

Union Calendar No. 408

111TH CONGRESS
2^D SESSION

H. R. 3817

[Report No. 111-687, Part I]

To provide the Securities and Exchange Commission with additional authorities to protect investors from violations of the securities laws, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 15, 2009

Mr. KANJORSKI introduced the following bill; which was referred to the Committee on Financial Services

DECEMBER 16, 2010

Reported with an amendment, and referred to the Committee on the Judiciary for a period ending not later than December 17, 2010, for consideration of such provisions of the bill and amendment as fall within the jurisdiction of that committee pursuant to clause 1(k) of rule X

[Strike out all after the enacting clause and insert the part printed in *italie*]

DECEMBER 17, 2010

Committee on the Judiciary discharged; committed to the Committee of the Whole House on the State of the Union and ordered to be printed

[For text of introduced bill, see copy of bill as introduced on October 15, 2009]

A BILL

To provide the Securities and Exchange Commission with additional authorities to protect investors from violations of the securities laws, and for other purposes.

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

3 **SECTION 1. SHORT TITLE.**

4 *This Act may be cited as the “Investor Protection Act*
 5 *of 2009”.*

6 **SEC. 2. TABLE OF CONTENTS.**

7 *The table of contents for this Act is as follows:*

Sec. 1. Short title.

Sec. 2. Table of contents.

TITLE I—DISCLOSURE

Sec. 101. Investor Advisory Committee established.

Sec. 102. Clarification of the commission’s authority to engage in consumer test-
ing.

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

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

Sec. 105. Beneficial ownership and short-swing profit reporting.

Sec. 106. Revision to recordkeeping rules.

Sec. 107. Study on enhancing investment advisor examinations.

Sec. 108. GAO study of financial planning.

TITLE II—ENFORCEMENT AND REMEDIES

Sec. 201. Authority to restrict mandatory pre-dispute arbitration.

Sec. 202. Comptroller General study to review securities arbitration system.

Sec. 203. Whistleblower protection.

Sec. 204. Conforming amendments for whistleblower protection.

Sec. 205. Implementation and transition provisions for whistleblower protections.

Sec. 206. Collateral bars.

Sec. 207. Aiding and abetting authority under the Securities Act and the Invest-
ment Company Act.

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

Sec. 209. Deadline for completing examinations, inspections and enforcement ac-
tions.

Sec. 210. Nationwide service of subpoenas.

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

Sec. 212. Formerly associated persons.

Sec. 213. Sharing privileged information with other authorities.

Sec. 214. Expanded access to grand jury material.

Sec. 215. Aiding and abetting standard of knowledge satisfied by recklessness.

Sec. 216. Extraterritorial jurisdiction of the antifraud provisions of the Federal
securities laws.

Sec. 217. Fidelity bonding.

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

- Sec. 219. Investment company examinations.*
- Sec. 220. Control person liability under the Securities Exchange Act.*
- Sec. 221. Enhanced application of anti-fraud provisions.*
- Sec. 222. SEC Authority to Issue Rules on Proxy Access.*

TITLE III—COMMISSION FUNDING AND ORGANIZATION

- Sec. 301. Authorization of appropriations.*
- Sec. 302. Investment adviser regulation funding.*
- Sec. 303. Amendments to section 31 of the Securities Exchange Act of 1934.*
- Sec. 304. Commission organizational study and reform.*
- Sec. 305. Capital Markets Safety Board.*
- Sec. 306. Report on implementation of “post-Madoff reforms”.*
- Sec. 307. Joint Advisory Committee.*

TITLE IV—ADDITIONAL COMMISSION REFORMS

- Sec. 401. Regulation of securities lending.*
- Sec. 402. Lost and stolen securities.*
- Sec. 403. Fingerprinting.*
- Sec. 404. Equal treatment of self-regulatory organization rules.*
- Sec. 405. Clarification that section 205 of the Investment Advisers Act of 1940 does not apply to State-registered advisers.*
- Sec. 406. Conforming amendments for the repeal of the Public Utility Holding Company Act of 1935.*
- Sec. 407. Promoting transparency in financial reporting.*
- Sec. 408. Unlawful margin lending.*
- Sec. 409. Protecting confidentiality of materials submitted to the Commission.*
- Sec. 410. Technical corrections.*
- Sec. 411. Municipal securities.*
- Sec. 412. Interested person definition.*
- Sec. 413. Rulemaking authority to protect redeeming investors.*
- Sec. 414. Study on SEC revolving door.*
- Sec. 415. Study on internal control evaluation and reporting cost burdens on smaller issuers.*
- Sec. 416. Analysis of rule regarding smaller reporting companies.*
- Sec. 417. Financial Reporting Forum.*
- Sec. 418. Investment advisers subject to State authorities.*
- Sec. 419. Custodial requirements.*
- Sec. 420. Ombudsman.*

TITLE V—SECURITIES INVESTOR PROTECTION ACT AMENDMENTS

- Sec. 501. Increasing the minimum assessment paid by SIPC members.*
- Sec. 502. Increasing the borrowing limit on treasury loans.*
- Sec. 503. Increasing the cash limit of protection.*
- Sec. 504. SIPC as trustee in SIPA liquidation proceedings.*
- Sec. 505. Insiders ineligible for SIPC advances.*
- Sec. 506. Eligibility for direct payment procedure.*
- Sec. 507. Increasing the fine for prohibited acts under SIPA.*
- Sec. 508. Penalty for misrepresentation of SIPC membership or protection.*
- Sec. 509. Futures held in a portfolio margin securities account protection.*
- Sec. 510. Study and report on the feasibility of risk-based assessments SIPC members.*
- Sec. 511. Budgetary treatment of Commission loans to SIPC.*

TITLE VI—SARBANES-OXLEY ACT AMENDMENTS

- Sec. 601. *Public Company Accounting Oversight Board oversight of auditors of brokers and dealers.*
- Sec. 602. *Foreign regulatory information sharing.*
- Sec. 603. *Expansion of audit information to be produced and exchanged with foreign counterparts.*
- Sec. 604. *Conforming amendment related to registration.*
- Sec. 605. *Fair fund amendments.*
- Sec. 606. *Exemption for nonaccelerated filers.*
- Sec. 607. *Whistleblower protection against retaliation by a subsidiary of an issuer.*
- Sec. 608. *Congressional access to information.*
- Sec. 609. *Creation of ombudsman for the PCAOB.*
- Sec. 610. *Auditing Oversight Board.*

TITLE VII—SENIOR INVESTMENT PROTECTION

- Sec. 701. *Findings.*
- Sec. 702. *Definitions.*
- Sec. 703. *Grants to States for enhanced protection of seniors from being misled by false designations.*
- Sec. 704. *Applications.*
- Sec. 705. *Length of participation.*
- Sec. 706. *Authorization of appropriations.*

TITLE VIII—REGISTRATION OF MUNICIPAL FINANCIAL ADVISORS

- Sec. 801. *Municipal financial adviser registration requirement.*
- Sec. 802. *Conforming amendments.*
- Sec. 803. *Effective dates.*

1 **TITLE I—DISCLOSURE**2 **SEC. 101. INVESTOR ADVISORY COMMITTEE ESTABLISHED.**

3 *The Securities Exchange Act of 1934 (15 U.S.C. 78a*
 4 *et seq.) is amended by adding after section 4C the following*
 5 *new section:*

6 **“SEC. 4D. INVESTOR ADVISORY COMMITTEE.**

7 “(a) *ESTABLISHMENT AND PURPOSE.—There is estab-*
 8 *lished an Investor Advisory Committee (in this section re-*
 9 *ferred to as the ‘Committee’) to advise and consult with the*
 10 *Commission on—*

1 “(1) *regulatory priorities and issues regarding*
2 *new products, trading strategies, fee structures and*
3 *the effectiveness of disclosures;*

4 “(2) *initiatives to protect investor interest; and*

5 “(3) *initiatives to promote investor confidence in*
6 *the integrity of the marketplace.*

7 “(b) *MEMBERSHIP.—*

8 “(1) *APPOINTMENT.—The Chairman of the Com-*
9 *mission shall appoint the members of the Committee,*
10 *which members shall—*

11 “(A) *represent the interests of individual*
12 *investors;*

13 “(B) *represent the interests of institutional*
14 *investors; and*

15 “(C) *use a wide range of investment ap-*
16 *proaches.*

17 “(2) *MEMBERS NOT COMMISSION EMPLOYEES.—*

18 *Members shall not be considered employees or agents*
19 *of the Commission solely because of membership on*
20 *the Committee.*

21 “(c) *MEETINGS.—The Committee shall meet from time*
22 *to time at the call of the Commission, but, at a minimum,*
23 *shall meet at least twice each year.*

1 “(d) *COMPENSATION AND TRAVEL EXPENSES.*—Mem-
2 bers of the Committee who are not full-time employees of
3 the United States shall—

4 “(1) be entitled to receive compensation at a rate
5 fixed by the Commission while attending meetings of
6 the Committee, including travel time; and

7 “(2) be allowed travel expenses, including trans-
8 portation and subsistence, while away from their
9 homes or regular places of business.

10 “(e) *COMMITTEE FINDINGS.*—Nothing in this section
11 requires the Commission to accept, agree, or act upon the
12 findings or recommendations of the Committee.

13 “(f) *AUTHORIZATION OF APPROPRIATIONS.*—There is
14 authorized to be appropriated to the Commission such sums
15 as are necessary for the activities of the Committee.”.

16 **SEC. 102. CLARIFICATION OF THE COMMISSION’S AUTHOR-**
17 **ITY TO ENGAGE IN CONSUMER TESTING.**

18 “(a) *AMENDMENT TO SECURITIES ACT OF 1933.*—Sec-
19 tion 19 of the Securities Act of 1933 (15 U.S.C. 77s) is
20 amended by adding at the end the following new subsection:

21 “(e) For the purposes of evaluating its rules and pro-
22 grams and for considering, proposing, adopting, or engag-
23 ing in rules or programs, the Commission is authorized to
24 gather information, communicate with investors or other
25 members of the public, and engage in such temporary or

1 *experimental programs as the Commission in its discretion*
2 *determines is in the public interest or for the protection of*
3 *investors. The Commission may delegate to its staff some*
4 *or all of the authority conferred by this subsection.”.*

5 *(b) AMENDMENT TO SECURITIES EXCHANGE ACT OF*
6 *1934.—Section 23 of the Securities Exchange Act of 1934*
7 *(15 U.S.C. 78w) is amended by redesignating subsections*
8 *(b), (c), and (d) as subsections (c), (d), and (e), respectively,*
9 *and inserting after subsection (a) the following:*

10 *“(b) For the purposes of evaluating its rules and pro-*
11 *grams and for considering proposing, adopting, or engaging*
12 *in rules or programs, the Commission is authorized to gath-*
13 *er information, communicate with investors or other mem-*
14 *bers of the public, and engage in such temporary or experi-*
15 *mental programs as the Commission in its discretion deter-*
16 *mines is in the public interest or for the protection of inves-*
17 *tors. The Commission may delegate to its staff some or all*
18 *of the authority conferred by this subsection.”.*

19 *(c) AMENDMENT TO INVESTMENT COMPANY ACT OF*
20 *1940.—Section 38 of the Investment Company Act of 1940*
21 *(15 U.S.C. 80a–38) is amended by adding at the end the*
22 *following new subsection:*

23 *“(d) GATHERING INFORMATION.—For the purposes of*
24 *evaluating its rules and programs and for considering pro-*
25 *posing, adopting, or engaging in rules or programs, the*

1 *Commission is authorized to gather information, commu-*
2 *nicate with investors or other members of the public, and*
3 *engage in such temporary or experimental programs as the*
4 *Commission in its discretion determines is in the public*
5 *interest or for the protection of investors. The Commission*
6 *may delegate to its staff some or all of the authority con-*
7 *ferred by this subsection.”.*

8 *(d) AMENDMENT TO THE INVESTMENT ADVISERS ACT*
9 *OF 1940.—Section 211 of the Investment Advisers Act of*
10 *1940 (15 U.S.C. 80b–11) is amended by adding at the end*
11 *the following new subsections:*

12 *“(e) For the purposes of evaluating its rules and pro-*
13 *grams and for considering proposing, adopting, or engaging*
14 *in rules or programs, the Commission is authorized to gath-*
15 *er information, communicate with investors or other mem-*
16 *bers of the public, and engage in such temporary or experi-*
17 *mental programs as the Commission in its discretion deter-*
18 *mines is in the public interest or for the protection of inves-*
19 *tors. The Commission may delegate to its staff some or all*
20 *of the authority conferred by this subsection.”.*

21 **SEC. 103. ESTABLISHMENT OF A FIDUCIARY DUTY FOR BRO-**
22 **KERS, DEALERS, AND INVESTMENT ADVISERS,**
23 **AND HARMONIZATION OF REGULATION.**

24 *(a) IN GENERAL.—*

1 (1) *SECURITIES EXCHANGE ACT OF 1934.*—*Sec-*
2 *tion 15 of the Securities Exchange Act of 1934 (15*
3 *U.S.C. 78o) is amended—*

4 (A) *by redesignating the second subsection*
5 *(i) as subsection (j); and*

6 (B) *by adding at the end the following new*
7 *subsections:*

8 “(k) *STANDARD OF CONDUCT.*—

9 “(1) *IN GENERAL.*—*Notwithstanding any other*
10 *provision of this Act or the Investment Advisers Act*
11 *of 1940, the Commission shall promulgate rules to*
12 *provide that, with respect to a broker or dealer, when*
13 *providing personalized investment advice about secu-*
14 *rities to a retail customer (and such other customers*
15 *as the Commission may by rule provide), the stand-*
16 *ard of conduct for such broker or dealer with respect*
17 *to such customer shall be the same as the standard of*
18 *conduct applicable to an investment adviser under the*
19 *Investment Advisers Act of 1940. The receipt of com-*
20 *penensation based on commission or other standard*
21 *compensation for the sale of securities shall not, in*
22 *and of itself, be considered a violation of such stand-*
23 *ard applied to a broker or dealer.*

24 “(2) *DISCLOSURE OF RANGE OF PRODUCTS OF-*
25 *FERED.*—*Where a broker or dealer sells only propri-*

1 *etary or other limited range of products, as deter-*
2 *mined by the Commission, the Commission shall by*
3 *rule require that such broker or dealer provide notice*
4 *to each retail customer and obtain the consent or ac-*
5 *knowledgment of the customer. The sale of only pro-*
6 *prietary or other limited range of products by a*
7 *broker or dealer shall not, in and of itself, be consid-*
8 *ered a violation of the standard set forth in para-*
9 *graph (1).*

10 “(3) *RETAIL CUSTOMER DEFINED.*—*For pur-*
11 *poses of this subsection, the term ‘retail customer’*
12 *means a natural person, or the legal representative of*
13 *such natural person, who—*

14 “(A) *receives personalized investment advice*
15 *about securities from a broker or dealer; and*

16 “(B) *uses such advice primarily for per-*
17 *sonal, family, or household purposes.*

18 “(l) *OTHER MATTERS.*—*The Commission shall—*

19 “(1) *facilitate the provision of simple and clear*
20 *disclosures to investors regarding the terms of their*
21 *relationships with brokers, dealers, and investment*
22 *advisers, including any material conflicts of interest;*
23 *and*

24 “(2) *examine and, where appropriate, promul-*
25 *gate rules prohibiting or restricting certain sales*

1 *practices, conflicts of interest, and compensation*
2 *schemes for brokers, dealers, and investment advisers*
3 *that the Commission deems contrary to the public in-*
4 *terest and the protection of investors.”.*

5 (2) *INVESTMENT ADVISERS ACT OF 1940.—Sec-*
6 *tion 211 of the Investment Advisers Act of 1940, as*
7 *amended by section 102(d), is further amended by*
8 *adding at the end the following new subsections:*

9 “(f) *STANDARD OF CONDUCT.—*

10 “(1) *IN GENERAL.—The Commission shall pro-*
11 *mulgate rules to provide that the standard of conduct*
12 *for all brokers, dealers, and investment advisers, when*
13 *providing personalized investment advice about secu-*
14 *rities to retail customers (and such other customers as*
15 *the Commission may by rule provide), shall be to act*
16 *in the best interest of the customer without regard to*
17 *the financial or other interest of the broker, dealer, or*
18 *investment adviser providing the advice. In accord-*
19 *ance with such rules, any material conflicts of inter-*
20 *est shall be disclosed and may be consented to by the*
21 *customer. Such rules shall provide that such standard*
22 *of conduct shall be no less stringent than the standard*
23 *applicable to investment advisers under section*
24 *206(1) and (2) of this Act when providing personal-*
25 *ized investment advice about securities, except the*

1 *Commission shall not ascribe a meaning to the term*
2 *‘customer’ that would include an investor in a private*
3 *fund managed by an investment adviser, where such*
4 *private fund has entered into an advisory contract*
5 *with such adviser. The receipt of compensation based*
6 *on commission or fees shall not, in and of itself, be*
7 *considered a violation of such standard applied to a*
8 *broker, dealer, or investment adviser.*

9 “(2) *RETAIL CUSTOMER DEFINED.*—*For pur-*
10 *poses of this subsection, the term ‘retail customer’*
11 *means a natural person, or the legal representative of*
12 *such natural person, who—*

13 “(A) *receives personalized investment advice*
14 *about securities from a broker, dealer, or invest-*
15 *ment adviser; and*

16 “(B) *uses such advice primarily for per-*
17 *sonal, family, or household purposes.*

18 “(g) *OTHER MATTERS.*—*The Commission shall—*

19 “(1) *facilitate the provision of simple and clear*
20 *disclosures to investors regarding the terms of their*
21 *relationships with brokers, dealers, and investment*
22 *advisers, including any material conflicts of interest;*
23 *and*

24 “(2) *examine and, where appropriate, promul-*
25 *gate rules prohibiting or restricting certain sales*

1 *practices, conflicts of interest, and compensation*
2 *schemes for brokers, dealers, and investment advisers*
3 *that the Commission deems contrary to the public in-*
4 *terest and the protection of investors.”.*

5 *(b) HARMONIZATION OF ENFORCEMENT.—*

6 *(1) SECURITIES EXCHANGE ACT OF 1934.—Sec-*
7 *tion 15 of the Securities Exchange Act of 1934, as*
8 *amended by subsection (a)(1), is further amended by*
9 *adding at the end the following new subsection:*

10 *“(m) HARMONIZATION OF ENFORCEMENT.—The en-*
11 *forcement authority of the Commission with respect to vio-*
12 *lations of the standard of conduct applicable to a broker*
13 *or dealer providing personalized investment advice about*
14 *securities to a retail customer shall include—*

15 *“(1) the enforcement authority of the Commis-*
16 *sion with respect to such violations provided under*
17 *this Act, and*

18 *“(2) the enforcement authority of the Commis-*
19 *sion with respect to violations of the standard of con-*
20 *duct applicable to an investment advisor under the*
21 *Investment Advisers Act of 1940, including the au-*
22 *thority to impose sanctions for such violations, and*
23 *the Commission shall seek to prosecute and sanction viola-*
24 *tors of the standard of conduct applicable to a broker or*
25 *dealer providing personalized investment advice about secu-*

1 *rities to a retail customer under this Act to same extent*
2 *as the Commission prosecutes and sanctions violators of the*
3 *standard of conduct applicable to an investment advisor*
4 *under the Investment Advisers Act of 1940.”.*

5 (2) *INVESTMENT ADVISERS ACT OF 1940.—Section*
6 *211 of the Investment Advisers Act of 1940, as*
7 *amended by section (a)(2), is further amended by*
8 *adding at the end the following new subsection:*

9 “(h) *HARMONIZATION OF ENFORCEMENT.—The en-*
10 *forcement authority of the Commission with respect to vio-*
11 *lations of the standard of conduct applicable to an invest-*
12 *ment adviser shall include—*

13 “(1) *the enforcement authority of the Commis-*
14 *sion with respect to such violations provided under*
15 *this Act, and*

16 “(2) *the enforcement authority of the Commis-*
17 *sion with respect to violations of the standard of con-*
18 *duct applicable to a broker or dealer providing per-*
19 *sonalized investment advice about securities to a re-*
20 *tail customer under the Securities Exchange Act of*
21 *1934, including the authority to impose sanctions for*
22 *such violations, and*

23 *the Commission shall seek to prosecute and sanction viola-*
24 *tors of the standard of conduct applicable to an investment*
25 *advisor under this Act to same extent as the Commission*

1 *prosecutes and sanctions violators of the standard of con-*
2 *duct applicable to a broker or dealer providing personalized*
3 *investment advice about securities to a retail customer*
4 *under the Securities Exchange Act of 1934.”.*

5 **SEC. 104. COMMISSION STUDY ON DISCLOSURE TO RETAIL**
6 **CUSTOMERS BEFORE PURCHASE OF PROD-**
7 **UCTS OR SERVICES.**

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

17 *(1) the nature of a “retail customer”, taking into*
18 *consideration the definition in section 15(k) of the Se-*
19 *curities Exchange Act of 1934 (15 U.S.C. 78o), as*
20 *amended by section 103 of this Act;*

21 *(2) the range of products and services sold or*
22 *provided to retail customers, and the sellers or pro-*
23 *viders of such products and services, that are within*
24 *the Commission’s jurisdiction;*

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

6 (4) *information that retail customers should re-*
7 *ceive prior to purchasing each product or service, and*
8 *the appropriate person or entity to provide such in-*
9 *formation; and*

10 (5) *ways to ensure that, where possible, reason-*
11 *ably similar products and services are subject to simi-*
12 *lar regulatory treatment, including with respect to in-*
13 *formation that must be provided to retail customers*
14 *prior to the purchase of such products or services and*
15 *how such information is provided.*

16 (b) *RULEMAKING.—*

17 (1) *Notwithstanding any other provision of the*
18 *Securities Act of 1933 (15 U.S.C. 77a et seq.) or the*
19 *Investment Company Act of 1940 (15 U.S.C. 80a–1*
20 *et seq.), following completion of the study required by*
21 *subsection (a), the Commission is authorized to pro-*
22 *mulgate rules to require that the appropriate persons*
23 *or entities provide designated documents or informa-*
24 *tion to retail customers prior to the purchase of iden-*

1 *tified investment products or services. Any such rules*
2 *shall—*

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

5 *(B) take into consideration, to the extent*
6 *possible, the need for such documents and infor-*
7 *mation to be consistent and comparable across*
8 *investment products or services sold or provided*
9 *to retail customers; and*

10 *(C) reduce, to the extent possible, disrup-*
11 *tions to the purchase process for investment*
12 *products and services sold or provided to retail*
13 *customers, by means such as permitting required*
14 *disclosures to be made via the Internet.*

15 *(2) Notwithstanding paragraph (1), the Commis-*
16 *sion is authorized to promulgate rules in connection*
17 *with—*

18 *(A) the implementation of section 103; and*

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

1 **SEC. 105. BENEFICIAL OWNERSHIP AND SHORT-SWING**
2 **PROFIT REPORTING.**

3 (a) *BENEFICIAL OWNERSHIP REPORTING.*—Section 13
4 of the Securities Exchange Act of 1934 (15 U.S.C. 78m)
5 is amended—

6 (1) in subsection (d)(1)—

7 (A) by inserting after “within ten days
8 after such acquisition” the following: “or within
9 such shorter time as the Commission may estab-
10 lish by rule”; and

11 (B) by striking “send to the issuer of the se-
12 curity at its principal executive office, by reg-
13 istered or certified mail, send to each exchange
14 where the security is traded, and”;

15 (2) in subsection (d)(2)—

16 (A) by striking “in the statements to the
17 issuer and the exchange, and”; and

18 (B) by striking “shall be transmitted to the
19 issuer and the exchange and”;

20 (3) in subsection (g)(1), by striking “shall send
21 to the issuer of the security and”; and

22 (4) in subsection (g)(2)—

23 (A) by striking “sent to the issuer and”;
24 and

25 (B) by striking “shall be transmitted to the
26 issuer and”.

1 (b) *SHORT-SWING PROFIT REPORTING.*—Section 16(a)
2 *of the Securities Exchange Act of 1934 (15 U.S.C. 78p(a))*
3 *is amended—*

4 (1) *in paragraph (1), by striking “(and, if such*
5 *security is registered on a national securities ex-*
6 *change, also with the exchange)”*; and

7 (2) *in paragraph (2)(B), by inserting after “offi-*
8 *cer” the following: “, or within such shorter time as*
9 *the Commission may establish by rule”*.

