Discussion Draft of the
Investor Protection Act of 2009
Section-by-Section Analysis
October 1, 2009

Section 1. Short title

The section designates the short title of the legislation as the Investor Protection Act of 2009.

Section 2. Table of contents

The section provides a table of contents for the bill.

TITLE I—DISCLOSURE

Section 101. Investor Advisory Committee established

The U.S. Securities and Exchange Commission (SEC) has recently administratively established an Investor Advisory Committee to advise on the SEC's regulatory priorities, including issues concerning new products, trading strategies, fee structures, and the effectiveness of disclosure; initiatives to protect investor interest; and initiatives to promote investor confidence in the integrity of the marketplace. The section would codify the Investor Advisory Committee.

The membership on the Investor Advisory Committee consists of individuals representing the interests of individual and institutional investors who use a wide range of investment approaches. The advisory panel must meet at least twice a year, and its members will receive compensation for participation in meetings and travel expenses. Funding, as is necessary, is authorized to support the work of the Investor Advisory Committee.

Section 102. Clarification of the commission's authority to engage in consumer testing

This section would clarify the SEC's authority to gather information (*e.g.*, through focus groups), communicate with investors or other members of the public (*e.g.*, through telephonic or written surveys), and engage in temporary experimental programs (*e.g.*, pilot programs to "field test" disclosures) in order to inform their rulemaking and other policy functions. This power would be conferred under the four principal securities laws administered by the SEC: the Securities Act, the Exchange Act, the Investment Company Act, and the Investment Advisers Act. The section represents an endorsement of the benefits that can accrue from field testing, consumer outreach, and testing of disclosures to individual investors.

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

This section would authorize the SEC to promulgate rules conforming the duties owed to individual investors by broker-dealers and investment advisers.

Currently, these two types of financial services professionals are subject to very different standards of care and regulatory regimes, even though the services they provide to investors are often very similar.

The section therefore establishes that brokers, dealers and investment advisers providing investment advice about securities shall be the same fiduciary standard of conduct. Individuals covered by these protections include those who use investment advice primarily for personal, family, or household purposes. The SEC must also take steps to facilitate simple and clear disclosure to investors about their relationships with brokers, dealers and investment advisers and to prohibit sales practices, conflicts of interest, and compensation schemes that it deems contrary to the public interest and the interest of investors.

Additionally, the SEC must, to the extent practicable, harmonize its enforcement and remedy regulations across brokers, dealers and investment advisers with respect to the provision of investment advice.

Section 104. Clarification of commission authority to require investor disclosure before purchase of investment company shares

The section authorizes the SEC to designate documents (*e.g.*, a mutual fund summary prospectus) or information (*e.g.*, information about performance or comparative fee and expense information available from a website) that an investor must receive prior to the purchase of shares of a mutual fund or other registered investment company.

Section 105. Beneficial ownership and short swing profit reporting

These changes would give the SEC the authority to adopt rules to shorten reporting timeframes and help the markets receive more timely information concerning substantial ownership interests in issuers that may be important for purposes of obtaining the accurate pricing of listed securities.

Section 106. Revision to recordkeeping rules

These amendments would expand the scope of records to be maintained and subject to examination by the SEC under both the Investment Company Act and the Investment Advisers Act to custodians or others who have custody or use of the investment company's or the investment adviser's clients' securities, deposits, or credits.

TITLE II—ENFORCEMENT AND REMEDIES

Section 201. Authority to restrict mandatory pre-dispute arbitration

This section would allow the SEC to promulgate rules to prohibit, or impose conditions or limitations on the use of pre-dispute agreements requiring arbitration between a broker, dealer, or municipal securities dealer and its customers. In

developing such rules, the SEC must first find that the reforms are in the public interest and for the protection of investors.

Section 202. Whistleblower protection

The SEC would have the authority to establish a fund to pay whistleblowers for information that leads to enforcement actions resulting in significant financial awards using funds collected in enforcement actions not otherwise distributed to investors. The SEC currently has such authority to compensate sources in insider trading cases, and this provision would extend the SEC's power to compensate whistleblowers that bring substantial evidence of other securities law violations.

Section 203. Conforming amendments for whistleblower protection

This section makes conforming changes to existing securities laws to account for the whistleblower bounty program established in section 202 of the bill.

Section 204. Implementation and transition provisions for whistleblower protections

The SEC must issue final rules and regulations to implement the new whistleblower bounty program within 270 days of enactment. The provisions also allow sources who submit tips before the date of enactment to receive rewards under the new program.

