

SECURITIES AND EXCHANGE COMMISSION
OVERPAYMENT CREDIT ACT

AUGUST 15, 2017.—Committed to the Committee of the Whole House on the State
of the Union and ordered to be printed

Mr. HENSARLING, from the Committee on Financial Services,
submitted the following

R E P O R T

[To accompany H.R. 1257]

[Including cost estimate of the Congressional Budget Office]

The Committee on Financial Services, to whom was referred the bill (H.R. 1257) to amend the Securities Exchange Act of 1934 to require the Securities Exchange Commission to refund or credit excess payments made to the Commission, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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 “Securities and Exchange Commission Overpayment Credit Act”.

SEC. 2. REFUNDING OR CREDITING OVERPAYMENT OF SECTION 31 FEES.

(a) **DEFINITIONS.**—In this section—

(1) the term “Commission” means the Securities and Exchange Commission;

(2) the term “national securities association” means an association that is registered under section 15A of the Securities Exchange Act of 1934 (15 U.S.C. 78o-3); and

(3) the term “national securities exchange” means an exchange that is registered as a national securities exchange under section 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f).

(b) **CREDIT FOR OVERPAYMENT OF FEES.**—Notwithstanding section 31(j) of the Securities Exchange Act of 1934 (15 U.S.C. 78ee(j)), and subject to subsection (c) of this section, if a national securities exchange or a national securities association has paid fees and assessments to the Commission in an amount that is more than the amount that the exchange or association was required to pay under section 31 of the Securities Exchange Act of 1934 (15 U.S.C. 78ee) and, not later than 10 years after the date of such payment, the exchange or association informs the Commission about the payment of such excess amount, the Commission shall offset future fees and assessments due by that exchange or association in an amount that is equal

to the difference between the amount that the exchange or association paid and the amount that the exchange or association was required to pay under such section 31.

(c) APPLICABILITY.—Subsection (b) shall apply only to fees and assessments that a national securities exchange or a national securities association was required to pay to the Commission before the date of enactment of this Act.

PURPOSE AND SUMMARY

On February 28, 2017, Representatives Gregory Meeks and Randy Hultgren introduced H.R. 1257 to allow national securities exchanges registered with the Securities and Exchange Commission (SEC) to offset previous overpayments made to the SEC against future fees, under a 10-year statute of limitations. The bill applies only to those overpayments made prior to the legislation's date of enactment and provides the SEC with the legal authority to refund any overpaid fees.

BACKGROUND AND NEED FOR LEGISLATION

Under Section 31 of the Securities Exchange Act of 1934 (the '34 Act), national securities exchanges and other self-regulatory organizations (SROs) owe proportional transaction fees to the SEC for the cost of supervising and regulating such transactions. In 2008, the Chicago Stock Exchange discovered it had overpaid \$154,048 for 2007 Section 31 fees. Similarly, in 2014, NASDAQ discovered it had overpaid almost \$750,000 for 2013 Section 31 fees. These exchanges overpaid these fees out of an abundance of caution, rather than risk an enforcement action for underpayment.

The SEC, however, has not refunded these overpayments because the SEC has interpreted the '34 Act as not granting the SEC the authority to refund the overpayment of Section 31 fees. To correct this problem, H.R. 1257 would allow the SROs to offset previous Section 31 overpayments against future Section 31 fees, under a 10-year statute of limitations.

In a 2013 letter to the Committee on Financial Services, former SEC Chair Mary Jo White noted that, "We recommend that the Commission be permitted to effect refunds by allowing an SRO to offset previous Section 31 overpayments against future Section 31 payments . . . This would clarify that the Commission has the authority to follow this approach to effect such refunds as an alternative to using appropriated funds."¹

At an April 29, 2015 Capital Markets and Government Sponsored Enterprises Subcommittee hearing, Mr. Tom Quaadman of the U.S. Chamber of Commerce's Center for Capital Markets Competitiveness testified that:

Although the SEC makes at least annual adjustments to the Section 31 fee rate, entities need to do a fair bit of projecting what their responsibility will be for a given time period. SROs and the national exchanges are therefore caught in a bit of a Catch-22 when it comes to Section 31 fees. If they underpay the required amount, they are subject to enforcement action by the SEC. If they overpay the amount, there is no way for them to be refunded or to have the overpayment amount credited against future payments. This legislation would provide a degree of certainty

¹Letter from SEC Chair Mary Jo White to Chairman Jeb Hensarling (May 15, 2013).

for SROs and exchanges by allowing such overpayments to be credited against future Section 31 responsibilities. Since these payments are often passed on to the investing public, allowing for such credits would ultimately benefit investors who trade in the public markets.

