

[DISCUSSION DRAFT]

111TH CONGRESS
1ST SESSION

H. R. _____

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

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

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
5 Act 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 testing.
- Sec. 103. Establishment of a fiduciary duty for brokers, dealers, and investment advisers, and harmonization of regulation.
- Sec. 104. Clarification of commission authority to require investor disclosures before purchase of investment company shares.
- Sec. 105. Beneficial ownership and short-swing profit reporting.
- Sec. 106. Revision to recordkeeping rules.

TITLE II—ENFORCEMENT AND REMEDIES

- Sec. 201. Authority to restrict mandatory pre-dispute arbitration.
- Sec. 202. Whistleblower protection.
- Sec. 203. Conforming amendments for whistleblower protection.
- Sec. 204. Implementation and transition provisions for whistleblower protections.
- Sec. 205. Collateral bars.
- Sec. 206. Aiding and abetting authority under the Securities Act and the Investment Company Act.
- Sec. 207. Authority to impose penalties for aiding and abetting violations of the Investment Advisers Act.
- Sec. 208. Deadline for completing examinations, inspections and enforcement actions.
- Sec. 209. Nationwide service of subpoenas.
- Sec. 210. Authority to impose civil penalties in cease and desist proceedings.
- Sec. 211. Formerly associated persons.
- Sec. 212. Sharing privileged information with other authorities.
- Sec. 213. Expanded access to grand jury material.
- Sec. 214. Aiding and abetting standard of knowledge satisfied by recklessness.
- Sec. 215. Extraterritorial jurisdiction of the antifraud provisions of the Federal securities laws.
- Sec. 216. Fidelity bonding.
- Sec. 217. Enhanced SEC authority to conduct surveillance and risk assessment.
- Sec. 218. Investment company examinations.
- Sec. 219. Control person liability under the Securities Exchange Act.
- Sec. 220. Enhanced application of anti-fraud provisions.

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.

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.

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. Limitations on customer status.
- Sec. 510. Futures held in a portfolio margin securities account protection.
- Sec. 511. Risk-based premiums.
- Sec. 512. Budgetary treatment of Commission loans to SIPC.

TITLE VI—SARBANES-OXLEY ACT AMENDMENTS

- Sec. 601. Public Company Accounting Oversight Board oversight of auditors of non-public 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. Fair fund amendments.
- Sec. 605. Whistleblower protection against retaliation by a subsidiary of an issuer.

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 fol-
5 lowing new section:

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

7 “(a) ESTABLISHMENT AND PURPOSE.—There is es-
8 tablished an Investor Advisory Committee (in this section
9 referred to as the ‘Committee’) to advise and consult with
10 the 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
6 in the integrity of the marketplace.

7 “(b) MEMBERSHIP.—

8 “(1) APPOINTMENT.—The Chairman of the
9 Commission shall appoint the members of the Com-
10 mittee, 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 EMPLOY-
18 EES.—Members shall not be considered employees or
19 agents of the Commission solely because of member-
20 ship on the Committee.

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

1 “(d) COMPENSATION AND TRAVEL EXPENSES.—
2 Members of the Committee who are not full-time employ-
3 ees of the United States shall—

4 “(1) be entitled to receive compensation at a
5 rate fixed by the Commission while attending meet-
6 ings of 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
14 is authorized to be appropriated to the Commission such
15 sums as are necessary for the activities of the Com-
16 mittee.”.

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

19 (a) AMENDMENT TO SECURITIES ACT OF 1933.—
20 Section 19 of the Securities Act of 1933 (15 U.S.C. 77s)
21 is amended by adding at the end the following new sub-
22 section:

23 “(e) For the purposes of evaluating its rules and pro-
24 grams and for considering, proposing, adopting, or engag-
25 ing in rules or programs, the Commission is authorized

1 to gather information, communicate with investors or
2 other members of the public, and engage in such tem-
3 porary or experimental programs as the Commission in its
4 discretion determines is in the public interest or for the
5 protection of investors. The Commission may delegate to
6 its staff some or all of the authority conferred by this sub-
7 section.”.

8 (b) AMENDMENT TO SECURITIES EXCHANGE ACT OF
9 1934.—Section 23 of the Securities Exchange Act of 1934
10 (15 U.S.C. 78w) is amended by redesignating subsections
11 (b), (c), and (d) as subsections (c), (d), and (e), respec-
12 tively, and inserting after subsection (a) the following:

13 “(b) For the purposes of evaluating its rules and pro-
14 grams and for considering proposing, adopting, or engag-
15 ing in rules or programs, the Commission is authorized
16 to gather information, communicate with investors or
17 other members of the public, and engage in such tem-
18 porary or experimental programs as the Commission in its
19 discretion determines is in the public interest or for the
20 protection of investors. The Commission may delegate to
21 its staff some or all of the authority conferred by this sub-
22 section.”.

23 (c) AMENDMENT TO INVESTMENT COMPANY ACT OF
24 1940.—Section 38 of the Investment Company Act of

1 1940 (15 U.S.C. 80a–38) is amended by adding at the
2 end the following new subsection:

3 “(d) GATHERING INFORMATION.—For the purposes
4 of evaluating its rules and programs and for considering
5 proposing, adopting, or engaging in rules or programs, the
6 Commission is authorized to gather information, commu-
7 nicate with investors or other members of the public, and
8 engage in such temporary or experimental programs as
9 the Commission in its discretion determines is in the pub-
10 lic interest or for the protection of investors. The Commis-
11 sion may delegate to its staff some or all of the authority
12 conferred by this subsection.”.

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

17 “(e) For the purposes of evaluating its rules and pro-
18 grams and for considering proposing, adopting, or engag-
19 ing in rules or programs, the Commission is authorized
20 to gather information, communicate with investors or
21 other members of the public, and engage in such tem-
22 porary or experimental programs as the Commission in its
23 discretion determines is in the public interest or for the
24 protection of investors. The Commission may delegate to

1 its staff some or all of the authority conferred by this sub-
2 section.”.

3 **SEC. 103. ESTABLISHMENT OF A FIDUCIARY DUTY FOR**
4 **BROKERS, DEALERS, AND INVESTMENT AD-**
5 **VISERS, AND HARMONIZATION OF REGULA-**
6 **TION.**

7 (a) IN GENERAL.—

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

11 (A) by redesignating the second subsection

12 (i) as subsection (j); and

13 (B) by adding at the end the following new
14 subsections:

15 “(k) STANDARDS OF CONDUCT.—

16 “(1) IN GENERAL.—Notwithstanding any other
17 provision of this Act or the Investment Advisers Act
18 of 1940, the Commission shall promulgate rules to
19 provide that, with respect to a broker or dealer that
20 is providing investment advice to a retail customer
21 (and such other customers as the Commission may
22 by rule provide), the standard of conduct for such
23 broker or dealer with respect to such customer shall
24 be the same as the standard of conduct applicable
25 to an investment adviser under the Investment Ad-

1 visers Act of 1940. The receipt of compensation
2 based on commission shall not, in and of itself, be
3 considered a violation of such standard applied to a
4 broker or dealer.

5 “(2) RETAIL CUSTOMER DEFINED.—For pur-
6 poses of this subsection, the term ‘retail customer’
7 means an individual, or the legal representative of
8 such individual, who—

9 “(A) receives personalized investment ad-
10 vice from a broker or dealer; and

11 “(B) uses such advice primarily for per-
12 sonal, family, or household purposes.

13 “(1) OTHER MATTERS.—The Commission shall—

14 “(1) facilitate the provision of simple and clear
15 disclosures to investors regarding the terms of their
16 relationships with brokers, dealers, and investment
17 advisers; and

18 “(2) examine and, where appropriate, promul-
19 gate rules prohibiting sales practices, conflicts of in-
20 terest, and compensation schemes for financial inter-
21 mediaries (including brokers, dealers, and invest-
22 ment advisers) that it deems contrary to the public
23 interest and the interests of investors.”.

24 (2) INVESTMENT ADVISERS ACT OF 1940.—Sec-
25 tion 211 of the Investment Advisers Act of 1940, as

1 amended by section 102(d), is further amended by
2 adding at the end the following new subsection:

3 “(f) STANDARDS OF CONDUCT.—

4 “(1) IN GENERAL.—Notwithstanding any other
5 provision of this Act or the Securities Exchange Act
6 of 1934, the Commission shall promulgate rules to
7 provide that the standards of conduct for all bro-
8 kers, dealers, and investment advisers, in providing
9 investment advice to retail customers (and such
10 other customers as the Commission may by rule pro-
11 vide), shall be to act in the best interest of the cus-
12 tomer without regard to the financial or other inter-
13 est of the broker, dealer, or investment adviser pro-
14 viding the advice.

15 “(2) RETAIL CUSTOMER DEFINED.—For pur-
16 poses of this subsection, the term ‘retail customer’
17 means an individual, or the legal representative of
18 such individual, who—

19 “(A) receives personalized investment ad-
20 vice from a broker, dealer, or investment ad-
21 viser; and

22 “(B) uses such advice primarily for per-
23 sonal, family, or household purposes.

24 “(g) OTHER MATTERS.—The Commission shall—

1 “(1) facilitate the provision of simple and clear
2 disclosures to investors regarding the terms of their
3 relationships with brokers, dealers, and investment
4 advisers; and

5 “(2) examine and, where appropriate, promul-
6 gate rules prohibiting sales practices, conflicts of in-
7 terest, and compensation schemes for financial inter-
8 mediaries (including brokers, dealers, and invest-
9 ment advisers) that it deems contrary to the public
10 interest and the interests of investors.”.

11 (b) HARMONIZATION OF ENFORCEMENT AND REM-
12 EDY REGULATIONS.—Section 15 of the Securities Ex-
13 change Act of 1934, as amended by subsection (a), is fur-
14 ther amended by adding at the end the following new sub-
15 section:

16 “(m) HARMONIZATION OF ENFORCEMENT AND REM-
17 EDY REGULATIONS.—The Commission shall issue regula-
18 tions to ensure, to the extent practicable, that the enforce-
19 ment options and remedies available for violations of the
20 standard of conduct applicable to a broker or dealer pro-
21 viding investment advice to a retail customer are commen-
22 surate with those enforcement options and remedies avail-
23 able for violations of the standard of conduct applicable
24 to investment advisers under the Investment Advisers Act
25 of 1940.”.

1 **SEC. 104. CLARIFICATION OF COMMISSION AUTHORITY TO**
2 **REQUIRE INVESTOR DISCLOSURES BEFORE**
3 **PURCHASE OF INVESTMENT COMPANY**
4 **SHARES.**

5 Section 24 of the Investment Company Act of 1940
6 (15 U.S.C. 80a–24) is amended by adding at the end the
7 following new subsection:

8 “(h) TIMING OF DISCLOSURE.—Notwithstanding any
9 other provision of this Act or the Securities Act of 1933,
10 the Commission is authorized to promulgate rules desig-
11 nating documents or information that must precede a sale
12 to a purchaser of securities issued by a registered invest-
13 ment company.”.

14 **SEC. 105. BENEFICIAL OWNERSHIP AND SHORT-SWING**
15 **PROFIT REPORTING.**

16 (a) BENEFICIAL OWNERSHIP REPORTING.—Section
17 13 of the Securities Exchange Act of 1934 (15 U.S.C.
18 78m) is amended—

19 (1) in subsection (d)(1)—

20 (A) by inserting after “within ten days
21 after such acquisition” the following: “or within
22 such shorter time as the Commission may es-
23 tablish by rule”; and

24 (B) by striking “send to the issuer of the
25 security at its principal executive office, by reg-

1 istered or certified mail, send to each exchange
2 where the security is traded, and”;

3 (2) in subsection (d)(2)—

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

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

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

10 (4) in subsection (g)(2)—

11 (A) by striking “sent to the issuer and”;
12 and

13 (B) by striking “shall be transmitted to
14 the issuer and”.

15 (b) **SHORT-SWING PROFIT REPORTING.**—Section
16 16(a) of the Securities Exchange Act of 1934 (15 U.S.C.
17 78p(a)) is amended—

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

21 (2) in paragraph (2)(B), by inserting after “of-
22 ficer” the following: “, or within such shorter time
23 as the Commission may establish by rule”.

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

2 (a) INVESTMENT COMPANY ACT OF 1940 AMEND-
3 MENTS.—Section 31 of the Investment Company Act of
4 1940 (15 U.S.C. 80a-30) is amended—

5 (1) in subsection (a)(1), by adding at the end
6 the following: “Each person with custody or use of
7 a registered investment company’s securities, depos-
8 its, or credits shall maintain and preserve all records
9 that relate to the person’s custody or use of the reg-
10 istered investment company’s securities, deposits, or
11 credits for such period or periods as the Commis-
12 sion, by rules and regulations, may prescribe as nec-
13 essary or appropriate in the public interest or for
14 the protection of investors.”; and

15 (2) in subsection (b), by adding at the end the
16 following new paragraph:

17 “(4) RECORDS OF PERSONS WITH CUSTODY OR
18 USE.—

19 “(A) IN GENERAL.—Notwithstanding para-
20 graph (1), records of persons with custody or
21 use of a registered investment company’s secu-
22 rities, deposits, or credits, that relate to such
23 custody or use, are subject at any time, or from
24 time to time, to such reasonable periodic, spe-
25 cial, or other examinations and other informa-
26 tion and document requests by representatives

1 of the Commission as the Commission deems
2 necessary or appropriate in the public interest
3 or for the protection of investors.

4 “(B) CERTAIN PERSONS SUBJECT TO
5 OTHER REGULATION.—Persons subject to regu-
6 lation and examination by a Federal financial
7 institution regulatory agency (as such term is
8 defined under section 212(c)(2) of title 18,
9 United States Code) may satisfy any examina-
10 tion request, information request, or document
11 request described under subparagraph (A), by
12 providing the Commission with a detailed list-
13 ing, in writing, of the registered investment
14 company’s securities, deposits, or credits within
15 such person’s custody or use.”.

