

STRONGER ENFORCEMENT OF CIVIL PENALTIES ACT OF  
2019

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FEBRUARY 27, 2020.—Committed to the Committee of the Whole House on the State  
of the Union and ordered to be printed

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Ms. WATERS, from the Committee on Financial Services,  
submitted the following

R E P O R T

together with

MINORITY VIEWS

[To accompany H.R. 3641]

[Including cost estimate of the Congressional Budget Office]

The Committee on Financial Services, to whom was referred the bill (H.R. 3641) to enhance civil penalties under the Federal securities laws, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

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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 “Stronger Enforcement of Civil Penalties Act of 2019”.

**SEC. 2. UPDATED CIVIL MONEY PENALTIES FOR SECURITIES LAWS VIOLATIONS.**

(a) SECURITIES ACT OF 1933.—

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

(A) in subparagraph (A)—

- (i) by striking “\$7,500” and inserting “\$10,000”; and
- (ii) by striking “\$75,000” and inserting “\$100,000”;

(B) in subparagraph (B)—

- (i) by striking “\$75,000” and inserting “\$100,000”; and
- (ii) by striking “\$375,000” and inserting “\$500,000”; and

(C) by striking subparagraph (C) and inserting the following:

“(C) THIRD TIER.—

“(i) IN GENERAL.—Notwithstanding subparagraphs (A) and (B), for a third tier act or omission, the amount of penalty for each such act or omission shall not exceed the greater of—

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

“(II) 3 times the gross amount of pecuniary gain to the person who committed the act or omission; or

“(III) the amount of losses incurred by victims as a result of the act or omission.

“(ii) THIRD TIER ACT OR OMISSION.—For the purposes of this subparagraph, the term ‘third tier act or omission’ means an act or omission described in paragraph (1) that—

“(I) involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement; and

“(II) directly or indirectly—

“(aa) resulted in substantial losses to other persons;

“(bb) created a significant risk of substantial losses to other persons; or

“(cc) resulted in substantial pecuniary gain to the person who committed the act or omission.”.

(2) MONEY PENALTIES IN CIVIL ACTIONS.—Section 20(d)(2) of the Securities Act of 1933 (15 U.S.C. 77t(d)(2)) is amended—

(A) in subparagraph (A)—

- (i) by striking “\$5,000” and inserting “\$10,000”; and
- (ii) by striking “\$50,000” and inserting “\$100,000”;

(B) in subparagraph (B)—

- (i) by striking “\$50,000” and inserting “\$100,000”; and
- (ii) by striking “\$250,000” and inserting “\$500,000”; and

(C) by striking subparagraph (C) and inserting the following:

“(C) THIRD TIER.—

“(i) IN GENERAL.—Notwithstanding subparagraphs (A) and (B), for a third tier violation, the amount of penalty for each violation shall not exceed the greater of—

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

“(II) 3 times the gross amount of pecuniary gain to the person who committed the violation; or

“(III) the amount of losses incurred by victims as a result of the violation.

“(ii) THIRD TIER VIOLATION.—For the purposes of this subparagraph, the term ‘third tier violation’ means a violation described in paragraph (1) that—

“(I) involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement; and

“(II) directly or indirectly—

“(aa) resulted in substantial losses to other persons;

“(bb) created a significant risk of substantial losses to other persons; or

“(cc) resulted in substantial pecuniary gain to the person who committed the violation.”.

## (b) SECURITIES EXCHANGE ACT OF 1934.—

(1) MONEY PENALTIES IN CIVIL ACTIONS.—Section 21(d)(3)(B) of the Securities Exchange Act of 1934 (15 U.S.C. 78u(d)(3)(B)) is amended—

(A) in clause (i)—

- (i) by striking “\$5,000” and inserting “\$10,000”; and
- (ii) by striking “\$50,000” and inserting “\$100,000”;

(B) in clause (ii)—

- (i) by striking “\$50,000” and inserting “\$100,000”; and
- (ii) by striking “\$250,000” and inserting “\$500,000”; and

(C) by striking clause (iii) and inserting the following:

“(iii) THIRD TIER.—

“(I) IN GENERAL.—Notwithstanding clauses (i) and (ii), for a third tier violation, the amount of penalty for each such violation shall not exceed the greater of—

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

“(bb) 3 times the gross amount of pecuniary gain to the person who committed the violation; or

“(cc) the amount of losses incurred by victims as a result of the violation.

“(II) THIRD TIER VIOLATION.—For the purposes of this clause, the term ‘third tier violation’ means a violation described in subparagraph (A) that—

“(aa) involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement; and

“(bb) directly or indirectly—

“(AA) resulted in substantial losses to other persons;

“(BB) created a significant risk of substantial losses to other persons; or

“(CC) resulted in substantial pecuniary gain to the person who committed the violation.”.

(2) MONEY PENALTIES IN ADMINISTRATIVE ACTIONS.—Section 21B(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78u–2(b)) is amended—

(A) in paragraph (1)—

- (i) by striking “\$5,000” and inserting “\$10,000”; and
- (ii) by striking “\$50,000” and inserting “\$100,000”;

(B) in paragraph (2)—

- (i) by striking “\$50,000” and inserting “\$100,000”; and
- (ii) by striking “\$250,000” and inserting “\$500,000”; and

(C) by striking paragraph (3) and inserting the following:

“(3) THIRD TIER.—

“(A) IN GENERAL.—Notwithstanding paragraphs (1) and (2), for a third tier act or omission, the amount of penalty for each such act or omission shall not exceed the greater of—

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

“(ii) 3 times the gross amount of pecuniary gain to the person who committed the act or omission; or

“(iii) the amount of losses incurred by victims as a result of the act or omission.

“(B) THIRD TIER ACT OR OMISSION.—For the purposes of this paragraph, the term ‘third tier act or omission’ means an act or omission described in paragraph (1) that—

“(i) involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement; and

“(ii) directly or indirectly—

“(I) resulted in substantial losses to other persons;

“(II) created a significant risk of substantial losses to other persons; or

“(III) resulted in substantial pecuniary gain to the person who committed the act or omission.”.

## (c) INVESTMENT COMPANY ACT OF 1940.—

(1) MONEY PENALTIES IN ADMINISTRATIVE ACTIONS.—Section 9(d)(2) of the Investment Company Act of 1940 (15 U.S.C. 80a–9(d)(2)) is amended—

(A) in subparagraph (A)—

- (i) by striking “\$5,000” and inserting “\$10,000”; and
- (ii) by striking “\$50,000” and inserting “\$100,000”;

(B) in subparagraph (B)—

- (i) by striking “\$50,000” and inserting “\$100,000”; and

(ii) by striking “\$250,000” and inserting “\$500,000”; and  
 (C) by striking subparagraph (C) and inserting the following:

“(C) THIRD TIER.—

“(i) IN GENERAL.—Notwithstanding subparagraphs (A) and (B), for a third tier act or omission, the amount of penalty for each such act or omission shall not exceed the greater of—

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

“(II) 3 times the gross amount of pecuniary gain to the person who committed the act or omission; or

“(III) the amount of losses incurred by victims as a result of the act or omission.

“(ii) THIRD TIER ACT OR OMISSION.—For the purposes of this subparagraph, the term ‘third tier act or omission’ means an act or omission described in paragraph (1) that—

“(I) involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement; and

“(II) directly or indirectly—

“(aa) resulted in substantial losses to other persons;

“(bb) created a significant risk of substantial losses to other persons; or

“(cc) resulted in substantial pecuniary gain to the person who committed the act or omission.”

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

(A) in subparagraph (A)—

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

(ii) by striking “\$50,000” and inserting “\$100,000”;

(B) in subparagraph (B)—

(i) by striking “\$50,000” and inserting “\$100,000”; and

(ii) by striking “\$250,000” and inserting “\$500,000”; and

(C) by striking subparagraph (C) and inserting the following:

“(C) THIRD TIER.—

“(i) IN GENERAL.—Notwithstanding subparagraphs (A) and (B), for a third tier violation, the amount of penalty for each such violation shall not exceed the greater of—

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

“(II) 3 times the gross amount of pecuniary gain to the person who committed the violation; or

“(III) the amount of losses incurred by victims as a result of the violation.

“(ii) THIRD TIER VIOLATION.—For the purposes of this subparagraph, the term ‘third tier violation’ means a violation described in paragraph (1) that—

“(I) involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement; and

“(II) directly or indirectly—

“(aa) resulted in substantial losses to other persons;

“(bb) created a significant risk of substantial losses to other persons; or

“(cc) resulted in substantial pecuniary gain to the person who committed the violation.”

(d) INVESTMENT ADVISERS ACT OF 1940.—

(1) MONEY PENALTIES IN ADMINISTRATIVE ACTIONS.—Section 203(i)(2) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-3(i)(2)) is amended—

(A) in subparagraph (A)—

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

(ii) by striking “\$50,000” and inserting “\$100,000”;

(B) in subparagraph (B)—

(i) by striking “\$50,000” and inserting “\$100,000”; and

(ii) by striking “\$250,000” and inserting “\$500,000”; and

(C) by striking subparagraph (C) and inserting the following:

“(C) THIRD TIER.—

“(i) IN GENERAL.—Notwithstanding subparagraphs (A) and (B), for a third tier act or omission, the amount of penalty for each such act or omission shall not exceed the greater of—

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

“(II) 3 times the gross amount of pecuniary gain to the person who committed the act or omission; or

“(III) the amount of losses incurred by victims as a result of the act or omission.

“(ii) THIRD TIER ACT OR OMISSION.—For the purposes of this subparagraph, the term ‘third tier act or omission’ means an act or omission described in paragraph (1) that—

“(I) involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement; and

“(II) directly or indirectly—

“(aa) resulted in substantial losses to other persons;

“(bb) created a significant risk of substantial losses to other persons; or

“(cc) resulted in substantial pecuniary gain to the person who committed the act or omission.”

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

(A) in subparagraph (A)—

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

(ii) by striking “\$50,000” and inserting “\$100,000”;

(B) in subparagraph (B)—

(i) by striking “\$50,000” and inserting “\$100,000”; and

(ii) by striking “\$250,000” and inserting “\$500,000”; and

(C) by striking subparagraph (C) and inserting the following:

“(C) THIRD TIER.—

“(i) IN GENERAL.—Notwithstanding subparagraphs (A) and (B), for a third tier violation, the amount of penalty for each such violation shall not exceed the greater of—

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

“(II) 3 times the gross amount of pecuniary gain to the person who committed the violation; or

“(III) the amount of losses incurred by victims as a result of the violation.

“(ii) THIRD TIER VIOLATION.—For the purposes of this subparagraph, the term ‘third tier violation’ means a violation described in paragraph (1) that—

“(I) involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement; and

“(II) directly or indirectly—

“(aa) resulted in substantial losses to other persons;

“(bb) created a significant risk of substantial losses to other persons; or

“(cc) resulted in substantial pecuniary gain to the person who committed the violation.”

### SEC. 3. PENALTIES FOR RECIDIVISTS.

(a) SECURITIES ACT OF 1933.—

(1) CEASE-AND-DESIST PROCEEDINGS.—Section 8A(g)(2) of the Securities Act of 1933 (15 U.S.C. 77h–1(g)(2)) is amended by adding at the end the following:

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

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

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

(b) SECURITIES EXCHANGE ACT OF 1934.—

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

“(iv) FOURTH TIER.—Notwithstanding clauses (i), (ii), and (iii), the maximum amount of penalty for each such violation shall be 3 times the otherwise applicable amount in such clauses if, within the 5-year period preceding such violation, the defendant was criminally convicted for securities fraud or became subject to a judgment or order imposing monetary, equitable, or administrative relief in any Commission action alleging fraud by that defendant.”.

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

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

(c) INVESTMENT COMPANY ACT OF 1940.—

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

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

(2) ENFORCEMENT OF CERTAIN ACTIONS.—Section 42(e)(2) of the Investment Company Act of 1940 (15 U.S.C. 80a–41(e)(2)) is amended by adding at the end the following:

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

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

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

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

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

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

#### SEC. 4. VIOLATIONS OF INJUNCTIONS AND BARS.

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

(1) in paragraph (1), by inserting after “the rules or regulations thereunder,” the following: “a Federal court injunction or a bar obtained or entered by the Commission under this title,”; and

(2) by striking paragraph (4) and inserting the following:

“(4) SPECIAL PROVISIONS RELATING TO A VIOLATION OF AN INJUNCTION OR CERTAIN ORDERS.—

“(A) IN GENERAL.—Each separate violation of an injunction or order described in subparagraph (B) shall be a separate offense, except that in the case of a violation through a continuing failure to comply with such injunction or order, each day of the failure to comply with the injunction or order shall be deemed a separate offense.

“(B) INJUNCTIONS AND ORDERS.—Subparagraph (A) shall apply with respect to any action to enforce—

“(i) a Federal court injunction obtained pursuant to this title;

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

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

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

(1) in subparagraph (A), by inserting after “the rules or regulations thereunder,” the following: “a Federal court injunction or a bar obtained or entered by the Commission under this title,”; and

(2) by striking subparagraph (D) and inserting the following:

“(D) SPECIAL PROVISIONS RELATING TO A VIOLATION OF AN INJUNCTION OR CERTAIN ORDERS.—

“(i) IN GENERAL.—Each separate violation of an injunction or order described in clause (ii) shall be a separate offense, except that in the case of a violation through a continuing failure to comply with such injunction or order, each day of the failure to comply with the injunction or order shall be deemed a separate offense.

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

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

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

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

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

(1) in paragraph (1), by inserting after “the rules or regulations thereunder,” the following: “a Federal court injunction or a bar obtained or entered by the Commission under this title,”; and

(2) by striking paragraph (4) and inserting the following:

“(4) SPECIAL PROVISIONS RELATING TO A VIOLATION OF AN INJUNCTION OR CERTAIN ORDERS.—

“(A) IN GENERAL.—Each separate violation of an injunction or order described in subparagraph (B) shall be a separate offense, except that in the case of a violation through a continuing failure to comply with such injunction or order, each day of the failure to comply with the injunction or order shall be deemed a separate offense.

