

107TH CONGRESS
2D SESSION

S. 1985

To allow Federal securities enforcement actions to be predicated on State securities enforcement actions, to prevent migration of rogue securities brokers between and among financial services industries, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 5, 2002

Ms. COLLINS introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

A BILL

To allow Federal securities enforcement actions to be predicated on State securities enforcement actions, to prevent migration of rogue securities brokers between and among financial services industries, and for other purposes.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Microcap Fraud Pre-
5 vention Act of 2001”.

1 **SEC. 2. AMENDMENTS TO THE SECURITIES EXCHANGE ACT**
2 **OF 1934.**

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

5 (1) in each of subparagraphs (A) through (E),
6 by striking the period at the end and inserting a
7 semicolon;

8 (2) by striking subparagraph (F) and inserting
9 the following:

10 “(F) is subject to any order of the Commission
11 barring or suspending the right of the person to be
12 associated with a broker or dealer;”;

13 (3) in subparagraph (G)—

14 (A) in clause (i), by striking “has omitted”
15 and all that follows through the semicolon and
16 inserting “omitted to state in any such applica-
17 tion, report, or proceeding any material fact
18 that is required to be stated therein;”;

19 (B) in clause (ii)—

20 (i) by striking “transactions in securi-
21 ties,” and inserting “securities, banking,
22 insurance,”; and

23 (ii) by adding “or” at the end; and

24 (C) in clause (iii)—

25 (i) by inserting “other” after “viola-
26 tion by any”;

1 (ii) by striking “empowering a foreign
 2 financial regulatory authority regarding
 3 transactions in securities,” and inserting
 4 “regarding securities, banking, insur-
 5 ance,”;

6 (iii) by striking “has been found, by a
 7 foreign financial regulatory authority,”;
 8 and

9 (iv) by striking the period at the end
 10 and inserting “; or”; and

11 (4) by adding at the end the following:

12 “(H) is subject to any order of a State securi-
 13 ties commission (or any agency or office performing
 14 like functions), State authority that supervises or ex-
 15 amines financial institutions, State insurance com-
 16 mission (or any agency or office performing like
 17 functions), or an appropriate Federal banking agen-
 18 cy (as defined in section 3 of the Federal Deposit
 19 Insurance Act (12 U.S.C. 1813)) that—

20 “(i) bars such person from association with
 21 an entity regulated by such commission, author-
 22 ity, agency, or officer, or from engaging in the
 23 business of securities, insurance, or banking; or

24 “(ii) constitutes a final order based on vio-
 25 lations of any laws or regulations that prohibit

1 fraudulent, manipulative, or deceptive con-
 2 duct.”.

3 **SEC. 3. AMENDMENTS TO THE INVESTMENT ADVISERS ACT**
 4 **OF 1940.**

5 Section 203 of the Investment Advisers Act of 1940
 6 (15 U.S.C. 80b–3) is amended—

7 (1) in subsection (e)—

8 (A) in each of paragraphs (1) through (6),
 9 by striking the period at the end and inserting
 10 a semicolon; and

11 (B) by striking paragraphs (7) and (8) and
 12 inserting the following:

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

16 “(8) has been found by a foreign financial regu-
 17 latory authority to have—

18 “(A) made or caused to be made in any
 19 application for registration or report required to
 20 be filed with, or in any proceeding before, that
 21 foreign financial regulatory authority with re-
 22 spect to registration, any statement that was,
 23 at the time and in light of the circumstances
 24 under which it was made, false or misleading
 25 with respect to any material fact, or omitted to

1 state in any such application or report filed
2 with, or in any proceeding before, that foreign
3 financial regulatory authority any material fact
4 that is required to be stated in the application,
5 report, or proceeding;

6 “(B) violated any foreign statute or regula-
7 tion regarding securities, banking, insurance, or
8 contracts of sale of a commodity for future de-
9 livery traded on or subject to the rules of a con-
10 tract market or any board of trade; or

11 “(C) aided, abetted, counseled, com-
12 manded, induced, or procured the violation by
13 any other person of any foreign statute or regu-
14 lation regarding securities, banking, insurance,
15 or contracts of sale of a commodity for future
16 delivery traded on or subject to the rules of a
17 contract market or any board of trade, or failed
18 reasonably to supervise, with a view to pre-
19 venting violations of any such statute or regula-
20 tion, another person who commits such a viola-
21 tion, if the other person is subject to its super-
22 vision; or