16 (b) INVESTMENT ADVISERS ACT OF 1940 AMEND-
17 MENT.—Section 204 of the Investment Advisers Act of
18 1940 (15 U.S.C. 80b-4) is amended by adding at the end
19 the following new subsection:

20 “(d) RECORDS OF PERSONS WITH CUSTODY OR
21 USE.—

22 “(1) IN GENERAL.—Records of persons with
23 custody or use of a client’s securities, deposits, or
24 credits, that relate to such custody or use, are sub-
25 ject at any time, or from time to time, to such rea-

1 sonable periodic, special, or other examinations and
2 other information and document requests by rep-
3 resentatives of the Commission as the Commission
4 deems necessary or appropriate in the public interest
5 or for the protection of investors.

6 “(2) CERTAIN PERSONS SUBJECT TO OTHER
7 REGULATION.—Persons subject to regulation and ex-
8 amination by a Federal financial institution regu-
9 latory agency (as such term is defined under section
10 212(c)(2) of title 18, United States Code) may sat-
11 isfy any examination request, information request,
12 or document request described under paragraph (1),
13 by providing the Commission with a detailed listing,
14 in writing, of the client’s securities, deposits, or
15 credits within such person’s custody or use.”

16 **TITLE II—ENFORCEMENT AND** 17 **REMEDIES**

18 **SEC. 201. AUTHORITY TO RESTRICT MANDATORY PRE-DIS-** 19 **PUTE ARBITRATION.**

20 (a) AMENDMENT TO SECURITIES EXCHANGE ACT OF
21 1934.—Section 15 of the Securities Exchange Act of 1934
22 (15 U.S.C. 78o), as amended by section 103) is further
23 amended by adding at the end the following new sub-
24 section:

1 “(m) AUTHORITY TO RESTRICT MANDATORY PRE-
2 DISPUTE ARBITRATION.—The Commission, by rule, may
3 prohibit, or impose conditions or limitations on the use
4 of, agreements that require customers or clients of any
5 broker, dealer, or municipal securities dealer to arbitrate
6 any future dispute between them arising under the Fed-
7 eral securities laws or the rules of a self-regulatory organi-
8 zation if it finds that such prohibition, imposition of condi-
9 tions, or limitations are in the public interest and for the
10 protection of investors.”.

11 (b) AMENDMENT TO INVESTMENT ADVISERS ACT OF
12 1940.—Section 205 of the Investment Advisers Act of
13 1940 (15 U.S.C. 80b–5) is amended by adding at the end
14 the following new subsection:

15 “(f) AUTHORITY TO RESTRICT MANDATORY PRE-
16 DISPUTE ARBITRATION.—The Commission, by rule, may
17 prohibit, or impose conditions or limitations on the use
18 of, agreements that require customers or clients of any
19 investment adviser to arbitrate any future dispute between
20 them arising under the Federal securities laws or the rules
21 of a self-regulatory organization if it finds that such prohi-
22 bition, imposition of conditions, or limitations are in the
23 public interest and for the protection of investors.”.

1 **SEC. 202. WHISTLEBLOWER PROTECTION.**

2 The Securities Exchange Act of 1934 (15 U.S.C. 78a
3 et seq.) is amended by adding after section 21E the fol-
4 lowing new section:

5 **“SEC. 21F. SECURITIES WHISTLEBLOWER INCENTIVES AND**
6 **PROTECTION.**

7 “(a) IN GENERAL.—In any judicial or administrative
8 action brought by the Commission under the securities
9 laws that results in monetary sanctions exceeding
10 \$1,000,000, the Commission, under regulations prescribed
11 by the Commission and subject to subsection (b), may pay
12 an award or awards not exceeding an amount equal to 30
13 percent, in total, of the monetary sanctions imposed in the
14 action or related actions to one or more whistleblowers
15 who voluntarily provided original information to the Com-
16 mission that led to the successful enforcement of the ac-
17 tion. Any amount payable under the preceding sentence
18 shall be paid from the fund described in subsection (f).

19 “(b) DETERMINATION OF AMOUNT OF AWARD; DE-
20 NIAL OF AWARD.—

21 “(1) DETERMINATION OF AMOUNT OF
22 AWARD.—The determination of the amount of an
23 award, within the limit specified in subsection (a),
24 shall be in the sole discretion of the Commission.
25 The Commission may take into account the signifi-
26 cance of the whistleblower’s information to the suc-

1 cess of the judicial or administrative action described
2 in subsection (a), the degree of assistance provided
3 by the whistleblower and any legal representative of
4 the whistleblower in such action, the Commission's
5 programmatic interest in deterring violations of the
6 securities laws by making awards to whistleblowers
7 who provide information that leads to the successful
8 enforcement of such laws, and such additional fac-
9 tors as the Commission may establish by rules or
10 regulations.

11 “(2) DENIAL OF AWARD.—No award under
12 subsection (a) shall be made—

13 “(A) to any whistleblower who is, or was at
14 the time he or she acquired the original infor-
15 mation submitted to the Commission, a mem-
16 ber, officer, or employee of any appropriate reg-
17 ulatory agency, the Department of Justice, or a
18 self-regulatory organization;

19 “(B) to any whistleblower who is convicted
20 of a criminal violation related to the judicial or
21 administrative action for which the whistle-
22 blower otherwise could receive an award under
23 this section; or

1 “(C) to any whistleblower who fails to sub-
2 mit information to the Commission in such
3 form as the Commission may, by rule, require.

4 “(c) REPRESENTATION.—

5 “(1) PERMITTED REPRESENTATION.—Any
6 whistleblower who makes a claim for an award under
7 subsection (a) may be represented by counsel.

8 “(2) REQUIRED REPRESENTATION.—Any whis-
9 tleblower who makes a claim for an award under
10 subsection (a) must be represented by counsel if the
11 whistleblower submits the information upon which
12 the claim is based anonymously. Prior to the pay-
13 ment of an award, the whistleblower must disclose
14 his or her identity and provide such other informa-
15 tion as the Commission may require.

16 “(d) NO CONTRACT NECESSARY.—No contract with
17 the Commission is necessary for any whistleblower to re-
18 ceive an award under subsection (a), unless the Commis-
19 sion, by rule or regulation, so requires.

20 “(e) APPEALS.—Any determinations under this sec-
21 tion, including whether, to whom, or in what amounts to
22 make awards, shall be in the sole discretion of the Com-
23 mission, and any such determinations shall be final and
24 not subject to judicial review.

25 “(f) INVESTOR PROTECTION FUND.—

1 “(1) FUND ESTABLISHED.—There is estab-
2 lished in the Treasury of the United States a fund
3 to be known as the ‘Securities and Exchange Com-
4 mission Investor Protection Fund’ (referred to in
5 this section as the ‘Fund’).

6 “(2) USE OF FUND.—The Fund shall be avail-
7 able to the Commission, without further appropria-
8 tion or fiscal year limitation, for the following pur-
9 poses:

10 “(A) Paying awards to whistleblowers as
11 provided in subsection (a).

12 “(B) Funding investor education initiatives
13 designed to help investors protect themselves
14 against securities fraud or other violations of
15 the securities laws, or the rules and regulations
16 thereunder.

17 “(3) DEPOSITS AND CREDITS.—There shall be
18 deposited into or credited to the Fund—

19 “(A) any monetary sanction collected by
20 the Commission in any judicial or administra-
21 tive action brought by the Commission under
22 the securities laws that is not added to a
23 disgorgement fund pursuant to section 308 of
24 the Sarbanes-Oxley Act of 2002 or other fund
25 or otherwise distributed to victims of a violation

1 of the securities laws, or the rules and regula-
2 tions thereunder, underlying such action, unless
3 the balance of the Fund at the time the mone-
4 tary sanction is collected exceeds \$100,000,000;

5 “(B) any monetary sanction added to a
6 disgorgement fund pursuant to section 308 of
7 the Sarbanes-Oxley Act of 2002 or other fund
8 that is not distributed to the victims for whom
9 the disgorgement fund was established, unless
10 the balance of the Fund at the time the deter-
11 mination is made not to distribute the monetary
12 sanction to such victims exceeds \$100,000,000;
13 and

14 “(C) all income from investments made
15 under paragraph (4).

16 “(4) INVESTMENTS.—

17 “(A) AMOUNTS IN FUND MAY BE IN-
18 VESTED.—The Commission may request the
19 Secretary of the Treasury to invest the portion
20 of the Fund that is not, in the Commission’s
21 judgment, required to meet the current needs of
22 the Fund.

23 “(B) ELIGIBLE INVESTMENTS.—Invest-
24 ments shall be made by the Secretary of the
25 Treasury in obligations of the United States or

1 obligations that are guaranteed as to principal
2 and interest by the United States, with matu-
3 rities suitable to the needs of the Fund as de-
4 termined by the Commission.

5 “(C) INTEREST AND PROCEEDS CRED-
6 ITED.—The interest on, and the proceeds from
7 the sale or redemption of, any obligations held
8 in the Fund shall be credited to, and form a
9 part of, the Fund.

10 “(5) REPORTS TO CONGRESS.—Not later than
11 October 30 of each year, the Commission shall
12 transmit to the Committee on Banking, Housing,
13 and Urban Affairs of the Senate, and the Committee
14 on Financial Services of the House of Representa-
15 tives a report on—

16 “(A) the Commission’s whistleblower
17 award program under this section, including a
18 description of the number of awards granted
19 and the types of cases in which awards granted
20 during the preceding fiscal year;

21 “(B) investor education initiatives de-
22 scribed in paragraph (2)(B) that were funded
23 by the Fund during the preceding fiscal year;

24 “(C) the balance of the Fund at the begin-
25 ning of the preceding fiscal year;

1 “(D) the amounts deposited into or cred-
2 ited to the Fund during the preceding fiscal
3 year;

4 “(E) the amount of earnings on invest-
5 ments of amounts in the Fund during the pre-
6 ceding fiscal year;

7 “(F) the amount paid from the Fund dur-
8 ing the preceding fiscal year to whistleblowers
9 pursuant to subsection (a);

10 “(G) the amount paid from the Fund dur-
11 ing the preceding fiscal year for investor edu-
12 cation initiatives described in paragraph (1)(B);

13 “(H) the balance of the Fund at the end
14 of the preceding fiscal year; and

15 “(I) a complete set of audited financial
16 statements, including a balance sheet, income
17 statement, and cash flow analysis.

18 “(g) PROTECTION OF WHISTLEBLOWERS.—

19 “(1) PROHIBITION AGAINST RETALIATION.—

20 “(A) IN GENERAL.—No employer may dis-
21 charge, demote, suspend, threaten, harass, or in
22 any other manner discriminate against an em-
23 ployee, contractor, or agent in the terms and
24 conditions of employment because of any lawful
25 act done by the employee, contractor, or agent

1 in providing information to the Commission in
2 accordance with subsection (a), or in assisting
3 in any investigation or judicial or administrative
4 action of the Commission based upon or related
5 to such information.

6 “(B) ENFORCEMENT.—

7 “(i) CAUSE OF ACTION.—An indi-
8 vidual who alleges discharge or other dis-
9 crimination in violation of subparagraph
10 (A) may bring an action under this sub-
11 section in the appropriate district court of
12 the United States for the relief provided in
13 subparagraph (C).

14 “(i) SUBPOENAS.—A subpoena requir-
15 ing the attendance of a witness at a trial
16 or hearing conducted under this section
17 may be served at any place in the United
18 States.

19 “(ii) STATUTE OF LIMITATIONS.—An
20 action under this subsection may not be
21 brought more than 6 years after the date
22 on which the violation of subparagraph (A)
23 occurred, or more than 3 years after the
24 date when facts material to the right of ac-
25 tion are known or reasonably should have

1 been known by the employee alleging a vio-
2 lation of subparagraph (A), but in no event
3 after 10 years after the date on which the
4 violation occurs.

5 “(C) RELIEF.—An employee, contractor,
6 or agent prevailing in any action brought under
7 subparagraph (B) shall be entitled to all relief
8 necessary to make that employee, contractor, or
9 agent whole, including reinstatement with the
10 same seniority status that the employee, con-
11 tractor, or agent would have had, but for the
12 discrimination, 2 times the amount of back pay,
13 with interest, and compensation for any special
14 damages sustained as a result of the discrimi-
15 nation, including litigation costs, expert witness
16 fees, and reasonable attorneys’ fees.

17 “(2) CONFIDENTIALITY.—

18 “(A) IN GENERAL.—Except as provided in
19 subparagraph (B), all information provided to
20 the Commission by a whistleblower shall be con-
21 fidential and privileged as an evidentiary matter
22 (and shall not be subject to civil discovery or
23 other legal process) in any proceeding in any
24 Federal or State court or administrative agen-
25 cy, and shall be exempt from disclosure, in the

1 hands of an agency or establishment of the
2 Federal Government, under the Freedom of In-
3 formation Act (5 U.S.C. 552), or otherwise, un-
4 less and until required to be disclosed to a de-
5 fendant or respondent in connection with a pub-
6 lic proceeding instituted by the Commission or
7 any entity described in subparagraph (B). For
8 purposes of section 552 of title 5, United States
9 Code, this paragraph shall be considered a stat-
10 ute described in subsection (b)(3)(B) of such
11 section 552. Nothing herein is intended to limit
12 the Attorney General's ability to present such
13 evidence to a grand jury or to share such evi-
14 dence with potential witnesses or defendants in
15 the course of an ongoing criminal investigation.

16 “(B) AVAILABILITY TO GOVERNMENT
17 AGENCIES.—Without the loss of its status as
18 confidential and privileged in the hands of the
19 Commission, all information referred to in sub-
20 paragraph (A) may, in the discretion of the
21 Commission, when determined by the Commis-
22 sion to be necessary to accomplish the purposes
23 of this Act and protect investors, be made avail-
24 able to—

1 “(i) the Attorney General of the
2 United States,

3 “(ii) an appropriate regulatory au-
4 thority,

5 “(iii) a self-regulatory organization,

6 “(iv) State attorneys general in con-
7 nection with any criminal investigation,
8 and

9 “(v) any appropriate State regulatory
10 authority,

11 each of which shall maintain such information
12 as confidential and privileged, in accordance
13 with the requirements in subparagraph (A).