10 **SEC. 106. REVISION TO RECORDKEEPING RULES.**

11 (a) *INVESTMENT COMPANY ACT OF 1940 AMEND-*
12 *MENTS.*—Section 31 of the Investment Company Act of
13 1940 (15 U.S.C. 80a–30) is amended—

14 (1) *in subsection (a)(1), by adding at the end the*
15 *following: “Each person with custody or use of a reg-*
16 *istered investment company’s securities, deposits, or*
17 *credits shall maintain and preserve all records that*
18 *relate to the person’s custody or use of the registered*
19 *investment company’s securities, deposits, or credits*
20 *for such period or periods as the Commission, by*
21 *rules and regulations, may prescribe as necessary or*
22 *appropriate in the public interest or for the protec-*
23 *tion of investors.”*; and

24 (2) *in subsection (b), by adding at the end the*
25 *following new paragraph:*

1 “(4) *RECORDS OF PERSONS WITH CUSTODY OR*
2 *USE.—*

3 “(A) *IN GENERAL.—Notwithstanding para-*
4 *graph (1), records of persons with custody or use*
5 *of a registered investment company’s securities,*
6 *deposits, or credits, that relate to such custody or*
7 *use, are subject at any time, or from time to*
8 *time, to such reasonable periodic, special, or*
9 *other examinations and other information and*
10 *document requests by representatives of the Com-*
11 *mission as the Commission deems necessary or*
12 *appropriate in the public interest or for the pro-*
13 *tection of investors.*

14 “(B) *CERTAIN PERSONS SUBJECT TO OTHER*
15 *REGULATION.—Persons subject to regulation and*
16 *examination by a Federal financial institution*
17 *regulatory agency (as such term is defined under*
18 *section 212(c)(2) of title 18, United States Code)*
19 *may satisfy any examination request, informa-*
20 *tion request, or document request described under*
21 *subparagraph (A), by providing the Commission*
22 *with a detailed listing, in writing, of the reg-*
23 *istered investment company’s securities, deposits,*
24 *or credits within such person’s custody or use.”.*

1 (b) *INVESTMENT ADVISERS ACT OF 1940 AMEND-*
2 *MENT.—Section 204 of the Investment Advisers Act of 1940*
3 *(15 U.S.C. 80b-4) is amended by adding at the end the*
4 *following new subsection:*

5 “(d) *RECORDS OF PERSONS WITH CUSTODY OR*
6 *USE.—*

7 “(1) *IN GENERAL.—Records of persons with cus-*
8 *tody or use of a client’s securities, deposits, or credits,*
9 *that relate to such custody or use, are subject at any*
10 *time, or from time to time, to such reasonable peri-*
11 *odic, special, or other examinations and other infor-*
12 *mation and document requests by representatives of*
13 *the Commission as the Commission deems necessary*
14 *or appropriate in the public interest or for the protec-*
15 *tion of investors.*

16 “(2) *CERTAIN PERSONS SUBJECT TO OTHER*
17 *REGULATION.—Persons subject to regulation and ex-*
18 *amination by a Federal financial institution regu-*
19 *latory agency (as such term is defined under section*
20 *212(c)(2) of title 18, United States Code) may satisfy*
21 *any examination request, information request, or doc-*
22 *ument request described under paragraph (1), by pro-*
23 *viding the Commission with a detailed listing, in*
24 *writing, of the client’s securities, deposits, or credits*
25 *within such person’s custody or use.”.*

1 **SEC. 107. STUDY ON ENHANCING INVESTMENT ADVISOR EX-**
2 **AMINATIONS.**

3 (a) *STUDY REQUIRED.*—

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

7 (2) *AREAS OF CONSIDERATION.*—*The study re-*
8 *quired by this subsection shall examine—*

9 (A) *the number and frequency of examina-*
10 *tions of investment advisers by the Commission*
11 *over the 5 years preceding the date of the enact-*
12 *ment of this Act;*

13 (B) *the extent to which having Congress au-*
14 *thorize the Commission to designate one or more*
15 *self-regulatory organizations to augment the*
16 *Commission's efforts in overseeing investment*
17 *advisers would improve the frequency of exami-*
18 *nations of investment advisers; and*

19 (C) *current and potential approaches to ex-*
20 *amining the investment advisory activities of*
21 *dually registered broker-dealers and investment*
22 *advisers or affiliated broker-dealers and invest-*
23 *ment advisers.*

24 (b) *REPORT REQUIRED.*—*The Commission shall re-*
25 *port its findings to the Committee on Financial Services*
26 *of the House of Representatives and the Committee on*

1 *Banking, Housing, and Urban Affairs of the Senate, not*
2 *later than 180 days after the date of enactment of this Act,*
3 *and shall use such findings to revise its rules and regula-*
4 *tions, as necessary. The report shall include a discussion*
5 *of regulatory or legislative steps that are recommended or*
6 *that may be necessary to address concerns identified in the*
7 *study.*

8 **SEC. 108. GAO STUDY OF FINANCIAL PLANNING.**

9 (a) *STUDY REQUIRED.*—*The Comptroller General of*
10 *the United States shall conduct a study on the regulation*
11 *and oversight of financial planning. The study shall con-*
12 *sider—*

13 (1) *the unique role of financial planners in pro-*
14 *viding comprehensive advice in investment planning,*
15 *income tax planning, education planning, retirement*
16 *planning, estate planning, risk management, and*
17 *other areas with respect to the management of finan-*
18 *cial resources; and*

19 (2) *any gaps in the regulation of financial plan-*
20 *ners given existing State and Federal regulation of fi-*
21 *nancial planning activities and the need to provide*
22 *related consumer protections for such financial plan-*
23 *ning activities.*

24 (b) *REPORT.*—*Not later than the end of the 180-day*
25 *period beginning on the date of the enactment of this Act,*

1 *the Comptroller General of the United States shall submit*
2 *to the Congress a report containing the findings and deter-*
3 *minations made by the Comptroller General in carrying out*
4 *the study required under subsection (a), including rec-*
5 *ommendations for the appropriate regulation of, or stand-*
6 *ards for, financial planners as a profession and how such*
7 *regulations or standards should be established.*

8 ***TITLE II—ENFORCEMENT AND***
9 ***REMEDIES***

10 ***SEC. 201. AUTHORITY TO RESTRICT MANDATORY PRE-DIS-***
11 ***PUTE ARBITRATION.***

12 *(a) AMENDMENT TO SECURITIES EXCHANGE ACT OF*
13 *1934.—Section 15 of the Securities Exchange Act of 1934*
14 *(15 U.S.C. 78o), as amended by section 103, is further*
15 *amended by adding at the end the following new subsection:*

16 *“(n) AUTHORITY TO RESTRICT MANDATORY PRE-DIS-*
17 *PUTE ARBITRATION.—The Commission, by rule, may pro-*
18 *hibit, or impose conditions or limitations on the use of,*
19 *agreements that require customers or clients of any broker,*
20 *dealer, or municipal securities dealer to arbitrate any fu-*
21 *ture dispute between them arising under the Federal securi-*
22 *ties laws, the rules and regulations thereunder, or the rules*
23 *of a self-regulatory organization if it finds that such prohi-*
24 *bitation, imposition of conditions, or limitations are in the*
25 *public interest and for the protection of investors.”.*

1 **(b) AMENDMENT TO INVESTMENT ADVISERS ACT OF**
2 *1940.—Section 205 of the Investment Advisers Act of 1940*
3 *(15 U.S.C. 80b-5) is amended by adding at the end the*
4 *following new subsection:*

5 **“(f) AUTHORITY TO RESTRICT MANDATORY PRE-DIS-**
6 *PUTE ARBITRATION.—The Commission, by rule, may pro-*
7 *hibit, or impose conditions or limitations on the use of,*
8 *agreements that require customers or clients of any invest-*
9 *ment adviser to arbitrate any future dispute between them*
10 *arising under the Federal securities laws, the rules and reg-*
11 *ulations thereunder, or the rules of a self-regulatory organi-*
12 *zation if it finds that such prohibition, imposition of condi-*
13 *tions, or limitations are in the public interest and for the*
14 *protection of investors.”.*

15 **SEC. 202. COMPTROLLER GENERAL STUDY TO REVIEW SE-**
16 **CURITIES ARBITRATION SYSTEM.**

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

19 **(1) the costs to parties of an arbitration pro-**
20 *ceeding using the arbitration system operated by the*
21 *Financial Industry Regulatory Authority and over-*
22 *seen by the Securities and Exchange Commission as*
23 *compared to litigation;*

24 **(2) the percentage of recovery of the total amount**
25 *of a claim in an arbitration proceeding using the ar-*

1 sion and subject to subsection (b), may pay an award or
2 awards not exceeding an amount equal to 30 percent, in
3 total, of the monetary sanctions imposed in the action or
4 related actions to one or more whistleblowers who volun-
5 tarily provided original information to the Commission
6 that led to the successful enforcement of the action. Any
7 amount payable under the preceding sentence shall be paid
8 from the fund described in subsection (f).

9 “(b) *DETERMINATION OF AMOUNT OF AWARD; DENIAL*
10 *OF AWARD.*—

11 “(1) *DETERMINATION OF AMOUNT OF AWARD.*—

12 *The determination of the amount of an award, within*
13 *the limit specified in subsection (a), shall be in the*
14 *sole discretion of the Commission. The Commission*
15 *may take into account the significance of the whistle-*
16 *blower’s information to the success of the judicial or*
17 *administrative action described in subsection (a), the*
18 *degree of assistance provided by the whistleblower and*
19 *any legal representative of the whistleblower in such*
20 *action, the Commission’s programmatic interest in*
21 *detering violations of the securities laws by making*
22 *awards to whistleblowers who provide information*
23 *that leads to the successful enforcement of such laws,*
24 *and such additional factors as the Commission may*
25 *establish by rules or regulations.*

1 “(2) *DENIAL OF AWARD.*—No award under sub-
2 *section (a) shall be made—*

3 “(A) *to any whistleblower who is, or was at*
4 *the time he or she acquired the original informa-*
5 *tion submitted to the Commission, a member, of-*
6 *ficer, or employee of any appropriate regulatory*
7 *agency, the Department of Justice, the Public*
8 *Company Accounting Oversight Board, or a self-*
9 *regulatory organization;*

10 “(B) *to any whistleblower who is convicted*
11 *of a criminal violation related to the judicial or*
12 *administrative action for which the whistle-*
13 *blower otherwise could receive an award under*
14 *this section; or*

15 “(C) *to any whistleblower who fails to sub-*
16 *mit information to the Commission in such form*
17 *as the Commission may, by rule, require.*

18 “(c) *REPRESENTATION.*—

19 “(1) *PERMITTED REPRESENTATION.*—Any whis-
20 *tleblower who makes a claim for an award under sub-*
21 *section (a) may be represented by counsel.*

22 “(2) *REQUIRED REPRESENTATION.*—Any whis-
23 *tleblower who makes a claim for an award under sub-*
24 *section (a) must be represented by counsel if the whis-*
25 *tleblower submits the information upon which the*

1 *claim is based anonymously. Prior to the payment of*
2 *an award, the whistleblower must disclose his or her*
3 *identity and provide such other information as the*
4 *Commission may require.*

5 *“(d) NO CONTRACT NECESSARY.—No contract with the*
6 *Commission is necessary for any whistleblower to receive*
7 *an award under subsection (a), unless the Commission, by*
8 *rule or regulation, so requires.*

9 *“(e) APPEALS.—Any determinations under this sec-*
10 *tion, including whether, to whom, or in what amounts to*
11 *make awards, shall be in the sole discretion of the Commis-*
12 *sion, and any such determinations shall be final and not*
13 *subject to judicial review.*

14 *“(f) INVESTOR PROTECTION FUND.—*

15 *“(1) FUND ESTABLISHED.—There is established*
16 *in the Treasury of the United States a fund to be*
17 *known as the ‘Securities and Exchange Commission*
18 *Investor Protection Fund’ (referred to in this section*
19 *as the ‘Fund’).*

20 *“(2) USE OF FUND.—The Fund shall be avail-*
21 *able to the Commission, without further appropri-*
22 *ation or fiscal year limitation, for the following pur-*
23 *poses:*

24 *“(A) Paying awards to whistleblowers as*
25 *provided in subsection (a).*

1 “(B) *Funding investor education initiatives*
2 *designed to help investors protect themselves*
3 *against securities fraud or other violations of the*
4 *securities laws, or the rules and regulations*
5 *thereunder.*

6 “(3) *DEPOSITS AND CREDITS.—There shall be*
7 *deposited into or credited to the Fund—*

8 “(A) *any monetary sanction collected by the*
9 *Commission in any judicial or administrative*
10 *action brought by the Commission under the se-*
11 *curities laws that is not added to a disgorgement*
12 *fund or other fund pursuant to section 308 of the*
13 *Sarbanes-Oxley Act of 2002 or otherwise distrib-*
14 *uted to victims of a violation of the securities*
15 *laws, or the rules and regulations thereunder,*
16 *underlying such action, unless the balance of the*
17 *Fund at the time the monetary sanction is col-*
18 *lected exceeds \$100,000,000;*

19 “(B) *any monetary sanction added to a*
20 *disgorgement fund or other fund pursuant to sec-*
21 *tion 308 of the Sarbanes-Oxley Act of 2002 that*
22 *is not distributed to the victims for whom the*
23 *disgorgement fund or other fund was established,*
24 *unless the balance of the Fund at the time the de-*
25 *termination is made not to distribute the mone-*

1 *tary sanction to such victims exceeds*
2 *\$100,000,000; and*

3 *“(C) all income from investments made*
4 *under paragraph (4).*

5 *“(4) INVESTMENTS.—*

6 *“(A) AMOUNTS IN FUND MAY BE IN-*
7 *VESTED.—The Commission may request the Sec-*
8 *retary of the Treasury to invest the portion of*
9 *the Fund that is not, in the Commission’s judg-*
10 *ment, required to meet the current needs of the*
11 *Fund.*

12 *“(B) ELIGIBLE INVESTMENTS.—Investments*
13 *shall be made by the Secretary of the Treasury*
14 *in obligations of the United States or obligations*
15 *that are guaranteed as to principal and interest*
16 *by the United States, with maturities suitable to*
17 *the needs of the Fund as determined by the Com-*
18 *mission.*

19 *“(C) INTEREST AND PROCEEDS CRED-*
20 *ITED.—The interest on, and the proceeds from*
21 *the sale or redemption of, any obligations held in*
22 *the Fund shall be credited to, and form a part*
23 *of, the Fund.*

24 *“(5) REPORTS TO CONGRESS.—Not later than*
25 *October 30 of each year, the Commission shall trans-*

1 *mit to the Committee on Banking, Housing, and*
2 *Urban Affairs of the Senate, and the Committee on*
3 *Financial Services of the House of Representatives a*
4 *report on—*

5 *“(A) the Commission’s whistleblower award*
6 *program under this section, including a descrip-*
7 *tion of the number of awards that were granted*
8 *and the types of cases in which awards were*
9 *granted during the preceding fiscal year;*

10 *“(B) investor education initiatives described*
11 *in paragraph (2)(B) that were funded by the*
12 *Fund during the preceding fiscal year;*

13 *“(C) the balance of the Fund at the begin-*
14 *ning of the preceding fiscal year;*

15 *“(D) the amounts deposited into or credited*
16 *to the Fund during the preceding fiscal year;*

17 *“(E) the amount of earnings on investments*
18 *of amounts in the Fund during the preceding fis-*
19 *cal year;*

20 *“(F) the amount paid from the Fund dur-*
21 *ing the preceding fiscal year to whistleblowers*
22 *pursuant to subsection (a);*

23 *“(G) the amount paid from the Fund dur-*
24 *ing the preceding fiscal year for investor edu-*
25 *cation initiatives described in paragraph (1)(B);*

1 “(H) the balance of the Fund at the end of
2 the preceding fiscal year; and

3 “(I) a complete set of audited financial
4 statements, including a balance sheet, income
5 statement, and cash flow analysis.

6 “(g) PROTECTION OF WHISTLEBLOWERS.—

7 “(1) PROHIBITION AGAINST RETALIATION.—

8 “(A) IN GENERAL.—No employer may dis-
9 charge, demote, suspend, threaten, harass, or in
10 any other manner discriminate against an em-
11 ployee, contractor, or agent in the terms and
12 conditions of employment because of any lawful
13 act done by the employee, contractor, or agent in
14 providing information to the Commission in ac-
15 cordance with subsection (a), or in assisting in
16 any investigation or judicial or administrative
17 action of the Commission based upon or related
18 to such information.

19 “(B) ENFORCEMENT.—

20 “(i) CAUSE OF ACTION.—An indi-
21 vidual who alleges discharge or other dis-
22 crimination in violation of subparagraph
23 (A) may bring an action under this sub-
24 section in the appropriate district court of

1 the United States for the relief provided in
2 subparagraph (C).

3 “(ii) *SUBPOENAS.*—A subpoena requir-
4 ing the attendance of a witness at a trial or
5 hearing conducted under this section may
6 be served at any place in the United States.

7 “(iii) *STATUTE OF LIMITATIONS.*—An
8 action under this subsection may not be
9 brought more than 6 years after the date on
10 which the violation of subparagraph (A) oc-
11 curred, or more than 3 years after the date
12 when facts material to the right of action
13 are known or reasonably should have been
14 known by the employee alleging a violation
15 of subparagraph (A), but in no event after
16 10 years after the date on which the viola-
17 tion occurs.

18 “(C) *RELIEF.*—An employee, contractor, or
19 agent prevailing in any action brought under
20 subparagraph (B) shall be entitled to all relief
21 necessary to make that employee, contractor, or
22 agent whole, including reinstatement with the
23 same seniority status that the employee, con-
24 tractor, or agent would have had, but for the dis-
25 crimination, 2 times the amount of back pay,

1 *with interest, and compensation for any special*
2 *damages sustained as a result of the discrimina-*
3 *tion, including litigation costs, expert witness*
4 *fees, and reasonable attorneys' fees.*

5 “(2) *CONFIDENTIALITY.*—

6 “(A) *IN GENERAL.*—*Except as provided in*
7 *subparagraph (B), all information provided to*
8 *the Commission by a whistleblower shall be con-*
9 *fidential and privileged as an evidentiary matter*
10 *(and shall not be subject to civil discovery or*
11 *other legal process) in any proceeding in any*
12 *Federal or State court or administrative agency,*
13 *and shall be exempt from disclosure, in the*
14 *hands of an agency or establishment of the Fed-*
15 *eral Government, under the Freedom of Informa-*
16 *tion Act (5 U.S.C. 552), or otherwise, unless and*
17 *until required to be disclosed to a defendant or*
18 *respondent in connection with a proceeding in-*
19 *stituted by the Commission or any entity de-*
20 *scribed in subparagraph (B). For purposes of*
21 *section 552 of title 5, United States Code, this*
22 *paragraph shall be considered a statute described*
23 *in subsection (b)(3)(B) of such section 552. Noth-*
24 *ing herein is intended to limit the Attorney Gen-*
25 *eral's ability to present such evidence to a grand*

1 *jury or to share such evidence with potential wit-*
2 *nesses or defendants in the course of an ongoing*
3 *criminal investigation.*

4 “(B) *AVAILABILITY TO GOVERNMENT AGEN-*
5 *CIES.—Without the loss of its status as confiden-*
6 *tial and privileged in the hands of the Commis-*
7 *sion, all information referred to in subparagraph*
8 *(A) may, in the discretion of the Commission,*
9 *when determined by the Commission to be nec-*
10 *essary to accomplish the purposes of this Act and*
11 *protect investors, be made available to—*

12 *“(i) the Attorney General of the United*
13 *States,*

14 *“(ii) an appropriate regulatory au-*
15 *thority,*

16 *“(iii) a self-regulatory organization,*

17 *“(iv) the Public Company Accounting*
18 *Oversight Board,*

19 *“(v) State attorneys general in connec-*
20 *tion with any criminal investigation, and*

21 *“(vi) any appropriate State regulatory*
22 *authority,*

23 *each of which shall maintain such information*
24 *as confidential and privileged, in accordance*
25 *with the requirements in subparagraph (A).*

1 “(3) *RIGHTS RETAINED.*—*Nothing in this section*
2 *shall be deemed to diminish the rights, privileges, or*
3 *remedies of any whistleblower under any Federal or*
4 *State law, or under any collective bargaining agree-*
5 *ment.*

6 “(h) *PROVISION OF FALSE INFORMATION.*—*Any whis-*
7 *tleblower who knowingly and willfully makes any false, fic-*
8 *titious, or fraudulent statement or representation, or makes*
9 *or uses any false writing or document knowing the same*
10 *to contain any false, fictitious, or fraudulent statement or*
11 *entry, shall not be entitled to an award under this section*
12 *and shall be subject to prosecution under section 1001 of*
13 *title 18, United States Code.*

14 “(i) *RULEMAKING AUTHORITY.*—*The Commission*
15 *shall have the authority to issue such rules and regulations*
16 *as may be necessary or appropriate to implement the provi-*
17 *sions of this section.*

18 “(j) *DEFINITIONS.*—*For purposes of this section, the*
19 *following terms have the following meanings:*

20 “(1) *ORIGINAL INFORMATION.*—*The term ‘origi-*
21 *nal information’ means information that—*

22 “(A) *is based on the direct and independent*
23 *knowledge or analysis of a whistleblower;*

1 “(B) is not known to the Commission from
2 any other source, unless the whistleblower is the
3 initial source of the information; and

4 “(C) is not based on allegations in a judi-
5 cial or administrative hearing, in a govern-
6 mental report, hearing, audit, or investigation,
7 or from the news media, unless the whistleblower
8 is the initial source of the information that re-
9 sulted in the judicial or administrative hearing,
10 governmental report, hearing, audit, or inves-
11 tigation, or the news media’s report on the alle-
12 gations.

13 “(2) *MONETARY SANCTIONS*.—The term ‘mone-
14 tary sanctions’, when used with respect to any judi-
15 cial or administrative action, means any monies, in-
16 cluding but not limited to penalties, disgorgement,
17 and interest, ordered to be paid, and any monies de-
18 posited into a disgorgement fund or other fund pursu-
19 ant to section 308(b) of the Sarbanes-Oxley Act of
20 2002 (15 U.S.C. 7246(b)), as a result of such action
21 or any settlement of such action.

22 “(3) *RELATED ACTION*.—The term ‘related ac-
23 tion’, when used with respect to any judicial or ad-
24 ministrative action brought by the Commission under
25 the securities laws, means any judicial or administra-

1 *tive action brought by an entity described in sub-*
2 *section (g)(2)(B) that is based upon the same original*
3 *information provided by a whistleblower pursuant to*
4 *subsection (a) that led to the successful enforcement of*
5 *the Commission action.*

6 “(4) *WHISTLEBLOWER.*—*The term ‘whistle-*
7 *blower’ means an individual, or two or more individ-*
8 *uals acting jointly, who submit information to the*
9 *Commission as provided in this section.”.*

10 (b) *ADMINISTRATION AND ENFORCEMENT.*—*The Secu-*
11 *rities and Exchange Commission shall establish a separate*
12 *office within the Commission to administer and enforce the*
13 *provisions of section 21F of the Securities Exchange Act*
14 *of 1934, as added by subsection (a). Such office shall report*
15 *annually to Congress on its activities, whistleblower com-*
16 *plaints, and the response of the Commission to such com-*
17 *plaints.*

18 **SEC. 204. CONFORMING AMENDMENTS FOR WHISTLE-**
19 **BLOWER PROTECTION.**

20 (a) *IN GENERAL.*—*Each of the following provisions is*
21 *amended by inserting “and section 21F of the Securities*
22 *Exchange Act of 1934” after “the Sarbanes-Oxley Act of*
23 *2002”:*

24 (1) *Section 20(d)(3)(A) of the Securities Act of*
25 *1933 (15 U.S.C. 77t(d)(3)(A)).*

1 (2) *Section 42(e)(3)(A) of the Investment Com-*
2 *pany Act of 1940 (15 U.S.C. 80a–41(e)(3)(A)).*

3 (3) *Section 209(e)(3)(A) of the Investment Advis-*
4 *ers Act of 1940 (15 U.S.C. 80b–9(e)(3)(A)).*

5 (b) *SECURITIES EXCHANGE ACT.—The Securities Ex-*
6 *change Act of 1934 (15 U.S.C. 78a et seq.) is amended—*

7 (1) *in section 21(d)(3)(C)(i) (15 U.S.C.*
8 *78u(d)(3)(C)(i)), by inserting “and section 21F of*
9 *this title” after “the Sarbanes-Oxley Act of 2002”;*

10 (2) *in section 21A(d)(1) (15 U.S.C. 78u–*
11 *1(d)(1))—*

12 (A) *by striking “(subject to subsection (e))”;*

13 *and*

14 (B) *by inserting “and section 21F of this*
15 *title” after “the Sarbanes-Oxley Act of 2002”;*

16 *and*

17 (3) *in section 21A, by striking subsection (e) and*
18 *redesignating subsections (f) and (g) as subsection (e)*
19 *and (f), respectively.*

20 **SEC. 205. IMPLEMENTATION AND TRANSITION PROVISIONS**

21 **FOR WHISTLEBLOWER PROTECTIONS.**

22 (a) *IMPLEMENTING RULES.—The Securities and Ex-*
23 *change Commission shall issue final regulations imple-*
24 *menting the provisions of section 21F of the Securities Ex-*

1 *change Act of 1934, as added by this title, no later than*
2 *270 days after the date of enactment of this Act.*

3 **(b) ORIGINAL INFORMATION.**—*Information submitted*
4 *to the Commission by a whistleblower in accordance with*
5 *regulations implementing the provisions of section 21F of*
6 *the Securities Exchange Act of 1934, as added by this title,*
7 *shall not lose its status as original information, as defined*
8 *in subsection (i)(1) of such section, solely because the whis-*
9 *tleblower submitted such information prior to the effective*
10 *date of such regulations, provided such information was*
11 *submitted after the date of enactment of this Act, or related*
12 *to insider trading violations for which a bounty could have*
13 *been paid at the time such information was submitted.*

14 **(c) AWARDS.**—*A whistleblower may receive an award*
15 *pursuant to section 21F of the Securities Exchange Act of*
16 *1934, as added by this title, regardless of whether any viola-*
17 *tion of a provision of the securities laws, or a rule or regula-*
18 *tion thereunder, underlying the judicial or administrative*
19 *action upon which the award is based occurred prior to the*
20 *date of enactment of this Act.*

21 **SEC. 206. COLLATERAL BARS.**

22 **(a) SECTION 15 OF THE SECURITIES EXCHANGE ACT**
23 **OF 1934.**—*Section 15(b)(6)(A) of the Securities Exchange*
24 *Act of 1934 (15 U.S.C. 78o(b)(6)(A)) is amended by strik-*
25 *ing “12 months, or bar such person from being associated*

1 *with a broker or dealer,” and inserting “12 months, or bar*
2 *any such person from being associated with a broker, dealer,*
3 *investment adviser, municipal securities dealer, transfer*
4 *agent, or nationally recognized statistical rating organiza-*
5 *tion,”.*

6 **(b) SECTION 15B OF THE SECURITIES EXCHANGE ACT**
7 *OF 1934.—Section 15B(c)(4) of the Securities Exchange Act*
8 *of 1934 (15 U.S.C. 78o–4(c)(4)) is amended by striking*
9 *“twelve months or bar any such person from being associ-*
10 *ated with a municipal securities dealer,” and inserting “12*
11 *months or bar any such person from being associated with*
12 *a broker, dealer, investment adviser, municipal securities*
13 *dealer, transfer agent, or nationally recognized statistical*
14 *rating organization,”.*

15 **(c) SECTION 17A OF THE SECURITIES EXCHANGE ACT**
16 *OF 1934.—Section 17A(c)(4)(C) of the Securities Exchange*
17 *Act of 1934 (15 U.S.C. 78q–1(c)(4)(C)) is amended by strik-*
18 *ing “twelve months or bar any such person from being asso-*
19 *ciated with the transfer agent,” and inserting “12 months*
20 *or bar any such person from being associated with any*
21 *transfer agent, broker, dealer, investment adviser, munic-*
22 *ipal securities dealer, or nationally recognized statistical*
23 *rating organization,”.*

24 **(d) SECTION 203 OF THE INVESTMENT ADVISERS ACT**
25 *OF 1940.—Section 203(f) of the Investment Advisers Act of*

1 1940 (15 U.S.C. 80b-3(f)) is amended by striking “twelve
2 months or bar any such person from being associated with
3 an investment adviser,” and inserting “12 months or bar
4 any such person from being associated with an investment
5 adviser, broker, dealer, municipal securities dealer, transfer
6 agent, or nationally recognized statistical rating organiza-
7 tion.”.