23 “(9) is subject to any order of a State securities
24 commission (or any agency or office performing like
25 functions), State authority that supervises or exam-

ines financial institutions, State insurance commis-
 sion (or any agency or office performing like func-
 tions), or an appropriate Federal banking agency (as
 defined in section 3 of the Federal Deposit Insur-
 ance Act (12 U.S.C. 1813)) that—

“(A) bars such investment adviser or per-
 son from association with an entity regulated by
 such commission, authority, agency, or officer,
 or from engaging in the business of securities,
 insurance, or banking; or

“(B) constitutes a final order based on vio-
 lations of any laws or regulations that prohibit
 fraudulent, manipulative, or deceptive con-
 duct.”; and

(2) in subsection (f)—

(A) by striking “(6), or (8)” and inserting
 “(6), (8), or (9)”; and

(B) by striking “paragraph (2)” and in-
 serting “paragraph (2) or (3)”.

**SEC. 4. AMENDMENTS TO THE INVESTMENT COMPANY ACT
 OF 1940.**

Section 9(b) of the Investment Company Act of 1940
 (15 U.S.C. 80a–9(b)) is amended—

(1) in paragraph (4), by striking subparagraphs

(A) through (C) and inserting the following:

1 “(A) made or caused to be made in any
2 application for registration or report required to
3 be filed with, or in any proceeding before, that
4 foreign financial regulatory authority with re-
5 spect to registration, any statement that was,
6 at the time and in light of the circumstances
7 under which it was made, false or misleading
8 with respect to any material fact, or omitted to
9 state in any application or report filed with, or
10 in any proceeding before, that foreign financial
11 regulatory authority any material fact that is
12 required to be stated in the application, report,
13 or proceeding;

14 “(B) violated any foreign statute or regula-
15 tion regarding securities, banking, insurance, or
16 contracts of sale of a commodity for future de-
17 livery traded on or subject to the rules of a con-
18 tract market or any board of trade; or

19 “(C) aided, abetted, counseled, com-
20 manded, induced, or procured the violation by
21 any other person of any foreign statute or regu-
22 lation regarding securities, banking, insurance,
23 or contracts of sale of a commodity for future
24 delivery traded on or subject to the rules of a
25 contract market or any board of trade;”;

1 (2) in paragraph (5), by striking “or” at the
2 end;

3 (3) in paragraph (6), by striking the period at
4 the end and inserting “; or”; and

5 (4) by adding at the end the following:

6 “(7) is subject to any order of a State securities
7 commission (or any agency or office performing like
8 functions), State authority that supervises or exam-
9 ines financial institutions, State insurance commis-
10 sion (or any agency or office performing like func-
11 tions), or an appropriate Federal banking agency (as
12 defined in section 3 of the Federal Deposit Insur-
13 ance Act (12 U.S.C. 1813)) that—

14 “(A) bars such person from association
15 with an entity regulated by such commission,
16 authority, agency, or officer, or from engaging
17 in the business of securities, insurance, or
18 banking; or

19 “(B) constitutes a final order based on vio-
20 lations of any laws or regulations that prohibit
21 fraudulent, manipulative, or deceptive con-
22 duct.”.

1 **SEC. 5. CONFORMING AMENDMENTS.**

2 (a) MUNICIPAL SECURITIES DEALERS.—Section
3 15B(c) of the Securities Exchange Act of 1934 (15 U.S.C.
4 78o–4(c)) is amended—

5 (1) in paragraph (2), by striking “act or omis-
6 sion” and all that follows through the period and in-
7 serting “act, or is subject to an order or finding,
8 enumerated in subparagraph (A), (D), (E), (G), or
9 (H) of section 15(b)(4), has been convicted of any
10 offense specified in section 15(b)(4)(B) within 10
11 years of the commencement of the proceedings under
12 this paragraph, or is enjoined from any action, con-
13 duct, or practice specified in section 15(b)(4)(C).”;
14 and

15 (2) in paragraph (4), in the first sentence, by
16 striking “any act or omission” and all that follows
17 through the period and inserting “or omitted any
18 act, or is subject to an order or finding, enumerated
19 in subparagraph (A), (D), (E), (G), or (H) of sec-
20 tion 15(b)(4), has been convicted of any offense
21 specified in section 15(b)(4)(B) within 10 years of
22 the commencement of the proceedings under this
23 paragraph, or is enjoined from any action, conduct,
24 or practice specified in section 15(b)(4)(C).”.