14 “(3) RIGHTS RETAINED.—Nothing in this sec-
15 tion shall be deemed to diminish the rights, privi-
16 leges, or remedies of any whistleblower under any
17 Federal or State law, or under any collective bar-
18 gaining agreement.

19 “(h) RULEMAKING AUTHORITY.—The Commission
20 shall have the authority to issue such rules and regulations
21 as may be necessary or appropriate to implement the pro-
22 visions of this section.

23 “(i) DEFINITIONS.—For purposes of this section, the
24 following terms have the following meanings:

1 “(1) ORIGINAL INFORMATION.—The term
2 ‘original information’ means information that—

3 “(A) is based on the direct and inde-
4 pendent knowledge or analysis of a whistle-
5 blower;

6 “(B) is not known to the Commission from
7 any other source; and

8 “(C) is not based on allegations in a judi-
9 cial or administrative hearing, in a govern-
10 mental report, hearing, audit, or investigation,
11 or from the news media, unless the whistle-
12 blower is the initial source of the information
13 that resulted in the judicial or administrative
14 hearing, governmental report, hearing, audit, or
15 investigation, or the news media’s report on the
16 allegations.

17 “(2) MONETARY SANCTIONS.—The term ‘mone-
18 etary sanctions,’ when used with respect to any judi-
19 cial or administrative action, means any monies, in-
20 cluding but not limited to penalties, disgorgement,
21 and interest, ordered to be paid, and any monies de-
22 posited into a disgorgement fund pursuant to section
23 308(b) of the Sarbanes-Oxley Act of 2002 (15
24 U.S.C. 7246(b)), as a result of such action or any
25 settlement of such action.

1 “(3) RELATED ACTION.—The term ‘related ac-
2 tion,’ when used with respect to any judicial or ad-
3 ministrative action brought by the Commission
4 under the securities laws, means any judicial or ad-
5 ministrative action brought by an entity described in
6 subsection (g)(2)(B) that is based upon the same
7 original information provided by a whistleblower
8 pursuant to subsection (a) that led to the successful
9 enforcement of the Commission action.

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

14 **SEC. 203. CONFORMING AMENDMENTS FOR WHISTLE-**
15 **BLOWER PROTECTION.**

16 (a) IN GENERAL.—Each of the following provisions
17 is amended by inserting “and section 21F of the Securities
18 Exchange Act of 1934” after “the Sarbanes-Oxley Act of
19 2002”:

20 (1) Section 20(d)(3)(A) of the Securities Act of
21 1933 (15 U.S.C. 77t(d)(3)(A)).

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

24 (3) Section 209(e)(3)(A) of the Investment Ad-
25 visers Act of 1940 (15 U.S.C. 80b-9(e)(3)(A)).

1 (b) SECURITIES EXCHANGE ACT.—The Securities
2 Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amend-
3 ed—

4 (1) in section 21(d)(3)(C)(i) (15 U.S.C.
5 78u(d)(3)(C)(i)), by inserting “and section 21F of
6 this title” after “the Sarbanes-Oxley Act of 2002”;

7 (2) in section 21A(d)(1) (15 U.S.C. 78u-
8 1(d)(1))—

9 (A) by striking “(subject to subsection
10 (e))”; and

11 (B) by inserting “and section 21F of this
12 title” after “the Sarbanes-Oxley Act of 2002”;
13 and

14 (3) in section 21A, by striking subsection (e)
15 and redesignating subsections (f) and (g) as sub-
16 section (e) and (f), respectively.

17 **SEC. 204. IMPLEMENTATION AND TRANSITION PROVISIONS**
18 **FOR WHISTLEBLOWER PROTECTIONS.**

19 (a) IMPLEMENTING RULES.—The Securities and Ex-
20 change Commission shall issue final regulations imple-
21 menting the provisions of section 21F of the Securities
22 Exchange Act of 1934, as added by this title, no later than
23 270 days after the date of enactment of this Act.

24 (b) ORIGINAL INFORMATION.—Information sub-
25 mitted to the Commission by a whistleblower in accord-

1 ance with regulations implementing the provisions of sec-
2 tion 21F of the Securities Exchange Act of 1934, as added
3 by this title, shall not lose its status as original informa-
4 tion, as defined in subsection (i)(1) of such section, solely
5 because the whistleblower submitted such information
6 prior to the effective date of such regulations, provided
7 such information was submitted after the date of enact-
8 ment of this Act, or related to insider trading violations
9 for which a bounty could have been paid at the time such
10 information was submitted.

11 (c) AWARDS.—A whistleblower may receive an award
12 pursuant to section 21F of the Securities Exchange Act
13 of 1934, as added by this title, regardless of whether any
14 violation of a provision of the securities laws, or a rule
15 or regulation thereunder, underlying the judicial or admin-
16 istrative action upon which the award is based occurred
17 prior to the date of enactment of this Act.

18 **SEC. 205. COLLATERAL BARS.**

19 (a) SECTION 15 OF THE SECURITIES EXCHANGE ACT
20 OF 1934.—Section 15(b)(6)(A) of the Securities Ex-
21 change Act of 1934 (15 U.S.C. 78o(b)(6)(A)) is amended
22 by striking “12 months, or bar such person from being
23 associated with a broker or dealer,” and inserting “12
24 months, or bar any such person from being associated with
25 a broker, dealer, investment adviser, municipal securities

1 dealer, transfer agent, or nationally recognized statistical
2 rating organization.”.

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

12 (c) SECTION 17A OF THE SECURITIES EXCHANGE
13 ACT OF 1934.—Section 17A(c)(4)(C) of the Securities
14 Exchange Act of 1934 (15 U.S.C. 78q–1(e)(4)(C)) is
15 amended by striking “twelve months or bar any such per-
16 son from being associated with the transfer agent,” and
17 inserting “12 months or bar any such person from being
18 associated with any transfer agent, broker, dealer, invest-
19 ment adviser, municipal securities dealer, or nationally
20 recognized statistical rating organization,”.

21 (d) SECTION 203 OF THE INVESTMENT ADVISERS
22 ACT OF 1940.—Section 203(f) of the Investment Advisers
23 Act of 1940 (15 U.S.C. 80b–3(f)) is amended by striking
24 “twelve months or bar any such person from being associ-
25 ated with an investment adviser,” and inserting “12

1 months or bar any such person from being associated with
2 an investment adviser, broker, dealer, municipal securities
3 dealer, transfer agent, or nationally recognized statistical
4 rating organization.”.

5 **SEC. 206. AIDING AND ABETTING AUTHORITY UNDER THE**
6 **SECURITIES ACT AND THE INVESTMENT COM-**
7 **PANY ACT.**

8 (a) UNDER THE SECURITIES ACT OF 1933.—Section
9 15 of the Securities Act of 1933 (15 U.S.C. 77o) is
10 amended—

11 (1) by striking “Every person who” and insert-
12 ing “(a) CONTROLLING PERSONS.—Every person
13 who”; and

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

15 “(b) PROSECUTION OF PERSONS WHO AID AND
16 ABET VIOLATIONS.—For purposes of any action brought
17 by the Commission under subparagraph (b) or (d) of sec-
18 tion 20, any person that knowingly or recklessly provides
19 substantial assistance to another person in violation of a
20 provision of this Act, or of any rule or regulation issued
21 under this Act, shall be deemed to be in violation of such
22 provision to the same extent as the person to whom such
23 assistance is provided.”.

24 (c) UNDER THE INVESTMENT COMPANY ACT OF
25 1940.—Section 48 of the Investment Company Act of

1 1940 (15 U.S.C. 80a–48) is amended by redesignating
2 subsection (b) as subsection (c) and inserting after sub-
3 section (a) the following:

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

12 **SEC. 207. AUTHORITY TO IMPOSE PENALTIES FOR AIDING**
13 **AND ABETTING VIOLATIONS OF THE INVEST-**
14 **MENT ADVISERS ACT.**

15 Section 209 of the Investment Advisers Act of 1940
16 (15 U.S.C. 80b–9) is amended by inserting at the end the
17 following new subsection:

18 “(f) AIDING AND ABETTING.—For purposes of any
19 action brought by the Commission under subsection (e),
20 any person that knowingly or recklessly has aided, abetted,
21 counseled, commanded, induced, or procured a violation
22 of any provision of this Act, or of any rule, regulation,
23 or order hereunder, shall be deemed to be in violation of
24 such provision, rule, regulation, or order to the same ex-
25 tent as the person that committed such violation.”.

1 **SEC. 208. DEADLINE FOR COMPLETING EXAMINATIONS, IN-**
2 **SPECTIONS AND ENFORCEMENT ACTIONS.**

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

6 **“SEC. 4E. DEADLINE FOR COMPLETING EXAMINATIONS, IN-**
7 **VESTIGATIONS AND ENFORCEMENT ACTIONS.**

8 “(a) IN GENERAL.—The Commission shall complete
9 any examination, investigations, or enforcement action ini-
10 tiated by the Commission not later than 180 days after
11 the date on which such examination, inspection, or en-
12 forcement action is commenced.

13 “(b) EXCEPTION FOR CERTAIN COMPLEX AC-
14 TIONS.—Notwithstanding subsection (a), if the head of
15 any division or office within the Commission determines
16 that a particular examination, investigation, or enforce-
17 ment action is sufficiently complex that it cannot be com-
18 pleted within the deadline provided under subsection (a),
19 such head may, after providing notice to the Chairman
20 of the Commission, extend such deadline by an additional
21 180 days.”.

22 **SEC. 209. NATIONWIDE SERVICE OF SUBPOENAS.**

23 (a) SECURITIES ACT OF 1933.—Section 22(a) of the
24 Securities Act of 1933 (15 U.S.C. 77v(a)) is amended by
25 inserting after the second sentence the following: “In any
26 action or proceeding instituted by the Commission under

1 this title in a United States district court for any judicial
2 district, subpoenas issued by or on behalf of such court
3 to compel the attendance of witnesses or the production
4 of documents or tangible things (or both) may be served
5 in any other district. Such subpoenas may be served and
6 enforced without application to the court or a showing of
7 cause, notwithstanding the provisions of rule 45(b)(2),
8 (c)(3)(A)(ii), and (c)(3)(B)(iii) of the Federal Rules of
9 Civil Procedure.”.

10 (b) SECURITIES EXCHANGE ACT OF 1934.—Section
11 27 of the Securities Exchange Act of 1934 (15 U.S.C.
12 78aa) is amended by inserting after the third sentence the
13 following: “In any action or proceeding instituted by the
14 Commission under this title in a United States district
15 court for any judicial district, subpoenas issued by or on
16 behalf of such court to compel the attendance of witnesses
17 or the production of documents or tangible things (or
18 both) may be served in any other district. Such subpoenas
19 may be served and enforced without application to the
20 court or a showing of cause, notwithstanding the provi-
21 sions of rule 45(b)(2), (c)(3)(A)(ii), and (c)(3)(B)(iii) of
22 the Federal Rules of Civil Procedure.”.

23 (c) INVESTMENT COMPANY ACT OF 1940.—Section
24 44 of the Investment Company Act of 1940 (15 U.S.C.
25 80a–43) is amended by inserting after the fourth sentence

1 the following: “In any action or proceeding instituted by
2 the Commission under this title in a United States district
3 court for any judicial district, subpoenas issued by or on
4 behalf of such court to compel the attendance of witnesses
5 or the production of documents or tangible things (or
6 both) may be served in any other district. Such subpoenas
7 may be served and enforced without application to the
8 court or a showing of cause, notwithstanding the provi-
9 sions of rule 45(b)(2), (c)(3)(A)(ii), and (c)(3)(B)(iii) of
10 the Federal Rules of Civil Procedure.”.

11 (d) INVESTMENT ADVISERS ACT OF 1940.—Section
12 214 of the Investment Advisers Act of 1940 (15 U.S.C.
13 80b–14) is amended by inserting after the third sentence
14 the following: “In any action or proceeding instituted by
15 the Commission under this title in a United States district
16 court for any judicial district, subpoenas issued by or on
17 behalf of such court to compel the attendance of witnesses
18 or the production of documents or tangible things (or
19 both) may be served in any other district. Such subpoenas
20 may be served and enforced without application to the
21 court or a showing of cause, notwithstanding the provi-
22 sions of rule 45(b)(2), (c)(3)(A)(ii), and (c)(3)(B)(iii) of
23 the Federal Rules of Civil Procedure.”.

1 **SEC. 210. AUTHORITY TO IMPOSE CIVIL PENALTIES IN**
2 **CEASE AND DESIST PROCEEDINGS.**

3 (a) UNDER THE SECURITIES ACT OF 1933.—Section
4 8A of the Securities Act of 1933 (15 U.S.C. 77h–1) is
5 amended by adding at the end the following new sub-
6 section:

7 “(g) AUTHORITY TO IMPOSE MONEY PENALTIES.—

8 “(1) GROUNDS FOR IMPOSING.—In any cease-
9 and-desist proceeding under subsection (a), the
10 Commission may impose a civil penalty on a person
11 if it finds, on the record after notice and opportunity
12 for hearing, that—

13 “(A) such person—

14 “(i) is violating or has violated any
15 provision of this title, or any rule or regu-
16 lation thereunder; or

17 “(ii) is or was a cause of the violation
18 of any provision of this title, or any rule or
19 regulation thereunder; and

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

21 “(2) MAXIMUM AMOUNT OF PENALTY.—

22 “(A) FIRST TIER.—The maximum amount
23 of penalty for each act or omission described in
24 paragraph (1) shall be \$7,500 for a natural
25 person or \$75,000 for any other person.

1 “(B) SECOND TIER.—Notwithstanding
2 paragraph (A), the maximum amount of pen-
3 alty for each such act or omission shall be
4 \$75,000 for a natural person or \$375,000 for
5 any other person if the act or omission de-
6 scribed in paragraph (1) involved fraud, deceit,
7 manipulation, or deliberate or reckless dis-
8 regard of a regulatory requirement.