8 **SEC. 207. AIDING AND ABETTING AUTHORITY UNDER THE**
9 **SECURITIES ACT AND THE INVESTMENT COM-**
10 **PANY ACT.**

11 (a) UNDER THE SECURITIES ACT OF 1933.—Section
12 15 of the Securities Act of 1933 (15 U.S.C. 77o) is amend-
13 ed—

14 (1) by striking “Every person who” and insert-
15 ing “(a) CONTROLLING PERSONS.—Every person
16 who”; and

17 (2) by adding at the end the following:

18 “(b) PROSECUTION OF PERSONS WHO AID AND ABET
19 VIOLATIONS.—For purposes of any action brought by the
20 Commission under subparagraph (b) or (d) of section 20,
21 any person that knowingly or recklessly provides substan-
22 tial assistance to another person in violation of a provision
23 of this Act, or of any rule or regulation issued under this
24 Act, shall be deemed to be in violation of such provision

1 *to the same extent as the person to whom such assistance*
2 *is provided.”.*

3 (c) *UNDER THE INVESTMENT COMPANY ACT OF*
4 *1940.—Section 48 of the Investment Company Act of 1940*
5 *(15 U.S.C. 80a–48) is amended by redesignating subsection*
6 *(b) as subsection (c) and inserting after subsection (a) the*
7 *following:*

8 “(b) *For purposes of any action brought by the Com-*
9 *mission under subsection (d) or (e) of section 42, any person*
10 *that knowingly or recklessly provides substantial assistance*
11 *to another person in violation of a provision of this Act,*
12 *or of any rule or regulation issued under this Act, shall*
13 *be deemed to be in violation of such provision to the same*
14 *extent as the person to whom such assistance is provided.”.*

15 **SEC. 208. AUTHORITY TO IMPOSE PENALTIES FOR AIDING**
16 **AND ABETTING VIOLATIONS OF THE INVEST-**
17 **MENT ADVISERS ACT.**

18 *Section 209 of the Investment Advisers Act of 1940 (15*
19 *U.S.C. 80b–9) is amended by inserting at the end the fol-*
20 *lowing new subsections:*

21 “(f) *AIDING AND ABETTING.—For purposes of any ac-*
22 *tion brought by the Commission under subsection (e), any*
23 *person that knowingly or recklessly has aided, abetted,*
24 *counseled, commanded, induced, or procured a violation of*
25 *any provision of this Act, or of any rule, regulation, or*

1 *order hereunder, shall be deemed to be in violation of such*
 2 *provision, rule, regulation, or order to the same extent as*
 3 *the person that committed such violation.*

4 “(g) *ENFORCEMENT BY NATIONAL SECURITIES ASSO-*
 5 *CIATIONS.—The Commission may permit or require a na-*
 6 *tional securities association registered under the Securities*
 7 *Exchange Act of 1934 to enforce compliance by its members*
 8 *and persons associated with its members with the provisions*
 9 *of this Act, the rules and regulations thereunder, and to*
 10 *adopt such rules (subject to any rule or order of the Com-*
 11 *mission pursuant to the Securities Exchange Act of 1934)*
 12 *as the association may deem necessary and in the public*
 13 *interest to further the purposes of this Act.”.*

14 **SEC. 209. DEADLINE FOR COMPLETING EXAMINATIONS, IN-**
 15 **SPECTIONS AND ENFORCEMENT ACTIONS.**

16 *The Securities Exchange Act of 1934 (15 U.S.C. 78a*
 17 *et seq.) is amended by inserting after section 4D (as added*
 18 *by section 101) the following new section:*

19 **“SEC. 4E. DEADLINE FOR COMPLETING ENFORCEMENT IN-**
 20 **VESTIGATIONS AND COMPLIANCE EXAMINA-**
 21 **TIONS AND INSPECTIONS.**

22 “(a) *ENFORCEMENT INVESTIGATIONS.—*

23 “(1) *IN GENERAL.—Not later than 180 days*
 24 *after the date on which Commission staff provide a*
 25 *written Wells notification to any person, the Commis-*

1 *sion staff shall either file an action against such per-*
2 *son or provide notice to the Director of the Division*
3 *of Enforcement of its intent to not file an action.*

4 *“(2) EXCEPTIONS FOR CERTAIN COMPLEX AC-*
5 *TIONS.—Notwithstanding paragraph (1), if the head*
6 *of any division or office within the Commission or his*
7 *designee determines that a particular enforcement in-*
8 *vestigation is sufficiently complex such that a deter-*
9 *mination regarding the filing of an action against a*
10 *person cannot be completed within the deadline speci-*
11 *fied in paragraph (1), the head of any division or of-*
12 *fice within the Commission or his designee may, after*
13 *providing notice to the Chairman of the Commission,*
14 *extend such deadline as needed for one additional*
15 *180-day period. If after the additional 180-day period*
16 *the head of any division or office within the Commis-*
17 *sion or his designee determines that a particular en-*
18 *forcement investigation is sufficiently complex such*
19 *that a determination regarding the filing of an action*
20 *against a person cannot be completed within the ad-*
21 *ditional 180-day period, the head of any division or*
22 *office within the Commission or his designee may,*
23 *after providing notice to and receiving approval of*
24 *the Commission, extend such deadline as needed for*
25 *one or more additional successive 180-day periods.*

1 “(b) *COMPLIANCE EXAMINATIONS AND INSPEC-*
2 *TIONS.—*

3 “(1) *IN GENERAL.—Not later than 180 days*
4 *after the date on which Commission staff completes*
5 *the on-site portion of its compliance examination or*
6 *inspection or receives all records requested from the*
7 *entity being examined or inspected, whichever is later,*
8 *Commission staff shall provide the entity being exam-*
9 *ined or inspected with written notification indicating*
10 *either that the examination or inspection has con-*
11 *cluded without findings or that the staff requests the*
12 *entity undertake corrective action.*

13 “(2) *EXCEPTION FOR CERTAIN COMPLEX AC-*
14 *TIONS.—Notwithstanding paragraph (1), if the head*
15 *of any division or office within the Commission or his*
16 *designee determines that a particular compliance ex-*
17 *amination or inspection is sufficiently complex such*
18 *that a determination regarding concluding the exam-*
19 *ination or inspection or regarding the staff requests*
20 *the entity undertake corrective action cannot be com-*
21 *pleted within the deadline specified in paragraph (1),*
22 *the head of any division or office within the Commis-*
23 *sion or his designee may, after providing notice to the*
24 *Chairman of the Commission, extend such deadline as*
25 *needed for one additional 180-day period.”.*

1 **SEC. 210. NATIONWIDE SERVICE OF SUBPOENAS.**

2 (a) *SECURITIES ACT OF 1933.*—Section 22(a) of the
3 *Securities Act of 1933 (15 U.S.C. 77v(a))* is amended by
4 *inserting after the second sentence the following: “In any*
5 *action or proceeding instituted by the Commission under*
6 *this title in a United States district court for any judicial*
7 *district, subpoenas issued to compel the attendance of wit-*
8 *nesses or the production of documents or tangible things (or*
9 *both) at a hearing or trial may be served at any place with-*
10 *in the United States.”.*

11 (b) *SECURITIES EXCHANGE ACT OF 1934.*—Section 27
12 *of the Securities Exchange Act of 1934 (15 U.S.C. 78aa)*
13 *is amended by inserting after the third sentence the fol-*
14 *lowing: “In any action or proceeding instituted by the Com-*
15 *mission under this title in a United States district court*
16 *for any judicial district, subpoenas issued to compel the at-*
17 *tendance of witnesses or the production of documents or tan-*
18 *gible things (or both) at a hearing or trial may be served*
19 *at any place within the United States.”.*

20 (c) *INVESTMENT COMPANY ACT OF 1940.*—Section 44
21 *of the Investment Company Act of 1940 (15 U.S.C. 80a-*
22 *43)* is amended by inserting after the fourth sentence the
23 *following: “In any action or proceeding instituted by the*
24 *Commission under this title in a United States district*
25 *court for any judicial district, subpoenas issued to compel*
26 *the attendance of witnesses or the production of documents*

1 *or tangible things (or both) at a hearing or trial may be*
 2 *served at any place within the United States.”.*

3 (d) *INVESTMENT ADVISERS ACT OF 1940.*—Section
 4 *214 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–*
 5 *14) is amended by inserting after the third sentence the fol-*
 6 *lowing: “In any action or proceeding instituted by the Com-*
 7 *mission under this title in a United States district court*
 8 *for any judicial district, subpoenas issued to compel the at-*
 9 *tendance of witnesses or the production of documents or tan-*
 10 *gible things (or both) at a hearing or trial may be served*
 11 *at any place within the United States.”.*

12 **SEC. 211. AUTHORITY TO IMPOSE CIVIL PENALTIES IN**
 13 **CEASE AND DESIST PROCEEDINGS.**

14 (a) *UNDER THE SECURITIES ACT OF 1933.*—Section
 15 *8A of the Securities Act of 1933 (15 U.S.C. 77h–1) is*
 16 *amended by adding at the end the following new subsection:*

17 “(g) *AUTHORITY TO IMPOSE MONEY PENALTIES.*—

18 “(1) *GROUND FOR IMPOSING.*—*In any cease-*
 19 *and-desist proceeding under subsection (a), the Com-*
 20 *mission may impose a civil penalty on a person if it*
 21 *finds, on the record after notice and opportunity for*
 22 *hearing, that—*

23 “(A) *such person—*

1 “(i) is violating or has violated any
2 provision of this title, or any rule or regula-
3 tion thereunder; or

4 “(ii) is or was a cause of the violation
5 of any provision of this title, or any rule or
6 regulation thereunder; and

7 “(B) such penalty is in the public interest.

8 “(2) *MAXIMUM AMOUNT OF PENALTY.*—

9 “(A) *FIRST TIER.*—*The maximum amount*
10 *of penalty for each act or omission described in*
11 *paragraph (1) shall be \$7,500 for a natural per-*
12 *son or \$75,000 for any other person.*

13 “(B) *SECOND TIER.*—*Notwithstanding*
14 *paragraph (A), the maximum amount of penalty*
15 *for each such act or omission shall be \$75,000 for*
16 *a natural person or \$375,000 for any other per-*
17 *son if the act or omission described in paragraph*
18 *(1) involved fraud, deceit, manipulation, or de-*
19 *liberate or reckless disregard of a regulatory re-*
20 *quirement.*

21 “(C) *THIRD TIER.*—*Notwithstanding para-*
22 *graphs (A) and (B), the maximum amount of*
23 *penalty for each such act or omission shall be*
24 *\$150,000 for a natural person or \$725,000 for*
25 *any other person if—*

1 “(i) the act or omission described in
2 paragraph (1) involved fraud, deceit, ma-
3 nipulation, or deliberate or reckless dis-
4 regard of a regulatory requirement; and

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

11 “(3) *EVIDENCE CONCERNING ABILITY TO PAY.*—

12 *In any proceeding in which the Commission may im-*
13 *pose a penalty under this section, a respondent may*
14 *present evidence of the respondent’s ability to pay*
15 *such penalty. The Commission may, in its discretion,*
16 *consider such evidence in determining whether such*
17 *penalty is in the public interest. Such evidence may*
18 *relate to the extent of such person’s ability to continue*
19 *in business and the collectability of a penalty, taking*
20 *into account any other claims of the United States or*
21 *third parties upon such person’s assets and the*
22 *amount of such person’s assets.”.*

23 (b) *UNDER THE SECURITIES EXCHANGE ACT OF*
24 1934.—*Subsection (a) of section 21B of the Securities Ex-*
25 *change Act of 1934 (15 U.S.C. 78u–2(a)) is amended—*

1 (1) by striking “(a) COMMISSION AUTHORITY TO
2 ASSESS MONEY PENALTIES.—In any proceeding”
3 and inserting the following:

4 “(a) COMMISSION AUTHORITY TO ASSESS MONEY
5 PENALTIES.—

6 “(1) IN GENERAL.—In any proceeding”;

7 (2) by redesignating paragraphs (1) through (4)
8 of such subsection as subparagraphs (A) through (D),
9 respectively, and moving such redesignated subpara-
10 graphs and the matter following such subparagraphs
11 2 ems to the right; and

12 (3) by adding at the end of such subsection the
13 following new paragraph:

14 “(2) CEASE-AND-DESIST PROCEEDINGS.—In any
15 proceeding instituted pursuant to section 21C of this
16 title against any person, the Commission may impose
17 a civil penalty if it finds, on the record after notice
18 and opportunity for hearing, that such person—

19 “(A) is violating or has violated any provi-
20 sion of this title, or any rule or regulation there-
21 under; or

22 “(B) is or was a cause of the violation of
23 any provision of this title, or any rule or regula-
24 tion thereunder.”.

1 (c) *UNDER THE INVESTMENT COMPANY ACT OF*
2 *1940.—Paragraph (1) of section 9(d) of the Investment*
3 *Company Act of 1940 (15 U.S.C. 80a-9(d)(1)) is amend-*
4 *ed—*

5 (1) *by striking “(1) AUTHORITY OF COMMIS-*
6 *SION.—In any proceeding” and inserting the fol-*
7 *lowing:*

8 “(1) *AUTHORITY OF COMMISSION.—*

9 “(A) *IN GENERAL.—In any proceeding”;*

10 (2) *by redesignating subparagraphs (A) through*
11 *(C) of such paragraph as clauses (i) through (iii), re-*
12 *spectively, and by moving such redesignated clauses*
13 *and the matter following such subparagraphs 2 ems*
14 *to the right; and*

15 (3) *by adding at the end of such paragraph the*
16 *following new subparagraph:*

17 “(B) *CEASE-AND-DESIST PROCEEDINGS.—*

18 *In any proceeding instituted pursuant to sub-*
19 *section (f) against any person, the Commission*
20 *may impose a civil penalty if it finds, on the*
21 *record after notice and opportunity for hearing,*
22 *that such person—*

23 “(i) *is violating or has violated any*
24 *provision of this title, or any rule or regula-*
25 *tion thereunder; or*

1 “(i) is or was a cause of the violation
2 of any provision of this title, or any rule or
3 regulation thereunder.”.

4 (d) *UNDER THE INVESTMENT ADVISERS ACT OF*
5 *1940.—Paragraph (1) of section 203(i) of the Investment*
6 *Advisers Act of 1940 (15 U.S.C. 80b-3(i)(1)) is amended—*

7 (1) *by striking “(1) AUTHORITY OF COMMIS-*
8 *SION.—In any proceeding” and inserting the fol-*
9 *lowing:*

10 “(1) *AUTHORITY OF COMMISSION.—*

11 “(A) *IN GENERAL.—In any proceeding”;*

12 (2) *by redesignating subparagraphs (A) through*
13 *(D) of such paragraph as clauses (i) through (iv), re-*
14 *spectively, and moving such redesignated clauses and*
15 *the matter following such subparagraphs 2 ems to the*
16 *right; and*

17 (3) *by adding at the end of such paragraph the*
18 *following new subparagraph:*

19 “(B) *CEASE-AND-DESIST PROCEEDINGS.—*

20 *In any proceeding instituted pursuant to sub-*
21 *section (k) against any person, the Commission*
22 *may impose a civil penalty if it finds, on the*
23 *record after notice and opportunity for hearing,*
24 *that such person—*

1 “(i) is violating or has violated any
2 provision of this title, or any rule or regula-
3 tion thereunder; or

4 “(ii) is or was a cause of the violation
5 of any provision of this title, or any rule or
6 regulation thereunder.”.

7 **SEC. 212. FORMERLY ASSOCIATED PERSONS.**

8 (a) *MEMBER OR EMPLOYEE OF THE MUNICIPAL SECURITIES*
9 *RULEMAKING BOARD.*—Section 15B(c)(8) of the Se-
10 *curities Exchange Act of 1934 (15 U.S.C. 78o-4(c)(8)) is*
11 *amended by striking “any member or employee” and insert-*
12 *ing “any person who is, or at the time of the alleged mis-*
13 *conduct was, a member or employee”.*

14 (b) *PERSON ASSOCIATED WITH A GOVERNMENT SECURITIES*
15 *BROKER OR DEALER.*—Section 15C of the Securities
16 *Exchange Act of 1934 (15 U.S.C. 78o-5) is amended—*

17 (1) *in subsection (c)(1)(C), by striking “or seek-*
18 *ing to become associated,” and inserting “seeking to*
19 *become associated, or, at the time of the alleged mis-*
20 *conduct, associated or seeking to become associated”;*

21 (2) *in subsection (c)(2)(A), by inserting “, seek-*
22 *ing to become associated, or, at the time of the alleged*
23 *misconduct, associated or seeking to become associ-*
24 *ated” after “any person associated”; and*

1 (3) in subsection (c)(2)(B), by inserting “, seek-
2 ing to become associated, or, at the time of the alleged
3 misconduct, associated or seeking to become associ-
4 ated” after “any person associated”.

5 (c) *PERSON ASSOCIATED WITH A MEMBER OF A NA-*
6 *TIONAL SECURITIES EXCHANGE OR REGISTERED SECURI-*
7 *TIES ASSOCIATION.*—Section 21(a)(1) of the Securities Ex-
8 change Act of 1934 (15 U.S.C. 78u(a)(1)) is amended by
9 inserting “, or, as to any act or practice, or omission to
10 act, while associated with a member, formerly associated”
11 after “member or a person associated”.

12 (d) *PARTICIPANT OF A REGISTERED CLEARING AGEN-*
13 *CY.*—Section 21(a)(1) of the Securities Exchange Act of
14 1934 (15 U.S.C. 78u(a)(1)) is amended by inserting “or,
15 as to any act or practice, or omission to act, while a partic-
16 ipant, was a participant,” after “in which such person is
17 a participant,”.

18 (e) *OFFICER OR DIRECTOR OF A SELF-REGULATORY*
19 *ORGANIZATION.*—Section 19(h)(4) of the Securities Ex-
20 change Act of 1934 (15 U.S.C. 78s(h)(4)) is amended—

21 (1) by striking “any officer or director” and in-
22 serting “any person who is, or at the time of the al-
23 leged misconduct was, an officer or director”; and

24 (2) by striking “such officer or director” and in-
25 serting “such person”.

1 (f) *OFFICER OR DIRECTOR OF AN INVESTMENT COM-*
2 *PANY.—Section 36(a) of the Investment Company Act of*
3 *1940 (15 U.S.C. 80a–35(a)) is amended—*

4 (1) *by striking “a person serving or acting” and*
5 *inserting “a person who is, or at the time of the al-*
6 *leged misconduct was, serving or acting”;* and

7 (2) *by striking “such person so serves or acts”*
8 *and inserting “such person so serves or acts, or at the*
9 *time of the alleged misconduct, so served or acted”.*

10 (g) *PERSON ASSOCIATED WITH A PUBLIC ACCOUNT-*
11 *ING FIRM.—*

12 (1) *SARBANES-OXLEY ACT OF 2002 AMEND-*
13 *MENT.—Section 2(a)(9) of the Sarbanes-Oxley Act of*
14 *2002 (15 U.S.C. 7201(9)) is amended by adding at*
15 *the end the following new subparagraph:*

16 “(C) *INVESTIGATIVE AND ENFORCEMENT*
17 *AUTHORITY.—For purposes of the provisions of*
18 *sections 3(c), 101(c), 105, and 107(c) and Board*
19 *or Commission rules thereunder, except to the ex-*
20 *tent specifically excepted by such rules, the terms*
21 *defined in subparagraph (A) shall include any*
22 *person associated, seeking to become associated,*
23 *or formerly associated with a public accounting*
24 *firm, except—*

1 “(i) the authority to conduct an inves-
2 tigation of such person under section 105(b)
3 shall apply only with respect to any act or
4 practice, or omission to act, while such per-
5 son was associated or seeking to become as-
6 sociated with a registered public accounting
7 firm; and

8 “(ii) the authority to commence a pro-
9 ceeding under section 105(c)(1), or impose
10 disciplinary sanctions under section
11 105(c)(4), against such person shall apply
12 only on—

13 “(I) the basis of conduct occurring
14 while such person was associated or
15 seeking to become associated with a
16 registered public accounting firm; or

17 “(II) non-cooperation as described
18 in section 105(b)(3) with respect to a
19 demand in a Board investigation for
20 testimony, documents, or other infor-
21 mation relating to a period when such
22 person was associated or seeking to be-
23 come associated with a registered pub-
24 lic accounting firm.”.

1 (2) *SECURITIES EXCHANGE ACT OF 1934 AMEND-*
2 *MENT.—Section 21(a)(1) of the Securities Exchange*
3 *Act of 1934 (15 U.S.C. 78u(a)(1)) is amended by*
4 *striking “or a person associated with such a firm”*
5 *and inserting “, a person associated with such a firm,*
6 *or, as to any act, practice, or omission to act while*
7 *associated with such firm, a person formerly associ-*
8 *ated with such a firm”.*

9 (h) *SUPERVISORY PERSONNEL OF AN AUDIT FIRM.—*
10 *Section 105(c)(6) of the Sarbanes-Oxley Act of 2002 (15*
11 *U.S.C. 7215(c)(6)) is amended—*

12 (1) *in subparagraph (A), by striking “the super-*
13 *visory personnel” and inserting “any person who is,*
14 *or at the time of the alleged failure reasonably to su-*
15 *pervise was, a supervisory person”; and*

16 (2) *in subparagraph (B)—*

17 (A) *by striking “No associated person” and*
18 *inserting “No current or former supervisory per-*
19 *son”; and*

20 (B) *by striking “any other person” and in-*
21 *serting “any associated person”.*

22 (i) *MEMBER OF THE PUBLIC COMPANY ACCOUNTING*
23 *OVERSIGHT BOARD.—Section 107(d)(3) of the Sarbanes-*
24 *Oxley Act of 2002 (15 U.S.C. 7217(d)(3)) is amended by*

1 *striking “any member” and inserting “any person who is,*
2 *or at the time of the alleged misconduct was, a member”.*

3 **SEC. 213. SHARING PRIVILEGED INFORMATION WITH**
4 **OTHER AUTHORITIES.**

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

7 *(1) by redesignating subsections (d) and (e) as*
8 *subsections (e) and (f), respectively;*

9 *(2) in subsection (e), as redesignated, by striking*
10 *“as provided in subsection (e)” and inserting “as pro-*
11 *vided in subsection (f)”;* and

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

14 *“(d) SHARING PRIVILEGED INFORMATION WITH*
15 *OTHER AUTHORITIES.—*

16 *“(1) PRIVILEGED INFORMATION PROVIDED BY*
17 *THE COMMISSION.—The Commission shall not be*
18 *deemed to have waived any privilege applicable to*
19 *any information by transferring that information to*
20 *or permitting that information to be used by—*

21 *“(A) any agency (as defined in section 6 of*
22 *title 18, United States Code);*

23 *“(B) any foreign securities authority;*

24 *“(C) the Public Company Accounting Over-*
25 *sight Board;*

1 “(D) any self-regulatory organization;

2 “(E) any foreign law enforcement author-
3 ity; or

4 “(F) any State securities or law enforce-
5 ment authority.

6 “(2) NON-DISCLOSURE OF PRIVILEGED INFORMA-
7 TION PROVIDED TO THE COMMISSION.—Except as
8 provided in subsection (f), the Commission shall not
9 be compelled to disclose privileged information ob-
10 tained from any foreign securities authority, or for-
11 eign law enforcement authority, if the authority has
12 in good faith determined and represented to the Com-
13 mission that the information is privileged.

14 “(3) NON-WAIVER OF PRIVILEGED INFORMATION
15 PROVIDED TO THE COMMISSION.—

16 “(A) IN GENERAL.—Federal agencies, State
17 securities and law enforcement authorities, self-
18 regulatory organizations, and the Public Com-
19 pany Accounting Oversight Board shall not be
20 deemed to have waived any privilege applicable
21 to any information by transferring that informa-
22 tion to or permitting that information to be used
23 by the Commission.

