in FY 2010 to $2.25 billion in FY 2015. Together these authorized amounts will provide the SEC with nearly $10 billion in funding over six years.

Many have documented the need for increased SEC funding. A report in March 2009 by the Government Accountability Office, for example, noted that SEC enforcement staff felt insufficient funding impeded their ability to effectively oversee the securities industry. In particular, the report notes that:

> . . . both management and staff said resource challenges have delayed cases, reduced the number of cases that can be brought, and potentially undermined the quality of some cases. Specifically, investigative attorneys cited the low level of administrative, paralegal, and information technology support, and unavailability of specialized services and expertise, as challenges to bringing actions.

In May 2009, Mr. Robert Khuzami, the Director of the SEC Division of Enforcement, also testified before the U.S. Senate Banking, Housing, and Urban Affairs Subcommittee on Securities, Insurance, and Investment. In his testimony, Mr. Khuzami offered the following assessment of the agency's resource needs:

> In today's markets, the SEC oversees more than 30,000 registrants, including more than 12,000 public companies, 4,600 mutual fund families, 11,000 investment advisers, 600 transfer agents, and 5,500 broker dealers. In fiscal year 2008, the Enforcement Division received more than 700,000 complaints, tips and referrals regarding potential violations of the federal securities laws. Yet, our entire Enforcement staff nationwide—including lawyers, accountants, information technology staff, and support staff—is just above 1,100.

If, as is contemplated by H.R. 3818, the Private Fund Investment Advisers Registration Act of 2009, advisers to private pools of capital also register with the SEC, the SEC could become responsible for the oversight of several thousand more registrants. H.R. 3817 ensures that the SEC will have the funding it needs to handle this increase in responsibilities.

On October 6, 2009, the Financial Services Committee further received testimony from Mr. Richard Ketchum, the Chairman and Chief Executive Officer of the Financial Industry Regulatory Authority (FINRA), a self-regulatory organization. Mr. Ketchum noted that of more than 11,000 federally registered investment advisory firms, the SEC projected that it would examine only 9 percent in 2009 and 2010. By comparison, FINRA and the SEC, which share oversight duties for brokerages, will together examine 55 percent of nearly 5,000 registered broker-dealer firms on average during the same timeframe.

When combined, these statistics begin to explain, but not forgive, the failure of the SEC to aggressively investigate and uncover the massive fraud perpetrated by Mr. Bernard L. Madoff. They also raise concerns that the SEC, the government's chief securities regulator, has fewer resources than even FINRA, a front-line self-funded securities regulatory entity that the SEC oversees.

Currently, broker-dealers pay a fee to FINRA to support their inspections and examinations, with the SEC providing backstop regulatory oversight and enforcement for this securities profession. The SEC, however, can assess no similar fee to support its direct examinations of investment advisers. To address this inequity and to increase the SEC's available resources, H.R. 3817 establishes a new funding stream for the agency through fees paid by investment advisers.

In addition to increasing its funding, H.R. 3817 vests the SEC with increased enforcement authorities to address long-standing concerns about the agency's powers. For example, many market analysts have noted that the SEC should have the authority to impose collateral bars on individuals in order to prevent wrongdoers in one sector of the securities industry from entering another sector.

A 1999 appellate decision for the D.C. Circuit, *Teicher* v. *SEC,* rejected the SEC authority to impose collateral bars in certain circumstances. Since then, administrative law judges have become reluctant to issue them at all. Yet, especially in light of the extreme blurring of the brokerage and investment advisory industries, many contend that the SEC should have the power to bar actors who violate the law in one area of the industry from participating in other areas. H.R. 3817 provides the SEC with clear authority to do so.

By addressing the SEC's extra-territorial jurisdiction, H.R. 3817 further acknowledges the global nature of securities frauds and Ponzi schemes. Without clear statutory guidance, the courts have developed and employed two separate tests to determine the question of jurisdiction in such cases: the conduct test and the effects test.

H.R. 3817 seeks to settle conflicts and confusion about which tests courts should use when considering extra-territorial jurisdiction in securities matters by providing the SEC with the broadest authority to prosecute actions truly international in scope. It achieves this goal by codifying both the conduct and the effects tests. Together, these tests will provide one national standard for protecting investors.

The Investor Protection Act also recognizes the need for greater flexibility for regulators to obtain and share information in today's increasingly complex global securities markets. With H.R. 3817, the SEC will have broader authority to collect information from and coordinate with foreign regulatory bodies about securities law violations.

While the entire financial crisis has brought to light weaknesses in the present system for securities regulation, perhaps no case has highlighted the problems of our existing investor protection framework as the massive Madoff fraud. Federal authorities arrested Mr. Madoff in December 2008 for perpetrating the largest investment fraud in history. Estimates of investor losses vary, but Mr. Madoff ultimately pleaded guilty in March 2009 to 11 charges of defrauding investors out of almost $65 billion over 20 years in a Ponzi scheme. For these transgressions, Mr. Madoff received a 150-year prison sentence.

Mr. Madoff's victims included pension funds, charities, wealthy investors, and large investment and asset management firms. They also included dozens of foreign financial institutions, such as commercial banks, investment banks, private banks, brokerages, hedge funds, insurers, and other financial services providers.

In perpetrating his landmark fraud, Mr. Madoff worked with others, as well. A top aide and his longtime independent auditor have both already pleaded guilty to charges related to the deception.

Whereas the Big Four accounting firms audit most large investment firms, Mr. Madoff's firm used a relatively obscure, small auditor to review the company's financial statements. The three-person auditing practice had not registered with the PCAOB as a result of a series of exemptions granted by the SEC after the enactment of the Sarbanes-Oxley Act.

Moreover, Mr. Harry Markopolos's regular communications with the SEC should have alerted the agency that Mr. Madoff's activities deserved closer scrutiny. The whistleblower first contacted the SEC in 2000 about his concerns. In late 2005, Mr. Markopolos sent the SEC a 19-page report entitled "The World's Largest Hedge Fund is a Fraud."

As reported by the *Wall Street Journal* on December 18, 2008, this document "presented a series of 29 'red flags,' ranging from in-depth mathematical calculations that purported to show the Madoff investment strategy couldn't work, to little more than rumor or innuendo—such as claims that a group of Arab investors were barred from using a major accounting firm to examine Mr. Madoff's books." Mr. Markopolos concluded that Mr. Madoff could only be engaged in one of two illegal practices—front-running or a Ponzi scheme. The SEC, unfortunately, failed to carefully examine Mr. Markopolos's conclusions.

On the heels of the Madoff revelations, in early 2009, allegations of another massive fraud arose. Stanford Financial Group and its owner, Mr. Allen Stanford, now stand accused of engaging in an $8 billion fraud to produce consistently above-market returns. The case has not yet been adjudicated, and Mr. Stanford has pleaded not guilty to fraud, conspiracy, and obstruction of justice charges. Nevertheless, this financial scam negatively affected the fortunes of numerous investors.

In addition to suffering sizable losses resulting from the Madoff and Stanford Financial frauds, investors experienced considerable setbacks as a result of purchasing securities backed by abusive and problematic mortgages. Together, these developments highlight shortcomings in the current system for investor protection regulation and the need for greater disclosures and accountability.

To fix the problems exposed by the Madoff scandal, the Stanford Financial fraud, and the meltdown of the mortgage-backed securities markets, H.R. 3817 takes a number of steps. For example, the bill closes a legal loophole in the Sarbanes-Oxley Act by giving the PCAOB the explicit power to investigate or examine the auditors of all broker-dealers. In granting this new power, the bill provides flexibility to the PCAOB to differentiate among classes of broker-dealers.

Because the SEC had failed to uncover the Madoff Ponzi scheme, despite having received a number of tips from several different sources as to the fraud's existence, H.R. 3817 creates a bounty program to reward individuals whose tips lead to successful enforcement actions by the SEC. After conducting his review of the Madoff fraud, SEC Inspector General H. David Kotz agreed with both the whistleblower protections and the PCAOB broker-dealer auditor fix contained in H.R. 3817.

Mr. Kotz further recommended changes to the law regarding the custody of records. Accordingly, H.R. 3817 improves statutory custody requirements. These changes will help to make it more difficult for fraudsters to misappropriate investors' securities.

H.R. 3817 also refines and makes improvements to the Securities Investor Protection Act. The Bernard L. Madoff Investment Securities and Lehman Brothers liquidations have placed a severe burden on the available resources of SIPC. To address this potential shortfall and protect against other such episodes in the future, the bill increases from $1 billion to $2.5 billion the borrowing authority at the Treasury Department for SIPC and raises the minimum assessments paid by SIPC members.

Among other things, H.R. 3817 also imposes both civil and criminal liability for false representation that an account has SIPC coverage. Moreover, H.R. 3817 enhances investor protection by providing SIPC coverage for futures held in portfolio margin accounts and increases SIPC's cash advance limits to bring them in line with the protection provided by the Federal Deposit Insurance Corporation.

In addition, the bill aims to protect senior citizens from less than scrupulous financial advisors who prey on the elderly by touting misleading or fraudulent "senior" designations and specializations. Too often these deceptive titles can be obtained online and require little or no training to acquire.

In response, the bill creates a new grant program administered by the SEC to assist the States in their efforts to protect seniors from misleading financial advisor designations and improve investor protections. The grants will provide the States with incentives to improve their own rules regulating the use of senior designations by encouraging them to adopt the North American Securities Administrators Association's and National Association of Insurance Commissioners' new model rules on the use of senior designations and suitability standards.

The grants are designed to give the States the flexibility to use funds for a wide variety of senior investor protection efforts, including hiring additional staff to investigate and prosecute cases. The States may also use the grants to fund new technology, equipment and training for regulators, prosecutors and law enforcement, as well as to provide educational materials to increase awareness and understanding of designations.

The financial crisis also laid bare problems in the $2.8 trillion municipal bond market in the United States and showed that municipal financial advisors needed better oversight. SEC Office of Municipal Securities Chief Martha Mahan Haines made clear the need for Congress to act when she stated during a May 2009 hearing of the Financial Services Committee: "The impact on the functioning of this market . . . from poor advice . . . or misleading disclosure documents prepared by unqualified municipal financial advisers, participation by financial advisors with conflicts of interest or those engaged in pay-to-play activities can indirectly affect the daily lives of Americans."

H.R. 3817 therefore extends regulation to the financial advisers of municipalities. In particular, the bill would bring professional standards to an area of public finance that currently lacks formal rules. Specifically, H.R. 3817 establishes a requirement and sets out the terms under which municipal financial advisers will register with the SEC. The bill also prohibits municipal financial advisers from engaging in certain transactions and establishes a fiduciary duty for these securities professionals.

In sum, H.R. 3817 responds to the financial crisis by putting in place more than six dozen reforms aimed overall at improving investor protection. These safeguards include establishing a fiduciary duty for broker-dealers, creating a whistleblower bounty program to reward tipsters, and restricting the use of mandatory arbitration clauses in securities contracts. The bill also enhances oversight of the auditors of broker-dealers and of municipal financial advisers.

H.R. 3817 further ensures that SIPC will have the resources it needs to compensate defrauded investors and updates provisions that have remained unchanged for more than three decades. Finally, the bill enhances the SEC's resources and effectiveness by doubling the agency's authorized funding over five years, creating a new funding stream to support its activities, and forcing a top-to-bottom study of its operations. Together these reforms will better protect investors in the future.

HEARINGS

The Financial Services Committee has reviewed the extraordinary investment fraud perpetrated by Mr. Madoff on two occasions. The Committee first met in a proceeding entitled *Assessing the Madoff Ponzi Scheme and the Need for Regulatory Reform* on January 5, 2009, and the following individuals participated:

Panel One

- Mr. H. David Kotz, Inspector General, SEC
- Mr. Stephen P. Harbeck, President, SIPC

Panel Two

- Mr. Allan Goldstein, a retiree and investor with Bernard L. Madoff Investment Securities
- Ms. Tamar Frankel, Professor of Law and Michaels Faculty Research Scholar, Boston University School of Law
- Mr. Leon Metzger, adjunct faculty member at Columbia University, Cornell University, New York University, and Yale University

The Subcommittee on Capital Markets, Insurance, and Government Sponsored Enterprises subsequently held a hearing entitled *Assessing the Madoff Ponzi Scheme and Regulatory Failures* on February 4, 2009. The following witnesses testified:

Panel One

- Mr. Harry Markopolos, an independent financial fraud investigator for institutional investors and others seeking forensic accounting expertise, as well as a Chartered Financial Analyst and Certified Fraud Examiner

Panel Two

- Ms. Linda Thomsen, Director, Division of Enforcement, SEC
- Mr. Andrew J. Donohue, Director, Division of Investor Management, SEC
- Mr. Erik Sirri, Director, Division of Trading and Markets, SEC
- Mr. Andy Vollmer, Acting General Counsel, SEC

• Ms. Lori A. Richards, Director, Office of Compliance Inspections and Examinations, SEC

• Mr. Stephen Luparello, Interim Chief Executive Officer, FINRA

Also, the Financial Services Committee held a hearing entitled *Federal and State Enforcement of Financial Consumer and Investor Protection Laws* on March 20, 2009. The following people participated:

Panel One

• The Honorable Elizabeth A. Duke, Governor, Board of Governors of the Federal Reserve System

• The Honorable John C. Dugan, Comptroller, Office of the Comptroller of the Currency

• The Honorable Elisse B. Walter, Commissioner, SEC

• The Honorable Martin J. Gruenberg, Vice Chairman, Federal Deposit Insurance Corporation

• Mr. Scott Polakoff, Acting Director, Office of Thrift Supervision

• Ms. Rita Glavin, Acting Assistant Attorney General, Criminal Division, U.S. Department of Justice

• Mr. John Pistole, Deputy Director, Federal Bureau of Investigations

Panel Two

• The Honorable William Francis Galvin, Secretary of the Commonwealth of Massachusetts

• The Honorable Lisa Madigan, Attorney General, State of Illinois

• Ms. Sarah Bloom Raskin, Commissioner, Maryland Office of Financial Regulation

• Mr. James B. Ropp, Securities Commissioner, Delaware Department of Justice

• Mr. Merle D. Sharick, Mortgage Asset Research Institute

Subsequently, the Financial Services Committee held a hearing entitled *Legislative Proposals to Improve the Efficiency and Oversight of Municipal Finance* on May 21, 2009. Witnesses testifying included:

Panel One

• Ms. Martha Mahan Haines, Chief, Office of Municipal Securities, SEC

• Mr. Bill Apgar, Senior Advisor to the Secretary, U.S. Department of Housing and Urban Development

• Mr. David W. Wilcox, Deputy Director, Division of Research and Statistics, Board of Governors of the Federal Reserve System

• The Honorable Thomas C. Leppert, Mayor of Dallas, Texas on behalf of the U.S. Conference of Mayors

• Mr. Ben Watkins, Director of State of Florida Division of Bond Finance, State Board of Administration

Panel Two

• Mr. Michael J. Marz, Vice Chairman, First Southwest Company on behalf of the Regional Bond Dealers Association

• Ms. Laura Levenstein, Senior Managing Director, Moody's Investors Service

- Mr. Keith Curry, PFM Group, Managing Director
- Mr. Alan B. Ispass, PE, BCEE, Vice President and Global Director of Utility Management Solutions, CH2M Hill
- Mr. Sean W. McCarthy, President and Chief Operating Officer, Financial Security Assurance, Inc.
- Mr. Bernard Beal, Chief Executive Officer, MR Beal & Company on behalf of the Securities Industry and Financial Markets Association
- Ms. Mary Jo Ochson, CFA, Senior Vice President, Chief Investment Officer for the Tax-Exempt Money Market and Municipal Bond Investment Groups and Senior Portfolio Manager, The Federated Funds
- Mr. Mike Allen, Chief Financial Officer, Winona Health on behalf of Healthcare Financial Management Association
- Mr. Sean Egan, Managing Director, Egan-Jones Ratings Company

The Capital Markets Subcommittee additionally convened a hearing entitled *SEC Oversight: Current State and Agenda* on July 14, 2009. The Honorable Mary L. Schapiro, Chairman of the SEC, testified during the proceedings.

Finally, the Financial Services Committee held a hearing entitled *Capital Markets Regulatory Reform: Strengthening Investor Protection, Enhancing Oversight of Private Pools of Capital, and Creating a National Insurance Office* on October 6, 2009. The first panel discussed investor protection issues, and the following witnesses testified on that panel:

- Ms. Denise Voigt Crawford, Texas Securities Commissioner, Securities Administrators Board, on behalf of the North American Securities Administrators Association
- Mr. Richard Ketchum, Chairman and CEO, FINRA
- Mr. Mercer E. Bullard, Founder and President, Fund Democracy, Inc.
- Mr. John Taft, Head of Wealth Management, RBC Wealth Management, on behalf of Securities Industry and Financial Markets Association
- Mr. David G. Tittsworth, Executive Director, Investment Adviser Association
- Mr. Bruce W. Maisel, Vice President and Managing Counsel, General Counsel's Office, Thrivent Financial for Lutherans, on behalf of the American Council of Life Insurers

COMMITTEE CONSIDERATION

The Committee on Financial Services met in open session on October 28 and November 3, 2009, and on November 4, 2009, ordered H.R. 3817, Investor Protection Act of 2009, favorably reported to the House by a record vote of 41 yeas and 28 nays.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. A motion by Mr. Frank to report the bill, as amended, to the House with a favorable recommendation was agreed to by a record vote of 41 yeas and 28 nays (Record vote no. FC–88). The names of Members voting for and against follow:

RECORD VOTE NO. FC–88

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Frank	X			Mr. Bachus		X	
Mr. Kanjorski	X			Mr. Castle		X	
Ms. Waters	X			Mr. King (NY)		X	
Mrs. Maloney	X			Mr. Royce		X	
Mr. Gutierrez	X			Mr. Lucas		X	
Ms. Velázquez	X			Mr. Paul		X	
Mr. Watt	X			Mr. Manzullo		X	
Mr. Ackerman	X			Mr. Jones		X	
Mr. Sherman	X			Mrs. Biggert		X	
Mr. Meeks	X			Mr. Miller (CA)		X	
Mr. Moore (KS)	X			Mrs. Capito		X	
Mr. Capuano	X			Mr. Hensarling		X	
Mr. Hinojosa	X			Mr. Garrett (NJ)		X	
Mr. Clay	X			Mr. Barrett (SC)		X	
Mrs. McCarthy	X			Mr. Gerlach			
Mr. Baca	X			Mr. Neugebauer		X	
Mr. Lynch	X			Mr. Price (GA)		X	
Mr. Miller (NC)	X			Mr. McHenry		X	
Mr. Scott	X			Mr. Campbell		X	
Mr. Green	X			Mr. Putnam		X	
Mr. Cleaver	X			Mrs. Bachmann		X	
Ms. Bean	X			Mr. Marchant		X	
Ms. Moore (WI)	X			Mr. McCotter		X	
Mr. Hodes	X			Mr. McCarthy		X	
Mr. Ellison	X			Mr. Posey		X	
Mr. Klein	X			Ms. Jenkins		X	
Mr. Wilson	X			Mr. Lee		X	
Mr. Perlmutter				Mr. Paulsen		X	
Mr. Donnelly	X			Mr. Lance		X	
Mr. Foster	X						
Mr. Carson	X						
Ms. Speier	X						
Mr. Childers	X						
Mr. Minnick	X						
Mr. Adler	X						
Ms. Kilroy	X						
Mr. Driehaus	X						
Ms. Kosmas	X						
Mr. Grayson	X						
Mr. Himes	X						
Mr. Peters	X						
Mr. Maffei	X						

During consideration of the bill, the following amendments were disposed of by record votes. The names of Members voting for and against follow:

An amendment by Mr. Price, no. 6, striking section 201 (authority to restrict mandatory pre-dispute arbitration), was not agreed to by a record vote of 27 yeas and 38 nays (Record vote no. FC–80):

RECORD VOTE NO. FC–80

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Frank		X		Mr. Bachus	X		
Mr. Kanjorski		X		Mr. Castle	X		
Ms. Waters		X		Mr. King (NY)	X		
Mrs. Maloney		X		Mr. Royce	X		
Mr. Gutierrez		X		Mr. Lucas	X		

RECORD VOTE NO. FC–80—Continued

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Ms. Velázquez		X		Mr. Paul	X		
Mr. Watt				Mr. Manzullo	X		
Mr. Ackerman		X		Mr. Jones	X		
Mr. Sherman		X		Mrs. Biggert	X		
Mr. Meeks		X		Mr. Miller (CA)			
Mr. Moore (KS)				Mrs. Capito	X		
Mr. Capuano		X		Mr. Hensarling	X		
Mr. Hinojosa		X		Mr. Garrett (NJ)	X		
Mr. Clay		X		Mr. Barrett (SC)	X		
Mrs. McCarthy				Mr. Gerlach			
Mr. Baca		X		Mr. Neugebauer	X		
Mr. Lynch		X		Mr. Price (GA)	X		
Mr. Miller (NC)		X		Mr. McHenry	X		
Mr. Scott		X		Mr. Campbell	X		
Mr. Green		X		Mr. Putnam	X		
Mr. Cleaver		X		Mrs. Bachmann	X		
Ms. Bean		X		Mr. Marchant	X		
Ms. Moore (WI)				Mr. McCotter	X		
Mr. Hodes		X		Mr. McCarthy	X		
Mr. Ellison		X		Mr. Posey	X		
Mr. Klein		X		Ms. Jenkins	X		
Mr. Wilson		X		Mr. Lee	X		
Mr. Perlmutter		X		Mr. Paulsen	X		
Mr. Donnelly		X		Mr. Lance	X		
Mr. Foster		X					
Mr. Carson		X					
Ms. Speier		X					
Mr. Childers		X					
Mr. Minnick		X					
Mr. Adler		X					
Ms. Kilroy		X					
Mr. Driehaus		X					
Ms. Kosmas		X					
Mr. Grayson		X					
Mr. Himes		X					
Mr. Peters		X					
Mr. Maffei		X					

An amendment by Mrs. Maloney (and Mr. Garrett), no. 9, regarding a study on internal control evaluation and reporting cost burdens on smaller issuers, was agreed to by a record vote of 57 yeas and 12 nays (Record vote no. FC–81):

RECORD VOTE NO. FC–81

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Frank		X		Mr. Bachus	X		
Mr. Kanjorski	X			Mr. Castle	X		
Ms. Waters	X			Mr. King (NY)	X		
Mrs. Maloney	X			Mr. Royce	X		
Mr. Gutierrez		X		Mr. Lucas	X		
Ms. Velázquez	X			Mr. Paul	X		
Mr. Watt		X		Mr. Manzullo	X		
Mr. Ackerman		X		Mr. Jones	X		
Mr. Sherman	X			Mrs. Biggert	X		
Mr. Meeks	X			Mr. Miller (CA)	X		
Mr. Moore (KS)	X			Mrs. Capito	X		
Mr. Capuano	X			Mr. Hensarling	X		
Mr. Hinojosa	X			Mr. Garrett (NJ)	X		
Mr. Clay		X		Mr. Barrett (SC)	X		
Mrs. McCarthy				Mr. Gerlach			
Mr. Baca	X			Mr. Neugebauer	X		
Mr. Lynch	X			Mr. Price (GA)	X		

RECORD VOTE NO. FC–81—Continued

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Miller (NC)	X			Mr. McHenry	X		
Mr. Scott	X			Mr. Campbell	X		
Mr. Green	X			Mr. Putnam	X		
Mr. Cleaver	X			Mrs. Bachmann	X		
Ms. Bean	X			Mr. Marchant	X		
Ms. Moore (WI)	X			Mr. McCotter	X		
Mr. Hodes	X			Mr. McCarthy	X		
Mr. Ellison		X		Mr. Posey	X		
Mr. Klein		X		Ms. Jenkins	X		
Mr. Wilson	X			Mr. Lee	X		
Mr. Perlmutter		X		Mr. Paulsen	X		
Mr. Donnelly	X			Mr. Lance	X		
Mr. Foster	X						
Mr. Carson		X					
Ms. Speier	X						
Mr. Childers	X						
Mr. Minnick	X						
Mr. Adler	X						
Ms. Kilroy		X					
Mr. Driehaus	X						
Ms. Kosmas	X						
Mr. Grayson		X					
Mr. Himes		X					
Mr. Peters	X						
Mr. Maffei	X						

An amendment by Mr. Lee, no. 12, regarding grandfathering of existing agreements, was not agreed to by a record vote of 29 yeas and 40 nays (Record vote no. FC–82):

RECORD VOTE NO. FC–82

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Frank		X		Mr. Bachus	X		
Mr. Kanjorski		X		Mr. Castle	X		
Ms. Waters		X		Mr. King (NY)	X		
Mrs. Maloney		X		Mr. Royce	X		
Mr. Gutierrez		X		Mr. Lucas	X		
Ms. Velázquez		X		Mr. Paul	X		
Mr. Watt		X		Mr. Manzullo	X		
Mr. Ackerman		X		Mr. Jones	X		
Mr. Sherman		X		Mrs. Biggert	X		
Mr. Meeks		X		Mr. Miller (CA)	X		
Mr. Moore (KS)		X		Mrs. Capito	X		
Mr. Capuano		X		Mr. Hensarling	X		
Mr. Hinojosa		X		Mr. Garrett (NJ)	X		
Mr. Clay		X		Mr. Barrett (SC)	X		
Mrs. McCarthy		X		Mr. Gerlach			
Mr. Baca		X		Mr. Neugebauer	X		
Mr. Lynch		X		Mr. Price (GA)	X		
Mr. Miller (NC)		X		Mr. McHenry	X		
Mr. Scott		X		Mr. Campbell	X		
Mr. Green		X		Mr. Putnam	X		
Mr. Cleaver		X		Mrs. Bachmann	X		
Ms. Bean	X			Mr. Marchant	X		
Ms. Moore (WI)		X		Mr. McCotter	X		
Mr. Hodes		X		Mr. McCarthy	X		
Mr. Ellison		X		Mr. Posey	X		
Mr. Klein		X		Ms. Jenkins	X		
Mr. Wilson		X		Mr. Lee	X		
Mr. Perlmutter				Mr. Paulsen	X		
Mr. Donnelly		X		Mr. Lance	X		
Mr. Foster		X					

RECORD VOTE NO. FC–82—Continued

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Carson		X					
Ms. Speier		X					
Mr. Childers		X					
Mr. Minnick		X					
Mr. Adler		X					
Ms. Kilroy		X					
Mr. Driehaus		X					
Ms. Kosmas		X					
Mr. Grayson		X					
Mr. Himes		X					
Mr. Peters		X					
Mr. Maffei		X					

An amendment by Mr. Neugebauer (and Mr. Garrett), no. 27, revising the SEC budget, was not agreed to by a record vote of 28 yeas and 41 nays (Record vote no. FC–83):

RECORD VOTE NO. FC–83

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Frank		X		Mr. Bachus	X		
Mr. Kanjorski		X		Mr. Castle	X		
Ms. Waters		X		Mr. King (NY)	X		
Mrs. Maloney		X		Mr. Royce	X		
Mr. Gutierrez		X		Mr. Lucas	X		
Ms. Velázquez		X		Mr. Paul	X		
Mr. Watt		X		Mr. Manzullo	X		
Mr. Ackerman		X		Mr. Jones	X		
Mr. Sherman		X		Mrs. Biggert	X		
Mr. Meeks		X		Mr. Miller (CA)	X		
Mr. Moore (KS)		X		Mrs. Capito	X		
Mr. Capuano		X		Mr. Hensarling	X		
Mr. Hinojosa		X		Mr. Garrett (NJ)	X		
Mr. Clay		X		Mr. Barrett (SC)	X		
Mrs. McCarthy		X		Mr. Gerlach			
Mr. Baca		X		Mr. Neugebauer	X		
Mr. Lynch		X		Mr. Price (GA)	X		
Mr. Miller (NC)		X		Mr. McHenry	X		
Mr. Scott		X		Mr. Campbell	X		
Mr. Green		X		Mr. Putnam	X		
Mr. Cleaver		X		Mrs. Bachmann	X		
Ms. Bean		X		Mr. Marchant	X		
Ms. Moore (WI)		X		Mr. McCotter	X		
Mr. Hodes		X		Mr. McCarthy	X		
Mr. Ellison		X		Mr. Posey	X		
Mr. Klein		X		Ms. Jenkins	X		
Mr. Wilson		X		Mr. Lee	X		
Mr. Perlmutter				Mr. Paulsen	X		
Mr. Donnelly		X		Mr. Lance	X		
Mr. Foster		X					
Mr. Carson		X					
Ms. Speier		X					
Mr. Childers		X					
Mr. Minnick		X					
Mr. Adler		X					
Ms. Kilroy		X					
Mr. Driehaus		X					
Ms. Kosmas		X					
Mr. Grayson		X					
Mr. Himes		X					
Mr. Peters		X					
Mr. Maffei		X					

An amendment by Ms. Waters (and Mr. Peters), no. 34, regarding SEC authority to issue rules on proxy access, was agreed to by a record vote of 39 yeas and 30 nays (Record vote no. FC–84):

RECORD VOTE NO. FC–84

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Frank	X			Mr. Bachus		X	
Mr. Kanjorski	X			Mr. Castle		X	
Ms. Waters	X			Mr. King (NY)		X	
Mrs. Maloney	X			Mr. Royce		X	
Mr. Gutierrez	X			Mr. Lucas		X	
Ms. Velázquez	X			Mr. Paul		X	
Mr. Watt	X			Mr. Manzullo		X	
Mr. Ackerman	X			Mr. Jones		X	
Mr. Sherman	X			Mrs. Biggert		X	
Mr. Meeks	X			Mr. Miller (CA)		X	
Mr. Moore (KS)	X			Mrs. Capito		X	
Mr. Capuano	X			Mr. Hensarling		X	
Mr. Hinojosa	X			Mr. Garrett (NJ)		X	
Mr. Clay	X			Mr. Barrett (SC)		X	
Mrs. McCarthy	X			Mr. Gerlach			
Mr. Baca	X			Mr. Neugebauer		X	
Mr. Lynch	X			Mr. Price (GA)		X	
Mr. Miller (NC)	X			Mr. McHenry		X	
Mr. Scott	X			Mr. Campbell		X	
Mr. Green	X			Mr. Putnam		X	
Mr. Cleaver	X			Mrs. Bachmann		X	
Ms. Bean	X			Mr. Marchant		X	
Ms. Moore (WI)	X			Mr. McCotter		X	
Mr. Hodes	X			Mr. McCarthy		X	
Mr. Ellison	X			Mr. Posey		X	
Mr. Klein	X			Ms. Jenkins		X	
Mr. Wilson	X			Mr. Lee		X	
Mr. Perlmutter				Mr. Paulsen		X	
Mr. Donnelly	X			Mr. Lance		X	
Mr. Foster	X			Mr. Childers		X	
Mr. Carson	X			Mr. Minnick		X	
Ms. Speier	X						
Mr. Adler	X						
Ms. Kilroy	X						
Mr. Driehaus	X						
Ms. Kosmas	X						
Mr. Grayson	X						
Mr. Himes	X						
Mr. Peters	X						
Mr. Maffei	X						