9 “(C) THIRD TIER.—Notwithstanding para-
10 graphs (A) and (B), the maximum amount of
11 penalty for each such act or omission shall be
12 \$150,000 for a natural person or \$725,000 for
13 any other person if—

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

18 “(ii) such act or omission directly or
19 indirectly resulted in substantial losses or
20 created a significant risk of substantial
21 losses to other persons or resulted in sub-
22 stantial pecuniary gain to the person who
23 committed the act or omission.

24 “(3) EVIDENCE CONCERNING ABILITY TO
25 PAY.—In any proceeding in which the Commission

1 may impose a penalty under this section, a respond-
2 ent may present evidence of the respondent's ability
3 to pay such penalty. The Commission may, in its
4 discretion, consider such evidence in determining
5 whether such penalty is in the public interest. Such
6 evidence may relate to the extent of such person's
7 ability to continue in business and the collectability
8 of a penalty, taking into account any other claims of
9 the United States or third parties upon such per-
10 son's assets and the amount of such person's as-
11 sets.”.

12 (b) UNDER THE SECURITIES EXCHANGE ACT OF
13 1934.—Subsection (a) of section 21B of the Securities
14 Exchange Act of 1934 (15 U.S.C. 78u-2(a)) is amend-
15 ed—

16 (1) by striking “(a) COMMISSION AUTHORITY
17 TO ASSESS MONEY PENALTIES.—In any pro-
18 ceeding” and inserting the following:

19 “(a) COMMISSION AUTHORITY TO ASSESS MONEY
20 PENALTIES.—

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

22 (2) by redesignating paragraphs (1) through
23 (4) of such subsection as subparagraphs (A) through
24 (D), respectively, and moving such redesignated sub-

1 paragraphs and the matter following such subpara-
2 graphs 2 ems to the right; and

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

5 “(2) CEASE-AND-DESIST PROCEEDINGS.—In
6 any proceeding instituted pursuant to section 21C of
7 this title against any person, the Commission may
8 impose a civil penalty if it finds, on the record after
9 notice and opportunity for hearing, that such per-
10 son—

11 “(A) is violating or has violated any provi-
12 sion of this title, or any rule or regulation
13 thereunder; or

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

17 (c) UNDER THE INVESTMENT COMPANY ACT OF
18 1940.—Paragraph (1) of section 9(d) of the Investment
19 Company Act of 1940 (15 U.S.C. 80a–9(d)(1)) is amend-
20 ed—

21 (1) by striking “(1) AUTHORITY OF COMMIS-
22 SION.—In any proceeding” and inserting the fol-
23 lowing:

24 “(1) AUTHORITY OF COMMISSION.—

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

1 (2) by redesignating subparagraphs (A) through
2 (C) of such paragraph as clauses (i) through (iii),
3 respectively, and by moving such redesignated
4 clauses and the matter following such subparagraphs
5 2 ems to the right; and

6 (3) by adding at the end of such paragraph the
7 following new subparagraph:

8 “(B) CEASE-AND-DESIST PROCEEDINGS.—

9 In any proceeding instituted pursuant to sub-
10 section (f) against any person, the Commission
11 may impose a civil penalty if it finds, on the
12 record after notice and opportunity for hearing,
13 that such person—

14 “(i) is violating or has violated any
15 provision of this title, or any rule or regu-
16 lation thereunder; or

17 “(ii) is or was a cause of the violation
18 of any provision of this title, or any rule or
19 regulation thereunder.”.

20 (d) UNDER THE INVESTMENT ADVISERS ACT OF
21 1940.—Paragraph (1) of section 203(i) of the Investment
22 Advisers Act of 1940 (15 U.S.C. 80b–3(i)(1)) is amend-
23 ed—

1 (1) by striking “(1) AUTHORITY OF COMMIS-
2 SION.—In any proceeding” and inserting the fol-
3 lowing:

4 “(1) AUTHORITY OF COMMISSION.—

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

6 (2) by redesignating subparagraphs (A) through
7 (D) of such paragraph as clauses (i) through (iv),
8 respectively, and moving such redesignated clauses
9 and the matter following such subparagraphs 2 ems
10 to the right; and

11 (3) by adding at the end of such paragraph the
12 following new subparagraph:

13 “(B) CEASE-AND-DESIST PROCEEDINGS.—

14 In any proceeding instituted pursuant to sub-
15 section (k) against any person, the Commission
16 may impose a civil penalty if it finds, on the
17 record after notice and opportunity for hearing,
18 that such person—

19 “(i) is violating or has violated any
20 provision of this title, or any rule or regu-
21 lation thereunder; or

22 “(ii) is or was a cause of the violation
23 of any provision of this title, or any rule or
24 regulation thereunder.”.

1 **SEC. 211. FORMERLY ASSOCIATED PERSONS.**

2 (a) MEMBER OR EMPLOYEE OF THE MUNICIPAL SE-
3 CURITIES RULEMAKING BOARD.—Section 15B(c)(8) of
4 the Securities Exchange Act of 1934 (15 U.S.C. 78o–
5 4(c)(8)) is amended by striking “any member or em-
6 ployee” and inserting “any person who is, or at the time
7 of the alleged misconduct was, a member or employee”.

8 (b) PERSON ASSOCIATED WITH A GOVERNMENT SE-
9 CURITIES BROKER OR DEALER.—Section 15C of the Se-
10 curities Exchange Act of 1934 (15 U.S.C. 78o–5) is
11 amended—

12 (1) in subsection (c)(1)(C), by striking “or
13 seeking to become associated,” and inserting “seek-
14 ing to become associated, or, at the time of the al-
15 leged misconduct, associated or seeking to become
16 associated”;

17 (2) in subsection (c)(2)(A), by inserting “, seek-
18 ing to become associated, or, at the time of the al-
19 leged misconduct, associated or seeking to become
20 associated” after “any person associated”; and

21 (3) in subsection (c)(2)(B), by inserting “,
22 seeking to become associated, or, at the time of the
23 alleged misconduct, associated or seeking to become
24 associated” after “any person associated”.

25 (c) PERSON ASSOCIATED WITH A MEMBER OF A NA-
26 TIONAL SECURITIES EXCHANGE OR REGISTERED SECURI-

1 TIES ASSOCIATION.—Section 21(a)(1) of the Securities
2 Exchange Act of 1934 (15 U.S.C. 78u(a)(1)) is amended
3 by inserting “, or, as to any act or practice, or omission
4 to act, while associated with a member, formerly associ-
5 ated” after “member or a person associated”.

6 (d) PARTICIPANT OF A REGISTERED CLEARING
7 AGENCY.—Section 21(a)(1) of the Securities Exchange
8 Act of 1934 (15 U.S.C. 78u(a)(1)) is amended by insert-
9 ing “or, as to any act or practice, or omission to act, while
10 a participant, was a participant,” after “in which such
11 person is a participant,”.

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

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

18 (2) by striking “such officer or director” and
19 inserting “such person”.

20 (f) OFFICER OR DIRECTOR OF AN INVESTMENT COM-
21 PANY.—Section 36(a) of the Investment Company Act of
22 1940 (15 U.S.C. 80a–35(a)) is amended—

23 (1) by striking “a person serving or acting” and
24 inserting “a person who is, or at the time of the al-
25 leged misconduct was, serving or acting”; and

1 (2) by striking “such person so serves or acts”
2 and inserting “such person so serves or acts, or at
3 the time of the alleged misconduct, so served or
4 acted”.

5 (g) PERSON ASSOCIATED WITH A PUBLIC ACCOUNT-
6 ING FIRM.—

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

11 “(C) INVESTIGATIVE AND ENFORCEMENT
12 AUTHORITY.—For purposes of the provisions of
13 sections 3(c), 101(c), 105, and 107(c) and
14 Board or Commission rules thereunder, except
15 to the extent specifically excepted by such rules,
16 the terms defined in subparagraph (A) shall in-
17 clude any person associated, seeking to become
18 associated, or formerly associated with a public
19 accounting firm, except—

20 “(i) the authority to conduct an inves-
21 tigation of such person under section
22 105(b) shall apply only with respect to any
23 act or practice, or omission to act, while
24 such person was associated or seeking to
25 become associated with that firm; and

1 “(ii) the authority to commence a dis-
2 ciplinary proceeding under section
3 105(c)(1), or impose disciplinary sanctions
4 under section 105(c)(4), against such per-
5 son shall apply only on—

6 “(I) the basis of misconduct oc-
7 ccurring while such person was associ-
8 ated or seeking to become associated
9 with that firm; or

10 “(II) on a violation of section
11 105(b).”.

12 (2) SECURITIES EXCHANGE ACT OF 1934
13 AMENDMENT.—Section 21(a)(1) of the Securities
14 Exchange Act of 1934 (15 U.S.C. 78u(a)(1)) is
15 amended by striking “or a person associated with
16 such a firm” and inserting “, a person associated
17 with such a firm, or, as to any act, practice, or omis-
18 sion to act, while associated with such firm, a person
19 formerly associated with such a firm”.

20 (h) SUPERVISORY PERSONNEL OF AN AUDIT
21 FIRM.—Section 105(c)(6) of the Sarbanes-Oxley Act of
22 2002 (15 U.S.C. 7215(c)(6)) is amended—

23 (1) in subparagraph (A), by striking “the su-
24 pervisory personnel” and inserting “any person who

1 is, or at the time of the alleged failure reasonably to
2 supervise was, a supervisory person”;

3 (2) in subparagraph (A)(i), by inserting after
4 “failed reasonably to supervise” the following: “any
5 person who is, or at the time of the alleged failure,
6 was”;

7 (3) in subparagraph (A)(ii), by striking “associ-
8 ated”;

9 (4) in subparagraph (B)—

10 (A) by striking “No associated person”
11 and inserting “No current or former super-
12 visory person”; and

13 (B) by striking “any other person” and in-
14 serting “any current or former associated per-
15 son”; and

16 (5) in subparagraph (B)(i), by striking “associ-
17 ated”.

18 (i) MEMBER OF THE PUBLIC COMPANY ACCOUNTING
19 OVERSIGHT BOARD.—Section 107(d)(3) of the Sarbanes-
20 Oxley Act of 2002 (15 U.S.C. 7217(d)(3)) is amended by
21 striking “any member” and inserting “any person who is,
22 or at the time of the alleged misconduct was, a member”.

1 **SEC. 212. SHARING PRIVILEGED INFORMATION WITH**
2 **OTHER AUTHORITIES.**

3 Section 24 of the Securities Exchange Act of 1934
4 (15 U.S.C. 78x) is amended—

5 (1) by redesignating subsections (d) and (e) as
6 subsections (e) and (f), respectively;

7 (2) in subsection (e), as redesignated, by strik-
8 ing “as provided in subsection (e)” and inserting “as
9 provided in subsection (f)”;

10 (3) by inserting after subsection (e) the fol-
11 lowing new subsection (d)—

12 “(d) SHARING PRIVILEGED INFORMATION WITH
13 OTHER AUTHORITIES.—

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

19 “(A) any agency (as defined in section 6 of
20 title 18, United States Code);

21 “(B) any foreign securities authority;

22 “(C) any foreign law enforcement author-
23 ity; or

24 “(D) any State securities or law enforce-
25 ment authority.

1 “(2) NON-DISCLOSURE OF PRIVILEGED INFOR-
2 MATION PROVIDED TO THE COMMISSION.—Except as
3 provided in subsection (f), the Commission shall not
4 be compelled to disclose privileged information ob-
5 tained from any foreign securities authority, or for-
6 eign law enforcement authority, if the authority has
7 in good faith determined and represented to the
8 Commission that the information is privileged.

9 “(3) NON-WAIVER OF PRIVILEGED INFORMA-
10 TION PROVIDED TO THE COMMISSION.—No Federal
11 agency or State securities or law enforcement au-
12 thority shall be deemed to have waived any privilege
13 applicable to any information by transferring that
14 information to or permitting that information to be
15 used by the Commission.

16 “(4) DEFINITIONS.—For purposes of this sub-
17 section:

18 “(A) The term ‘privilege’ includes any
19 work-product privilege, attorney-client privilege,
20 governmental privilege, or other privilege recog-
21 nized under Federal, foreign, or State law.

22 “(B) The term ‘foreign law enforcement
23 authority’ means any foreign authority that is
24 empowered under foreign law to detect, inves-
25 tigate or prosecute potential violations of law.

1 “(C) The term ‘State securities or law en-
2 forcement authority’ means the authority of any
3 State or territory that is empowered under
4 State or territory law to detect, investigate or
5 prosecute potential violations of law.”.

6 **SEC. 213. EXPANDED ACCESS TO GRAND JURY MATERIAL.**

7 (a) IN GENERAL.—Title VI of the Sarbanes-Oxley
8 Act of 2002 is amended by adding at the end the following
9 new section:

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

11 “(a) DISCLOSURE.—

12 “(1) IN GENERAL.—Upon motion of an attor-
13 ney for the government, a court may direct disclo-
14 sure of matters occurring before a grand jury during
15 an investigation of conduct that may constitute a
16 violation of any provision of the securities laws to
17 the Commission for use in relation to any matter
18 within the jurisdiction of the Commission.

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

22 “(b) USE OF MATTER.—A person to whom a matter
23 has been disclosed under this section shall not use such
24 matter other than for the purpose for which such disclo-
25 sure was authorized.

1 suits in equity and actions at law under that section, in-
2 volving—

3 “(1) conduct within the United States that con-
4 stitutes significant steps in furtherance of the viola-
5 tion, even if the securities transaction occurs outside
6 the United States and involves only foreign inves-
7 tors; or

8 “(2) conduct occurring outside the United
9 States that has a foreseeable substantial effect with-
10 in the United States.”.

11 (b) UNDER THE SECURITIES EXCHANGE ACT OF
12 1934.—Section 27 of the Securities Exchange Act of 1934
13 (15 U.S.C. 78aa) is amended—

14 (1) by striking “The district” and inserting the
15 following:

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

17 (2) by inserting at the end the following new
18 subsection:

19 “(b) EXTRATERRITORIAL JURISDICTION.—The juris-
20 diction of the district courts of the United States and the
21 United States courts of any Territory or other place sub-
22 ject to the jurisdiction of the United States described
23 under subsection (a) includes violations of the antifraud
24 provisions of this title, and all suits in equity and actions
25 at law under those provisions, involving—

1 “(1) conduct within the United States that con-
2 stitutes significant steps in furtherance of the viola-
3 tion, even if the securities transaction occurs outside
4 the United States and involves only foreign inves-
5 tors; or

6 “(2) conduct occurring outside the United
7 States that has a foreseeable substantial effect with-
8 in the United States.”.