“(B) INJUNCTIONS AND ORDERS.—Subparagraph (A) shall apply with respect to any action to enforce—

“(i) a Federal court injunction obtained pursuant to this title;

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

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

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

(1) in paragraph (1), by inserting after “the rules or regulations thereunder,” the following: “a Federal court injunction or a bar obtained or entered by the Commission under this title,”; and

(2) by striking paragraph (4) and inserting the following:

“(4) SPECIAL PROVISIONS RELATING TO A VIOLATION OF AN INJUNCTION OR CERTAIN ORDERS.—

“(A) IN GENERAL.—Each separate violation of an injunction or order described in subparagraph (B) shall be a separate offense, except that in the case of a violation through a continuing failure to comply with such injunction or order, each day of the failure to comply with the injunction or order shall be deemed a separate offense.

“(B) INJUNCTIONS AND ORDERS.—Subparagraph (A) shall apply with respect to any action to enforce—

- “(i) a Federal court injunction obtained pursuant to this title;
- “(ii) an order entered or obtained by the Commission pursuant to this title that bars, suspends, places limitations on the activities or functions of, or prohibits the activities of a person; or
- “(iii) a cease-and-desist order entered by the Commission pursuant to section 203(k).”.

#### PURPOSE AND SUMMARY

On July 9, 2019, Representative Katie Porter introduced H.R. 3641, the Stronger Enforcement of Civil Penalties Act, which would increase the SEC’s statutory limits on civil monetary penalties; directly link the size of these penalties to the scope of harm and associated investor losses; and substantially raise the financial stakes for repeat securities law violators.

#### BACKGROUND AND NEED FOR LEGISLATION

Specifically, the bill would increase the per-violation cap applicable to the most serious securities laws violations from \$181,071 to \$1 million per violation for individuals, and from \$905,353 to \$10 million per violation for entities. It would also triple the penalty cap for recidivists who have been held criminally or civilly liable for securities fraud within the preceding five years. The SEC would be able to assess these types of penalties through administrative action, and not just in federal court.

H.R. 3641 would increase the deterrence of these civil penalties through the increases in penalties provided for in this Act. When Congress passed legislation indexing the original civil penalty amounts to inflation in 1990, the S&P 500 had a value of \$303.23. Although the S&P 500 is currently valued over \$3,100, or 10 times the amount in 1990, the underlying penalty amounts have not been changed and thus have failed to keep up with the rate and magnitude of our financial markets and of financial misconduct (although certain penalties have increased because they are indexed to inflation). The current penalty amounts do not reflect these new market realities and so do not adequately deter or penalize bad actors. Instead, many actors see these fines as a cost of doing business and a necessary expense for maximizing financial gains.

This increased authority is consistent with that requested by former SEC Chair Schapiro and agreed to by former SEC Chair White.<sup>1</sup> This bill is similar to a bipartisan bill in the Senate (S. 779) and a modest increase to a provision in former Chairman Hensarling’s CHOICE Act from the 115th Congress (Section 211 of H.R. 10). This bill is supported by North American Securities Administrators Association (NASAA) and Public Citizen.

#### SECTION-BY-SECTION ANALYSIS

##### *Section 1. Short title*

This section states that the title of the bill is the Stronger Enforcement of Civil Penalties Act of 2019.

<sup>1</sup> Letter from SEC Chairman Mary Schapiro to Senator Jack Reed re: SEC Penalty Authority (Nov. 28, 2011), available at <http://www.davispolk.com/files/uploads/IMG/Mary-Schapiro-Letter-to-Senator-Jack-Reed.pdf>.

*Section 2. Updated civil money penalties for securities laws violations*

This section increased penalties in a like manner for the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Company Act of 1940 and the Investor Advisers Act of 1940.

Subsection (a) of Section 2 amends the Securities Act of 1933:

Paragraph (1) of subsection (a) amends Section 8A(g)(2) the Securities Act of 1933 (relating to cease and desist orders) to increase penalties in administrative actions:

Subparagraph (A) amends section 8A(g)(2)(A) by striking “\$7,500” and inserting “\$10,000” and by striking “\$75,000” and inserting “\$100,000”, increasing the penalty amounts for natural and other persons, respectively, for first tier penalties.

Subparagraph (B) amends section 8A(g)(2)(B) by striking “\$75,000” and inserting “\$100,000” and by striking “\$375,000” and inserting “\$500,000”, increasing the penalty amounts for natural and other persons respectively for second tier penalties (where the act or omission involved fraud, deceit, manipulation or deliberate or reckless disregard of a regulatory requirement).

Subparagraph (C) amends section 8A(g)(2)(C) and limits the amount of the penalty to: \$1,000,000 for a natural person or \$10,000,000 for any other person; 3 times the gross amount of pecuniary gain to the person who committed the act or omission; or the amount of losses incurred by victims as a result of the act or omission, for third tier penalties (where the act or omission involved fraud, deceit, manipulation or deliberate or reckless disregard of a regulatory requirement and the act or omission directly or indirectly resulted in a substantial losses to other persons, 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).

Paragraph (2) of Subsection (a) amends Section 20(d)(2) of the Securities Act of 1933 (relating to injunctions and civil actions).

Subparagraph (A) amends section 20(d)(2)(A) by: striking “\$5,000” and inserting “\$10,000” and by striking “\$50,000” and inserting “\$100,000”, increasing the penalty amounts for natural and other persons, respectively, for first tier penalties

Subparagraph (B) amends section 20(d)(2)(B) by striking “\$50,000” and inserting “\$100,000”; and 12 by striking “\$250,000” and inserting “\$500,000” increasing the penalty amounts for natural and other persons, respectively, for second tier penalties

Subparagraph (C): amends section 20(d)(2)(C) by revising the penalties for third tier violations to be no greater than \$1,000,000 for a natural person or \$10,000,000 for any other person; 3 times the gross amount of pecuniary gain to the person who committed the violation; or the amount of losses incurred by the victim as a result of the violation, for third tier penalties.

Subsection (b) of section 2 amends section 21(d)(3)(B) and section 21B(b) of the Securities Exchange Act of 1934: The amendments are similar to the amendments made to the Securities Act of 1933, amending the penalties for tier one, two and three offenses in the same manner as subsection (a) amends the Securities Act of 1933.

Subsection (c) of Section 2 amends section 9(d)(2) and 42(e)(2) of the Investment Company Act of 1940: The amendments are similar to the amendments made to the Securities Act of 1933, amending

the penalties for tier one, two and three offenses in the same manner as subsection (a) amends the Securities Act of 1933.

Subsection (d) of Section 2 amends section 203(i)(2) and 209(e)(2) of the Investment Advisors Act of 1940. The amendments are similar to the amendments made to the Securities Act of 1933, amending the penalties for tier one, two and three offenses in the same manner as subsection (a) amends the Securities Act of 1933.

*Section 3. Penalties for recidivists*

Section 3 amends sections 8A(g)(2) and 20(d)(2) of the Securities Act of 1933; sections 21(d)(3)(B) and 21B(b) of the Securities Exchange Act of 1934; sections 9(d)(2) of the Investment Company Act of 1940; sections 42(e)(2) of the Investment Company Act of 1940; and sections 203(i)(2) and sections 209(e)(2) of the Investment Advisers Act of 1940 to add a fourth tier to each provision. The new fourth tier provides for a maximum penalty in an amount equal to 3 times the otherwise applicable amount if the person within the 5-year period preceding the violation or omission was criminally convicted for securities fraud or became subject to a judgment or order imposing monetary, equitable, or administrative relief in any Commission action alleging fraud by that person.

*Section 4. Violations of injunctions and bars*

Section 4 amends section 20(d) of the Securities Act of 1933; section 21(d)(3) of the Securities Exchange Act of 1934; Section 42(e) of the Investment Company Act of 1940; and section 209(e) of the Investment Advisers Act of 1940 to add a fourth tier, which explicitly requires in each provision that each separate violation of an injunction order is to be considered a separate offense and that injunctions and orders shall apply to any action to enforce a federal court injunction, an order entered or obtained by the Commission, or a cease-and-desist order entered by the Commission.

HEARINGS

For the purposes of section 103(i) of H. Res. 6 for the 116th Congress, the Committee on Financial Services' Subcommittee on Investor Protection, Entrepreneurship, and Capital Markets held a hearing to consider H.R. 3641 entitled, "Putting Investors First: Examining Proposals to Strengthen Enforcement Against Securities Law Violators" on June 19, 2019. Testifying before the Committee was Jordan A. Thomas, Partner, Labaton Sucharow; Urska Velikonja, Professor of Law, Georgetown University Law Center; Andrew N. Vollmer, Professor of Law, University of Virginia School of Law; and Stephen Crimmins, Partner, Murphy & McGonigle, PC.

COMMITTEE CONSIDERATION

The Committee on Financial Services met in open session on, and ordered H.R. 3641 to be reported favorably to the House with an amendment in the nature of a substitute by a vote of 33 yeas and 25 nays, a quorum being present.

COMMITTEE VOTES AND ROLL CALL VOTES

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the Committee advises that the following roll call votes occurred during the Committee's consideration of H.R. 3641:

Present	Representatives	Ayes	Nays
	Ms. Waters, <i>Chairwoman</i>	X	
	Mrs. Maloney	X	
	Ms. Velázquez	X	
	Mr. Sherman	X	
	Mr. Meeks	X	
	Mr. Clay	X	
	Mr. Scott	X	
	Mr. Green	X	
	Mr. Cleaver	X	
	Mr. Perlmutter	X	
	Mr. Himes	X	
	Mr. Foster	X	
	Mrs. Beatty	X	
	Mr. Heck		
	Mr. Vargas	X	
	Mr. Gottheimer	X	
	Mr. Gonzalez (TX)	X	
	Mr. Lawson	X	
	Mr. San Nicolas	X	
	Ms. Tlaib	X	
	Ms. Porter	X	
	Ms. Axne	X	
	Mr. Casten	X	
	Ms. Pressley	X	
	Mr. McAdams	X	
	Ms. Ocasio-Cortez	X	
	Ms. Wexton	X	
	Mr. Lynch	X	
	Ms. Gabbard	X	
	Ms. Adams	X	
	Ms. Dean	X	
	Mr. Garcia (IL)	X	
	Ms. Garcia (TX)	X	
	Mr. Phillips	X	
34			
	Mr. McHenry, <i>Ranking Member</i>		X
	Ms. Wagner		X
	Mr. King		X
	Mr. Lucas		X
	Mr. Posey		X
	Mr. Luetkemeyer		X
	Mr. Huizenga		X
	Mr. Duffy		X
	Mr. Stivers		X
	Mr. Barr		X
	Mr. Tipton		X
	Mr. Williams		
	Mr. Hill		X
	Mr. Emmer		X
	Mr. Zeldin		X
	Mr. Loudermilk		X
	Mr. Mooney		X
	Mr. Davidson		X
	Mr. Budd		X
	Mr. Kustoff		X
	Mr. Hollingsworth		X
	Mr. Gonzalez (OH)		X
	Mr. Rose		X
	Mr. Steil		X
	Mr. Gooden		X
	Mr. Riggleman		X
26			

**Committee on Financial Services**  
Full Committee  
116th Congress (1st Session)

Date: \_\_\_\_\_ 7/16/2019

Measure \_ HR 3641

Amendment No. \_\_\_\_\_

Offered by: Rep. Porter (as amended)

Agreed To	Yes	No	Prsnt	Wdrn
Voice Vote	Ayes		Nays	

Record Vote	FC
	33-25

STATEMENT OF OVERSIGHT FINDINGS AND RECOMMENDATIONS OF  
THE COMMITTEE

In compliance with clause 3(c)(1) of rule XIII and clause 2(b)(1) of rule X of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in the descriptive portions of this report.

STATEMENT OF PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause (3)(c) of rule XIII of the Rules of the House of Representatives, the goals of H.R. 3641 are to increase civil penalties for violations of the relevant acts amendment by H.R. 3641 to deter violations of those statutes.

NEW BUDGET AUTHORITY AND CBO COST ESTIMATE

Pursuant to clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974, and pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the *Congressional Budget Act of 1974*, the Committee has received the following estimate for H.R. 3641 from the Director of the Congressional Budget Office:

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, February 20, 2020.*

Hon. MAXINE WATERS,  
*Chairwoman, Committee on Financial Services,  
House of Representatives, Washington, DC.*

DEAR MADAM CHAIRWOMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 3641, the Stronger Enforcement of Civil Penalties Act of 2019.

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

Sincerely,

MARK P. HADLEY  
(For Phillip L. Swagel, Director).

Enclosure.

<b>At a Glance</b>			
<b>H.R. 3641, Stronger Enforcement of Civil Penalties Act of 2019</b>			
As ordered reported by the House Committee on Financial Services on July 16, 2019			
By Fiscal Year, Millions of Dollars	2020	2020-2025	2020-2030
<b>Direct Spending (Outlays)</b>	<b>40</b>	<b>960</b>	<b>2,060</b>
<b>Revenues</b>	<b>185</b>	<b>4,635</b>	<b>9,260</b>
<b>Increase or Decrease (-) in the Deficit</b>	<b>-145</b>	<b>-3,675</b>	<b>-7,200</b>
<b>Spending Subject to Appropriation (Outlays)</b>	*	*	*
Statutory pay-as-you-go procedures apply?	Yes	<b>Mandate Effects</b>	
Increases on-budget deficits in any of the four consecutive 10-year periods beginning in 2031?	No	Contains intergovernmental mandate?	No
		Contains private-sector mandate?	Yes, Under Threshold
* = between -\$500,000 and \$500,000.			
<b>The bill would</b>			
<ul style="list-style-type: none"> <li>• Increase the amount of civil monetary penalties the Securities and Exchange Commission (SEC) may order in certain judicial and administrative enforcement actions</li> <li>• Raise the cost of an existing mandate on private entities required to pay assessments to the SEC</li> </ul>			
<b>Estimated budgetary effects would primarily stem from</b>			
<ul style="list-style-type: none"> <li>• Increased collections of civil monetary penalties and distributions to harmed investors</li> <li>• Increased payments to whistleblowers</li> </ul>			
<b>Areas of significant uncertainty include</b>			
<ul style="list-style-type: none"> <li>• Predicting the amount of penalties that the SEC orders, collects, and distributes under current law and how those collections and related spending would change under the bill</li> <li>• Estimating the amount and timing of payments to whistleblowers</li> </ul>			
Detailed estimate begins on the next page.			

Bill summary: H.R. 3641 would increase the maximum civil monetary penalties that the Securities and Exchange Commission (SEC) may order against individuals and companies that violate certain securities laws or regulations. In addition to increasing the specific penalty amounts, the bill would give the SEC the authority, in the case of certain serious violations, to order penalties equal to three times the pecuniary gain to the violator or equal to the amount of losses incurred by the victims. H.R. 3641 would permit the SEC to further compound certain penalties ordered against repeat violators.