An amendment by Mr. Garrett, no. 42, regarding clearing services, was not agreed to by a record vote of 26 yeas and 43 nays (Record vote no. FC–85):

RECORD VOTE NO. FC–85

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Frank		X		Mr. Bachus	X		
Mr. Kanjorski		X		Mr. Castle	X		
Ms. Waters		X		Mr. King (NY)		X	
Mrs. Maloney		X		Mr. Royce	X		
Mr. Gutierrez		X		Mr. Lucas	X		
Ms. Velázquez		X		Mr. Paul	X		
Mr. Watt		X		Mr. Manzullo	X		
Mr. Ackerman		X		Mr. Jones	X		
Mr. Sherman		X		Mrs. Biggert		X	
Mr. Meeks		X		Mr. Miller (CA)	X		
Mr. Moore (KS)		X		Mrs. Capito	X		

RECORD VOTE NO. FC–85—Continued

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Capuano		X		Mr. Hensarling	X		
Mr. Hinojosa		X		Mr. Garrett (NJ)	X		
Mr. Clay		X		Mr. Barrett (SC)	X		
Mrs. McCarthy		X		Mr. Gerlach			
Mr. Baca		X		Mr. Neugebauer	X		
Mr. Lynch		X		Mr. Price (GA)	X		
Mr. Miller (NC)		X		Mr. McHenry	X		
Mr. Scott		X		Mr. Campbell	X		
Mr. Green		X		Mr. Putnam	X		
Mr. Cleaver		X		Mrs. Bachmann	X		
Ms. Bean		X		Mr. Marchant	X		
Ms. Moore (WI)		X		Mr. McCotter	X		
Mr. Hodes		X		Mr. McCarthy	X		
Mr. Ellison		X		Mr. Posey	X		
Mr. Klein		X		Ms. Jenkins	X		
Mr. Wilson		X		Mr. Lee	X		
Mr. Perlmutter		X		Mr. Paulsen	X		
Mr. Donnelly		X		Mr. Lance	X		
Mr. Foster		X					
Mr. Carson		X					
Ms. Speier		X					
Mr. Childers		X					
Mr. Minnick		X					
Mr. Adler		X					
Ms. Kilroy		X					
Mr. Driehaus		X					
Ms. Kosmas		X					
Mr. Grayson		X					
Mr. Himes		X					
Mr. Peters		X					
Mr. Maffei		X					

An amendment by Mr. Garrett (and Mr. Adler), no. 44, regarding exemption for non-accelerated filers, was agreed to by a record vote of 37 yeas and 32 nays (Record vote no. FC–86):

RECORD VOTE NO. FC–86

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Frank		X		Mr. Bachus	X		
Mr. Kanjorski		X		Mr. Castle	X		
Ms. Waters		X		Mr. King (NY)	X		
Mrs. Maloney		X		Mr. Royce	X		
Mr. Gutierrez		X		Mr. Lucas	X		
Ms. Velázquez		X		Mr. Paul	X		
Mr. Watt		X		Mr. Manzullo	X		
Mr. Ackerman		X		Mr. Jones	X		
Mr. Sherman		X		Mrs. Biggert	X		
Mr. Meeks		X		Mr. Miller (CA)	X		
Mr. Moore (KS)		X		Mrs. Capito	X		
Mr. Capuano		X		Mr. Hensarling	X		
Mr. Hinojosa		X		Mr. Garrett (NJ)	X		
Mr. Clay		X		Mr. Barrett (SC)	X		
Mrs. McCarthy		X		Mr. Gerlach			
Mr. Baca		X		Mr. Neugebauer	X		
Mr. Lynch		X		Mr. Price (GA)	X		
Mr. Miller (NC)		X		Mr. McHenry	X		
Mr. Scott		X		Mr. Campbell	X		
Mr. Green		X		Mr. Putnam	X		
Mr. Cleaver		X		Mrs. Bachmann	X		
Ms. Bean	X			Mr. Marchant	X		
Ms. Moore (WI)		X		Mr. McCotter	X		
Mr. Hodes		X		Mr. McCarthy	X		

RECORD VOTE NO. FC–86—Continued

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Ellison		X		Mr. Posey	X		
Mr. Klein		X		Ms. Jenkins	X		
Mr. Wilson		X		Mr. Lee	X		
Mr. Perlmutter				Mr. Paulsen	X		
Mr. Donnelly		X		Mr. Lance	X		
Mr. Foster	X						
Mr. Carson		X					
Ms. Speier		X					
Mr. Childers	X						
Mr. Minnick	X						
Mr. Adler	X						
Ms. Kilroy		X					
Mr. Driehaus	X						
Ms. Kosmas	X						
Mr. Grayson		X					
Mr. Himes		X					
Mr. Peters	X						
Mr. Maffei	X						

An amendment by Mr. Lee, no. 45, regarding prohibition of certain contingency-based attorney fee agreements relating to pre-existing agreements, was not agreed to by a record vote of 27 yeas, 41 nays, and 1 present (Record vote no. FC–87):

RECORD VOTE NO. FC–87

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Frank		X		Mr. Bachus	X		
Mr. Kanjorski		X		Mr. Castle	X		
Ms. Waters		X		Mr. King (NY)	X		
Mrs. Maloney		X		Mr. Royce	X		
Mr. Gutierrez		X		Mr. Lucas	X		
Ms. Velázquez		X		Mr. Paul	X		
Mr. Watt		X		Mr. Manzullo	X		
Mr. Ackerman		X		Mr. Jones	X		
Mr. Sherman		X		Mrs. Biggert			X
Mr. Meeks		X		Mr. Miller (CA)	X		
Mr. Moore (KS)		X		Mrs. Capito	X		
Mr. Capuano		X		Mr. Hensarling	X		
Mr. Hinojosa		X		Mr. Garrett (NJ)	X		
Mr. Clay		X		Mr. Barrett (SC)	X		
Mrs. McCarthy		X		Mr. Gerlach			
Mr. Baca		X		Mr. Neugebauer	X		
Mr. Lynch		X		Mr. Price (GA)	X		
Mr. Miller (NC)		X		Mr. McHenry	X		
Mr. Scott		X		Mr. Campbell	X		
Mr. Green		X		Mr. Putnam	X		
Mr. Cleaver		X		Mrs. Bachmann	X		
Ms. Bean		X		Mr. Marchant	X		
Ms. Moore (WI)		X		Mr. McCotter	X		
Mr. Hodes		X		Mr. McCarthy	X		
Mr. Ellison		X		Mr. Posey	X		
Mr. Klein		X		Ms. Jenkins	X		
Mr. Wilson		X		Mr. Lee	X		
Mr. Perlmutter				Mr. Paulsen	X		
Mr. Donnelly		X		Mr. Lance	X		
Mr. Foster		X					
Mr. Carson		X					
Ms. Speier		X					
Mr. Childers		X					
Mr. Minnick		X					
Mr. Adler		X					
Ms. Kilroy		X					

RECORD VOTE NO. FC–87—Continued

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Driehaus		X					
Ms. Kosmas		X					
Mr. Grayson		X					
Mr. Himes		X					
Mr. Peters		X					
Mr. Maffei		X					

The following other amendments were also considered by the Committee:

An amendment by Mr. Frank (and Mr. Kanjorski), no. 1, a managers amendment, was agreed to by voice vote, as amended. An amendment by Mr. Maffei, no. 1a, to the amendment, was agreed to by voice vote. An amendment by Mr. Hensarling, no. 1b, to the amendment, was offered and withdrawn.

An amendment by Mr. Castle (and Ms. Speier), no. 2, a study on SEC revolving door, was agreed to by voice vote.

An amendment by Mr. Hodes, no. 3, regarding senior investment protection, was agreed to, as modified, by voice vote.

An amendment by Mr. Campbell, no. 4, regarding nationwide service of subpenas, was agreed to by voice vote.

An amendment by Mr. Driehaus, no. 5, regarding registration of municipal financial advisors, was agreed to by voice vote.

An amendment by Mr. Perlmutter, no. 7, regarding a study of high-frequency trading, was agreed to by voice vote.

An amendment by Mr. Adler, no. 8, regarding exemption for smaller companies from attestation requirements, was offered, a record vote was ordered, and the amendment was withdrawn by unanimous consent.

An amendment by Mr. Neugebauer, no. 10, regarding a Comptroller General study to review the securities arbitration system, was agreed to, as modified, by voice vote.

An amendment by Ms. Kilroy, no. 11, regarding additional responsibilities to secure delivery of dividends, interest, and other valuable property rights, was offered and withdrawn.

An amendment by Mr. Miller (CA), no. 13, regarding a financial reporting forum, was agreed to by voice vote.

An amendment by Mrs. McCarthy (NY), no. 14, regarding a study on enhancing investment advisor examinations, was agreed to by voice vote.

An amendment by Mr. Posey, no. 15, regarding authority to contract for collection of delinquent judgments and orders, was not agreed to by voice vote.

An amendment by Mr. Perlmutter, no. 16, regarding a study on disclosure to retail customers before purchase of products or services, was agreed to by voice vote.

An amendment by Mr. Campbell, no. 17, regarding biannual rather than quarterly reporting, was offered and withdrawn.

An amendment by Mr. Klein, no. 18, regarding a clarification of liquidation proceedings, was offered and withdrawn.

An amendment by Mr. Royce, no. 19, regarding an SEC administration and enforcement office, was agreed to by voice vote.

An amendment by Mr. Royce, no. 20, establishing a Capital Markets Safety Board, was agreed to by voice vote.

An amendment by Mr. Ellison, no. 21, a securities clarification, was agreed to by voice vote.

An amendment by Mr. Ellison, no. 22, a fiduciary duty clarification, was offered and withdrawn.

An amendment by Mr. McCarthy (CA), no. 23, a report on implementation of reforms, was agreed to by voice vote.

An amendment by Mr. McCarthy (CA), no. 24, regarding the organization and conduct of the divisions and offices of the SEC, was offered and withdrawn.

An amendment by Mr. Frank, no. 25, regarding investment advisers subject to state authorities, was agreed to by voice vote.

An amendment by Mr. Maffei (and Mr. Ellison), no. 26, regarding higher SIPC payouts with respect to pension plans, was offered and withdrawn.

An amendment by Mr. Foster, no. 28, regarding custodial requirements, was agreed to by voice vote.

An amendment by Mr. Putnam, no. 29, regarding congressional access to information, was agreed to, as modified, by voice vote.

An amendment by Mr. Capuano, no. 30, regarding a GAO study of financial planning, was agreed to by voice vote.

An amendment by Mr. Bachus, no. 31, regarding national securities association enforcement, was agreed to by voice vote.

An amendment by Mr. Capuano (and Mr. Garrett), no. 32, regarding an analysis of rule regarding smaller reporting companies, was agreed to by voice vote.

An amendment by Mrs. Jenkins (and Mr. Garrett), no. 33, creating an ombudsman for the PCAOB, was agreed to by voice vote.

An amendment by Mr. McCarthy (CA), no. 35, creating an ombudsman for the SEC, was agreed to by voice vote.

An amendment by Mr. Meeks (and Mr. Posey), no. 36, streamlining SEC filing procedures, was offered and withdrawn.

An amendment by Mr. Bachus, no. 37, regarding the definition of "customer", was agreed to by voice vote.

An amendment by Mr. Campbell (and Mr. Peters), no. 38, a clarification of the standard of conduct with respect to Commission and fee-base compensation, was agreed to by voice vote.

An amendment by Mrs. Bachmann, no. 39, regarding the effective date, was offered and withdrawn.

An amendment by Mrs. Bachmann, no. 40, regarding Presidential appointment of PCAOB members, was offered and withdrawn.

An amendment by Mr. Miller (CA), no. 41, regarding a joint SEC–CFTC advisory committee, was agreed to by voice vote.

An amendment by Mr. Garrett, no. 43, regarding the Auditing Oversight Board, was agreed to by voice vote.

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee has held hearings and made findings that are reflected in this report.

Performance Goals and Objectives

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee establishes the following performance related goals and objectives for this legislation:

H.R. 3817 aims to improve investor protection by enhancing the powers, increasing the funding, and augmenting the operations of the U.S. Securities and Exchange Commission. H.R. 3817 also makes refinements to the laws governing the Public Company Accounting Oversight Board and the Securities Investor Protection Corporation with the goal of improving those entities' abilities to better protect the interests of investors.

New Budget Authority, Entitlement Authority, and Tax Expenditures

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee adopts as its own the estimate of new budget authority, entitlement authority, or tax expenditures or revenues contained in the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

Committee Cost Estimate

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

Congressional Budget Office Estimate

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office for H.R. 4173 as introduced on December 2, 2009, title V of which incorporated H.R. 3817 as reported, pursuant to section 402 of the Congressional Budget Act of 1974:

U.S. Congress,
Congressional Budget Office,
Washington, DC, December 4, 2009.

Hon. Barney Frank,
Chairman, Committee on Financial Services,
House of Representatives, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office (CBO) and the Joint Committee on Taxation (JCT) have reviewed H.R. 4173, the Wall Street Reform and Consumer Protection Act of 2009, as introduced on December 2, 2009. As summarized in the enclosed table, CBO and JCT estimate that enacting H.R. 4173 would increase revenues by $4.9 billion over the 2010–2019 period and would increase direct spending by $9.4 billion over that 10-year period. In total, CBO estimates that enacting the legislation would increase budget deficits by $10.7 billion over the 2010–2014 period and by $4.5 billion over the 2010–2019 period. CBO has not completed an estimate of the bill's impact on spending subject to appropriation.

The direct spending and revenue impacts of H.R. 4173 stem from provisions in titles I, IV, and V. Those budgetary impacts are briefly described below.

TITLE I—FINANCIAL STABILITY IMPROVEMENT ACT

CBO and JCT estimate that the provisions in title I would increase revenues by $4.4 billion over the 2010–2019 period and increase direct spending by $7.4 billion over the same period. The net effect of enacting this title would be an increase in budget deficits of $3.0 billion over the 2010–2019 period. Much of that net cost would occur because income from the fees collected under this title would be partially offset by a loss of revenue from income and payroll taxes. Title I includes four subtitles that would affect direct spending and revenues; each is described below.

Subtitle B would establish new standards, procedures, and programs for identifying and addressing potential risks to the financial or economic stability of the United States. CBO estimates that implementing this subtitle would increase direct spending by $1.1 billion and increase revenues by $0.6 billion over the 2010–2019 period. Most of the estimated costs of this subtitle would result from provisions that would expand the scope and modify the terms of the Federal Deposit Insurance Corporation's (FDIC's) authority to guarantee obligations of solvent depository institutions and financial companies during a financial crises. While the probability of such events is small, potential losses from such guarantees could be significant. For this estimate, CBO assumes that the FDIC would eventually recover any costs through fees on participants and, as necessary, compulsory assessments (which are classified as revenues) on very large financial institutions. The FDIC's authority to provide guarantees would expire on December 31, 2013.

Subtitle C would revise the regulatory regime for thrift associations, transferring functions now performed by the Office of Thrift Supervision (OTS) to other regulatory agencies. CBO estimates that enacting those provisions would increase direct spending by $0.5 billion and reduce revenues by $0.3 billion over the 2010–2019 period. Most of the estimated costs of this subtitle would result from provisions that would authorize the Office of the Comptroller of Currency to enter into agreements without regard to existing laws governing the disposition of real or personal property; allow for the expenditure of unobligated funds held by the OTS; and transfer oversight of thrift holding companies to the Federal Reserve, which unlike the OTS does not charge fees to cover its supervision costs.

Subtitle D would direct the Federal Reserve to assess fees on bank holding companies with total assets of $10 billion or more to defray the cost of examining those firms. CBO estimates that the Federal Reserve would collect about $0.4 billion over the 2010–2019 period to offset those costs. That collection would increase revenues remitted to the Treasury by the Federal Reserve. (This provision would not apply to thrift holding companies, which would come under the Federal Reserve's supervision in subtitle C.)

Subtitle G would create new government mechanisms for dissolving systemically important firms that are in default or in danger of default. CBO estimates that implementing these provisions would increase direct spending by $5.7 billion and increase revenues by $3.7 billion over the next 10 years. Under conditions outlined in the bill, the FDIC would be appointed as receiver and would be authorized to enter into various arrangements necessary to liquidate such firms, including organizing bridge banks that would be exempt from federal and state taxation. Under this bill, the FDIC's obligations for this purpose would be capped at $150 billion. Those funds could be derived from assessments on certain large financial firms (which are classified in the budget as revenues) or amounts borrowed from the Treasury. Under the bill, any amounts borrowed through the Treasury would be repaid from proceeds from asset sales, warrants, or future assessments on private firms. The FDIC's authority to obligate or borrow funds for such activities would expire on December 31, 2013. CBO expects that the probability of such receivership activities would be small and that spending for losses and working capital would eventually be offset by recoveries and assessments.

TITLE IV—CONSUMER FINANCIAL PROTECTION ACT

Title IV of H.R. 4173 is identical to H.R. 3126, the Consumer Financial Protection Agency Act of 2009, as ordered reported by the House Committee on Financial Services on October 22, 2009. On December 3, 2009, CBO transmitted a cost estimate for H.R. 3126 to the Congress. As detailed in that cost estimate, the provisions of title IV of H.R. 4173 would increase direct spending by $0.6 billion over the 2010–2019 period and decrease revenues by $0.5 billion over the same period. In total, those changes would increase budget deficits by about $1.1 billion over the 2010–2019 period. This net deficit impact would result for a number of reasons:

- The Department of the Treasury would incur costs that would not be subject to appropriation and would not be offset by fees;
- The Federal Reserve would incur additional costs that would decrease the revenues they would remit to the Treasury;
- While the Consumer Financial Protection Agency would be authorized to spend all of the fees they collect under the bill, those fees would be partially offset by a loss of receipts from income and payroll taxes; and
- Federal banking regulators would not be able to offset all of the costs they would incur under title IV because the bill would impose a cap on the fees they are otherwise authorized to collect under current law.

TITLE V—CAPITAL MARKETS

CBO estimates that title V would increase direct spending by $1.4 billion over the 2010–2019 period and increase revenues by about $1.0 billion over the same 10-year period. The net effect of this title would be an increase in the federal deficit of about $0.4 billion over the 10-year period.

The bill would increase fees to support examination activities by both the Securities and Exchange Commission (SEC) and the Public Companies Accounting Oversight Board (PCAOB), which would be recorded in the budget as revenues. This title also would raise the amount that the Securities Investor Protection Corporation (SIPC) would be authorized to borrow from the SEC; under current law, SIPC may borrow up to $1 billion from the SEC—the bill would raise that to about $2.5 billion. From fees collected from brokers and dealers of securities under current law, SIPC may make payments to investors that are harmed when a brokerage firm fails and customer assets are missing. CBO estimates that there is a small probability (about 10 percent) that SIPC would exercise the new borrowing authority over the next 10 years. CBO estimates that the net effect of the new borrowing authority would increase direct spending by about $0.7 billion over the 2010–2019 period. Other provisions of the bill, including spending for awards to individuals who report violations of securities laws to the SEC and additional costs of the PCAOB, would increase direct spending by about $0.7 billion over the 2010–2019 period.

Intergovernmental and private-sector impact: H.R. 4173 includes a number of intergovernmental and private-sector mandates, as defined in the Unfunded Mandates Reform Act (UMRA) that CBO previously identified in its cost estimates for H.R. 3269, the Corporate and Financial Institution Compensation Fairness Act of 2009; H.R. 3795, the Over-the-Counter Derivatives Markets Act of 2009; and H.R. 3818, the Private Fund Investment Advisers Registration Act of 2009. In addition, H.R. 4173 would preempt state laws and would impose intergovernmental and private-sector mandates on entities that conduct financial activities and credit rating agencies.

Because the costs of complying with some of the mandates would depend on the regulations to be established under the bill, CBO cannot determine whether the aggregate costs of the intergovernmental mandates would exceed the annual threshold established in UMRA ($69 million in 2009, adjusted annually for inflation). CBO estimates that the total costs of the private-sector mandates in the bill would well exceed the annual threshold established in UMRA ($139 million in 2009, adjusted annually for inflation).

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Susan Willie and Kathleen Gramp (for federal spending), Barbara Edwards (for federal revenues), Elizabeth Cove Delisle (for intergovernmental mandates), and Sam Wice, Paige Piper/Bach, and Brian Prest (for private-sector mandates).

Sincerely,

DOUGLAS W. ELMENDORF,
Director.

Enclosure.

ESTIMATED CHANGES IN REVENUES AND DIRECT SPENDING RESULTING FROM H.R. 4173, THE WALL STREET REFORM AND CONSUMER PROTECTION ACT OF 2009, AS INTRODUCED ON DECEMBER 2, 2009

	By fiscal year, in billions of dollars—											
	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2010–2014	2010–2019
CHANGES IN REVENUES												
Title I—Financial Stability Improvement Act												
Subtitle B—Prudential Regulation	0	0	0	*	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.6

ESTIMATED CHANGES IN REVENUES AND DIRECT SPENDING RESULTING FROM H.R. 4173, THE WALL STREET REFORM AND CONSUMER PROTECTION ACT OF 2009, AS INTRODUCED ON DECEMBER 2, 2009—Continued

	By fiscal year, in billions of dollars—											
	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2010–2014	2010–2019
Subtitle C—Improvements to Supervision of Federal Depository Institutions	*	*	*	*	*	*	*	*	*	−0.1	−0.1	−0.3
Subtitle D—Improvements to Regulation of Bank Holding Companies	0	*	*	*	*	*	*	0.1	0.1	0.1	0.1	0.4
Subtitle G—Enhanced Dissolution Authority	0	0	0.2	0.4	0.5	0.5	0.5	0.5	0.6	0.5	1.1	3.7
Total Title I—Financial Stability Improvement Act	0	0	0.2	0.4	0.6	0.6	0.6	0.7	0.7	0.6	1.2	4.4
Title IV—Consumer Financial Protection Agency Act	0	0	−0.3	−0.2	−0.1	*	*	*	*	*	−0.6	−0.5
Title V—Capital Markets	0	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.4	1.0
Total Changes in Revenues [2]	0	0.1	*	0.3	0.6	0.7	0.7	0.8	0.8	0.7	1.0	4.9
CHANGES IN DIRECT SPENDING												
Title I—Financial Stability Improvement Act												
Subtitle B—Prudential Regulation												
Estimated Budget Authority	0	0.6	0.9	0.6	0	−0.4	−0.3	−0.2	−0.1	0	2.1	1.1
Estimated Outlays	0	0.6	0.9	0.6	0	−0.4	−0.3	−0.2	−0.1	0	2.1	1.1
Subtitle C—Improvements to Supervision of Federal Depository Institutions												
Estimated Budget Authority	0	*	*	*	0.1	0.1	0.1	0.1	0.1	0.1	0.3	0.6
Estimated Outlays	0	*	*	*	0.1	0.1	0.1	0.1	*	*	0.1	0.5
Subtitle G—Enhanced Dissolution Authority												
Estimated Budget Authority	0.2	2.2	3.7	2.6	0.5	−1.5	−1.3	−0.5	−0.2	−0.1	9.2	5.7
Estimated Outlays	0.2	2.2	3.7	2.6	0.5	−1.5	−1.3	−0.5	−0.2	−0.1	9.2	5.7
Total Title I—Financial Stability Improvement Act												
Estimated Budget Authority	0.2	2.9	4.7	3.2	0.5	−1.8	−1.5	−0.6	−0.2	0	11.5	7.4
Estimated Outlays	0.2	2.9	4.7	3.2	0.5	−1.8	−1.5	−0.6	−0.2	*	11.5	7.4
Title IV—Consumer Financial Protection Agency Act												
Estimated Budget Authority	*	*	−0.2	−0.1	*	0.1	0.2	0.2	0.2	0.2	−0.3	0.6
Estimated Outlays	*	*	−0.2	−0.1	*	0.1	0.2	0.2	0.2	0.2	−0.3	0.6
Title V—Capital Markets												
Estimated Budget Authority	*	0.1	0.1	0.1	0.3	0.2	0.2	0.2	0.1	0.1	0.5	1.4
Estimated Outlays	*	0.1	0.1	0.1	0.3	0.2	0.2	0.2	0.1	0.1	0.5	1.4
Total Changes in Direct Spending.												
Estimated Budget Authority	0.2	3.0	4.6	3.2	0.9	−1.5	−1.1	−0.2	0.1	0.3	11.9	9.5
Estimated Outlays	0.2	3.0	4.6	3.2	0.8	−1.5	−1.1	−0.2	0.1	0.3	11.7	9.4

ESTIMATED CHANGES IN REVENUES AND DIRECT SPENDING RESULTING FROM H.R. 4173, THE WALL STREET REFORM AND CONSUMER PROTECTION ACT OF 2009, AS INTRODUCED ON DECEMBER 2, 2009—Continued

	By fiscal year, in billions of dollars—											
	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2010–2014	2010–2019
IMPACT OF CHANGES IN REVENUES AND DIRECT SPENDING ON THE DEFICIT												
Net Effect on the Deficit [b]	0.2	2.9	4.6	2.9	0.2	−2.2	−1.8	−1.0	−0.9	−0.4	10.7	4.5

[a] H.R. 4173 could affect federal tax receipts under the Internal Revenue Code. However, there are a number of uncertainties regarding potential effects of the use of a bridge financial company by the Federal Deposit Insurance Corporation on the tax attributes of a failed financial institution. It is not possible to determine whether the use of a bridge financial company would provide a tax result that is more or less favorable than bankruptcy, which is the current-law alternative. For this reason at this point, the staff of the Joint Committee on Taxation is not able to estimate the changes in tax revenue that would result from the bill.

[b] Positive numbers indicate increases in deficits; negative numbers indicate the opposite.

Notes: * = between −$50 million and $50 million. Components may not sum to totals because of rounding.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

ADVISORY COMMITTEE STATEMENT

Section 101 of this legislation establishes an Investor Advisory Committee to advise and consult with the SEC and section 307 establishes a joint advisory committee to assist the SEC and CFTC, both being advisory committees as defined by section 3 of the Federal Advisory Committee Act. The Committee finds pursuant to section 5 of the Federal Advisory Committee Act that none of the functions of the proposed advisory committees are being or could be performed by one or more agencies or by an advisory committee already in existence, or by enlarging the mandate of an existing advisory committee. The Committee also determines that these committees have a clearly defined purpose, fairly balanced membership, and meets all of the other requirements of section 5(b) of the Federal Advisory Committee Act.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds that the Constitutional Authority of Congress to enact this legislation is provided by Article 1, section 8, clause 1 (relating to the general welfare of the United States) and clause 3 (relating to the power to regulate interstate commerce).

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

EARMARK IDENTIFICATION

H.R. 3817 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

The section designates the short title of the legislation as the "Investor Protection Act of 2009".

Section 2. Table of contents

The section provides a table of contents for the bill.

TITLE I—DISCLOSURE

Section 101. Investor Advisory Committee established

The U.S. Securities and Exchange Commission (SEC) has recently administratively established an Investor Advisory Committee to advise on the SEC's regulatory priorities, including issues concerning new products, trading strategies, fee structures, and the effectiveness of disclosure; initiatives to protect investor interest; and initiatives to promote investor confidence in the integrity of the marketplace. The section codifies the Investor Advisory Committee.

The membership on the Investor Advisory Committee consists of individuals representing the interests of individual and institutional investors who use a wide range of investment approaches. The advisory panel must meet at least twice annually, and its members will receive compensation for participation in meetings and travel expenses. The section authorizes funding, as is necessary, to support the work of the Investor Advisory Committee, as well.

Section 102. Clarification of the Commission's authority to engage in consumer testing

This section clarifies the SEC's authority to gather information (e.g., through focus groups), communicate with investors or other members of the public (e.g., through telephonic or written surveys), and engage in temporary experimental programs (*e.g.*, pilot programs to "field test" disclosures) in order to inform the agency's rulemaking and other policy functions. The section confers this power under the four principal securities laws administered by the SEC: the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Company Act of 1940, and the Investment Advisers Act of 1940. The section represents an endorsement of the benefits that can accrue from field testing, consumer outreach and testing of disclosures to individual investors.

Section 103. Establishment of a fiduciary duty for brokers, dealers and investment advisers, and harmonization of regulation

Section 103 requires the SEC to write rules to establish a fiduciary duty for brokers and dealers harmonizing the standard of conduct for brokers and dealers with that of investment advisers when giving personalized investment advice about securities to retail customers (and such other customers as the SEC provides). The section amends the Securities Exchange Act of 1934 (Exchange Act) and the Investment Advisers Act of 1940 (Advisers Act).

In this section, the Exchange Act is amended with a new subsection within section 15. The new section authorizes the SEC to write rules for brokers and dealers to establish a fiduciary duty that is the same standard applicable to investment advisers under the Advisers Act. The section also states that compensation, by commission or other standard forms of compensation, is not to be considered a violation of the standard applied to the broker or dealer.

This section directs the SEC to establish rules under the Exchange Act for the disclosure and consent by a retail customer when a broker or dealer sells only proprietary products or a limited range of products. The practice of selling proprietary or a limited basket of products will not be considered a violation of the established fiduciary duty. The SEC shall take into consideration in rulemaking the preservation of proprietary product channels and limited offerings by brokers and dealers when providing personalized investment advice. This is consistent with standards and practices for investment advisers, which also may advise on and sell a limited range of products.

Under this section, it is intended for the SEC when writing rules to remain mindful of the range of activities conducted by brokers and dealers and the varying methods of compensation. The SEC shall prescribe rules that are inclusive of, address and preserve the different activities and compensation models of brokers and dealers. This range of activities should not prohibit brokers and dealers from acting in the best interests of customers when they give personalized investment advice about securities.

Additionally, while rules under this section will require that a broker or dealer act in the best interest of a customer in providing investment advice, the section does not indicate that a broker or dealer that provides advice in one setting or on a limited basis, such as a telephonic advice line or responding to a client request for limited advice, has established a relationship of duty and trust and a fiduciary obligation for all purposes and all accounts if the professional does not otherwise provide ongoing advice to the customer, as with a discount broker.

Section 103 also amends the Advisers Act by adding a new subsection to Section 211. The subsection directs the SEC to write rules on the standard of care such that "the standard of conduct for all brokers, dealers and investment advisers, when providing personalized investment advice about securities shall be to act in the best interest of a customer without regard to the financial or other interest of the broker, dealer, of investment adviser providing the advice."

This section enables the SEC through rulemaking proceedings to enhance this fiduciary duty, as necessary. As industry and markets evolve, the SEC should be able to evolve application and interpretation of the rules. As stated in the language of the provision, "such rules shall provide that such standard of conduct shall be no less stringent than the standard applicable to investment advisers under Section 206(1) and (2) of this Act." The section purposefully neither defines nor employs the terminology "fiduciary duty" in statute to avoid confusion as to what is the standard of conduct under the Advisers Act. Additionally, while the rulemaking required by this section requires the SEC to address only retail customers, it does not change the existing standard of care by investment advisers to non-retail customers.

The section references the Advisers Act, Sections 206(1) and 206(2), to direct the SEC to the source of the standard of conduct applicable currently to investment advisers. The relevant case law emanating from these sections of the Advisers Act is chiefly outlined in the Supreme Court case, SEC v. Capital Gains Research Bureau, 375 U.S. 180 (1963), and forms the basis, in addition to SEC administrative rulings, for accepted industry practice for investment advisers. The Committee aims to apply the current state of law to brokers and dealers and does not intend to undermine or dilute this fiduciary standard and market practice for investment advisers.