9 (c) UNDER THE INVESTMENT ADVISERS ACT OF
10 1940.—Section 214 of the Investment Advisers Act of
11 1940 (15 U.S.C. 80b-14) is amended—

12 (1) by striking “The district” and inserting the
13 following:

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

15 (2) by inserting at the end the following new
16 subsection:

17 “(b) EXTRATERRITORIAL JURISDICTION.—The juris-
18 diction of the district courts of the United States and the
19 United States courts of any Territory or other place sub-
20 ject to the jurisdiction of the United States described
21 under subsection (a) includes violations of section 206,
22 and all suits in equity and actions at law under that sec-
23 tion, involving—

24 “(1) conduct within the United States that con-
25 stitutes significant steps in furtherance of the viola-

1 tion, even if the securities transaction occurs outside
2 the United States and involves only foreign inves-
3 tors; or

4 “(2) conduct occurring outside the United
5 States that has a foreseeable substantial effect with-
6 in the United States.”.

7 **SEC. 216. FIDELITY BONDING.**

8 Section 17(g) of the Investment Company Act of
9 1940 (15 U.S.C. 80a-17(g)) is amended to read as follows:

10 “(g) FIDELITY BONDING.—

11 “(1) IN GENERAL.—The Commission is author-
12 ized to require that a registered management invest-
13 ment company provide and maintain a bond against
14 loss caused by any fraudulent act or theft committed
15 by any officer or employee of the company, either
16 alone or in collusion with others, in such form and
17 amount as the Commission may prescribe by rule,
18 regulation, or order for the protection of investors.

19 “(2) DEFINITIONS.—For purposes of this sub-
20 section, the term ‘officer or employee’ shall include
21 the officers and employees of the depositor, trustee,
22 investment adviser, or any other manager of the reg-
23 istered investment company, and any affiliated per-
24 son of any such person.”.

1 **SEC. 217. ENHANCED SEC AUTHORITY TO CONDUCT SUR-**
2 **VEILLANCE AND RISK ASSESSMENT.**

3 (a) SECURITIES EXCHANGE ACT OF 1934 AMEND-
4 MENTS.—Section 17(b) of the Securities Exchange Act of
5 1934 (15 U.S.C. 78q(b)) is amended by adding at the end
6 the following new paragraph:

7 “(5) SURVEILLANCE AND RISK ASSESSMENT.—
8 All persons described in subsection (a) of this sec-
9 tion are subject at any time, or from time to time,
10 to such reasonable periodic, special, or other infor-
11 mation and document requests by representatives of
12 the Commission as the Commission by rule or order
13 deems necessary or appropriate to conduct surveil-
14 lance or risk assessments of the securities markets,
15 persons registered with the Commission under this
16 title, or otherwise in furtherance of the purposes of
17 this title.”.

18 (b) INVESTMENT COMPANY ACT OF 1940 AMEND-
19 MENTS.—Section 31(b) of the Investment Company Act
20 of 1940 (15 U.S.C. 80a-30(b)) is amended by adding at
21 the end the following new paragraph:

22 “(4) SURVEILLANCE AND RISK ASSESSMENT.—
23 All persons described in paragraph (1) are subject at
24 any time, or from time to time, to such reasonable
25 periodic, special, or other information and document
26 requests by representatives of the Commission as the

1 Commission by rule or order deems necessary or ap-
2 propriate to conduct surveillance or risk assessments
3 of the securities markets, persons registered with the
4 Commission under this title, or otherwise in further-
5 ance of the purposes of this title.”.

6 (c) INVESTMENT ADVISERS ACT OF 1940 AMEND-
7 MENTS.—Section 204 of the Investment Advisers Act of
8 1940 (15 U.S.C. 80b-4) is amended by adding at the end
9 the following new subsection:

10 “(d) SURVEILLANCE AND RISK ASSESSMENT.—All
11 persons described in subsection (a) are subject at any
12 time, or from time to time, to such reasonable periodic,
13 special, or other information and document requests by
14 representatives of the Commission as the Commission by
15 rule or order deems necessary or appropriate to conduct
16 surveillance or risk assessments of the securities markets,
17 persons registered with the Commission under this title,
18 or otherwise in furtherance of the purposes of this title.”.

19 **SEC. 218. INVESTMENT COMPANY EXAMINATIONS.**

20 Section 31(b)(1) of the Investment Company Act of
21 1940 (15 U.S.C. 80a-30) is amended to read as follows:

22 “(1) IN GENERAL.—All records of each reg-
23 istered investment company, and each underwriter,
24 broker, dealer, or investment adviser that is a major-
25 ity-owned subsidiary of such a company, shall be

1 subject at any time, or from time to time, to such
2 reasonable periodic, special, or other examinations
3 by representatives of the Commission as the Com-
4 mission deems necessary or appropriate in the public
5 interest or for the protection of investors.”.

6 **SEC. 219. CONTROL PERSON LIABILITY UNDER THE SECURITIES EXCHANGE ACT.**

8 Section 20(a) of the Securities Exchange Act of 1934
9 (15 U.S.C. 78t(a)) is amended by inserting after “con-
10 trolled person is liable” the following: “including to the
11 Commission in any action brought under paragraph (1)
12 or (3) of section 21(d),”.

13 **SEC. 220. ENHANCED APPLICATION OF ANTI-FRAUD PROVISIONS.**

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

17 (1) in section 9—

18 (A) by striking “registered on a national
19 securities exchange” each place it appears and
20 inserting “other than a government security”;

21 (B) in subsection (b), by striking “by use
22 of any facility of a national securities ex-
23 change,”; and

1 (C) in subsection (c), by inserting after
2 “unlawful for any” the following: “broker, deal-
3 er, or”;

4 (2) in section 10(a)(1), by striking “registered
5 on a national securities exchange” each place it ap-
6 pears and inserting “other than a government secu-
7 rity”; and

8 (3) in section 15(c)(1)(A), by striking “other-
9 wise than on a national securities exchange of which
10 it is a member”.

11 **TITLE III—COMMISSION** 12 **FUNDING AND ORGANIZATION**

13 **SEC. 301. AUTHORIZATION OF APPROPRIATIONS.**

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

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

17 “In addition to any other funds authorized to be ap-
18 propriated to the Commission, there are authorized to be
19 appropriated to carry out the functions, powers, and du-
20 ties of the Commission—

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

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

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

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

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

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

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

3 Section 203 of the Investment Advisers Act of 1940
4 (15 U.S.C. 80b–3) is amended by adding at the end the
5 following new subsection:

6 “(1) ANNUAL ASSESSMENT.—

7 “(1) IN GENERAL.—The Commission shall, in
8 accordance with this subsection, collect from invest-
9 ment advisers required to register with the Commis-
10 sion under this title, fees designed to help recover
11 the cost of inspections and examinations of reg-
12 istered investment advisers conducted by the Com-
13 mission pursuant to 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 Commis-
20 sion shall consider—

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

22 “(B) the risk profile of the investment ad-
23 viser;

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

1 “(D) such other relevant factors as the
2 Commission determines to be appropriate.

3 “(3) AMOUNT AND USE OF FEES.—

4 “(A) MINIMUM AGGREGATE AMOUNT.—

5 The aggregate amount of fees determined by
6 the Commission under this subsection for any
7 fiscal year shall be greater than the amount the
8 Commission spent on inspections and examina-
9 tions of registered investment advisers during
10 the 2009 fiscal year.

11 “(B) EXCESS FEES.—The Commission
12 may retain any excess fees collected under this
13 subsection during a fiscal year for application
14 towards the costs of inspections and examina-
15 tions of investment advisers in future fiscal
16 years.

17 “(4) REVIEW AND ADJUSTMENT OF FEES.—

18 The Commission may review fee rates established
19 pursuant to this section before the end of any fiscal
20 year and make any appropriate adjustments prior to
21 collecting any such fee in the following fiscal year.

22 “(5) PENALTY FEE.—The Commission shall
23 prescribe by rule or regulation an additional fee to
24 be assessed as a penalty for late payment of fees re-
25 quired by this subsection.

1 “(6) JUDICIAL REVIEW.—Increases or decreases
2 in fees made pursuant to this section shall not be
3 subject 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
7 (15 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”
11 and inserting “August 31”; and

12 (3) in subsection (j)—

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
17 collected under subsection (d) of this section)”
18 and inserting “(including fees estimated to be
19 collected under subsections (b) and (c) prior to
20 the effective date of the uniform adjusted rate
21 and assessments estimated to be collected under
22 subsection (d))”.

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

25 (a) STUDY REQUIRED.—

1 (1) IN GENERAL.—Not later than the end of
2 the 60-day period beginning on the date of the en-
3 actment of this Act, the Securities and Exchange
4 Commission (hereinafter in this section referred to
5 as the “SEC”) shall hire an independent consultant
6 of high caliber and with expertise in organizational
7 restructuring to examine the internal operations,
8 structure, funding, and need for comprehensive re-
9 form of the SEC, self-regulatory organizations, and
10 other entities relevant to the regulation of securities
11 and the protection of securities investors.

12 (2) SPECIFIC AREAS FOR STUDY.—The study
13 required under paragraph (1) shall, at a minimum,
14 include the study of—

15 (A) the possible elimination of unnecessary
16 or redundant units at the SEC;

17 (B) improving communications between
18 SEC offices and divisions;

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

22 (D) the SEC’s hiring policies and personal
23 practices, including—

24 (i) whether there is a need to further
25 streamline hiring authorities for those who

1 are not lawyers, accountants, compliance
2 examiners, or economists;

3 (ii) whether there is a need for further
4 pay reforms;

5 (iii) the experiential mix of SEC em-
6 ployees and whether such mix efficiently
7 and effectively permits the SEC to protect
8 investors; and

9 (iv) the application of civil service
10 laws by the SEC; and

11 (E) the present self-regulatory organiza-
12 tional structure and a determination of whether
13 the present reliance on self-regulatory organiza-
14 tions promotes efficient and effective govern-
15 ance for the securities markets.

16 (b) CONSULTANT REPORT.—Not later than the end
17 of the 180-day period beginning on the date of the enact-
18 ment of this Act, the independent consultant hired pursu-
19 ant to subsection (a)(1) shall issue a report to the SEC
20 and the Congress containing—

21 (1) a detailed description of any findings and
22 conclusions made while carrying out the study re-
23 quired under subsection (a)(1);

24 (2) recommendations for legislative, regulatory,
25 or administrative action that the consultant deter-

1 mines appropriate to enable the SEC and other enti-
2 ties on which it reports to perform their statutorily
3 or otherwise mandated missions.

4 (c) SEC REPORT.—Not later than the end of the 6-
5 month period beginning on the date the consultant issues
6 the report under subsection (b), and every 6-months there-
7 after during the 2-year period following the date on which
8 the consultant issues such report, the SEC shall issue a
9 report to the Committee on Financial Services of the
10 House of Representatives and the Committee on Banking,
11 Housing, and Urban Affairs of the Senate describing the
12 SEC’s implementation of the regulatory and administra-
13 tive recommendations contained in the consultant’s report.

14 **TITLE IV—ADDITIONAL** 15 **COMMISSION REFORMS**

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

17 Section 10 of the Securities Exchange Act of 1934
18 (15 U.S.C. 78j) is amended by adding at the end the fol-
19 lowing new subsection:

20 “(c) To effect or accept a transaction involving the
21 loan or borrowing of securities in contravention of such
22 rules and regulations as the Commission may prescribe as
23 necessary or appropriate in the public interest or for the
24 protection of investors.”.

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

2 Section 17(f)(1) of the Securities Exchange Act of
3 1934 (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 sto-
10 len” and inserting “stolen, cancelled, or reported in
11 such other manner as the Commission, by rule, may
12 prescribe”.

13 **SEC. 403. FINGERPRINTING.**

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

16 (1) by striking “and registered clearing agen-
17 cy,” and inserting “registered clearing agency, reg-
18 istered securities information processor, national se-
19 curities exchange, and national securities associa-
20 tion”; and

21 (2) by striking “or clearing agency,” and insert-
22 ing “clearing agency, securities information proc-
23 essor, national securities exchange, or national secu-
24 rities association.”.

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 organi-
6 zation,”.

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
11 1940 (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
14 “registered or required to be registered with the
15 Commission”;

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**
21 **OF THE PUBLIC UTILITY HOLDING COMPANY**
22 **ACT OF 1935.**

23 (a) SECURITIES EXCHANGE ACT OF 1934.—The Se-
24 curities Exchange Act of 1934 (15 U.S.C. 78 et seq.) is
25 amended—

1 (1) in section 3(a)(47) (15 U.S.C. 78c(a)(47)),
2 by striking “the Public Utility Holding Company
3 Act 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 charac-
9 terized 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 substan-
20 tially disrupts, or threatens to substantially dis-
21 rupt—

22 “(i) the functioning of securities mar-
23 kets, investment companies, or any other
24 significant portion or segment of the secu-
25 rities 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)),
4 by striking “section 18(c) of the Public Utility Hold-
5 ing Company Act of 1935,”.

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

9 (1) in section 303 (15 U.S.C. 77ccc), by
10 amending paragraph (17) to read as follows:

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

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

22 (3) in section 310 (15 U.S.C. 77jjj), by striking
23 subsection (c) (including the preceding heading);

24 (4) in section 311 (15 U.S.C. 77kkk) by strik-
25 ing subsection (c);

1 (5) in section 323(b) (15 U.S.C. 77www(b)), by
2 striking “Securities Act of 1933, or the Securities
3 Exchange Act of 1934, or the Public Utility Holding
4 Company Act of 1935” and inserting “Securities Act
5 of 1933 or the Securities Exchange Act of 1934”;
6 and

7 (6) in section 326 (15 U.S.C. 77zzz), by strik-
8 ing “Securities Act of 1933, or the Securities Ex-
9 change Act of 1934, or the Public Utility Holding
10 Company Act of 1935,” and inserting “Securities
11 Act of 1933 or the Securities Exchange Act of
12 1934”.