Estimated Federal cost: The estimated budgetary effect of H.R. 3641 is shown in Table 1. The costs of the legislation fall within budget function 370 (commerce and housing credit).

TABLE 1.—ESTIMATED BUDGETARY EFFECTS OF H.R. 3641

	By fiscal year, millions of dollars—												
	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2020–2025	2020–2030
Estimated Revenues .....	185	750	925	925	925	925	925	925	925	925	925	4,635	9,260
Increases in Revenues													
Estimated Budget Authority .....	40	75	185	220	220	220	220	220	220	220	220	960	2,060
Estimated Outlays .....	40	75	185	220	220	220	220	220	220	220	220	960	2,060
Net Decrease in the Deficit													
From Changes in Revenues and Direct Spending													
Effect on the Deficit .....	— 145	— 675	— 740	— 705	— 705	— 705	— 705	— 705	— 705	— 705	— 705	— 3,675	— 7,200

CBO expects that implementing the bill could increase costs for the Securities and Exchange Commission (SEC) by an insignificant amount to collect and process the increased penalty collections under H.R. 3641. However, the SEC is authorized to collect fees each year to offset its annual appropriation. Assuming appropriation actions consistent with that authority, CBO estimates that any change in discretionary spending would be negligible.

Basis of estimate: CBO assumes that H.R. 3641 will be enacted in 2020.

Revenues: H.R. 3641 would increase the maximum civil monetary penalties the SEC could seek for certain violations. Under current law, those amounts range from \$5,000 to \$1 million, depending on such factors as the type and severity of the violation and whether the violator is an individual or business. For some violations, the SEC may use a federal court action to seek a penalty equal to the gross amount of the pecuniary gain to the violator, if that amount is greater than the maximum amount enumerated in law.

H.R. 3641 would increase the maximum amounts for civil monetary penalties. Under the bill, those amounts would range from \$10,000 for lesser violations to \$10 million for more serious violations. In certain cases, the bill also would give the SEC the authority to order penalties equal to three times the pecuniary gain to the violator or equal to the amount of losses incurred by the victim. H.R. 3641 would permit the SEC to further compound penalties ordered against repeat violators.

CBO treats collections of civil monetary penalties as revenues in the federal budget. Using data from the SEC about enforcement actions in recent years, CBO estimates that enacting H.R. 3641 would increase the collection of civil monetary penalties, and thus revenues, by about \$9.3 billion over the 2020–2030 period.

Direct spending: Section 308 of the Sarbanes-Oxley Act, known as the Fair Fund provision, authorizes the SEC to distribute civil monetary penalties to harmed investors. For this cost estimate, CBO has displayed distributions of additional revenues as direct spending. Based on distribution patterns from enforcement actions in recent years, CBO estimates that H.R. 3641 would increase outlays by about \$1.6 billion over the 2020–2030 period.

In addition, the SEC provides monetary awards to whistleblowers who report violations that lead to judicial or administrative enforcement actions yielding more than \$1 million in penalties. Whistleblowers are eligible to receive between 10 percent and 30 percent of any penalties ordered and collected. Because civil monetary penalties would increase under H.R. 3641, CBO expects that whistleblower awards would increase proportionally. CBO estimates that the SEC would pay \$440 million in additional whistleblower awards over the 2020–2030 period. Such awards are recorded as direct spending in the federal budget.

In total, CBO expects that enacting H.R. 3641 would increase direct spending by about \$2.1 billion over the 2020–2030 period.

Uncertainty: Because the amount of penalties that the SEC orders, collects, and distributes from securities law violations is hard to predict and varies from year to year, estimating the budgetary effects of H.R. 3641 is uncertain; collections could be larger or smaller than CBO estimates. Several other factors also could affect the estimated change in revenues under the bill, including how frequently the SEC would seek the new maximum penalties, how much those larger penalties would deter violators, whether the higher amounts would affect the SEC's collection rates, and how much the SEC would return to harmed investors. In addition, because the amount and timing of payments to whistleblowers depends on factors such as the number of whistleblowers and the size

of awards each year, all of which are hard to predict, the total amounts could be larger or smaller than CBO estimates.

Pay-As-You-Go considerations: 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 and revenues that are subject to those pay-as-you-go procedures are shown in Table 2.

TABLE 2.—CBO'S ESTIMATE OF THE STATUTORY PAY-AS-YOU-GO EFFECTS OF H.R. 3641, THE STRONGER ENFORCEMENT OF CIVIL PENALTIES ACT OF 2019, AS ORDERED REPORTED BY THE HOUSE COMMITTEE ON FINANCIAL SERVICES ON JULY 16, 2019

	By fiscal year, millions of dollars—												
	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2020-2030	
Pay-As-You-Go Effect .....	-145	-675	-740	-705	-705	-705	-705	-705	-705	-705	-705	-3,675	-7,200
Memorandum:													
Changes in Outlays .....	40	75	185	220	220	220	220	220	220	220	220	960	2,060
Changes in Revenues .....	185	750	925	925	925	925	925	925	925	925	925	4,635	9,260

Increase in long-term deficits: None.

Mandates: If the SEC increased fees to offset the costs associated with implementing the bill, H.R. 3641 would increase the cost of an existing mandate on private entities required to pay those assessments. CBO estimates that the incremental cost of the mandate would be below the annual threshold established in the Unfunded Mandates Reform Act (UMRA) for private-sector mandates (\$168 million in 2020, adjusted annually for inflation).

The bill contains no intergovernmental mandates as defined in UMRA.

Estimate prepared by revenues: Nathaniel Frentz; Direct Spending: David Hughes; Mandates: Rachel Austin.

Estimate reviewed by: Joshua Shakin, Chief, Revenue Estimating Unit; John McClelland, Director of Tax Analysis; Susan Willie, Chief, Public and Private Mandates Unit; Kim Cawley, Chief, Natural and Physical Resources Cost Estimates Unit; H. Samuel Papenfuss, Deputy Director of Budget Analysis; Theresa Gullo, Director of Budget Analysis.

#### COMMITTEE COST ESTIMATE

Clause 3(d)(1) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison of the costs that would be incurred in carrying out H.R. 3641. However, clause 3(d)(2)(B) of that rule provides that this requirement does not apply when the committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the *Congressional Budget Act*.

#### UNFUNDED MANDATE STATEMENT

Pursuant to Section 423 of the *Congressional Budget and Impoundment Control Act* (as amended by Section 101(a)(2) of the *Unfunded Mandates Reform Act*, Pub. L. 104–4), the Committee adopts as its own the estimate of federal mandates regarding H.R. 362, as amended, prepared by the Director of the Congressional Budget Office.

#### ADVISORY COMMITTEE

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

#### APPLICATION OF LAW TO THE LEGISLATIVE BRANCH

Pursuant to section 102(b)(3) of the *Congressional Accountability Act*, Pub. L. No. 104–1, H.R. 3641, as amended, does not apply to terms and conditions of employment or to access to public services or accommodations within the legislative branch.

#### EARMARK STATEMENT

In accordance with clause 9 of rule XXI of the Rules of the House of Representatives, H.R. 3641 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as described in clauses 9(e), 9(f), and 9(g) of rule XXI.

## DUPLICATION OF FEDERAL PROGRAMS

Pursuant to clause 3(c)(5) of rule XIII of the Rules of the House of Representatives, the Committee states that no provision of H.R. 3641 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.

## CHANGES TO EXISTING LAW

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, H.R. 3641, as reported, are shown as follows:

## 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 italics, and existing law in which no change is proposed is shown in roman):

**SECURITIES ACT OF 1933**

## TITLE I—

\* \* \* \* \*

## CEASE-AND-DESIST PROCEEDINGS

SEC. 8A. (a) **AUTHORITY OF THE COMMISSION.**—If the Commission finds, after notice and opportunity for hearing, that any person is violating, has violated, or is about to violate any provision of this title, or any rule or regulation thereunder, the Commission may publish its findings and enter an order requiring such person, and any other person that is, was, or would be a cause of the violation, due to an act or omission the person knew or should have known would contribute to such violation, to cease and desist from committing or causing such violation and any future violation of the same provision, rule, or regulation. Such order may, in addition to requiring a person to cease and desist from committing or causing a violation, require such person to comply, or to take steps to effect compliance, with such provision, rule, or regulation, upon such terms and conditions and within such time as the Commission may specify in such order. Any such order may, as the Commission deems appropriate, require future compliance or steps to effect future compliance, either permanently or for such period of time as the Commission may specify, with such provision, rule, or regulation with respect to any security, any issuer, or any other person.

(b) **HEARING.**—The notice instituting proceedings pursuant to subsection (a) shall fix a hearing date not earlier than 30 days nor later than 60 days after service of the notice unless an earlier or a later date is set by the Commission with the consent of any respondent so served.

## (c) TEMPORARY ORDER.—

(1) IN GENERAL.—Whenever the Commission determines that the alleged violation or threatened violation specified in the notice instituting proceedings pursuant to subsection (a), or the continuation thereof, is likely to result in significant dissipation or conversion of assets, significant harm to investors, or substantial harm to the public interest, including, but not limited to, losses to the Securities Investor Protection Corporation, prior to the completion of the proceedings, the Commission may enter a temporary order requiring the respondent to cease and desist from the violation or threatened violation and to take such action to prevent the violation or threatened violation and to prevent dissipation or conversion of assets, significant harm to investors, or substantial harm to the public interest as the Commission deems appropriate pending completion of such proceeding. Such an order shall be entered only after notice and opportunity for a hearing, unless the Commission determines that notice and hearing prior to entry would be impracticable or contrary to the public interest. A temporary order shall become effective upon service upon the respondent and, unless set aside, limited, or suspended by the Commission or a court of competent jurisdiction, shall remain effective and enforceable pending the completion of the proceedings.

(2) APPLICABILITY.—This subsection 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, 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.

## (d) REVIEW OF TEMPORARY ORDERS.—

(1) COMMISSION REVIEW.—At any time after the respondent has been served with a temporary cease-and-desist order pursuant to subsection (c), the respondent may apply to the Commission to have the order set aside, limited, or suspended. If the respondent has been served with a temporary cease-and-desist order entered without a prior Commission hearing, the respondent may, within 10 days after the date on which the order was served, request a hearing on such application and the Commission shall hold a hearing and render a decision on such application at the earliest possible time.

## (2) JUDICIAL REVIEW.—Within—

(A) 10 days after the date the respondent was served with a temporary cease-and-desist order entered with a prior Commission hearing, or

(B) 10 days after the Commission renders a decision on an application and hearing under paragraph (1), 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, 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 paragraph (1) of this subsection.

(3) NO AUTOMATIC STAY OF TEMPORARY ORDER.—The commencement of proceedings under paragraph (2) of this subsection shall not, unless specifically ordered by the court, operate as a stay of the Commission's order.

(4) EXCLUSIVE REVIEW.—Section 9(a) of this title shall not apply to a temporary order entered pursuant to this section.

(e) AUTHORITY TO ENTER AN ORDER REQUIRING AN ACCOUNTING AND DISGORGEMENT.—In any cease-and-desist proceeding under subsection (a), the Commission may enter an order requiring accounting and disgorgement, including reasonable interest. The Commission is authorized to adopt rules, regulations, and orders concerning payments to investors, rates of interest, periods of accrual, and such other matters as it deems appropriate to implement this subsection.

(f) AUTHORITY OF THE COMMISSION TO PROHIBIT PERSONS FROM SERVING AS OFFICERS OR DIRECTORS.—In any cease-and-desist proceeding under subsection (a), the Commission may issue an order to prohibit, conditionally or unconditionally, and permanently or for such period of time as it shall determine, any person who has violated section 17(a)(1) or the rules or regulations thereunder, from acting as an officer or director of any issuer that has a class of securities registered pursuant to section 12 of the Securities Exchange Act of 1934, or that is required to file reports pursuant to section 15(d) of that Act, if the conduct of that person demonstrates unfitness to serve as an officer or director of any such issuer.

(g) AUTHORITY TO IMPOSE MONEY PENALTIES.—

(1) GROUNDS.—In any cease-and-desist proceeding under subsection (a), the Commission may impose a civil penalty on a person if the Commission 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 issued under this title; 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 a penalty for each act or omission described in paragraph (1) shall be ~~[\$7,500]~~ \$10,000 for a natural person or ~~[\$75,000]~~ \$100,000 for any other person.

(B) SECOND TIER.—Notwithstanding subparagraph (A), the maximum amount of penalty for each such act or omission shall be ~~[\$75,000]~~ \$100,000 for a natural person or ~~[\$375,000]~~ \$500,000 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 subparagraphs (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—

[(I) substantial losses or created a significant risk of substantial losses to other persons; or

[(II) substantial pecuniary gain to the person who committed the act or omission.]

(C) THIRD TIER.—

(i) *IN GENERAL.*—Notwithstanding subparagraphs (A) and (B), for a third tier act or omission, the amount of penalty for each such act or omission shall not exceed the greater of—

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

(II) 3 times the gross amount of pecuniary gain to the person who committed the act or omission; or

(III) the amount of losses incurred by victims as a result of the act or omission.

(ii) *THIRD TIER ACT OR OMISSION.*—For the purposes of this subparagraph, the term “third tier act or omission” means an act or omission described in paragraph (1) that—

(I) involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement; and

(II) directly or indirectly—

(aa) resulted in substantial losses to other persons;

(bb) created a significant risk of substantial losses to other persons; or

(cc) resulted in substantial pecuniary gain to the person who committed the act or omission.

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

(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 ability of the respondent 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 the ability of the respondent to continue

in business and the collectability of a penalty, taking into account any other claims of the United States or third parties upon the assets of the respondent and the amount of the assets of the respondent.

\* \* \* \* \*

#### INJUNCTIONS AND PROSECUTION OF OFFENSES

SEC. 20. (a) Whenever it shall appear to the Commission, either upon complaint or otherwise, that the provisions of this title, or of any rule or regulation prescribed under authority thereof, have been or are about to be violated, it may, in its discretion, either require or permit such person to file with it a statement in writing, under oath, or otherwise, as to all the facts and circumstances concerning the subject matter which it believes to be in the public interest to investigate, and may investigate such facts.