This section further defines "retail customer" and gives the SEC rulemaking authority to extend rules to other types of customers in both the Exchange Act and the Advisers Act. Investment advisers have a fiduciary duty to all customers, including but not limited to retail customers. Direction to the SEC under this section is not intended to alter the duty to the range of customers that investment advisers' currently serve.

This section also stipulates that the SEC cannot define an investor in a private fund where the investment adviser is contracted to the private fund as a "retail customer" for the purpose of such rules. This language ensures that the fiduciary duty of an investment adviser to a private fund is owed to the *fund*, not to each individual investor in the private fund. Further, this section prevents the mere receipt of compensation—whether in the form of fees for investment advisers or commissions for broker-dealers—from being considered a violation of the required standard of care.

This section further codifies in both the Exchange Act and the Advisers Act that the SEC shall facilitate the disclosure of conflicts of interest, including material conflicts of interest, to customers for a broker, dealer, and investment adviser. These disclosures should be enhanced, clear, simple and easy to understand for a wide range of investors. Such disclosures should include the roles and duties of the intermediaries such that investors can make informed decisions and preserve the choice of the customer.

This section additionally directs the SEC in both the Exchange Act and the Advisers Act to conduct an examination of sales practices, conflicts of interest and compensation schemes of brokers, dealers and investment advisers. The SEC shall write rules prohibiting or restricting these provisions should they be deemed contrary to the public interest or investor protection.

In addition to harmonizing the fiduciary duty of brokers, dealers, and investment advisers under the Exchange Act and the Advisers Act, this section harmonizes the enforcement authority of the SEC with respect to violations by brokers, dealers, and investment advisers. This section is intended to bring equal sanctions and prosecution to brokers, dealers, and investment advisers who violate their standard of conduct set forth in this title.

Section 104. Commission study on disclosure to retail customers before purchase of products or services

Within 180 days of enactment, this section requires the SEC to perform a study of the nature and range of products sold to retail customers. The study must also examine how products are sold to customers and what information retail customers should receive prior to purchasing such products and services. The study will additionally examine ways to ensure that, where possible, reasonably similar products and services are subject to similar regulatory treatment. After completing the study, the SEC may propose rules or regulations relating to the subject matter contained in the study.

Section 105. Beneficial ownership and short swing profit reporting

This section provides the SEC with the authority to adopt rules to shorten reporting timeframes and help the markets receive more timely information concerning substantial ownership interests in issuers. This change is important for purposes of obtaining more accurate pricing of listed securities.

Section 106. Revision to recordkeeping rules

The Madoff scandal highlighted the need for better recordkeeping and third-party custody. This section would expand the scope of records to be maintained and subject to examination by the SEC under both the Investment Company Act of 1940 and the Investment Advisers Act of 1940 to custodians or others who have custody or use of the investment company's or the investment adviser's clients' securities, deposits, or credits.

Section 107. Study on enhancing investment adviser examinations

This section calls for the SEC, within 180 days of enactment, to examine the need to enhance and improve the oversight of investment advisers. The study must include a discussion of needed or recommended regulatory or legislative steps necessary to implement changes identified by the SEC. The SEC shall also examine the potential need for designating one or more self-regulatory organizations to augment its oversight of investment advisers. The SEC must report its findings to the House and Senate and use such findings to revise its rules and regulations as necessary.

Section 108. GAO study of financial planning

Within 180 days of enactment, this section requires the Comptroller General to conduct a study on the unique role of financial planners in offering investment planning and other services to individuals. The study by the Government Accountability Office (GAO) must also examine potential regulatory gaps in this field. The GAO must report to Congress, including recommendations for registration or standards for financial planners.

TITLE II—ENFORCEMENT AND REMEDIES

Section 201. Authority to restrict mandatory pre-dispute arbitration

This section allows the SEC to issue rules under the Securities Exchange Act of 1934 and the Investment Advisers Act of 1940 to prohibit, or impose conditions or limitations on the use of pre-dispute agreements requiring arbitration between a broker, dealer, or municipal securities dealer and its customers. In developing such rules, it is intended that the SEC will review arbitration practices and establish that the reforms are in the public interest and for the protection of investors.

Section 202. Comptroller General study to review securities arbitration system

This section requires the GAO to conduct a study on securities arbitration issues, including costs and benefits. The Comptroller General has one year after enactment to submit a report to Congress.

Section 203. Whistleblower protection

The section provides the SEC with the authority to establish an Investor Protection Fund, using funds collected in enforcement actions not otherwise distributed to investors, to pay whistleblowers for information that leads to enforcement actions resulting in significant financial awards. The SEC currently has such authority to compensate sources in insider trading cases, and this provision would extend the SEC's power to compensate other tipsters who bring substantial evidence of other securities law violations. The SEC may also use the Investor Protection Fund to pay for investor education initiatives designed to help investors protect themselves against securities fraud or other violations of the securities laws. Any whistleblower who knowingly and willfully makes any false, fictitious, or fraudulent statement or representation, or makes or uses any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry, shall not be entitled to an award under this section and shall be subject to criminal prosecution.

Section 204. Conforming amendments for whistleblower protection

This section makes conforming changes to existing securities laws to account for the whistleblower bounty program established in section 203 of the bill.

Section 205. Implementation and transition provisions for whistleblower protections

The SEC must issue final rules and regulations to implement the new whistleblower bounty program within 270 days of enactment. The provisions also allow sources who submit tips before the date of enactment to receive rewards under the new program.

Section 206. Collateral bars

Generally, this section authorizes the SEC to impose collateral bars against regulated persons. As a result, the SEC would have the power to bar a regulated person who violates the securities laws in one part of the industry (*e.g.,* a broker-dealer who misappropriates customer funds) from access to customer funds in another part of the securities industry (*e.g.,* an investment adviser). By expressly empowering the SEC under the Securities Exchange Act of 1934 and the Investment Advisers Act of 1940 to impose broad prophylactic relief in one action in the first instance, this section will enable the SEC to more effectively protect investors and the markets while more efficiently using SEC resources.

Section 207. Aiding and abetting authority under the Securities Act and the Investment Company Act

The Securities Exchange Act of 1934 and the Investment Advisers Act of 1940 presently permit the SEC to bring actions for aiding and abetting violations of those statutes in civil enforcement actions. This section provides the SEC with the power to bring similar actions for aiding and abetting violations of the Securities Act of 1933 and the Investment Company Act of 1940. In addition, the section clarifies that the knowledge requirement to bring an aiding and abetting claim can be satisfied by recklessness.

Section 208. Authority to impose penalties for aiding and abetting violations of the Investment Advisers Act

This section would clarify that the Investment Advisers Act of 1940 expressly permits the imposition of penalties on those individuals who aid and abet securities fraud.

Section 209. Deadline for completing examinations, inspections and enforcement actions

This section generally requires the SEC to complete enforcement investigations within 180 days after staff provides a written Wells notice to any person. The section contains exceptions for complex actions to permit 180-day extensions after notice to the Chairman for the initial extension and after notice to and approval by the Commission for subsequent extensions.

For compliance examinations and inspections, the SEC has 180 days after the staff completes the on-site portion of its compliance examination or inspection or receives all records requested from the entity being examined or inspected, whichever is later, to request the entity to undertake corrective action or conclude the examination or inspection without findings. For complex cases, the SEC may extend the examination or inspection for one additional 180-day period after providing notice to the Chairman.

Section 210. Nationwide service of subpoenas

The SEC currently has nationwide service of process in administrative proceedings. This section enhances the SEC's enforcement program by providing the SEC with the ability to make nationwide service of process available in civil actions filed in Federal courts. Nationwide service of process would produce a number of substantial advantages, including a significant savings in terms of travel costs and staff time. The changes apply to the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Company Act of 1940, and the Investment Advisers Act of 1940.

Section 211. Authority to impose civil penalties in cease and desist proceedings

This section streamlines the SEC's existing enforcement authorities by permitting the SEC to seek civil money penalties in cease-and-desist proceedings under Federal securities laws. The section provides appropriate due process protections by making the SEC's authority in administrative penalty proceedings coextensive with its authority to seek penalties in Federal court. As is the case when a Federal district court imposes a civil penalty in a SEC action, administrative civil money penalties would be subject to review by a Federal appeals court.

Section 212. Formerly associated persons

Many provisions of the Federal securities laws that authorize the sanctioning of a person who engages in misconduct while associated with a regulated or supervised entity explicitly provide that such power exists even if the person is no longer associated with that entity. Several provisions, however, do not explicitly address this issue. As such, this section amends those provisions of the Federal securities laws that do not explicitly address this issue to make it clear that the SEC, or in applicable cases the Public Company Accounting Oversight Board, may sanction or discipline persons who engage in misconduct while associated with a regulated or supervised entity even if they are no longer associated with that entity.

Section 213. Sharing privileged information with other authorities

This section allows the SEC to share information with domestic and foreign regulators and law enforcement agencies engaged in the investigation and prosecution of violations of applicable securities laws without waiving any privileges the SEC may have with respect to such information. The language is modeled on a provision in the Federal Deposit Insurance Act that enables the Federal bank regulatory agencies to share information with other regulators without waiving their privileges with respect to such information.

Section 214. Expanded access to grand jury material

Modeled on Section 964 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 providing banking and thrift regulators with access to grand jury information, the section authorizes government attorneys to seek court authorization to release certain limited grand jury information to SEC personnel for use in matters within the SEC's jurisdiction.

Under existing law, the SEC may access grand jury information only in the rare case in which the agency can demonstrate that it has a "particularized need" for the information and that the information is sought "preliminarily to or in connection with a judicial proceeding". As a practical matter, the "particularized need" standard and the required nexus with an ongoing or imminent judicial proceeding severely limit the situations in which the U.S. Department of Justice can share with the SEC even the most critical information relevant to parallel investigations.

In most cases, the SEC must therefore conduct a separate, duplicative investigation to obtain the same information. This both entails an inefficient use of government resources and frequently burdens private parties and financial institutions with the need to provide essentially the same documents and testimony in multiple investigations. The need for the SEC to conduct a separate investigation also can result in substantial delays. A narrow modification of the "grand jury secrecy rule", consistent with provisions already in place for Federal banking regulators, would aid the SEC in its investigations and would greatly enhance the efficient use of the law enforcement resources devoted to those investigations.

The section also permits sharing of information only with regard to conduct that may constitute violations of the Federal securities laws. With regard to that information, however, the section lessens the burden in obtaining court approval. With this legislation, the court could approve the sharing of the information upon a showing of a "substantial need in the public interest" rather than the higher "particularized need" standard. In addition, under the section the judicial proceeding requirement does not apply to the SEC, permitting information to be shared at an earlier stage in an investigation and in connection with an administrative proceeding.

Section 215. Aiding and abetting standards of knowledge satisfied by recklessness

The current law for determining aiding and abetting violations and the scope of primary liability remains unsettled, resulting in challenges for the SEC in charging people who play substantial roles in fraud cases. Specifically, the Securities Exchange Act of 1934 provides that the SEC can prosecute people for "knowingly" aiding and abetting violations of that law. A growing number of courts, however, have held that knowingly means actual knowledge, rather than recklessness, resulting in a standard that is higher for aiding and abetting violations than for the primary violation (which, for a fraud violation, would include recklessness).

The section corrects this discrepancy by clarifying that recklessness is sufficient for bringing an aiding and abetting action. As a result, the standard for aiding and abetting and the primary violation would become the same, and the SEC would no longer find itself at a disadvantage in charging someone as an aider and abettor rather than a primary violator.

Section 216. Extraterritorial jurisdiction of the anti-fraud provisions of the Federal securities laws

This section addresses the authority of the SEC and the United States to bring civil and criminal law enforcement proceedings involving transnational securities frauds—*i.e.*, securities frauds in which not all of the fraudulent conduct occurs within the United States and not all of the wrongdoers are located domestically. Courts have previously ruled that Federal securities laws are silent as to their transnational reach, so two court tests—the conduct test and the effects test—have emerged for making such determinations and different courts apply different tests. This section would codify the SEC's authority to bring proceedings under both the conduct and the effects tests developed by the courts regardless of the jurisdiction of the proceedings. As a result, the bill creates a single national standard for protecting investors affected by transnational frauds.

Section 217. Fidelity bonding

The section provides the SEC with the power to require that registered management companies provide and maintain a bond against loss as to any officer or employee who has access to securities or funds of the company either directly or through the authority to draw upon such funds or to direct generally the disposition of such securities.

Section 218. Enhanced SEC authority to conduct surveillance and risk assessment

This section amends the Securities Exchange Act of 1934, the Investment Company Act of 1940, and the Investment Advisers Act of 1940 to subject registered individuals and firms at any time, or from time to time, to such reasonable periodic, special, or other information and document requests as the SEC by rule or order deems necessary or appropriate to conduct surveillance or risk assessments of the securities markets.

Section 219. Investment company examinations

Since 1975 the SEC has had the authority to examine "all" records of broker-dealers and other persons registered under the Securities Exchange Act of 1934, as well as "all" records of advisers registered under the Investment Advisers Act of 1940. The SEC's authority to examine registered investment companies, however, has remained limited to "required" records. This section changes the authority under the Investment Companies Act of 1940 to apply to "all" records. By fixing this statutory anomaly, the SEC would gain a better understanding of the operations of investment companies.

Section 220. Control person liability under the Securities Exchange Act

The SEC had for many years relied on Section 20(a) of the Securities Exchange Act of 1934, which imposes joint-and-several liability on control persons unless they can establish an affirmative defense. Two recent court decisions, however, have concluded that the provision is available only to private parties. This section makes it clear that the SEC may once again impose joint-and-several liability on control persons unless they can establish an affirmative defense.

Section 221. Enhanced application of anti-fraud provisions

Several of the anti-fraud provisions in the Securities Exchange Act of 1934 apply only to those transactions that involve securities registered on an exchange. In today's trading environment, however, the same standards should apply to all transactions whether they involve securities registered on an exchange.

This section therefore broadens the SEC's authority to apply the law's anti-fraud provisions to transactions not conducted on exchanges. Significantly, the amendments extend the SEC's existing rulemaking authority to cover short sales in the over-the-counter markets and of non-equity securities. Additionally, the section extends the SEC's anti-fraud rulemaking power to cover all options on securities.

Section 222. SEC authority to issue rules on proxy access

This section provides the SEC with the clear authority to issue regulations regarding the nomination of directors by shareholders to serve on a company's board of directors, thereby further democratizing corporate governance.

TITLE III—COMMISSION FUNDING AND ORGANIZATION

Section 301. Authorization of appropriations

Under this section, the SEC's authorized funding level doubles over a 5-year period, going from $1.115 billion in FY 2010 to $2.25 billion in FY 2015. This enhanced funding authorization will allow the SEC to improve its enforcement programs and obtain the tools needed to better protect investors, hire staff with industry experience, and police today's complex markets.

Section 302. Investment adviser regulation funding

This section grants the SEC rulemaking authority to create a new user fee paid by investment advisers to support the SEC's work related to the inspection and examination of investment advisers. Broker-dealers presently pay fees to the Financial Industry Regulatory Authority (FINRA), a self-regulatory organization, to cover the costs of their primary regulator, but investment advisers do not pay such fees to the SEC, which serves as their front-line regulator.

Section 303. Amendments to section 31 of the Securities Exchange Act of 1934

This section makes several technical changes to section 31 of the Securities Exchange Act of 1934 to improve the collection of the fees assessed on securities transactions that presently help to offset the costs of the SEC's operations.

Section 304. Commission organizational study and reform

The failures to detect the Madoff and Stanford Financial frauds demonstrated deep deficiencies and flaws in our existing securities regulatory structure. The section therefore requires an expeditious, independent, comprehensive study of the present structure of securities regulation by a high-caliber entity with expertise in organizational change. The study will identify structural and operational reforms, and offer administrative and regulatory recommendations designed to identify further modifications aimed at enhancing investor protection at the SEC, FINRA, and other self-regulatory organizations. The SEC must hire the independent consultant within 90 days of enactment, and the consultant must complete its work within 150 days after being retained.

Not later than the end of the 6-month period beginning on the date the consultant releases the organizational reform study, the SEC shall issue a report to the House Financial Services Committee and the Senate Banking Committee about what steps the agency is taking to implement the report's recommendations and reorganize securities regulation. The SEC shall continue via reports to update the two congressional panels on its progress every 6 months for 2 years after the issuance of the initial organizational reform study.

Section 305. Capital Markets Safety Board

This section creates within the SEC a Capital Markets Safety Board to investigate how institutions in the securities industry failed. After completing its investigations, the Board must publish on the SEC's website its findings and recommendations on how other firms can avoid similar mistakes.

Section 306. Report on implementation of "post-Madoff reforms"

Under this section, the SEC must publish within 6 months of enactment a report outlining how the agency has implemented its post-Madoff reforms and whether an overlap exists between those reforms and the post-Madoff recommendations made by the SEC Inspector General.

Section 307. Joint Advisory Committee

This section permits the SEC and the Commodity Futures Trading Commission (CFTC) to establish a joint advisory committee—on which members of each Commission and industry experts can sit—to examine areas of common interest, identify emerging regulatory risks and provide solutions, and regularly report its findings to the SEC, the CFTC, and Congress.

TITLE IV—ADDITIONAL COMMISSION REFORMS

Section 401. Regulation of securities lending

The securities lending program of American International Group contributed greatly to the company's need to seek aid from the Federal government. Securities lending and borrowing therefore have the potential to harm investors. In response, this section clarifies the SEC's authority to regulate stock loans and borrowing. Such rules will enhance market transparency, limit collateral risk exposures, and limit conflicts of interest in the securities lending process.

The section further ensures that nothing in the new power shall be construed to limit the ability of other Federal financial regulators to issue rules to impose restrictions on the lending or borrowing of securities in order to protect the solvency of a financial institution under their jurisdiction or against systemic risk.

Section 402. Lost and stolen securities

The section expands the scope of securities that must be reported to the SEC or its designee under the Lost and Stolen Securities Program, to include cancelled, missing or counterfeit securities certificates.

Section 403. Fingerprinting

This section requires fingerprinting for the personnel of registered securities information processors, national securities exchanges, and national securities associations. This change would bring these new entities in line with the organizations already listed in the Securities Exchange Act of 1934. This reform also ensures that these entities are aware of whether their personnel have criminal backgrounds and facilitates governmental efforts to combat terrorism financing.

Section 404. Equal treatment of self-regulatory organization rules

Section 29(a) of the Securities Exchange Act of 1934 voids any condition, stipulation, or provision binding any person to waive compliance with any provision of the law, any rule or regulation thereunder, or any rule of an exchange. This section extends this safeguard to the rules of other self-regulatory organizations—specifically registered securities associations (*e.g.*, FINRA) and registered clearing agencies.

This change is consistent with provisions of the law that encourage allocation of self-regulatory responsibilities among self-regulatory organizations to avoid overlapping and duplicative regulation. The change is particularly important now that FINRA has taken over the regulation of New York Stock Exchange's members' conduct in relation to customers.

Section 405. Clarification that section 205 of the Investment Advisers Act of 1940 does not apply to State-registered advisers

As part of the National Securities Markets Improvements Act of 1996, Congress determined that the SEC should regulate larger investment advisers while States should oversee smaller investment advisers. This section eliminates any remaining application of Federal law to investment adviser firms that the States now exclusively regulate.

Section 406. Conforming amendments for the repeal of the Public Utility Holding Company Act of 1935

In 2005, Congress repealed the Public Utility Holding Company Act of 1935 but failed to remove all associated references in Federal securities laws. This section amends the following statutes to make conforming amendments resulting from the 2005 repeal of the Public Utility Holding Company Act: the Securities Exchange Act of 1934, the Trust Indenture Act of 1939, the Investment Company Act of 1940, and the Investment Advisers Act of 1940.

Section 407. Promoting transparency in financial reporting

This section requires the SEC, the Financial Accounting Standards Board, and the Public Company Accounting Oversight Board to provide oral testimony by their respective chairpersons (or a designee), beginning in 2010, and annually for 5 years, to the House Committee on Financial Services. Testimony at these hearings will address efforts to reduce the complexity in financial reporting in order to provide more accurate and clearer financial information to investors.

Section 408. Unlawful margin lending

The Capital Markets Efficiency Act of 1996 amended Section 7(c) of the Exchange Act, in part, by replacing the period that concluded the predecessor provision of Subsection 7(c)(1)(A) with a semicolon and an "and". This section changes the "and" to an "or" in order to clarify that a violation of either prong remains sufficient to establish a cause of action for improper margin lending. This technical fix would match the statutory language to existing SEC policy interpretations that provide that the two clauses operate independently.

Section 409. Protecting confidentiality of materials submitted to the Commission

This section amends the Securities Exchange Act of 1934, the Investment Company Act of 1940, and the Investment Advisers Act of 1940 to protect the confidentiality of other sensitive business records and information obtained by SEC staff during the supervisory process. The section also protects the confidentiality of sensitive business records and information that the staff obtains during examinations of investment companies and investment advisers.

Section 410. Technical corrections

This section makes numerous technical corrections to the Securities Act of 1933, the Securities Exchange Act of 1934, the Trust Indenture Act of 1939, the Investment Company Act of 1940, and the Investment Advisers Act of 1940.

Section 411. Municipal securities

In recent years, the composition of the governing bodies of most self-regulatory organizations has become more independent. Consistent with these changes, this section gives the SEC greater flexibility in determining the make-up of the Municipal Securities Rulemaking Board (a statutorily mandated self-regulatory organization), director independence, and how the board functions.

Section 412. Interested person definition

This section amends the Investment Company Act of 1940 to include in the definition of an interested person of an investment company any person whom the SEC finds would be unlikely to exercise an appropriate degree of independence because of (1) a material business or professional relationship with the company or any affiliated person of the company or (2) a close familial relationship with any affiliated person of the company. As a result of these changes, the SEC will have the authority the agency needs to ensure that these individuals and other conflicted persons cannot claim to act as independent watchdogs for mutual fund shareholders.

Section 413. Rulemaking authority to protect redeeming investors

This section provides the SEC with express authority to limit mutual funds' investments in illiquid securities. During the height of the financial crisis, the illiquidity of short-term debt threatened to cause the per share net asset values of many money market funds to drop below a dollar when they were unable to sell previously liquid securities at their carrying value. As a result of these market conditions, Reserve Primary Fund "broke the buck," and only government intervention averted similar situations at other money market funds. While the SEC's longstanding illiquid investment limits have worked reasonably well, the section will remove any doubt about the SEC's authority to impose such restrictions.

Section 414. Study on SEC revolving door

This section requires the GAO to perform a study within one year of enactment about concerns related to SEC employees going on to work for entities they once regulated.

Section 415. Study on internal control evaluation and reporting cost burdens on smaller issuers

This section requires the SEC and the GAO to each conduct a study evaluating the costs and benefits of complying with section 404(b) of the Sarbanes-Oxley Act for non-accelerated issuers. Non-accelerated issuers are publicly traded companies that have a market capitalization of $75 million or less. The report will provide reform recommendations on reducing compliance burdens.

Section 416. Analysis of rule regarding smaller reporting companies

In light of the fact that certain companies' revenues and market capitalizations do not precisely reflect the nature of those companies, especially in the biotechnology industry, this section requires the SEC to conduct a study on the inclusion of revenue as a criteria used in defining smaller reporting companies under Rule 12b–2, established pursuant to the Sarbanes-Oxley Act.

Section 417. Financial Reporting Forum

This section establishes a Financial Reporting Forum comprised of the SEC Chairman, the head of the Financial Accounting Standards Board, the Chairman of the Public Company Accounting Oversight Board, the heads of other Federal financial regulators, and appointed representatives with an interest in accounting issues to meet quarterly to discuss issues critical to immediate and long-term financial reporting. The Financial Reporting Forum shall annually report its findings to Congress.

Section 418. Investment advisers subject to State authorities

This section clarifies the regulatory treatment of certain investment advisers. Generally, the provision requires investment advisers with $100 million or less in assets under management, or such higher figure as the SEC may by rule deem appropriate, to register with State securities regulators.

Section 419. Custodial requirements

This section prohibits registered investment advisers from maintaining custody of client assets in excess of $10 million dollars, unless the assets are kept by a qualified custodian, maintained in separate accounts under the client's names, or retained in an account of which the investment adviser is the trustee. The qualified custodian cannot, directly or indirectly, provide investment advice to the funds it holds in custody. The change comes in response to the Madoff scandal.

Section 420. Ombudsman

The section creates the position of an ombudsman at the SEC. Within 180 days after enactment, the SEC Chairman will appoint the ombudsman who will report directly to the Chairman. The ombudsman will serve as a liaison between the SEC and any affected person with respect to any problem such person may have in dealing with the SEC resulting from the regulatory activities of the SEC. The ombudsman will have a number of duties, including issuing reports to the SEC annually.

TITLE V—SECURITIES INVESTOR PROTECTION ACT AMENDMENTS

Section 501. Increasing the minimum assessment paid by SIPC members

This section updates the Securities Investor Protection Act (SIPA) to increase the minimum assessments paid by members of the Securities Investor Protection Corporation (SIPC) to the SIPC Fund. Currently, SIPA provides that the minimum assessment of a SIPC member shall not exceed $150 per year, regardless of the size of the SIPC member. This limit was imposed when SIPA was first enacted in 1970 and has never been adjusted to reflect either inflation or the substantial growth of the securities industry. The section strikes this current minimum assessment level and sets a new minimum assessment at 2 basis points of a SIPC member's gross revenues.

Section 502. Increasing the borrowing limit on Treasury loans

The liquidations of Bernard L. Madoff Investment Securities and Lehman Brothers have significantly decreased and may eventually deplete the SIPC Fund's available reserves. This section therefore provides that, in the event that the SIPC Fund is or may reasonably appear to be insufficient to satisfy its statutory requirements, the SEC is authorized to make loans to the SIPC Fund by issuing notes or other obligations to the Secretary of the Treasury. Congress imposed the current borrowing limit of $1 billion at the time of SIPA's enactment in 1970 and has never adjusted the figure to reflect either inflation or the substantial growth of the securities industry. This section increases the SEC's authority to issue notes or other obligations to $2.5 billion.

Section 503. Increasing the cash limit of protection

This section raises the maximum cash advance amount to $250,000 and authorizes SIPC, subject to the approval of the SEC, to make inflationary adjustments every 5 years to that amount starting in 2010. Since the establishment of SIPC in 1970, Congress has generally increased the SIPC cash advance amount each time it has increased the amount of Federal Deposit Insurance Corporation (FDIC) coverage. Consistent with changes to FDIC coverage levels made in 2005, this section brings SIPC and FDIC coverage back in line and provides a commensurate level of protection for the clients of securities brokerage firms as the customers of depository institutions.

Section 504. SIPC as trustee in SIPA liquidation proceedings

Under current law, SIPC must designate an outside trustee for the liquidation of a failed SIPC member when the failed firm's liabilities to unsecured general creditors and to subordinated lenders exceed $750,000 and where the failed firm appears to have more than 500 customers. Experience has shown that administration expenses are substantially reduced when SIPC personnel perform the liquidation functions, with equal benefit to customers as when an outside trustee is appointed. Accordingly, this section permits SIPC to designate itself as trustee for the liquidation of a failed SIPC member regardless of the size of the firm's liabilities to unsecured general creditors and where the failed firm appears to have less than 5,000 customers.

Section 505. Insiders ineligible for SIPC advances

The section adds “insiders” (as defined under the Bankruptcy Code) to the class of customers ineligible for SIPC advances. This statutory change would thus conform the treatment of an insider’s claims filed in a stockbroker liquidation under the Bankruptcy Code and in a SIPA liquidation proceeding.

Section 506. Eligibility for direct payment procedure

This section allows SIPC to use the direct payment procedure to resolve the failure of small firms with total claims of all customers up to an aggregate of $850,000. The direct payment procedure enables SIPC to quickly, and inexpensively, resolve the failure of small brokerage firms without the need to use the more time-consuming and expensive procedures applicable in a judicial liquidation proceeding. Current law limits the use of the direct payment procedure to cases in which all customer claims of an affected SIPC member aggregate to less than $250,000. Congress imposed this limit when adding the direct payment procedure to SIPA in 1978, and the figure has remained unadjusted since then.

Section 507. Increasing the fine for prohibited acts under SIPA

SIPA currently identifies and prescribes criminal penalties up to $50,000 for several prohibited acts and for fraudulent conversion. The maximum penalty amount has remained constant since the enactment of the provisions concerning prohibited acts and fraudulent conversions, more than three decades ago. This section quintuples the maximum fine under SIPA to $250,000.

Section 508. Penalty for misrepresentation of SIPC membership or protection

This section adds false advertising and misrepresentation regarding SIPC membership or protection to the list of prohibited acts under SIPA. This section also prescribes civil liability for damages caused by such misrepresentations and criminal liability in the form of a fine up to $250,000 or imprisonment up to 5 years. Finally, this section extends civil liability to Internet service providers who knowingly transmit such misrepresentations and provides for court jurisdiction to issue injunctions.

Section 509. Futures held in a portfolio margin securities account protection

Under SIPA, claims of securities customers take priority over claims of general creditors. SIPC insurance, however, does not extend to futures positions, other than securities futures.

This section extends SIPC insurance to futures positions held in a customer’s portfolio margining account under a program approved by the SEC. This amendment addresses the possibility that current law would treat a portfolio margining customer as a general creditor with respect to the proceeds from such customer’s futures positions, while the same portfolio margining customer would have priority for their securities holdings in the case of insolvency of their broker-dealer. This uneven treatment, along with the Commodity Exchange Act (CEA) requirement that futures be held in a segregated account, prevents customers from including related futures products in their portfolio margining securities accounts. These obstacles preclude those customers from taking full advantage of the efficiencies created from hedging related positions in a single account.

This section would become fully operative when the CFTC provides exemptive relief from the CEA's requirements regarding segregation of customer funds. This section neither amends the CEA nor limits the CFTC's discretion in granting exemptive relief.

Section 510. Study and report on the feasibility of risk-based assessments for SIPC members

This section directs the Comptroller General to conduct and complete a study within one year of enactment to determine whether SIPC could levy risk-based premiums on SIPC members. The GAO must consult with the SEC, FINRA, SIPC, FDIC, and any other entity it deems relevant in carrying out this study.

Section 511. Budgetary treatment of Commission loans to SIPC

This section clarifies that SIPC is a budgetary entity as defined by the Federal Credit Reform Act, codifying a recent Office of Management and Budget determination to this effect. This provision would neither affect the status of SIPC staff as non-government employees nor subject SIPC to Federal procurement law. It would, however, require an accounting of SIPC expenses and revenues in monthly statements issued by the U.S. Treasury. This clarification is needed because, for the first time, SIPC may need to borrow money from the SEC as a result of the Madoff fraud and other insolvencies.