24 “(B) EXCEPTION WITH RESPECT TO CER-
25 TAIN ACTIONS.—The provisions of subparagraph

1 (A) shall not apply to a self-regulatory organiza-
2 tion or the Public Company Accounting Over-
3 sight Board with respect to information used by
4 the Commission in an action against such orga-
5 nization.

6 “(4) *DEFINITIONS.*—For purposes of this sub-
7 section:

8 “(A) The term ‘privilege’ includes any
9 work-product privilege, attorney-client privilege,
10 governmental privilege, or other privilege recog-
11 nized under Federal, foreign, or State law.

12 “(B) The term ‘foreign law enforcement au-
13 thority’ means any foreign authority that is em-
14 powered under foreign law to detect, investigate
15 or prosecute potential violations of law.

16 “(C) The term ‘State securities or law en-
17 forcement authority’ means the authority of any
18 State or territory that is empowered under State
19 or territory law to detect, investigate or pros-
20 ecute potential violations of law.”.

21 **SEC. 214. EXPANDED ACCESS TO GRAND JURY MATERIAL.**

22 (a) *IN GENERAL.*—Title VI of the Sarbanes-Oxley Act
23 of 2002 is amended by adding at the end the following new
24 section:

1 **“SEC. 605. ACCESS TO GRAND JURY INFORMATION.**

2 “(a) *DISCLOSURE.*—

3 “(1) *IN GENERAL.*—Upon motion of an attorney
4 for the government, a court may direct disclosure of
5 matters occurring before a grand jury during an in-
6 vestigation of conduct that may constitute a violation
7 of any provision of the securities laws to the Commis-
8 sion for use in relation to any matter within the ju-
9 risdiction of the Commission.

10 “(2) *SUBSTANTIAL NEED REQUIRED.*—A court
11 may issue an order under paragraph (1) only upon
12 a finding of a substantial need in the public interest.

13 “(b) *USE OF MATTER.*—A person to whom a matter
14 has been disclosed under this section shall not use such mat-
15 ter other than for the purpose for which such disclosure was
16 authorized.

17 “(c) *DEFINITIONS.*—As used in this section, the terms
18 ‘attorney for the government’ and ‘grand jury information’
19 have the meanings given to those terms in section 3322 of
20 title 18, United States Code.”.

21 (b) *CONFORMING AMENDMENT.*—The table of contents
22 in section 1(b) of the Sarbanes-Oxley Act of 2002 is amend-
23 ed by inserting after the item relating to section 604 the
24 following:

“Sec. 605. Access to grand jury information.”.

1 **SEC. 215. AIDING AND ABETTING STANDARD OF KNOWL-**
2 **EDGE SATISFIED BY RECKLESSNESS.**

3 *Section 20(e) of the Securities Exchange Act of 1934*
4 *(15 U.S.C. 78t(e)) is amended by inserting “or recklessly”*
5 *after “knowingly”.*

6 **SEC. 216. EXTRATERRITORIAL JURISDICTION OF THE ANTI-**
7 **FRAUD PROVISIONS OF THE FEDERAL SECU-**
8 **RITIES LAWS.**

9 *(a) UNDER THE SECURITIES ACT OF 1933.—Section*
10 *22 of the Securities Act of 1933 (15 U.S.C. 77v(a)) is*
11 *amended by adding at the end the following new subsection:*

12 *“(c) EXTRATERRITORIAL JURISDICTION.—The juris-*
13 *isdiction of the district courts of the United States and the*
14 *United States courts of any Territory described under sub-*
15 *section (a) includes violations of section 17(a), and all suits*
16 *in equity and actions at law under that section, involv-*
17 *ing—*

18 *“(1) conduct within the United States that con-*
19 *stitutes significant steps in furtherance of the viola-*
20 *tion, even if the securities transaction occurs outside*
21 *the United States and involves only foreign investors;*
22 *or*

23 *“(2) conduct occurring outside the United States*
24 *that has a foreseeable substantial effect within the*
25 *United States.”.*

1 (b) *UNDER THE SECURITIES EXCHANGE ACT OF*
2 *1934.—Section 27 of the Securities Exchange Act of 1934*
3 *(15 U.S.C. 78aa) is amended—*

4 (1) *by striking “The district” and inserting the*
5 *following:*

6 “*(a) IN GENERAL.—The district*”; and

7 (2) *by inserting at the end the following new*
8 *subsection:*

9 “*(b) EXTRATERRITORIAL JURISDICTION.—The juris-*
10 *isdiction of the district courts of the United States and the*
11 *United States courts of any Territory or other place subject*
12 *to the jurisdiction of the United States described under sub-*
13 *section (a) includes violations of the antifraud provisions*
14 *of this title, and all suits in equity and actions at law under*
15 *those provisions, involving—*

16 “*(1) conduct within the United States that con-*
17 *stitutes significant steps in furtherance of the viola-*
18 *tion, even if the securities transaction occurs outside*
19 *the United States and involves only foreign investors;*
20 *or*

21 “*(2) conduct occurring outside the United States*
22 *that has a foreseeable substantial effect within the*
23 *United States.*”.

1 (c) *UNDER THE INVESTMENT ADVISERS ACT OF*
2 *1940.—Section 214 of the Investment Advisers Act of 1940*
3 *(15 U.S.C. 80b-14) is amended—*

4 (1) *by striking “The district” and inserting the*
5 *following:*

6 “*(a) IN GENERAL.—The district*”; and

7 (2) *by inserting at the end the following new*
8 *subsection:*

9 “*(b) EXTRATERRITORIAL JURISDICTION.—The juris-*
10 *diction of the district courts of the United States and the*
11 *United States courts of any Territory or other place subject*
12 *to the jurisdiction of the United States described under sub-*
13 *section (a) includes violations of section 206, and all suits*
14 *in equity and actions at law under that section, involv-*
15 *ing—*

16 “*(1) conduct within the United States that con-*
17 *stitutes significant steps in furtherance of the viola-*
18 *tion, even if the violation is committed by a foreign*
19 *adviser and involves only foreign investors; or*

20 “*(2) conduct occurring outside the United States*
21 *that has a foreseeable substantial effect within the*
22 *United States.”.*

23 **SEC. 217. FIDELITY BONDING.**

24 Section 17(g) of the Investment Company Act of 1940
25 (15 U.S.C. 80a-17(g)) is amended to read as follows:

1 “(g) *FIDELITY BONDING.*—

2 “(1) *IN GENERAL.*—*The Commission is author-*
3 *ized to require that a registered management com-*
4 *pany provide and maintain a fidelity bond against*
5 *loss as to any officer or employee who has access to*
6 *securities or funds of the company, either directly or*
7 *through authority to draw upon such funds or to di-*
8 *rect generally the disposition of such securities (unless*
9 *the officer or employee has such access solely through*
10 *his position as an officer or employee of a bank), in*
11 *such form and amount as the Commission may pre-*
12 *scribe by rule, regulation, or order for the protection*
13 *of investors.*

14 “(2) *DEFINITIONS.*—*For purposes of this sub-*
15 *section:*

16 “(A) *MANAGEMENT COMPANY.*—*The term*
17 *‘management company’ has the meaning given*
18 *such term under section 4 of the Investment*
19 *Company Act of 1940.*

20 “(B) *OFFICER OR EMPLOYEE.*—*The term*
21 *‘officer or employee’ means—*

22 “(i) *any officer or employee of the*
23 *management company; and;*

24 “(ii) *any officer or employee of any in-*
25 *vestment adviser to the management com-*

1 pany, or of any affiliated company of any
2 such investment adviser, as the Commission
3 may prescribe by rule, regulation, or order
4 for the protection of investors.

5 “(C) *OTHER DEFINITIONS.*—The terms ‘af-
6 filiated company’ and ‘investment adviser’ shall
7 have the meaning given such terms under section
8 2 of the Investment Company Act of 1940.”.

9 **SEC. 218. ENHANCED SEC AUTHORITY TO CONDUCT SUR-**
10 **VEILLANCE AND RISK ASSESSMENT.**

11 (a) *SECURITIES EXCHANGE ACT OF 1934 AMEND-*
12 *MENTS.*—Section 17(b) of the Securities Exchange Act of
13 1934 (15 U.S.C. 78q(b)) is amended by adding at the end
14 the following new paragraph:

15 “(5) *SURVEILLANCE AND RISK ASSESSMENT.*—
16 All persons described in subsection (a) of this section
17 are subject at any time, or from time to time, to such
18 reasonable periodic, special, or other information and
19 document requests by representatives of the Commis-
20 sion as the Commission by rule or order deems nec-
21 essary or appropriate to conduct surveillance or risk
22 assessments of the securities markets, persons reg-
23 istered with the Commission under this title, or other-
24 wise in furtherance of the purposes of this title.”.

1 (b) *INVESTMENT COMPANY ACT OF 1940 AMEND-*
2 *MENTS.—Section 31(b) of the Investment Company Act of*
3 *1940 (15 U.S.C. 80a–30(b)), as amended by section*
4 *106(a)(2), is further amended by adding at the end the fol-*
5 *lowing new paragraph:*

6 “(5) *SURVEILLANCE AND RISK ASSESSMENT.—*
7 *All persons described in paragraph (1) are subject at*
8 *any time, or from time to time, to such reasonable*
9 *periodic, special, or other information and document*
10 *requests by representatives of the Commission as the*
11 *Commission by rule or order deems necessary or ap-*
12 *propriate to conduct surveillance or risk assessments*
13 *of the securities markets, persons registered with the*
14 *Commission under this title, or otherwise in further-*
15 *ance of the purposes of this title.”.*

16 (c) *INVESTMENT ADVISERS ACT OF 1940 AMEND-*
17 *MENTS.—Section 204 of the Investment Advisers Act of*
18 *1940 (15 U.S.C. 80b–4), as amended by section 106(b), is*
19 *further amended by adding at the end the following new*
20 *subsection:*

21 “(e) *SURVEILLANCE AND RISK ASSESSMENT.—All per-*
22 *sons described in subsection (a) are subject at any time,*
23 *or from time to time, to such reasonable periodic, special,*
24 *or other information and document requests by representa-*
25 *tives of the Commission as the Commission by rule or order*

1 *deems necessary or appropriate to conduct surveillance or*
2 *risk assessments of the securities markets, persons registered*
3 *with the Commission under this title, or otherwise in fur-*
4 *therance of the purposes of this title.”.*

5 **SEC. 219. INVESTMENT COMPANY EXAMINATIONS.**

6 *Section 31(b)(1) of the Investment Company Act of*
7 *1940 (15 U.S.C. 80a–30) is amended to read as follows:*

8 *“(1) IN GENERAL.—All records of each registered*
9 *investment company, and each underwriter, broker,*
10 *dealer, or investment adviser that is a majority-*
11 *owned subsidiary of such a company, shall be subject*
12 *at any time, or from time to time, to such reasonable*
13 *periodic, special, or other examinations by representa-*
14 *tives of the Commission as the Commission deems*
15 *necessary or appropriate in the public interest or for*
16 *the protection of investors.”.*

17 **SEC. 220. CONTROL PERSON LIABILITY UNDER THE SECURI-**
18 **TIES EXCHANGE ACT.**

19 *Section 20(a) of the Securities Exchange Act of 1934*
20 *(15 U.S.C. 78t(a)) is amended by inserting after “controlled*
21 *person is liable,” the following: “including to the Commis-*
22 *sion in any action brought under paragraph (1) or (3) of*
23 *section 21(d),”.*

1 **SEC. 221. ENHANCED APPLICATION OF ANTI-FRAUD PROVI-**
2 **SIONS.**

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

5 *(1) in section 9—*

6 *(A) by striking “registered on a national se-*
7 *curities exchange” each place it appears and in-*
8 *serting “other than a government security”;*

9 *(B) in subsection (b), by striking “by use of*
10 *any facility of a national securities exchange,”;*
11 *and*

12 *(C) in subsection (c), by inserting after*
13 *“unlawful for any” the following: “broker, deal-*
14 *er, or”;*

15 *(2) in section 10(a)(1), by striking “registered on*
16 *a national securities exchange” and inserting “other*
17 *than a government security”; and*

18 *(3) in section 15(c)(1)(A), by striking “otherwise*
19 *than on a national securities exchange of which it is*
20 *a member”.*

21 **SEC. 222. SEC AUTHORITY TO ISSUE RULES ON PROXY AC-**
22 **CESS.**

23 *Section 14(a) of the Securities Exchange Act of 1934*
24 *(15 U.S.C. 78n(a)) is amended—*

25 *(1) by inserting “(1)” after “(a)”;* and

26 *(2) by adding at the end the following:*

1 “(2) The authority of the Commission to prescribe
2 rules and regulations under paragraph (1) includes rules
3 and regulations that require the inclusion and set proce-
4 dures relating to the inclusion, in a solicitation of a proxy
5 or consent or authorization by or on behalf of an issuer,
6 of a nominee or nominees submitted by shareholders to serve
7 on the issuer’s board of directors.”.

8 **TITLE III—COMMISSION**
9 **FUNDING AND ORGANIZATION**

10 **SEC. 301. AUTHORIZATION OF APPROPRIATIONS.**

11 Section 35 of the Securities Exchange Act of 1934 (15
12 U.S.C. 78kk) is amended to read as follows:

13 **“SEC. 35. AUTHORIZATION OF APPROPRIATIONS.**

14 *“In addition to any other funds authorized to be ap-
15 propriated to the Commission, there are authorized to be
16 appropriated to carry out the functions, powers, and duties
17 of the Commission—*

18 *“(1) for fiscal year 2010, \$1,115,000,000;*

19 *“(2) for fiscal year 2011, \$1,300,000,000;*

20 *“(3) for fiscal year 2012, \$1,500,000,000;*

21 *“(4) for fiscal year 2013, \$1,750,000,000;*

22 *“(5) for fiscal year 2014, \$2,000,000,000; and*

23 *“(6) for fiscal year 2015, \$2,250,000,000.”.*

1 **SEC. 302. INVESTMENT ADVISER REGULATION FUNDING.**

2 *Section 203 of the Investment Advisers Act of 1940 (15*
3 *U.S.C. 80b-3) is amended by adding at the end the fol-*
4 *lowing new subsection:*

5 “(l) *ANNUAL ASSESSMENT.*—

6 “(1) *IN GENERAL.*—*The Commission shall, in*
7 *accordance with this subsection, promulgate rules*
8 *pursuant to which it may collect from investment ad-*
9 *visers required to register with the Commission under*
10 *this title, fees designed to help recover the cost of in-*
11 *spections and examinations of registered investment*
12 *advisers conducted by the Commission pursuant to*
13 *this title.*

14 “(2) *FEE PAYMENT REQUIRED.*—*An investment*
15 *adviser shall, at the time of registration with the*
16 *Commission, and each fiscal year thereafter during*
17 *which such adviser is so registered, pay to the Com-*
18 *mission a fair and reasonable fee determined by the*
19 *Commission. In determining such fee, the Commission*
20 *shall consider objective factors such as—*

21 “(A) *the investment adviser’s size;*

22 “(B) *the number of clients of the investment*
23 *adviser;*

24 “(C) *the types of clients of the investment*
25 *adviser; and*

1 “(D) *such other relevant factors as the Com-*
2 *mission determines to be appropriate.*

3 “(3) *AMOUNT AND USE OF FEES.—*

4 “(A) *MINIMUM AGGREGATE AMOUNT.—The*
5 *aggregate amount of fees determined by the Com-*
6 *mission under this subsection for any fiscal year*
7 *shall be greater than the amount the Commission*
8 *spent on inspections and examinations of reg-*
9 *istered investment advisers during the 2009 fis-*
10 *cal year.*

11 “(B) *EXCESS FEES.—The Commission may*
12 *retain any excess fees collected under this sub-*
13 *section during a fiscal year for application to-*
14 *wards the costs of inspections and examinations*
15 *of investment advisers in future fiscal years.*

16 “(4) *REVIEW AND ADJUSTMENT OF FEES.—The*
17 *Commission may review fee rates established pursu-*
18 *ant to this section before the end of any fiscal year*
19 *and make any appropriate adjustments prior to col-*
20 *lecting any such fee in the following fiscal year.*

21 “(5) *PENALTY FEE.—The Commission shall pre-*
22 *scribe by rule or regulation an additional fee to be as-*
23 *essed as a penalty for late payment of fees required*
24 *by this subsection.*

1 “(6) *JUDICIAL REVIEW*.—Increases or decreases
2 in fees made pursuant to this section shall not be sub-
3 ject to judicial review.”.

4 **SEC. 303. AMENDMENTS TO SECTION 31 OF THE SECURI-**
5 **TIES EXCHANGE ACT OF 1934.**

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

8 (1) in subsection (e)(2), by striking “September
9 30” and inserting “September 25”;

10 (2) in subsection (g), by striking “April 30” and
11 inserting “August 31”; and

12 (3) in subsection (j)(2)—

13 (A) by striking “5 months” and inserting
14 “4 months”; and

15 (B) by striking “(including fees collected
16 during such 5-month period and assessments col-
17 lected under subsection (d))” and inserting “(in-
18 cluding fees estimated to be collected under sub-
19 sections (b) and (c) prior to the effective date of
20 the uniform adjusted rate and assessments esti-
21 mated to be collected under subsection (d))”.

22 **SEC. 304. COMMISSION ORGANIZATIONAL STUDY AND RE-**
23 **FORM.**

24 (a) *STUDY REQUIRED*.—

1 (1) *IN GENERAL.*—Not later than the end of the
2 90-day period beginning on the date of the enactment
3 of this Act, the Securities and Exchange Commission
4 (hereinafter in this section referred to as the “SEC”)
5 shall hire an independent consultant of high caliber
6 and with expertise in organizational restructuring
7 and the operations of capital markets to examine the
8 internal operations, structure, funding, and the need
9 for comprehensive reform of the SEC, as well as the
10 SEC’s relationship with the reliance on self-regu-
11 latory organizations and other entities relevant to the
12 regulation of securities and the protection of securities
13 investors that are under the SEC’s oversight.

14 (2) *SPECIFIC AREAS FOR STUDY.*—The study re-
15 quired under paragraph (1) shall, at a minimum, in-
16 clude the study of—

17 (A) the possible elimination of unnecessary
18 or redundant units at the SEC;

19 (B) improving communications between
20 SEC offices and divisions;

21 (C) the need to put in place a clear chain-
22 of-command structure, particularly for enforce-
23 ment examinations and compliance inspections;

24 (D) the effect of high-frequency trading and
25 other technological advances on the market and

1 *what the SEC requires to monitor the effect of*
2 *such trading and advances on the market;*

3 *(E) the SEC’s hiring authorities, workplace*
4 *policies, and personal practices, including—*

5 *(i) whether there is a need to further*
6 *streamline hiring authorities for those who*
7 *are not lawyers, accountants, compliance*
8 *examiners, or economists;*

9 *(ii) whether there is a need for further*
10 *pay reforms;*

11 *(iii) the diversity of skill sets of SEC*
12 *employees and whether the present skill set*
13 *diversity efficiently and effectively fosters*
14 *the SEC’s mission of investor protection;*
15 *and*

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

18 *(F) whether the SEC’s oversight and reli-*
19 *ance on self-regulatory organizations promotes*
20 *efficient and effective governance for the securi-*
21 *ties markets; and*

22 *(G) whether adjusting the SEC’s reliance on*
23 *self-regulatory organizations is necessary to pro-*
24 *mote more efficient and effective governance for*
25 *the securities markets.*

1 **(b) CONSULTANT REPORT.**—Not later than the end of
2 the 150-day period after being retained, the independent
3 consultant hired pursuant to subsection (a)(1) shall issue
4 a report to the SEC and the Congress containing—

5 (1) a detailed description of any findings and
6 conclusions made while carrying out the study re-
7 quired under subsection (a)(1);

8 (2) recommendations for legislative, regulatory,
9 or administrative action that the consultant deter-
10 mines appropriate to enable the SEC and other enti-
11 ties on which it reports to perform their statutorily
12 or otherwise mandated missions.

13 **(c) SEC REPORT.**—Not later than the end of the 6-
14 month period beginning on the date the consultant issues
15 the report under subsection (b), and every 6-months there-
16 after during the 2-year period following the date on which
17 the consultant issues such report, the SEC shall issue a re-
18 port to the Committee on Financial Services of the House
19 of Representatives and the Committee on Banking, Hous-
20 ing, and Urban Affairs of the Senate describing the SEC's
21 implementation of the regulatory and administrative rec-
22 ommendations contained in the consultant's report.

23 **SEC. 305. CAPITAL MARKETS SAFETY BOARD.**

24 There is established within the Securities and Ex-
25 change Commission an office to be known as the Capital

1 *Markets Safety Board whose purpose shall be to conduct*
2 *investigations, at the direction of the Commission, of failed*
3 *institutions registered with the Commission, to determine*
4 *what caused such institutions to fail. Upon the conclusion*
5 *of an investigation, the Board shall make available on the*
6 *Commission's website a report of its findings, including rec-*
7 *ommendations regarding how others can avoid similar mis-*
8 *takes. No information that may compromise an ongoing*
9 *Federal investigation shall be made available in any such*
10 *report.*

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

13 (a) *IN GENERAL.*—*Not later than 6 months after the*
14 *date of the enactment of this Act, the Securities and Ex-*
15 *change Commission shall provide to the Committee on Fi-*
16 *nancial Services of the House of Representatives and the*
17 *Committee on Banking, Housing, and Urban Affairs of the*
18 *Senate a report describing the implementation of reforms*
19 *outlined by the Commission in the wake of the discovery*
20 *of fraud by Bernie Madoff.*

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

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

1 (2) *whether there is overlap between any of the*
2 *Commission’s reform proposals and those rec-*
3 *ommended by the Inspector General of the Commis-*
4 *sion.*

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

8 **SEC. 307. JOINT ADVISORY COMMITTEE.**

9 *The Securities and Exchange Commission and the*
10 *Commodities Futures Trading Commission may jointly*
11 *form and operate a joint advisory committee composed of*
12 *members of each Commission and industry experts and par-*
13 *ticipants. The purposes of such an advisory committee in-*
14 *clude—*

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

18 (2) *identifying emerging regulatory risks and as-*
19 *sess and quantify their implications for investors and*
20 *other market participants, and provide recommenda-*
21 *tions for solutions;*

22 (3) *servicing as a vehicle for discussion and com-*
23 *munication on regulatory issues of mutual concerns*
24 *affecting each Commission, the regulated markets, and*
25 *the industry generally; and*

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

3 **TITLE IV—ADDITIONAL**
4 **COMMISSION REFORMS**

5 **SEC. 401. REGULATION OF SECURITIES LENDING.**

6 Section 10 of the Securities Exchange Act of 1934 (15
7 U.S.C. 78j) is amended by adding at the end the following
8 new subsection:

9 “(c)(1) To effect, accept, or facilitate a transaction in-
10 volving the loan or borrowing of securities in contravention
11 of such rules and regulations as the Commission may pre-
12 scribe as necessary or appropriate in the public interest or
13 for the protection of investors.

14 “(2) Nothing in paragraph (1) shall be construed to
15 limit the authority of an appropriate Federal banking
16 agency (as defined in section 3 of the Federal Deposit Insur-
17 ance Act (12 U.S.C. 1813(q))), the National Credit Union
18 Administration, or any other Federal department or agency
19 identified under law as having a systemic risk responsi-
20 bility from prescribing rules or regulations to impose re-
21 strictions on transactions involving the loan or borrowing
22 of securities in order to protect the safety and soundness
23 of a financial institution or to protect the financial system
24 from systemic risk.”.

1 **SEC. 402. LOST AND STOLEN SECURITIES.**

2 *Section 17(f)(1) of the Securities Exchange Act of 1934*
3 *(15 U.S.C. 78q(f)(1)) is amended—*

4 *(1) in subparagraph (A), by striking “missing,*
5 *lost, counterfeit, or stolen securities” and inserting*
6 *“securities that are missing, lost, counterfeit, stolen,*
7 *cancelled, or any other category of securities as the*
8 *Commission, by rule, may prescribe”; and*

9 *(2) in subparagraph (B), by striking “or stolen”*
10 *and inserting “stolen, cancelled, or reported in such*
11 *other manner as the Commission, by rule, may pre-*
12 *scribe”.*

13 **SEC. 403. FINGERPRINTING.**

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

16 *(1) by striking “and registered clearing agency,”*
17 *and inserting “registered clearing agency, registered*
18 *securities information processor, national securities*
19 *exchange, and national securities association”; and*

20 *(2) by striking “or clearing agency,” and insert-*
21 *ing “clearing agency, securities information processor,*
22 *national securities exchange, or national securities as-*
23 *sociation,”.*

1 **SEC. 404. EQUAL TREATMENT OF SELF-REGULATORY ORGA-**
2 **NIZATION RULES.**

3 *Section 29(a) of the Securities Exchange Act of 1934*
4 *(15 U.S.C. 78cc(a)) is amended by striking “an exchange*
5 *required thereby” and inserting “a self-regulatory organiza-*
6 *tion.”.*

7 **SEC. 405. CLARIFICATION THAT SECTION 205 OF THE IN-**
8 **VESTMENT ADVISERS ACT OF 1940 DOES NOT**
9 **APPLY TO STATE-REGISTERED ADVISERS.**

10 *Section 205(a) of the Investment Advisers Act of 1940*
11 *(15 U.S.C. 80b-5(a)) is amended—*

12 *(1) by striking “, unless exempt from registra-*
13 *tion pursuant to section 203(b),” and inserting “reg-*
14 *istered or required to be registered with the Commis-*
15 *sion”;*

16 *(2) by striking “make use of the mails or any*
17 *means or instrumentality of interstate commerce, di-*
18 *rectly or indirectly, to”;* and

19 *(3) by striking “to” after “in any way”.*

20 **SEC. 406. CONFORMING AMENDMENTS FOR THE REPEAL OF**
21 **THE PUBLIC UTILITY HOLDING COMPANY ACT**
22 **OF 1935.**

23 *(a) SECURITIES EXCHANGE ACT OF 1934.—The Secu-*
24 *rities Exchange Act of 1934 (15 U.S.C. 78 et seq.) is amend-*
25 *ed—*

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

4 (2) in section 12(k) (15 U.S.C. 78l(k)), by
5 amending paragraph (7) to read as follows:

6 “(7) *DEFINITION.*—For purposes of this sub-
7 section, the term ‘emergency’ means—

8 “(A) a major market disturbance character-
9 ized by or constituting—

10 “(i) sudden and excessive fluctuations
11 of securities prices generally, or a substan-
12 tial threat thereof, that threaten fair and
13 orderly markets; or

14 “(ii) a substantial disruption of the
15 safe or efficient operation of the national
16 system for clearance and settlement of
17 transactions in securities, or a substantial
18 threat thereof; or

19 “(B) a major disturbance that substantially
20 disrupts, or threatens to substantially disrupt—

21 “(i) the functioning of securities mar-
22 kets, investment companies, or any other
23 significant portion or segment of the securi-
24 ties markets; or

1 “(ii) the transmission or processing of
2 securities transactions.”.