(b) Whenever it shall appear to the Commission that any person is engaged or about to engage in any acts or practices which constitute or will constitute a violation of the provisions of this title, or of any rule or regulation prescribed under authority thereof, the Commission may, in its discretion, bring an action in any district court of the United States, or United States court of any Territory, to enjoin such acts or practices, and upon a proper showing, a permanent or temporary injunction or restraining order shall be granted without bond. The Commission may transmit such evidence as may be available concerning such acts or practices to the Attorney General who may, in his discretion, institute the necessary criminal proceedings under this title. Any such criminal proceeding may be brought either in the district wherein the transmittal of the prospectus or security complained of begins, or in the district wherein such prospectus or security is received.

(c) Upon application of the Commission, the district courts of the United States and the United States courts of any Territory shall have jurisdiction to issue writs of mandamus commanding any person to comply with the provisions of this title or any order of the Commission made in pursuance thereof.

(d) MONEY PENALTIES IN CIVIL ACTIONS.—

(1) AUTHORITY OF COMMISSION.—Whenever it shall appear to the Commission that any person has violated any provision of this title, the rules or regulations thereunder, *a Federal court injunction or a bar obtained or entered by the Commission under this title*, or a cease-and-desist order entered by the Commission pursuant to section 8A of this title, other than by committing a violation subject to a penalty pursuant to section 21A of the Securities Exchange Act of 1934, the Commission may bring an action in a United States district court to seek, and the court shall have jurisdiction to impose, upon a proper showing, a civil penalty to be paid by the person who committed such violation.

(2) AMOUNT OF PENALTY.—

(A) FIRST TIER.—The amount of the penalty shall be determined by the court in light of the facts and circumstances. For each violation, the amount of the penalty shall not exceed the greater of (i) ~~[\$5,000]~~ \$10,000 for a natural person or ~~[\$50,000]~~ \$100,000 for any other per-

son, or (ii) the gross amount of pecuniary gain to such defendant as a result of the violation.

(B) **SECOND TIER.**—Notwithstanding subparagraph (A), the amount of penalty for each such violation shall not exceed the greater of (i) ~~【\$50,000】~~ \$100,000 for a natural person or ~~【\$250,000】~~ \$500,000 for any other person, or (ii) the gross amount of pecuniary gain to such defendant as a result of the violation, if the violation described in paragraph (1) involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement.

【(C) **THIRD TIER.**—Notwithstanding subparagraphs (A) and (B), the amount of penalty for each such violation shall not exceed the greater of (i) \$100,000 for a natural person or \$500,000 for any other person, or (ii) the gross amount of pecuniary gain to such defendant as a result of the violation, if—

【(I) the violation described in paragraph (1) involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement; and

【(II) such violation directly or indirectly resulted in substantial losses or created a significant risk of substantial losses to other persons.】

(C) **THIRD TIER.**—

(i) **IN GENERAL.**—Notwithstanding subparagraphs (A) and (B), for a third tier violation, the amount of penalty for each violation shall not exceed the greater of—

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

(II) 3 times the gross amount of pecuniary gain to the person who committed the violation; or

(III) the amount of losses incurred by victims as a result of the violation.

(ii) **THIRD TIER VIOLATION.**—For the purposes of this subparagraph, the term “third tier violation” means a violation described in paragraph (1) that—

(I) involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement; and

(II) directly or indirectly—

(aa) resulted in substantial losses to other persons;

(bb) created a significant risk of substantial losses to other persons; or

(cc) resulted in substantial pecuniary gain to the person who committed the violation.

(D) **FOURTH TIER.**—Notwithstanding subparagraphs (A), (B), and (C), the maximum amount of penalty for each such violation shall be 3 times the otherwise applicable amount in such subparagraphs if, within the 5-year period preceding such violation, the defendant was criminally convicted for securities fraud or became subject to a judgment or order imposing monetary, equitable, or administrative relief in any Commission action alleging fraud by that defendant.

## (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.

(B) COLLECTION OF PENALTIES.—If a person upon whom such a penalty is imposed shall fail to pay such penalty within the time prescribed in the court's order, the Commission may refer the matter to the Attorney General who shall recover such penalty by action in the appropriate United States district court.

(C) REMEDY NOT EXCLUSIVE.—The actions authorized by this subsection may be brought in addition to any other action that the Commission or the Attorney General is entitled to bring.

(D) JURISDICTION AND VENUE.—For purposes of section 22 of this title, actions under this section shall be actions to enforce a liability or a duty created by this title.

[(4) SPECIAL PROVISIONS RELATING TO A VIOLATION OF A CEASE-AND-DESIST ORDER.—In an action to enforce a cease-and-desist order entered by the Commission pursuant to section 8A, each separate violation of such order shall be a separate offense, except that in the case of a violation through a continuing failure to comply with such an order, each day of the failure to comply with the order shall be deemed a separate offense.]

(4) SPECIAL PROVISIONS RELATING TO A VIOLATION OF AN INJUNCTION OR CERTAIN ORDERS.—

(A) IN GENERAL.—*Each separate violation of an injunction or order described in subparagraph (B) shall be a separate offense, except that in the case of a violation through a continuing failure to comply with such injunction or order, each day of the failure to comply with the injunction or order shall be deemed a separate offense.*

(B) INJUNCTIONS AND ORDERS.—*Subparagraph (A) shall apply with respect to any action to enforce—*

*(i) a Federal court injunction obtained pursuant to this title;*

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

*(iii) a cease-and-desist order entered by the Commission pursuant to section 8A.*

(e) AUTHORITY OF A COURT TO PROHIBIT PERSONS FROM SERVING AS OFFICERS AND DIRECTORS.—In any proceeding under subsection (b), the court may prohibit, conditionally or unconditionally, and permanently or for such period of time as it shall determine, any person who violated section 17(a)(1) of this title from acting as an officer or director of any issuer that has a class of securities registered pursuant to section 12 of the Securities Exchange Act of 1934 or that is required to file reports pursuant to section 15(d) of such Act if the person's conduct demonstrates unfitness to serve as an officer or director of any such issuer.

(f) PROHIBITION OF ATTORNEYS' FEES PAID FROM COMMISSION DISGORGEMENT FUNDS.—Except as otherwise ordered by the court upon motion by the Commission, or, in the case of an administrative action, as otherwise ordered by the Commission, funds disgorged as the result of an action brought by the Commission in Federal court, or as a result of any Commission administrative action, shall not be distributed as payment for attorneys' fees or expenses incurred by private parties seeking distribution of the disgorged funds.

(g) AUTHORITY OF A COURT TO PROHIBIT PERSONS FROM PARTICIPATING IN AN OFFERING OF PENNY STOCK.—

(1) IN GENERAL.—In any proceeding under subsection (a) against any person participating in, or, at the time of the alleged misconduct, who was participating in, an offering of penny stock, the court may prohibit that person from participating in an offering of penny stock, conditionally or unconditionally, and permanently or for such period of time as the court shall determine.

(2) DEFINITION.—For purposes of this subsection, the term "person participating in an offering of penny stock" includes any person engaging in activities with a broker, dealer, or issuer for purposes of issuing, trading, or inducing or attempting to induce the purchase or sale of, any penny stock. The Commission may, by rule or regulation, define such term to include other activities, and may, by rule, regulation, or order, exempt any person or class of persons, in whole or in part, conditionally or unconditionally, from inclusion in such term.

\* \* \* \* \*

**SECURITIES EXCHANGE ACT OF 1934**

**TITLE I—REGULATION OF SECURITIES EXCHANGES**

\* \* \* \* \*

**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, 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.

(2) On request from a foreign securities authority, the Commission may provide assistance in accordance with this paragraph if the requesting authority states that the requesting authority is conducting an investigation which it deems necessary to determine whether any person has violated, is violating, or is about to violate any laws or rules relating to securities matters that the requesting authority administers or enforces. The Commission may, in its discretion, conduct such investigation as the Commission deems necessary to collect information and evidence pertinent to the request for assistance. Such assistance may be provided without regard to whether the facts stated in the request would also constitute a violation of the laws of the United States. In deciding whether to provide such assistance, the Commission shall consider whether (A) the requesting authority has agreed to provide reciprocal assistance in securities matters to the Commission; and (B) compliance with the request would prejudice the public interest of the United States.

(b) For the purpose of any such investigation, or any other proceeding under this title, any member of the Commission or any officer designated by it is empowered to administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, or other records which the Commission deems relevant or material to the inquiry. Such attendance of witnesses and the production of any such records may be required from any place in the United States or any State at any designated place of hearing.

(c) In case of contumacy by, or refusal to obey a subpoena issued to, any person, the Commission may invoke the aid of any court of the United States within the jurisdiction of which such investigation or proceeding is carried on, or where such person resides or carries on business, in requiring the attendance and testimony of witnesses and the production of books, papers, correspondence, memoranda, and other records. And such court may issue an order requiring such person to appear before the Commission or member or officer designated by the Commission, there to produce records, if so ordered, or to give testimony touching the matter under investigation or in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof. All process in any such case may be served in the judicial district whereof such person is an inhabitant or wherever he may be found. Any person who shall, without just cause, fail or refuse to attend and testify or to answer any lawful inquiry or to produce books, papers, correspondence, memoranda, and other records, if in his power so to do, in obedience to the subpoena of the Commission, shall be guilty of a misdemeanor and, upon conviction, shall be

subject to a fine of not more than \$1,000 or to imprisonment for a term of not more than one year, or both.

(d)(1) Whenever it shall appear to the Commission that any person is engaged or is about to engage in acts or practices constituting a violation of 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 with a member, the rules of a registered clearing agency in which such person is 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, or the rules of the Municipal Securities Rulemaking Board, it may in its discretion bring an action in the proper district court of the United States, the United States District Court for the District of Columbia, or the United States courts of any territory or other place subject to the jurisdiction of the United States, to enjoin such acts or practices, and upon a proper showing a permanent or temporary injunction or restraining order shall be granted without bond. The Commission may transmit such evidence as may be available concerning such acts or practices as may constitute a violation of any provision of this title or the rules or regulations thereunder to the Attorney General, who may, in his discretion, institute the necessary criminal proceedings under this title.

(2) AUTHORITY OF A COURT TO PROHIBIT PERSONS FROM SERVING AS OFFICERS AND DIRECTORS.—In any proceeding under paragraph (1) of this subsection, the court may prohibit, conditionally or unconditionally, and permanently or for such period of time as it shall determine, any person who violated section 10(b) of this title or the rules or regulations thereunder from acting as an officer or director of any issuer that has a class of securities registered pursuant to section 12 of this title or that is required to file reports pursuant to section 15(d) of this title if the person's conduct demonstrates unfitness to serve as an officer or director of any such issuer.

(3) MONEY PENALTIES IN CIVIL ACTIONS.—

(A) AUTHORITY OF COMMISSION.—Whenever it shall appear to the Commission that any person has violated any provision of this title, the rules or regulations thereunder, a *Federal court injunction* or a *bar obtained or entered by the Commission under this title*, or a cease-and-desist order entered by the Commission pursuant to section 21C of this title, other than by committing a violation subject to a penalty pursuant to section 21A, the Commission may bring an action in a United States district court to seek, and the court shall have jurisdiction to impose, upon a proper showing, a civil penalty to be paid by the person who committed such violation.

(B) AMOUNT OF PENALTY.—

(i) FIRST TIER.—The amount of the penalty shall be determined by the court in light of the facts and circumstances. For each violation, the amount of the penalty shall not exceed the greater of (I) ~~[\$5,000]~~ \$10,000 for a natural person or ~~[\$50,000]~~ \$100,000 for any other person, or (II) the gross amount of pecuniary gain to such defendant as a result of the violation.

(ii) SECOND TIER.—Notwithstanding clause (i), the amount of penalty for each such violation shall not exceed

the greater of (I) ~~【\$50,000】~~ \$100,000 for a natural person or ~~【\$250,000】~~ \$500,000 for any other person, or (II) the gross amount of pecuniary gain to such defendant as a result of the violation, if the violation described in subparagraph (A) involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement.

【(iii) THIRD TIER.—Notwithstanding clauses (i) and (ii), the amount of penalty for each such violation shall not exceed the greater of (I) \$100,000 for a natural person or \$500,000 for any other person, or (II) the gross amount of pecuniary gain to such defendant as a result of the violation, if—

【(aa) the violation described in subparagraph (A) involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement; and

【(bb) such violation directly or indirectly resulted in substantial losses or created a significant risk of substantial losses to other persons.】

(iii) *THIRD TIER.*—

(I) *IN GENERAL.*—Notwithstanding clauses (i) and (ii), for a third tier violation, the amount of penalty for each such violation shall not exceed the greater of—

(aa) \$1,000,000 for a natural person or \$10,000,000 for any other person;

(bb) 3 times the gross amount of pecuniary gain to the person who committed the violation; or

(cc) the amount of losses incurred by victims as a result of the violation.

(II) *THIRD TIER VIOLATION.*—For the purposes of this clause, the term “third tier violation” means a violation described in subparagraph (A) that—

(aa) involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement; and

(bb) directly or indirectly—

(AA) resulted in substantial losses to other persons;

(BB) created a significant risk of substantial losses to other persons; or

(CC) resulted in substantial pecuniary gain to the person who committed the violation.

(iv) *FOURTH TIER.*—Notwithstanding clauses (i), (ii), and (iii), the maximum amount of penalty for each such violation shall be 3 times the otherwise applicable amount in such clauses if, within the 5-year period preceding such violation, the defendant was criminally convicted for securities fraud or became subject to a judgment or order imposing monetary, equitable, or administrative relief in any Commission action alleging fraud by that defendant.

(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.

(ii) COLLECTION OF PENALTIES.—If a person upon whom such a penalty is imposed shall fail to pay such penalty within the time prescribed in the court's order, the Commission may refer the matter to the Attorney General who shall recover such penalty by action in the appropriate United States district court.

(iii) REMEDY NOT EXCLUSIVE.—The actions authorized by this paragraph may be brought in addition to any other action that the Commission or the Attorney General is entitled to bring.

(iv) JURISDICTION AND VENUE.—For purposes of section 27 of this title, actions under this paragraph shall be actions to enforce a liability or a duty created by this title.

[(D) SPECIAL PROVISIONS RELATING TO A VIOLATION OF A CEASE-AND-DESIST ORDER.—In an action to enforce a cease-and-desist order entered by the Commission pursuant to section 21C, each separate violation of such order shall be a separate offense, except that in the case of a violation through a continuing failure to comply with the order, each day of the failure to comply shall be deemed a separate offense.]