TITLE VI—SARBANES-OXLEY ACT AMENDMENTS

Section 601. Public Company Accounting Oversight Board oversight of auditors of brokers and dealers

The $65 billion Madoff Ponzi scheme revealed a loophole in Federal securities laws with respect to the oversight of the auditors of broker-dealers. This section closes this loophole by providing the Public Company Accounting Oversight Board (PCAOB) with oversight authorities over the auditors of brokers-dealers, not just the requirement that such auditors register with the PCAOB.

Like public companies, brokers-dealers would pay an accounting support fee in proportion to the broker-dealer's net capital compared to the total net capital of all brokers and dealers. The section also authorizes the PCAOB to refer investigations to FINRA or other defined self-regulatory organizations and share relevant information with them. The section further allows the PCAOB to differentiate amongst different types of broker-dealers to allow for the scaling and scoping of registered auditor reviews commensurate with the activities and size of the broker-dealer.

Section 602. Foreign regulatory information sharing

This section allows the PCAOB to share information with foreign regulatory and law enforcement agencies engaged in the investigation and prosecution of violations of applicable accounting and auditing laws without waiving any privileges with respect to such information. This statutory change will resolve international conflicts that have impaired the PCAOB's ability to fulfill its statutory obligation to inspect non-U.S. registered accounting firms.

Section 603. Expansion of audit information to be produced and exchanged with foreign counterparts

This section enhances the ability of the SEC and the PCAOB to access the audit work of foreign public accounting firms when the foreign public accounting firm performs audit work, conducts interim reviews, or performs other material services upon which a registered public accounting firm relies in the conduct of an audit or interim review.

Section 604. Conforming amendment related to registration

This section changes the Sarbanes-Oxley Act so that the SEC has authority—in addition to the PCAOB—regarding applications for registration.

Section 605. Fair Fund amendments

This section increases the money available to compensate defrauded investors by revising the Fair Fund provisions to permit the SEC to use penalties obtained from a securities fraudster to recompense victims of the fraud even if the SEC does not obtain an order requiring the fraudster to disgorge ill-gotten gains. In some cases, a defendant may engage in a securities law violation that harms investors, but the SEC cannot obtain disgorgement from the defendant because the defendant did not personally benefit from the violation.

Section 606. Exemption for non-accelerated filers

This section exempts non-accelerated filers, which are those public companies with less than $75 million in market capitalization, from the external audit of internal controls requirements contained in section 404 of the Sarbanes-Oxley Act. The provision also calls for a joint study by the SEC and the GAO to determine ways the section 404 compliance burdens for companies whose public float falls between $75 and $250 million can be further reduced.

Section 607. Whistleblower protection against retaliation by a subsidiary of an issuer

This section creates additional protections for whistleblowers who report securities fraud and other wrongdoing. Currently, the statute could be read as providing a remedy only for retaliation by the issuer, and not by the subsidiaries or affiliates of an issuer. This section would eliminate a defense now raised in a substantial number of actions brought by whistleblowers and apply the whistleblower protections under the Sarbanes-Oxley Act to both issuers and their subsidiaries and affiliates.

Section 608. Congressional access to information

This section clarifies that the PCAOB may not withhold information from Congress.

Section 609. Creation of ombudsman for the PCAOB

This section creates an ombudsman for the PCAOB, who will be appointed by the Board within 180 days of enactment and who will report directly to the PCAOB Chairman. The ombudsman will serve as a liaison between the Board and registered accounting firms and issuers. The ombudsman will also assure that safeguards exist to encourage complaints to come forward and carry out other duties assigned by the Board.

Section 610. Auditing Oversight Board

This section changes the name of the Public Company Accounting Oversight Board to the Auditing Oversight Board to reflect the entity's actual responsibilities, especially in light of the changes made by section 601 of the bill.

TITLE VII—SENIOR INVESTMENT PROTECTION

Section 701. Findings

This section provides congressional findings that seniors are targeted by unscrupulous salespersons using misleading designations and that seniors have a right to know whether they are working with qualified advisers who understand the products they are offering.

Section 702. Definitions

This section defines the terms "misleading designation", "financial product", and "misleading or fraudulent marketing", among others.

Section 703. Grants to States for enhanced protection of seniors from being mislead by false designations

This section requires the SEC to establish a program providing grants to the States to investigate and prosecute misleading and fraudulent marketing practices and to educate seniors to reduce the occurrence of those practices. The section also lays out how the States can use the grants and the minimum amounts of the grants. The section additionally explains in detail how State designation rules for securities, and State suitability rules for securities and annuities, will function within the grant program.

Section 704. Applications

This section establishes how States will apply to the SEC for grants. The application must identify the scope of the problem, and describe how the proposal protects seniors from misleading or fraudulent marketing in the sale of financial products.

Section 705. Length of participation

States obtaining grants under this title can receive assistance for three years, after which they may reapply for funding.

Section 706. Authorization of appropriations

To carry out the program created under this title, this section authorizes $8 million for each of the fiscal years 2011 through 2015.

TITLE VIII—REGISTRATION OF MUNICIPAL FINANCIAL ADVISERS

Section 801. Municipal financial adviser registration requirements

This section requires municipal financial advisers not currently regulated under existing securities laws to register with the SEC. The section sets forth professional standards for this area of public finance. It further spells out the terms under which municipal financial advisers must register with the SEC and defines a municipal financial adviser. The section also defines prohibited transactions for municipal financial advisers and creates a fiduciary duty toward their clients.

Section 802. Conforming amendments

This section amends relevant securities laws to reflect the changes made in this title.

Section 803. Effective dates

This section makes these amendments effective 30 days after enactment. The SEC, however, has until 120 days after the enactment to publish for notice and public comment regulations necessary to effectuate the title. The SEC must take final action on the rules within 270 days after enactment.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

SECURITIES EXCHANGE ACT OF 1934

TITLE I—REGULATION OF SECURITIES EXCHANGES

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NECESSITY FOR REGULATION AS PROVIDED IN THIS TITLE

SEC. 2. For the reasons hereinafter enumerated, transactions in securities as commonly conducted upon securities exchanges and over-the-counter markets are affected with a national public interest which makes it necessary to provide for regulation and control of such transactions and of practices and matters related thereto, including transactions by officers, directors, and principal security holders, to require appropriate reports, to remove impediments to and perfect the mechanisms of a national market system for securities and a national system for the clearance and settlement of securities transactions and the safeguarding of securities and funds related thereto, and to impose requirements necessary to make such regulation and control reasonably complete and effective, in order to protect interstate commerce, the national credit, the Federal taxing power, to protect and make more effective the national banking system and Federal Reserve System, and to insure the maintenance of fair and honest markets in such transactions:

(1) Such transactions (a) are carried on in large volume by the public generally and in large part originate outside the States in which the exchanges and over-the-counter markets are located and/or are [affected] *effected* by means of the mails and instrumentalities of interstate commerce; (b) constitute an important part of the current of interstate commerce; (c) involve in large part the securities of issuers engaged in interstate commerce; (d) involve the use of credit, directly affect the financing of trade, industry, and transportation in interstate commerce, and directly affect and influence the volume of interstate commerce; and affect the national credit.

* * * * * * *

DEFINITIONS AND APPLICATION OF TITLE

SEC. 3. (a) When used in this title, unless the context otherwise requires—

(1) * * *

* * * * * * *

(47) The term "securities laws" means the Securities Act of 1933 (15 U.S.C. 78a et seq.), the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.), the Sarbanes-Oxley Act of 2002, [the Public Utility Holding Company Act of 1935 (15 U.S.C. 79a et seq.),] the Trust Indenture Act of 1939 (15 U.S.C. 77aaa et seq.), the Investment Company Act of 1940 (15 U.S.C. 80a–1 et seq.), the Investment Advisers Act of 1940 (15 U.S.C. 80b et seq.), and the Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa et seq.).

* * * * * * *

(55)(A) The term "security future" means a contract of sale for future delivery of a single security or of a narrow-based security index, including any interest therein or based on the value thereof, except an exempted security under [section 3(a)(12) of the Securities Exchange Act of 1934] *section 3(a)(12) of this Act* as in effect on the date of the enactment of the Futures Trading Act of 1982 (other than any municipal security as defined in section 3(a)(29) as in effect on the date of the enactment of the Futures Trading Act of 1982). The term "security future" does not include any agreement, contract, or transaction excluded from the Commodity Exchange Act under section 2(c), 2(d), 2(f), or 2(g) of the Commodity Exchange Act (as in effect on the date of the enactment of the Commodity Futures Modernization Act of 2000) or title IV of the Commodity Futures Modernization Act of 2000.

* * * * * * *

(65) MUNICIPAL FINANCIAL ADVISER.—

(A) The term "municipal financial adviser" means a person who, for compensation, engages in the business of—

(i) providing advice to a municipal securities issuer with respect to—

(I) the issuance or proposed issuance of securities, including any remarketing of municipal securities directly or indirectly by or on behalf of a municipal securities issuer;

(II) the investment of proceeds from securities issued by such municipal securities issuer;

(III) the hedging of any risks associated with subclauses (I) or (II), including advice as to swap agreements (as defined in section 206A of the Gramm-Leach-Bliley Act regardless of whether the counterparties constitute eligible contract participants); or

(IV) preparation of disclosure documents in connection with the issuance, proposed issuance, or previous issuance of securities issued by a municipal securities issuer, including, without limitation, official statements and documents prepared in connection with a written agreement or contract for the benefit of holders of such securities described in section 240.15c2–12 of title 17, Code of Federal Regulations;

(ii) assisting a municipal securities issuer in selecting or negotiating guaranteed investment contracts or other investment products; or

(iii) assisting any municipal securities issuer in the primary offering of securities not involving a public offering.

(B) Such term does not include—

(i) an attorney, if the attorney is offering advice or providing services that are of a traditional legal nature;

(ii) a nationally recognized statistical rating organization to the extent it is involved in the process of developing credit ratings;

(iii) a registered broker-dealer when acting as an underwriter, as such term is defined in section 2(a)(11) of the Securities Act of 1933 (15 U.S.C. section 77b(a)(11)); or

(iv) a State or any political subdivision thereof.

(66) MUNICIPAL SECURITIES ISSUER.—The term "municipal securities issuer" means—

(A) any entity that has the ability to issue a security the interest on which is excludable from gross income under section 103 of the Internal Revenue Code of 1986 and the regulations thereunder; or

(B) any person who receives the proceeds generated from the issuance of municipal securities.

(67) PERSON ASSOCIATED WITH A MUNICIPAL FINANCIAL ADVISER; ASSOCIATED PERSON OF A MUNICIPAL FINANCIAL ADVISER.—The term "person associated with a municipal financial adviser" or "associated person of a municipal financial adviser" means any partner, officer, director, or branch manager of such municipal financial adviser (or any person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with such municipal financial adviser, or any employee of such municipal financial adviser, except that any person associated with a municipal financial adviser whose functions are solely clerical or ministerial shall not be included in the meaning of

such term for purposes of section 15F(b) (other than paragraph (6) thereof).

* * * * * * *

(g) CHURCH PLANS.—No church plan described in section 414(e) of the Internal Revenue Code of 1986, no person or entity eligible to establish and maintain such a plan under the Internal Revenue Code of 1986, no company or account that is excluded from the definition of an investment company under section 3(c)(14) of the Investment Company Act of 1940, and no trustee, director, officer or employee of or volunteer for such plan, [company, account person, or entity] *company, account, person, or entity*, acting within the scope of that person's employment or activities with respect to such plan, shall be deemed to be a "broker", "dealer", "municipal securities broker", "municipal securities dealer", "government securities broker", "government securities dealer", "clearing agency", or "transfer agent" for purposes of this title—

(1) * * *

* * * * * * *

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—

(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. 4E. DEADLINE FOR COMPLETING ENFORCEMENT INVESTIGATIONS AND COMPLIANCE EXAMINATIONS AND INSPECTIONS.

(a) ENFORCEMENT INVESTIGATIONS.—

(1) IN GENERAL.—Not later than 180 days after the date on which Commission staff provide a written Wells notification to any person, the Commission staff shall either file an action against such person or provide notice to the Director of the Division of Enforcement of its intent to not file an action.

(2) EXCEPTIONS FOR CERTAIN COMPLEX ACTIONS.—Notwithstanding paragraph (1), if the head of any division or office within the Commission or his designee determines that a particular enforcement investigation is sufficiently complex such that a determination regarding the filing of an action against a person cannot be completed within the deadline specified in paragraph (1), the head of any division or office within the Commission or his designee may, after providing notice to the Chairman of the Commission, extend such deadline as needed for one additional 180-day period. If after the additional 180-day period the head of any division or office within the Commission or his designee determines that a particular enforcement investigation is sufficiently complex such that a determination regarding the filing of an action against a person cannot be completed within the additional 180-day period, the head of any division or office within the Commission or his designee may, after providing notice to and receiving approval of the Commission, extend such deadline as needed for one or more additional successive 180-day periods.

(b) COMPLIANCE EXAMINATIONS AND INSPECTIONS.—

(1) IN GENERAL.—Not later than 180 days after the date on which Commission staff completes the on-site portion of its compliance examination or inspection or receives all records requested from the entity being examined or inspected, whichever is later, Commission staff shall provide the entity being examined or inspected with written notification indicating either that the examination or inspection has concluded without findings or that the staff requests the entity undertake corrective action.

(2) EXCEPTION FOR CERTAIN COMPLEX ACTIONS.—Notwithstanding paragraph (1), if the head of any division or office within the Commission or his designee determines that a particular compliance examination or inspection is sufficiently complex such that a determination regarding concluding the examination or inspection or regarding the staff requests the entity undertake corrective action cannot be completed within the deadline specified in paragraph (1), the head of any division or office within the Commission or his designee may, after providing notice to the Chairman of the Commission, extend such deadline as needed for one additional 180-day period.

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MARGIN REQUIREMENTS

SEC. 7. (a) * * *

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(c) UNLAWFUL CREDIT EXTENSION TO CUSTOMERS.—

(1) PROHIBITION.—It shall be unlawful for any member of a national securities exchange or any broker or dealer, directly or indirectly, to extend or maintain credit or arrange for the extension or maintenance of credit to or for any customer—

(A) on any security (other than an exempted security), except as provided in paragraph (2), in contravention of the rules and regulations which the Board of Governors of the Federal Reserve System (hereafter in this section referred to as the "Board") shall prescribe under subsections (a) and (b); ❲and❳ *or*

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PROHIBITION AGAINST MANIPULATION OF SECURITY PRICES

SEC. 9. (a) It shall be unlawful for any person, directly or indirectly, by the use of the mails or any means or instrumentality of interstate commerce, or of any facility of any national securities exchange, or for any member of a national securities exchange—

(1) For the purpose of creating a false or misleading appearance of active trading in any security ❲registered on a national securities exchange❳ *other than a government security*, or a false or misleading appearance with respect to the market for any such security, (A) to effect any transaction in such security which involves no change in the beneficial ownership thereof, or (B) to enter an order or orders for the purchase of such security with the knowledge that an order or orders of substantially the same size, at substantially the same time, and at substantially the same price, for the sale of any such security, has been or will be entered by or for the same or different parties, or (C) to enter any order or orders for the sale of any such security with the knowledge that an order or orders of substantially the same size, at substantially the same time, and at substantially the same price, for the purchase of such security, has been or will be entered by or for the same or different parties.

(2) To effect, alone or with one or more other persons, a series of transactions in any security ❲registered on a national securities exchange❳ *other than a government security* or in connection with any security-based swap agreement (as defined in section 206B of the Gramm-Leach-Bliley Act) with respect to such security creating actual or apparent active trading in such security, or raising or depressing the price of such security, for the purpose of inducing the purchase or sale of such security by others.

(3) If a dealer or broker, or other person selling or offering for sale or purchasing or offering to purchase the security or a security-based swap agreement (as defined in section 206B of the Gramm-Leach-Bliley Act) with respect to such security, to induce the purchase or sale of any security ❲registered on a national securities exchange❳ *other than a government security* or any security-based swap agreement (as defined in section 206B of the Gramm-Leach-Bliley Act) with respect to such security by the circulation

or dissemination in the ordinary course of business of information to the effect that the price of any such security will or is likely to rise or fall because of market operations of any one or more persons conducted for the purpose of raising or depressing the price of such security.

(4) If a dealer or broker, or the person selling or offering for sale or purchasing or offering to purchase the security or a security-based swap agreement (as defined in section 206B of the Gramm-Leach-Bliley Act) with respect to such security, to make, regarding any security [registered on a national securities exchange] *other than a government security* or any security-based swap agreement (as defined in section 206B of the Gramm-Leach-Bliley Act) with respect to such security, for the purpose of inducing the purchase or sale of such security or such security-based swap agreement, any statement which was at the time and in the light of the circumstances under which it was made, false or misleading with respect to any material fact, and which he knew or had reasonable ground to believe was so false or misleading.

(5) For a consideration, received directly or indirectly from a dealer or broker, or other person selling or offering for sale or purchasing or offering to purchase the security or a security-based swap agreement (as defined in section 206B of the Gramm-Leach-Bliley Act) with respect to such security, to induce the purchase of any security [registered on a national securities exchange] *other than a government security* or any security-based swap agreement (as defined in section 206B of the Gramm-Leach-Bliley Act) with respect to such security by the circulation or dissemination of information to the effect that the price of any such security will or is likely to rise or fall because of the market operations of any one or more persons conducted for the purpose of raising or depressing the price of such security.

(6) To effect either alone or with one or more other persons any series of transactions for the purchase and/or sale of any security [registered on a national securities exchange] *other than a government security* for the purpose of pegging, fixing, or stabilizing the price of such security 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.

(b) It shall be unlawful for any person to effect, [by use of any facility of a national securities exchange,] 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—

(1) * * *

* * * * * * *

(c) It shall be unlawful for any *broker, dealer, or* member of a national securities exchange directly or indirectly to endorse or guarantee the performance of any put, call, straddle, option, or privilege in relation to any security [registered on a national securities exchange] *other than a government security*, 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.

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REGULATION OF THE USE OF MANIPULATIVE AND DECEPTIVE DEVICES

SEC. 10. It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce or of the mails, or of any facility of any national securities exchange—

(a)(1) To effect a short sale, or to use or employ any stop-loss order in connection with the purchase or sale, of any security ⟦registered on a national securities exchange⟧ *other than a government security*, 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.

* * * * * * *

(c)(1) To effect, accept, or facilitate 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.

(2) Nothing in paragraph (1) shall be construed to limit the authority of an appropriate Federal banking agency (as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813(q))), the National Credit Union Administration, or any other Federal department or agency identified under law as having a systemic risk responsibility from prescribing rules or regulations to impose restrictions on transactions involving the loan or borrowing of securities in order to protect the safety and soundness of a financial institution or to protect the financial system from systemic risk.

SEC. 10A. AUDIT REQUIREMENTS.

(a) * * *

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(i) PREAPPROVAL REQUIREMENTS.—

(1) IN GENERAL.—

(A) * * *

(B) DE MINIMUS EXCEPTION.—The preapproval requirement under subparagraph (A) is waived with respect to the provision of non-audit services for an issuer, if—

(i) the aggregate amount of all such non-audit services provided to the issuer constitutes not more than 5 percent of the total amount of revenues paid by the issuer to its auditor during the fiscal year in which the ⟦nonaudit⟧ *non-audit* services are provided;

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REGISTRATION REQUIREMENTS FOR SECURITIES

SEC. 12. (a) * * *

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(k) TRADING SUSPENSIONS; EMERGENCY AUTHORITY.—

(1) * * *

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⟦(7) DEFINITIONS.—For purposes of this subsection—

⟦(A) the term "emergency" means—

⟦(i) 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

[(ii) 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; and

[(B) notwithstanding section 3(a)(47), the term "securities laws" does not include the Public Utility Holding Company Act of 1935.]

(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.

* * * * * * *

PERIODICAL AND OTHER REPORTS

SEC. 13. (a) * * *

(b)(1) The Commission may prescribe, in regard to reports made pursuant to this title, the form or forms in which the required information shall be set forth, the items or details to be shown in the balance sheet and the [earning statement] *earnings statement*, and the methods to be followed in the preparation of reports, in the appraisal or valuation of assets and liabilities, in the determination of depreciation and depletion, in the differentiation of recurring and nonrecurring income, in the differentiation of investment and operating income, and in the preparation, where the Commission deems it necessary or desirable, of separate and/or consolidated balance sheets or income accounts of any person directly or indirectly controlling or controlled by the issuer, or any person under direct or indirect common control with the issuer; but in the case of the reports of any person whose methods of accounting are prescribed under the provisions of any law of the United States, or any rule or regulation thereunder, the rules and regulations of the Commission with respect to reports shall not be inconsistent with the requirements imposed by such law or rule or regulation in respect of the same subject matter (except that such rules and regulations of the Commission may be inconsistent with such requirements to the extent that the Commission determines that the public interest or the protection of investors so requires).

* * * * * * *

(d)(1) Any person who, after acquiring directly or indirectly the beneficial ownership of any equity security of a class which is registered pursuant to section 12 of this title, or any equity security of an insurance company which would have been required to be so registered except for the exemption contained in section 12(g)(2)(G) of this title, or any equity security issued by a closed-end investment company registered under the Investment Company Act of 1940 or any equity security issued by a Native Corporation pursuant to section 37(d)(6) of the Alaska Native Claims Settlement Act, is directly or indirectly the beneficial owner of more than 5 per centum of such class shall, within ten days after such acquisition *or within such shorter time as the Commission may establish by rule*, ⟦send to the issuer of the security at its principal executive office, by registered or certified mail, send to each exchange where the security is traded, and⟧ file with the Commission, a statement containing such of the following information, and such additional information, as the Commission may by rules and regulations, prescribe as necessary or appropriate in the public interest or for the protection of investors—

(A) * * *

* * * * * * *

(2) If any material change occurs in the facts set forth ⟦in the statements to the issuer and the exchange, and⟧ in the statement filed with the Commission, an amendment ⟦shall be transmitted to the issuer and the exchange and⟧ shall be filed with the Commission, in accordance with such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.

* * * * * * *

(g)(1) Any person who is directly or indirectly the beneficial owner of more than 5 per centum of any security of a class described in subsection (d)(1) of this section ⟦shall send to the issuer of the security and⟧ shall file with the Commission a statement setting forth, in such form and at such time as the Commission may, by rule, prescribe—

(A) * * *

* * * * * * *

(2) If any material change occurs in the facts set forth in the statement ⟦sent to the issuer and⟧ filed with the Commission, an amendment ⟦shall be transmitted to the issuer and⟧ shall be filed with the Commission, in accordance with such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.

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PROXIES

SEC. 14. (a)*(1)* It shall be unlawful for any person, by the use of the mails or by any means or instrumentality of interstate commerce or of any facility of a national securities exchange or otherwise, 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, to solicit or to permit the use of his name to solicit any proxy or consent or authorization in respect of any security (other than an exempted security) registered pursuant to section 12 of this title.

(2) The authority of the Commission to prescribe rules and regulations under paragraph (1) includes rules and regulations that require the inclusion and set procedures relating to the inclusion, in a solicitation of a proxy or consent or authorization by or on behalf of an issuer, of a nominee or nominees submitted by shareholders to serve on the issuer's board of directors.

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REGISTRATION AND REGULATION OF BROKERS AND DEALERS

SEC. 15. (a) * * *

(b)(1) A broker or dealer may be registered by filing with the Commission an application for registration in such form and containing such information and documents concerning such broker or dealer and any persons associated with such broker or dealer as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors. Within forty-five days of the date of the filing of such application (or within such longer period as to which the applicant consents), the Commission shall—

(A) * * *

(B) institute proceedings to determine whether registration should be denied. Such proceedings shall include notice of the grounds for denial under consideration and opportunity for hearing and shall be concluded within one hundred twenty days of the date of the filing of the application for registration. At the conclusion of such proceedings, the Commission, by order, shall grant or deny such registration. ⟦The order granting registration shall not be effective until such broker or dealer has become a member of a registered securities association, or until such broker or dealer has become a member of a national securities exchange if such broker or dealer effects transactions solely on that exchange, unless the Commission has exempted such broker or dealer, by rule or order, from such membership.⟧ The Commission may extend the time for conclusion of such proceedings for up to ninety days if it finds good cause for such extension and publishes its reasons for so finding or for such longer period as to which the applicant consents.

The Commission shall grant such registration if the Commission finds that the requirements of this section are satisfied. *The order granting registration shall not be effective until such broker or dealer has become a member of a registered securities association, or until such broker or dealer has become a member of a national securities exchange if such broker or dealer effects transactions solely on* *that exchange, unless the Commission has exempted such broker or dealer, by rule or order, from such membership.* The Commission shall deny such registration if it does not make such a finding or if it finds that if the applicant were so registered, its registration would be subject to suspension or revocation under paragraph (4) of this subsection.

* * * * * * *

(4) The Commission, by order, shall censure, place limitations on the activities, functions, or operations of, suspend for a period not exceeding twelve months, or revoke the registration of any broker or dealer if it finds, on the record after notice and opportunity for hearing, that such censure, placing of limitations, suspension, or revocation is in the public interest and that such broker or dealer, whether prior or subsequent to becoming such, or any person associated with such broker or dealer, whether prior or subsequent to becoming so associated—

(A) * * *

(B) has been convicted within ten years preceding the filing of any application for registration or at any time thereafter of any felony or misdemeanor or of a substantially equivalent crime by a foreign court of competent jurisdiction which the Commission finds—

(i) * * *

(ii) arises out of the conduct of the business of a broker, dealer, municipal securities dealer, government securities broker, government securities dealer, investment adviser, bank, insurance company, fiduciary, transfer agent, nationally recognized statistical rating organization, *municipal finance adviser,* foreign person performing a function substantially equivalent to any of the above, or entity or person required to be registered under the Commodity Exchange Act (7 U.S.C. 1 et seq.) or any substantially equivalent foreign statute or regulation;

* * * * * * *

(C) is permanently or temporarily enjoined by order, judgment, or decree of any court of competent jurisdiction from acting as an investment adviser, underwriter, broker, dealer, municipal securities dealer, government securities broker, government securities dealer, transfer agent, nationally recognized statistical rating organization, *municipal finance adviser,* foreign person performing a function substantially equivalent to any of the above, or entity or person required to be registered under the Commodity Exchange Act or any substantially equivalent foreign statute or regulation, or as an affiliated person or employee of any investment company, bank, insurance company, foreign entity substantially equivalent to any of the above, or entity or person required to be registered under the Commodity Exchange Act or any substantially equivalent foreign statute or regulation, or from engaging in or continuing any conduct or practice in connection with any such activity, or in connection with the purchase or sale of any security.

* * * * * * *

(6)(A) With respect to any person who is associated, who is seeking to become associated, or, at the time of the alleged misconduct, who was associated or was seeking to become associated with a broker or dealer, or any person participating, or, at the time of the alleged misconduct, who was participating, in an offering of any penny stock, the Commission, by order, shall censure, place limitations on the activities or functions of such person, or suspend for a period not exceeding ⟦12 months, or bar such person from being associated with a broker or dealer,⟧ *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,* or from participating in an offering of penny stock, if the Commission finds, on the record after notice and opportunity for a hearing, that such censure, placing of limitations, suspension, or bar is in the public interest and that such person—

(i) * * *

* * * * * * *

(c)(1)(A) No broker or dealer shall make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any security (other than commercial paper, bankers' acceptances, or commercial bills) ⟦otherwise than on a national securities exchange of which it is a member⟧, or any security-based swap agreement (as defined in section 206B of the Gramm-Leach-Bliley Act), by means of any manipulative, deceptive, or other fraudulent device or contrivance.

* * * * * * *

⟦(i)⟧ *(j)* The authority of the Commission under this section with respect to security-based swap agreements (as defined in section 206B of the Gramm-Leach-Bliley Act) shall be subject to the restrictions and limitations of section 3A(b) of this title.

(k) STANDARD 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, when providing personalized investment advice about securities 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 Advisers Act of 1940. The receipt of compensation based on commission or other standard compensation for the sale of securities shall not, in and of itself, be considered a violation of such standard applied to a broker or dealer.

(2) DISCLOSURE OF RANGE OF PRODUCTS OFFERED.—Where a broker or dealer sells only proprietary or other limited range of products, as determined by the Commission, the Commission shall by rule require that such broker or dealer provide notice to each retail customer and obtain the consent or acknowledgment of the customer. The sale of only proprietary or other limited range of products by a broker or dealer shall not, in and

of itself, be considered a violation of the standard set forth in paragraph (1).

(3) RETAIL CUSTOMER DEFINED.—For purposes of this subsection, the term "retail customer" means a natural person, or the legal representative of such natural person, who—

(A) receives personalized investment advice about securities 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, including any material conflicts of interest; and

(2) examine and, where appropriate, promulgate rules prohibiting or restricting certain sales practices, conflicts of interest, and compensation schemes for brokers, dealers, and investment advisers that the Commission deems contrary to the public interest and the protection of investors.

(m) HARMONIZATION OF ENFORCEMENT.—The enforcement authority of the Commission with respect to violations of the standard of conduct applicable to a broker or dealer providing personalized investment advice about securities to a retail customer shall include—

(1) the enforcement authority of the Commission with respect to such violations provided under this Act, and

(2) the enforcement authority of the Commission with respect to violations of the standard of conduct applicable to an investment advisor under the Investment Advisers Act of 1940, including the authority to impose sanctions for such violations, and

the Commission shall seek to prosecute and sanction violators of the standard of conduct applicable to a broker or dealer providing personalized investment advice about securities to a retail customer under this Act to same extent as the Commission prosecutes and sanctions violators of the standard of conduct applicable to an investment advisor under the Investment Advisers Act of 1940.

(n) 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, the rules and regulations thereunder, 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.

* * * * * * *

MUNICIPAL SECURITIES

SEC. 15B. (a) * * *

(b)[(1) Not later than one hundred twenty days after the date of enactment of the Securities Acts Amendments of 1975, the Commission shall establish a Municipal Securities Rulemaking Board (hereinafter in this section referred to as the "Board"), to be composed initially of fifteen members appointed by the Commission, which shall perform the duties set forth in this section. The initial members of the Board shall serve as members for a term of two years, and shall consist of (A) five individuals who are not associated with any broker, dealer, or municipal securities dealer (other than by reason of being under common control with, or indirectly controlling, any broker or dealer which is not a municipal securities broker or municipal securities dealer), 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) five individuals who are associated with and 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) five individuals who are associated with and 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"). Prior to the expiration of the terms of office of the initial members of the Board, an election shall be held under rules adopted by the Board (pursuant to subsection (b)(2)(B) of this section) of the members to succeed such initial members.⟧ (1) Not later than October 1, 2010, 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 independent 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").

(2) The Board shall propose and adopt rules to effect the purposes of this title with respect to transactions in municipal securities effected by brokers, dealers, and municipal securities dealers. (Such rules are hereinafter collectively referred to in this title as "rules of the Board".) The rules of the Board, as a minimum, shall:

(A) * * *

⟦(B) establish fair procedures for the nomination and election of members of the Board and assure fair representation in such nominations and elections of municipal securities brokers and municipal securities dealers. Such rules shall provide that the membership of the Board shall at all times be equally divided among public representatives, broker-dealer representatives, and bank representatives, and that the public representatives shall be subject to approval by the Commission to assure that no one of them is associated with any broker, dealer, or municipal securities dealer (other than by reason of being under common control with, or indirectly controlling, any broker or dealer which is not a municipal securities broker or municipal securities dealer) and that at least one is representative of investors in municipal securities and at least one is representative of issuers of municipal securities. Such rules shall also specify the term members shall serve and may increase the number of members which shall constitute the whole Board provided that such number is an odd number.]