HEARINGS

The Committee on Financial Services held a hearing during the 114th Congress, on April 29, 2015, titled “Legislative Proposals to Enhance Capital Formation and Reduce Regulatory Burdens,” at which this matter was examined.

COMMITTEE CONSIDERATION

The Committee on Financial Services met in open session on March 9, 2017, and ordered H.R. 1257 to be reported favorably to the House as amended by a recorded vote of 59 yeas to 0 nays (recorded vote no. FC–35), a quorum being present.

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. An amendment offered by Representative Meeks was agreed to by a voice vote. The first and only recorded vote in Committee was a motion by Chairman Hensarling to report the bill favorably to the House as amended. That motion was agreed to by a recorded vote of 59 yeas to 0 nays (recorded vote no. FC–35), a quorum being present.

Present	Representative	Yeas	Nays
	Mr. HENSARLING, <i>Chairman</i>	✓	
	Mr. MCHENRY	✓	
	Mr. KING	✓	
	Mr. ROYCE	✓	
	Mr. LUCAS	✓	
	Mr. PEARCE	✓	
	Mr. POSEY	✓	
	Mr. LUETKEMEYER	✓	
	Mr. HUIZENGA	✓	
	Mr. DUFFY	✓	
	Mr. STIVERS	✓	
	Mr. HULTGREN	✓	
	Mr. ROSS	✓	
	Mr. PITTENGER	✓	
	Mrs. WAGNER	✓	
	Mr. BARR	✓	
	Mr. ROTHFUS	✓	
	Mr. MESSER	✓	
	Mr. TIPTON	✓	
	Mr. WILLIAMS	✓	
	Mr. POLIQUIN	✓	
	Mrs. LOVE	✓	
	Mr. HILL	✓	
	Mr. EMMER	✓	
	Mr. ZELDIN	✓	
	Mr. TROTT	✓	
	Mr. LOUDERMILK	✓	
	Mr. MOONEY	✓	
	Mr. MACARTHUR	✓	
	Mr. DAVIDSON	✓	
	Mr. BUDD	✓	
	Mr. KUSTOFF	✓	
	Ms. TENNEY	✓	
	Mr. HOLLINGSWORTH	✓	
	Ms. WATERS, <i>Ranking Member</i>	✓	
	Mrs. MALONEY	✓	
	Ms. VELÁZQUEZ	✓	
	Mr. SHERMAN	✓	
	Mr. MEEKS	✓	
	Mr. CAPUANO	✓	
	Mr. CLAY	✓	
	Mr. LYNCH	✓	
	Mr. SCOTT	✓	
	Mr. GREEN	✓	
	Mr. CLEAVER	✓	
	Ms. MOORE	✓	
	Mr. ELLISON	✓	
	Mr. PERLMUTTER	✓	
	Mr. HIMES	✓	
	Mr. FOSTER	✓	
	Mr. KILDEE	✓	
	Mr. DELANEY	✓	
	Ms. SINEMA		
	Mrs. BEATTY	✓	
	Mr. HECK	✓	
	Mr. VARGAS	✓	
	Mr. GOTTHEIMER	✓	
	Mr. GONZALEZ	✓	
	Mr. CRIST	✓	
	Mr. KIHUEN	✓	

Committee on Financial Services

115th CongressDATE: 3/9/17Measure HR 1257Amendment No. MTA

Offered by: _____

Agreed To	Yes	No	Wdrn
	✓		

Voice Vote	Yeas	Nays	Prsnt
	59	0	

Record vote no. FC- 35

As Amended

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the findings and recommendations of the committee based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of 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 states that H.R. 1257 will remedy the SEC's inability to provide refunds or credit for previous overpayments of Section 31 fees by statutorily obligating the SEC to allow the SROs to offset previous Section 31 overpayments against future Section 31 fees, under a 10-year statute of limitations.