3 (3) in section 21(h)(2) (15 U.S.C. 78u(h)(2)), by
4 striking “section 18(c) of the Public Utility Holding
5 Company Act of 1935,”.

6 (b) *TRUST INDENTURE ACT OF 1939*.—*The Trust In-*
7 *denture Act of 1939 (15 U.S.C. 77aaa et seq.) is amended—*

8 (1) in section 303 (15 U.S.C. 77ccc), by amend-
9 ing paragraph (17) to read as follows:

10 “(17) The terms ‘Securities Act of 1933’ and ‘Se-
11 curities Exchange Act of 1934’ shall be deemed to
12 refer, respectively, to such Acts, as amended, whether
13 amended prior to or after the enactment of this title.”;

14 (2) in section 308 (15 U.S.C. 77hhh), by striking
15 “Securities Act of 1933, the Securities Exchange Act
16 of 1934, or the Public Utility Holding Company Act
17 of 1935” each place it appears and inserting “Securi-
18 ties Act of 1933 or the Securities Exchange Act of
19 1934”;

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

22 (4) in section 311 (15 U.S.C. 77kkk) by striking
23 subsection (c);

24 (5) in section 323(b) (15 U.S.C. 77www(b)), by
25 striking “Securities Act of 1933, or the Securities Ex-

1 *change Act of 1934, or the Public Utility Holding*
2 *Company Act of 1935” and inserting “Securities Act*
3 *of 1933 or the Securities Exchange Act of 1934”;* and

4 (6) *in section 326 (15 U.S.C. 77zzz), by striking*
5 *“Securities Act of 1933, or the Securities Exchange*
6 *Act of 1934, or the Public Utility Holding Company*
7 *Act of 1935,” and inserting “Securities Act of 1933*
8 *or the Securities Exchange Act of 1934”.*

9 (c) *INVESTMENT COMPANY ACT OF 1940.—The Invest-*
10 *ment Company Act of 1940 (15 U.S.C. 80a–1 et seq.) is*
11 *amended—*

12 (1) *in section 2(a)(44) (15 U.S.C. 80a–2(a)(44)),*
13 *by striking “‘Public Utility Holding Company Act of*
14 *1935’”;*

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

17 *“(8) [Repealed]”;*

18 (3) *in section 38(b) (15 U.S.C. 80a–37(b)), by*
19 *striking “the Public Utility Holding Company Act of*
20 *1935,”; and*

21 (4) *in section 50 (15 U.S.C. 80a–49), by striking*
22 *“the Public Utility Holding Company Act of 1935,”.*

23 (d) *INVESTMENT ADVISERS ACT OF 1940.—Section*
24 *202(a)(21) of the Investment Advisers Act of 1940 (15*

1 *U.S.C. 80b–2(a)(21)) is amended by striking “‘Public Util-*
2 *ity Holding Company Act of 1935’”.*

3 **SEC. 407. PROMOTING TRANSPARENCY IN FINANCIAL RE-**
4 **PORTING.**

5 *(a) FINDINGS.—Congress finds the following:*

6 *(1) Transparent and clear financial reporting is*
7 *integral to the continued growth and strength of our*
8 *capital markets and the confidence of investors.*

9 *(2) The increasing detail and volume of account-*
10 *ing, auditing, and reporting guidance pose a major*
11 *challenge.*

12 *(3) The complexity of accounting and auditing*
13 *standards in the United States has added to the costs*
14 *and effort involved in financial reporting.*

15 *(b) TESTIMONY REQUIRED ON REDUCING COMPLEXITY*
16 *IN FINANCIAL REPORTING.—The Securities and Exchange*
17 *Commission, the Public Company Accounting Oversight*
18 *Board, and the standard setting body designated pursuant*
19 *to section 19(b) of the Securities Act of 1933 shall annually*
20 *provide oral testimony by their respective Chairpersons or*
21 *a designee of the Chairperson, beginning in 2010, and for*
22 *5 years thereafter, to the Committee on Financial Services*
23 *of the House of Representatives on their efforts to reduce*
24 *the complexity in financial reporting to provide more accu-*

1 *rate and clear financial information to investors, includ-*
2 *ing—*

3 (1) *reassessing complex and outdated accounting*
4 *standards;*

5 (2) *improving the understandability, consistency,*
6 *and overall usability of the existing accounting and*
7 *auditing literature;*

8 (3) *developing principles-based accounting*
9 *standards;*

10 (4) *encouraging the use and acceptance of inter-*
11 *active data; and*

12 (5) *promoting disclosures in “plain English”.*

13 **SEC. 408. UNLAWFUL MARGIN LENDING.**

14 *Section 7(c)(1)(A) of the Securities Exchange Act of*
15 *1934 (15 U.S.C. 78g(c)(1)(A)) is amended by striking “;*
16 *and” and inserting “; or”.*

17 **SEC. 409. PROTECTING CONFIDENTIALITY OF MATERIALS**
18 **SUBMITTED TO THE COMMISSION.**

19 (a) *SECURITIES EXCHANGE ACT OF 1934.—Section*
20 *17(j) of the Securities Exchange Act of 1934 (15 U.S.C.*
21 *78q(j)) is amended to read as follows:*

22 “(j) *AUTHORITY TO LIMIT DISCLOSURE OF INFORMA-*
23 *TION.—*

24 “(1) *IN GENERAL.—Notwithstanding any other*
25 *provision of law, the Commission shall not be com-*

1 *pelled to disclose any information, documents,*
2 *records, or reports that relate to an examination, sur-*
3 *veillance, or risk assessment of a person subject to or*
4 *described in this section, including subsection*
5 *(i)(5)(A), or the financial or operational condition of*
6 *such persons, or any information supplied to the*
7 *Commission by any domestic or foreign regulatory*
8 *agency or self-regulatory organization that relates to*
9 *the financial or operational condition of such persons,*
10 *of any associated person of such persons, or any affil-*
11 *iate of an investment bank holding company.*

12 *“(2) CERTAIN EXCEPTIONS.—Nothing in this*
13 *subsection shall authorize the Commission to withhold*
14 *information from the Congress, prevent the Commis-*
15 *sion from complying with a request for information*
16 *from any other Federal department or agency, the*
17 *Public Company Accounting Oversight Board, or any*
18 *self-regulatory organization requesting the informa-*
19 *tion for purposes within the scope of its jurisdiction,*
20 *or prevent the Commission from complying with an*
21 *order of a court of the United States in an action*
22 *brought by the United States or the Commission*
23 *against a person subject to or described in this section*
24 *to produce information, documents, records, or reports*
25 *relating directly to the examination, surveillance, or*

1 *risk assessment of that person or the financial or*
2 *operational condition of that person or an associated*
3 *or affiliated person of that person.*

4 “(3) *TREATMENT UNDER SECTION 552 OF TITLE*
5 *5, UNITED STATES CODE.—For purposes of section*
6 *552 of title 5, United States Code, this subsection*
7 *shall be considered a statute described in subsection*
8 *(b)(3)(B) of that section.*”

9 “(4) *CERTAIN INFORMATION TO BE CONFIDEN-*
10 *TIAL.—In prescribing regulations to carry out the re-*
11 *quirements of this subsection, the Commission shall*
12 *designate information described in or obtained pursu-*
13 *ant to subparagraphs (A), (B), and (C) of subsection*
14 *(i)(3) as confidential information for purposes of sec-*
15 *tion 24(b)(2) of this title.”*

16 *(b) INVESTMENT COMPANY ACT OF 1940.—Section*
17 *31(b) of the Investment Company Act of 1940 (15 U.S.C.*
18 *80a–30(b)), as amended by sections 106(a)(2) and*
19 *218(b)(4), is further amended by adding at the end the fol-*
20 *lowing new paragraph:*

21 “(6) *CONFIDENTIALITY.—*

22 “(A) *IN GENERAL.—Notwithstanding any*
23 *other provision of law, the Commission shall not*
24 *be compelled to disclose any information, docu-*
25 *ments, records, or reports that relate to an exam-*

1 *ination, surveillance, or risk assessment of a per-*
2 *son subject to or described in this section.*

3 “(B) *CERTAIN EXCEPTIONS.—Nothing in*
4 *this subsection shall authorize the Commission to*
5 *withhold information from the Congress, prevent*
6 *the Commission from complying with a request*
7 *for information from any other Federal depart-*
8 *ment or agency, or the Public Company Ac-*
9 *counting Oversight Board requesting the infor-*
10 *mation for purposes within the scope of its juris-*
11 *isdiction, or prevent the Commission from com-*
12 *plying with an order of a court of the United*
13 *States in an action brought by the United States*
14 *or the Commission against a person subject to or*
15 *described in this section to produce information,*
16 *documents, records, or reports relating directly to*
17 *the examination of that person or the financial*
18 *or operational condition of that person or an as-*
19 *sociated or affiliated person of that person.*

20 “(C) *TREATMENT UNDER SECTION 552 OF*
21 *TITLE 5, UNITED STATES CODE.—For purposes of*
22 *section 552 of title 5, United States Code, this*
23 *subsection shall be considered a statute described*
24 *in subsection (b)(3)(B) of that section.”.*

1 (c) *INVESTMENT ADVISERS ACT OF 1940.*—Section
2 *204 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–*
3 *4), as amended by sections 106(b) and 218(c), is further*
4 *amended by adding at the end the following new subsection:*

5 “(f) *CONFIDENTIALITY.*—

6 “(1) *IN GENERAL.*—Notwithstanding any other
7 *provision of law, the Commission shall not be com-*
8 *pelled to disclose any information, documents,*
9 *records, or reports that relate to an examination of a*
10 *person subject to or described in this section.*

11 “(2) *CERTAIN EXCEPTIONS.*—Nothing in this
12 *subsection shall authorize the Commission to withhold*
13 *information from Congress, prevent the Commission*
14 *from complying with a request for information from*
15 *any other Federal department or agency, the Public*
16 *Company Accounting Oversight Board, or a self-regu-*
17 *latory organization requesting the information for*
18 *purposes within the scope of its jurisdiction, or pre-*
19 *vent the Commission from complying with an order*
20 *of a court of the United States in an action brought*
21 *by the United States or the Commission against a*
22 *person subject to or described in this section to*
23 *produce information, documents, records, or reports*
24 *relating directly to the examination of that person or*

1 *the financial or operational condition of that person*
2 *or an associated or affiliated person of that person.*

3 “(3) *TREATMENT UNDER SECTION 552 OF TITLE*
4 *5, UNITED STATES CODE.—For purposes of section*
5 *552 of title 5, United States Code, this subsection*
6 *shall be considered a statute described in subsection*
7 *(b)(3)(B) of that section.”.*

8 **SEC. 410. TECHNICAL CORRECTIONS.**

9 *(a) SECURITIES ACT OF 1933.—The Securities Act of*
10 *1933 (15 U.S.C. 77a et seq.) is amended—*

11 *(1) in section 3(a)(4) (15 U.S.C. 77c(a)(4)), by*
12 *striking “individual;” and inserting “individual;”;*

13 *(2) in the matter following paragraph (5) of sec-*
14 *tion 11(a), by striking “earning statement” and in-*
15 *serting “earnings statement”.*

16 *(3) in section 18(b)(1)(C) (15 U.S.C.*
17 *77r(b)(1)(C)), by striking “is a security” and insert-*
18 *ing “a security”;*

19 *(4) in section 18(c)(2)(B)(i) (15 U.S.C.*
20 *77r(c)(2)(B)(i)), by striking “State, or” and inserting*
21 *“State or”;*

22 *(5) in section 19(d)(6)(A) (15 U.S.C.*
23 *77s(d)(6)(A)), by striking “in paragraph (1) of (3)”*
24 *and inserting “in paragraph (1) or (3)”;* and

1 (6) in section 27A(c)(1)(B)(ii) (15 U.S.C. 77z–
2 2(c)(1)(B)(ii)), by striking “business entity;” and in-
3 serting “business entity;”.

4 (b) SECURITIES EXCHANGE ACT OF 1934.—The Secu-
5 rities Exchange Act of 1934 (15 U.S.C. 78 et seq.) is amend-
6 ed—

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

9 (2) in section 3(a)(55)(A) (15 U.S.C.
10 78c(a)(55)(A)), by striking “section 3(a)(12) of the
11 Securities Exchange Act of 1934” and inserting “sec-
12 tion 3(a)(12) of this Act”;

13 (3) in section 3(g) (15 U.S.C. 78c(g)), by strik-
14 ing “company, account person, or entity” and insert-
15 ing “company, account, person, or entity”;

16 (4) in section 10A(i)(1)(B)(i) (15 U.S.C. 78j–
17 1(i)(1)(B)(i)), by striking “nonaudit” and inserting
18 “non-audit”;

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

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

23 (A) by striking the sentence beginning “The
24 order granting” and ending “from such member-
25 ship.” in subparagraph (B); and

1 (B) by inserting such sentence in the matter
2 following such subparagraph after “are satis-
3 fied.”;

4 (7) in section 15C(a)(2) (15 U.S.C. 780-
5 5(a)(2))—

6 (A) by redesignating clauses (i) and (ii) as
7 subparagraphs (A) and (B), respectively;

8 (B) by striking the sentence beginning “The
9 order granting” and ending “from such member-
10 ship.” in such subparagraph (B), as redesign-
11 nated; and

12 (C) by inserting such sentence in the matter
13 following such redesignated subparagraph after
14 “are satisfied.”;

15 (8) in section 16(a)(2)(C) (15 U.S.C.
16 78p(a)(2)(C)), by striking “section 206(b)” and in-
17 serting “section 206B”;

18 (9) in section 17(b)(1)(B) (15 U.S.C.
19 78q(b)(1)(B)), by striking “15A(k) gives” and insert-
20 ing “15A(k), give”; and

21 (10) in section 21C(c)(2) (15 U.S.C. 78u-
22 3(c)(2)), by striking “paragraph (1) subsection” and
23 inserting “Paragraph (1)”.

24 (c) TRUST INDENTURE ACT OF 1939.—The Trust In-
25 denture Act of 1939 (15 U.S.C. 77aaa et seq.) is amended—

1 (1) in section 304(b) (15 U.S.C. 77ddd(b)), by
2 striking “section 2 of such Act” and inserting “section
3 2(a) of such Act”;

4 (2) in section 313(a)(4) (15 U.S.C.
5 77mmm(a)(4)) by striking “subsection (b) of section
6 311” and inserting “section 311(b)”; and

7 (3) in section 317(a)(1) (15 U.S.C. 77qqq(a)(1)),
8 by striking “(1),” and inserting “(1)”.

9 (d) INVESTMENT COMPANY ACT OF 1940.—*The Invest-*
10 *ment Company Act of 1940 (15 U.S.C. 80a–1 et seq.) is*
11 *amended—*

12 (1) in section 2(a)(19)(B) (15 U.S.C. 80a–
13 2(a)(19)(B)) by striking “clause (vi)” both places it
14 appears in the last two sentences and inserting
15 “clause (vii)”;

16 (2) in section 9(b)(4)(B) (15 U.S.C. 80a–
17 9(b)(4)(B)), by inserting “or” after the semicolon at
18 the end;

19 (3) in section 12(d)(1)(J) (15 U.S.C. 80a–
20 12(d)(1)(J)), by striking “any provision of this sub-
21 section” and inserting “any provision of this para-
22 graph”;

23 (4) in section 13(a)(3) (15 U.S.C. 80a–13(a)(3)),
24 by inserting “or” after the semicolon at the end;

1 (5) in section 17(f)(4) (15 U.S.C. 80a–17(f)(4)),
2 by striking “No such member” and inserting “No
3 member of a national securities exchange”;

4 (6) in section 17(f)(6) (15 U.S.C. 80a–17(f)(6)),
5 by striking “company may serve” and inserting
6 “company, may serve”; and

7 (7) in section 61(a)(3)(B)(iii) (15 U.S.C. 80a–
8 60(a)(3)(B)(iii))—

9 (A) by striking “paragraph (1) of section
10 205” and inserting “section 205(a)(1)”; and

11 (B) by striking “clause (A) or (B) of that
12 section” and inserting “section 205(b)(1) or (2)”.

13 (e) INVESTMENT ADVISERS ACT OF 1940.—*The Invest-*
14 *ment Advisers Act of 1940 (15 U.S.C. 80b–1 et seq.) is*
15 *amended—*

16 (1) in each of the following sections, by striking
17 “principal business office” or “principal place of
18 business” (whichever and wherever it appears) and
19 inserting “principal office and place of business”: sec-
20 tions 203(c)(1)(A), 203(k)(4)(B), 213(a), 222(b), and
21 222(c) (15 U.S.C. 80b–3(c)(1)(A), 80b–3(k)(4)(B),
22 80b–13(a), 80b–18a(b), and 80b–18a(c)); and

23 (2) in section 206(3) (15 U.S.C. 80b–6(3)), by
24 inserting “or” after the semicolon at the end.

1 **SEC. 411. MUNICIPAL SECURITIES.**

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

4 *(1) by amending paragraph (1) to read as fol-*
5 *lows:(1) Not later than October 1, 2010, the Munic-*
6 *ipal Securities Rulemaking Board (hereinafter in this*
7 *section referred to as the ‘Board’), shall be composed*
8 *of members which shall perform the duties set forth in*
9 *this section and shall consist of—*

10 *“(A) a majority of independent public rep-*
11 *resentatives, at least one of whom shall be rep-*
12 *resentative of investors in municipal securities*
13 *and at least one of whom shall be representative*
14 *of issuers of municipal securities (which mem-*
15 *bers are hereinafter referred to as ‘public rep-*
16 *resentatives’);*

17 *“(B) at least one individual who is rep-*
18 *resentative of municipal securities brokers and*
19 *municipal securities dealers which are not banks*
20 *or subsidiaries or departments or divisions of*
21 *banks (which members are hereinafter referred to*
22 *as ‘broker-dealer representatives’); and*

23 *“(C) at least one individual who is rep-*
24 *resentative of municipal securities dealers which*
25 *are banks or subsidiaries or departments or divi-*

1 sions of banks (which members are hereinafter
2 referred to as ‘bank representatives’).”; and

3 (2) by amending paragraph (2)(B) to read as
4 follows:

5 “(B) Establish fair procedures for the nomina-
6 tion and election of members of the Board and assure
7 fair representation in such nominations and elections
8 of municipal securities brokers and municipal securi-
9 ties dealers. Such rules—

10 “(i) shall establish requirements regarding
11 the independence of public representatives;

12 “(ii) shall provide that the number of public
13 representatives of the Board shall at all times ex-
14 ceed the total number of broker-dealer representa-
15 tives and bank representatives;

16 “(iii) shall establish minimum knowledge,
17 experience, and other appropriate qualifications
18 for individuals to serve as public representatives,
19 which may include, among other things, prior
20 work experience in the securities, municipal fi-
21 nance, or municipal securities industries;

22 “(iv) shall specify the term members shall
23 serve; and

24 “(v) may increase or decrease the number of
25 members which shall constitute the whole Board,

1 *but in no case may such number be an even*
2 *number.”.*

3 **SEC. 412. INTERESTED PERSON DEFINITION.**

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

6 (1) *by striking clauses (v) and (vi);*

7 (2) *by inserting after clause (iv) the following*
8 *new clause:*

9 *“(v) any natural person who is a*
10 *member of a class of persons who the Com-*
11 *mission, by rule or regulation, determines*
12 *are unlikely to exercise an appropriate de-*
13 *gree of independence as a result of—*

14 *“(I) a material business or profes-*
15 *sional relationship with such company*
16 *or any affiliated person of such com-*
17 *pany; or*

18 *“(II) a close familial relationship*
19 *with any natural person who is an af-*
20 *filiated person of such company;”;*

21 (3) *by redesignating clause (vii) as clause (vi);*

22 *and*

23 (4) *in clause (vi), as redesignated, by striking*
24 *“two completed fiscal years” and inserting “five com-*
25 *pleted fiscal years”.*

1 **SEC. 413. RULEMAKING AUTHORITY TO PROTECT REDEEM-**
2 **ING INVESTORS.**

3 *Section 22(e) of the Investment Company Act of 1940*
4 *(15 U.S.C. 80a-22(e)) is amended by adding at the end*
5 *the following: “The Commission may, by rules and regula-*
6 *tions, limit the extent to which a registered open-end invest-*
7 *ment company may own, hold, or invest in illiquid securi-*
8 *ties or other illiquid property.”.*

9 **SEC. 414. STUDY ON SEC REVOLVING DOOR.**

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

13 *(1) review the number of employees who leave the*
14 *Securities and Exchange Commission to work for fi-*
15 *nancial institutions regulated by such Commission;*

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

20 *(3) review the length of time employees work for*
21 *the Securities and Exchange Commission before leav-*
22 *ing to be employed by financial institutions regulated*
23 *by such Commission;*

24 *(4) review existing internal controls and make*
25 *recommendations on strengthening such controls to*
26 *ensure that employees of the Securities and Exchange*

1 *Commission who are later employed by financial in-*
2 *stitutions did not assist such institutions in violating*
3 *any rules or regulations of the Commission during the*
4 *course of their employment with such Commission;*

5 *(5) determine if greater post-employment restric-*
6 *tions are necessary to prevent employees of the Secu-*
7 *rities and Exchange Commission from being employed*
8 *by financial institutions after employment with such*
9 *Commission;*

10 *(6) determine if the volume of employees of the*
11 *Securities and Exchange Commission who are later*
12 *employed by financial institutions has led to ineffi-*
13 *ciencies in enforcement;*

14 *(7) determine if employees of the Securities and*
15 *Exchange Commission who are later employed by fi-*
16 *nancial institutions have engaged in information*
17 *sharing or assisted such institutions in circumventing*
18 *Federal rules and regulations while employed by such*
19 *Commission;*

20 *(8) review any information that may address the*
21 *volume of employees of the Securities and Exchange*
22 *Commission who are later employed by financial in-*
23 *stitutions, and make recommendations to Congress;*
24 *and*

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

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

10 **SEC. 415. STUDY ON INTERNAL CONTROL EVALUATION AND**
11 **REPORTING COST BURDENS ON SMALLER**
12 **ISSUERS.**

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

20 (1) *include recommendations, administrative re-*
21 *forms, and legislative proposals on implementation*
22 *steps that could be taken to reduce compliance bur-*
23 *dens on these issuers; and*

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

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

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

16 **SECTION 416. ANALYSIS OF RULE REGARDING SMALLER RE-**
17 **PORTING COMPANIES.**

18 **(a) FINDINGS.**—*Congress finds the following:*

19 (1) *Many small businesses in cutting-edge tech-*
20 *nology sectors require significant capital investment*
21 *to develop new technologies related to clean energy,*
22 *drug treatments for terminal diseases and food pro-*
23 *duction in hunger-stricken areas of the World.*

24 (2) *Many technology companies conducting re-*
25 *search do not meet the definition of “smaller report-*

1 *ing company” under the Securities and Exchange*
2 *Commission’s Rule 12b–2 due to unusually high pub-*
3 *lic floats despite low or zero revenue.*

4 *(3) The Final Report of the Advisory Committee*
5 *on Smaller Public Companies to the Securities and*
6 *Exchange Commission recommended that a company*
7 *with a market capitalization of less than about*
8 *\$787,000,000 be considered a smallcap company and*
9 *that the Commission provide exemptions from section*
10 *404(b) of the Sarbanes-Oxley Act to companies with*
11 *less than \$250,000,000 in annual revenues.*

12 *(b) STUDY OF USING REVENUE AS CRITERIA TO DE-*
13 *FINE SMALLER REPORTING COMPANY.—The Securities and*
14 *Exchange Commission shall conduct a study of the inclu-*
15 *sion of revenue as a criteria used in defining smaller report-*
16 *ing company as defined under the Commission’s Rule 12b-*
17 *2 to account for smaller public companies with public floats*
18 *less than \$700,000,000 and revenues less than \$250,000,000.*
19 *Not later than 180 days after the date of enactment of this*
20 *Act, the Commission shall provide the Committee on Finan-*
21 *cial Services of the House of Representatives and the Com-*
22 *mittee on Banking, Housing and Urban Affairs of the Sen-*
23 *ate a report of the findings of the study.*

1 **SEC. 417. FINANCIAL REPORTING FORUM.**

2 (a) *ESTABLISHMENT.*—*There is hereby established a*
3 *Financial Reporting Forum (hereinafter referred to as the*
4 *“Forum”), which shall consist of—*

5 (1) *the Chairman of the Securities Exchange*
6 *Commission (hereinafter referred to as the “SEC”);*

7 (2) *the head of the Financial Accounting Stand-*
8 *ards Board;*

9 (3) *the Chairman of the Public Company Ac-*
10 *counting Oversight Board;*

11 (4) *the head of each appropriate Federal banking*
12 *agency, as such term is defined under section 3(q) of*
13 *the Federal Deposit Insurance Act (12 U.S.C.*
14 *1813(q));*

15 (5) *the Administrator of the National Credit*
16 *Union Administration;*

17 (6) *the Secretary of the Treasury;*

18 (7) *a representative of a non-financial institu-*
19 *tion, appointed by the SEC;*

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

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

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

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

3 (c) *DUTIES.*—*The Forum shall meet to discuss imme-*
4 *diately and long-term issues critical to financial reporting.*

5 (d) *REPORTING.*—*The Forum shall issue an annual re-*
6 *port to the Congress detailing any determinations or find-*
7 *ings made by the Forum during the previous year, includ-*
8 *ing any legislative recommendations the Forum may have*
9 *related to financial reporting matters.*

10 **SEC. 418. INVESTMENT ADVISERS SUBJECT TO STATE AU-**
11 **THORITIES.**

12 *Section 203A(a) of the Investment Advisers Act of 1940*
13 *(15 U.S.C. 80b-3a(a)) is amended—*

14 (1) *by redesignating paragraph (2) as para-*
15 *graph (3); and*

16 (2) *by inserting after paragraph (1) the fol-*
17 *lowing new paragraph:*

18 “(2) *TREATMENT OF CERTAIN MID-SIZED IN-*
19 *VESTMENT ADVISERS.*—*Notwithstanding paragraph*
20 *(1), an investment adviser that—*

21 “(A) *is regulated and examined, or required*
22 *to be regulated and examined, by a State; and*

23 “(B) *has assets under management be-*
24 *tween—*

1 “(i) the amount specified under sub-
2 paragraph (A) of paragraph (1), as such
3 amount may have been adjusted by the
4 Commission pursuant to that subpara-
5 graph, and

6 “(ii) \$100,000,000, or such higher
7 amount as the Commission may, by rule,
8 deem appropriate in accordance with the
9 purposes of this title,

10 shall register with, and be subject to examination
11 by, such State. The Commission shall publish a
12 list of the States that regulate and examine, or
13 require regulation and examination of, invest-
14 ment advisers to which the requirements of this
15 paragraph apply.”.