(D) SPECIAL PROVISIONS RELATING TO A VIOLATION OF AN INJUNCTION OR CERTAIN ORDERS.—

(i) IN GENERAL.—*Each separate violation of an injunction or order described in clause (ii) shall be a separate offense, except that in the case of a violation through a continuing failure to comply with such injunction or order, each day of the failure to comply with the injunction or order shall be deemed a separate offense.*

(ii) INJUNCTIONS AND ORDERS.—*Clause (i) shall apply with respect to an action to enforce—*

*(I) a Federal court injunction obtained pursuant to this title;*

*(II) an order entered or obtained by the Commission pursuant to this title that bars, suspends, places limitations on the activities or functions of, or prohibits the activities of a person; or*

*(III) a cease-and-desist order entered by the Commission pursuant to section 21C.*

(4) PROHIBITION OF ATTORNEYS' FEES PAID FROM COMMISSION DISGORGEMENT FUNDS.—Except as otherwise ordered by the court upon motion by the Commission, or, in the case of an administrative action, as otherwise ordered by the Commission, funds disgorged as the result of an action brought by the Commission in Federal court, or as a result of any Commission administrative action, shall not be distributed as payment for attorneys' fees or expenses incurred by private parties seeking distribution of the disgorged funds.

(5) EQUITABLE RELIEF.—In any action or proceeding brought or instituted by the Commission under any provision of the securities laws, the Commission may seek, and any Federal court may grant, any equitable relief that may be appropriate or necessary for the benefit of investors.

(6) AUTHORITY OF A COURT TO PROHIBIT PERSONS FROM PARTICIPATING IN AN OFFERING OF PENNY STOCK.—

(A) IN GENERAL.—In any proceeding under paragraph (1) against any person participating in, or, at the time of the alleged misconduct who was participating in, an offering of penny stock, the court may prohibit that person from participating in an offering of penny stock, conditionally or unconditionally, and permanently or for such period of time as the court shall determine.

(B) DEFINITION.—For purposes of this paragraph, the term “person participating in an offering of penny stock” includes any person engaging in activities with a broker, dealer, or issuer for purposes of issuing, trading, or inducing or attempting to induce the purchase or sale of, any penny stock. The Commission may, by rule or regulation, define such term to include other activities, and may, by rule, regulation, or order, exempt any person or class of persons, in whole or in part, conditionally or unconditionally, from inclusion in such term.

(e) Upon application of the Commission 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 to issue writs of mandamus, injunctions, and orders commanding (1) any person to comply with the provisions of this title, the rules, regulations, and orders thereunder, the rules of a national securities exchange or registered securities association of which such person is a member or person associated with a member, the rules of a registered clearing agency in which such person is 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, the rules of the Municipal Securities Rulemaking Board, or any undertaking contained in a registration statement as provided in subsection (d) of section 15 of this title, (2) any national securities exchange or registered securities association to enforce compliance by its members and persons associated with its members with the provisions of this title, the rules, regulations, and orders thereunder, and the rules of such exchange or association, or (3) any registered clearing agency to enforce compliance by its participants with the provisions of the rules of such clearing agency.

(f) Notwithstanding any other provision of this title, the Commission shall not bring any action pursuant to subsection (d) or (e) of this section against any person for violation of, or to command compliance with, the rules of a self-regulatory organization or the Public Company Accounting Oversight Board unless it appears to the Commission that (1) such self-regulatory organization or the Public Company Accounting Oversight Board is unable or unwilling to take appropriate action against such person in the public interest and for the protection of investors, or (2) such action is otherwise necessary or appropriate in the public interest or for the protection of investors.

(g) Notwithstanding the provisions of section 1407(a) of title 28, United States Code, or any other provision of law, no action for equitable relief instituted by the Commission pursuant to the securities laws shall be consolidated or coordinated with other actions not brought by the Commission, even though such other actions may involve common questions of fact, unless such consolidation is consented to by the Commission.

(h)(1) The Right to Financial Privacy Act of 1978 shall apply with respect to the Commission, except as otherwise provided in this subsection.

(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 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) delay in obtaining access to such financial records, or the required notice, will result in—

- (i) flight from prosecution;
- (ii) destruction of or tampering with evidence;
- (iii) transfer of assets or records outside the territorial limits of the United States;
- (iv) improper conversion of investor assets; or
- (v) impeding the ability of the Commission to identify or trace the source or disposition of funds involved in any securities transaction;

(B) such financial records are necessary to identify or trace the record or beneficial ownership interest in any security;

(C) the acts, practices or course of conduct under investigation involve—

- (i) the dissemination of materially false or misleading information concerning any security, issuer, or market, or the failure to make disclosures required under the securities laws, which remain uncorrected; or
- (ii) a financial loss to investors or other persons protected under the securities laws which remains substantially uncompensated; or

(D) the acts, practices or course of conduct under investigation—

- (i) involve significant financial speculation in securities;
- or
- (ii) endanger the stability of any financial or investment intermediary.

(3) Any application under paragraph (2) for a delay in notice shall be made with reasonable specificity.

(4)(A) Upon a showing described in paragraph (2), the presiding judge or magistrate shall enter an ex parte order granting the requested delay for a period not to exceed ninety days and an order prohibiting the financial institution involved from disclosing that records have been obtained or that a request for records has been made.

(B) Extensions of the period of delay of notice provided in subparagraph (A) of up to ninety days each may be granted by the court upon application, but only in accordance with this subsection or section 1109(a), (b)(1), or (b)(2) of the Right to Financial Privacy Act of 1978.

(C) Upon expiration of the period of delay of notification ordered under subparagraph (A) or (B), the customer shall be served with or mailed a copy of the subpoena insofar as it applies to the customer together with the following notice which shall describe with reasonable specificity the nature of the investigation for which the Commission sought the financial records: "Records or information concerning your transactions which are held by the financial institution named in the attached subpoena were supplied to the Securities and Exchange Commission on (date). Notification was withheld pursuant to a determination by the (title of court so ordering) under section 21(h) of the Securities Exchange Act of 1934 that (state reason). The purpose of the investigation or official proceeding was (state purpose)."

(5) Upon application by the Commission, all proceedings pursuant to paragraphs (2) and (4) shall be held in camera and the records thereof sealed until expiration of the period of delay or such other date as the presiding judge or magistrate may permit.

(7)(A) Following the expiration of the period of delay of notification ordered by the court pursuant to paragraph (4) of this subsection, the customer may, upon motion, reopen the proceeding in the district court which issued the order. If the presiding judge or magistrate finds that the movant is the customer to whom the records obtained by the Commission pertain, and that the Commission has obtained financial records or information contained therein in violation of this subsection, other than paragraph (1), it may order that the customer be granted civil penalties against the Commission in an amount equal to the sum of—

- (i) \$100 without regard to the volume of records involved;
- (ii) any out-of-pocket damages sustained by the customer as a direct result of the disclosure; and
- (iii) if the violation is found to have been willful, intentional, and without good faith, such punitive damages as the court may allow, together with the costs of the action and reasonable attorney's fees as determined by the court.

(B) Upon a finding that the Commission has obtained financial records or information contained therein in violation of this subsection, other than paragraph (1), the court, in its discretion, may also or in the alternative issue injunctive relief to require the Commission to comply with this subsection with respect to any subpoena which the Commission issues in the future for financial records of such customer for purposes of the same investigation.

(C) Whenever the court determines that the Commission has failed to comply with this subsection, other than paragraph (1), and the court finds that the circumstances raise questions of whether an officer or employee of the Commission acted in a willful and intentional manner and without good faith with respect to the violation, the Office of Personnel Management shall promptly initiate a proceeding to determine whether disciplinary action is warranted against the agent or employee who was primarily responsible for the violation. After investigating and considering the evidence submitted, the Office of Personnel Management shall submit its findings and recommendations to the Commission and shall send copies of the findings and recommendations to the officer or employee or his representative. The Commission shall take the corrective action that the Office of Personnel Management recommends.

(8) The relief described in paragraphs (7) and (10) shall be the only remedies or sanctions available to a customer for a violation of this subsection, other than paragraph (1), and nothing herein or in the Right to Financial Privacy Act of 1978 shall be deemed to prohibit the use in any investigation or proceeding of financial records, or the information contained therein, obtained by a subpoena issued by the Commission. In the case of an unsuccessful action under paragraph (7), the court shall award the costs of the action and attorney's fees to the Commission if the presiding judge or magistrate finds that the customer's claims were made in bad faith.

(9)(A) The Commission may transfer financial records or the information contained therein to any government authority if the Commission proceeds as a transferring agency in accordance with section 1112 of the Right to Financial Privacy Act of 1978, except that the customer notice required under section 1112(b) or (c) of such Act may be delayed upon a showing by the Commission, in accordance with the procedure set forth in paragraphs (4) and (5), that one or more of subparagraphs (A) through (D) of paragraph (2) apply.

(B) The Commission may, without notice to the customer pursuant to section 1112 of the Right to Financial Privacy Act of 1978, transfer financial records or the information contained therein to a State securities agency or to the Department of Justice. Financial records or information transferred by the Commission to the Department of Justice or to a State securities agency pursuant to the provisions of this subparagraph may be disclosed or used only in an administrative, civil, or criminal action or investigation by the Department of Justice or the State securities agency which arises out of or relates to the acts, practices, or courses of conduct investigated by the Commission, except that if the Department of Justice or the State securities agency determines that the information should be disclosed or used for any other purpose, it may do so if it notifies the customer, except as otherwise provided in the Right to Financial Privacy Act of 1978, within 30 days of its determination, or complies with the requirements of section 1109 of such Act regarding delay of notice.

(10) Any government authority violating paragraph (9) shall be subject to the procedures and penalties applicable to the Commission under paragraph (7)(A) with respect to a violation by the Commission in obtaining financial records.

(11) Notwithstanding the provisions of this subsection, the Commission may obtain financial records from a financial institution or transfer such records in accordance with provisions of the Right to Financial Privacy Act of 1978.

(12) Nothing in this subsection shall enlarge or restrict any rights of a financial institution to challenge requests for records made by the Commission under existing law. Nothing in this subsection shall entitle a customer to assert any rights of a financial institution.

(13) Unless the context otherwise requires, all terms defined in the Right to Financial Privacy Act of 1978 which are common to this subsection shall have the same meaning as in such Act.

(i) INFORMATION TO CFTC.—The Commission shall provide the Commodity Futures Trading Commission with notice of the com-

mencement of any proceeding and a copy of any order entered by the Commission against any broker or dealer registered pursuant to section 15(b)(11), any exchange registered pursuant to section 6(g), or any national securities association registered pursuant to section 15A(k).

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CIVIL REMEDIES IN ADMINISTRATIVE PROCEEDINGS

SEC. 21B. (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 penalty is in the public interest and that such person—

(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;

(B) has willfully aided, abetted, counseled, commanded, induced, or procured such a violation by any other person;

(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

(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;

(2) CEASE-AND-DESIST PROCEEDINGS.—In any proceeding instituted under section 21C against any person, the Commission may impose a civil penalty, if the Commission 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 issued under this title; or

(B) is or was a cause of the violation of any provision of this title, or any rule or regulation issued under this title.

(b) MAXIMUM AMOUNT OF PENALTY.—

(1) FIRST TIER.—The maximum amount of penalty for each act or omission described in subsection (a) shall be **【\$5,000】** **【\$10,000】** for a natural person or **【\$50,000】** **【\$100,000】** for any other person.

(2) SECOND TIER.—Notwithstanding paragraph (1), the maximum amount of penalty for each such act or omission shall be

【\$50,000】 \$100,000 for a natural person or 【\$250,000】 \$500,000 for any other person if the act or omission described in subsection (a) involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement.

【(3) THIRD TIER.—Notwithstanding paragraphs (1) and (2), the maximum amount of penalty for each such act or omission shall be \$100,000 for a natural person or \$500,000 for any other person if—

【(A) the act or omission described in subsection (a) involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement; and

【(B) 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) *THIRD TIER.*—

(A) *IN GENERAL.*—Notwithstanding paragraphs (1) and (2), for a third tier act or omission, the amount of penalty for each such act or omission shall not exceed the greater of—

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

(ii) 3 times the gross amount of pecuniary gain to the person who committed the act or omission; or

(iii) the amount of losses incurred by victims as a result of the act or omission.

(B) *THIRD TIER ACT OR OMISSION.*—For the purposes of this paragraph, the term “third tier act or omission” means an act or omission described in paragraph (1) that—

(i) involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement; and

(ii) directly or indirectly—

(I) resulted in substantial losses to other persons;

(II) created a significant risk of substantial losses to other persons; or

(III) resulted in substantial pecuniary gain to the person who committed the act or omission.

(4) *FOURTH TIER.*—Notwithstanding paragraphs (1), (2), and (3), the maximum amount of penalty for each such act or omission shall be 3 times the otherwise applicable amount in such paragraphs if, within the 5-year period preceding such act or omission, the person who committed the act or omission was criminally convicted for securities fraud or became subject to a judgment or order imposing monetary, equitable, or administrative relief in any Commission action alleging fraud by that person.

(c) *DETERMINATION OF PUBLIC INTEREST.*—In considering under this section whether a penalty is in the public interest, the Commission or the appropriate regulatory agency may consider—

(1) whether the act or omission for which such penalty is assessed involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement;

(2) the harm to other persons resulting either directly or indirectly from such act or omission;

(3) the extent to which any person was unjustly enriched, taking into account any restitution made to persons injured by such behavior;

(4) whether such person previously has been found by the Commission, another appropriate regulatory agency, or a self-regulatory organization to have violated the Federal securities laws, State securities laws, or the rules of a self-regulatory organization, has been enjoined by a court of competent jurisdiction from violations of such laws or rules, or has been convicted by a court of competent jurisdiction of violations of such laws or of any felony or misdemeanor described in section 15(b)(4)(B) of this title;

(5) the need to deter such person and other persons from committing such acts or omissions; and

(6) such other matters as justice may require.

(d) EVIDENCE CONCERNING ABILITY TO PAY.—In any proceeding in which the Commission or the appropriate regulatory agency may impose a penalty under this section, a respondent may present evidence of the respondent’s ability to pay such penalty. The Commission or the appropriate regulatory agency 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.

(e) AUTHORITY TO ENTER AN ORDER REQUIRING AN ACCOUNTING AND DISGORGEMENT.—In any proceeding in which the Commission or the appropriate regulatory agency may impose a penalty under this section, the Commission or the appropriate regulatory agency may enter an order requiring accounting and disgorgement, including reasonable interest. The Commission is authorized to adopt rules, regulations, and orders concerning payments to investors, rates of interest, periods of accrual, and such other matters as it deems appropriate to implement this subsection.