1 (b) GOVERNMENT SECURITIES BROKERS AND DEAL-
 2 ERS.—Section 15C(e)(1) of the Securities Exchange Act
 3 of 1934 (15 U.S.C. 78o–5(c)(1)) is amended—

4 (1) in subparagraph (A), by striking “or omis-
 5 sion enumerated in subparagraph (A), (D), (E), or
 6 (G) of paragraph (4) of section 15(b) of this title”
 7 and inserting “, or is subject to an order or finding,
 8 enumerated in subparagraph (A), (D), (E), (G), or
 9 (H) of section 15(b)(4)”; and

10 (2) in subparagraph (C), by striking “or omis-
 11 sion enumerated in subparagraph (A), (D), (E), or
 12 (G) of paragraph (4) of section 15(b) of this title”
 13 and inserting “, or is subject to an order or finding,
 14 enumerated in subparagraph (A), (D), (E), (G), or
 15 (H) of section 15(b)(4)”.

16 (c) CLEARING AGENCIES.—Section 17A(c) of the Se-
 17 curities Exchange Act of 1934 (15 U.S.C. 78q–1(c)) is
 18 amended—

19 (1) in paragraph (3)(A), by striking “any act
 20 enumerated in subparagraph (A), (D), (E), or (G) of
 21 paragraph (4) of section 15(b) of this title” and in-
 22 serting “any act, or is subject to an order or finding,
 23 enumerated in subparagraph (A), (D), (E), (G), or
 24 (H) of section 15(b)(4)”; and

1 (2) in paragraph (4)(C), in the first sentence,
 2 by striking “any act enumerated” and all that fol-
 3 lows through “of this title,” and inserting “any act,
 4 or is subject to an order or finding, enumerated in
 5 subparagraph (A), (D), (E), (G), or (H) of para-
 6 graph (4) of section 15(b),”.

7 (d) STATUTORY DISQUALIFICATIONS.—Section
 8 3(a)(39)(F) of the Securities Exchange Act of 1934 (15
 9 U.S.C. 78c(a)(39)(F)) is amended—

10 (1) by striking “any act enumerated in sub-
 11 paragraph (D), (E), or (G) of paragraph (4) of sec-
 12 tion 15(b) of this title” and inserting “any act, or
 13 is subject to an order or finding, enumerated in sub-
 14 paragraph (D), (E), (G), or (H) of section
 15 15(b)(4)”;

16 (2) by striking “subparagraph (B) of such
 17 paragraph (4)” and inserting “section 15(b)(4)(B)”;
 18 and

19 (3) by striking “subparagraph (C) of such para-
 20 graph (4)” and inserting “section 15(b)(4)(C)”.

21 **SEC. 6. BROADENING OF PENNY STOCK BAR.**

22 Section 15(b)(6) of the Securities Exchange Act of
 23 1934 (15 U.S.C. 78o(b)(6)) is amended—

24 (1) in subparagraph (A)—

1 (A) by striking “of any penny stock” and
 2 inserting “of any noncovered security”;

3 (B) by striking “of penny stock” and in-
 4 serting “of any noncovered security”; and

5 (C) in clause (i), by striking “or omission
 6 enumerated” and all that follows through the
 7 semicolon and inserting “, or is subject to an
 8 order or finding, enumerated in subparagraph
 9 (A), (D), (E), (G), or (H) of paragraph (4)”;
 10 (2) in subparagraph (B)—

11 (A) by striking “an offering of penny
 12 stock” each place that term appears and insert-
 13 ing “any securities offering”; and

14 (B) in clause (iii), by striking “such a per-
 15 son” and inserting “a person as to whom an
 16 order under section 21(d)(5) or subparagraph
 17 (A) of this paragraph is in effect”; and

18 (3) by striking subparagraph (C) and inserting
 19 the following:

20 “(C) For purposes of this paragraph—

21 “(i) the term ‘noncovered security’ means any
 22 security other than those described in paragraphs
 23 (1) and (2) of section 18(b) of the Securities Act of
 24 1933 (15 U.S.C. 77r(b)); and

1 “(ii) the term ‘participation in an offering of
2 noncovered securities’—

3 “(I) means acting as a promoter, finder,
4 consultant, or agent, or engaging in activities
5 with a broker, dealer, or issuer for purposes of
6 the issuance of or trading in any noncovered se-
7 curity, or inducing or attempting to induce the
8 purchase or sale of any noncovered security;

9 “(II) includes other activities that the
10 Commission specifies by rule or regulation; and

11 “(III) excludes any person or class of per-
12 sons, in whole or in part, conditionally or un-
13 conditionally, that the Commission, by rule, reg-
14 ulation, or order, may exclude.”.

15 **SEC. 7. COURT AUTHORITY TO PROHIBIT OFFERINGS OF**
16 **NONCOVERED SECURITIES.**

17 Section 21(d) of the Securities Exchange Act of 1934
18 (15 U.S.C. 78u(d)) is amended—

19 (1) by striking “(d)(1) Whenever” and inserting
20 the following:

21 “(d) **AUTHORITY OF COURTS AND COMMISSION FOR**
22 **VIOLATIONS.**—

23 “(1) **COURT ACTIONS.**—Whenever”;

(2) in paragraphs (2) and (3), by moving each of the margins in those paragraphs 2 ems to the right; and

(3) by adding at the end the following:

“(5) COURT AUTHORITY TO PROHIBIT PERSONS FROM PARTICIPATING IN OFFERING OF NONCOVERED SECURITIES.—

“(A) IN GENERAL.—In any proceeding under paragraph (1), the court may prohibit, conditionally or unconditionally, and permanently or for such period of time as it shall determine, any person that violated section 10(b) or the rules or regulations issued thereunder in connection with any transaction in any noncovered security from participating in an offering of a noncovered security.

“(B) DEFINITIONS.—For purposes of this paragraph—

“(i) the term ‘noncovered security’ means any security other than those described in paragraphs (1) and (2) of section 18(b) of the Securities Act of 1933 (15 U.S.C. 77r(b)); and

“(ii) the term ‘participation in an offering of noncovered securities’—

1 “(I) means acting as a promoter,
 2 finder, consultant, or agent, or engag-
 3 ing in activities with a broker, dealer,
 4 or issuer for purposes of the issuance
 5 of or trading in any noncovered secu-
 6 rity, or inducing or attempting to in-
 7 duce the purchase or sale of any non-
 8 covered security;

9 “(II) includes other activities
 10 that the Commission specifies by rule
 11 or regulation; and

12 “(III) excludes any person or
 13 class of persons, in whole or in part,
 14 conditionally or unconditionally, that
 15 the Commission, by rule, regulation,
 16 or order, may exempt.”.

17 **SEC. 8. BROADENING OF OFFICER AND DIRECTOR BAR.**

18 Section 21(d)(2) of the Securities Exchange Act of
 19 1934 (15 U.S.C. 78u(d)(2)) is amended—

20 (1) by striking “of this title or that” and insert-
 21 ing “, that”; and

22 (2) by striking “of this title if” and inserting “,
 23 or the securities of which are quoted in any
 24 quotation medium, if”.

1 **SEC. 9. VIOLATIONS OF COURT ORDERED BARS.**

2 (a) IN GENERAL.—Section 21 of the Securities Ex-
 3 change Act of 1934 (15 U.S.C. 78u) is amended by adding
 4 at the end the following:

5 “(j) BAR ON PARTICIPATION.—It shall be unlawful
 6 for any person, against which an order under paragraph
 7 (2) or (5) of subsection (d) is in effect, to serve as officer,
 8 director, or participant in any offering involving a non-
 9 covered security (as defined in subsection (d)(5)(B)) in
 10 contravention of that order.”.

11 (b) CONFORMING AMENDMENT.—Section
 12 21(d)(3)(D) of the Securities Exchange Act of 1934 (15
 13 U.S.C. 78u(d)(3)(D)) is amended by inserting “or relating
 14 to a violation of subsection (j) of this section,” before
 15 “each separate”.

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