16 **SEC. 419. CUSTODIAL REQUIREMENTS.**

17 Not later than 180 days after the date of the enactment
18 of this Act, the Securities and Exchange Commission shall
19 adopt a rule pursuant to its authority under section 211(a)
20 of the Investment Advisers Act of 1940 making it unlawful
21 under section 206(4) of such Act for an investment adviser
22 registered under the Act to have custody of funds or securi-
23 ties of a client the value of which exceeds \$10,000,000, sub-
24 ject to such exception the Commission determines in such

1 *rule are in the public interest and consistent with the pro-*
2 *tection of investors, unless—*

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

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

12 **SEC. 420. OMBUDSMAN.**

13 *(a) APPOINTMENT.—Not later than 180 days after the*
14 *date of the enactment of this Act, the Chairman of the Secu-*
15 *rities and Exchange Commission shall appoint an Ombuds-*
16 *man who shall report directly to the Chairman.*

17 *(b) DUTIES.—The Ombudsman appointed under sub-*
18 *section (a) shall—*

19 *(1) act as a liaison between the Commission and*
20 *any affected person with respect to any problem such*
21 *person may have in dealing with the Commission re-*
22 *sulting from the regulatory activities of the Commis-*
23 *sion;*

24 *(2) review and make recommendations regarding*
25 *Commission policies and procedures to encourage per-*

1 sons to present questions to the Commission regarding
2 compliance with Federal securities laws; and

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

5 (c) *LIMITATION.*—In carrying out the duties under
6 subsection (b), the Ombudsman shall utilize personnel of the
7 Commission to the extent practicable. Nothing in this sec-
8 tion shall be construed as replacing, altering, or dimin-
9 ishing the activities of any ombudsman or similar office
10 in any other agency.

11 (d) *REPORT.*—Each year, the Ombudsman shall sub-
12 mit a report to the Commission for inclusion in the annual
13 report that describes the activities and evaluates the effec-
14 tiveness of the Ombudsman during the preceding year. In
15 that report, the Ombudsman shall include solicited com-
16 ments and evaluations from registrants in regards to the
17 effectiveness of the Ombudsman.

18 **TITLE V—SECURITIES INVESTOR**
19 **PROTECTION ACT AMENDMENTS**

20 **SEC. 501. INCREASING THE MINIMUM ASSESSMENT PAID BY**
21 **SIPC MEMBERS.**

22 Section 4(d)(1)(C) of the Securities Investor Protection
23 Act of 1970 (15 U.S.C. 78ddd(d)(1)(C)) is amended by
24 striking “\$150 per annum” and inserting the following:

1 “0.02 percent of the gross revenues from the securities busi-
 2 ness of such member of SIPC”.

3 **SEC. 502. INCREASING THE BORROWING LIMIT ON TREAS-
 4 URY LOANS.**

5 *Section 4(h) of the Securities Investor Protection Act*
 6 *of 1970 (15 U.S.C. 78ddd(h)) is amended by striking “of*
 7 *not to exceed \$1,000,000,000” and inserting “the lesser of*
 8 *\$2,500,000,000 or the target amount of the SIPC Fund*
 9 *specified in the bylaws of SIPC”.*

10 **SEC. 503. INCREASING THE CASH LIMIT OF PROTECTION.**

11 *Section 9 of the Securities Investor Protection Act of*
 12 *1970 (15 U.S.C. 78fff-3) is amended—*

13 *(1) in subsection (a)(1), by striking “\$100,000*
 14 *for each such customer” and inserting “the standard*
 15 *maximum cash advance amount for each such cus-*
 16 *tomer, as determined in accordance with subsection*
 17 *(d)”;* and

18 *(2) by adding the following new subsections:*

19 *“(d) STANDARD MAXIMUM CASH ADVANCE AMOUNT*
 20 *DEFINED.—For purposes of this section, the term ‘standard*
 21 *maximum cash advance amount’ means \$250,000, as such*
 22 *amount may be adjusted after March 31, 2010, as provided*
 23 *under subsection (e).*

24 *“(e) INFLATION ADJUSTMENT.—*

1 “(1) *IN GENERAL.*—No later than April 1, 2010,
2 and every 5 years thereafter, and subject to the ap-
3 proval of the Commission as provided under section
4 3(e)(2), the Board of Directors of SIPC shall deter-
5 mine whether an inflation adjustment to the standard
6 maximum cash advance amount is appropriate. If the
7 Board of Directors of SIPC determines such an ad-
8 justment is appropriate, then the standard maximum
9 cash advance amount shall be an amount equal to—

10 “(A) \$250,000 multiplied by,

11 “(B) the ratio of the annual value of the
12 *Personal Consumption Expenditures Chain-Type*
13 *Price Index* (or any successor index thereto),
14 published by the Department of Commerce, for
15 the calendar year preceding the year in which
16 such determination is made, to the published an-
17 nual value of such index for the calendar year
18 preceding the year in which this subsection was
19 enacted.

20 *The index values used in calculations under this*
21 *paragraph shall be, as of the date of the calculation,*
22 *the values most recently published by the Department*
23 *of Commerce.*

24 “(2) *ROUNDING.*—If the standard maximum
25 cash advance amount determined under paragraph

1 (1) *for any period is not a multiple of \$10,000, the*
2 *amount so determined shall be rounded down to the*
3 *nearest \$10,000.*

4 “(3) *PUBLICATION AND REPORT TO THE CON-*
5 *GRESS.—Not later than April 5 of any calendar year*
6 *in which a determination is required to be made*
7 *under paragraph (1)—*

8 “(A) *the Commission shall publish in the*
9 *Federal Register the standard maximum cash*
10 *advance amount; and*

11 “(B) *the Board of Directors of SIPC shall*
12 *submit a report to the Congress containing stat-*
13 *ing the standard maximum cash advance*
14 *amount.*

15 “(4) *IMPLEMENTATION PERIOD.—Any adjust-*
16 *ment to the standard maximum cash advance amount*
17 *shall take effect on January 1 of the year immediately*
18 *succeeding the calendar year in which such adjust-*
19 *ment is made.*

20 “(5) *INFLATION ADJUSTMENT CONSIDER-*
21 *ATIONS.—In making any determination under para-*
22 *graph (1) to increase the standard maximum cash ad-*
23 *vance amount, the Board of Directors of SIPC shall*
24 *consider—*

1 “(A) the overall state of the fund and the
2 economic conditions affecting members of SIPC;

3 “(B) the potential problems affecting mem-
4 bers of SIPC; and

5 “(C) such other factors as the Board of Di-
6 rectors of SIPC may determine appropriate.”.

7 **SEC. 504. SIPC AS TRUSTEE IN SIPA LIQUIDATION PRO-**
8 **CEEDINGS.**

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

11 (1) by striking “SIPC has determined that the
12 liabilities of the debtor to unsecured general creditors
13 and to subordinated lenders appear to aggregate less
14 than \$750,000 and that”; and

15 (2) by striking “five hundred” and inserting
16 “five thousand”.

17 **SEC. 505. INSIDERS INELIGIBLE FOR SIPC ADVANCES.**

18 Section 9(a)(4) of the Securities Investor Protection
19 Act of 1970 (15 U.S.C. 78fff-3(a)(4)) is amended by insert-
20 ing “an insider,” after “or net profits of the debtor,”.

21 **SEC. 506. ELIGIBILITY FOR DIRECT PAYMENT PROCEDURE.**

22 Section 10(a)(4) of the Securities Investor Protection
23 Act of 1970 (15 U.S.C. 78fff-4(a)(4)) is amended by strik-
24 ing “\$250,000” and inserting “\$850,000”.

1 **SEC. 507. INCREASING THE FINE FOR PROHIBITED ACTS**
2 **UNDER SIPA.**

3 *Section 14(c) of the Securities Investor Protection Act*
4 *of 1970 (15 U.S.C. 78jjj(c)) is amended—*

5 *(1) in paragraph (1), by striking “\$50,000” and*
6 *inserting “\$250,000”; and*

7 *(2) in paragraph (2), by striking “\$50,000” and*
8 *inserting “\$250,000”.*

9 **SEC. 508. PENALTY FOR MISREPRESENTATION OF SIPC**
10 **MEMBERSHIP OR PROTECTION.**

11 *Section 14 of the Securities Investor Protection Act of*
12 *1970 (15 U.S.C. 78jjj) is amended by adding at the end*
13 *the following new subsection:*

14 *“(d) MISREPRESENTATION OF SIPC MEMBERSHIP OR*
15 *PROTECTION.—*

16 *“(1) IN GENERAL.—Any person who falsely rep-*
17 *resents by any means (including, without limitation,*
18 *through the Internet or any other medium of mass*
19 *communication), with actual knowledge of the falsity*
20 *of the representation and with an intent to deceive or*
21 *cause injury to another, that such person, or another*
22 *person, is a member of SIPC or that any person or*
23 *account is protected or is eligible for protection under*
24 *this Act or by SIPC, shall be liable for any damages*
25 *caused thereby and shall be fined not more than*
26 *\$250,000 or imprisoned for not more than five years.*

1 “(2) *INTERNET SERVICE PROVIDERS.*—*Any*
2 *Internet service provider that, on or through a system*
3 *or network controlled or operated by the Internet serv-*
4 *ice provider, transmits, routes, provides connections*
5 *for, or stores any material containing any misrepre-*
6 *sentation of the kind prohibited in paragraph (1)*
7 *shall be liable for any damages caused thereby, in-*
8 *cluding damages suffered by SIPC, if the Internet*
9 *service provider—*

10 “(A) *has actual knowledge that the material*
11 *contains a misrepresentation of the kind prohib-*
12 *ited in paragraph (1), or*

13 “(B) *in the absence of actual knowledge, is*
14 *aware of facts or circumstances from which it is*
15 *apparent that the material contains a misrepre-*
16 *sentation of the kind prohibited in paragraph*
17 *(1), and*

18 *upon obtaining such knowledge or awareness, fails to*
19 *act expeditiously to remove, or disable access to, the*
20 *material.*

21 “(3) *INJUNCTIONS.*—*Any court having jurisdic-*
22 *tion of a civil action arising under this Act may*
23 *grant temporary injunctions and final injunctions on*
24 *such terms as the court deems reasonable to prevent*
25 *or restrain any violation of paragraph (1) or (2).*

1 *Any such injunction may be served anywhere in the*
 2 *United States on the person enjoined, shall be opera-*
 3 *tive throughout the United States, and shall be en-*
 4 *forceable, by proceedings in contempt or otherwise, by*
 5 *any United States court having jurisdiction over that*
 6 *person. The clerk of the court granting the injunction*
 7 *shall, when requested by any other court in which en-*
 8 *forcement of the injunction is sought, transmit*
 9 *promptly to the other court a certified copy of all pa-*
 10 *pers in the case on file in such clerk's office.”.*

11 **SEC. 509. FUTURES HELD IN A PORTFOLIO MARGIN SECURI-**
 12 **TIES ACCOUNT PROTECTION.**

13 (a) *SIPC ADVANCES.*—Section 9(a)(1) of the *Securi-*
 14 *ties Investor Protection Act of 1970 (15 U.S.C. 78fff-*
 15 *3(a)(1)) is amended by inserting “or options on futures con-*
 16 *tracts” after “claim for securities”.*

17 (b) *DEFINITIONS.*—Section 16 of such Act (15 U.S.C.
 18 78lll) is amended—

19 (1) *by amending paragraph (2) to read as fol-*
 20 *lows:*

21 “(2) *CUSTOMER.*—

22 “(A) *IN GENERAL.*—The term ‘customer’ of
 23 *a debtor means any person (including any per-*
 24 *son with whom the debtor deals as principal or*
 25 *agent) who has a claim on account of securities*

1 *received, acquired, or held by the debtor in the*
2 *ordinary course of its business as a broker or*
3 *dealer from or for the securities accounts of such*
4 *person for safekeeping, with a view to sale, to*
5 *cover consummated sales, pursuant to purchases,*
6 *as collateral, security, or for purposes of effecting*
7 *transfer. The term ‘customer’ includes any per-*
8 *son who has a claim against the debtor arising*
9 *out of sales or conversions of such securities.*

10 “(B) *INCLUDED PERSONS.—The term ‘cus-*
11 *tomers’ includes—*

12 “(i) *any person who has deposited cash*
13 *with the debtor for the purpose of pur-*
14 *chasing securities; and*

15 “(ii) *any person who has a claim*
16 *against the debtor for, or a claim against*
17 *the debtor arising out of sales or conversions*
18 *of, cash, securities, futures contracts, or op-*
19 *tions on futures contracts received, acquired,*
20 *or held in a portfolio margining account*
21 *carried as a securities account pursuant to*
22 *a portfolio margining program approved by*
23 *the Commission.*

24 “(C) *EXCLUDED PERSONS.—The term ‘cus-*
25 *tomers’ does not include—*

1 “(i) any person to the extent that the
2 claim of such person arises out of trans-
3 actions with a foreign subsidiary of a mem-
4 ber of SIPC;

5 “(ii) any person to the extent that such
6 person has a claim for cash or securities
7 which by contract, agreement, or under-
8 standing, or by operation of law, is part of
9 the capital of the debtor, or is subordinated
10 to the claims of any or all creditors of the
11 debtor, notwithstanding that some ground
12 exists for declaring such contract, agree-
13 ment, or understanding void or voidable in
14 a suit between the claimant and the debtor;
15 or

16 “(iii) any person to the extent such
17 person has a claim relating to any open re-
18 purchase or open reverse repurchase agree-
19 ment.

20 For purposes of this paragraph, the term ‘repur-
21 chase agreement’ means the sale of a security at
22 a specified price with a simultaneous agreement
23 or obligation to repurchase the security at a
24 specified price on a specified future date.”;

1 (2) in paragraph (4), by inserting after the first
2 sentence the following new sentence: “In the case of
3 portfolio margining accounts of customers that are
4 carried as securities accounts pursuant to a portfolio
5 margining program approved by the Commission,
6 such term shall also include futures contracts and op-
7 tions on futures contracts received, acquired, or held
8 by or for the account of a debtor from or for such ac-
9 counts, and the proceeds thereof.”;

10 (3) in paragraph (9), by inserting before “Such
11 term” in the matter following subparagraph (L) the
12 following: “The term includes revenues earned by a
13 broker or dealer in connection with transactions in
14 customers’ portfolio margining accounts carried as se-
15 curities accounts pursuant to a portfolio margining
16 program approved by the Commission.”; and

17 (4) in paragraph (11)—

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

20 “(A) calculating the sum which would have
21 been owed by the debtor to such customer if the
22 debtor had liquidated, by sale or purchase on the
23 filing date—

1 “(i) all securities positions of such cus-
2 tomer (other than customer name securities
3 reclaimed by such customer); and

4 “(ii) all positions in futures contracts
5 and options on futures contracts held in a
6 portfolio margining account carried as a se-
7 curities account pursuant to a portfolio
8 margining program approved by the Com-
9 mission; minus”; and

10 (B) by inserting before “In determining” in
11 the matter following subparagraph (C) the fol-
12 lowing: “A claim for a commodity futures con-
13 tract received, acquired, or held in a portfolio
14 margining account pursuant to a portfolio mar-
15 gining program approved by the Commission, or
16 a claim for a security futures contract, shall be
17 deemed to be a claim for the mark-to-market
18 (variation) payments due with respect to such
19 contract as of the filing date, and such claim
20 shall be treated as a claim for cash.”.

21 **SEC. 510. STUDY AND REPORT ON THE FEASIBILITY OF**
22 **RISK-BASED ASSESSMENTS FOR SIPC MEM-**
23 **BERS.**

24 (a) **STUDY REQUIRED.**—The Comptroller General of
25 the United States shall conduct a study on whether the Se-

1 *curities Investor Protection Corporation (hereafter in this*
2 *section referred to as “SIPC”) should be required to impose*
3 *assessments, on its member brokers and dealers, based on*
4 *risk for the purpose of adequately maintaining the SIPC*
5 *Fund.*

6 (b) *CONTENT.—The Comptroller General in con-*
7 *ducting this study shall—*

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

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

15 (3) *explore whether objective measures like the*
16 *volume of assets of the SIPC member, previous en-*
17 *forcement and compliance actions taken by regulatory*
18 *bodies against the SIPC member, or the number of*
19 *years the SIPC member has been in operation, among*
20 *other factors, can be used to assess the probability the*
21 *fund will incur a loss with respect to the SIPC mem-*
22 *ber;*

23 (4) *examine the impact that risk-based assess-*
24 *ments could have on large and small brokers and*
25 *dealers; and*

1 **TITLE VI—SARBANES-OXLEY ACT**
2 **AMENDMENTS**

3 **SEC. 601. PUBLIC COMPANY ACCOUNTING OVERSIGHT**
4 **BOARD OVERSIGHT OF AUDITORS OF BRO-**
5 **KERS AND DEALERS.**

6 (a) *DEFINITIONS.*—(1) *Title I of the Sarbanes-Oxley*
7 *Act of 2002 is amended by adding at the end the following*
8 *new section:*

9 **“SEC. 110. DEFINITIONS.**

10 *“For the purposes of this title, and notwithstanding*
11 *section 2:*

12 *“(1) AUDIT.—The term ‘audit’ means an exam-*
13 *ination of the financial statements, reports, docu-*
14 *ments, procedures or controls, or notices, of any*
15 *issuer, broker, or dealer by an independent public ac-*
16 *counting firm in accordance with the rules of the*
17 *Board or the Commission (or, for the period pre-*
18 *ceding the adoption of applicable rules of the Board*
19 *under section 103, in accordance with then-applicable*
20 *generally accepted auditing and related standards for*
21 *such purposes), for the purpose of expressing an opin-*
22 *ion on such financial statements, reports, documents,*
23 *procedures or controls, or notices.*

24 *“(2) AUDIT REPORT.—The term ‘audit report’*
25 *means a document, report, notice, or other record—*

1 “(A) prepared following an audit performed
2 for purposes of compliance by an issuer, broker,
3 or dealer with the requirements of the securities
4 laws; and

5 “(B) in which a public accounting firm ei-
6 ther—

7 “(i) sets forth the opinion of that firm
8 regarding a financial statement, report, no-
9 tice, other document, procedures, or controls;
10 or

11 “(ii) asserts that no such opinion can
12 be expressed.

13 “(3) *PROFESSIONAL STANDARDS.*—The term
14 ‘professional standards’ means—

15 “(A) accounting principles that are—

16 “(i) established by the standard setting
17 body described in section 19(b) of the Secu-
18 rities Act of 1933, as amended by this Act,
19 or prescribed by the Commission under sec-
20 tion 19(a) of that Act (15 U.S.C. 17a(s)) or
21 section 13(b) of the Securities Exchange Act
22 of 1934 (15 U.S.C. 78a(m)); and

23 “(ii) relevant to audit reports for par-
24 ticular issuers, brokers, or dealers, or dealt
25 with in the quality control system of a par-

1 *ticular registered public accounting firm;*
2 *and*

3 *“(B) auditing standards, standards for at-*
4 *testation engagements, quality control policies*
5 *and procedures, ethical and competency stand-*
6 *ards, and independence standards (including*
7 *rules implementing title II) that the Board or*
8 *the Commission determines—*

9 *“(i) relate to the preparation or*
10 *issuance of audit reports for issuers, bro-*
11 *kers, or dealers; and*

12 *“(ii) are established or adopted by the*
13 *Board under section 103(a), or are promul-*
14 *gated as rules of the Commission.*

15 *“(4) BROKER.—The term ‘broker’ means a*
16 *broker (as such term is defined in section 3(a)(4) of*
17 *the Securities Exchange Act of 1934 (15 U.S.C.*
18 *78c(a)(4))) that is required to file a balance sheet, in-*
19 *come statement, or other financial statement under*
20 *section 17(e)(1)(A) of such Act (15 U.S.C.*
21 *78q(e)(1)(A)), where such balance sheet, income state-*
22 *ment, or financial statement is required to be certified*
23 *by a registered public accounting firm.*

24 *“(5) DEALER.—The term ‘dealer’ means a dealer*
25 *(as such term is defined in section 3(a)(5) of the Se-*

1 *curities Exchange Act of 1934 (15 U.S.C. 78c(a)(5))*
2 *that is required to file a balance sheet, income state-*
3 *ment, or other financial statement under section*
4 *17(e)(1)(A) of such Act (15 U.S.C. 78q(e)(1)(A)),*
5 *where such balance sheet, income statement, or finan-*
6 *cial statement is required to be certified by a reg-*
7 *istered public accounting firm.*

8 “(6) *SELF-REGULATORY ORGANIZATION.*—*The*
9 *term ‘self-regulatory organization’ has the same*
10 *meaning as in section 3(a)(26) of the Securities Ex-*
11 *change Act of 1934 (15 U.S.C. 78c(a)(26)).”.*

12 (2) *The table of sections in section 1(b) of such Act*
13 *is amended, by inserting after the item relating to section*
14 *109 the following new item:*

 “*Sec. 110. Definitions.*”.

15 (b) *ESTABLISHMENT AND ADMINISTRATION OF THE*
16 *PUBLIC COMPANY ACCOUNTING OVERSIGHT BOARD.*—*Sec-*
17 *tion 101 of such Act is amended—*

18 (1) *by striking “issuers” each place it appears*
19 *and inserting “issuers, brokers, and dealers”;*

20 (2) *in subsection (a), by striking “public compa-*
21 *nies” and inserting “companies”; and*

22 (3) *in subsection (a), by striking “for companies*
23 *the securities of which are sold to, and held by and*
24 *for, public investors”.*

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

3 (1) *in subsection (a), by striking “Beginning 180*
4 *days after the date of the determination of the Com-*
5 *mission under section 101(d), it” and inserting “It”;*

6 (2) *in subsections (a) and (b)(2)(G), by striking*
7 *“issuer” each place it appears and inserting “issuer,*
8 *broker, or dealer”;* and

9 (3) *in subsection (b)(2)(A), by striking “issuers”*
10 *and inserting “issuers, brokers, and dealers”.*

11 (d) *AUDITING AND INDEPENDENCE.*—Section 103(a) of
12 *such Act is amended—*

13 (1) *in paragraph (1), by striking “and such eth-*
14 *ics standards” and inserting “such ethics standards,*
15 *and such independence standards”;*

16 (2) *in paragraph (2)(A)(iii), by striking “de-*
17 *scribe in each audit report” and inserting “in each*
18 *audit report for an issuer, describe”;* and

19 (3) *in paragraph (2)(B)(i), by striking “issuers”*
20 *and inserting “issuers, brokers, and dealers”.*

21 (e) *INSPECTIONS OF REGISTERED PUBLIC ACCOUNT-*
22 *ING FIRMS.*—Section 104 of *such Act is amended—*

23 (1) *in subsection (a), by striking “issuers” and*
24 *inserting “issuers, brokers, and dealers”;*

25 (2) *in subsection (b)(1)(A)—*

1 (A) by striking “audit reports” and insert-
2 ing “audit reports on annual financial state-
3 ments”; and

4 (B) by striking “and”;

5 (3) in subsection (b)(1)(B)—

6 (A) by striking “audit reports” and insert-
7 ing “audit reports on annual financial state-
8 ments”; and

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

11 (4) by adding at the end of subsection (b)(1) the
12 following new subparagraph:

13 “(C) with respect to each registered public
14 accounting firm that regularly provides audit re-
15 ports and is not described under subparagraph
16 (A) or (B), on a basis to be determined by the
17 Board, by rule, consistent with the public inter-
18 est and protection of investors.”.