13 (c) INVESTMENT COMPANY ACT OF 1940.—The In-
14 vestment Company Act of 1940 (15 U.S.C. 80a–1 et seq.)
15 is amended—

16 (1) in section 2(a)(44) (15 U.S.C. 80a–
17 2(a)(44)), by striking “‘Public Utility Holding Com-
18 pany Act of 1935’,”;

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

21 “(8) [Repealed]”;

22 (3) in section 38(b) (15 U.S.C. 80a–37(b)), by
23 striking “the Public Utility Holding Company Act of
24 1935,”; and

1 (4) in section 50 (15 U.S.C. 80a–49), by strik-
2 ing “the Public Utility Holding Company Act of
3 1935,”.

4 (d) INVESTMENT ADVISERS ACT OF 1940.—Section
5 202(a)(21) of the Investment Advisers Act of 1940 (15
6 U.S.C. 80b–2(a)(21)) is amended by striking “‘Public
7 Utility Holding Company Act of 1935’”.

8 **SEC. 407. PROMOTING TRANSPARENCY IN FINANCIAL RE-**
9 **PORTING.**

10 (a) FINDINGS.—Congress finds the following:

11 (1) Transparent and clear financial reporting is
12 integral to the continued growth and strength of our
13 capital markets and the confidence of investors.

14 (2) The increasing detail and volume of ac-
15 counting, auditing, and reporting guidance pose a
16 major challenge.

17 (3) The complexity of accounting and auditing
18 standards in the United States has added to the
19 costs and effort involved in financial reporting.

20 (b) TESTIMONY REQUIRED ON REDUCING COM-
21 PLEXITY IN FINANCIAL REPORTING.—The Securities and
22 Exchange Commission, the Financial Accounting Stand-
23 ards Board, and the Public Company Accounting Over-
24 sight Board shall annually provide oral testimony by their
25 respective Chairpersons or a designee of the Chairperson,

1 beginning in 2010, and for 5 years thereafter, to the Com-
2 mittee on Financial Services of the House of Representa-
3 tives on their efforts to reduce the complexity in financial
4 reporting to provide more accurate and clear financial in-
5 formation to investors, including—

6 (1) reassessing complex and outdated account-
7 ing standards;

8 (2) improving the understandability, consist-
9 ency, and overall usability of the existing accounting
10 and auditing literature;

11 (3) developing principles-based accounting
12 standards;

13 (4) encouraging the use and acceptance of
14 interactive data; and

15 (5) promoting disclosures in “plain English”.

16 **SEC. 408. UNLAWFUL MARGIN LENDING.**

17 Section 7(c)(1)(A) of the Securities Exchange Act of
18 1934 (15 U.S.C. 78g(c)(1)(A)) is amended by striking “;
19 and” and inserting “; or”.

20 **SEC. 409. PROTECTING CONFIDENTIALITY OF MATERIALS**

21 **SUBMITTED TO THE COMMISSION.**

22 (a) SECURITIES EXCHANGE ACT OF 1934.—Section
23 17(j) of the Securities Exchange Act of 1934 (15 U.S.C.
24 78q(j)) is amended to read as follows:

1 “(j) AUTHORITY TO LIMIT DISCLOSURE OF INFOR-
2 MATION.—

3 “(1) IN GENERAL.—Notwithstanding any other
4 provision of law, the Commission shall not be com-
5 pelled to disclose any information, documents,
6 records, or reports that relate to an examination of
7 a person subject to or described in this section, in-
8 cluding subsection (i)(5)(A), or the financial or oper-
9 ational condition of such persons, or any information
10 supplied to the Commission by any domestic or for-
11 eign regulatory agency that relates to the financial
12 or operational condition of such persons, of any as-
13 sociated person of such persons, or any affiliate of
14 an investment bank holding company.

15 “(2) CERTAIN EXCEPTIONS.—Nothing in this
16 subsection shall authorize the Commission to with-
17 hold information from the Congress, prevent the
18 Commission from complying with a request for infor-
19 mation from any other Federal department or agen-
20 cy or any self-regulatory organization requesting the
21 information for purposes within the scope of its ju-
22 risdiction, or prevent the Commission from com-
23 plying with an order of a court of the United States
24 in an action brought by the United States or the
25 Commission against a person subject to or described

1 in this section to produce information, documents,
2 records, or reports relating directly to the examina-
3 tion of that person or the financial or operational
4 condition of that person or an associated or affili-
5 ated person of that person.

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

11 “(4) CERTAIN INFORMATION TO BE CONFIDEN-
12 TIAL.—In prescribing regulations to carry out the
13 requirements of this subsection, the Commission
14 shall designate information described in or obtained
15 pursuant to subparagraphs (A), (B), and (C) of sub-
16 section (i)(3) as confidential information for pur-
17 poses of section 24(b)(2) of this title.”.

18 (b) INVESTMENT COMPANY ACT OF 1940.—Section
19 31(b) of the Investment Company Act of 1940 (15 U.S.C.
20 80a–30(b)) is amended by adding at the end the following
21 new paragraph:

22 “(4) CONFIDENTIALITY.—

23 “(A) IN GENERAL.—Notwithstanding any
24 other provision of law, the Commission shall not
25 be compelled to disclose any information, docu-

1 ments, records, or reports that relate to an ex-
2 amination of a person subject to or described in
3 this section.

4 “(B) CERTAIN EXCEPTIONS.—Nothing in
5 this subsection shall authorize the Commission
6 to withhold information from the Congress, pre-
7 vent the Commission from complying with a re-
8 quest for information from any other Federal
9 department or agency requesting the informa-
10 tion for purposes within the scope of its juris-
11 diction, 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
14 States or the Commission against a person sub-
15 ject to or described in this section to produce
16 information, documents, records, or reports re-
17 lating directly to the examination of that person
18 or the financial or operational condition of that
19 person or an associated or affiliated person of
20 that person.

21 “(C) TREATMENT UNDER SECTION 552 OF
22 TITLE 5, UNITED STATES CODE.— For purposes
23 of section 552 of title 5, United States Code,
24 this subsection shall be considered a statute de-

1 scribed in subsection (b)(3)(B) of that sec-
2 tion.”.

3 (c) INVESTMENT ADVISERS ACT OF 1940.—Section
4 204 of the Investment Advisers Act of 1940 (15 U.S.C.
5 80b–4) is amended by adding at the end the following new
6 subsection:

7 “(d) CONFIDENTIALITY.—

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

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

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

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

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

9 (a) SECURITIES ACT OF 1933.—The Securities Act
10 of 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 section 18(b)(1)(C) (15 U.S.C.
14 77r(b)(1)(C)), by striking “is a security” and insert-
15 ing “a security”;

16 (3) in section 18(c)(2)(B)(i) (15 U.S.C.
17 77r(c)(2)(B)(i)), by striking “State, or” and insert-
18 ing “State or”;

19 (4) in section 19(d)(6)(A) (15 U.S.C.
20 77s(d)(6)(A)), by striking “in paragraph (1) of (3)”
21 and inserting “in paragraph (1) or (3)”;

22 (5) in section 27A(c)(1)(B)(ii) (15 U.S.C. 77z-
23 2(c)(1)(B)(ii)), by striking “business entity;” and in-
24 serting “business entity;”.

1 (b) SECURITIES EXCHANGE ACT OF 1934.—The Se-
2 curities Exchange Act of 1934 (15 U.S.C. 78 et seq.) is
3 amended—

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

6 (2) in section 3(a)(55)(A) (15 U.S.C.
7 78c(a)(55)(A)), by striking “section 3(a)(12) of the
8 Securities Exchange Act of 1934” and inserting
9 “section 3(a)(12) of this Act”;

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

13 (4) in section 10A(i)(1)(B)(i) (15 U.S.C. 78j-
14 1(i)(1)(B)(i)), by striking “nonaudit” and inserting
15 “non-audit”;

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

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

20 (A) by striking the sentence beginning
21 “The order granting” and ending “from such
22 membership.” in subparagraph (B); and

23 (B) by inserting such sentence in the mat-
24 ter following such subparagraph after “are sat-
25 isfied.”;

1 (7) in section 15 (15 U.S.C. 78o), by redesignig-
2 nating subsection (i), as added by section 303(f) of
3 the Commodity Futures Modernization Act of 2000
4 (114 Stat. 2763A–455), as subsection (j);

5 (8) in section 15C(a)(2) (15 U.S.C. 78o–
6 5(a)(2))—

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

9 (B) by striking the sentence beginning
10 “The order granting” and ending “from such
11 membership.” in such subparagraph (B), as re-
12 designated; and

13 (C) by inserting such sentence in the mat-
14 ter following such redesignated subparagraph
15 after “are satisfied.”;

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

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

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

1 (c) TRUST INDENTURE ACT OF 1939.—The Trust
2 Indenture Act of 1939 (15 U.S.C. 77aaa et seq.) is
3 amended—

4 (1) in section 304(b) (15 U.S.C. 77ddd(b)), by
5 striking “section 2 of such Act” and inserting “sec-
6 tion 2(a) of such Act”;

7 (2) in section 313(a)(4) (15 U.S.C.
8 77mmm(a)(4)) by striking “subsection 311” and in-
9 serting “section 311(b)”; and

10 (3) in section 317(a)(1) (15 U.S.C.
11 77qqq(a)(1)), by striking “(1),” and inserting “(1)”.

12 (d) INVESTMENT COMPANY ACT OF 1940.—The In-
13 vestment Company Act of 1940 (15 U.S.C. 80a–1 et seq.)
14 is amended—

15 (1) in section 2(a)(19) (15 U.S.C. 80a–
16 2(a)(19)) by striking “clause (vi)” both places it ap-
17 pears in the last two sentences and inserting “clause
18 (vii)”;

19 (2) in section 9(b)(4)(B) (15 U.S.C. 80a–
20 9(b)(4)(B)), by inserting “or” after the semicolon at
21 the end;

22 (3) in section 12(d)(1)(J) (15 U.S.C. 80a–
23 12(d)(1)(J)), by striking “any provision of this sub-
24 section” and inserting “any provision of this para-
25 graph”;

1 (4) in section 13(a)(3) (15 U.S.C. 80a–
2 13(a)(3)), by inserting “or” after the semicolon at
3 the end;

4 (5) in section 17(f)(4) (15 U.S.C. 80a–
5 17(f)(4)), by striking “No such member” and insert-
6 ing “No member of a national securities exchange”;

7 (6) in section 17(f)(6) (15 U.S.C. 80a–
8 17(f)(6)), by striking “company may serve” and in-
9 serting “company, may serve”; and

10 (7) in section 61(a)(3)(B)(iii) (15 U.S.C. 80a–
11 60(a)(3)(B)(iii))—

12 (A) by striking “paragraph (1) of section
13 205” and inserting “section 205(a)(1)”; and

14 (B) by striking “clause (A) or (B) of that
15 section” and inserting “section 205(b)(1) or
16 (2)”.

17 (e) INVESTMENT ADVISERS ACT OF 1940.—The In-
18 vestment Advisers Act of 1940 (15 U.S.C. 80b–1 et seq.)
19 is amended—

20 (1) in each of the following sections, by striking
21 “principal business office” or “principal place of
22 business” (whichever and wherever it appears) and
23 inserting “principal office and place of business”:
24 sections 203(c)(1)(A), 203(k)(4)(B), 213(a), 222(b),
25 and 222(c) (15 U.S.C. 80b–3(c)(1)(A), 80b–

1 3(k)(4)(B), 80b-13(a), 80b-18a(b), and 80b-
2 18a(c)); and

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

5 **SEC. 411. MUNICIPAL SECURITIES.**

6 Section 15B(b) of the Securities Exchange Act of
7 1934 (15 U.S.C. 78o-4(b)) is amended—

8 (1) by amending paragraph (1) to read as fol-
9 lows:

10 “(1) COMPOSITION OF THE MUNICIPAL SECURI-
11 TIES RULEMAKING BOARD.—Not later than the end
12 of the 120-day period beginning on the date of the
13 enactment of this paragraph, the Municipal Securi-
14 ties Rulemaking Board (hereinafter in this section
15 referred to as the ‘Board’), shall be composed of
16 members which shall perform the duties set forth in
17 this section and shall consist of—

18 “(A) a majority of public representatives,
19 at least one of whom shall be representative of
20 investors in municipal securities and at least
21 one of whom shall be representative of issuers
22 of municipal securities (which members are
23 hereinafter referred to as ‘public representa-
24 tives’);

1 “(B) at least one individual who is rep-
2 resentative of municipal securities brokers and
3 municipal securities dealers which are not
4 banks or subsidiaries or departments or divi-
5 sions of banks (which members are hereinafter
6 referred to as ‘broker-dealer representatives’);
7 and

8 “(C) at least one individual who is rep-
9 resentative of municipal securities dealers which
10 are banks or subsidiaries or departments or di-
11 visions of banks (which members are herein-
12 after referred to as ‘bank representatives’)”;
13 and

14 (2) by amending paragraph (2)(B) to read as
15 follows:

16 “(B) Establish fair procedures for the
17 nomination and election of members of the
18 Board and assure fair representation in such
19 nominations and elections. Such rules—

20 “(i) shall establish requirements re-
21 garding the independence of public rep-
22 resentatives;

23 “(ii) shall provide that the number of
24 public representatives of the Board shall at
25 all times exceed the total number of

1 broker-dealer representatives and bank
2 representatives;

3 “(iii) shall specify the term members
4 shall serve; and

5 “(iv) may increase or decrease the
6 number of members which shall constitute
7 the whole Board, but in no case may such
8 number be an even number.”.