(B) Establish fair procedures for the nomination and election of members of the Board and assure fair representation in such nominations and elections of municipal securities brokers and municipal securities dealers. 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 establish minimum knowledge, experience, and other appropriate qualifications for individuals to serve as public representatives, which may include, among other things, prior work experience in the securities, municipal finance, or municipal securities industries;

(iv) shall specify the term members shall serve; and

(v) 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.

* * * * * * *

(c)(1) * * *

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(4) The Commission, by order, shall censure or place limitations on the activities or functions of any person associated, seeking to become associated, or, at the time of the alleged misconduct, associated or seeking to become associated with a municipal securities dealer, or suspend for a period not exceeding [twelve months or bar any such person from being associated with a municipal securities dealer,] *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,* if the Commission finds, on the record after notice and opportunity for hearing, that such censure, placing of limitations, suspension, or bar is in the public interest and that such person has committed any act, or is subject to an order or finding, enumerated in subparagraph (A), (D), (E), (H), or (G) of paragraph (4) of section 15(b) of this title, has been convicted of any offense specified in subparagraph (B) of such paragraph (4) within 10 years of the commencement of the proceedings under this paragraph, or is enjoined from any action, conduct, or practice specified in subparagraph (C) of such paragraph (4). It shall be unlawful for any person as to whom an order entered pursuant to this paragraph or paragraph (5) of this subsection suspending or barring him from being associated with a municipal securities dealer is in effect willfully to become, or to be, associated with a municipal securities dealer without the consent of the Commission, and it shall be unlawful for

any municipal securities dealer to permit such a person to become, or remain, a person associated with him without the consent of the Commission, if such municipal securities dealer knew, or, in the exercise of reasonable care should have known, of such order.

* * * * * * *

(8) The Commission is authorized, by order, if in its opinion such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise, in furtherance of the purposes of this title, to remove from office or censure ⟦any member or employee⟧ *any person who is, or at the time of the alleged misconduct was, a member or employee* of the Board, who, the Commission finds, on the record after notice and opportunity for hearing, has willfully (A) violated any provision of this title, the rules and regulations thereunder, or the rules of the Board or (B) abused his authority.

* * * * * * *

GOVERNMENT SECURITIES BROKERS AND DEALERS

SEC. 15C. (a)(1) * * *

(2) A government securities broker or a government securities dealer subject to the registration requirement of paragraph (1)(A) of this subsection may be registered by filing with the Commission an application for registration in such form and containing such information and documents concerning such government securities broker or government securities dealer and any persons associated with such government securities broker or government securities dealer as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors. Within 45 days of the date of filing of such application (or within such longer period as to which the applicant consents), the Commission shall—

⟦(i)⟧ *(A)* by order grant registration, or

⟦(ii)⟧ *(B)* institute proceedings to determine whether registration should be denied. Such proceedings shall include notice of the grounds for denial under consideration and opportunity for hearing and shall be concluded within 120 days of the date of the filing of the application for registration. At the conclusion of such proceedings, the Commission, by order, shall grant or deny such registration. ⟦The order granting registration shall not be effective until such government securities broker or government securities dealer has become a member of a national securities exchange registered under section 6 of this title, or a securities association registered under section 15A of this title, unless the Commission has exempted such government securities broker or government securities dealer, by rule or order, from such membership.⟧ The Commission may extend the time for the conclusion of such proceedings for up to 90 days if it finds good cause for such extension and publishes its reasons for so finding or for such longer period as to which the applicant consents.

The Commission shall grant the registration of a government securities broker or a government securities dealer if the Commission finds that the requirements of this section are satisfied. *The order granting registration shall not be effective until such government se-*

curities broker or government securities dealer has become a member of a national securities exchange registered under section 6 of this title, or a securities association registered under section 15A of this title, unless the Commission has exempted such government securities broker or government securities dealer, by rule or order, from such membership. The Commission shall deny such registration if it does not make such a finding or if it finds that if the applicant were so registered, its registration would be subject to suspension or revocation under subsection (c) of this section.

* * * * * * *

(c)(1) With respect to any government securities broker or government securities dealer registered or required to register under subsection (a)(1)(A) of this section—

(A) * * *

* * * * * * *

(C) The Commission, by order, shall censure or place limitations on the activities or functions of any person associated, [or seeking to become associated,] *seeking to become associated, or, at the time of the alleged misconduct, associated or seeking to become associated* with a government securities broker or government securities dealer registered or required to register under subsection (a)(1)(A) of this section or suspend for a period not exceeding 12 months or bar any such person from being associated with such a government securities broker or government securities dealer, if the Commission finds, on the record after notice and opportunity for hearing, that such censure, placing of limitations, suspension, or bar is in the public interest and that such person has committed or omitted any act, or is subject to an order or finding, enumerated in subparagraph (A), (D), (E), (H), or (G) of paragraph (4) of section 15(b) of this title, has been convicted of any offense specified in subparagraph (B) of such paragraph (4) within 10 years of the commencement of the proceedings under this paragraph, or is enjoined from any action, conduct, or practice specified in subparagraph (C) of such paragraph (4).

(2)(A) With respect to any government securities broker or government securities dealer which is not registered or required to register under subsection (a)(1)(A) of this section, the appropriate regulatory agency for such government securities broker or government securities dealer may, in the manner and for the reasons specified in paragraph (1)(A) of this subsection, censure, place limitations on the activities, functions, or operations of, suspend for a period not exceeding 12 months, or bar from acting as a government securities broker or government securities dealer any such government securities broker or government securities dealer, and may sanction any person associated*, seeking to become associated, or, at the time of the alleged misconduct, associated or seeking to become associated* with such government securities broker or government securities dealer in the manner and for the reasons specified in paragraph (1)(C) of this subsection.

(B) In addition, where applicable, such appropriate regulatory agency may, in accordance with section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818), section 5 of the Home Owners' Loan Act of 1933 (12 U.S.C. 1464), or section 407 of the National Housing Act (12 U.S.C. 1730), enforce compliance by such government securities broker or government securities dealer or any person associated*, seeking to become associated, or, at the time of the alleged misconduct, associated or seeking to become associated* with such government securities broker or government securities dealer with the provisions of this section and the rules thereunder.

* * * * * * *

SEC. 15F. MUNICIPAL FINANCIAL ADVISER REGISTRATION REQUIREMENT.

(a)(1)(A) It shall be unlawful for any person to make use of the mails or any means or instrumentality of interstate commerce to act as a municipal financial adviser unless such person is registered as a municipal financial adviser in accordance with subsection (b).

(B) Subparagraph (A) shall not apply to a natural person associated with a municipal financial adviser, as long as such adviser is registered in accordance with subsection (b) and is not a natural person.

(2) The Commission, by rule or order, as it deems consistent with the public interest and the protection of investors, may conditionally or unconditionally exempt from paragraph (1) of this section any municipal financial adviser or class of municipal financial advisers specified in such rule or order.

(b)(1) A municipal financial adviser may be registered by filing with the Commission an application for registration in such form and containing such information and documents concerning such municipal financial adviser and any persons associated with such municipal financial adviser as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors. Within 45 days of the date of the filing of such application (or within such longer period as to which the applicant consents), the Commission shall—

(A) by order grant registration, or

(B) institute proceedings to determine whether registration should be denied. Such proceedings shall include notice of the grounds for denial under consideration and opportunity for hearing and shall be concluded within 120 days of the date of the filing of the application for registration. At the conclusion of such proceedings, the Commission, by order, shall grant or deny such registration. The Commission may extend the time for conclusion of such proceedings for up to 90 days if it finds good cause for such extension and publishes its reasons for so finding or for such longer period as to which the applicant consents.

The Commission shall grant such registration if the Commission finds that the requirements of this section are satisfied. The Commission shall deny such registration if it does not make such a finding or if it finds that if the applicant were so registered, its registration would be subject to suspension or revocation under paragraph (4).

(2) An application for registration of a municipal financial adviser to be formed or organized may be made by a municipal financial adviser to which the municipal financial adviser to be formed or organized is to be the successor. Such application, in such form as the Commission, by rule, may prescribe, shall contain such infor-

mation and documents concerning the applicant, the successor, and any persons associated with the applicant or the successor, as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors. The grant or denial of registration to such an applicant shall be in accordance with the procedures set forth in paragraph (1) of this subsection. If the Commission grants such registration, the registration shall terminate on the 45th day after the effective date thereof, unless prior thereto the successor shall, in accordance with such rules and regulations as the Commission may prescribe, adopt the application for registration as its own.

(3) Any provision of this title (other than section 5 and subsection (a) of this section) which prohibits any act, practice, or course of business if the mails or any means or instrumentality of interstate commerce is used in connection therewith shall also prohibit any such act, practice, or course of business by any registered municipal financial adviser or any person acting on behalf of such a municipal financial adviser, irrespective of any use of the mails or any means or instrumentality of interstate commerce in connection therewith.

(4) The Commission, by order, shall censure, place limitations on the activities, functions, or operations of, suspend for a period not exceeding 12 months, or revoke the registration of any municipal financial adviser if it finds, on the record after notice and opportunity for hearing, that such censure, placing of limitations, suspension, or revocation is in the public interest and that such municipal financial adviser, whether prior or subsequent to becoming such, or any person associated with such municipal financial adviser, whether prior or subsequent to becoming so associated—

(A) has willfully made or caused to be made in any application for registration or report required to be filed with the Commission or with any other appropriate regulatory agency under this title, or in any proceeding before the Commission with respect to registration, any statement which was at the time and in the light of the circumstances under which it was made false or misleading with respect to any material fact, or has omitted to state in any such application or report any material fact which is required to be stated therein;

(B) has been convicted within 10 years preceding the filing of any application for registration or at any time thereafter of any felony or misdemeanor or of a substantially equivalent crime by a foreign court of competent jurisdiction which the Commission finds—

(i) involves the purchase or sale of any security, the taking of a false oath, the making of a false report, bribery, perjury, burglary, any substantially equivalent activity however denominated by the laws of the relevant foreign government, or conspiracy to commit any such offense;

(ii) arises out of the conduct of the business of a municipal financial adviser, broker, dealer, municipal securities dealer, government securities broker, government securities dealer, investment adviser, bank, insurance company, fiduciary, transfer agent, nationally recognized statistical rating organization, foreign person performing a function substantially equivalent to any of the above, or entity or person

required to be registered under the Commodity Exchange Act (7 U.S.C. 1 et seq.) or any substantially equivalent foreign statute or regulation;

(iii) involves the larceny, theft, robbery, extortion, forgery, counterfeiting, fraudulent concealment, embezzlement, fraudulent conversion, or misappropriation of funds, or securities, or substantially equivalent activity however denominated by the laws of the relevant foreign government; or

(iv) involves the violation of section 152, 1341, 1342, or 1343 or chapter 25 or 47 of title 18, or a violation of a substantially equivalent foreign statute;

(C) is permanently or temporarily enjoined by order, judgment, or decree of any court of competent jurisdiction from acting as a municipal financial adviser, investment adviser, underwriter, broker, dealer, municipal securities dealer, government securities broker, government securities dealer, transfer agent, nationally recognized statistical rating organization, foreign person performing a function substantially equivalent to any of the above, or entity or person required to be registered under the Commodity Exchange Act or any substantially equivalent foreign statute or regulation, or as an affiliated person or employee of any investment company, bank, insurance company, foreign entity substantially equivalent to any of the above, or entity or person required to be registered under the Commodity Exchange Act or any substantially equivalent foreign statute or regulation or from engaging in or continuing any conduct or practice in connection with any such activity, or in connection with the purchase or sale of any security;

(D) has willfully violated any provision of the Securities Act of 1933, the Investment Advisers Act of 1940, the Investment Company Act of 1940, the Commodity Exchange Act, this title, the rules or regulations under any of such statutes, or is unable to comply with any such provision;

(E) has willfully aided, abetted, counseled, commanded, induced, or procured the violation by any other person of any provision of the Securities Act of 1933, the Investment Advisers Act of 1940, the Investment Company Act of 1940, the Commodity Exchange Act, this title, the rules or regulations under any of such statutes, or has failed reasonably to supervise, with a view to preventing violations of the provisions of such statutes, rules, and regulations, another person who commits such a violation, if such other person is subject to his supervision. For the purposes of this subparagraph, no person shall be deemed to have failed reasonably to supervise any other person, if—

(i) there have been established procedures, and a system for applying such procedures, which would reasonably be expected to prevent and detect, insofar as practicable, any such violation by such other person, and

(ii) such person has reasonably discharged the duties and obligations incumbent upon him by reason of such procedures and system without reasonable cause to believe that such procedures and system were not being complied with;

(F) is subject to any order of the Commission barring or suspending the right of the person to be associated with a municipal financial adviser;

(G) has been found by a foreign financial regulatory authority to have—

(i) made or caused to be made in any application for registration or report required to be filed with a foreign financial regulatory authority, or in any proceeding before a foreign financial regulatory authority with respect to registration, any statement that was at the time and in the light of the circumstances under which it was made false or misleading with respect to any material fact, or has omitted to state in any application or report to the foreign financial regulatory authority any material fact that is required to be stated therein;

(ii) violated any foreign statute or regulation regarding transactions in securities, or contracts of sale of a commodity for future delivery, traded on or subject to the rules of a contract market or any board of trade; or

(iii) aided, abetted, counseled, commanded, induced, or procured the violation by any person of any provision of any statutory provisions enacted by a foreign government, or rules or regulations thereunder, empowering a foreign financial regulatory authority regarding transactions in securities, or contracts of sale of a commodity for future delivery, traded on or subject to the rules of a contract market or any board of trade, or has been found, by a foreign financial regulatory authority, to have failed reasonably to supervise, with a view to preventing violations of such statutory provisions, rules, and regulations, another person who commits such a violation, if such other person is subject to his supervision; or

(H) is subject to any final order of a State securities commission (or any agency or officer performing like functions), State authority that supervises or examines banks, savings associations, or credit unions, State insurance commission (or any agency or office performing like functions), an appropriate Federal banking agency (as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813(q))), or the National Credit Union Administration, that—

(i) bars such person from association with an entity regulated by such commission, authority, agency, or officer, or from engaging in the business of securities, insurance, banking, savings association activities, or credit union activities; or

(ii) constitutes a final order based on violations of any laws or regulations that prohibit fraudulent, manipulative, or deceptive conduct.

(5) Pending final determination whether any registration under this subsection shall be revoked, the Commission, by order, may suspend such registration, if such suspension appears to the Commission, after notice and opportunity for hearing, to be necessary or appropriate in the public interest or for the protection of investors. Any registered municipal financial adviser may, upon such terms and conditions as the Commission deems necessary or appropriate in the

public interest or for the protection of investors, withdraw from registration by filing a written notice of withdrawal with the Commission. If the Commission finds that any registered municipal financial adviser is no longer in existence or has ceased to do business as a municipal financial adviser, the Commission, by order, shall cancel the registration of such municipal financial adviser.

(6)(A) With respect to any person who is associated, who is seeking to become associated, or, at the time of the alleged misconduct, who was associated or was seeking to become associated with a municipal financial adviser, the Commission, by order, shall censure, place limitations on the activities or functions of such person, or suspend for a period not exceeding 12 months, or bar such person from being associated with a municipal financial adviser, if the Commission finds, on the record after notice and opportunity for a hearing, that such censure, placing of limitations, suspension, or bar is in the public interest and that such person—

(i) has committed or omitted any act, or is subject to an order or finding, enumerated in subparagraph (A), (D), or (E) of paragraph (4) of this subsection;

(ii) has been convicted of any offense specified in subparagraph (B) of such paragraph (4) within 10 years of the commencement of the proceedings under this paragraph; or

(iii) is enjoined from any action, conduct, or practice specified in subparagraph (C) of such paragraph (4).

(B) It shall be unlawful—

(i) for any person as to whom an order under subparagraph (A) is in effect, without the consent of the Commission, willfully to become, or to be, associated with a municipal financial adviser in contravention of such order; or

(ii) for any municipal financial adviser to permit such a person, without the consent of the Commission, to become or remain, a person associated with the municipal financial adviser in contravention of such order, if such municipal financial adviser knew, or in the exercise of reasonable care should have known, of such order.

(7) No registered municipal financial adviser shall act as such unless it meets such standards of operational capability and such municipal financial adviser and all natural persons associated with such municipal financial adviser meet such standards of training, experience, competence, and such other qualifications as the Commission finds necessary or appropriate in the public interest or for the protection of investors. The Commission shall establish such standards by rules and regulations, which may—

(A) specify that all or any portion of such standards shall be applicable to any class of municipal financial advisers and persons associated with municipal financial advisers;

(B) require persons in any such class to pass tests prescribed in accordance with such rules and regulations, which tests shall, with respect to any class of partners, officers, or supervisory employees (which latter term may be defined by the Commission's rules and regulations) engaged in the management of the municipal financial adviser, include questions relating to bookkeeping, accounting, supervision of employees, maintenance of records, and other appropriate matters; and

(C) provide that persons in any such class other than municipal financial advisers and partners, officers, and supervisory employees of municipal financial advisers, may be qualified solely on the basis of compliance with such standards of training and such other qualifications as the Commission finds appropriate.

The Commission, by rule, may prescribe reasonable fees and charges to defray its costs in carrying out this paragraph, including, but not limited to, fees for any test administered by it or under its direction.

(c)(1)(A) No municipal financial adviser shall make use of the mails or any means or instrumentality of interstate commerce in connection with which such municipal financial adviser engages in any fraudulent, deceptive, or manipulative act or practice or violates such rules and regulations regarding conflicts of interest or fair practices, including but not limited to rules and regulations related to political contributions, as the Commission shall prescribe in the public interest or for the protection of investors or to maintain fair and orderly markets.

(B) The Commission shall, for the purposes of this paragraph as the Commission finds necessary or appropriate in the public interest or for the protection of investors, by rules and regulations define, and prescribe means reasonably designed to prevent, such acts and practices as are fraudulent, deceptive, or manipulative.

(2) If the Commission finds, after notice and opportunity for a hearing, that any person subject to the provisions of this section or any rule or regulation thereunder has failed to comply with any such provision, rule, or regulation in any material respect, the Commission may publish its findings and issue an order requiring such person, and any person who was a cause of the failure to comply due to an act or omission the person knew or should have known would contribute to the failure to comply, to comply, or to take steps to effect compliance, with such provision or such rule or regulation thereunder upon such terms and conditions and within such time as the Commission may specify in such order.

(d) Every registered municipal financial adviser shall establish, maintain, and enforce written policies and procedures reasonably designed, taking into consideration the nature of such municipal financial adviser's business, to prevent the misuse in violation of this title, or the rules or regulations thereunder, of material, nonpublic information by such municipal financial adviser or any person associated with such municipal financial adviser. The Commission, as it deems necessary or appropriate in the public interest or for the protection of investors, shall adopt rules or regulations to require specific policies or procedures reasonably designed to prevent misuse in violation of this title (or the rules or regulations thereunder) of material, nonpublic information.

(e) A municipal financial adviser and any person associated with such municipal financial adviser shall be deemed to have a fiduciary duty to any municipal securities issuer for whom such municipal financial adviser acts as a municipal financial adviser. A municipal financial adviser may not engage in any act, practice, or course of business which is not consistent with a municipal financial adviser's fiduciary duty. The Commission shall, for the purposes of this paragraph, by rules and regulations define, and prescribe means reasonably designed to prevent, such acts, practices,

and courses of business as are not consistent with a municipal financial adviser's fiduciary duty to its clients.

SEC. 16. DIRECTORS, OFFICERS, AND PRINCIPAL STOCKHOLDERS.

(a) DISCLOSURES REQUIRED.—

(1) DIRECTORS, OFFICERS, AND PRINCIPAL STOCKHOLDERS REQUIRED TO FILE.—Every person who is directly or indirectly the beneficial owner of more than 10 percent of any class of any equity security (other than an exempted security) which is registered pursuant to section 12, or who is a director or an officer of the issuer of such security, shall file the statements required by this subsection with the Commission [(and, if such security is registered on a national securities exchange, also with the exchange)].

(2) TIME OF FILING.—The statements required by this subsection shall be filed—

(A) * * *

(B) within 10 days after he or she becomes such beneficial owner, director, or officer*, or within such shorter time as the Commission may establish by rule*;

(C) if there has been a change in such ownership, or if such person shall have purchased or sold a security-based swap agreement (as defined in [section 206(b)] *section 206B* of the Gramm-Leach-Bliley Act (15 U.S.C. 78c note)) involving such equity security, before the end of the second business day following the day on which the subject transaction has been executed, or at such other time as the Commission shall establish, by rule, in any case in which the Commission determines that such 2-day period is not feasible.

* * * * * * *

ACCOUNTS AND RECORDS, EXAMINATIONS OF EXCHANGES, MEMBERS, AND OTHERS

SEC. 17. (a)(1) Every national securities exchange, member thereof, broker or dealer who transacts a business in securities through the medium of any such member, registered securities association, registered broker or dealer, registered municipal securities dealer, registered securities information processor, registered transfer agent, nationally recognized statistical rating organization, *registered municipal financial adviser,* and registered clearing agency and the Municipal Securities Rulemaking Board shall make and keep for prescribed periods such records, furnish such copies thereof, and make and disseminate such reports as the Commission, by rule, prescribes as necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this title. Any report that a nationally recognized statistical rating organization is required by Commission rules under this paragraph to make and disseminate to the Commission shall be deemed furnished to the Commission.

* * * * * * *

(b) RECORDS SUBJECT TO EXAMINATION.—

(1) PROCEDURES FOR COOPERATION WITH OTHER AGENCIES.—All records of 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 examinations by representatives of the Commission and the appropriate regulatory agency for such persons as the Commission or the appropriate regulatory agency for such persons deems necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this title: *Provided, however,* That the Commission shall, prior to conducting any such examination of a—

(A) * * *

(B) broker or dealer registered pursuant to section 15(b)(11), exchange registered pursuant to section 6(g), or national securities association registered pursuant to section 【15A(k) gives】 *15A(k), give* notice to the Commodity Futures Trading Commission of such proposed examination and consults with the Commodity Futures Trading Commission concerning the feasibility and desirability of coordinating such examination with examinations conducted by the Commodity Futures Trading Commission in order to avoid unnecessary regulatory duplication or undue regulatory burdens for such broker or dealer or exchange.

* * * * * * *

(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.

* * * * * * *

(f)(1) Every national securities exchange, member thereof, registered securities association, broker, dealer, municipal securities dealer, government securities broker, government securities dealer, registered transfer agent, registered clearing agency, participant therein, member of the Federal Reserve System, and bank whose deposits are insured by the Federal Deposit Insurance Corporation shall—

(A) report to the Commission or other person designated by the Commission and, in the case of securities issued pursuant to chapter 31 of title 31, United States Code, to the Secretary of the Treasury such information about 【missing, lost, counterfeit, or stolen securities】 *securities that are missing, lost, counterfeit, stolen, cancelled, or any other category of securities as the Commission, by rule, may prescribe*, in such form and within such time as the Commission, by rule, determines is necessary or appropriate in the public interest or for the protection of investors; such information shall be available on request for a reasonable fee, to any such exchange, member, association, broker, dealer, municipal securities dealer, transfer agent, clearing agency, participant, member of the Federal Reserve System, or insured bank, and such other persons as the Commission, by rule, designates; and

(B) make such inquiry with respect to information reported pursuant to this subsection as the Commission, by rule, prescribes as necessary or appropriate in the public interest or for the protection of investors, to determine whether securities in their custody or control, for which they are responsible, or in which they are effecting, clearing, or settling a transaction have been reported as missing, lost, counterfeit, [or stolen] *stolen, cancelled, or reported in such other manner as the Commission, by rule, may prescribe*.

(2) Every member of a national securities exchange, broker, dealer, registered transfer agent, [and registered clearing agency,] *registered clearing agency, registered securities information processor, national securities exchange, and national securities association* shall require that each of its partners, directors, officers, and employees be fingerprinted and shall submit such fingerprints, or cause the same to be submitted, to the Attorney General of the United States for identification and appropriate processing. The Commission, by rule, may exempt from the provisions of this paragraph upon specified terms, conditions, and periods, any class of partners, directors, officers, or employees of any such member, broker, dealer, transfer agent, [or clearing agency,] *clearing agency, securities information processor, national securities exchange, or national securities association,* if the Commission finds that such action is not inconsistent with the public interest or the protection of investors. Notwithstanding any other provision of law, in providing identification and processing functions, the Attorney General shall provide the Commission and self-regulatory organizations designated by the Commission with access to all criminal history record information.

* * * * * * *

[(j) AUTHORITY TO LIMIT DISCLOSURE OF INFORMATION.—Notwithstanding any other provision of law, the Commission shall not be compelled to disclose any information required to be reported under subsection (h) or (i) or any information supplied to the Commission by any domestic or foreign regulatory agency that relates to the financial or operational condition of any associated person of a broker or dealer, investment bank holding company, or any affiliate of an investment bank holding company. Nothing in this subsection shall authorize the Commission to withhold information from Congress, or 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 complying with an order of a court of the United States in an action brought by the United States or the Commission. 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 such section 552. 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)(5) as confidential information for purposes of section 24(b)(2) of this title.]

(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 in-

formation, documents, records, or reports that relate to an examination, surveillance, or risk assessment 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 or self-regulatory organization 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, the Public Company Accounting Oversight Board, 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, surveillance, or risk assessment 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.

* * * * * * *

NATIONAL SYSTEM FOR CLEARANCE AND SETTLEMENT OF SECURITIES TRANSACTIONS

SEC. 17A. (a) * * *

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(c)(1) * * *

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(4)(A) * * *

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(C) The appropriate regulatory agency for a transfer agent, by order, shall censure or place limitations on the activities or functions of any person associated, seeking to become associated, or, at the time of the alleged misconduct, associated or seeking to become associated with the transfer agent, or suspend for a period not exceeding [twelve months or bar any such person from being associated with the transfer agent,] *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,* if the appropriate regulatory agency finds, on the record after notice and opportunity for hearing, that such censure, placing of limitations, suspension, or bar is in the public interest and that such person has committed or omitted any act, or is subject to an order or finding, enumerated in subparagraph (A), (D), (E), (H), or (G) or paragraph (4) of section 15(b) of this title, has been convicted of any offense specified in subparagraph (B) of such paragraph (4) within ten years of the commencement of the proceedings under this paragraph, or is enjoined from any action, conduct, or practice specified in subparagraph (C) of such paragraph (4). It shall be unlawful for any person as to whom such an order suspending or barring him from being associated with a transfer agent is in effect willfully to become, or to be, associated with a transfer agent without the consent of the appropriate regulatory agency that entered the order and the appropriate regulatory agency for that transfer agent. It shall be unlawful for any transfer agent to permit such a person to become, or remain, a person associated with it without the consent of such appropriate regulatory agencies, if the transfer agent knew, or in the exercise of reasonable care should have known, of such order. The Commission may establish, by rule, procedures by which a transfer agent reasonably can determine whether a person associated or seeking to become associated with it is subject to any such order, and may require, by rule, that any transfer agent comply with such procedures.

* * * * * * *

REGISTRATION, RESPONSIBILITIES, AND OVERSIGHT OF SELF-REGULATORY ORGANIZATIONS

SEC. 19. (a) * * *

* * * * * * *

(h)(1) * * *

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(4) The appropriate regulatory agency for a self-regulatory organization is authorized, by order, if in its opinion such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this title, to remove from office or censure 【any officer or director】 *any person who is, or at the time of the alleged misconduct was, an officer or director* of such self-regulatory organization, if such appropriate regulatory agency finds, on the record after notice and opportunity for hearing, that 【such officer or director】 *such person* has willfully violated any provision of this title, the rules or regulations thereunder, or the rules of such self-regulatory organization, willfully abused his authority, or without reasonable justification or excuse has failed to enforce compliance—

(A) * * *

* * * * * * *

LIABILITY OF CONTROLLING PERSONS AND PERSONS WHO AID AND ABET VIOLATIONS

SEC. 20. (a) Every person who, directly or indirectly, controls any person liable under any provision of this title or of any rule or regulation thereunder shall also be liable jointly and severally with and to the same extent as such controlled person to any person to whom such controlled person is liable, *including to the Commission in any action brought under paragraph (1) or (3) of section 21(d),* unless the controlling person acted in good faith and did not directly or indirectly induce the act or acts constituting the violation or cause of action.

* * * * * * *

(e) PROSECUTION OF PERSONS WHO AID AND ABET VIOLATIONS.—For purposes of any action brought by the Commission under paragraph (1) or (3) of section 21(d), any person that knowingly *or recklessly* provides substantial assistance to another person in violation of a provision of this title, or of any rule or regulation issued under this title, shall be deemed to be in violation of such provision to the same extent as the person to whom such assistance is provided.

* * * * * * *

INVESTIGATIONS; INJUNCTIONS AND PROSECUTION OF OFFENSES

SEC. 21. (a)(1) The Commission may, in its discretion, make such investigations as it deems necessary to determine whether any person has violated, is violating, or is about to violate any provision of this title, the rules or regulations thereunder, the rules of a national securities exchange or registered securities association of which such person is a member or a person associated*, or, as to any act or practice, or omission to act, while associated with a member, formerly associated* with a member, the rules of a registered clearing agency in which such person is a participant, *or, as to any act or practice, or omission to act, while a participant, was a participant,* the rules of the Public Company Accounting Oversight Board, of which such person is a registered public accounting firm ⟦or a person associated with such a firm⟧*, 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*, or the rules of the Municipal Securities Rulemaking Board, and may require or permit any person to file with it a statement in writing, under oath or otherwise as the Commission shall determine, as to all the facts and circumstances concerning the matter to be investigated. The Commission is authorized in its discretion, to publish information concerning any such violations, and to investigate any facts, conditions, practices, or matters which it may deem necessary or proper to aid in the enforcement of such provisions, in the prescribing of rules and regulations under this title, or in securing information to serve as a basis for recommending further legislation concerning the matters to which this title relates.

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(d)(1) * * *

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(3) MONEY PENALTIES IN CIVIL ACTIONS.—

(A) * * *

* * * * * * *

(C) PROCEDURES FOR COLLECTION.—

(i) PAYMENT OF PENALTY TO TREASURY.—A penalty imposed under this section shall be payable into the Treasury of the United States, except as otherwise provided in section 308 of the Sarbanes-Oxley Act of 2002 *and section 21F of this title*.