(f) SECURITY-BASED SWAPS.—

(1) CLEARING AGENCY.—Any clearing agency that knowingly or recklessly evades or participates in or facilitates an evasion of the requirements of section 3C shall be liable for a civil money penalty in twice the amount otherwise available for a violation of section 3C.

(2) SECURITY-BASED SWAP DEALER OR MAJOR SECURITY-BASED SWAP PARTICIPANT.—Any security-based swap dealer or major security-based swap participant that knowingly or recklessly evades or participates in or facilitates an evasion of the requirements of section 3C shall be liable for a civil money penalty in twice the amount otherwise available for a violation of section 3C.

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**INVESTMENT COMPANY ACT OF 1940**

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## TITLE I—INVESTMENT COMPANIES

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## 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, 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, 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

(3) a company any affiliated person of which is ineligible, by reason of paragraph (1) or (2), to serve or act in the foregoing capacities.

For the purposes of paragraphs (1), (2), and (3) of this subsection, the term "investment adviser" shall include an investment adviser as defined in title II of this Act.

(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) has willfully made or caused to be made in any registration statement, application or report 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;

(2) has willfully violated any provision of the Securities Act of 1933, or of the Securities Exchange Act of 1934, or of title II of this Act, or of this title, or of the Commodity Exchange Act, or of any rule or regulation under any of such statutes;

(3) has willfully aided, abetted, counseled, commanded, induced, or procured the violation by any other person of the Securities Act of 1933, or of the Securities Exchange Act of 1934, or of title II of this Act, or of this title, or of the Commodity Exchange Act, or of any rule or regulation under any of such statutes;

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

(A) made or caused to be made in any application for registration or report required to be filed with a foreign securities authority, or in any proceeding before a foreign securities authority with respect to registration, any statement that was at the time and in 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 a foreign securities authority any material fact that is required to be stated therein;

(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

(C) aided, abetted, counseled, commanded, induced, or procured the violation by any other person of 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;

(5) within 10 years has been convicted by a foreign court of competent jurisdiction of a crime, however denominated by the laws of the relevant foreign government, that is substantially equivalent to an offense set forth in paragraph (1) of subsection (a); or

(6) by reason of any misconduct, is temporarily or permanently enjoined by any foreign court of competent jurisdiction from acting in any of the capacities, set forth in paragraph (2) of subsection (a), or a substantially equivalent foreign capacity, 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.

(c) Any person who is ineligible, by reason of subsection (a), to serve or act in the capacities enumerated in that subsection, may file with the Commission an application for an exemption from the provisions of that subsection. The Commission shall by order grant such application, either unconditionally or on an appropriate temporary or other conditional basis, if it is established that the prohibitions of subsection (a), as applied to such person, are unduly or disproportionately severe or that the conduct of such person has been such as not to make it against the public interest or protection of investors to grant such application.

## (d) MONEY PENALTIES IN ADMINISTRATIVE PROCEEDINGS.—

## (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 penalty is in the public interest, and that such person—

(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;

(ii) has willfully aided, abetted, counseled, commanded, induced, or procured such a violation by any other person; or

(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;

(B) CEASE-AND-DESIST PROCEEDINGS.—In any proceeding instituted pursuant to subsection (f) against any person, the Commission may impose a civil penalty if the Commission 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 issued under this title; or

(ii) is or was a cause of the violation of any provision of this title, or any rule or regulation issued under this title.

## (2) MAXIMUM AMOUNT OF PENALTY.—

(A) FIRST TIER.—The maximum amount of penalty for each act or omission described in paragraph (1) shall be ~~[\$5,000]~~ \$10,000 for a natural person or ~~[\$50,000]~~ \$100,000 for any other person.

(B) SECOND TIER.—Notwithstanding subparagraph (A), the maximum amount of penalty for each such act or omission shall be ~~[\$50,000]~~ \$100,000 for a natural person or ~~[\$250,000]~~ \$500,000 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 subparagraphs (A) and (B), the maximum amount of penalty for each such act or omission shall be \$100,000 for a natural person or \$500,000 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.】

(C) *THIRD TIER.*—

(i) *IN GENERAL.*—*Notwithstanding subparagraphs (A) and (B), for a third tier act or omission, the amount of penalty for each such act or omission shall not exceed the greater of—*

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

(II) 3 times the gross amount of pecuniary gain to the person who committed the act or omission;

or

(III) the amount of losses incurred by victims as a result of the act or omission.

(ii) *THIRD TIER ACT OR OMISSION.*—*For the purposes of this subparagraph, the term “third tier act or omission” means an act or omission described in paragraph (1) that—*

(I) involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement; and

(II) directly or indirectly—

(aa) resulted in substantial losses to other persons;

(bb) created a significant risk of substantial losses to other persons; or

(cc) resulted in substantial pecuniary gain to the person who committed the act or omission.

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

(3) *DETERMINATION OF PUBLIC INTEREST.*—*In considering under this section whether a penalty is in the public interest, the Commission may consider—*

(A) whether the act or omission for which such penalty is assessed involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement;

(B) the harm to other persons resulting either directly or indirectly from such act or omission;

(C) the extent to which any person was unjustly enriched, taking into account any restitution made to persons injured by such behavior;

(D) whether such person previously has been found by the Commission, another appropriate regulatory agency, or a self-regulatory organization to have violated the Federal securities laws, State securities laws, or the rules of a self-regulatory organization, has been enjoined by a court of competent jurisdiction from violations of such laws or

rules, or has been convicted by a court of competent jurisdiction of violations of such laws or of any felony or misdemeanor described in section 203(e)(2) of the Investment Advisers Act of 1940;

(E) the need to deter such person and other persons from committing such acts or omissions; and

(F) such other matters as justice may require.

(4) 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.

(e) AUTHORITY TO ENTER AN ORDER REQUIRING AN ACCOUNTING AND DISGORGEMENT.—In any proceeding in which the Commission may impose a penalty under this section, the Commission may enter an order requiring accounting and disgorgement, including reasonable interest. The Commission is authorized to adopt rules, regulations, and orders concerning payments to investors, rates of interest, periods of accrual, and such other matters as it deems appropriate to implement this subsection.

(f) CEASE-AND-DESIST PROCEEDINGS.—

(1) AUTHORITY OF THE COMMISSION.—If the Commission finds, after notice and opportunity for hearing, that any person is violating, has violated, or is about to violate any provision of this title, or any rule or regulation thereunder, the Commission may publish its findings and enter an order requiring such person, and any other person that is, was, or would be a cause of the violation, due to an act or omission the person knew or should have known would contribute to such violation, to cease and desist from committing or causing such violation and any future violation of the same provision, rule, or regulation. Such order may, in addition to requiring a person to cease and desist from committing or causing a violation, require such person to comply, or to take steps to effect compliance, with such provision, rule, or regulation, upon such terms and conditions and within such time as the Commission may specify in such order. Any such order may, as the Commission deems appropriate, require future compliance or steps to effect future compliance, either permanently or for such period of time as the Commission may specify, with such provision, rule, or regulation with respect to any security, any issuer, or any other person.

(2) HEARING.—The notice instituting proceedings pursuant to paragraph (1) shall fix a hearing date not earlier than 30 days nor later than 60 days after service of the notice unless an earlier or a later date is set by the Commission with the consent of any respondent so served.

(3) TEMPORARY ORDER.—

(A) IN GENERAL.—Whenever the Commission determines that the alleged violation or threatened violation specified

in the notice instituting proceedings pursuant to paragraph (1), or the continuation thereof, is likely to result in significant dissipation or conversion of assets, significant harm to investors, or substantial harm to the public interest, including, but not limited to, losses to the Securities Investor Protection Corporation, prior to the completion of the proceeding, the Commission may enter a temporary order requiring the respondent to cease and desist from the violation or threatened violation and to take such action to prevent the violation or threatened violation and to prevent dissipation or conversion of assets, significant harm to investors, or substantial harm to the public interest as the Commission deems appropriate pending completion of such proceedings. Such an order shall be entered only after notice and opportunity for a hearing, unless the Commission, notwithstanding section 40(a) of this title, determines that notice and hearing prior to entry would be impracticable or contrary to the public interest. A temporary order shall become effective upon service upon the respondent and, unless set aside, limited, or suspended by the Commission or a court of competent jurisdiction, shall remain effective and enforceable pending the completion of the proceedings.

(B) APPLICABILITY.—This paragraph 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, 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.

(4) REVIEW OF TEMPORARY ORDERS.—

(A) COMMISSION REVIEW.—At any time after the respondent has been served with a temporary cease-and-desist order pursuant to paragraph (3), the respondent may apply to the Commission to have the order set aside, limited, or suspended. If the respondent has been served with a temporary cease-and-desist order entered without a prior Commission hearing, the respondent may, within 10 days after the date on which the order was served, request a hearing on such application and the Commission shall hold a hearing and render a decision on such application at the earliest possible time.

(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, 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.

(C) NO AUTOMATIC STAY OF TEMPORARY ORDER.—The commencement of proceedings under subparagraph (B) of this paragraph shall not, unless specifically ordered by the court, operate as a stay of the Commission's order.

(D) EXCLUSIVE REVIEW.—Section 43 of this title shall not apply to a temporary order entered pursuant to this section.

(5) AUTHORITY TO ENTER AN ORDER REQUIRING AN ACCOUNTING AND DISGORGEMENT.—In any cease-and-desist proceeding under subsection (f)(1), the Commission may enter an order requiring accounting and disgorgement, including reasonable interest. The Commission is authorized to adopt rules, regulations, and orders concerning payments to investors, rates of interest, periods of accrual, and such other matters as it deems appropriate to implement this subsection.

(g) For the purposes of this section, the term "investment adviser" includes a corporate or other trustee performing the functions of an investment adviser.

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#### ENFORCEMENT OF TITLE

SEC. 42. (a) The Commission may make such investigations as it deems necessary to determine whether any person has violated or is about to violate any provision of this title or of any rule, regulation, or order hereunder, or to determine whether any action in any court or any proceeding before the Commission shall be instituted under this title against a particular person or persons, or with respect to a particular transaction or transactions. The Commission shall 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.

(b) For the purpose of any investigation or any other proceeding under this title, any member of the Commission, or any officer thereof designated by it, is empowered to administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, contracts, agreements, or other records which are relevant or material to the inquiry. Such attendance of witnesses and the production of any such records may be required from any place in any State or in any Territory or other place subject to the jurisdiction of the United States at any designated place of hearing.

(c) In case of contumacy by, or refusal to obey a subpoena issued to, any person, the Commission may invoke the aid of any court of the United States within the jurisdiction of which such investigation or proceeding is carried on, or where such person resides or

carries on business, in requiring the attendance and testimony of witnesses and the production of books, papers, correspondence, memoranda, contracts, agreements, and other records. And such court may issue an order requiring such person to appear before the Commission or member or officer designated by the Commission, there to produce records, if so ordered, or to give testimony touching the matter under investigation or in question; any failure to obey such order of the court may be punished by such court as a contempt thereof. All process in any such case may be served in the judicial district whereof such person is an inhabitant or wherever he may be found. Any person who without just cause shall fail or refuse to attend and testify or to answer any lawful inquiry or to produce books, papers, correspondence, memoranda, contracts, agreements, or other records, if in his or its power so to do, in obedience to the subpoena of the Commission, shall be guilty of a misdemeanor, and upon conviction shall be subject to a fine of not more than \$1,000 or to imprisonment for a term of not more than one year, or both.

(d) Whenever it shall appear to the Commission that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of this title, or of any rule, regulation, or order hereunder, it may in its discretion bring an action in the proper district court of the United States, or the proper United States court of any Territory or other place subject to the jurisdiction of the United States, to enjoin such acts or practices and to enforce compliance with this title or any rule, regulation, or order hereunder. Upon a showing that such person has engaged or is about to engage in any such act or practice, a permanent or temporary injunction or decree or restraining order shall be granted without bond. In any proceeding under this subsection to enforce compliance with section 7, the court as a court of equity may, to the extent it deems necessary or appropriate, take exclusive jurisdiction and possession of the investment company or companies involved and the books, records, and assets thereof, wherever located; and the court shall have jurisdiction to appoint a trustee, who with the approval of the court shall have power to dispose of any or all of such assets, subject to such terms and conditions as the court may prescribe. The Commission may transmit such evidence as may be available concerning any violation of the provisions of this title, or of any rule, regulation, or order thereunder, to the Attorney General, who, in his discretion, may institute the appropriate criminal proceedings under this title.

(e) MONEY PENALTIES IN CIVIL ACTIONS.—

(1) AUTHORITY OF COMMISSION.—Whenever it shall appear to the Commission that any person has violated any provision of this title, the rules or regulations thereunder, *a Federal court injunction or a bar obtained or entered by the Commission under this title*, or a cease-and-desist order entered by the Commission pursuant to section 9(f) of this title, the Commission may bring an action in a United States district court to seek, and the court shall have jurisdiction to impose, upon a proper showing, a civil penalty to be paid by the person who committed such violation.

(2) AMOUNT OF PENALTY.—

(A) **FIRST TIER.**—The amount of the penalty shall be determined by the court in light of the facts and circumstances. For each violation, the amount of the penalty shall not exceed the greater of (i) ~~[\$5,000]~~ \$10,000 for a natural person or ~~[\$50,000]~~ \$100,000 for any other person, or (ii) the gross amount of pecuniary gain to such defendant as a result of the violation.

(B) **SECOND TIER.**—Notwithstanding subparagraph (A), the amount of penalty for each such violation shall not exceed the greater of (i) ~~[\$50,000]~~ \$100,000 for a natural person or ~~[\$250,000]~~ \$500,000 for any other person, or (ii) the gross amount of pecuniary gain to such defendant as a result of the violation, if the violation described in paragraph (1) involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement.

(C) **THIRD TIER.**—Notwithstanding subparagraphs (A) and (B), the amount of penalty for each such violation shall not exceed the greater of (i) \$100,000 for a natural person or \$500,000 for any other person, or (ii) the gross amount of pecuniary gain to such defendant as a result of the violation, if—

[(I) the violation described in paragraph (1) involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement; and

[(II) such violation directly or indirectly resulted in substantial losses or created a significant risk of substantial losses to other persons.]

(C) **THIRD TIER.**—

(i) **IN GENERAL.**—Notwithstanding subparagraphs (A) and (B), for a third tier violation, the amount of penalty for each such violation shall not exceed the greater of—

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

(II) 3 times the gross amount of pecuniary gain to the person who committed the violation; or

(III) the amount of losses incurred by victims as a result of the violation.