Section 205. Collateral bars

Generally, this section would authorize the SEC to impose collateral bars against regulated persons. The SEC should have the authority to bar a regulated person who violates the securities laws in one part of the industry (*e.g.*, a broker-dealer who misappropriates customer funds) from access to customer funds in another part of the securities industry (*e.g.*, an investment adviser). By expressly empowering the SEC under the Exchange Act and the Investment Advisers Act to impose broad prophylactic relief in one action in the first instance, this section would enable the SEC to more effectively protect investors and the markets while more efficiently using SEC resources.

Section 206. Aiding and abetting authority under the Securities Act and the Investment Company Act

The Exchange Act and the Investment Advisers Act presently permit the SEC to bring actions for aiding and abetting violations of those statutes in civil enforcement actions. This section would provide the SEC with the power to bring similar actions for aiding and abetting violations of the Securities Act and the Investment Company Act. In addition, the section would clarify that the knowledge requirement to bring an aiding and abetting claim can be satisfied by recklessness.

Section 207. Authority to impose penalties for aiding and abetting violations of the Investment Advisers Act

This section would clarify that the Investment Advisers Act expressly permits imposition of penalties on aiders and abettors.

Section 208. Deadline for completing examinations, inspections and enforcement actions

This section would require the SEC (with limited exceptions for complex cases) to complete examinations, investigations, and enforcement actions within 180 days after commencement.

Section 209. Nationwide service of subpoenas

The SEC currently has nationwide service of process in administrative proceedings. This section would enhance the SEC's enforcement program by now providing the SEC with the ability to make nationwide service of process available in civil actions filed in Federal courts. Nationwide service of process would produce a number of substantial advantages, including a significant savings in terms of travel costs and staff time. The changes would apply to the Securities Act, the Exchange Act, the Investment Company Act, and the Investment Advisers Act.

Section 210. Authority to impose civil penalties in cease and desist proceedings

This section would streamline the SEC's existing enforcement authorities by permitting the SEC to seek civil money penalties in cease-and-desist proceedings under Federal securities laws. The section would ensure appropriate due process protections by making the SEC's authority in administrative penalty proceedings coextensive with its authority to seek penalties in Federal court. As is the case when a Federal district court imposes a civil penalty in a SEC action, administrative civil money penalties would be subject to review by a Federal appeals court.

Section 211. Formerly associated persons

Many provisions of the Federal securities laws that authorize the sanctioning of a person who engages in misconduct while associated with a regulated or supervised entity explicitly provide that such authority exists even if the person is no longer associated with that entity. Several provisions, however, do not explicitly address this issue. This section would amend those provisions that do not explicitly address this issue to make it clear that the SEC, or in applicable cases the Public Company Accounting Oversight Board, may sanction or discipline persons who engage in misconduct while associated with a regulated or supervised entity even if they are no longer associated with that entity.

<u>Section 212. Sharing privileged information with other authorities</u>

This section would allow the SEC to share information with domestic and foreign regulators and law enforcement agencies engaged in the investigation and prosecution of violations of applicable securities laws without waiving any privileges the SEC may have with respect to such information. The language is modeled on a provision in the Federal Deposit Insurance Act that enables the Federal bank regulatory agencies to share information with other regulators without waiving their privileges with respect to such information.

<u>Section 213. Expanded access to grand jury material</u>

Under existing law, the SEC may access grand jury information only in the rare case in which it can demonstrate that it has a "particularized need" for the information and that the information is sought "preliminarily to or in connection with a judicial proceeding". As a practical matter, the "particularized need" standard and the required nexus with an ongoing or imminent judicial proceeding severely limit the situations in which the Department of Justice can share with the SEC even the most critical information relevant to parallel investigations.

In most cases, the SEC must therefore conduct a separate, duplicative investigation to obtain the same information. This both entails an inefficient use of government resources and frequently burdens private parties and financial institutions with the need to provide essentially the same documents and testimony in multiple investigations. The need for the SEC to conduct a separate investigation also can result in substantial delays. A narrow modification of the "grand jury secrecy rule" would aid the SEC in its investigations and would greatly enhance the efficient use of the law enforcement resources devoted to those investigations.

This modification is modeled on Section 964 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 providing banking and thrift regulators with access to grand jury information. The section authorizes government attorneys to seek court authorization to release certain limited grand jury information to SEC personnel for use in matters within the SEC's jurisdiction.

The section also permits sharing of information only with regard to conduct that may constitute violations of the Federal securities laws. With regard to that information, however, the section lessens the burden in obtaining court approval. The court could approve the sharing of the information upon a showing of a "substantial need in the public interest" rather than the higher "particularized need" standard. In addition, under the section the judicial proceeding requirement would not apply to the SEC, permitting information to be shared at an earlier stage in an investigation and in connection with an administrative proceeding.

