

111TH CONGRESS
2D SESSION

H. R. 5032

To amend the Securities Investor Protection Act of 1970 to provide insurance coverage for certain indirect investors caught in Ponzi schemes, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 15, 2010

Mr. ACKERMAN (for himself, Mr. MAFFEI, Mr. KING of New York, Mr. KLEIN of Florida, Mr. PERLMUTTER, and Ms. SPEIER) introduced the following bill; which was referred to the Committee on Financial Services

A BILL

To amend the Securities Investor Protection Act of 1970 to provide insurance coverage for certain indirect investors caught in Ponzi schemes, 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 “Ponzi Scheme Investor
5 Protection Act of 2010”.

1 **SEC. 2. ADDITIONAL PROTECTIONS FOR INVESTORS IN**
2 **PONZI SCHEMES.**

3 (a) IN GENERAL.—The Securities Investor Protec-
4 tion Act of 1970 (15 U.S.C. 78aaa et seq.) is amended
5 by inserting after section 8 the following new section:

6 **“SEC. 8A. SPECIAL PROVISIONS RELATED TO PONZI**
7 **SCHEMES.**

8 “(a) DETERMINATION BY TRUSTEE.—Promptly after
9 the appointment of the trustee, such trustee shall deter-
10 mine if the debtor is a Ponzi scheme. If the trustee deter-
11 mines that the debtor is a Ponzi scheme—

12 “(1) the trustee shall notify SIPC;

13 “(2) SIPC shall make such determination pub-
14 licly available, including on SIPC’s Web site; and

15 “(3) if the trustee determines that customers
16 invested more than \$1,000,000,000 in such Ponzi
17 scheme, the trustee and SIPC shall, not later than
18 30 days after such determination is made, jointly
19 submit to the Committee on Financial Services of
20 the House, the Committee on Banking, Housing,
21 and Urban Affairs of the Senate, and the Secretary
22 of the Treasury a reasonable expected timeline for
23 the consideration of claims made under this section.

24 “(b) STATEMENT OF CLAIM.—

25 “(1) IN GENERAL.—An indirect Ponzi scheme
26 investor may, not later than the end of the 1-year

1 period beginning on the date SIPC makes a deter-
2 mination publicly available under subsection (a), file
3 with the trustee a written claim—

4 “(A) stating the type of securities held by
5 the Ponzi scheme on behalf of the Ponzi scheme
6 investor on behalf of the indirect Ponzi scheme
7 investor;

8 “(B) stating the number of such securities,
9 or in the case of a pooled investment, the per-
10 centage of such securities;

11 “(C) stating the amount of any funds in-
12 vested by the indirect Ponzi scheme investor
13 with the Ponzi scheme investor that were in-
14 vested with the Ponzi scheme, but for which the
15 indirect Ponzi scheme investor has not received
16 a statement or other documentation that would
17 allow the indirect Ponzi scheme investor to
18 identify in which securities the Ponzi scheme
19 stated such funds were invested; and

20 “(D) containing such other information as
21 SIPC may determine necessary to carry out the
22 provisions of this section.

23 “(2) NOTICE.—At the time an indirect Ponzi
24 scheme investor makes a claim under paragraph (1),
25 the indirect Ponzi scheme investor shall also file a

1 copy of the claim with the appropriate Ponzi scheme
2 investor.

3 “(c) COORDINATION WITH PONZI SCHEME INVES-
4 TOR.—To the extent necessary, the trustee shall coordi-
5 nate with Ponzi scheme investors to ensure proper pay-
6 ments to indirect Ponzi scheme investors under this sec-
7 tion.

8 “(d) PAYMENTS TO INDIRECT PONZI SCHEME INVES-
9 TORS.—

10 “(1) IN GENERAL.—After receipt of a written
11 statement of claim pursuant to subsection (b), un-
12 less the trustee determines such claim to be fraudu-
13 lent, the trustee shall, with respect to the securities
14 that are the subject of such claim, take the following
15 actions in the following order:

16 “(A) With respect to a claim relating to se-
17 curities of a class and series of an issuer which
18 are ascertainable from the books and records of
19 the Ponzi scheme or are otherwise established
20 to the satisfaction of the trustee, deliver securi-
21 ties of such class and series to the indirect
22 Ponzi scheme investor if and to the extent
23 available to satisfy such claims in whole or in
24 part, with partial deliveries to be made pro rata

1 to the greatest extent considered practicable by
2 the trustee.

3 “(B) Pay the indirect Ponzi scheme inves-
4 tor a cash amount equal to—

5 “(i) the value of any securities identi-
6 fied in the claim and not otherwise deliv-
7 ered to the indirect Ponzi scheme investor
8 under subparagraph (A); and

9 “(ii) the value of any funds identified
10 in the claim as being invested in the Ponzi
11 scheme by the Ponzi scheme investor on
12 behalf of the indirect Ponzi scheme inves-
13 tor, but for which the indirect Ponzi
14 scheme investor is unable to identify in
15 which specific securities the Ponzi scheme
16 stated such funds were invested.