19 (f) *INVESTIGATIONS AND DISCIPLINARY PRO-*
20 *CEEDINGS.*—Section 105(c)(7)(B) of such Act is amended—

21 (1) in the subparagraph heading, by inserting “,
22 *BROKER, OR DEALER*” after “*ISSUER*”;

23 (2) by striking “any issuer” each place it ap-
24 pears and inserting “any issuer, broker, or dealer”;

25 and

1 (3) by striking “an issuer under this subsection”
2 and inserting “a registered public accounting firm
3 under this subsection”.

4 (g) *FOREIGN PUBLIC ACCOUNTING FIRMS.*—Section
5 106 of such Act is amended—

6 (1) in subsection (a)(1), by striking “issuer” and
7 inserting “issuer, broker, or dealer”; and

8 (2) in subsection (a)(2), by striking “issuers”
9 and inserting “issuers, brokers, or dealers”.

10 (h) *FUNDING.*—Section 109 of such Act is amended—

11 (1) in subsection (c)(2), by striking “subsection
12 (i)” and inserting “subsection (j)”;

13 (2) in subsection (d)(2), by striking “allowing
14 for differentiation among classes of issuers, as appro-
15 priate” and inserting “and among brokers and deal-
16 ers in accordance with subsection (h), and allowing
17 for differentiation among classes of issuers and bro-
18 kers and dealers, as appropriate”;

19 (3) in subsection (d), by inserting at the end the
20 following new paragraph:

21 “(3) *BROKERS AND DEALERS.*—The rules of the
22 Board under paragraph (1) shall provide that the al-
23 location, assessment, and collection by the Board (or
24 an agent appointed by the Board) of the fee estab-
25 lished under paragraph (1) with respect to brokers

1 *and dealers shall not begin until the first day of the*
2 *first full fiscal year beginning after the date of the en-*
3 *actment of this paragraph.”;*

4 *(4) by redesignating subsections (h), (i), and (j)*
5 *as subsections (i), (j), and (k), respectively; and*

6 *(5) by inserting after subsection (g) the following*
7 *new subsection:*

8 “*(h) ALLOCATION OF ACCOUNTING SUPPORT FEES*
9 *AMONG BROKERS AND DEALERS.—*

10 “*(1) IN GENERAL.—Any amount due from bro-*
11 *kers and dealers (or a particular class of such brokers*
12 *and dealers) under this section to fund the budget of*
13 *the Board shall be allocated among and payable by*
14 *such brokers and dealers (or such brokers and dealers*
15 *in a particular class, as applicable). A broker or deal-*
16 *er’s allocation shall be in proportion to the broker or*
17 *dealer’s net capital compared to the total net capital*
18 *of all brokers and dealer, in accordance with the rules*
19 *of the Board.*

20 “*(2) OBLIGATION TO PAY.—Every broker or deal-*
21 *er shall pay the share of a reasonable annual account-*
22 *ing support fee or fees allocated to such broker or*
23 *dealer under this section.”.*

1 (i) *REFERRAL OF INVESTIGATIONS TO A SELF-REGU-*
2 *LATORY ORGANIZATION.*—Section 105(b)(4)(B) of the Sar-
3 *banes-Oxley Act of 2002 is amended—*

4 (1) *by redesignating clauses (ii) and (iii) as*
5 *clauses (iii) and (iv), respectively; and*

6 (2) *by inserting after clause (i) the following new*
7 *clause:*

8 “(ii) *to a self-regulatory organization,*
9 *in the case of an investigation that concerns*
10 *an audit report for a broker or dealer that*
11 *is subject to the jurisdiction of such self-reg-*
12 *ulatory organization;”.*

13 (j) *USE OF DOCUMENTS RELATED TO AN INSPECTION*
14 *OR INVESTIGATION.*—Section 105(b)(5)(B)(ii) of such Act
15 *is amended—*

16 (1) *in subclause (III), by striking “and”;*

17 (2) *in subclause (IV), by striking the comma and*
18 *inserting “; and”;* and

19 (3) *by inserting after subclause (IV) the fol-*
20 *lowing new subclause:*

21 “(V) *a self-regulatory organiza-*
22 *tion, with respect to an audit report*
23 *for a broker or dealer that is subject to*
24 *the jurisdiction of such self-regulatory*
25 *organization;”.*

1 **SEC. 602. FOREIGN REGULATORY INFORMATION SHARING.**

2 (a) *DEFINITION.*—Section 2(a) of the Sarbanes-Oxley
3 Act of 2002 (15 U.S.C. 7201(a)) is amended by inserting
4 after paragraph (16) the following:

5 “(17) *FOREIGN AUDITOR OVERSIGHT AUTHOR-*
6 *ITY.*—The term ‘foreign auditor oversight authority’
7 means any governmental body or other entity empow-
8 ered by a foreign government to conduct inspections
9 of public accounting firms or otherwise to administer
10 or enforce laws related to the regulation of public ac-
11 counting firms.”.

12 (b) *AVAILABILITY TO SHARE INFORMATION.*—Section
13 105(b)(5) of the Sarbanes-Oxley Act of 2002 (15 U.S.C.
14 7215(b)(5)) is amended by adding at the end the following:

15 “(C) *AVAILABILITY TO FOREIGN OVERSIGHT*
16 *AUTHORITIES.*—When in the Board’s discretion
17 it is necessary to accomplish the purposes of this
18 Act or to protect investors, and without the loss
19 of its status as confidential and privileged in the
20 hands of the Board, all information referred to
21 in subparagraph (A) that relates to a public ac-
22 counting firm within the inspection authority, or
23 other regulatory or law enforcement jurisdiction,
24 of a foreign auditor oversight authority may be
25 made available to the foreign auditor oversight
26 authority if the foreign auditor oversight author-

1 *ity provides such assurances of confidentiality as*
2 *the Board determines appropriate.”.*

3 (c) *CONFORMING AMENDMENT.—Section 105(b)(5)(A)*
4 *of the Sarbanes-Oxley Act of 2002 (15 U.S.C.*
5 *7215(b)(5)(A)) is amended by striking “subparagraph (B)”*
6 *and inserting “subparagraphs (B) and (C)”.*

7 **SEC. 603. EXPANSION OF AUDIT INFORMATION TO BE PRO-**
8 **DUCED AND EXCHANGED WITH FOREIGN**
9 **COUNTERPARTS.**

10 *Section 106 of the Sarbanes-Oxley Act of 2002 (15*
11 *U.S.C. 7216) is amended—*

12 (1) *by amending subsection (b) to read as fol-*
13 *lows:*

14 “(b) *PRODUCTION OF DOCUMENTS.—*

15 “(1) *PRODUCTION BY FOREIGN FIRMS.—If a for-*
16 *foreign public accounting firm issues an audit report,*
17 *performs audit work, conducts interim reviews, or*
18 *performs material services upon which a registered*
19 *public accounting firm relies in the conduct of an*
20 *audit or interim review, the foreign public accounting*
21 *firm shall produce its audit work papers and all*
22 *other documents related to any such audit work or in-*
23 *terim review to the Commission or the Board when*
24 *requested by the Commission or the Board and the*
25 *foreign public accounting firm shall be subject to the*

1 *jurisdiction of the courts of the United States for pur-*
2 *poses of enforcement of any request of such documents.*

3 “(2) *OTHER PRODUCTION.*—*Any registered pub-*
4 *lic accounting firm that relies, in whole or in part,*
5 *on the work of a foreign public accounting firm in*
6 *issuing an audit report, performing audit work, or*
7 *conducting an interim review, shall—*

8 “(A) *produce the foreign public accounting*
9 *firm’s audit work papers and all other docu-*
10 *ments related to any such work in response to a*
11 *request for production by the Commission or the*
12 *Board; and*

13 “(B) *secure the agreement of any foreign*
14 *public accounting firm to such production, as a*
15 *condition of its reliance on the work of that for-*
16 *ign public accounting firm.”;*

17 (2) *by redesignating subsection (d) as subsection*
18 *(g); and*

19 (3) *by inserting after subsection (c) the following*
20 *new subsections:*

21 “(d) *SERVICE OF REQUESTS OR PROCESS.*—*Any for-*
22 *ign public accounting firm that performs work for a do-*
23 *mestic registered public accounting firm shall furnish to the*
24 *domestic firm a written irrevocable consent and power of*
25 *attorney that designates the domestic firm as an agent upon*

1 *whom may be served any process, pleadings, or other papers*
2 *in any action brought to enforce this section. Any foreign*
3 *public accounting firm that issues an audit report, per-*
4 *forms audit work, performs interim reviews, or performs*
5 *other material services upon which a registered public ac-*
6 *counting firm relies in the conduct of an audit or interim*
7 *review, shall designate to the Commission or the Board an*
8 *agent in the United States upon whom may be served any*
9 *process, pleading, or other papers in any action brought*
10 *to enforce this section or any request by the Commission*
11 *or the Board under this section.*

12 “(e) *SANCTIONS.—A willful refusal to comply, in*
13 *whole in or in part, with any request by the Commission*
14 *or the Board under this section, shall be a violation of this*
15 *Act.*

16 “(f) *OTHER MEANS OF SATISFYING PRODUCTION OB-*
17 *LIGATIONS.—Notwithstanding any other provision of this*
18 *section, the staff of the Commission or Board may allow*
19 *foreign public accounting firms subject to this section to*
20 *meet production obligations under this section through alter-*
21 *nate means, such as through foreign counterparts of the*
22 *Commission or Board.”.*

1 **SEC. 604. CONFORMING AMENDMENT RELATED TO REG-**
2 **ISTRATION.**

3 *Section 102(b)(3)(A) of the Sarbanes-Oxley Act of 2002*
4 *(15 U.S. Code 7212(b)(3)(A)) is amended by striking “by*
5 *the Board” and inserting “by the Commission or the*
6 *Board”.*

7 **SEC. 605. FAIR FUND AMENDMENTS.**

8 *Section 308 of the Sarbanes-Oxley Act of 2002 (15*
9 *U.S.C. 7246(a)) is amended—*

10 *(1) by amending subsection (a) to read as fol-*
11 *lows:*

12 *“(a) CIVIL PENALTIES TO BE USED FOR THE RELIEF*
13 *OF VICTIMS.—If in any judicial or administrative action*
14 *brought by the Commission under the securities laws (as*
15 *such term is defined in section 3(a)(47) of the Securities*
16 *Exchange Act of 1934 (15 U.S.C. 78c(a)(47)), the Commis-*
17 *sion obtains a civil penalty against any person for a viola-*
18 *tion of such laws or the rules and regulations thereunder,*
19 *or such person agrees in settlement of any such action to*
20 *such civil penalty, the amount of such civil penalty or set-*
21 *tlement shall, on the motion or at the direction of the Com-*
22 *mission, be added to and become part of a disgorgement*
23 *fund or other fund established for the benefit of the victims*
24 *of such violation.”;*

25 *(2) in subsection (b), by—*

1 (A) striking “for a disgorgement fund de-
2 scribed in subsection (a)” and inserting “for a
3 disgorgement fund or other fund described in
4 subsection (a)”; and

5 (B) striking “in the disgorgement fund”
6 and inserting “in such fund”; and

7 (3) by striking subsection (e).

8 **SEC. 606. EXEMPTION FOR NONACCELERATED FILERS.**

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

11 “(c) *EXEMPTION FOR SMALLER ISSUERS.*—Subsection
12 (b) shall not apply with respect to any audit report pre-
13 pared for an issuer that is not an accelerated filer within
14 the meaning Rule 12b–2 of the Commission (17 C.F.R.
15 240.12b–2).”.

16 (b) *STUDY.*—The Securities and Exchange Commis-
17 sion and the Comptroller General shall jointly conduct a
18 study to determine how the Commission could reduce the
19 burden of complying with section 404(b) of the Sarbanes-
20 Oxley Act of 2002 for companies whose market capitaliza-
21 tion is between \$75,000,000 and \$250,000,000 for the rel-
22 evant reporting period while maintaining investor protec-
23 tions for such companies. The study shall also consider
24 whether any such methods of reducing the compliance bur-
25 den or a complete exemption for such companies from com-

1 *pliance with such section would encourage companies to list*
2 *on exchanges in the United States in their initial public*
3 *offerings. Not later than 180 days after the date of the enact-*
4 *ment of this Act, the Commission and the Comptroller Gen-*
5 *eral shall transmit a report of such study to Congress.*

6 **SEC. 607. WHISTLEBLOWER PROTECTION AGAINST RETAL-**
7 **IATION BY A SUBSIDIARY OF AN ISSUER.**

8 *Section 1514A(a) of title 18, United States Code, is*
9 *amended by inserting “including any subsidiary or affiliate*
10 *whose financial information is included in the consolidated*
11 *financial statements of such company,” after “(15 U.S.C.*
12 *780(d)),”.*

13 **SEC. 608. CONGRESSIONAL ACCESS TO INFORMATION.**

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

16 *“(i) CONGRESSIONAL ACCESS TO INFORMATION.—*
17 *Nothing in this section shall—*

18 *“(1) affect the Boards obligations, if any, to pro-*
19 *vide access to records under the Right to Financial*
20 *Privacy Act; or*

21 *“(2) authorize the Board to withhold informa-*
22 *tion from Congress or prevent the Board from com-*
23 *plying with an order of a court of the United States*
24 *in an action commenced by the United States or the*
25 *Board.”.*

1 **SEC. 609. CREATION OF OMBUDSMAN FOR THE PCAOB.**

2 (a) *OMBUDSMAN.*—*Title I of the Sarbanes-Oxley Act*
3 *of 2002 (15 U.S.C. 7211 et seq.), as amended by section*
4 *601(a)(1), is further amended by adding at the end the fol-*
5 *lowing new section:*

6 **“SEC. 111. OMBUDSMAN.**

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

11 “(b) *DUTIES OF OMBUDSMAN.*—*The ombudsman ap-*
12 *pointed in accordance with subsection (a) for the Board*
13 *shall—*

14 “(1) *act as a liaison between the Board and—*

15 “(A) *any registered public accounting firm*
16 *or issuer with respect to issues or disputes con-*
17 *cerning the preparation or issuance of any audit*
18 *report with respect to that issuer; and*

19 “(B) *any affected registered public account-*
20 *ing firm or issuer with respect to—*

21 “(i) *any problem such firm or issuer*
22 *may have in dealing with the Board result-*
23 *ing from the regulatory activities of the*
24 *Board, particularly with regard to the im-*
25 *plementation of section 404; and*

1 “(i) issues caused by the relationships
2 of registered public accounting firms and
3 issuers generally; and

4 “(2) assure that safeguards exist to encourage
5 complainants to come forward and to preserve con-
6 fidentiality; and

7 “(3) carry out such activities, and any other ac-
8 tivities assigned by the Board, in accordance with
9 guidelines prescribed by the Board.”.

10 (b) *CONFORMING AMENDMENT.*—*The table of sections*
11 *in section 1(b) of such Act is amended, by inserting after*
12 *the item relating to section 110 (as added by section*
13 *601(a)(2)) the following new item:*

 “Sec. 111. Ombudsman.”.

14 **SEC. 610. AUDITING OVERSIGHT BOARD.**

15 *The Sarbanes-Oxley Act of 2002 is amended—*

16 (1) *in section 2(a)(5), by striking “Public Com-*
17 *pany Accounting Oversight Board” and inserting*
18 *“Auditing Oversight Board”;*

19 (2) *in section 101(a), by striking “Public Com-*
20 *pany Accounting Oversight Board” and inserting*
21 *“Auditing Oversight Board”; and*

22 (3) *in the heading of title I, by striking “**PUB-***
23 ***LIC COMPANY ACCOUNTING OVER-***
24 ***SIGHT BOARD” and inserting “**AUDITING*****
25 ***OVERSIGHT BOARD”.***

1 **TITLE VII—SENIOR INVESTMENT**
2 **PROTECTION**

3 **SEC. 701. FINDINGS.**

4 *Congress finds that—*

5 *(1) many seniors are targeted by salespersons*
6 *and advisers using misleading certifications and pro-*
7 *fessional designations;*

8 *(2) many certifications and professional designa-*
9 *tions used by salespersons and advisers represent lim-*
10 *ited training or expertise, and may in fact be of no*
11 *value with respect to advising seniors on financial*
12 *and estate planning matters, and far too often, such*
13 *designations are obtained simply by attending a*
14 *weekend seminar and passing an open book, multiple*
15 *choice test;*

16 *(3) many seniors have lost their life savings be-*
17 *cause salespersons and advisers holding a misleading*
18 *designation have steered them toward products that*
19 *were unsuitable for them, given their retirement needs*
20 *and life expectancies;*

21 *(4) seniors have a right to clearly know whether*
22 *they are working with a qualified adviser who under-*
23 *stands the products and is working in their best in-*
24 *terest or a self-interested salesperson or adviser advo-*
25 *cating particular products; and*

1 (5) *many existing State laws and enforcement*
2 *measures addressing the use of certifications, profes-*
3 *sional designations, and suitability standards in sell-*
4 *ing financial products to seniors are inadequate to*
5 *protect senior investors from salespersons and advis-*
6 *ers using such designations.*

7 **SEC. 702. DEFINITIONS.**

8 *For purposes of this title:*

9 (1) *MISLEADING DESIGNATION.*—*The term “mis-*
10 *leading designation”*—

11 (A) *means the use of a purported certifi-*
12 *cation, professional designation, or other creden-*
13 *tial, that indicates or implies that a salesperson*
14 *or adviser has special certification or training in*
15 *advising or servicing seniors; and*

16 (B) *does not include any legitimate certifi-*
17 *cation, professional designation, license, or other*
18 *credential, if—*

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

21 (ii) *it meets the standards for certifi-*
22 *cations, licenses, and professional designa-*
23 *tions outlined by the North American Secu-*
24 *rities Administrators Association (in this*
25 *title referred to as the “NASAA”) Model*

1 *Rule on the Use of Senior-Specific Certifi-*
2 *cations and Professional Designations, as in*
3 *effect on the date of the enactment of this*
4 *Act, or any successor thereto, or it was*
5 *issued by or obtained from any State.*

6 (2) *FINANCIAL PRODUCT.*—*The term “financial*
7 *product” means securities, insurance products (in-*
8 *cluding insurance products which pay a return,*
9 *whether fixed or variable), and bank and loan prod-*
10 *ucts.*

11 (3) *MISLEADING OR FRAUDULENT MARKETING.*—
12 *The term “misleading or fraudulent marketing”*
13 *means the use of a misleading designation when sell-*
14 *ing to or advising a senior about the sale of a finan-*
15 *cial product.*

16 (4) *SENIOR.*—*The term “senior” means any in-*
17 *dividual who has attained the age of 62 years or*
18 *more.*

19 (5) *STATE.*—*The term “State” means each of the*
20 *50 States, the District of Columbia, and the unincor-*
21 *porated territories of Puerto Rico and the U.S. Virgin*
22 *Islands.*

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

4 (a) *GRANT PROGRAM.*—*The Securities and Exchange*
5 *Commission (in this title referred to as the “Commis-*
6 *sion”)*—

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

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

11 (B) *to develop educational materials and*
12 *training aimed at reducing misleading and*
13 *fraudulent marketing of financial products to-*
14 *ward seniors; and*

15 (2) *may establish such performance objectives, re-*
16 *porting requirements, and application procedures for*
17 *States and State agencies receiving grants under this*
18 *title as the Commission determines are necessary to*
19 *carry out and assess the effectiveness of the program*
20 *under this title.*

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

25 (1) *to fund additional staff to identify, inves-*
26 *tigate, and prosecute (through civil, administrative,*

1 or criminal enforcement actions) cases involving mis-
2 leading or fraudulent marketing of financial products
3 to seniors;

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

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

12 (4) to provide educational materials and train-
13 ing to regulators on the appropriateness of the use of
14 designations by salespersons and advisers of financial
15 products;

16 (5) to provide educational materials and train-
17 ing to seniors to increase their awareness and under-
18 standing of designations; and

19 (6) to develop comprehensive plans to combat
20 misleading or fraudulent marketing of financial prod-
21 ucts to seniors.

22 (c) *GRANT REQUIREMENTS.*—

23 (1) *MAXIMUM.*—The amount of a grant under
24 this title may not exceed \$500,000 per fiscal year per
25 State, if all requirements of paragraphs (2), (3), (4),

1 *and (5) are met. Such amount shall be limited to*
2 *\$100,000 per fiscal year per State in any case in*
3 *which the State meets the requirements of—*

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

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

8 *(2) STANDARD DESIGNATION RULES FOR SECURI-*
9 *TIES.—A State shall have adopted rules on the appro-*
10 *prate use of designations in the offer or sale of secu-*
11 *rities or investment advice, which shall meet or exceed*
12 *the minimum requirements of the NASAA Model Rule*
13 *on the Use of Senior-Specific Certifications and Pro-*
14 *fessional Designations, as in effect on the date of the*
15 *enactment of this Act, or any successor thereto.*

16 *(3) SUITABILITY RULES FOR SECURITIES.—A*
17 *State shall have adopted standard rules on the suit-*
18 *ability requirements in the sale of securities, which*
19 *shall, to the extent practicable, conform to the min-*
20 *imum requirements on suitability imposed by self-reg-*
21 *ulatory organization rules under the securities laws*
22 *(as defined in section 3 of the Securities Exchange*
23 *Act of 1934).*

24 *(4) STANDARD DESIGNATION RULES FOR INSUR-*
25 *ANCE PRODUCTS.—A State shall have adopted stand-*

1 *ard rules on the appropriate use of designations in*
2 *the sale of insurance products, which shall, to the ex-*
3 *tent practicable, conform to the minimum require-*
4 *ments of the National Association of Insurance Com-*
5 *missioners Model Regulation on the Use of Senior-*
6 *Specific Certifications and Professional Designations*
7 *in the Sale of Life Insurance and Annuities, as in ef-*
8 *fect on the date of the enactment of this Act, or any*
9 *successor thereto.*

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

12 (A) *IN GENERAL.—A State shall have*
13 *adopted rules governing insurer supervision of,*
14 *suitability of, and insurer and insurance pro-*
15 *ducer conduct relating to, the sale of annuity*
16 *products, including fixed and index annuities.*

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

20 (i) *that insurers, and insurance pro-*
21 *ducers are responsible for, and liable for*
22 *penalties for, the suitability of each rec-*
23 *ommended annuity transaction;*

24 (ii) *that insurers and insurance pro-*
25 *ducers are required to apply a standard for*

1 *determining the suitability of each rec-*
2 *ommended annuity transaction, including*
3 *fixed and index annuities, that is at least*
4 *as protective of the interests of the consumer*
5 *as rule 2821(b) of the Financial Industry*
6 *Regulatory Authority (in this paragraph re-*
7 *ferred to as “FINRA”), as in effect on the*
8 *date of the enactment of this Act, or any*
9 *successor to such rule;*

10 *(iii) that insurers and insurance pro-*
11 *ducers are required to maintain a process*
12 *for review of the suitability, and approval*
13 *or disapproval, of each recommended annu-*
14 *ity transaction that is at least as protective*
15 *of the interests of the consumer as the prin-*
16 *cipal review required under rule 2821(c) of*
17 *FINRA, as in effect on the date of the enact-*
18 *ment of this Act, or any successor to such*
19 *rule;*

20 *(iv) that insurers and insurance pro-*
21 *ducers are required to maintain processes*
22 *for the supervision of direct annuity sales*
23 *and insurance producer-recommended an-*
24 *nuity sales (including procedures for the in-*
25 *surer to obtain and confirm consumer suit-*

1 *ability information and for the insurer to*
2 *confirm consumer understanding of the an-*
3 *nuity transaction) that are at least as pro-*
4 *ductive of the interests of the consumer as*
5 *member broker and dealer supervision re-*
6 *quirements of FINRA, as in effect on the*
7 *date of the enactment of this Act, or any*
8 *successor to such requirements;*

9 *(v) that insurers are required to verify*
10 *that each insurance producer successfully*
11 *completes, and each insurance producer is*
12 *required to receive, training designed to en-*
13 *sure that the insurance producer is com-*
14 *petent to recommend each class of annuity;*

15 *(vi) that insurers are required to verify*
16 *that insurance producers receive, and insur-*
17 *ance producers are required to receive,*
18 *training regarding the features of each of-*
19 *ferred annuity product, to an extent that is*
20 *at least as protective of the interests of the*
21 *consumer as the FINRA firm element train-*
22 *ing requirements, as in effect on the date of*
23 *the enactment of this Act, or any successor*
24 *to such requirements;*

1 (vii) for coordination of such rules
2 with the rules of FINRA governing member
3 brokers, dealers, and security representa-
4 tives, to the extent appropriate, consistent
5 with protecting the interests of consumers,
6 for State insurance regulators to rely on, or
7 to avoid duplication of FINRA rules; and

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

11 **SEC. 704. APPLICATIONS.**

12 To be eligible for a grant under this title, the State
13 or appropriate State agency shall submit to the Commis-
14 sion a proposal to use the grant money to protect seniors
15 from misleading or fraudulent marketing techniques in the
16 offer and sale of financial products, which application
17 shall—

18 (1) identify the scope of the problem;

19 (2) describe how the proposed program will help
20 to protect seniors from misleading or fraudulent mar-
21 keting in the sale of financial products, including, at
22 a minimum—

23 (A) by proactively identifying senior vic-
24 tims of misleading and fraudulent marketing in
25 the offer and sale of financial products;

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

5 (C) how the proposed program can help dis-
6 courage and reduce future cases of misleading or
7 fraudulent marketing in the offer and sale of fi-
8 nancial products to seniors; and

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

11 **SEC. 705. LENGTH OF PARTICIPATION.**

12 A State receiving a grant under this title shall be pro-
13 vided assistance funds for a period of 3 years, after which
14 the State may reapply for additional funding.