(ii) **THIRD TIER VIOLATION.**—For the purposes of this subparagraph, the term “third tier violation” means a violation described in paragraph (1) that—

(I) involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement; and

(II) directly or indirectly—

(aa) resulted in substantial losses to other persons;

(bb) created a significant risk of substantial losses to other persons; or

(cc) resulted in substantial pecuniary gain to the person who committed the violation.

(D) **FOURTH TIER.**—Notwithstanding subparagraphs (A), (B), and (C), the maximum amount of penalty for each such violation shall be 3 times the otherwise applicable amount in such subparagraphs if, within the 5-year period pre-

*ceding such violation, the defendant was criminally convicted for securities fraud or became subject to a judgment or order imposing monetary, equitable, or administrative relief in any Commission action alleging fraud by that defendant.*

(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.

(B) COLLECTION OF PENALTIES.—If a person upon whom such a penalty is imposed shall fail to pay such penalty within the time prescribed in the court's order, the Commission may refer the matter to the Attorney General who shall recover such penalty by action in the appropriate United States district court.

(C) REMEDY NOT EXCLUSIVE.—The actions authorized by this subsection may be brought in addition to any other action that the Commission or the Attorney General is entitled to bring.

(D) JURISDICTION AND VENUE.—For purposes of section 44 of this title, actions under this paragraph shall be actions to enforce a liability or a duty created by this title.

[(4) SPECIAL PROVISIONS RELATING TO A VIOLATION OF A CEASE-AND-DESIST ORDER.—In an action to enforce a cease-and-desist order entered by the Commission pursuant to section 9(f), each separate violation of such order shall be a separate offense, except that in the case of a violation through a continuing failure to comply with the order, each day of the failure to comply shall be deemed a separate offense.]

(4) SPECIAL PROVISIONS RELATING TO A VIOLATION OF AN INJUNCTION OR CERTAIN ORDERS.—

(A) IN GENERAL.—*Each separate violation of an injunction or order described in subparagraph (B) shall be a separate offense, except that in the case of a violation through a continuing failure to comply with such injunction or order, each day of the failure to comply with the injunction or order shall be deemed a separate offense.*

(B) INJUNCTIONS AND ORDERS.—*Subparagraph (A) shall apply with respect to any action to enforce—*

*(i) a Federal court injunction obtained pursuant to this title;*

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

*(iii) a cease-and-desist order entered by the Commission pursuant to section 9(f).*

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**INVESTMENT ADVISERS ACT OF 1940**

**TITLE II—INVESTMENT ADVISERS**

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REGISTRATION OF INVESTMENT ADVISERS

SEC. 203. (a) Except as provided in subsection (b) and section 203A, it shall be unlawful for any investment adviser, unless registered under this section, to make use of the mails or any means or instrumentality of interstate commerce in connection with his or its business as an investment adviser.

(b) The provisions of subsection (a) shall not apply to—

(1) any investment adviser, other than an investment adviser who acts as an investment adviser to any private fund, all of whose clients are residents of the State within which such investment adviser maintains his or its principal office and place of business, and who does not furnish advice or issue analyses or reports with respect to securities listed or admitted to unlisted trading privileges on any national securities exchange;

(2) any investment adviser whose only clients are insurance companies;

(3) any investment adviser that is a foreign private adviser;

(4) any investment adviser that is a charitable organization, as defined in section 3(c)(10)(D) of the Investment Company Act of 1940, or is a trustee, director, officer, employee, or volunteer of such a charitable organization acting within the scope of such person's employment or duties with such organization, whose advice, analyses, or reports are provided only to one or more of the following:

(A) any such charitable organization;

(B) 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; or

(C) a trust or other donative instrument described in section 3(c)(10)(B) of the Investment Company Act of 1940, or the trustees, administrators, settlors (or potential settlors), or beneficiaries of any such trust or other instrument;

(5) any plan described in section 414(e) of the Internal Revenue Code of 1986, any person or entity eligible to establish and maintain such a plan under the Internal Revenue Code of 1986, or any trustee, director, officer, or employee of or volunteer for any such plan or person, if such person or entity, acting in such capacity, provides investment advice exclusively to, or with respect to, any plan, person, or entity or any company, account, or fund that is excluded from the definition of an investment company under section 3(c)(14) of the Investment Company Act of 1940;

(6)(A) any investment adviser that is registered with the Commodity Futures Trading Commission as a commodity trading advisor whose business does not consist primarily of acting as an investment adviser, as defined in section 202(a)(11) of this title, and that does not act as an investment adviser to—

- (i) an investment company registered under title I of this Act; or
  - (ii) a company which has elected to be a business development company pursuant to section 54 of title I of this Act and has not withdrawn its election; or
- (B) any investment adviser that is registered with the Commodity Futures Trading Commission as a commodity trading advisor and advises a private fund, provided that, if after the date of enactment of the Private Fund Investment Advisers Registration Act of 2010, the business of the advisor should become predominately the provision of securities-related advice, then such adviser shall register with the Commission;
- (7) any investment adviser, other than any entity that has elected to be regulated or is regulated as a business development company pursuant to section 54 of the Investment Company Act of 1940 (15 U.S.C. 80a-54), who solely advises—
- (A) small business investment companies that are licensees under the Small Business Investment Act of 1958;
  - (B) entities that have received from the Small Business Administration notice to proceed to qualify for a license as a small business investment company under the Small Business Investment Act of 1958, which notice or license has not been revoked; or
  - (C) applicants that are affiliated with 1 or more licensed small business investment companies described in subparagraph (A) and that have applied for another license under the Small Business Investment Act of 1958, which application remains pending; or
- (8) any investment adviser, other than an entity that has elected to be regulated or is regulated as a business development company pursuant to section 54 of the Investment Company Act of 1940 (15 U.S.C. 80a-53), who solely advises—
- (A) rural business investment companies (as defined in section 384A of the Consolidated Farm and Rural Development Act (7 U.S.C. 2009cc)); or
  - (B) companies that have submitted to the Secretary of Agriculture an application in accordance with section 384D(b) of the Consolidated Farm and Rural Development Act (7 U.S.C. 2009cc-3(b)) that—
    - (i) have received from the Secretary of Agriculture a letter of conditions, which has not been revoked; or
    - (ii) are affiliated with 1 or more rural business investment companies described in subparagraph (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 office, principal 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;

(B) the education, the business affiliations for the past ten years, and the present business affiliations of such investment adviser and of his or its partners, officers, directors, and persons performing similar functions and of any controlling person thereof;

(C) the nature of the business of such investment adviser, including the manner of giving advice and rendering analyses or reports;

(D) a balance sheet certified by an independent public accountant and other financial statements (which shall, as the Commission specifies, be certified);

(E) the nature and scope of the authority of such investment adviser with respect to clients' funds and accounts;

(F) the basis or bases upon which such investment adviser is compensated;

(G) whether such investment adviser, or any person associated with such investment adviser, is subject to any disqualification which would be a basis for denial, suspension, or revocation of registration of such investment adviser under the provisions of subsection (e) of this section; and

(H) a statement as to whether the principal business of such investment adviser consists or is to consist of acting as investment adviser and a statement as to whether a substantial part of the business of such investment adviser, consists or is to consist of rendering investment supervisory services.

(2) 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) by order grant such 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 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 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 and that the applicant is not prohibited from registering as an investment adviser under section 203A. 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 (e) of this section.

(d) Any provision of this title (other than 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 are used in connection therewith shall also prohibit any such act, practice, or course of business by any investment adviser registered

pursuant to this section or any person acting on behalf of such an investment adviser, irrespective of any use of the mails or any means or instrumentality of interstate commerce in connection therewith.

(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) 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 is required to be stated therein.

(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) 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;

(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, 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;

(C) 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

(D) involves the violation of section 152, 1341, 1342, or 1343 or chapter 25 or 47 of title 18, United States Code, or a violation of substantially equivalent foreign statute.

(3) has been convicted during the 10-year period preceding the date of filing of any application for registration, or at any time thereafter, of—

(A) any crime that is punishable by imprisonment for 1 or more years, and that is not described in paragraph (2); or

(B) a substantially equivalent crime by a foreign court of competent jurisdiction.

(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, 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.

(5) has willfully violated any provision of the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Company Act of 1940, this title, the Commodity Exchange Act, or the rules or regulations under any such statutes or any rule of the Municipal Securities Rulemaking Board, or is unable to comply with any such provision.

(6) 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 Securities Exchange Act of 1934, the Investment Company Act of 1940, this title, the Commodity Exchange Act, the rules or regulations under any of such statutes, or the rules of the Municipal Securities Rulemaking Board, 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 paragraph no person shall be deemed to have failed reasonably to supervise any person, if—

(A) 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

(B) 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.

(7) is subject to any order of the Commission barring or suspending the right of the person to be associated with an investment adviser;

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

(A) made or caused to be made in any application for registration or report required to be filed with a foreign securities authority, or in any proceeding before a foreign securities authority with respect to registration, any state-

ment that was at the time and in 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 a foreign securities authority any material fact that is required to be stated therein;

(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

(C) aided, abetted, counseled, commanded, induced, or procured the violation by any other person of 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 has been found, by the foreign financial regulatory authority, to have failed reasonably to supervise, with a view to preventing violations of statutory provisions, and rules and regulations promulgated thereunder, another person who commits such a violation, if such other person is subject to his supervision; or

(9) 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—

(A) 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

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

(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 12 months or bar any such person from being associated with an investment adviser, broker, dealer, municipal securities dealer, municipal advisor, 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, associ-

ated 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.

(g) Any successor to the business of an investment adviser registered under this section shall be deemed likewise registered hereunder, if within thirty days from its succession to such business it shall file an application for registration under this section, unless and until the Commission, pursuant to subsection (c) or subsection (e) of this section, shall deny registration to or revoke or suspend the registration of such successor.

(h) Any person registered under this section may, upon such terms and conditions as the Commission finds necessary 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 person registered under this section, or who has pending an application for registration filed under this section, is no longer in existence, is not engaged in business as an investment adviser, or is prohibited from registering as an investment adviser under section 203A, the Commission shall by order cancel the registration of such person.

(i) MONEY PENALTIES IN ADMINISTRATIVE PROCEEDINGS.—

(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 penalty is in the public interest and that such person—

(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;

(ii) has willfully aided, abetted, counseled, commanded, induced, or procured such a violation by any other person;

(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

(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;

(B) CEASE-AND-DESIST PROCEEDINGS.—In any proceeding instituted pursuant to subsection (k) against any person,

the Commission may impose a civil penalty if the Commission 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 issued under this title; or

(ii) is or was a cause of the violation of any provision of this title, or any rule or regulation issued under this title.

(2) MAXIMUM AMOUNT OF PENALTY.—

(A) FIRST TIER.—The maximum amount of penalty for each act or omission described in paragraph (1) shall be ~~[\$5,000]~~ \$10,000 for a natural person or ~~[\$50,000]~~ \$100,000 for any other person.

(B) SECOND TIER.—Notwithstanding subparagraph (A), the maximum amount of penalty for each such act or omission shall be ~~[\$50,000]~~ \$100,000 for a natural person or ~~[\$250,000]~~ \$500,000 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 subparagraphs (A) and (B), the maximum amount of penalty for each such act or omission shall be \$100,000 for a natural person or \$500,000 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.]

(C) THIRD TIER.—

(i) IN GENERAL.—Notwithstanding subparagraphs (A) and (B), for a third tier act or omission, the amount of penalty for each such act or omission shall not exceed the greater of—

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

(II) 3 times the gross amount of pecuniary gain to the person who committed the act or omission; or

(III) the amount of losses incurred by victims as a result of the act or omission.

(ii) THIRD TIER ACT OR OMISSION.—For the purposes of this subparagraph, the term “third tier act or omission” means an act or omission described in paragraph (1) that—

(I) involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement; and

(II) directly or indirectly—

(aa) resulted in substantial losses to other persons;

(bb) created a significant risk of substantial losses to other persons; or

(cc) resulted in substantial pecuniary gain to the person who committed the act or omission.

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

(3) *DETERMINATION OF PUBLIC INTEREST.*—In considering under this section whether a penalty is in the public interest, the Commission may consider—

(A) whether the act or omission for which such penalty is assessed involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement;

(B) the harm to other persons resulting either directly or indirectly from such act or omission;

(C) the extent to which any person was unjustly enriched, taking into account any restitution made to persons injured by such behavior;

(D) whether such person previously has been found by the Commission, another appropriate regulatory agency, or a self-regulatory organization to have violated the Federal securities laws, State securities laws, or the rules of a self-regulatory organization, has been enjoined by a court of competent jurisdiction from violations of such laws or rules, or has been convicted by a court of competent jurisdiction of violations of such laws or of any felony or misdemeanor described in section 203(e)(2) of this title;

(E) the need to deter such person and other persons from committing such acts or omissions; and

(F) such other matters as justice may require.

(4) *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.

(j) *AUTHORITY TO ENTER AN ORDER REQUIRING AN ACCOUNTING AND DISGORGEMENT.*—In any proceeding in which the Commission may impose a penalty under this section, the Commission may enter an order requiring accounting and disgorgement, including reasonable interest. The Commission is authorized to adopt rules, regulations, and orders concerning payments to investors, rates of interest, periods of accrual, and such other matters as it deems appropriate to implement this subsection.

(k) *CEASE-AND-DESIST PROCEEDINGS.*—

(1) **AUTHORITY OF THE COMMISSION.**—If the Commission finds, after notice and opportunity for hearing, that any person is violating, has violated, or is about to violate any provision of this title, or any rule or regulation thereunder, the Commission may publish its findings and enter an order requiring such person, and any other person that is, was, or would be a cause of the violation, due to an act or omission the person knew or should have known would contribute to such violation, to cease and desist from committing or causing such violation and any future violation of the same provision, rule, or regulation. Such order may, in addition to requiring a person to cease and desist from committing or causing a violation, require such person to comply, or to take steps to effect compliance, with such provision, rule, or regulation, upon such terms and conditions and within such time as the Commission may specify in such order. Any such order may, as the Commission deems appropriate, require future compliance or steps to effect future compliance, either permanently or for such period of time as the Commission may specify, with such provision, rule, or regulation with respect to any security, any issuer, or any other person.

(2) **HEARING.**—The notice instituting proceedings pursuant to paragraph (1) shall fix a hearing date not earlier than 30 days nor later than 60 days after service of the notice unless an earlier or a later date is set by the Commission with the consent of any respondent so served.