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 ESTIMATES

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 pursuant to section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, April 4, 2017.

Hon. JEB HENSARLING,
*Chairman, Committee on Financial Services,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1257, the Securities and Exchange Commission Overpayment Credit Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Stephen Rabent.

Sincerely,

KEITH HALL.

Enclosure.

H.R. 1257—Securities and Exchange Commission Overpayment Credit Act

Under current law, the Security and Exchange Commission (SEC) is required to collect fees and assessments from national securities exchanges to cover the agency's costs of regulating such exchanges. The SEC is required to adjust the annual rates that associations and exchanges must pay so that collections in a given year equal the amount appropriated to the agency for that year. H.R. 1257 would require the SEC to refund any overpayment of such fees that an exchange identifies within 10 years of the overpayment and that occurred before the enactment of the bill by lowering future collections due from an exchange by the amount of any previous overpayment by that exchange.

Based on an analysis of information from the SEC on the amount national securities exchanges estimate they have overpaid in the past, CBO estimates that enacting H.R. 1257 would initially reduce fees by \$3 million to retroactively refund overpayments. For this estimate, CBO assumes that H.R. 1257 will be enacted, and that those retroactive fee reductions will occur, before the end of 2017. Because those reductions would not be contingent on further legislation, CBO estimates they would increase direct spending by \$3 million in 2017. Because enacting the bill would affect direct spending, pay-as-you-go procedures apply. Enacting H.R. 1257 would not affect revenues.

In years after 2017 the SEC may need to provide additional refunds by reducing collections from exchanges for overpayments that have not yet been identified. Such reimbursements would result in a reduction in amounts collected by the SEC in the year in which they occur. CBO estimates that any resulting net reduction in fees after 2017 would be insignificant in any given year over the 2018–2027 period.

The Statutory Pay-As-You-Go Act of 2010 establishes budget-reporting and enforcement procedures for legislation affecting direct spending or revenues. The net changes in outlays that are subject to those pay-as-you-go procedures are shown in the following table.

CBO ESTIMATE OF PAY-AS-YOU-GO EFFECTS FOR H.R. 1257, AS ORDERED REPORTED BY THE HOUSE COMMITTEE ON FINANCIAL SERVICES ON MARCH 9, 2017

	By fiscal year, in millions of dollars—												
	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2017– 2022	2017– 2027
NET INCREASE IN THE DEFICIT													
Statutory Pay-As-You-Go Impact	3	0	0	0	0	0	0	0	0	0	0	3	3

CBO estimates that enacting H.R. 1257 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2028.

H.R. 1257 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

On April 4, 2017, CBO transmitted a cost estimate for S. 462, the Securities and Exchange Commission Overpayment Credit Act, as reported by the Senate Committee on Banking, Housing, and

Urban Affairs on March 13, 2017. The two bills are similar and CBO's estimate of their budgetary effects is the same.

The CBO staff contact for this estimate is Stephen Rabent. The estimate was approved by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

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

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

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 the section 102(b)(3) of the Congressional Accountability Act.

EARMARK IDENTIFICATION

H.R. 1257 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI.

DUPLICATION OF FEDERAL PROGRAMS

Pursuant to section 3(c)(5) of rule XIII, the Committee states that no provision of H.R. 1257 establishes or reauthorizes a program of the Federal Government known to be duplicative of another Federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111-139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

DISCLOSURE OF DIRECTED RULEMAKING

Pursuant to section 3(i) of H. Res. 5, 115th Cong. (2017), the Committee states that H.R. 1257 contains no directed rulemaking.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

This section cites H.R. 1257 as the "Securities and Exchange Commission Overpayment Credit Act."

Section 2. Refunding or crediting overpayment of Section 31 fees

This section requires the SEC to allow SROs to offset previous Section 31 overpayments against future Section 31 fees, under a 10-year statute of limitations.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

H.R. 1257 does not repeal or amend any section of a statute. Therefore, the Office of Legislative Counsel did not prepare the re-

port contemplated by Clause 3(e)(1)(B) of rule XIII of the House of Representatives.