17 “(2) MAXIMUM AMOUNT.—The aggregate
18 amount of the value of all securities and cash deliv-
19 ered under paragraph (1) may not exceed, for each
20 indirect Ponzi scheme investor, an amount equal
21 to—

22 “(A) \$100,000, minus

23 “(B) the aggregate amount of all cash and
24 securities invested in the Ponzi scheme by the
25 Ponzi scheme investor on behalf of the indirect

1 Ponzi scheme investor that is recovered by the
2 Ponzi scheme investor from the trustee.

3 “(3) ADVANCES BY SIPC.—With respect to pay-
4 ments made pursuant to this section, the trustee
5 may satisfy claims out of moneys made available to
6 the trustee by SIPC notwithstanding the fact that
7 there has not been any showing or determination
8 that there are sufficient funds of the Ponzi scheme
9 available to satisfy such claims.

10 “(4) WAIVER.—By accepting any security or
11 cash from the trustee under this section, the indirect
12 Ponzi scheme investor agrees to waive the right to
13 sue the Ponzi scheme investor with respect to such
14 security or with respect to the security that was the
15 basis for such cash payment.

16 “(5) SECURITY VALUATION.—For purposes of
17 this subsection, the value of a security shall be
18 deemed to be the amount listed for such security on
19 the last statement the indirect Ponzi scheme investor
20 received from the Ponzi scheme investor before the
21 trustee determined the debtor was a Ponzi scheme
22 pursuant to subsection (a).

23 “(e) PROHIBITION ON DOUBLE PAYMENTS.—Securi-
24 ties delivered pursuant to subsection (d), and securities,
25 or percentages of securities, which were the basis for cash

1 paid pursuant to subsection (d), may not be the basis for
2 any other payment by the trustee or SIPC under this Act.

3 “(f) RECOVERY OF FUNDS.—The trustee of a Ponzi
4 scheme may not seek to recover money, including profits,
5 from any investor in the Ponzi scheme unless such inves-
6 tor was either complicit or negligent in their participation
7 in the Ponzi scheme.

8 “(g) NON-APPLICABILITY IF LAWSUIT FILED.—This
9 section shall not apply to a claim filed by an indirect Ponzi
10 scheme investor if such investor has filed a lawsuit against
11 the Ponzi scheme investor, the Ponzi scheme, or the trust-
12 ee in connection with the securities that are the basis of
13 such claim.

14 “(h) RETROACTIVE APPLICABILITY.—With respect to
15 the appointment of a trustee made before the date of the
16 enactment of this section, such trustee shall make the de-
17 termination required under subsection (a) not later than
18 30 days after such date of enactment, and only if such
19 trustee makes a determination that the debtor is a Ponzi
20 scheme and customers invested more than \$1,000,000,000
21 in the Ponzi scheme.

22 “(i) INTEREST PAYMENTS.—If the Secretary of the
23 Treasury makes a determination that claims under this
24 section are not being considered in accordance with the
25 timeline submitted to the Secretary under subsection

1 (a)(3), the Secretary may require any future payments
 2 made under this section to be made with interest.

3 “(j) RULEMAKING.—SIPC shall issue regulations to
 4 carry out the provisions of this section.”.

5 (b) SIPC AUTHORITY TO ADVANCE FUNDS.—Sec-
 6 tion 9 of such Act (15 U.S.C. 78fff–3) is amended by add-
 7 ing at the end the following new subsection:

8 “(d) ADVANCES RELATED TO PONZI SCHEMES.—
 9 SIPC shall advance to the trustee—

10 “(1) such moneys as may be required to pay
 11 claims made under section 8A; and

12 “(2) such moneys as may be required to carry
 13 out section 8A.”.

14 **SEC. 3. SIPC FUND ASSESSMENT.**

15 Not later than the end of the 60-day period beginning
 16 on the date of the enactment of this Act, SIPC shall issue
 17 regulations to modify the SIPC Fund assessment levels
 18 to ensure they are adequate to cover the anticipated costs
 19 to the SIPC Fund of carrying out the amendments made
 20 by this Act.

21 **SEC. 4. DEFINITIONS.**

22 Section 16 of the Securities Investor Protection Act
 23 of 1970 (15 U.S.C. 78lll) is amended by adding at the
 24 end the following new paragraph:

1 “(15) DEFINITIONS RELATED TO PONZI
2 SCHEMES.—

3 “(A) PONZI SCHEME.—The term ‘Ponzi
4 scheme’ means any fraudulent investment oper-
5 ation which is managed in a manner that pro-
6 vides investors with returns (or purported re-
7 turns) derived substantially from investments
8 made by other investors rather than from prof-
9 its.

10 “(B) PONZI SCHEME INVESTOR.—The
11 term ‘Ponzi scheme investor’ means a customer
12 of a debtor, where the trustee of such debtor
13 has determined the debtor to be a Ponzi
14 scheme.

15 “(C) INDIRECT PONZI SCHEME INVES-
16 TOR.—The term ‘indirect Ponzi scheme inves-
17 tor’ means any person (including any person
18 with whom the Ponzi scheme investor deals as
19 principal or agent) who is an investor in a
20 Ponzi scheme investor and on whose behalf the
21 Ponzi scheme investor has a claim on account
22 of securities received, acquired, or held by the
23 Ponzi scheme in the ordinary course of its busi-
24 ness as a broker or dealer from or for the secu-
25 rities accounts of such Ponzi scheme investor

1 for safekeeping, with a view to sale, to cover
2 consummated sales, pursuant to purchases, as
3 collateral, security, or for purposes of effecting
4 transfer.”.

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