* * * * * * *

(h)(1) * * *

(2) Notwithstanding section 1105 or 1107 of the Right to Financial Privacy Act of 1978, the Commission may have access to and obtain copies of, or the information contained in financial records of a customer from a financial institution without prior notice to the customer upon an ex parte showing to an appropriate United States district court that the Commission seeks such financial records pursuant to a subpoena issued in conformity with the requirements of section 19(b) of the Securities Act of 1933, section 21(b) of the Securities Exchange Act of 1934, ⟦section 18(c) of the Public Utility Holding Company Act of 1935,⟧ section 42(b) of the Investment Company Act of 1940, or section 209(b) of the Investment Advisers Act of 1940, and that the Commission has reason to believe that—

(A) * * *

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CIVIL PENALTIES FOR INSIDER TRADING

SEC. 21A. (a) * * *

* * * * * * *

(d) PROCEDURES FOR COLLECTION.—

(1) PAYMENT OF PENALTY TO TREASURY.—A penalty imposed under this section shall ⟦(subject to subsection (e))⟧ be payable into the Treasury of the United States, except as otherwise provided in section 308 of the Sarbanes-Oxley Act of 2002 *and section 21F of this title*.

* * * * * * *

⟦(e) AUTHORITY TO AWARD BOUNTIES TO INFORMANTS.—Notwithstanding the provisions of subsection (d)(1), there shall be paid from amounts imposed as a penalty under this section and recovered by the Commission or the Attorney General, such sums, not to exceed 10 percent of such amounts, as the Commission deems appropriate, to the person or persons who provide information leading to the imposition of such penalty. Any determinations under this subsection, including whether, to whom, or in what amount to make payments, shall be in the sole discretion of the Commission, except that no such payment shall be made to any member, officer, or employee of any appropriate regulatory agency, the Department of Justice, or a self-regulatory organization. Any such determination shall be final and not subject to judicial review.⟧

⟦(f)⟧ *(e)* DEFINITION.—For purposes of this section, "profit gained" or "loss avoided" is the difference between the purchase or sale price of the security and the value of that security as measured by the trading price of the security a reasonable period after public dissemination of the nonpublic information.

⟦(g)⟧ *(f)* The authority of the Commission under this section with respect to security-based swap agreements (as defined in section

206B of the Gramm-Leach-Bliley Act) shall be subject to the restrictions and limitations of section 3A(b) of this title.

CIVIL REMEDIES IN ADMINISTRATIVE PROCEEDINGS

SEC. 21B. [(a) COMMISSION AUTHORITY TO ASSESS MONEY PENALTIES.—In any proceeding]

(a) COMMISSION AUTHORITY TO ASSESS MONEY PENALTIES.—

(1) IN GENERAL.—In any proceeding instituted pursuant to sections 15(b)(4), 15(b)(6), 15D, 15B, 15C, 15E, or 17A of this title against any person, the Commission or the appropriate regulatory agency may impose a civil penalty if it finds, on the record after notice and opportunity for hearing, that such person—

[(1)] *(A)* has willfully violated any provision of the Securities Act of 1933, the Investment Company Act of 1940, the Investment Advisers Act of 1940, or this title, or the rules or regulations thereunder, or the rules of the Municipal Securities Rulemaking Board;

[(2)] *(B)* has willfully aided, abetted, counseled, commanded, induced, or procured such a violation by any other person;

[(3)] *(C)* has willfully made or caused to be made in any application for registration or report required to be filed with the Commission or with any other appropriate regulatory agency under this title, or in any proceeding before the Commission with respect to registration, any statement which was, at the time and in the light of the circumstances under which it was made, false or misleading with respect to any material fact, or has omitted to state in any such application or report any material fact which is required to be stated therein; or

[(4)] *(D)* has failed reasonably to supervise, within the meaning of section 15(b)(4)(E) of this title, with a view to preventing violations of the provisions of such statutes, rules and regulations, another person who commits such a violation, if such other person is subject to his supervision;

and that such penalty is in the public interest.

(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 person—

(A) is violating or has violated any provision 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 regulation thereunder.

CEASE-AND-DESIST PROCEEDINGS

SEC. 21C. (a) * * *

* * * * * * *

(c) TEMPORARY ORDER.—

(1) * * *

(2) APPLICABILITY.—[paragraph (1) subsection]*Paragraph (1)* shall apply only to a respondent that acts, or, at the time of the alleged misconduct acted, as a broker, dealer, investment

adviser, investment company, municipal securities dealer, government securities broker, government securities dealer, registered public accounting firm (as defined in section 2 of the Sarbanes-Oxley Act of 2002), or transfer agent, or is, or was at the time of the alleged misconduct, an associated person of, or a person seeking to become associated with, any of the foregoing.

* * * * * * *

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 success 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, the Public Company Accounting Oversight Board, 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.

(c) 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 established in the Treasury of the United States a fund to be known as the "Securities and Exchange Commission Investor Protection Fund" (referred to in this section as the "Fund").

(2) USE OF FUND.—The Fund shall be available to the Commission, without further appropriation or fiscal year limitation, for the following purposes:

(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 administrative action brought by the Commission under the securities laws that is not added to a disgorgement fund or other fund pursuant to section 308 of the Sarbanes-Oxley Act of 2002 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 or other fund pursuant to section 308 of the Sarbanes-Oxley Act of 2002 that is not distributed to the victims for whom the disgorgement fund or other 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 maturities suitable to the needs of the Fund as determined by the Commission.

(C) INTEREST AND PROCEEDS CREDITED.—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 Representatives a report on—

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

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

(C) the balance of the Fund at the beginning 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.

(iii) 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 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) the Public Company Accounting Oversight Board,

(v) State attorneys general in connection with any criminal investigation, and

(vi) 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) PROVISION OF FALSE INFORMATION.—Any whistleblower who knowingly and willfully makes any false, fictitious, or fraudulent statement or representation, or makes or uses any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry, shall not be entitled to an award under this section and shall be subject to prosecution under section 1001 of title 18, United States Code.

(i) 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.

(j) 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, unless the whistleblower is the initial source of the information; 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 or other 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.

* * * * * * *

RULES, REGULATIONS, AND ORDERS; ANNUAL REPORTS

SEC. 23. (a) * * *

(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.

【(b)】 *(c)*(1) * * *

* * * * * * *

【(c)】 *(d)* The Commission, by rule, shall prescribe the procedure applicable to every case pursuant to this title of adjudication (as defined in section 551 of title 5, United States Code) not required to be determined on the record after notice and opportunity for hearing. Such rules shall, as a minimum, provide that prompt notice shall be given of any adverse action or final disposition and that such notice and the entry of any order shall be accompanied by a statement of written reasons.

【(d)】 *(e)* CEASE-AND-DESIST PROCEDURES.—Within 1 year after the date of enactment of this subsection, the Commission shall establish regulations providing for the expeditious conduct of hearings and rendering of decisions under section 21C of this title, section 8A of the Securities Act of 1933, section 9(f) of the Investment Company Act of 1940, and section 203(k) of the Investment Advisers Act of 1940.

PUBLIC AVAILABILITY OF INFORMATION

SEC. 24. (a) * * *

* * * * * * *

(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) the Public Company Accounting Oversight Board;

(D) any self-regulatory organization;

(E) any foreign law enforcement authority; or

(F) 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.—

(A) IN GENERAL.—Federal agencies, State securities and law enforcement authorities, self-regulatory organizations, and the Public Company Accounting Oversight Board 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 the Commission.

(B) EXCEPTION WITH RESPECT TO CERTAIN ACTIONS.—The provisions of subparagraph (A) shall not apply to a self-regulatory organization or the Public Company Accounting Oversight Board with respect to information used by the Commission in an action against such organization.

(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.

【(d)】 *(e)* RECORDS OBTAINED FROM FOREIGN SECURITIES AUTHORITIES.—Except 【as provided in subsection (e)】 *as provided in subsection (f)*, the Commission shall not be compelled to disclose records obtained from a foreign securities authority if (1) the foreign securities authority has in good faith determined and represented to the Commission that public disclosure of such records would violate the laws applicable to that foreign securities authority, and (2) the Commission obtains such records pursuant to (A) such procedure as the Commission may authorize for use in connection with the administration or enforcement of the securities laws, or (B) a memorandum of understanding. 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 such section 552.

【(e)】 *(f)* SAVINGS PROVISIONS.—Nothing in this section shall—

(1) * * *

* * * * * * *

JURISDICTION OF OFFENSES AND SUITS

SEC. 27. 【The district】

(a) IN GENERAL.—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 shall have exclusive jurisdiction of violations of this title or the rules and regulations thereunder, and of all suits in equity and actions at law brought to enforce any liability or duty created by this title or the rules and regulations thereunder. Any criminal proceeding may be brought in the district wherein any act or transaction constituting the violation occurred. Any suit or action to enforce any liability or duty created by this title or rules and regulations thereunder, or to enjoin any violation

of such title or rules and regulations, may be brought in any such district or in the district wherein the defendant is found or is an inhabitant or transacts business, and process in such cases may be served in any other district of which the defendant is an inhabitant or wherever the defendant may be found. *In any action or proceeding instituted by the Commission under this title in a United States district court for any judicial district, subpoenas issued to compel the attendance of witnesses or the production of documents or tangible things (or both) at a hearing or trial may be served at any place within the United States.* Judgments and decrees so rendered shall be subject to review as provided in sections 1254, 1291, 1292, and 1294 of title 28, United States Code. No costs shall be assessed for or against the Commission in any proceeding under this title brought by or against it in the Supreme Court or such other courts.

(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 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.

* * * * * * *

VALIDITY OF CONTRACTS

SEC. 29. (a) Any condition, stipulation, or provision binding any person to waive compliance with any provision of this title or of any rule or regulation thereunder, or of any rule of ⟦an exchange required thereby⟧ *a self-regulatory organization,* shall be void.

* * * * * * *

SEC. 31. TRANSACTION FEES.

(a) * * *

* * * * * * *

(e) DATES FOR PAYMENTS.—The fees and assessments required by subsections (b), (c), and (d) of this section shall be paid—

(1) * * *

(2) on or before ⟦September 30⟧ *September 25*, with respect to transactions and sales occurring during the period beginning on the preceding January 1 and ending at the close of the preceding August 31.

* * * * * * *

(g) PUBLICATION.—The Commission shall publish in the Federal Register notices of the fee or assessment rates applicable under this section for each fiscal year not later than ⟦April 30⟧ *August 31* of the fiscal year preceding the fiscal year to which such rate applies, together with any estimates or projections on which such fees are based.

*   *   *   *   *   *   *

(j) RECAPTURE OF PROJECTION WINDFALLS FOR FURTHER RATE REDUCTIONS.—

(1) * * *

(2) MID-YEAR ADJUSTMENT.—For each of the fiscal years 2002 through 2011, the Commission shall determine, by March 1 of such fiscal year, whether, based on the actual aggregate dollar volume of sales during the first [5 months] *4 months* of such fiscal year, the baseline estimate of the aggregate dollar volume of sales used under paragraph (1) for such fiscal year (or $48,800,000,000,000 in the case of fiscal year 2002) is reasonably likely to be 10 percent (or more) greater or less than the actual aggregate dollar volume of sales for such fiscal year. If the Commission so determines, the Commission shall by order, no later than such March 1, adjust each of the rates applicable under subsections (b) and (c) for such fiscal year to a uniform adjusted rate that, when applied to the revised estimate of the aggregate dollar amount of sales for the remainder of such fiscal year, is reasonably likely to produce aggregate fee collections under this section [(including fees collected during such 5-month period and assessments collected under subsection (d))] *(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))* that are equal to the target offsetting collection amount for such fiscal year. In making such revised estimate, the Commission shall, after consultation with the Congressional Budget Office and the Office of Management and Budget, use the same methodology required by subsection (l)(2).

*   *   *   *   *   *   *

[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, $776,000,000 for fiscal year 2003, of which—

[(1) $102,700,000 shall be available to fund additional compensation, including salaries and benefits, as authorized in the Investor and Capital Markets Fee Relief Act (Public Law 107–123; 115 Stat. 2390 et seq.);

[(2) $108,400,000 shall be available for information technology, security enhancements, and recovery and mitigation activities in light of the terrorist attacks of September 11, 2001; and

[(3) $98,000,000 shall be available to add not fewer than an additional 200 qualified professionals to provide enhanced oversight of auditors and audit services required by the Federal securities laws, and to improve Commission investigative and disciplinary efforts with respect to such auditors and services, as well as for additional professional support staff necessary to strengthen the programs of the Commission involving Full Disclosure and Prevention and Suppression of Fraud, risk management, industry technology review, compliance, inspections, examinations, market regulation, and investment management.]

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.

* * * * * * *

SECURITIES ACT OF 1933

TITLE I—SHORT TITLE

SECTION 1. This title may be cited as the "Securities Act of 1933".

* * * * * * *

EXEMPTED SECURITIES

SEC. 3. (a) Except as hereinafter expressly provided, the provisions of this title shall not apply to any of the following classes of securities:

(1) * * *

* * * * * * *

(4) Any security issued by a person organized and operated exclusively for religious, educational, benevolent, fraternal, charitable, or reformatory purposes and not for pecuniary profit, and no part of the net earnings of which inures to the benefit of any person, private stockholder, or [individual;] *individual,* or any security of a fund that is excluded from the definition of an investment company under section 3(c)(10)(B) of the Investment Company Act of 1940;

* * * * * * *

CEASE-AND-DESIST PROCEEDINGS

SEC. 8A. (a) * * *

* * * * * * *

(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.

CIVIL LIABILITIES ON ACCOUNT OF FALSE REGISTRATION STATEMENT

SEC. 11. (a) In case any part of the registration statement, when such part became effective, contained an untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary to make the statements therein not misleading, any person acquiring such security (unless it is proved that at the time of such acquisition he knew of such untruth or omission) may, either at law or in equity, in any court of competent jurisdiction, sue—

(1) * * *

* * * * * * *

If such person acquired the security after the issuer has made generally available to its security holders an ⟦earning statement⟧ *earnings statement* covering a period of at least twelve months beginning after the effective date of the registration statement, then the right of recovery under this subsection shall be conditioned on proof that such person acquired the security relying upon such untrue statement in the registration statement or relying upon the registration statement and not knowing of such omission, but such reliance may be established without proof of the reading of the registration statement by such person.

* * * * * * *

LIABILITY OF CONTROLLING PERSONS

SEC. 15. [Every person who] *(a) CONTROLLING PERSONS.—Every person who*, by or through stock ownership, agency, or otherwise, or who, pursuant to or in connection with an agreement or understanding with one or more other persons by or through stock ownership, agency, or otherwise, controls any person liable under section 11 or 12, shall also be liable jointly and severally with and to the same extent as such controlled person to any person to whom such controlled person is liable, unless the controlling person had no knowledge of or reasonable ground to believe in the existence of the facts by reason of which the liability of the controlled person is alleged to exist.

(b) PROSECUTION OF PERSONS WHO AID AND ABET VIOLATIONS.—For purposes of any action brought by the Commission under subparagraph (b) or (d) of section 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.

* * * * * * *

SEC. 18. EXEMPTION FROM STATE REGULATION OF SECURITIES OFFERINGS.

(a) * * *

(b) COVERED SECURITIES.—For purposes of this section, the following are covered securities:

(1) EXCLUSIVE FEDERAL REGISTRATION OF NATIONALLY TRADED SECURITIES.—A security is a covered security if such security is—

(A) * * *

* * * * * * *

(C) [is a security] *a security* of the same issuer that is equal in seniority or that is a senior security to a security described in subparagraph (A) or (B).

* * * * * * *

(c) PRESERVATION OF AUTHORITY.—

(1) * * *

(2) PRESERVATION OF FILING REQUIREMENTS.—

(A) * * *

(B) PRESERVATION OF FEES.—

(i) IN GENERAL.—Until otherwise provided by law, rule, regulation, or order, or other administrative action of any [State, or] *State or* any political subdivision thereof, adopted after the date of enactment of the National Securities Markets Improvement Act of 1996, filing or registration fees with respect to securities or securities transactions shall continue to be collected in amounts determined pursuant to State law as in effect on the day before such date.

* * * * * * *

SPECIAL POWERS OF COMMISSION

SEC. 19. (a) * * *

* * * * * * *

(d)(1) * * *

* * * * * * *

(6) Notwithstanding any other provision of law, neither the Commission nor any other person shall be required to establish any procedures not specifically required by the securities laws, as that term is defined in section 3(a)(47) of the Securities Exchange Act of 1934, or by chapter 5 of title 5, United States Code, in connection with cooperation, coordination, or consultation with—

(A) any association referred to ⟦in paragraph (1) of (3)⟧ *in paragraph (1) or (3)* or any conference or meeting referred to in paragraph (4), while such association, conference, or meeting is carrying out activities in furtherance of the provisions of this subsection; or

* * * * * * *

(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.

INJUNCTIONS AND PROSECUTION OF OFFENSES

SEC. 20. (a) * * *

* * * * * * *

(d) MONEY PENALTIES IN CIVIL ACTIONS.—

(1) * * *

* * * * * * *

(3) PROCEDURES FOR COLLECTION.—

(A) PAYMENT OF PENALTY TO TREASURY.—A penalty imposed under this section shall be payable into the Treasury of the United States, except as otherwise provided in section 308 of the Sarbanes-Oxley Act of 2002 *and section 21F of the Securities Exchange Act of 1934*.

* * * * * * *

JURISDICTION OF OFFENSES AND SUITS

SEC. 22. (a) The district courts of the United States and United States courts of any Territory shall have jurisdiction of offenses and violations under this title and under the rules and regulations promulgated by the Commission in respect thereto, and, concurrent with State and Territorial courts, except as provided in section 16 with respect to covered class actions, of all suits in equity and actions at law brought to enforce any liability or duty created by this title. Any such suit or action may be brought in the district wherein the defendant is found or is an inhabitant or transacts business, or in the district where the offer or sale took place, if the defendant participated therein, and process in such cases may be served in any other district of which the defendant is an inhabitant or wherever the defendant may be found. *In any action or proceeding instituted by the Commission under this title in a United States district court for any judicial district, subpoenas issued to compel the attendance of witnesses or the production of documents or tangible things (or both) at a hearing or trial may be served at any place within the United States.* Judgments and decrees so rendered shall be subject to review as provided in sections 1254, 1291, 1292, and 1294 of title 28, United States Code. Except as provided in section 16(c), no case arising under this title and brought in any State court of competent jurisdiction shall be removed to any court of the United States. No costs shall be assessed for or against the Commission in any proceeding under this title brought by or against it in the Supreme Court or such other courts.

* * * * * * *

(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, 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.

* * * * * * *

SEC. 27A. APPLICATION OF SAFE HARBOR FOR FORWARD-LOOKING STATEMENTS.

(a) * * *

* * * * * * *

(c) SAFE HARBOR.—

(1) IN GENERAL.—Except as provided in subsection (b), in any private action arising under this title that is based on an untrue statement of a material fact or omission of a material fact necessary to make the statement not misleading, a person referred to in subsection (a) shall not be liable with respect to any forward-looking statement, whether written or oral, if and to the extent that—

(A) * * *

(B) the plaintiff fails to prove that the forward-looking statement—

(i) * * *

(ii) if made by a ⟦business entity;⟧ *business entity,* was—

(I) * * *

* * * * * * *

INVESTMENT COMPANY ACT OF 1940

TITLE I—INVESTMENT COMPANIES

* * * * * * *

GENERAL DEFINITIONS

SEC. 2. (a) When used in this title, unless the context otherwise requires—

(1) * * *

* * * * * * *

(19) "Interested person" of another person means—

(A) when used with respect to an investment company—

(i) * * *

* * * * * * *

【(v) any person or any affiliated person of a person (other than a registered investment company) that, at any time during the 6-month period preceding the date of the determination of whether that person or affiliated person is an interested person, has executed any portfolio transactions for, engaged in any principal transactions with, or distributed shares for—

【(I) the investment company;

【(II) any other investment company having the same investment adviser as such investment company or holding itself out to investors as a related company for purposes of investment or investor services; or

【(III) any account over which the investment company's investment adviser has brokerage placement discretion,

【(vi) any person or any affiliated person of a person (other than a registered investment company) that, at any time during the 6-month period preceding the date of the determination of whether that person or affiliated person is an interested person, has loaned money or other property to—

【(I) the investment company;

【(II) any other investment company having the same investment adviser as such investment company or holding itself out to investors as a related company for purposes of investment or investor services; or

【(III) any account for which the investment company's investment adviser has borrowing authority,】

(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 affiliated person of such company;

【(vii)】 *(vi)* any natural person whom the Commission by order shall have determined to be an interested person by reason of having had, at any time since the beginning of the last 【two】 *five* completed fiscal years of such company, a material business or professional relationship with such company or with the principal executive officer of such company or with any other investment company having the same investment adviser or principal underwriter or with the principal executive officer of such other investment company:

Provided, That no person shall be deemed to be an interested person of an investment company solely by reason of (aa) his being a member of its board of directors or advisory board or an owner of its securities, or (bb) his membership in the immediate family of any person specified in clause (aa) of this proviso; and

(B) when used with respect to an investment adviser of or principal underwriter for any investment company—

(i) * * *

* * * * * * *

For the purposes of this paragraph (19), "member of the immediate family" means any parent, spouse of a parent, child, spouse of a child, spouse, brother, or sister, and includes step and adoptive relationships. The Commission may modify or revoke any order issued under clause [(vi)] *(vii)* of subparagraph (A) or (B) of this paragraph whenever it finds that such order is no longer consistent with the facts. No order issued pursuant to clause [(vi)] *(vii)* of subparagraph (A) or (B) of this paragraph shall become effective until at least sixty days after the entry thereof, and no such order shall affect the status of any person for the purposes of this title or for any other purpose for any period prior to the effective date of such order.

* * * * * * *

(44) "Securities Act of 1933", "Securities Exchange Act of 1934", ["Public Utility Holding Company Act of 1935",] and "Trust Indenture Act of 1939" means those Acts, respectively, as heretofore or hereafter amended.

* * * * * * *

(54) The term "municipal finance adviser" has the same meaning as in section 3 of the Securities Exchange Act of 1934.

* * * * * * *

DEFINITION OF INVESTMENT COMPANY

SEC. 3. (a) * * *

* * * * * * *

(c) Notwithstanding subsection (a), none of the following persons is an investment company within the meaning of this title:

(1) * * *

* * * * * * *

[(8) Any company subject to regulation under the Public Utility Holding Company Act of 1935.]

(8) [Repealed]

* * * * * * *

INELIGIBILITY OF CERTAIN AFFILIATED PERSONS AND UNDERWRITERS

SEC. 9. (a) It shall be unlawful for any of the following persons to serve or act in the capacity of employee, officer, director, member of an advisory board, investment adviser, or depositor of any registered investment company, or principal underwriter for any registered open-end company, registered unit investment trust, or registered face-amount certificate company:

(1) any person who within 10 years has been convicted of any felony or misdemeanor involving the purchase or sale of any security or arising out of such person's conduct as an underwriter, broker, dealer, investment adviser, municipal securities dealer, government securities broker, government securities dealer, bank, transfer agent, credit rating agency, *municipal finance adviser,* or entity or person required to be registered under the Commodity Exchange Act, or as an affiliated person, salesman, or employee of any investment company, bank, insurance company, or entity or person required to be registered under the Commodity Exchange Act;

(2) any person who, by reason of any misconduct, is permanently or temporarily enjoined by order, judgment, or decree of any court of competent jurisdiction from acting as an underwriter, broker, dealer, investment adviser, municipal securities dealer, government securities broker, government securities dealer, bank, transfer agent, credit rating agency, *municipal finance adviser,* or entity or person required to be registered under the Commodity Exchange Act, or as an affiliated person, salesman, or employee of any investment company, bank, insurance company, or entity or person required to be registered under the Commodity Exchange Act, or from engaging in or continuing any conduct or practice in connection with any such activity or in connection with the purchase or sale of any security; or

* * * * * * *

(b) The Commission may, after notice and opportunity for hearing, by order prohibit, conditionally or unconditionally, either permanently or for such period of time as it in its discretion shall deem appropriate in the public interest, any person from serving or acting as an employee, officer, director, member of an advisory board, investment adviser or depositor of, or principal underwriter for, a registered investment company or affiliated person of such investment adviser, depositor, or principal underwriter, if such person—

(1) * * *

* * * * * * *

(4) has been found by a foreign financial regulatory authority to have—

(A) * * *

(B) violated any foreign statute or regulation regarding transactions in securities or contracts of sale of a commodity for future delivery traded on or subject to the rules of a contract market or any board of trade; *or*

* * * * * * *

(d) MONEY PENALTIES IN ADMINISTRATIVE PROCEEDINGS.—

[(1) AUTHORITY OF COMMISSION.—In any proceeding]

(1) AUTHORITY OF COMMISSION.—

(A) IN GENERAL.—In any proceeding instituted pursuant to subsection (b) 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—

[(A)] *(i)* has willfully violated any provision of the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Advisers Act of 1940, or this title, or the rules or regulations thereunder;

[(B)] *(ii)* has willfully aided, abetted, counseled, commanded, induced, or procured such a violation by any other person; or

[(C)] *(iii)* has willfully made or caused to be made in any registration statement, application, or report required to be filed with the Commission under this title, any statement which was, at the time and in the light of the circumstances under which it was made, false or misleading with respect to any material fact, or has omitted to state in any such registration statement, application, or report any material fact which was required to be stated therein;

and that such penalty is in the public interest.

(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.

* * * * * * *

FUNCTIONS AND ACTIVITIES OF INVESTMENT COMPANIES

SEC. 12. (a) * * *

* * * * * * *

(d)(1)(A) * * *

* * * * * * *

(J) The Commission, by rule or regulation, upon its own motion or by order upon application, may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions from [any provision of this subsection] *any provision of this paragraph*, if and to the extent that such exemption is consistent with the public interest and the protection of investors.

* * * * * * *

CHANGES IN INVESTMENT POLICY

SEC. 13. (a) No registered investment company shall, unless authorized by the vote of a majority of its outstanding voting securities—

(1) * * *

* * * * * * *

(3) deviate from its policy in respect of concentration of investments in any particular industry or group of industries as

recited in its registration statement, deviate from any investment policy which is changeable only if authorized by shareholder vote, or deviate from any policy recited in its registration statement pursuant to section 8(b)(3); *or*

* * * * * * *

TRANSACTIONS OF CERTAIN AFFILIATED PERSONS AND UNDERWRITERS

SEC. 17. (a) * * *

* * * * * * *

(f) CUSTODY OF SECURITIES.—

(1) * * *

* * * * * * *

(4) [No such member] *No member of a national securities exchange* which trades in securities for its own account may act as custodian except in accordance with rules and regulations prescribed by the Commission for the protection of investors.

* * * * * * *

(6) The Commission may, after consultation with and taking into consideration the views of the Federal banking agencies (as defined in section 3 of the Federal Deposit Insurance Act), adopt rules and regulations, and issue orders, consistent with the protection of investors, prescribing the conditions under which a bank, or an affiliated person of a bank, either of which is an affiliated person, promoter, organizer, or sponsor of, or principal underwriter for, a registered management [company may serve] *company, may serve* as custodian of that registered management company.

[(g) The Commission is authorized to require by rules and regulations or orders for the protection of investors that any officer or employee of a registered management investment company who may singly, or jointly with others, have access to securities or funds of any registered company, either directly or through authority to draw upon such funds or to direct generally the disposition of such securities (unless the officer or employee has such access solely through his position as an officer or employee of a bank) be bonded by a reputable fidelity insurance company against larceny and embezzlement in such reasonable minimum amounts as the Commission may prescribe.]

(g) FIDELITY BONDING.—

(1) IN GENERAL.—The Commission is authorized to require that a registered management company provide and maintain a fidelity bond against loss as to any officer or employee who has access to securities or funds of the company, either directly or through authority to draw upon such funds or to direct generally the disposition of such securities (unless the officer or employee has such access solely through his position as an officer or employee of a bank), 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 subsection:

(A) MANAGEMENT COMPANY.—The term "management company" has the meaning given such term under section 4 of the Investment Company Act of 1940.

(B) OFFICER OR EMPLOYEE.—The term “officer or employee” means—

(i) any officer or employee of the management company; and;

(ii) any officer or employee of any investment adviser to the management company, or of any affiliated company of any such investment adviser, as the Commission may prescribe by rule, regulation, or order for the protection of investors.

(C) OTHER DEFINITIONS.—The terms “affiliated company” and “investment adviser” shall have the meaning given such terms under section 2 of the Investment Company Act of 1940.

* * * * * * *

DISTRIBUTION, REDEMPTION, AND REPURCHASE OF REDEEMABLE SECURITIES

SEC. 22. (a) * * *

* * * * * * *

(e) No registered investment company shall suspend the right of redemption, or postpone the date of payment or satisfaction upon redemption of any redeemable security in accordance with its terms for more than seven days after the tender of such security to the company or its agent designated for that purpose for redemption, except—

(1) * * *

* * * * * * *

The Commission shall by rules and regulations determine the conditions under which (i) trading shall be deemed to be restricted and (ii) an emergency shall be deemed to exist within the meaning of this subsection. *The Commission may, by rules and regulations, limit the extent to which a registered open-end investment company may own, hold, or invest in illiquid securities or other illiquid property.*

* * * * * * *

ACCOUNTS AND RECORDS

SEC. 31. (a) MAINTENANCE OF RECORDS.—

(1) IN GENERAL.—Each registered investment company, and each underwriter, broker, dealer, or investment adviser that is a majority-owned subsidiary of such a company, shall maintain and preserve such records (as defined in section 3(a)(37) of the Securities Exchange Act of 1934) 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. Each investment adviser that is not a majority-owned subsidiary of, and each depositor of any registered investment company, and each principal underwriter for any registered investment company other than a closed-end company, shall maintain and preserve for such period or periods as the Commission shall prescribe by rules and regulations, such records as are necessary or appropriate to record such

person's transactions with such registered company. *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.*

* * * * * * *

(b) EXAMINATIONS OF RECORDS.—

[(1) IN GENERAL.—All records required to be maintained and preserved in accordance with subsection (a) shall be subject at any time and from time to time to such reasonable periodic, special, and other examinations by the Commission, or any member or representative thereof, as the Commission may prescribe.]

(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.

* * * * * * *

(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.

(5) 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.

(6) CONFIDENTIALITY.—

(A) 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, surveillance, or risk assessment 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, or the Public Company Accounting Oversight Board 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 described in subsection (b)(3)(B) of that section.

* * * * * * *

BREACH OF FIDUCIARY DUTY

SEC. 36. (a) The Commission is authorized to bring an action in the proper district court of the United States, or in the United States court of any territory or other place subject to the jurisdiction of the United States, alleging that [a person serving or acting] *a person who is, or at the time of the alleged misconduct was, serving or acting* in one or more of the following capacities has engaged within five years of the commencement of the action or is about to engage in any act or practice constituting a breach of fiduciary duty involving personal misconduct in respect of any registered investment company for which [such person so serves or acts] *such person so serves or acts, or at the time of the alleged misconduct, so served or acted—*

(1) * * *

* * * * * * *

RULES, REGULATIONS, AND ORDERS; GENERAL POWERS OF COMMISSION

SEC. 38. (a) * * *

(b) The Commission, by such rules and regulations or order as it deems necessary or appropriate in the public interest or for the protection of investors, may authorize the filing of any information or documents required to be filed with the Commission under this title, title II of this Act, the Securities Act of 1933, the Securities Exchange Act of 1934, [the Public Utility Holding Company Act of 1935,] or the Trust Indenture Act of 1939, by incorporating by reference any information or documents theretofore or concurrently filed with the Commission under this title or any of such Acts.

* * * * * * *

(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.