15 **SEC. 706. AUTHORIZATION OF APPROPRIATIONS.**

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

1 **TITLE VIII—REGISTRATION OF**
2 **MUNICIPAL FINANCIAL ADVI-**
3 **SORS**

4 **SEC. 801. MUNICIPAL FINANCIAL ADVISER REGISTRATION**
5 **REQUIREMENT.**

6 (a) *IN GENERAL.*—*The Securities Exchange Act of*
7 *1934 is amended by inserting after section 15E (15 U.S.C.*
8 *780–7) the following new section:*

9 **“SEC. 15F. MUNICIPAL FINANCIAL ADVISER REGISTRATION**
10 **REQUIREMENT.**

11 “(a)(1)(A) *It shall be unlawful for any person to make*
12 *use of the mails or any means or instrumentality of inter-*
13 *state commerce to act as a municipal financial adviser un-*
14 *less such person is registered as a municipal financial ad-*
15 *viser in accordance with subsection (b).*

16 “(B) *Subparagraph (A) shall not apply to a natural*
17 *person associated with a municipal financial adviser, as*
18 *long as such adviser is registered in accordance with sub-*
19 *section (b) and is not a natural person.*

20 “(2) *The Commission, by rule or order, as it deems*
21 *consistent with the public interest and the protection of in-*
22 *vestors, may conditionally or unconditionally exempt from*
23 *paragraph (1) of this section any municipal financial ad-*
24 *viser or class of municipal financial advisers specified in*
25 *such rule or order.*

1 “(b)(1) *A municipal financial adviser may be reg-*
2 *istered by filing with the Commission an application for*
3 *registration in such form and containing such information*
4 *and documents concerning such municipal financial ad-*
5 *viser and any persons associated with such municipal fi-*
6 *nancial adviser as the Commission, by rule, may prescribe*
7 *as necessary or appropriate in the public interest or for*
8 *the protection of investors. Within 45 days of the date of*
9 *the filing of such application (or within such longer period*
10 *as to which the applicant consents), the Commission shall—*

11 “(A) *by order grant registration, or*

12 “(B) *institute proceedings to determine whether*
13 *registration should be denied. Such proceedings shall*
14 *include notice of the grounds for denial under consid-*
15 *eration and opportunity for hearing and shall be con-*
16 *cluded within 120 days of the date of the filing of the*
17 *application for registration. At the conclusion of such*
18 *proceedings, the Commission, by order, shall grant or*
19 *deny such registration. The Commission may extend*
20 *the time for conclusion of such proceedings for up to*
21 *90 days if it finds good cause for such extension and*
22 *publishes its reasons for so finding or for such longer*
23 *period as to which the applicant consents.*

24 *The Commission shall grant such registration if the*
25 *Commission finds that the requirements of this section*

1 *are satisfied. The Commission shall deny such reg-*
2 *istration if it does not make such a finding or if it*
3 *finds that if the applicant were so registered, its reg-*
4 *istration would be subject to suspension or revocation*
5 *under paragraph (4).*

6 *“(2) An application for registration of a municipal*
7 *financial adviser to be formed or organized may be made*
8 *by a municipal financial adviser to which the municipal*
9 *financial adviser to be formed or organized is to be the suc-*
10 *cessor. Such application, in such form as the Commission,*
11 *by rule, may prescribe, shall contain such information and*
12 *documents concerning the applicant, the successor, and any*
13 *persons associated with the applicant or the successor, as*
14 *the Commission, by rule, may prescribe as necessary or ap-*
15 *propriate in the public interest or for the protection of in-*
16 *vestors. The grant or denial of registration to such an appli-*
17 *cant shall be in accordance with the procedures set forth*
18 *in paragraph (1) of this subsection. If the Commission*
19 *grants such registration, the registration shall terminate on*
20 *the 45th day after the effective date thereof, unless prior*
21 *thereto the successor shall, in accordance with such rules*
22 *and regulations as the Commission may prescribe, adopt*
23 *the application for registration as its own.*

24 *“(3) Any provision of this title (other than section 5*
25 *and subsection (a) of this section) which prohibits any act,*

1 *practice, or course of business if the mails or any means*
2 *or instrumentality of interstate commerce is used in connec-*
3 *tion therewith shall also prohibit any such act, practice,*
4 *or course of business by any registered municipal financial*
5 *adviser or any person acting on behalf of such a municipal*
6 *financial adviser, irrespective of any use of the mails or*
7 *any means or instrumentality of interstate commerce in*
8 *connection therewith.*

9 “(4) *The Commission, by order, shall censure, place*
10 *limitations on the activities, functions, or operations of,*
11 *suspend for a period not exceeding 12 months, or revoke*
12 *the registration of any municipal financial adviser if it*
13 *finds, on the record after notice and opportunity for hear-*
14 *ing, that such censure, placing of limitations, suspension,*
15 *or revocation is in the public interest and that such munic-*
16 *ipal financial adviser, whether prior or subsequent to be-*
17 *coming such, or any person associated with such municipal*
18 *financial adviser, whether prior or subsequent to becoming*
19 *so associated—*

20 “(A) *has willfully made or caused to be made in*
21 *any application for registration or report required to*
22 *be filed with the Commission or with any other ap-*
23 *propriate regulatory agency under this title, or in*
24 *any proceeding before the Commission with respect to*
25 *registration, any statement which was at the time*

1 *and in the light of the circumstances under which it*
2 *was made false or misleading with respect to any ma-*
3 *terial fact, or has omitted to state in any such appli-*
4 *cation or report any material fact which is required*
5 *to be stated therein;*

6 *“(B) has been convicted within 10 years pre-*
7 *ceding the filing of any application for registration or*
8 *at any time thereafter of any felony or misdemeanor*
9 *or of a substantially equivalent crime by a foreign*
10 *court of competent jurisdiction which the Commission*
11 *finds—*

12 *“(i) involves the purchase or sale of any se-*
13 *curity, the taking of a false oath, the making of*
14 *a false report, bribery, perjury, burglary, any*
15 *substantially equivalent activity however de-*
16 *nominated by the laws of the relevant foreign*
17 *government, or conspiracy to commit any such*
18 *offense;*

19 *“(ii) arises out of the conduct of the busi-*
20 *ness of a municipal financial adviser, broker,*
21 *dealer, municipal securities dealer, government*
22 *securities broker, government securities dealer,*
23 *investment adviser, bank, insurance company, fi-*
24 *duciary, transfer agent, nationally recognized*
25 *statistical rating organization, foreign person*

1 *performing a function substantially equivalent to*
2 *any of the above, or entity or person required to*
3 *be registered under the Commodity Exchange Act*
4 *(7 U.S.C. 1 et seq.) or any substantially equiva-*
5 *lent foreign statute or regulation;*

6 *“(iii) involves the larceny, theft, robbery, ex-*
7 *tortion, forgery, counterfeiting, fraudulent con-*
8 *cealment, embezzlement, fraudulent conversion,*
9 *or misappropriation of funds, or securities, or*
10 *substantially equivalent activity however de-*
11 *nominated by the laws of the relevant foreign*
12 *government; or*

13 *“(iv) involves the violation of section 152,*
14 *1341, 1342, or 1343 or chapter 25 or 47 of title*
15 *18, or a violation of a substantially equivalent*
16 *foreign statute;*

17 *“(C) is permanently or temporarily enjoined by*
18 *order, judgment, or decree of any court of competent*
19 *jurisdiction from acting as a municipal financial ad-*
20 *viser, investment adviser, underwriter, broker, dealer,*
21 *municipal securities dealer, government securities*
22 *broker, government securities dealer, transfer agent,*
23 *nationally recognized statistical rating organization,*
24 *foreign person performing a function substantially*
25 *equivalent to any of the above, or entity or person re-*

1 *quired to be registered under the Commodity Ex-*
2 *change Act or any substantially equivalent foreign*
3 *statute or regulation, or as an affiliated person or*
4 *employee of any investment company, bank, insur-*
5 *ance company, foreign entity substantially equivalent*
6 *to any of the above, or entity or person required to*
7 *be registered under the Commodity Exchange Act or*
8 *any substantially equivalent foreign statute or regula-*
9 *tion or from engaging in or continuing any conduct*
10 *or practice in connection with any such activity, or*
11 *in connection with the purchase or sale of any secu-*
12 *rity;*

13 *“(D) has willfully violated any provision of the*
14 *Securities Act of 1933, the Investment Advisers Act of*
15 *1940, the Investment Company Act of 1940, the Com-*
16 *modity Exchange Act, this title, the rules or regula-*
17 *tions under any of such statutes, or is unable to com-*
18 *ply with any such provision;*

19 *“(E) has willfully aided, abetted, counseled, com-*
20 *manded, induced, or procured the violation by any*
21 *other person of any provision of the Securities Act of*
22 *1933, the Investment Advisers Act of 1940, the Invest-*
23 *ment Company Act of 1940, the Commodity Exchange*
24 *Act, this title, the rules or regulations under any of*
25 *such statutes, or has failed reasonably to supervise,*

1 *with a view to preventing violations of the provisions*
2 *of such statutes, rules, and regulations, another per-*
3 *son who commits such a violation, if such other per-*
4 *son is subject to his supervision. For the purposes of*
5 *this subparagraph, no person shall be deemed to have*
6 *failed reasonably to supervise any other person, if—*

7 *“(i) there have been established procedures,*
8 *and a system for applying such procedures,*
9 *which would reasonably be expected to prevent*
10 *and detect, insofar as practicable, any such vio-*
11 *lation by such other person, and*

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

17 *“(F) is subject to any order of the Commission*
18 *barring or suspending the right of the person to be as-*
19 *sociated with a municipal financial adviser;*

20 *“(G) has been found by a foreign financial regu-*
21 *latory authority to have—*

22 *“(i) made or caused to be made in any ap-*
23 *plication for registration or report required to be*
24 *filed with a foreign financial regulatory author-*
25 *ity, or in any proceeding before a foreign finan-*

1 *cial regulatory authority with respect to reg-*
2 *istration, any statement that was at the time*
3 *and in the light of the circumstances under*
4 *which it was made false or misleading with re-*
5 *spect to any material fact, or has omitted to*
6 *state in any application or report to the foreign*
7 *financial regulatory authority any material fact*
8 *that is required to be stated therein;*

9 *“(ii) violated any foreign statute or regula-*
10 *tion regarding transactions in securities, or con-*
11 *tracts of sale of a commodity for future delivery,*
12 *traded on or subject to the rules of a contract*
13 *market or any board of trade; or*

14 *“(iii) aided, abetted, counseled, commanded,*
15 *induced, or procured the violation by any person*
16 *of any provision of any statutory provisions en-*
17 *acted by a foreign government, or rules or regu-*
18 *lations thereunder, empowering a foreign finan-*
19 *cial regulatory authority regarding transactions*
20 *in securities, or contracts of sale of a commodity*
21 *for future delivery, traded on or subject to the*
22 *rules of a contract market or any board of trade,*
23 *or has been found, by a foreign financial regu-*
24 *latory authority, to have failed reasonably to su-*
25 *pervise, with a view to preventing violations of*

1 *such statutory provisions, rules, and regulations,*
2 *another person who commits such a violation, if*
3 *such other person is subject to his supervision; or*
4 *“(H) is subject to any final order of a State se-*
5 *curities commission (or any agency or officer per-*
6 *forming like functions), State authority that super-*
7 *vises or examines banks, savings associations, or cred-*
8 *it unions, State insurance commission (or any agency*
9 *or office performing like functions), an appropriate*
10 *Federal banking agency (as defined in section 3 of the*
11 *Federal Deposit Insurance Act (12 U.S.C. 1813(q))),*
12 *or the National Credit Union Administration, that—*

13 *“(i) bars such person from association with*
14 *an entity regulated by such commission, author-*
15 *ity, agency, or officer, or from engaging in the*
16 *business of securities, insurance, banking, sav-*
17 *ings association activities, or credit union activi-*
18 *ties; or*

19 *“(ii) constitutes a final order based on vio-*
20 *lations of any laws or regulations that prohibit*
21 *fraudulent, manipulative, or deceptive conduct.*

22 *“(5) Pending final determination whether any reg-*
23 *istration under this subsection shall be revoked, the Com-*
24 *mission, by order, may suspend such registration, if such*
25 *suspension appears to the Commission, after notice and op-*

1 *portunity for hearing, to be necessary or appropriate in the*
2 *public interest or for the protection of investors. Any reg-*
3 *istered municipal financial adviser may, upon such terms*
4 *and conditions as the Commission deems necessary or ap-*
5 *propriate in the public interest or for the protection of in-*
6 *vestors, withdraw from registration by filing a written no-*
7 *tice of withdrawal with the Commission. If the Commission*
8 *finds that any registered municipal financial adviser is no*
9 *longer in existence or has ceased to do business as a munic-*
10 *ipal financial adviser, the Commission, by order, shall can-*
11 *cel the registration of such municipal financial adviser.*

12 “(6)(A) *With respect to any person who is associated,*
13 *who is seeking to become associated, or, at the time of the*
14 *alleged misconduct, who was associated or was seeking to*
15 *become associated with a municipal financial adviser, the*
16 *Commission, by order, shall censure, place limitations on*
17 *the activities or functions of such person, or suspend for*
18 *a period not exceeding 12 months, or bar such person from*
19 *being associated with a municipal financial adviser, if the*
20 *Commission finds, on the record after notice and oppor-*
21 *tunity for a hearing, that such censure, placing of limita-*
22 *tions, suspension, or bar is in the public interest and that*
23 *such person—*

24 “(i) *has committed or omitted any act, or is sub-*
25 *ject to an order or finding, enumerated in subpara-*

1 *graph (A), (D), or (E) of paragraph (4) of this sub-*
2 *section;*

3 *“(i) has been convicted of any offense specified*
4 *in subparagraph (B) of such paragraph (4) within 10*
5 *years of the commencement of the proceedings under*
6 *this paragraph; or*

7 *“(iii) is enjoined from any action, conduct, or*
8 *practice specified in subparagraph (C) of such para-*
9 *graph (4).*

10 *“(B) It shall be unlawful—*

11 *“(i) for any person as to whom an order under*
12 *subparagraph (A) is in effect, without the consent of*
13 *the Commission, willfully to become, or to be, associ-*
14 *ated with a municipal financial adviser in con-*
15 *travention of such order; or*

16 *“(ii) for any municipal financial adviser to per-*
17 *mit such a person, without the consent of the Com-*
18 *mission, to become or remain, a person associated*
19 *with the municipal financial adviser in contravention*
20 *of such order, if such municipal financial adviser*
21 *knew, or in the exercise of reasonable care should have*
22 *known, of such order.*

23 *“(7) No registered municipal financial adviser shall*
24 *act as such unless it meets such standards of operational*
25 *capability and such municipal financial adviser and all*

1 *natural persons associated with such municipal financial*
2 *adviser meet such standards of training, experience, com-*
3 *petence, and such other qualifications as the Commission*
4 *finds necessary or appropriate in the public interest or for*
5 *the protection of investors. The Commission shall establish*
6 *such standards by rules and regulations, which may—*

7 “(A) *specify that all or any portion of such*
8 *standards shall be applicable to any class of munic-*
9 *ipal financial advisers and persons associated with*
10 *municipal financial advisers;*

11 “(B) *require persons in any such class to pass*
12 *tests prescribed in accordance with such rules and*
13 *regulations, which tests shall, with respect to any*
14 *class of partners, officers, or supervisory employees*
15 *(which latter term may be defined by the Commis-*
16 *sion’s rules and regulations) engaged in the manage-*
17 *ment of the municipal financial adviser, include ques-*
18 *tions relating to bookkeeping, accounting, supervision*
19 *of employees, maintenance of records, and other ap-*
20 *propriate matters; and*

21 “(C) *provide that persons in any such class other*
22 *than municipal financial advisers and partners, offi-*
23 *cers, and supervisory employees of municipal finan-*
24 *cial advisers, may be qualified solely on the basis of*
25 *compliance with such standards of training and such*

1 *other qualifications as the Commission finds appro-*
2 *priate.*

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

7 *“(c)(1)(A) No municipal financial adviser shall make*
8 *use of the mails or any means or instrumentality of inter-*
9 *state commerce in connection with which such municipal*
10 *financial adviser engages in any fraudulent, deceptive, or*
11 *manipulative act or practice or violates such rules and reg-*
12 *ulations regarding conflicts of interest or fair practices, in-*
13 *cluding but not limited to rules and regulations related to*
14 *political contributions, as the Commission shall prescribe*
15 *in the public interest or for the protection of investors or*
16 *to maintain fair and orderly markets.*

17 *“(B) The Commission shall, for the purposes of this*
18 *paragraph as the Commission finds necessary or appro-*
19 *priate in the public interest or for the protection of inves-*
20 *tors, by rules and regulations define, and prescribe means*
21 *reasonably designed to prevent, such acts and practices as*
22 *are fraudulent, deceptive, or manipulative.*

23 *“(2) If the Commission finds, after notice and oppor-*
24 *tunity for a hearing, that any person subject to the provi-*
25 *sions of this section or any rule or regulation thereunder*

1 *has failed to comply with any such provision, rule, or regu-*
2 *lation in any material respect, the Commission may pub-*
3 *lish its findings and issue an order requiring such person,*
4 *and any person who was a cause of the failure to comply*
5 *due to an act or omission the person knew or should have*
6 *known would contribute to the failure to comply, to comply,*
7 *or to take steps to effect compliance, with such provision*
8 *or such rule or regulation thereunder upon such terms and*
9 *conditions and within such time as the Commission may*
10 *specify in such order.*

11 “(d) *Every registered municipal financial adviser*
12 *shall establish, maintain, and enforce written policies and*
13 *procedures reasonably designed, taking into consideration*
14 *the nature of such municipal financial adviser’s business,*
15 *to prevent the misuse in violation of this title, or the rules*
16 *or regulations thereunder, of material, nonpublic informa-*
17 *tion by such municipal financial adviser or any person as-*
18 *sociated with such municipal financial adviser. The Com-*
19 *mission, as it deems necessary or appropriate in the public*
20 *interest or for the protection of investors, shall adopt rules*
21 *or regulations to require specific policies or procedures rea-*
22 *sonably designed to prevent misuse in violation of this title*
23 *(or the rules or regulations thereunder) of material, non-*
24 *public information.*

1 “(e) A municipal financial adviser and any person as-
2 sociated with such municipal financial adviser shall be
3 deemed to have a fiduciary duty to any municipal securi-
4 ties issuer for whom such municipal financial adviser acts
5 as a municipal financial adviser. A municipal financial
6 adviser may not engage in any act, practice, or course of
7 business which is not consistent with a municipal financial
8 adviser’s fiduciary duty. The Commission shall, for the pur-
9 poses of this paragraph, by rules and regulations define,
10 and prescribe means reasonably designed to prevent, such
11 acts, practices, and courses of business as are not consistent
12 with a municipal financial adviser’s fiduciary duty to its
13 clients.”.

14 (b) DEFINITION.—Section 3(a) of the Securities Ex-
15 change Act of 1934 (15 U.S.C. 78c(a)) is amended by add-
16 ing at the end the following new paragraphs:

17 “(65) MUNICIPAL FINANCIAL ADVISER.—

18 “(A) The term ‘municipal financial adviser’
19 means a person who, for compensation, engages
20 in the business of—

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

23 “(I) the issuance or proposed
24 issuance of securities, including any
25 remarketing of municipal securities di-

1 *rectly or indirectly by or on behalf of*
2 *a municipal securities issuer;*

3 *“(II) the investment of proceeds*
4 *from securities issued by such munic-*
5 *ipal securities issuer;*

6 *“(III) the hedging of any risks as-*
7 *sociated with subclauses (I) or (II), in-*
8 *cluding advice as to swap agreements*
9 *(as defined in section 206A of the*
10 *Gramm-Leach-Bliley Act regardless of*
11 *whether the counterparties constitute*
12 *eligible contract participants); or*

13 *“(IV) preparation of disclosure*
14 *documents in connection with the*
15 *issuance, proposed issuance, or pre-*
16 *vious issuance of securities issued by a*
17 *municipal securities issuer, including,*
18 *without limitation, official statements*
19 *and documents prepared in connection*
20 *with a written agreement or contract*
21 *for the benefit of holders of such securi-*
22 *ties described in section 240.15c2–12 of*
23 *title 17, Code of Federal Regulations;*

24 *“(ii) assisting a municipal securities*
25 *issuer in selecting or negotiating guaranteed*

1 *investment contracts or other investment*
2 *products; or*

3 “(iii) *assisting any municipal securi-*
4 *ties issuer in the primary offering of securi-*
5 *ties not involving a public offering.*

6 “(B) *Such term does not include—*

7 “(i) *an attorney, if the attorney is of-*
8 *fering advice or providing services that are*
9 *of a traditional legal nature;*

10 “(ii) *a nationally recognized statistical*
11 *rating organization to the extent it is in-*
12 *volved in the process of developing credit*
13 *ratings;*

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

19 “(iv) *a State or any political subdivi-*
20 *sion thereof.*

21 “(66) *MUNICIPAL SECURITIES ISSUER.—The*
22 *term ‘municipal securities issuer’ means—*

23 “(A) *any entity that has the ability to issue*
24 *a security the interest on which is excludable*
25 *from gross income under section 103 of the Inter-*

1 *nal Revenue Code of 1986 and the regulations*
2 *thereunder; or*

3 *“(B) any person who receives the proceeds*
4 *generated from the issuance of municipal securi-*
5 *ties.*

6 *“(67) PERSON ASSOCIATED WITH A MUNICIPAL*
7 *FINANCIAL ADVISER; ASSOCIATED PERSON OF A MU-*
8 *NICIPAL FINANCIAL ADVISER.—The term ‘person asso-*
9 *ciated with a municipal financial adviser’ or ‘associ-*
10 *ated person of a municipal financial adviser’ means*
11 *any partner, officer, director, or branch manager of*
12 *such municipal financial adviser (or any person oc-*
13 *cupying a similar status or performing similar func-*
14 *tions), any person directly or indirectly controlling,*
15 *controlled by, or under common control with such*
16 *municipal financial adviser, or any employee of such*
17 *municipal financial adviser, except that any person*
18 *associated with a municipal financial adviser whose*
19 *functions are solely clerical or ministerial shall not be*
20 *included in the meaning of such term for purposes of*
21 *section 15F(b) (other than paragraph (6) thereof).”.*

22 **SEC. 802. CONFORMING AMENDMENTS.**

23 *(a) SECURITIES EXCHANGE ACT OF 1934 .—The Secu-*
24 *rities Exchange Act of 1934 is amended—*

1 (1) in section 15(b)(4)(B)(ii) (15 U.S.C.
2 780(b)(4)(B)(ii)), by inserting “municipal finance
3 adviser,” after “nationally recognized statistical rat-
4 ing organization,”;

5 (2) in section 15(b)(4)(C) (15 U.S.C.
6 780(b)(4)(C)), by inserting “municipal finance ad-
7 viser,” after “nationally recognized statistical rating
8 organization,”; and

9 (3) in section 17(a)(1) (15 U.S.C. 78q(a)(1)), by
10 inserting “registered municipal financial adviser,”
11 after “nationally recognized statistical rating organi-
12 zation,”.

13 (b) INVESTMENT COMPANY ACT OF 1940.—*The Invest-*
14 *ment Company Act of 1940 is amended—*

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

17 “(54) The term ‘municipal finance adviser’ has
18 the same meaning as in section 3 of the Securities
19 Exchange Act of 1934.”;

20 (2) in section 9(a)(1) (15 U.S.C. 80a-9(a)(1)),
21 by inserting “municipal finance adviser,” after “cred-
22 it rating agency,”; and

23 (3) in section 9(a)(2) (15 U.S.C. 80a-9(a)(2)),
24 by inserting “municipal finance adviser,” after “cred-
25 it rating agency,”.

1 (c) *INVESTMENT ADVISERS ACT OF 1940.*—*The Invest-*
2 *ment Advisers Act of 1940 is amended—*

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

5 “(29) *The term ‘municipal finance adviser’ has*
6 *the same meaning as in section 3 of the Securities*
7 *Exchange Act of 1934.”;*

8 (2) *in section 203(e)(2)(B) (15 U.S.C. 80b–*
9 *3(e)(2)(B)), by inserting “municipal finance adviser,”*
10 *after “credit rating agency,”; and*

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

14 **SEC. 803. EFFECTIVE DATES.**

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

18 (b) *EFFECTIVE DATE AND REQUIREMENTS FOR REGU-*
19 *LATIONS.*—*Notwithstanding subsection (a), the Securities*
20 *and Exchange Commission shall, within 120 days after the*
21 *date of the enactment of this Act, publish for notice and*
22 *public comment such regulations as are initially required*
23 *to implement this title, and shall take final action with re-*
24 *spect to such regulations not later than 270 days after the*
25 *date of enactment of this Act.*

1 (c) *REGISTRATION DATE.*—No person may continue to
2 act as a municipal financial adviser, as such term is de-
3 fined in section 3(a)(65) of the Securities Exchange Act of
4 1934 (as added by this title), after 30 days after the date
5 the regulations described in subsection (b) become effective
6 unless such person has been registered as required by the
7 amendment made by section 701 of this title.

Union Calendar No. 408

11TH CONGRESS
2^D SESSION

H. R. 3817

[Report No. 111-687, Part I]

A BILL

To provide the Securities and Exchange Commission with additional authorities to protect investors from violations of the securities laws, and for other purposes.

DECEMBER 17, 2010

Committee on the Judiciary discharged; committed to the Committee of the Whole House on the State of the Union and ordered to be printed