9 **SEC. 412. INTERESTED PERSON DEFINITION.**

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

12 (1) by striking clauses (v) and (vi);

13 (2) by inserting after clause (iv) the following
14 new clause:

15 “(v) any natural person who is a
16 member of a class of persons who the
17 Commission, by rule or regulation, deter-
18 mines are unlikely to exercise an appro-
19 priate degree of independence as a result
20 of—

21 “(I) a material business or pro-
22 fessional relationship with such com-
23 pany or any affiliated person of such
24 company; or

1 “(II) a close familial relationship
2 with any natural person who is an af-
3 filiated person of such company;”;

4 (3) by redesignating clause (vii) as clause (vi);
5 and

6 (4) in clause (vi), as redesignated, by striking
7 “two completed fiscal years” and inserting “five
8 completed fiscal years”.

9 **SEC. 413. RULEMAKING AUTHORITY TO PROTECT REDEEM-**
10 **ING INVESTORS.**

11 Section 22(e) of the Investment Company Act of
12 1940 (15 U.S.C. 80a-22(e)) is amended by adding at the
13 end the following: “The Commission may, by rules and
14 regulations, limit the extent to which a registered open-
15 end investment company may own, hold, or invest in il-
16 liquid securities or other illiquid property”.

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

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

21 Section 4(d)(1)(C) of the Securities Investor Protec-
22 tion Act of 1970 (15 U.S.C. 78ddd(d)(1)(C)) is amended
23 by striking “\$150 per annum” and inserting the following:
24 “0.02 percent of the gross revenues of such member of
25 SIPC”.

1 **SEC. 502. INCREASING THE BORROWING LIMIT ON TREAS-**
2 **URY LOANS.**

3 Section 4(h) of the Securities Investor Protection Act
4 of 1970 (15 U.S.C. 78ddd(h)) is amended by striking “of
5 not to exceed \$1,000,000,000” and inserting “not to ex-
6 ceed \$2,500,000,000”.

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

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

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

15 (2) by adding the following new subsections:

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

21 “(e) INFLATION ADJUSTMENT.—

22 “(1) IN GENERAL.—No later than April 1,
23 2010, and every 5 years thereafter, and subject to
24 the approval of the Commission as provided under
25 section 3(e)(2), the Board of Directors of SIPC shall
26 determine whether an inflation adjustment to the

1 standard maximum cash advance amount is appro-
2 priate. If the Board of Directors of SIPC determines
3 such an adjustment is appropriate, then the stand-
4 ard maximum cash advance amount shall be an
5 amount equal to—

6 “(A) \$250,000 multiplied by,

7 “(B) the ratio of the annual value of the
8 Personal Consumption Expenditures Chain-
9 Type Price Index (or any successor index there-
10 to), published by the Department of Commerce,
11 for the calendar year preceding the year in
12 which such determination is made, to the pub-
13 lished annual value of such index for the cal-
14 endar year preceding the year in which this
15 subsection was enacted.

16 The index values used in calculations under this
17 paragraph shall be, as of the date of the calculation,
18 the values most recently published by the Depart-
19 ment of Commerce.

20 “(2) ROUNDING.—If the standard maximum
21 cash advance amount determined under paragraph
22 (1) for any period is not a multiple of \$10,000, the
23 amount so determined shall be rounded down to the
24 nearest \$10,000.

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

5 “(A) the Commission shall publish in the
6 Federal Register the standard maximum cash
7 advance amount; and

8 “(B) the Board of Directors of SIPC shall
9 submit a report to the Congress containing
10 stating the standard maximum cash advance
11 amount.

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

17 “(5) INFLATION ADJUSTMENT CONSIDER-
18 ATIONS.—In making any determination under para-
19 graph (1) to increase the standard maximum cash
20 advance amount, the Board of Directors of SIPC
21 shall consider—

22 “(A) the overall state of the fund and the
23 economic conditions affecting members of
24 SIPC;

1 “(B) the potential problems affecting mem-
2 bers of SIPC; and

3 “(C) such other factors as the Board of
4 Directors of SIPC may determine appro-
5 priate.”.

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

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

10 (1) by striking “SIPC has determined that the
11 liabilities of the debtor to unsecured general credi-
12 tors and to subordinated lenders appear to aggre-
13 gate less than \$750,000 and that”; and

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

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

17 Section 9(a)(4) of the Securities Investor Protection
18 Act of 1970 (15 U.S.C. 78fff-3(a)(4)) is amended by in-
19 serting “an insider (as such term is defined under section
20 101(31) of title 11, United States Code),” after “or net
21 profits of the debtor,”.

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

23 Section 10(a)(4) of the Securities Investor Protection
24 Act of 1970 (15 U.S.C. 78fff-4(a)(4)) is amended by strik-
25 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
4 Act of 1970 (15 U.S.C. 78jjj(c)) is amended—

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

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

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

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

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

16 “(1) IN GENERAL.—Any person who falsely
17 represents by any means (including, without limita-
18 tion, through the Internet or any other medium of
19 mass communication), with actual knowledge of the
20 falsity of the representation and with an intent to
21 deceive or cause injury to another, that such person,
22 or another person, is a member of SIPC or that any
23 person or account is protected or is eligible for pro-
24 tection under this Act or by SIPC, shall be liable for
25 any damages caused thereby and shall be fined not

1 more than \$250,000 or imprisoned for not more
2 than five years.

3 “(2) INTERNET SERVICE PROVIDERS.—Any
4 Internet service provider that, on or through a sys-
5 tem or network controlled or operated by the Inter-
6 net service provider, transmits, routes, provides con-
7 nections for, or stores any material containing any
8 misrepresentation of the kind prohibited in para-
9 graph (1) shall be liable for any damages caused
10 thereby, including damages suffered by SIPC, if the
11 Internet service provider—

12 “(A) has actual knowledge that the mate-
13 rial contains a misrepresentation of the kind
14 prohibited in paragraph (1), or

15 “(B) in the absence of actual knowledge, is
16 aware of facts or circumstances from which it
17 is apparent that the material contains a mis-
18 representation of the kind prohibited in para-
19 graph (1), and

20 upon obtaining such knowledge or awareness, fails to
21 act expeditiously to remove, or disable access to, the
22 material.

23 “(3) INJUNCTIONS.—Any court having jurisdic-
24 tion of a civil action arising under this Act may
25 grant temporary injunctions and final injunctions on

1 such terms as the court deems reasonable to prevent
2 or restrain any violation of paragraph (1) or (2).
3 Any such injunction may be served anywhere in the
4 United States on the person enjoined, shall be oper-
5 ative throughout the United States, and shall be en-
6 forceable, by proceedings in contempt or otherwise,
7 by any United States court having jurisdiction over
8 that person. The clerk of the court granting the in-
9 junction shall, when requested by any other court in
10 which enforcement of the injunction is sought, trans-
11 mit promptly to the other court a certified copy of
12 all papers in the case on file in such clerk's office.”.

13 **SEC. 509. LIMITATIONS ON CUSTOMER STATUS.**

14 Section 16(2) of the Securities Investor Protection
15 Act of 1970 (15 U.S.C. 78lll(2)) is amended—

- 16 (1) in subparagraph (A), by striking “or”;
- 17 (2) in subparagraph (B), by striking the period
18 at the end and inserting “; or”; and
- 19 (3) by adding at the end the following new sub-
20 paragraph:
- 21 “(C) any person to the extent such person
22 has a claim for cash or securities arising out of
23 a repurchase agreement or reverse repurchase
24 agreement (as such terms are defined under
25 section 47 of title 11, United States Code).”.

1 **SEC. 510. FUTURES HELD IN A PORTFOLIO MARGIN SECURITIES ACCOUNT PROTECTION.**
2

3 (a) SIPC ADVANCES.—Section 9(a)(1) of the Securities Investor Protection Act of 1970 (15 U.S.C. 78fff–
4 3(a)(1)) is amended by inserting “or options on commodity futures contracts” after “claim for securities”.

7 (b) DEFINITIONS.—Section 16 of such Act (15
8 U.S.C. 78lll) is amended—

9 (1) by amending paragraph (2) to read as follows:
10

11 “(2) CUSTOMER.—

12 “(A) IN GENERAL.—The term ‘customer’
13 of a debtor means any person (including any
14 person with whom the debtor deals as principal
15 or agent) who has a claim on account of securities
16 received, acquired, or held by the debtor in
17 the ordinary course of its business as a broker
18 or dealer from or for the securities accounts of
19 such person for safekeeping, with a view to sale,
20 to cover consummated sales, pursuant to purchases,
21 as collateral, security, or for purposes of
22 effecting transfer.

23 “(B) INCLUDED PERSONS.—The term
24 ‘customer’ includes—

1 “(i) any person who has deposited
2 cash with the debtor for the purpose of
3 purchasing securities; and

4 “(ii) any person who has a claim
5 against the debtor for, or a claim against
6 the debtor arising out of sales or conver-
7 sions of, cash, securities, futures contracts,
8 or options on futures contracts received,
9 acquired, or held in a portfolio margining
10 account carried as a securities account
11 pursuant to a portfolio margining program
12 approved by the Commission.

13 “(C) EXCLUDED PERSONS.—The term
14 ‘customer’ does not include—

15 “(i) any person to the extent that the
16 claim of such person arises out of trans-
17 actions with a foreign subsidiary of a mem-
18 ber of SIPC; or

19 “(ii) any person to the extent that
20 such person has a claim for cash or securi-
21 ties which by contract, agreement, or un-
22 derstanding, or by operation of law, is part
23 of the capital of the debtor, or is subordi-
24 nated to the claims of any or all creditors
25 of the debtor, notwithstanding that some

1 ground exists for declaring such contract,
2 agreement, or understanding void or void-
3 able in a suit between the claimant and the
4 debtor.”;

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

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

21 (4) in paragraph (11)—

22 (A) by amending subparagraph (A) to read
23 as follows:

24 “(A) calculating the sum which would have
25 been owed by the debtor to such customer if the

1 debtor had liquidated, by sale or purchase on
2 the filing date—

3 “(i) all securities positions of such
4 customer (other than customer name secu-
5 rities reclaimed by such customer); and

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

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

1 **SEC. 511. RISK-BASED PREMIUMS.**

2 Section 4(e) of the Securities Investor Protection Act
3 of 1970 (15 U.S.C. 78ddd(e)) is amended by adding at
4 the end the following new paragraph:

5 “(4) RISK-BASED ASSESSMENT SYSTEM.—

6 “(A) IN GENERAL.—Assessments made
7 pursuant to paragraph (2) shall be made using a
8 risk-based assessment system.

9 “(B) RISK-BASED ASSESSMENT SYSTEM
10 DEFINED.—For purposes of this paragraph, the
11 term ‘risk-based assessment system’ means a
12 system for calculating a member’s assessment
13 based on—

14 “(i) the probability that the fund will
15 incur a loss with respect to the member,
16 taking into consideration the risks attrib-
17 utable to—

18 “(I) the size of the member;

19 “(II) the number of enforcement
20 and compliance actions taken against
21 such member during the previous 5-
22 year period by SIPC, the Commission,
23 State securities regulators, and other
24 Federal and State financial regu-
25 lators;

1 “(III) the number of years such
2 member has been in operation; and

3 “(IV) any other factors SIPC de-
4 termines are relevant to assessing
5 such probability;

6 “(ii) the likely amount of any such
7 loss; and

8 “(iii) the revenue needs of the fund.

9 “(C) SEPARATE ASSESSMENT SYSTEMS.—
10 SIPC may establish separate risk-based assess-
11 ment systems for large and small members of
12 SIPC.

13 “(D) MODIFICATIONS TO THE RISK-BASED
14 ASSESSMENT SYSTEM ALLOWED ONLY AFTER
15 NOTICE AND COMMENT.—In revising or modi-
16 fying the risk-based assessment system at any
17 time after the date of the enactment of this
18 paragraph, SIPC may implement such revisions
19 or modification in final form only after notice
20 and opportunity for comment.”.

21 **SEC. 512. BUDGETARY TREATMENT OF COMMISSION LOANS**
22 **TO SIPC.**

23 Section 4(g) of the Securities Investor Protection Act
24 of 1970 (15 U.S.C. 78ddd(g)) is amended by adding at
25 the end the following: “Any loan made by the Commission

1 to SIPC under this subsection shall not be considered to
2 result in a new direct loan obligation or a new loan guar-
3 antee commitment for purposes of section 504 of the Fed-
4 eral Credit Reform Act of 1990.”

5 **TITLE VI—SARBANES-OXLEY ACT**
6 **AMENDMENTS**

7 **SEC. 601. PUBLIC COMPANY ACCOUNTING OVERSIGHT**
8 **BOARD OVERSIGHT OF AUDITORS OF NON-**
9 **PUBLIC BROKERS AND DEALERS.**

10 (a) DEFINITIONS.—Title I of the Sarbanes-Oxley Act
11 of 2002 is amended by adding at the end the following
12 new section:

13 **“SEC. 110. DEFINITIONS.**

14 “For the purposes of this title, and notwithstanding
15 section 2:

16 “(1) AUDIT.—The term ‘audit’ means an exam-
17 ination of the financial statements, reports, docu-
18 ments, or notices, of any issuer, broker, or dealer by
19 an independent public accounting firm in accordance
20 with the rules of the Board or the Commission (or,
21 for the period preceding the adoption of applicable
22 rules of the Board under section 103, in accordance
23 with then-applicable generally accepted auditing and
24 related standards for such purposes), for the pur-

1 pose of expressing an opinion on such financial
2 statements, reports, documents, or notices.

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

5 “(A) prepared following an audit per-
6 formed for purposes of compliance by an issuer,
7 broker, or dealer with the requirements of the
8 securities laws; and

9 “(B) in which a public accounting firm ei-
10 ther—

11 “(i) sets forth the opinion of that firm
12 regarding a financial statement, report, no-
13 tice, other document, procedures, or con-
14 trols; or

15 “(ii) asserts that no such opinion can
16 be expressed.