* * * * * * *

ENFORCEMENT OF TITLE

SEC. 42. (a) * * *

* * * * * * *

(e) MONEY PENALTIES IN CIVIL ACTIONS.—

(1) * * *

* * * * * * *

(3) PROCEDURES FOR COLLECTION.—

(A) PAYMENT OF PENALTY TO TREASURY.—A penalty imposed under this section shall be payable into the Treasury of the United States, except as otherwise provided in section 308 of the Sarbanes-Oxley Act of 2002 *and section 21F of the Securities Exchange Act of 1934*.

* * * * * * *

JURISDICTION OF OFFENSES AND SUITS

SEC. 44. 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 shall have jurisdiction of violations of this title or the rules, regulations, or orders thereunder, and, concurrently with State and Territorial courts, of all suits in equity and actions at law brought to enforce any liability or duty created by, or to enjoin any violation of, this title or the rules, regulations, or orders thereunder. Any criminal proceeding may be brought in the district wherein any act or transaction constituting the violation occurred. A criminal proceeding based upon a violation of section 34, or upon a failure to file a report or other document required to be filed under this title, may be brought in the district wherein the defendant is an inhabitant or maintains his principal office or place of business. Any suit or action to enforce any liability or duty created by, or to enjoin any violation of, this title or rules, regulations, or orders thereunder, may be brought in any such district or in the district wherein the defendant is an inhabitant or transacts business, and process in such cases may be served in any district of which the defendant is an inhabitant or transacts business or wherever the defendant may be found. *In any action or proceeding instituted by the Commission under this title in a United States district court for any judicial district, subpoenas issued to compel the attendance of witnesses or the production of documents or tangible things (or both) at a hearing or trial may be served at any place* *within the United States.* Judgments and decrees so rendered shall be subject to review as provided in sections 1254, 1291, 1292, and 1294 of title 28, United States Code. No costs shall be assesssed for or against the Commission in any proceeding under this title brought by or against the Commission in any court. The Commission may intervene as a party in any action or suit to enforce any liability or duty created by, or to enjoin any noncompliance with, section 36(b) of this title at any stage of such action or suit prior to final judgment therein.

* * * * * * *

LIABILITY OF CONTROLLING PERSONS; PREVENTING COMPLIANCE WITH TITLE

SEC. 48. (a) * * *

(b) For purposes of any action brought by the Commission under subsection (d) or (e) of section 42, 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.

⟦(b)⟧ *(c)* It shall be unlawful for any person without just cause to hinder, delay, or obstruct the making, filing, or keeping of any information, document, report, record, or account required to be made, filed, or kept under any provision of this title or any rule, regulation, or order thereunder.

* * * * * * *

EFFECT ON EXISTING LAW

SEC. 50. Except where specific provision is made to the contrary, nothing in this title shall affect (1) the jurisdiction of the Commission under the Securities Act of 1933, the Securities Exchange Act of 1934, ⟦the Public Utility Holding Company Act of 1935,⟧ the Trust Indenture Act of 1939, or title II of this Act, over any person, security, or transaction, or (2) the rights, obligations, duties, or liabilities of any person under such Acts; nor shall anything in this title affect the jurisdiction of any other commission, board, agency, or officer of the United States or of any State or political subdivision of any State, over any person, security, or transaction, insofar as such jurisdiction does not conflict with any provision of this title or of any rule, regulation, or order hereunder.

* * * * * * *

CAPITAL STRUCTURE

SEC. 61. (a) Notwithstanding the exemption set forth in section 6(f), section 18 shall apply to a business development company to the same extent as if it were a registered closed-end investment company, except as follows:

(1) * * *

* * * * * * *

(3) Notwithstanding section 18(d)—

(A) * * *

(B) a business development company may issue, to its directors, officers, employees, and general partners, warrants, options, and rights to purchase voting securities of such company pursuant to an executive compensation plan, if—

(i) * * *

* * * * * * *

(iii) no investment adviser of such business development company receives any compensation described in ⟦paragraph (1) of section 205⟧ *section 205(a)(1)* of title II of this Act, except to the extent permitted by ⟦clause (A) or (B) of that section⟧ *section 205(b)(1) or (2)*; and

* * * * * * *

INVESTMENT ADVISERS ACT OF 1940

TITLE II—INVESTMENT ADVISERS

* * * * * * *

DEFINITIONS

SEC. 202. (a) When used in this title, unless the context otherwise requires, the following definitions shall apply:

(1) * * *

* * * * * * *

(21) "Securities Act of 1933", "Securities Exchange Act of 1934", ⟦"Public Utility Holding Company Act of 1935",⟧ and "Trust Indenture Act of 1939", mean those Acts, respectively, as heretofore or hereafter amended.

* * * * * * *

(29) The term "municipal finance adviser" has the same meaning as in section 3 of the Securities Exchange Act of 1934.

* * * * * * *

REGISTRATION OF INVESTMENT ADVISERS

SEC. 203. (a) * * *

* * * * * * *

(c)(1) An investment adviser, or any person who presently contemplates becoming an investment adviser, may be registered by filing with the Commission an application for registration in such form and containing such of the following information and documents as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors:

(A) the name and form of organization under which the investment adviser engages or intends to engage in business; the name of the State or other sovereign power under which such investment adviser is organized; the location of his or its ⟦principal business office⟧ *principal office and place of business* and branch offices, if any; the names and addresses of his or its partners, officers, directors, and persons performing similar functions or, if such an investment adviser be an individual, of such individual; and the number of his or its employees;

* * * * * * *

(e) The Commission, by order, shall censure, place limitations on the activities, functions, or operations of, suspend for a period not exceeding twelve months, or revoke the registration of any investment adviser if it finds, on the record after notice and opportunity for hearing, that such censure, placing of limitations, suspension, or revocation is in the public interest and that such investment adviser, or any person associated with such investment adviser, whether prior to or subsequent to becoming so associated—

(1) * * *

(2) has been convicted within ten years preceding the filing of any application for registration or at any time thereafter of any felony or misdemeanor or of a substantially equivalent crime by a foreign court of competent jurisdiction which the Commission finds—

(A) * * *

(B) arises out of the conduct of the business of a broker, dealer, municipal securities dealer, investment adviser, bank, insurance company, government securities broker, government securities dealer, fiduciary, transfer agent, credit rating agency, *municipal finance adviser,* foreign person performing a function substantially equivalent to any of the above, or entity or person required to be registered under the Commodity Exchange Act or any substantially equivalent statute or regulation;

* * * * * * *

(4) is permanently or temporarily enjoined by order, judgment, or decree of any court of competent jurisdiction, including any foreign court of competent jurisdiction, from acting as an investment adviser, underwriter, broker, dealer, municipal securities dealer, government securities broker, government securities dealer, transfer agent, credit rating agency, *municipal finance adviser,* foreign person performing a function substantially equivalent to any of the above, or entity or person required to be registered under the Commodity Exchange Act or any substantially equivalent statute or regulation, or as an affiliated person or employee of any investment company, bank, insurance company, foreign entity substantially equivalent to any of the above, or entity or person required to be registered under the Commodity Exchange Act or any substantially equivalent statute or regulation, or from engaging in or continuing any conduct or practice in connection with any such activity, or in connection with the purchase or sale of any security.

* * * * * * *

(f) The Commission, by order, shall censure or place limitations on the activities of any person associated, seeking to become associated, or, at the time of the alleged misconduct, associated or seeking to become associated with an investment adviser, or suspend for a period not exceeding ⟦twelve months or bar any such person from being associated with an investment adviser,⟧ *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,* if the Commission finds, on the record after notice and opportunity for hearing, that such censure, placing of limitations, suspension, or bar is in the public interest and that such person has committed or omitted any act or omission enumerated in paragraph (1), (5), (6), (8), or (9) of subsection (e) or has been convicted of any offense specified in paragraph (2) or (3) of subsection (e) within ten years of the commencement of the proceedings under this subsection, or is enjoined from any action, conduct, or practice specified in paragraph (4) of subsection (e). It shall be unlawful for any person as to whom such an order suspending or barring him from being associated with an investment adviser is in effect willfully to become, or to be, associated with an investment adviser without the consent of the Commission, and it shall be unlawful for any investment adviser to permit such a person to become, or remain, a person associated with him without the consent of the Commission, if such investment adviser knew, or in the exercise of reasonable care, should have known, of such order.

* * * * * * *

(i) MONEY PENALTIES IN ADMINISTRATIVE PROCEEDINGS.—

【(1) AUTHORITY OF COMMISSION.—In any proceeding】

(1) AUTHORITY OF COMMISSION.—

(A) IN GENERAL.—In any proceeding instituted pursuant to subsection (e) or (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—

【(A)】 *(i)* has willfully violated any provision of the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Company Act of 1940, or this title, or the rules or regulations thereunder;

【(B)】 *(ii)* has willfully aided, abetted, counseled, commanded, induced, or procured such a violation by any other person;

【(C)】 *(iii)* has willfully made or caused to be made in any application for registration or report required to be filed with the Commission under this title, or in any proceeding before the Commission with respect to registration, any statement which was, at the time and in the light of the circumstances under which it was made, false or misleading with respect to any material fact, or has omitted to state in any such application or report any material fact which was required to be stated therein; or

【(D)】 *(iv)* has failed reasonably to supervise, within the meaning of subsection (e)(6), with a view to preventing violations of the provisions of this title and the rules and regulations thereunder, another person who commits such a violation, if such other person is subject to his supervision;

and that such penalty is in the public interest.

(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.

* * * * * * *

(k) CEASE-AND-DESIST PROCEEDINGS.—

(1) * * *

* * * * * * *

(4) REVIEW OF TEMPORARY ORDERS.—

(A) * * *

(B) JUDICIAL REVIEW.—Within—

(i) 10 days after the date the respondent was served with a temporary cease-and-desist order entered with a prior Commission hearing, or

(ii) 10 days after the Commission renders a decision on an application and hearing under subparagraph (A), with respect to any temporary cease-and-desist order entered without a prior Commission hearing,

the respondent may apply to the United States district court for the district in which the respondent resides or has its [principal place of business] *principal office and place of business*, or for the District of Columbia, for an order setting aside, limiting, or suspending the effectiveness or enforcement of the order, and the court shall have jurisdiction to enter such an order. A respondent served with a temporary cease-and-desist order entered without a prior Commission hearing may not apply to the court except after hearing and decision by the Commission on the respondent's application under subparagraph (A) of this paragraph.

* * * * * * *

(l) ANNUAL ASSESSMENT.—

(1) IN GENERAL.—The Commission shall, in accordance with this subsection, promulgate rules pursuant to which it may 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 objective factors such as—

(A) the investment adviser's size;

(B) the number of clients 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 examinations 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 examinations 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 required by this subsection.

(6) JUDICIAL REVIEW.—Increases or decreases in fees made pursuant to this section shall not be subject to judicial review.

SEC. 203A. STATE AND FEDERAL RESPONSIBILITIES.

(a) ADVISERS SUBJECT TO STATE AUTHORITIES.—

(1) * * *

(2) TREATMENT OF CERTAIN MID-SIZED INVESTMENT ADVISERS.—Notwithstanding paragraph (1), an investment adviser that—

(A) is regulated and examined, or required to be regulated and examined, by a State; and

(B) has assets under management between—

(i) the amount specified under subparagraph (A) of paragraph (1), as such amount may have been adjusted by the Commission pursuant to that subparagraph, and

(ii) $100,000,000, or such higher amount as the Commission may, by rule, deem appropriate in accordance with the purposes of this title,

shall register with, and be subject to examination by, such State. The Commission shall publish a list of the States that regulate and examine, or require regulation and examination of, investment advisers to which the requirements of this paragraph apply.

⟦(2)⟧ *(3)* DEFINITION.—For purposes of this subsection, the term "assets under management" means the securities portfolios with respect to which an investment adviser provides continuous and regular supervisory or management services.

* * * * * * *

ANNUAL AND OTHER REPORTS

SEC. 204. (a) * * *

* * * * * * *

(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 cus-

tody 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.

(2) 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 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.

(e) 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.

(f) 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, the Public Company Accounting Oversight Board, or a 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.

* * * * * * *

INVESTMENT ADVISORY CONTRACTS

SEC. 205. (a) No investment adviser【, unless exempt from registration pursuant to section 203(b),】 *registered or required to be registered with the Commission* shall 【make use of the mails or any means or instrumentality of interstate commerce, directly or indirectly, to】 enter into, extend, or renew any investment advisory contract, or in any way 【to】 perform any investment advisory contract entered into, extended, or renewed on or after the effective date of this title, if such contract—

(1) * * *

* * * * * * *

(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, the rules and regulations thereunder, 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.

PROHIBITED TRANSACTIONS BY REGISTERED INVESTMENT ADVISERS

SEC. 206. It shall be unlawful for any investment adviser, by use of the mails or any means or instrumentality of interstate commerce, directly or indirectly—

(1) * * *

* * * * * * *

(3) acting as principal for his own account, knowingly to sell any security to or purchase any security from a client, or acting as broker for a person other than such client, knowingly to effect any sale or purchase of any security for the account of such client, without disclosing to such client in writing before the completion of such transaction the capacity in which he is acting and obtaining the consent of the client to such transaction. The prohibitions of this paragraph (3) shall not apply to any transaction with a customer of a broker or dealer if such broker or dealer is not acting as an investment adviser in relation to such transaction; *or*

* * * * * * *

ENFORCEMENT OF TITLE

SEC. 209. (a) * * *

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(e) MONEY PENALTIES IN CIVIL ACTIONS.—

(1) * * *

* * * * * * *

(3) PROCEDURES FOR COLLECTION.—

(A) PAYMENT OF PENALTY TO TREASURY.—A penalty imposed under this section shall be payable into the Treasury of the United States, except as otherwise provided in section 308 of the Sarbanes-Oxley Act of 2002 *and section 21F of the Securities Exchange Act of 1934*.

* * * * * * *

(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 extent as the person that committed such violation.

(g) ENFORCEMENT BY NATIONAL SECURITIES ASSOCIATIONS.—The Commission may permit or require a national securities association registered under the Securities Exchange Act of 1934 to enforce compliance by its members and persons associated with its members with the provisions of this Act, the rules and regulations thereunder, and to adopt such rules (subject to any rule or order of the Commission pursuant to the Securities Exchange Act of 1934) as the association may deem necessary and in the public interest to further the purposes of this Act.

* * * * * * *

RULES, REGULATIONS, AND ORDERS

SEC. 211. (a) * * *

* * * * * * *

(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.

(f) STANDARD OF CONDUCT.—

(1) IN GENERAL.—The Commission shall promulgate rules to provide that the standard of conduct for all brokers, dealers, and investment advisers, when providing personalized investment advice about securities 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. In accordance with such rules, any material conflicts of interest shall be disclosed and may be consented to by the customer. Such rules shall provide that such standard of conduct shall be no less stringent than the standard applicable to investment advisers under section 206(1) and (2) of this Act when providing personalized investment advice about securities, except the Commission shall not ascribe a meaning to the term "customer" that would include an investor in a private fund managed by an investment adviser, where such private fund has entered into an advisory contract with such adviser. The receipt of compensation based on commission or fees shall not, in and of itself, be considered a violation of such standard applied to a broker, dealer, or investment adviser.

(2) RETAIL CUSTOMER DEFINED.—For purposes of this subsection, the term "retail customer" means a natural person, or the legal representative of such natural person, who—

(A) receives personalized investment advice about securities 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, including any material conflicts of interest; and

(2) examine and, where appropriate, promulgate rules prohibiting or restricting certain sales practices, conflicts of interest, and compensation schemes for brokers, dealers, and investment advisers that the Commission deems contrary to the public interest and the protection of investors.

(h) HARMONIZATION OF ENFORCEMENT.—The enforcement authority of the Commission with respect to violations of the standard of conduct applicable to an investment adviser shall include—

(1) the enforcement authority of the Commission with respect to such violations provided under this Act, and

(2) the enforcement authority of the Commission with respect to violations of the standard of conduct applicable to a broker or dealer providing personalized investment advice about securities to a retail customer under the Securities Exchange Act of 1934, including the authority to impose sanctions for such violations, and

the Commission shall seek to prosecute and sanction violators of the standard of conduct applicable to an investment advisor under this Act to same extent as the Commission prosecutes and sanctions violators of the standard of conduct applicable to a broker or dealer providing personalized investment advice about securities to a retail customer under the Securities Exchange Act of 1934.

* * * * * * *

COURT REVIEW OF ORDERS

SEC. 213. (a) Any person or party aggrieved by an order issued by the Commission under this title may obtain a review of such order in the court of appeals of the United States within any circuit wherein such person resides or has his [principal place of business] *principal office and place of business*, or in the United States Court of Appeals for the District of Columbia, by filing in such court, within sixty days after the entry of such order, a written petition praying that the order of the Commission be modified or set aside in whole or in part. A copy of such petition shall be forthwith transmitted by the clerk of the court to any member of the Commission, or any officer thereof designated by the Commission for that purpose, and thereupon the Commission shall file in the court the record upon which the order complained of was entered, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition such court shall have jurisdiction, which upon the filing of the record shall be exclusive, to affirm, modify, or set aside such order, in whole or in part. No objection to the order of the Commission shall be considered by the court unless such objection shall have been urged before the Commission or unless there were reasonable grounds for failure so to do. The findings of the Commission as to the facts, if supported by substantial evidence, shall be conclusive. If application is made to the court for leave to adduce additional evidence, and it is shown to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence in the proceeding before the Commission, the court may order such additional evidence to be taken before the Commission and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The Commission may modify its findings as to the facts by reason of the additional evidence so taken, and it shall file with the court such modified or new findings, which, if supported by substantial evidence, shall be conclusive, and its recommendation, if any, for the modification or setting aside of the original order. The judgment and decree of the court affirming, modifying, or setting aside, in whole or in part, any such order of the Commission shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28, United States Code.

* * * * * * *

JURISDICTION OF OFFENSES AND SUITS

SEC. 214. [The district]

(a) IN GENERAL.—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 shall have jurisdiction of violations of this title or the rules, regulations, or orders thereunder, and, concurrently with State and Territorial courts, of all suits in equity and actions at law brought to enforce any liability or duty created by, or to enjoin any violation of this title or the rules, regulations, or orders thereunder. Any criminal proceeding may be brought in the district wherein any act or transaction constituting the violation occurred. Any suit or action to enforce any liability or duty created by, or to enjoin any violation of this title or rules, regulations, or orders thereunder, may be brought in any such district or in the district wherein the defendant is an inhabitant or transacts business, and process in such cases may be served in any district of which the defendant is an inhabitant or transacts business or wherever the defendant may be found. *In any action or proceeding instituted by the Commission under this title in a United States district court for any judicial district, subpoenas issued to compel the attendance of witnesses or the production of documents or tangible things (or both) at a hearing or trial may be served at any place within the United States.* Judgments and decrees so rendered shall be subject to review as provided in sections 1254, 1291, 1292, and 1294 of title 28, United States Code. No costs shall be assessed for or against the Commission in any proceeding under this title brought by or against the Commission in any court.

(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 violation, even if the violation is committed by a foreign adviser and involves only foreign investors; or

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

* * * * * * *

SEC. 222. STATE REGULATION OF INVESTMENT ADVISERS.

(a) * * *

(b) DUAL COMPLIANCE PURPOSES.—No State may enforce any law or regulation that would require an investment adviser to maintain any books or records in addition to those required under the laws of the State in which it maintains its [principal place of business] *principal office and place of business*, if the investment adviser—

(1) is registered or licensed as such in the State in which it maintains its [principal place of business] *principal office and place of business*; and

(2) is in compliance with the applicable books and records requirements of the State in which it maintains its [principal place of business] *principal office and place of business*.

(c) LIMITATION ON CAPITAL AND BOND REQUIREMENTS.—No State may enforce any law or regulation that would require an investment adviser to maintain a higher minimum net capital or to post any bond in addition to any that is required under the laws of the State in which it maintains its [principal place of business] *principal office and place of business*, if the investment adviser—

(1) is registered or licensed as such in the State in which it maintains its [principal place of business] *principal office and place of business*; and

(2) is in compliance with the applicable net capital or bonding requirements of the State in which it maintains its [principal place of business] *principal office and place of business*.

* * * * * * *

SARBANES-OXLEY ACT OF 2002

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) * * *

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

SEC. 2. DEFINITIONS.

(a) IN GENERAL.—In this Act, the following definitions shall apply:

(1) * * *

* * * * * * *

(5) BOARD.—The term “Board” means the ⟦Public Company Accounting Oversight Board⟧ *Auditing Oversight Board* established under section 101.

*　*　*　*　*　*　*

(9) PERSON ASSOCIATED WITH A PUBLIC ACCOUNTING FIRM.—

(A) * * *

*　*　*　*　*　*　*

(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 a registered public accounting firm; and

(ii) the authority to commence a 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 conduct occurring while such person was associated or seeking to become associated with a registered public accounting firm; or

(II) non-cooperation as described in section 105(b)(3) with respect to a demand in a Board investigation for testimony, documents, or other information relating to a period when such person was associated or seeking to become associated with a registered public accounting firm.

*　*　*　*　*　*　*

(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.

*　*　*　*　*　*　*

TITLE I—⟦PUBLIC COMPANY ACCOUNTING OVERSIGHT BOARD⟧ *AUDITING OVERSIGHT BOARD*

SEC. 101. ESTABLISHMENT; ADMINISTRATIVE PROVISIONS.

(a) ESTABLISHMENT OF BOARD.—There is established the ⟦Public Company Accounting Oversight Board⟧ *Auditing Oversight Board*, to oversee the audit of ⟦public companies⟧ *companies* that are subject to the securities laws, and related matters, in order to protect the interests of investors and further the public interest in the preparation of informative, accurate, and independent audit reports [for companies the securities of which are sold to, and held by and for, public investors]. The Board shall be a body corporate, operate as a nonprofit corporation, and have succession until dissolved by an Act of Congress.

* * * * * * *

(c) DUTIES OF THE BOARD.—The Board shall, subject to action by the Commission under section 107, and once a determination is made by the Commission under subsection (d) of this section—

(1) register public accounting firms that prepare audit reports for [issuers] *issuers, brokers, and dealers*, in accordance with section 102;

(2) establish or adopt, or both, by rule, auditing, quality control, ethics, independence, and other standards relating to the preparation of audit reports for [issuers] *issuers, brokers, and dealers*, in accordance with section 103;

* * * * * * *

(e) BOARD MEMBERSHIP.—

(1) COMPOSITION.—The Board shall have 5 members, appointed from among prominent individuals of integrity and reputation who have a demonstrated commitment to the interests of investors and the public, and an understanding of the responsibilities for and nature of the financial disclosures required of [issuers] *issuers, brokers, and dealers* under the securities laws and the obligations of accountants with respect to the preparation and issuance of audit reports with respect to such disclosures.

* * * * * * *

(i) CONGRESSIONAL ACCESS TO INFORMATION.—Nothing in this section shall—

(1) affect the Board's obligations, if any, to provide access to records under the Right to Financial Privacy Act; or

(2) authorize the Board to withhold information from Congress or prevent the Board from complying with an order of a court of the United States in an action commenced by the United States or the Board.

SEC. 102. REGISTRATION WITH THE BOARD.

(a) MANDATORY REGISTRATION.—[Beginning 180 days after the date of the determination of the Commission under section 101(d), it] *It* shall be unlawful for any person that is not a registered public accounting firm to prepare or issue, or to participate in the preparation or issuance of, any audit report with respect to any [issuer] *issuer, broker, or dealer*.

(b) APPLICATIONS FOR REGISTRATION.—

(1) * * *

(2) CONTENTS OF APPLICATIONS.—Each public accounting firm shall submit, as part of its application for registration, in such detail as the Board shall specify—

(A) the names of all [issuers] *issuers, brokers, and dealers* for which the firm prepared or issued audit reports during the immediately preceding calendar year, and for which the firm expects to prepare or issue audit reports during the current calendar year;

* * * * * * *

(G) copies of any periodic or annual disclosure filed by an ⟦issuer⟧ *issuer, broker, or dealer* with the Commission during the immediately preceding calendar year which discloses accounting disagreements between such ⟦issuer⟧ *issuer, broker, or dealer* and the firm in connection with an audit report furnished or prepared by the firm for such ⟦issuer⟧ *issuer, broker, or dealer*; and

* * * * * * *

(3) CONSENTS.—Each application for registration under this subsection shall include—

(A) a consent executed by the public accounting firm to cooperation in and compliance with any request for testimony or the production of documents made ⟦by the Board⟧ *by the Commission or the Board* in the furtherance of its authority and responsibilities under this title (and an agreement to secure and enforce similar consents from each of the associated persons of the public accounting firm as a condition of their continued employment by or other association with such firm); and

* * * * * * *

SEC. 103. AUDITING, QUALITY CONTROL, AND INDEPENDENCE STANDARDS AND RULES.

(a) AUDITING, QUALITY CONTROL, AND ETHICS STANDARDS.—

(1) IN GENERAL.—The Board shall, by rule, establish, including, to the extent it determines appropriate, through adoption of standards proposed by 1 or more professional groups of accountants designated pursuant to paragraph (3)(A) or advisory groups convened pursuant to paragraph (4), and amend or otherwise modify or alter, such auditing and related attestation standards, such quality control standards, ⟦and such ethics standards⟧ *such ethics standards, and such independence standards* to be used by registered public accounting firms in the preparation and issuance of audit reports, as required by this Act or the rules of the Commission, or as may be necessary or appropriate in the public interest or for the protection of investors.

(2) RULE REQUIREMENTS.—In carrying out paragraph (1), the Board—

(A) shall include in the auditing standards that it adopts, requirements that each registered public accounting firm shall—

(i) * * *

* * * * * * *

(iii) ⟦describe in each audit report⟧ *in each audit report for an issuer, describe* the scope of the auditor's testing of the internal control structure and procedures of the issuer, required by section 404(b), and present (in such report or in a separate report)—

(I) * * *

* * * * * * *

(B) shall include, in the quality control standards that it adopts with respect to the issuance of audit reports, requirements for every registered public accounting firm relating to—

(i) monitoring of professional ethics and independence from ❲issuers❳ *issuers, brokers, and dealers* on behalf of which the firm issues audit reports;

* * * * * * *

SEC. 104. INSPECTIONS OF REGISTERED PUBLIC ACCOUNTING FIRMS.

(a) IN GENERAL.—The Board shall conduct a continuing program of inspections to assess the degree of compliance of each registered public accounting firm and associated persons of that firm with this Act, the rules of the Board, the rules of the Commission, or professional standards, in connection with its performance of audits, issuance of audit reports, and related matters involving ❲issuers❳ *issuers, brokers, and dealers*.

(b) INSPECTION FREQUENCY.—

(1) IN GENERAL.—Subject to paragraph (2), inspections required by this section shall be conducted—

(A) annually with respect to each registered public accounting firm that regularly provides ❲audit reports❳ *audit reports on annual financial statements* for more than 100 issuers; ❲and❳

(B) not less frequently than once every 3 years with respect to each registered public accounting firm that regularly provides ❲audit reports❳ *audit reports on annual financial statements* for 100 or fewer issuers❲.❳*; and*

(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.

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SEC. 105. INVESTIGATIONS AND DISCIPLINARY PROCEEDINGS.

(a) * * *

(b) INVESTIGATIONS.—

(1) * * *

* * * * * * *

(4) COORDINATION AND REFERRAL OF INVESTIGATIONS.—

(A) * * *

(B) REFERRAL.—The Board may refer an investigation under this section—

(i) * * *

(ii) to a self-regulatory organization, in the case of an investigation that concerns an audit report for a broker or dealer that is subject to the jurisdiction of such self-regulatory organization;

❲(ii)❳ *(iii)* to any other Federal functional regulator (as defined in section 509 of the Gramm-Leach-Bliley Act (15 U.S.C. 6809)), in the case of an investigation that concerns an audit report for an institution that is subject to the jurisdiction of such regulator; and

【(iii)】 *(iv)* at the direction of the Commission, to—

(I) * * *

* * * * * * *

(5) USE OF DOCUMENTS.—

(A) CONFIDENTIALITY.—Except as provided in 【subparagraph (B)】 *subparagraphs (B) and (C)*, all documents and information prepared or received by or specifically for the Board, and deliberations of the Board and its employees and agents, in connection with an inspection under section 104 or with an investigation under this section, 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. 552a), or otherwise, unless and until presented in connection with a public proceeding or released in accordance with subsection (c).

(B) AVAILABILITY TO GOVERNMENT AGENCIES.—Without the loss of its status as confidential and privileged in the hands of the Board, all information referred to in subparagraph (A) may—

(i) * * *

(ii) in the discretion of the Board, when determined by the Board to be necessary to accomplish the purposes of this Act or to protect investors, be made available to—

(I) * * *

* * * * * * *

(III) State attorneys general in connection with any criminal investigation; 【and】

(IV) any appropriate State regulatory authority【,】*; and*

(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,

each of which shall maintain such information as confidential and privileged.

(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.

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(c) DISCIPLINARY PROCEDURES.—

(1) * * *

* * * * * * *

(6) FAILURE TO SUPERVISE.—

(A) IN GENERAL.—The Board may impose sanctions under this section on a registered accounting firm or upon ⟦the supervisory personnel⟧ *any person who is, or at the time of the alleged failure reasonably to supervise was, a supervisory person* of such firm, if the Board finds that—

(i) * * *

* * * * * * *

(B) RULE OF CONSTRUCTION.—⟦No associated person⟧ *No current or former supervisory person* of a registered public accounting firm shall be deemed to have failed reasonably to supervise ⟦any other person⟧ *any associated person* for purposes of subparagraph (A), if—

(i) * * *

* * * * * * *

(7) EFFECT OF SUSPENSION.—

(A) * * *

(B) ASSOCIATION WITH AN ISSUER*, BROKER, OR DEALER*.— It shall be unlawful for any person that is suspended or barred from being associated with ⟦an issuer under this subsection⟧ *a registered public accounting firm under this subsection* willfully to become or remain associated with ⟦any issuer⟧ *any issuer, broker, or dealer* in an accountancy or a financial management capacity, and for ⟦any issuer⟧ *any issuer, broker, or dealer* that knew, or in the exercise of reasonable care should have known, of such suspension or bar, to permit such an association, without the consent of the Board or the Commission.

* * * * * * *

SEC. 106. FOREIGN PUBLIC ACCOUNTING FIRMS.

(a) APPLICABILITY TO CERTAIN FOREIGN FIRMS.—

(1) IN GENERAL.—Any foreign public accounting firm that prepares or furnishes an audit report with respect to any ⟦issuer⟧ *issuer, broker, or dealer*, shall be subject to this Act and the rules of the Board and the Commission issued under this Act, in the same manner and to the same extent as a public accounting firm that is organized and operates under the laws of the United States or any State, except that registration pursuant to section 102 shall not by itself provide a basis for subjecting such a foreign public accounting firm to the jurisdiction of the Federal or State courts, other than with respect to controversies between such firms and the Board.