(3) **TEMPORARY ORDER.**—

(A) **IN GENERAL.**—Whenever the Commission determines that the alleged violation or threatened violation specified in the notice instituting proceedings pursuant to paragraph (1), or the continuation thereof, is likely to result in significant dissipation or conversion of assets, significant harm to investors, or substantial harm to the public interest, including, but not limited to, losses to the Securities Investor Protection Corporation, prior to the completion of the proceedings, the Commission may enter a temporary order requiring the respondent to cease and desist from the violation or threatened violation and to take such action to prevent the violation or threatened violation and to prevent dissipation or conversion of assets, significant harm to investors, or substantial harm to the public interest as the Commission deems appropriate pending completion of such proceedings. Such an order shall be entered only after notice and opportunity for a hearing, unless the Commission, notwithstanding section 211(c) of this title, determines that notice and hearing prior to entry would be impracticable or contrary to the public interest. A temporary order shall become effective upon service upon the respondent and, unless set aside, limited, or suspended by the Commission or a court of competent jurisdiction, shall remain effective and enforceable pending the completion of the proceedings.

(B) **APPLICABILITY.**—This paragraph shall apply only to a respondent that acts, or, at the time of the alleged misconduct acted, as a broker, dealer, investment adviser, in-

vestment company, municipal securities dealer, government securities broker, government securities dealer, 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.

(4) REVIEW OF TEMPORARY ORDERS.—

(A) COMMISSION REVIEW.—At any time after the respondent has been served with a temporary cease-and-desist order pursuant to paragraph (3), the respondent may apply to the Commission to have the order set aside, limited, or suspended. If the respondent has been served with a temporary cease-and-desist order entered without a prior Commission hearing, the respondent may, within 10 days after the date on which the order was served, request a hearing on such application and the Commission shall hold a hearing and render a decision on such application at the earliest possible time.

(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 office or 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.

(C) NO AUTOMATIC STAY OF TEMPORARY ORDER.—The commencement of proceedings under subparagraph (B) of this paragraph shall not, unless specifically ordered by the court, operate as a stay of the Commission's order.

(D) EXCLUSIVE REVIEW.—Section 213 of this title shall not apply to a temporary order entered pursuant to this section.

(5) AUTHORITY TO ENTER AN ORDER REQUIRING AN ACCOUNTING AND DISGORGEMENT.—In any cease-and-desist proceeding under paragraph (1), the Commission may enter an order requiring accounting and disgorgement, including reasonable interest. The Commission is authorized to adopt rules, regulations, and orders concerning payments to investors, rates of interest, periods of accrual, and such other matters as it deems appropriate to implement this subsection.

(1) EXEMPTION OF VENTURE CAPITAL FUND ADVISERS.—

(1) IN GENERAL.—No investment adviser that acts as an investment adviser solely to 1 or more venture capital funds shall be subject to the registration requirements of this title

with respect to the provision of investment advice relating to a venture capital fund. Not later than 1 year after the date of enactment of this subsection, the Commission shall issue final rules to define the term “venture capital fund” for purposes of this subsection. The Commission shall require such advisers to maintain such records and provide to the Commission such annual or other reports as the Commission determines necessary or appropriate in the public interest or for the protection of investors.

(2) ADVISERS OF SBICS.—For purposes of this subsection, a venture capital fund includes an entity described in subparagraph (A), (B), or (C) of subsection (b)(7) (other than an entity that has elected to be regulated or is regulated as a business development company pursuant to section 54 of the Investment Company Act of 1940).

(3) ADVISERS OF RBICS.—For purposes of this subsection, a venture capital fund includes an entity described in subparagraph (A) or (B) of subsection (b)(8) (other than an entity that has elected to be regulated as a business development company pursuant to section 54 of the Investment Company Act of 1940 (15 U.S.C. 80a–53)).

(m) EXEMPTION OF AND REPORTING BY CERTAIN PRIVATE FUND ADVISERS.—

(1) IN GENERAL.—The Commission shall provide an exemption from the registration requirements under this section to any investment adviser of private funds, if each of such investment adviser acts solely as an adviser to private funds and has assets under management in the United States of less than \$150,000,000.

(2) REPORTING.—The Commission shall require investment advisers exempted by reason of this subsection to maintain such records and provide to the Commission such annual or other reports as the Commission determines necessary or appropriate in the public interest or for the protection of investors.

(3) ADVISERS OF SBICS.—For purposes of this subsection, the assets under management of a private fund that is an entity described in subparagraph (A), (B), or (C) of subsection (b)(7) (other than an entity that has elected to be regulated or is regulated as a business development company pursuant to section 54 of the Investment Company Act of 1940) shall be excluded from the limit set forth in paragraph (1).

(4) ADVISERS OF RBICS.—For purposes of this subsection, the assets under management of a private fund that is an entity described in subparagraph (A) or (B) of subsection (b)(8) (other than an entity that has elected to be regulated or is regulated as a business development company pursuant to section 54 of the Investment Company Act of 1940 (15 U.S.C. 80a–53)) shall be excluded from the limit set forth in paragraph (1).

(n) REGISTRATION AND EXAMINATION OF MID-SIZED PRIVATE FUND ADVISERS.—In prescribing regulations to carry out the requirements of this section with respect to investment advisers acting as investment advisers to mid-sized private funds, the Commission shall take into account the size, governance, and investment strategy of such funds to determine whether they pose systemic risk,

and shall provide for registration and examination procedures with respect to the investment advisers of such funds which reflect the level of systemic risk posed by such funds.

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#### ENFORCEMENT OF TITLE

SEC. 209. (a) Whenever it shall appear to the Commission, either upon complaint or otherwise, that the provisions of this title or of any rule or regulation prescribed under the authority thereof, have been or are about to be violated by any person, it may in its discretion require, and in any event shall permit, such person to file with it a statement in writing, under oath or otherwise, as to all the facts and circumstances relevant to such violation, and may otherwise investigate all such facts and circumstances.

(b) For the purposes of any investigation or any proceeding under this title, any member of the Commission or any officer thereof designated by it is empowered to administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, contracts, agreements, or other records which are relevant or material to the inquiry. Such attendance of witnesses and the production of any such records may be required from any place in any State or in any Territory or other place subject to the jurisdiction of the United States at any designated place of hearing.

(c) In case of contumacy by, or refusal to obey a subpoena issued to, any person, the Commission may invoke the aid of any court of the United States within the jurisdiction of which such investigation or proceeding is carried on, or where such person resides or carries on business, in requiring the attendance and testimony of witnesses and the production of books, papers, correspondence, memoranda, contracts, agreements, and other records. And such court may issue an order requiring such person to appear before the Commission or member or officer designated by the Commission, there to produce records, if so ordered or to give testimony touching the matter under investigation or in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof. All process in any such case may be served in the judicial district whereof such person is an inhabitant or wherever he may be found. Any person who without just cause shall fail or refuse to attend and testify or to answer any lawful inquiry or to produce books, papers, correspondence, memoranda, contracts, agreements, or other records, if in his or its power so to do, in obedience to the subpoena of the Commission, shall be guilty of a misdemeanor, and upon conviction shall be subject to a fine of not more than \$1,000 or to imprisonment for a term of not more than one year, or both.

(d) Whenever it shall appear to the Commission that any person has engaged, is engaged, or is about to engage in any act or practice constituting a violation of any provision of this title, or of any rule, regulation, or order hereunder, or that any person has aided, abetted, counseled, commanded, induced, or procured, is aiding, abetting, counseling, commanding, inducing, or procuring, or is about to aid, abet, counsel, command, induce, or procure such a violation, it may in its discretion bring an action in the proper district

court of the United States, or the proper United States court of any Territory or other place subject to the jurisdiction of the United States, to enjoin such acts or practices and to enforce compliance with this title or any rule, regulation, or order hereunder. Upon a showing that such person has engaged, is engaged, or is about to engage in any such act or practice, or in aiding, abetting, counseling, commanding, inducing, or procuring any such act or practice, a permanent or temporary injunction or decree or restraining order shall be granted without bond. The Commission may transmit such evidence as may be available concerning any violation of the provisions of this title, or of any rule, regulation, or order thereunder, to the Attorney General, who, in his discretion, may institute the appropriate criminal proceedings under this title.

(e) MONEY PENALTIES IN CIVIL ACTIONS.—

(1) AUTHORITY OF COMMISSION.—Whenever it shall appear to the Commission that any person has violated any provision of this title, the rules or regulations thereunder, a *Federal court injunction* or a *bar obtained or entered by the Commission under this title*, or a cease-and-desist order entered by the Commission pursuant to section 203(k) of this title, the Commission may bring an action in a United States district court to seek, and the court shall have jurisdiction to impose, upon a proper showing, a civil penalty to be paid by the person who committed such violation.

(2) AMOUNT OF PENALTY.—

(A) FIRST TIER.—The amount of the penalty shall be determined by the court in light of the facts and circumstances. For each violation, the amount of the penalty shall not exceed the greater of (i) ~~[\$5,000]~~ \$10,000 for a natural person or ~~[\$50,000]~~ \$100,000 for any other person, or (ii) the gross amount of pecuniary gain to such defendant as a result of the violation.

(B) SECOND TIER.—Notwithstanding subparagraph (A), the amount of penalty for each such violation shall not exceed the greater of (i) ~~[\$50,000]~~ \$100,000 for a natural person or ~~[\$250,000]~~ \$500,000 for any other person, or (ii) the gross amount of pecuniary gain to such defendant as a result of the violation, if the violation described in paragraph (1) involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement.

[(C) THIRD TIER.—Notwithstanding subparagraphs (A) and (B), the amount of penalty for each such violation shall not exceed the greater of (i) \$100,000 for a natural person or \$500,000 for any other person, or (ii) the gross amount of pecuniary gain to such defendant as a result of the violation, if—

[(I) the violation described in paragraph (1) involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement; and

[(II) such violation directly or indirectly resulted in substantial losses or created a significant risk of substantial losses to other persons.]

(C) THIRD TIER.—

(i) IN GENERAL.—Notwithstanding subparagraphs (A) and (B), for a third tier violation, the amount of

penalty for each such violation shall not exceed the greater of—

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

(II) 3 times the gross amount of pecuniary gain to the person who committed the violation; or

(III) the amount of losses incurred by victims as a result of the violation.

(ii) **THIRD TIER VIOLATION.**—For the purposes of this subparagraph, the term “third tier violation” means a violation described in paragraph (1) that—

(I) involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement; and

(II) directly or indirectly—

(aa) resulted in substantial losses to other persons;

(bb) created a significant risk of substantial losses to other persons; or

(cc) resulted in substantial pecuniary gain to the person who committed the violation.

(D) **FOURTH TIER.**—Notwithstanding subparagraphs (A), (B), and (C), the maximum amount of penalty for each such violation shall be 3 times the otherwise applicable amount in such subparagraphs if, within the 5-year period preceding such violation, the defendant was criminally convicted for securities fraud or became subject to a judgment or order imposing monetary, equitable, or administrative relief in any Commission action alleging fraud by that defendant.

(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.

(B) **COLLECTION OF PENALTIES.**—If a person upon whom such a penalty is imposed shall fail to pay such penalty within the time prescribed in the court’s order, the Commission may refer the matter to the Attorney General who shall recover such penalty by action in the appropriate United States district court.

(C) **REMEDY NOT EXCLUSIVE.**—The actions authorized by this subsection may be brought in addition to any other action that the Commission or the Attorney General is entitled to bring.

(D) **JURISDICTION AND VENUE.**—For purposes of section 214 of this title, actions under this paragraph shall be actions to enforce a liability or a duty created by this title.

[(4) **SPECIAL PROVISIONS RELATING TO A VIOLATION OF A CEASE-AND-DESIST ORDER.**—In an action to enforce a cease-and-desist order entered by the Commission pursuant to section 203(k), each separate violation of such order shall be a separate offense, except that in the case of a violation through a

continuing failure to comply with the order, each day of the failure to comply shall be deemed a separate offense.】

(4) *SPECIAL PROVISIONS RELATING TO A VIOLATION OF AN INJUNCTION OR CERTAIN ORDERS.*—

(A) *IN GENERAL.*—*Each separate violation of an injunction or order described in subparagraph (B) shall be a separate offense, except that in the case of a violation through a continuing failure to comply with such injunction or order, each day of the failure to comply with the injunction or order shall be deemed a separate offense.*

(B) *INJUNCTIONS AND ORDERS.*—*Subparagraph (A) shall apply with respect to any action to enforce—*

*(i) a Federal court injunction obtained pursuant to this title;*

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

*(iii) a cease-and-desist order entered by the Commission pursuant to section 203(k).*

(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.*

\* \* \* \* \*

## MINORITY VIEWS

H.R. 3641, the *Stronger Enforcement of Civil Penalties Act of 2019*, borrows from H.R. 10, the *Financial Choice Act of 2017* (115th Congress). However, H.R. 3641 fails to include an equally important component of H.R. 10 that ensures a balanced SEC enforcement program.

While H.R. 3641 raises statutory limits on certain SEC civil monetary penalties as well as triples the penalty cap for certain recidivists, it fails to include important reforms to the SEC's enforcement program that promote the rule of law and ensure due process for the accused. The proposed reforms include, among other enhancements: (1) giving respondents in SEC administrative proceedings the right to remove their enforcement action to federal court to ensure that the respondents' due process rights are protected; (2) establishing an advisory committee on the Commission's enforcement policies and practices to ensure that the program is attaining its goals while respecting due process; and (3) requiring the SEC to approve, within a year of enactment, an updated manual that sets forth the policies and practices that the SEC will follow in the enforcement of the securities laws.

Without additional procedural protections, the increased penalties included in H.R. 3641 do not strike the right balance between deterring and punishing securities fraud and protecting shareholders who are ultimately responsible for paying large civil penalties for violations that the shareholders did not commit. Further, the SEC did not request these additional penalties, nor have they expressed concern with the current penalty thresholds.

During the July 16, 2019 markup, Representative Davidson (R-Ohio) offered a substitute amendment to H.R. 3641 to include the *Financial CHOICE Act's* crucial due process reforms. However, the Chairwoman ruled the commonsense amendment non-germane. Committee Republicans regret that the Democrats missed an opportunity to continue the groundwork laid in the 115th Congress with H.R. 10, choosing instead to move a bill that the Senate will not consider nor for which the SEC has indicated a need.

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