17 “(3) PROFESSIONAL STANDARDS.—The term
18 ‘professional standards’ means—

19 “(A) accounting principles that are—

20 “(i) established by the standard set-
21 ting body described in section 19(b) of the
22 Securities Act of 1933, as amended by this
23 Act, or prescribed by the Commission
24 under section 19(a) of that Act (15 U.S.C.
25 17a(s)) or section 13(b) of the Securities

1 Exchange Act of 1934 (15 U.S.C. 78a(m));

2 and

3 “(ii) relevant to audit reports for par-

4 ticular issuers, brokers, or dealers, or dealt

5 with in the quality control system of a par-

6 ticular registered public accounting firm;

7 and

8 “(B) auditing standards, standards for at-

9 testation engagements, quality control policies

10 and procedures, ethical and competency stand-

11 ards, and independence standards (including

12 rules implementing title II) that the Board or

13 the Commission determines—

14 “(i) relate to the preparation or

15 issuance of audit reports for issuers, bro-

16 kers, or dealers; and

17 “(ii) are established or adopted by the

18 Board under section 103(a), or are pro-

19 mulgated as rules of the Commission.

20 “(4) BROKER.—The term ‘broker’ means a

21 broker (as such term is defined in section 3(a)(4) of

22 the Securities Exchange Act of 1934 (15 U.S.C.

23 78c(a)(4))) that is required to file a balance sheet,

24 income statement, or other financial statement

25 under section 17(e)(1)(A) of such Act (15 U.S.C.

1 78q(e)(1)(A)), where such balance sheet, income
2 statement, or financial statement is required to be
3 certified by a registered public accounting firm.

4 “(5) DEALER.—The term ‘dealer’ means a
5 dealer (as such term is defined in section 3(a)(5) of
6 the Securities Exchange Act of 1934 (15 U.S.C.
7 78c(a)(5))) that is required to file a balance sheet,
8 income statement, or other financial statement
9 under section 17(e)(1)(A) of such Act (15 U.S.C.
10 78q(e)(1)(A)), where such balance sheet, income
11 statement, or financial statement is required to be
12 certified by a registered public accounting firm.

13 “(6) SELF-REGULATORY ORGANIZATION.—The
14 term ‘self-regulatory organization’ has the same
15 meaning as in section 3(a)(26) of the Securities Ex-
16 change Act of 1934 (15 U.S.C. 78c(a)(26)).”.

17 (b) ESTABLISHMENT AND ADMINISTRATION OF THE
18 PUBLIC COMPANY ACCOUNTING OVERSIGHT BOARD.—
19 Section 101 of such Act is amended—

20 (1) by striking “issuers” each place it appears
21 and inserting “issuers, brokers, and dealers”;

22 (2) in subsection (a), by striking “public com-
23 panies” and inserting “companies”; and

1 (3) in subsection (a), by striking “for compa-
2 nies the securities of which are sold to, and held by
3 and for, public investors”.

4 (c) REGISTRATION WITH THE BOARD.—Section 102
5 of such Act is amended—

6 (1) by striking “Beginning 180 days after the
7 date of the determination of the Commission under
8 section 101(d), it” and inserting “It”;

9 (2) in subsections (a) and (b)(2)(G), by striking
10 “issuer” each place it appears and inserting “issuer,
11 broker, or dealer”; and

12 (3) by striking “issuers” and inserting “issuers,
13 brokers, and dealers”.

14 (d) AUDITING AND INDEPENDENCE.—Section 103(a)
15 of such Act is amended—

16 (1) in paragraph (1), by striking “and such eth-
17 ics standards” and inserting “such ethics standards,
18 and such independence standards”;

19 (2) in paragraph (2)(A)(iii), by striking “de-
20 scribe in each audit report” and inserting “in each
21 audit report for an issuer, describe”; and

22 (3) in paragraph (2)(B)(i), by striking
23 “issuers” and inserting “issuers, brokers, and deal-
24 ers”.

1 (e) INSPECTIONS OF REGISTERED PUBLIC ACCOUNT-
2 ING FIRMS.—Section 104 of such Act is amended—

3 (1) in subsection (a), by striking “issuers” and
4 inserting “issuers, brokers, and dealers”;

5 (2) in subsection (b)(1)(A)—

6 (A) by striking “audit reports” and insert-
7 ing “audit reports on annual financial state-
8 ments”; and

9 (B) by striking “and”;

10 (3) in subsection (b)(1)(B)—

11 (A) by striking “audit reports” and insert-
12 ing “audit reports on annual financial state-
13 ments”; and

14 (B) by striking the period on the end and
15 inserting “; and”; and

16 (4) by adding at the end of subsection (b)(1)
17 the following new subparagraph:

18 “(C) with respect to each registered public
19 accounting firm that regularly provides audit
20 reports and is not described under subpara-
21 graph (A) or (B), on a basis to be determined
22 by the Board, by rule, consistent with the pub-
23 lic interest and protection of investors.”.

1 (f) INVESTIGATIONS AND DISCIPLINARY PRO-
2 CEEDINGS.—Section 105(c)(7)(B) of such Act is amend-
3 ed—

4 (1) by striking “any issuer” each place it ap-
5 pears and inserting “any issuer, broker, or dealer”;
6 and

7 (2) by striking “an issuer under this sub-
8 section” and inserting “a registered public account-
9 ing firm under this subsection”.

10 (g) FOREIGN PUBLIC ACCOUNTING FIRMS.—Section
11 106 of such Act is amended—

12 (1) by striking “issuer” and inserting “issuer,
13 broker, or dealer”; and

14 (2) by striking “issuers” and inserting “issuers,
15 brokers, or dealers”.

16 (h) FUNDING.—Section 109 of such Act is amend-
17 ed—

18 (1) in subsection (c)(2), by striking “subsection
19 (i)” and inserting “subsection (j)”;

20 (2) in subsection (d)(2), by striking “allowing
21 for differentiation among classes of issuers, as ap-
22 propriate” and inserting “and among brokers and
23 dealers that are not issuers, in accordance with sub-
24 section (h), and allowing for differentiation among

1 classes of issuers and brokers and dealers, as appropriate”;
2

3 (3) in subsection (d), by inserting at the end
4 the following new paragraph:

5 “(3) **BROKERS AND DEALERS.**—The rules of
6 the Board under paragraph (1) shall provide that
7 the allocation, assessment, and collection by the
8 Board (or an agent appointed by the Board) of the
9 fee established under paragraph (1) with respect to
10 brokers and dealers shall not begin until the first
11 day of the first full fiscal year beginning after the
12 date of the enactment of this paragraph.”;

13 (4) by redesignating subsections (h), (i), and (j)
14 as subsections (i), (j), and (k), respectively; and

15 (5) by inserting after subsection (g) the following new subsection:
16

17 “(h) **ALLOCATION OF ACCOUNTING SUPPORT FEES**
18 **AMONG BROKERS AND DEALERS.**—

19 “(1) **IN GENERAL.**—Any amount due from brokers and dealers that are not issuers (or a particular class of such brokers and dealers) under this section to fund the budget of the Board shall be allocated among and payable by such brokers and dealers (or such brokers and dealers in a particular class, as applicable). A broker or dealer’s allocation shall be in
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1 proportion to the broker or dealer’s net capital com-
2 pared to the total net capital of all brokers and deal-
3 ers that are not issuers, in accordance with the rules
4 of the Board.

5 “(2) OBLIGATION TO PAY.—Every broker or
6 dealer shall pay the share of a reasonable annual ac-
7 counting support fee or fees allocated to such broker
8 or dealer under this section.”.

9 (i) REFERRAL OF INVESTIGATIONS TO A SELF-REGU-
10 LATORY ORGANIZATION.—Section 105(b)(4)(B) of the
11 Sarbanes-Oxley Act of 2002 is amended—

12 (1) by redesignating clauses (ii) and (iii) as
13 clauses (iii) and (iv), respectively; and

14 (2) by inserting after clause (i) the following
15 new clause:

16 “(ii) to a self-regulatory organization,
17 in the case of an investigation that con-
18 cerns an audit report for a broker or deal-
19 er that is subject to the jurisdiction of
20 such self-regulatory organization;”.

21 (j) USE OF DOCUMENTS RELATED TO AN INSPEC-
22 TION OR INVESTIGATION.—Section 105(b)(5)(B)(ii) of
23 such Act is amended—

24 (1) in subclause (III), by striking “and”;

1 (2) in subclause (IV), by striking the comma
2 and inserting “; and”; and

3 (3) by inserting after subclause (IV) the fol-
4 lowing new subclause:

5 “(V) a self-regulatory organiza-
6 tion, with respect to an audit report
7 for a broker or dealer that is subject
8 to the jurisdiction of such self-regu-
9 latory organization.”.

10 **SEC. 602. FOREIGN REGULATORY INFORMATION SHARING.**

11 (a) DEFINITION.—Section 2(a) of the Sarbanes-
12 Oxley Act of 2002 (15 U.S.C. 7201(a)) is amended by
13 inserting after paragraph (16) the following:

14 “(17) FOREIGN AUDITOR OVERSIGHT AUTHOR-
15 ITY.—The term ‘foreign auditor oversight authority’
16 means any governmental body or other entity em-
17 powered by a foreign government to conduct inspec-
18 tions of public accounting firms or otherwise to ad-
19 minister or enforce laws related to the regulation of
20 public accounting firms.”.

21 (b) AVAILABILITY TO SHARE INFORMATION.—Sec-
22 tion 105(b)(5) of the Sarbanes-Oxley Act of 2002 (15
23 U.S.C. 7215(b)(5)) is amended by adding at the end the
24 following:

1 “(C) AVAILABILITY TO FOREIGN OVER-
2 SIGHT AUTHORITIES.—When in the Board’s
3 discretion it is necessary to accomplish the pur-
4 poses of this Act or to protect investors, and
5 without the loss of its status as confidential and
6 privileged in the hands of the Board, all infor-
7 mation referred to in subparagraph (A) that re-
8 lates to a public accounting firm within the in-
9 spection authority, or other regulatory or law
10 enforcement jurisdiction, of a foreign auditor
11 oversight authority may be made available to
12 the foreign auditor oversight authority if the
13 foreign auditor oversight authority provides
14 such assurances of confidentiality as the Board
15 determines appropriate.”.

16 (c) CONFORMING AMENDMENT.—Section
17 105(b)(5)(A) of the Sarbanes-Oxley Act of 2002 (15
18 U.S.C. 7215(b)(5)(A)) is amended by striking “subpara-
19 graph (B)” and inserting “subparagraphs (B) and (C)”.

20 **SEC. 603. EXPANSION OF AUDIT INFORMATION TO BE PRO-**
21 **DUCED AND EXCHANGED WITH FOREIGN**
22 **COUNTERPARTS.**

23 Section 106 of the Sarbanes-Oxley Act of 2002 (15
24 U.S.C. 7216) is amended—

1 (1) by amending subsection (b) to read as fol-
2 lows:

3 “(b) PRODUCTION OF DOCUMENTS.—

4 “(1) PRODUCTION BY FOREIGN FIRMS.—If a
5 foreign public accounting firm issues an audit re-
6 port, performs audit work, conducts interim reviews,
7 or performs material services, with respect to any
8 issuer or its subsidiaries, the foreign public account-
9 ing firm shall produce its audit documentation and
10 all other documents related to any such audit work
11 or interim review to the Commission or the Board
12 when requested by the Commission or the Board in
13 connection with any investigation and the foreign
14 public accounting firm shall be subject to the juris-
15 diction of the courts of the United States for pur-
16 poses of enforcement of any request of such docu-
17 ments.

18 “(2) OTHER PRODUCTION.—Any registered
19 public accounting firm that relies, in whole or in
20 part, on the work of a foreign public accounting firm
21 in issuing an audit report, performing audit work,
22 conducting an interim review, or performing mate-
23 rial services, with respect to any issuer or its sub-
24 sidiaries, shall—

1 “(A) produce the foreign public accounting
2 firm’s audit documentation and all other docu-
3 ments related to any such work in response to
4 a request for production by the Commission or
5 the Board; and

6 “(B) secure the agreement of any foreign
7 public accounting firm to such production, as a
8 condition of its reliance on the work of that for-
9 eign public accounting firm.”;

10 (2) by redesignating subsection (d) as sub-
11 section (f); and

12 (3) by inserting after subsection (c) the fol-
13 lowing new subsections:

14 “(d) SERVICE OF REQUESTS OR PROCESS.—Any for-
15 eign public accounting firm that performs work for a do-
16 mestic registered public accounting firm shall furnish to
17 the domestic firm a written irrevocable consent and power
18 of attorney that designates the domestic firm as an agent
19 upon whom may be served any process, pleadings, or other
20 papers in any action brought to enforce this section. Any
21 foreign firm that issues an audit report, performs audit
22 work, performs interim reviews, or performs material serv-
23 ices, shall designate to the Commission or the Board an
24 agent in the United States upon whom may be served any
25 process, pleading, or other papers in any action brought

1 to enforce this section or any request by the Commission
2 or the Board under this section.

3 “(e) SANCTIONS.—A willful refusal to comply, in
4 whole in or in part, with any request by the Commission
5 or the Board under this section, shall be a violation of
6 this Act.”.

7 **SEC. 604. 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 RE-
13 LIEF OF VICTIMS.—If in any judicial or administrative ac-
14 tion brought by the Commission under the securities laws
15 (as such term is defined in section 3(a)(47) of the Securi-
16 ties Exchange Act of 1934 (15 U.S.C. 78c(a)(47)), the
17 Commission obtains a civil penalty against any person for
18 a violation of such laws or the rules and regulations there-
19 under, the amount of such civil penalty shall, on the mo-
20 tion or at the direction of the Commission, be added to
21 and become part of a disgorgement fund or other fund
22 established for the benefit of the victims of such viola-
23 tion.”;

24 (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)”;

5 (B) striking “in the disgorgement fund”
6 and inserting “in such fund”;

7 (3) by striking subsection (e).

8 **SEC. 605. WHISTLEBLOWER PROTECTION AGAINST RETAL-**
9 **IATION BY A SUBSIDIARY OF AN ISSUER.**

10 Section 1514A of title 18, United States Code, is
11 amended by inserting “including any subsidiary or affil-
12 iate whose financial information is included in the consoli-
13 dated financial statements of such company,” after “(15
14 U.S.C. 78o(d)),”.