(2) BOARD AUTHORITY.—The Board may, by rule, determine that a foreign public accounting firm (or a class of such firms) that does not issue audit reports nonetheless plays such a substantial role in the preparation and furnishing of such reports

for particular [issuers] *issuers, brokers, or dealers*, that it is necessary or appropriate, in light of the purposes of this Act and in the public interest or for the protection of investors, that such firm (or class of firms) should be treated as a public accounting firm (or firms) for purposes of registration under, and oversight by the Board in accordance with, this title.

[(b) PRODUCTION OF AUDIT WORKPAPERS.—

[(1) CONSENT BY FOREIGN FIRMS.—If a foreign public accounting firm issues an opinion or otherwise performs material services upon which a registered public accounting firm relies in issuing all or part of any audit report or any opinion contained in an audit report, that foreign public accounting firm shall be deemed to have consented—

[(A) to produce its audit workpapers for the Board or the Commission in connection with any investigation by either body with respect to that audit report; and

[(B) to be subject to the jurisdiction of the courts of the United States for purposes of enforcement of any request for production of such workpapers.

[(2) CONSENT BY DOMESTIC FIRMS.—A registered public accounting firm that relies upon the opinion of a foreign public accounting firm, as described in paragraph (1), shall be deemed—

[(A) to have consented to supplying the audit workpapers of that foreign public accounting firm in response to a request for production by the Board or the Commission; and

[(B) to have secured the agreement of that foreign public accounting firm to such production, as a condition of its reliance on the opinion of that foreign public accounting firm.]

(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 upon which a registered public accounting firm relies in the conduct of an audit or interim review, the foreign public accounting firm shall produce its audit work papers 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 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, or conducting an interim review, shall—

(A) produce the foreign public accounting firm's audit work papers 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.

* * * * * * *

(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 public accounting firm that issues an audit report, performs audit work, performs interim reviews, or performs other material services upon which a registered public accounting firm relies in the conduct of an audit or interim review, 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.

(f) OTHER MEANS OF SATISFYING PRODUCTION OBLIGATIONS.—Notwithstanding any other provision of this section, the staff of the Commission or Board may allow foreign public accounting firms subject to this section to meet production obligations under this section though alternate means, such as through foreign counterparts of the Commission or Board.

⟦(d)⟧ *(g)* DEFINITION.—In this section, the term “foreign public accounting firm” means a public accounting firm that is organized and operates under the laws of a foreign government or political subdivision thereof.

SEC. 107. COMMISSION OVERSIGHT OF THE BOARD.

(a) * * *

* * * * * * *

(d) CENSURE OF THE BOARD; OTHER SANCTIONS.—

(1) * * *

* * * * * * *

(3) CENSURE OF BOARD MEMBERS; REMOVAL FROM OFFICE.—The Commission may, as necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this Act or the securities laws, remove from office or censure ⟦any member⟧ *any person who is, or at the time of the alleged misconduct was, a member* of the Board, if the Commission finds, on the record, after notice and opportunity for a hearing, that such member—

(A) * * *

* * * * * * *

SEC. 109. FUNDING.

(a) * * *

* * * * * * *

(c) SOURCES AND USES OF FUNDS.—

(1) * * *

(2) FUNDS GENERATED FROM THE COLLECTION OF MONETARY PENALTIES.—Subject to the availability in advance in an appropriations Act, and notwithstanding ⟦subsection (i)⟧ *subsection (j)*, all funds collected by the Board as a result of the assess-

ment of monetary penalties shall be used to fund a merit scholarship program for undergraduate and graduate students enrolled in accredited accounting degree programs, which program is to be administered by the Board or by an entity or agent identified by the Board.

(d) ANNUAL ACCOUNTING SUPPORT FEE FOR THE BOARD.—

(1) * * *

(2) ASSESSMENTS.—The rules of the Board under paragraph (1) shall provide for the equitable allocation, assessment, and collection by the Board (or an agent appointed by the Board) of the fee established under paragraph (1), among issuers, in accordance with subsection (g), ⟦allowing for differentiation among classes of issuers, as appropriate⟧ *and among brokers and dealers in accordance with subsection (h), and allowing for differentiation among classes of issuers and brokers and dealers, as appropriate*.

(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.

* * * * * * *

(h) ALLOCATION OF ACCOUNTING SUPPORT FEES AMONG BROKERS AND DEALERS.—

(1) IN GENERAL.—Any amount due from brokers and dealers (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 compared to the total net capital of all brokers and dealer, in accordance with the rules of the Board.

(2) OBLIGATION TO PAY.—Every broker or dealer shall pay the share of a reasonable annual accounting support fee or fees allocated to such broker or dealer under this section.

⟦(h)⟧ *(i)* CONFORMING AMENDMENTS.—Section 13(b)(2) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(b)(2)) is amended—

(1) * * *

* * * * * * *

⟦(i)⟧ *(j)* RULE OF CONSTRUCTION.—Nothing in this section shall be construed to render either the Board, the standard setting body referred to in subsection (a), or both, subject to procedures in Congress to authorize or appropriate public funds, or to prevent such organization from utilizing additional sources of revenue for its activities, such as earnings from publication sales, provided that each additional source of revenue shall not jeopardize, in the judgment of the Commission, the actual and perceived independence of such organization.

⟦(j)⟧ *(k)* START-UP EXPENSES OF THE BOARD.—From the unexpended balances of the appropriations to the Commission for fiscal year 2003, the Secretary of the Treasury is authorized to advance to the Board not to exceed the amount necessary to cover the expenses of the Board during its first fiscal year (which may be a short fiscal year).

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, procedures or controls, 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 purpose of expressing an opinion on such financial statements, reports, documents, procedures or controls, or notices.

(2) AUDIT REPORT.—The term "audit report" means a document, report, notice, or other record—

(A) prepared following an audit performed 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 either—

(i) sets forth the opinion of that firm regarding a financial statement, report, notice, other document, procedures, or controls; 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 setting 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. 78c(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. 78c(a)(26)).

SEC. 111. OMBUDSMAN.

(a) ESTABLISHMENT REQUIRED.—Not later than 180 days after the date of enactment of the Investor Protection Act, the Board shall appoint an ombudsman for the Board. The Ombudsman shall report directly to the Chairman.

(b) DUTIES OF OMBUDSMAN.—The ombudsman appointed in accordance with subsection (a) for the Board shall—

(1) act as a liaison between the Board and—

(A) any registered public accounting firm or issuer with respect to issues or disputes concerning the preparation or issuance of any audit report with respect to that issuer; and

(B) any affected registered public accounting firm or issuer with respect to—

(i) any problem such firm or issuer may have in dealing with the Board resulting from the regulatory activities of the Board, particularly with regard to the implementation of section 404; and

(ii) issues caused by the relationships of registered public accounting firms and issuers generally; and

(2) assure that safeguards exist to encourage complainants to come forward and to preserve confidentiality; and

(3) carry out such activities, and any other activities assigned by the Board, in accordance with guidelines prescribed by the Board.

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TITLE III—CORPORATE RESPONSIBILITY

* * * * * * *

SEC. 308. FAIR FUNDS FOR INVESTORS.

[(a) CIVIL PENALTIES ADDED TO DISGORGEMENT FUNDS 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 an order requiring disgorgement against any person for a violation of such laws or the rules or regulations thereunder, or such person agrees in settlement of any such action to such disgorgement, and the Commission also obtains pursuant to such laws a civil penalty against such person, the amount of such civil penalty shall, on the motion or at the direction of the Commission, be added to and become part of the disgorgement fund for the benefit of the victims of such violation.]

(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, or such person agrees in settlement of any such action to such civil penalty, the amount of such civil penalty or settlement 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.

(b) ACCEPTANCE OF ADDITIONAL DONATIONS.—The Commission is authorized to accept, hold, administer, and utilize gifts, bequests and devises of property, both real and personal, to the United States [for a disgorgement fund described in subsection (a)] *for a disgorgement fund or other fund described in subsection (a).* Such gifts, bequests, and devises of money and proceeds from sales of other property received as gifts, bequests, or devises shall be deposited [in the disgorgement fund] *in such fund* and shall be available for allocation in accordance with subsection (a).

[(e) DEFINITION.—As used in this section, the term "disgorgement fund" means a fund established in any administrative or judicial proceeding described in subsection (a).]

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SEC. 404. MANAGEMENT ASSESSMENT OF INTERNAL CONTROLS.

(A) * * *.—

* * * * * * *

(c) EXEMPTION FOR SMALLER ISSUERS.—Subsection (b) shall not apply with respect to any audit report prepared for an issuer that is not an accelerated filer within the meaning Rule 12b–2 of the Commission (17 C.F.R. 240.12b–2).

TITLE VI—COMMISSION RESOURCES AND AUTHORITY

* * * * * * *

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.

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TRUST INDENTURE ACT OF 1939

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TITLE III—SHORT TITLE

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DEFINITIONS

SEC. 303. When used in this title, unless the context otherwise requires—

(1) * * *

* * * * * * *

【(17) The terms "Securities Act of 1933", "Securities Exchange Act of 1934", and "Public Utility Holding Company Act of 1935" shall be deemed to refer, respectively, to such Acts, as amended, whether amended prior to or after the enactment of this title.】

(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.

* * * * * * *

EXEMPTED SECURITIES AND TRANSACTIONS

SEC. 304. (a) * * *

(b) The provisions of sections 305 and 306 shall not apply (1) to any of the transactions exempted from the provisions of section 5 of the Securities Act of 1933 by section 4 thereof, or (2) to any transaction which would be so exempted but for the last sentence of paragraph (11) of 【section 2 of such Act】 *section 2(a) of such Act*.

* * * * * * *

INTEGRATION OF PROCEDURE WITH SECURITIES ACT AND OTHER ACTS

SEC. 308. (a) The Commission, by such rules and regulations or orders as it deems necessary or appropriate in the public interest or for the protection of investors, shall authorize the filing of any information or documents required to be filed with the Commission under this title, or under the 【Securities Act of 1933, the Securities Exchange Act of 1934, or the Public Utility Holding Company Act of 1935】 *Securities Act of 1933 or the Securities Exchange Act of 1934*, by incorporating by reference any information or documents on file with the Commission under this title or under any such Act.

(b) The Commission, by such rules and regulations or orders as it deems necessary or appropriate in the public interest or for the protection of investors, shall provide for the consolidation of applications, reports, and proceedings under this title with registration statements, applications, reports, and proceedings under the [Securities Act of 1933, the Securities Exchange Act of 1934, or the Public Utility Holding Company Act of 1935] *Securities Act of 1933 or the Securities Exchange Act of 1934*.

* * * * * * *

ELIGIBILITY AND DISQUALIFICATION OF TRUSTEE

SEC. 310. (a) * * *

* * * * * * *

[(c) APPLICABILITY OF SECTION.—The Public Utility Holding Company Act of 1935 shall not be held to establish or authorize the establishment of any standards regarding the eligibility and qualifications of any trustee or prospective trustee under an indenture to be qualified under this title, or regarding the provisions to be included in any such indenture with respect to the eligibility and qualifications of the trustee thereunder, other than those established by the provisions of this section.]

PREFERENTIAL COLLECTION OF CLAIMS AGAINST OBLIGOR

SEC. 311. (a) * * *

* * * * * * *

[(c) In the exercise by the Commission of any jurisdiction under the Public Utility Holding Company Act of 1935 regarding the issue or sale, by any registered holding company or a subsidiary company thereof, of any security of such issuer or seller or of any other company to a person which is trustee under an indenture or indentures of such issuer or seller or other company, or of a subsidiary or associate company or affiliate of such issuer or seller or other company (whether or not such indenture or indentures are qualified or to be qualified under this title), the fact that such trustee will thereby become a creditor, directly or indirectly, of any of the foregoing shall not constitute a ground for the Commission taking adverse action with respect to any application or declaration, or limiting the scope of any rule or regulation which would otherwise permit such transaction to take effect; but in any case in which such trustee is trustee under an indenture of the company of which it will thereby become a creditor, or of any subsidiary company thereof, this subsection shall not prevent the Commission from requiring (if such requirement would be authorized under the provisions of the Public Utility Holding Company Act of 1935) that such trustee, as such, shall effectively and irrevocably agree in writing, for the benefit of the holders from time to time of the securities from time to time outstanding under such indenture, to be bound by the provisions of this section, subsection (c) of section 315, and, in case of default (as such term is defined in such indenture), subsection (d) of section 315, as fully as though such provisions were included in such indenture. For the purposes of this subsection the terms "registered holding company", "subsidiary company", "associate company", and "affiliate" shall have the respective meanings assigned to such terms in section 2(a) of the Public Utility Holding Company Act of 1935.]

* * * * * * *

REPORTS BY INDENTURE TRUSTEE

SEC. 313. (a) The indenture trustee shall transmit to the indenture security holders as hereinafter provided, at stated intervals of not more than 12 months, a brief report with respect to any of the following events which may have occurred within the previous 12 months (but if no such event has occurred within such period no report need be transmitted):—

(1) * * *

* * * * * * *

(4) any change to the amount, interest rate, and maturity date of all other indebtedness owing to it in its individual capacity, on the date of such report, by the obligor upon the indenture securities, with a brief description of any property held as collateral security therefor, except an indebtedness based upon a creditor relationship arising in any manner described in paragraphs (2), (3), (4), or (6) of [subsection (b) of section 311] *section 311(b)*;

* * * * * * *

SPECIAL POWERS OF TRUSTEE; DUTIES OF PAYING AGENTS

SEC. 317. (a) The indenture trustee shall be authorized—

(1) [,] in the case of a default in payment of the principal of any indenture security, when and as the same shall become due and payable, or in the case of a default in payment of the interest on any such security, when and as the same shall become due and payable and the continuance of such default for such period as may be prescribed in such indenture, to recover judgment, in its own name and as trustee of an express trust, against the obligor upon the indenture securities for the whole amount of such principal and interest remaining unpaid; and

* * * * * * *

LIABILITY FOR MISLEADING STATEMENTS

SEC. 323. (a) * * *

(b) The rights and remedies provided by this title shall be in addition to any and all other rights and remedies that may exist under the [Securities Act of 1933, or the Securities Exchange Act of 1934, or the Public Utility Holding Company Act of 1935] *Securities Act of 1933 or the Securities Exchange Act of 1934*, or otherwise at law or in equity; but no person permitted to maintain a suit for damages under the provisions of this title shall recover, through satisfaction of judgment in one or more actions, a total amount in excess of his actual damages on account of the act complained of.

* * * * * * *

EFFECT ON EXISTING LAW

SEC. 326. Except as otherwise expressly provided, nothing in this title shall affect (1) the jurisdiction of the Commission under the [Securities Act of 1933, or the Securities Exchange Act of 1934, or the Public Utility Holding Company Act of 1935,] *Securities Act of 1933 or the Securities Exchange Act of 1934* over any person, security, or contract, or (2) the rights, obligations, duties, or liabilities of any person under such Acts; nor shall anything in this title affect the jurisdiction of any other commission, board, agency, or officer of the United States or of any State or political subdivision of any State, over any person or security, insofar as such jurisdiction does not conflict with any provision of this title or any rule, regulation, or order thereunder.

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SECURITIES INVESTOR PROTECTION ACT OF 1970

* * * * * * *

SEC. 4. SIPC FUND.

(a) * * *

* * * * * * *

(d) REQUIREMENTS RESPECTING ASSESSMENTS AND LINES OF CREDIT.—

(1) ASSESSMENTS.—

(A) * * *

* * * * * * *

(C) MINIMUM ASSESSMENT.—The minimum assessment imposed upon each member of SIPC shall be $25 per annum through the year ending December 31, 1979, and thereafter shall be the amount from time to time set by SIPC bylaw, but in no event shall the minimum assessment be greater than [$150 per annum] *0.02 percent of the gross revenues from the securities business of such member of SIPC*.

* * * * * * *

(g) SEC LOANS TO SIPC.—In the event that the fund is or may reasonably appear to be insufficient for the purposes of this Act, the Commission is authorized to make loans to SIPC. At the time of application for, and as a condition to, any such loan, SIPC shall file with the Commission a statement with respect to the anticipated use of the proceeds of the loan. If the Commission determines that such loan is necessary for the protection of customers of brokers or dealers and the maintenance of confidence in the United States securities markets and that SIPC has submitted a plan which provides as reasonable an assurance of prompt repayment as may be feasible under the circumstances, then the Commission shall so certify to the Secretary of the Treasury, and issue notes or other obligations to the Secretary of the Treasury pursuant to subsection (h). If the Commission determines that the amount or time for payment of the assessments pursuant to such plan would not satisfactorily provide for the repayment of such loan, it may, by rules and regulations, impose upon the purchasers of equity securities in transactions on national securities exchanges and in the over-the-counter markets a transaction fee in such amount as at any time or from time to time it may determine to be appropriate, but not exceeding one-fiftieth of 1 per centum of the purchase price of the securities. No such fee shall be imposed on a transaction (as defined by rules or regulations of the Commission) of less than $5,000. For the purposes of the next preceding sentence, (1) the fee shall be based upon the total dollar amount of each purchase; (2) the fee shall not apply to any purchase on a national securities exchange or in an over-the-counter market by or for the account of a broker or dealer registered under section 15(b) of the 1934 Act unless such purchase is for an investment account of such broker or dealer (and for this purpose any transfer from a trading account to an investment account shall be deemed a purchase at fair market value); and (3) the Commission may, by rule, exempt any transaction in the over-the-counter markets or on any national securities exchange where necessary to provide for the assessment of fees on purchasers in transactions in such markets and exchanges on a comparable basis. Such fee shall be collected by the broker or dealer effecting the transaction for or with the purchaser, or by such other person as provided by the Commission by rule, and shall be paid to SIPC in the same manner as assessments imposed pursuant to subsection (c) but without regard to the limits on such assessments, or in such other manner as the Commission may by rule provide. *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.*

(h) SEC NOTES ISSUED TO TREASURY.—To enable the Commission to make loans under subsection (g), the Commission is authorized to issue to the Secretary of the Treasury notes or other obligations in an aggregate amount ⟦of not to exceed $1,000,000,000⟧ *the lesser of $2,500,000,000 or the target amount of the SIPC Fund specified in the bylaws of SIPC*, in such forms and denominations, bearing such maturities, and subject to such terms and conditions, as may be prescribed by the Secretary of the Treasury. Such notes or other obligations shall bear interest at a rate determined by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding marketable obligations of the United States of comparable maturities during the month preceding the issuance of the notes or other obligations. The Secretary of the Treasury may reduce the interest rate if he determines such reduction to be in the national interest. The Secretary of the Treasury is authorized and directed to purchase any notes and other obligations issued hereunder and for that purpose he is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under the Second Liberty Bond Act, as amended, and the purposes for which securities may be issued under that Act, as amended, are extended to include any purchase of such notes and obligations. The Secretary of the Treasury may at any time sell any of the notes or other obligations acquired by him under this subsection. All redemptions, purchases, and sales by the Secretary of the Treasury of such notes or other obligations shall be treated as public debt transactions of the United States.

* * * * * * *

SEC. 5. PROTECTION OF CUSTOMERS.

(a) * * *

(b) COURT ACTION.—

(1) * * *

* * * * * * *

(3) APPOINTMENT OF TRUSTEE AND ATTORNEY.—If the court issues a protective decree under paragraph (1), such court shall forthwith appoint, as trustee for the liquidation of the business of the debtor and as attorney for the trustee, such persons as SIPC, in its sole discretion, specifies. The persons appointed as trustee and as attorney for the trustee may be associated with the same firm. SIPC may, in its sole discretion, specify itself or one of its employees as trustee in any case in which ⟦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⟧ there appear to be fewer than ⟦five hundred⟧ *five thousand* customers of such debtor. No person may be appointed to serve as trustee or attorney for the trustee if such person is not disinterested within the meaning of paragraph (6), except that for any specified purpose other than to represent a trustee in conducting a liquidation proceeding, the trustee may, with the approval of SIPC and the court, employ an attorney who is not disinterested. A trustee appointed under this paragraph shall qualify by filing a bond in the manner prescribed by section 322 of title 11 of the United States Code, except that neither SIPC nor any employee of SIPC shall be required to file a bond when appointed as trustee.

* * * * * * *

SEC. 9. SIPC ADVANCES.

(a) ADVANCES FOR CUSTOMERS' CLAIMS.—In order to provide for prompt payment and satisfaction of net equity claims of customers of the debtor, SIPC shall advance to the trustee such moneys, not to exceed $500,000 for each customer, as may be required to pay or otherwise satisfy claims for the amount by which the net equity of each customer exceeds his ratable share of customer property, except that—

(1) if all or any portion of the net equity claim of a customer in excess of his ratable share of customer property is a claim for cash, as distinct from a claim for securities *or options on futures contracts*, the amount advanced to satisfy such claim for cash shall not exceed ⟦$100,000 for each such customer⟧ *the standard maximum cash advance amount for each such customer, as determined in accordance with subsection (d)*;

* * * * * * *

(4) no advance shall be made by SIPC to the trustee to pay or otherwise satisfy, directly or indirectly, any net equity claim of a customer who is a general partner, officer, or director of the debtor, a beneficial owner of five per centum or more of any class of equity security of the debtor (other than a nonconvertible stock having fixed preferential dividend and liquidation rights), a limited partner with a participation of five per centum or more in the net assets or net profits of the debtor, *an insider,* or a person who, directly or indirectly and through agreement or otherwise, exercised or had the power to exercise a controlling influence over the management or policies of the debtor; and

* * * * * * *

(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 thereto), 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. 10. DIRECT PAYMENT PROCEDURE.

(a) DETERMINATION REGARDING DIRECT PAYMENTS.—If SIPC determines that—

(1) * * *

* * * * * * *

(4) the claims of all customers of the member aggregate less than [$250,000] *$850,000*;

* * * * * * *

SIPC may, in its discretion, use the direct payment procedure set forth in this section in lieu of instituting a liquidation proceeding with respect to such member.

* * * * * * *

SEC. 14. PROHIBITED ACTS.

(a) * * *

* * * * * * *

(c) CONCEALMENT OF ASSETS; FALSE STATEMENTS OR CLAIMS.—

(1) SPECIFIC PROHIBITED ACTS.—Any person who, directly or indirectly, in connection with or in contemplation of any liquidation proceeding or direct payment procedure—

(A) * * *

* * * * * * *

shall be fined not more than [$50,000] *$250,000* or imprisoned for not more than five years, or both.

(2) FRAUDULENT CONVERSION.—Any person who, directly or indirectly steals, embezzles, or fraudulently, or with intent to defeat this Act, abstracts or converts to his own use or to the use of another any of the moneys, securities, or other assets of SIPC, or otherwise defrauds or attempts to defraud SIPC or a trustee by any means, shall be fined not more than [$50,000] *$250,000* or imprisoned not more than five years, or both.

(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 mate-

rial 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. 16. DEFINITIONS.

For purposes of this Act, including the application of the Bankruptcy Act to a liquidation proceeding:

(1) * * *

[(2) CUSTOMER.—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. The term "customer" includes any person who has a claim against the debtor arising out of sales or conversions of such securities, and any person who has deposited cash with the debtor for the purpose of purchasing securities, but does not include—

[(A) 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

[(B) 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) 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 ef-

fecting transfer. The term "customer" includes any person who has a claim against the debtor arising out of sales or conversions of such securities.

(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;

(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; or

(iii) any person to the extent such person has a claim relating to any open repurchase or open reverse repurchase agreement.

For purposes of this paragraph, the term "repurchase agreement" means the sale of a security at a specified price with a simultaneous agreement or obligation to repurchase the security at a specified price on a specified future date.

* * * * * * *

(4) CUSTOMER PROPERTY.—The term "customer property" means cash and securities (except customer name securities delivered to the customer) at any time received, acquired, or held by or for the account of a debtor from or for the securities accounts of a customer, and the proceeds of any such property transferred by the debtor, including property unlawfully converted. *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.* The term "customer property" includes—

(A) * * *

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(9) GROSS REVENUES FROM THE SECURITIES BUSINESS.—The term "gross revenues from the securities business" means the sum of (but without duplication)—

(A) * * *

* * * * * * *

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. Such term does not include revenues received by a broker or dealer in connection with the distribution of shares of a registered open end investment company or unit investment trust or revenues derived by a broker or dealer from the sale of variable annuities or from the conduct of the business of insurance.

* * * * * * *

(11) NET EQUITY.—The term "net equity" means the dollar amount of the account or accounts of a customer, to be determined by—

[(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, all securities positions of such customer (other than customer name securities reclaimed by such customer); minus]

(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 securities 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 Commission; minus

* * * * * * *

A claim for a commodity futures contract received, acquired, or held in a portfolio margining account pursuant to a portfolio margining program approved by the Commission, 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. In determining net equity under this paragraph, accounts held by a customer in separate capacities shall be deemed to be accounts of separate customers.

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TITLE 18, UNITED STATES CODE

PART I—CRIMES

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CHAPTER 73—OBSTRUCTION OF JUSTICE

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§ 1514A. Civil action to protect against retaliation in fraud cases

(a) WHISTLEBLOWER PROTECTION FOR EMPLOYEES OF PUBLICLY TRADED COMPANIES.—No company with a class of securities registered under section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78l), or that is required to file reports under section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(d)), *including any subsidiary or affiliate whose financial information is included in the consolidated financial statements of such company,* or any officer, employee, contractor, subcontractor, or agent of such company, may discharge, demote, suspend, threaten, harass, or in any other manner discriminate against an employee in the terms and conditions of employment because of any lawful act done by the employee—

(1) * * *

* * * * * * *

DISSENTING VIEWS

The catastrophic failures of several large, complex financial institutions and the massive financial frauds carried out by Bernard Madoff and others on Wall Street provide clear evidence that our current capital markets regulatory and enforcement structure is in need of repair. H.R. 3817, the Investor Protection Act of 2009, incorporates several key provisions from the Republican Financial Regulatory Reform plan (H.R. 3310), giving the Securities and Exchange Commission (SEC) enhanced enforcement powers and providing victims of financial fraud additional relief. These provisions will enhance investor protection, modernize our capital markets and begin to restore investor confidence in the SEC. Additionally, the legislation contains provisions sponsored by Representatives Kevin McCarthy, Chris Lee, and Lynn Jenkins that have already passed the House this year. These provisions would close regulatory loopholes that prevent the SEC from filing enforcement actions against formerly associated persons, make needed technical corrections to securities laws, and promote transparency in financial reporting. The bill also includes the provisions of H.R. 2873, introduced by Representative John Campbell and passed by the House on December 2, 2009, to provide the SEC with increased enforcement powers.

However, Committee Republicans have serious concerns regarding other provisions of H.R. 3817 that will have potentially harmful consequences for U.S. capital markets. Republicans also object to the Committee's hurried consideration of this far-reaching legislation.

The Committee held only a single legislative hearing on H.R. 3817, which addressed only three of the Investor Protection Act's more than sixty sections in any detail. Additionally, the Committee did not receive any testimony regarding Title VI of the bill, which would amend the Sarbanes-Oxley Act (SOX) for the first time since the law's enactment seven years ago. The former Chairman of the Public Company Accounting Oversight Board (PCAOB), Mark Olson, wrote to the Majority requesting the changes contained in Title VI, however, the Committee never elicited testimony from the PCAOB on the need for these SOX amendments. While Titles V and VI raise important policy considerations that are worthy of attention, the Committee has failed to conduct any oversight of the Securities Investor Protection Corporation (outside of the Madoff Ponzi scheme), the PCAOB—whose existing authorities are expanded in Title VI—or the Sarbanes-Oxley Act since 2006, when Republicans were in the majority. Furthermore, the U.S. Supreme Court has scheduled oral arguments in the case of *Free Enterprise Fund v. Public Company Accounting Oversight Board* for December 7, 2009. This important case is expected to determine the constitutionality of both the PCAOB and Sarbanes-Oxley. It seems premature to significantly amend the statute until the Supreme Court decides its constitutionality. Again, no testimony was ever received by the Committee regarding this important Constitutional concern.

The useful reforms contained in H.R. 3817 are overshadowed by the bill's failure to fundamentally reform the SEC, whose shortcomings were exposed by the Madoff scandal and by the spectacular collapse of Bear Stearns and Lehman Brothers, both of which operated under the SEC's regulatory purview. The bill dramatically increases the SEC's taxing authority but does little to reform the agency's outdated, ineffective, and siloed structure. The recent SEC Inspector General's report detailing the massive failure by the SEC staff to detect the Madoff Ponzi scheme is the best evidence for SEC reform. The Office of Compliance, Inspections and Examinations (OCIE) needs to be eliminated and its functions returned to the divisions from which it was created. Instead of eliminating OCIE, which completely missed the Madoff Ponzi scheme, the SEC created a new division that will further entrench the SEC's stovepipe operational structure. H.R. 3817 does nothing to address this continuing problem with the agency.

Unfortunately, H.R. 3817 would restrict the ability of investors to effectively resolve their disputes by granting the SEC the authority to ban pre-dispute arbitration agreements. Arbitration, an alternative to expensive and protracted litigation, uses neutral third parties to settle differences between parties to a controversy. Arbitration produces much faster results for parties seeking damages, as awards must be paid within 30 days of the date of the arbitration ruling, unless a party seeks judicial review. The SEC oversees the arbitration programs administered by securities industry self-regulatory organizations (SROs). H.R. 3817 would give the SEC the power to prohibit or restrict the use of contractual agreements that contain mandatory arbitration clauses to settle any disputes. If enacted, this mandate will result in extended and costly litigation and additional costs for all investors. Its primary beneficiaries will be members of the trial bar, not individual investors. An amendment offered by Representative Lee of New York that would preserve existing contracts with arbitration clauses received unanimous Republican support, but was rejected by the Majority by a vote of 40–29.

In addition, the Majority's legislation fails to recognize the complexities of the broker-dealer business model and seeks to impose a "one-size-fits-all" standard on the brokerage industry in an effort to harmonize the duty of care between broker-dealers and investment advisers. Once again, the Committee received no evidence that the existing broker-dealer suitability standard was a cause of the financial crisis, however, the Majority decided to eliminate a standard that has served investors well for 75 years. Requiring broker-dealers and investment advisers to be held to the same fiduciary standard could place providers of commission-based investment products at a competitive disadvantage versus fee-based products and subject them to increased litigation. The result could be fewer investment options for investors who cannot afford to pay upfront fees for financial advice.

The Committee also adopted an ill-considered amendment offered by Representative Waters which will inject the SEC into regulating and overseeing corporate board elections for all public companies. There have been significant changes in corporate governance since the adoption of the Sarbanes-Oxley Act, including the adoption of majority voting in uncontested director elections, which has resulted in greater board accountability. The Waters amendment takes the SEC away from its core mission of protecting investors. States are already enhancing shareholder rights. For example, Delaware has enacted legislation clarifying the authority of companies and their shareholders to adopt proxy access and proxy reimbursement bylaws and North Dakota has created a state proxy access right. These state actions allow shareholders to choose whether proxy access is appropriate and, if it is, to delineate specific details such as ownership thresholds and holding periods. The amendment would undermine 150 years of corporate governance that has served our capital markets well.

The Committee on Financial Services ordered H.R. 3817 reported on a party-line vote. Republicans believe that the House should reject this ill-considered legislation and send it back to the Committee on Financial Services for a more thorough review of its potentially harmful impact on investors of the U.S. capital markets.

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KENNY MARCHANT.
SCOTT GARRETT.
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