Section 214. Aiding and abetting standards of knowledge satisfied by recklessness

The current law for determining aiding and abetting violations and the scope of primary liability remains unsettled, resulting in challenges for the SEC in charging people who play substantial roles in fraud cases. Specifically, the Exchange Act provides that the SEC can prosecute people for "knowingly" aiding and abetting violations of that law. A growing number of courts, however, have held that knowingly means actual knowledge, rather than recklessness, resulting in a standard that is higher for aiding and abetting violations than for the primary violation (which, for a fraud violation, would include recklessness). By clarifying that recklessness is sufficient for bringing an aiding and abetting action, the standard for aiding and abetting and the primary violation would be the same, and the SEC would not be at a disadvantage charging someone as an aider and abettor rather than a primary violator.

Section 215. Extraterritorial jurisdiction of the antifraud provisions of the Federal securities laws

This section addresses the authority of the SEC and the United States to bring civil and criminal law enforcement proceedings involving transnational securities frauds—*i.e.*, securities frauds in which not all of the fraudulent conduct occurs within the United States and not all of the wrongdoers are located domestically. Courts have previously ruled that Federal securities laws are silent as to their transnational reach, so two court tests have emerged for making such determinations and different courts apply different tests. This section would codify the SEC's authority to bring proceedings under both tests developed by the courts regardless of the jurisdiction of the proceedings.

Section 216. Fidelity bonding

The section would provide the SEC with the power to require that registered management investment companies provide and maintain a bond against losses caused by any fraudulent act or theft committed by any officer or employee of the company, either alone or in collusion with others.

Section 217. Enhanced SEC authority to conduct surveillance and risk assessment

This section would amend the Exchange Act, the Investment Company Act, and the Investment Advisers Act to subject registered individuals and firms at any time, or from time to time, to such reasonable periodic, special, or other information and document requests as the SEC by rule or order deems necessary or appropriate to conduct surveillance or risk assessments of the securities markets.

Section 218. Investment company examinations

Since 1975 the SEC has had the authority to examine "all" records of broker-dealers and other persons registered under the Exchange Act, as well as "all" records of advisers registered under the Investment Advisers Act. The SEC's authority to examine registered investment companies, however, has remained limited to "required" records. This section would change the authority under the Investment Companies Act to apply to "all" records. By fixing this anomaly, the SEC would gain a better understanding of the operations of investment companies.

Section 219. Control person liability under the Securities Exchange Act

The SEC has for many years relied on Section 20(a) of the Exchange Act, which imposes joint-and-several liability on control persons unless they can establish an affirmative defense. Two recent court decisions, however, have concluded that the provision is available only to private parties. This section would make it clear that the SEC may once again impose joint-and-several liability on control persons unless they can establish an affirmative defense.

Section 220. Enhanced application of anti-fraud provisions

Several of the Exchange Act's anti-fraud provisions apply only to those transactions that involve securities registered on an exchange. In today's trading environment, however, the same standards should apply to transactions whether they involve securities registered on an exchange or not registered on an exchange. This section would therefore broaden the SEC's authority under several sections of the Exchange Act to also apply the anti-fraud provision to securities transactions not conducted on exchanges. The amendments exclude government securities in order to avoid any possible impact of SEC rules on that market. The general anti-fraud provisions for these transactions would continue to apply.

TITLE III—COMMISSION FUNDING AND ORGANIZATION

Section 301. Authorization of appropriations

Under this section, the SEC's authorized funding level would double over a 5-year period, going from $1.15 billion in FY 2010 to $2.25 billion in FY 2015. This enhanced funding authorization would allow the SEC to improve its enforcement programs and obtain the tools needed to better protect investors and police today's markets.

Section 302. Investment adviser regulation funding

This section would grant the SEC rulemaking authority to create a new user fee paid by investment advisers to support the SEC's work related to the inspection and examination of investment advisers. Broker-dealers presently pay fees to the Financial Industry Regulatory Authority (FINRA), a self-regulatory organization, to

cover the costs of their primary regulator, but investment advisers do not pay such fees to the SEC, which serves as their front-line regulator.

In addition, the examination statistics of investment advisers and broker-dealers reveal disparities and further vulnerabilities in our present regulatory framework. Last year, the SEC examined only 9 percent of investment advisers, while FINRA examined more than 50 percent of broker-dealers. This new user fee for the investment adviser community would help to increase the resources available at the SEC to inspect investment advisers and better protect investors.

Section 303. Amendments to section 31 of the Securities Exchange Act of 1934

This section would make several technical changes to section 31 of the Exchange Act to improve the collection of the fees assessed on securities transactions that presently help to offset the costs of the SEC's operations.

Section 304. Commission organizational study and reform

The failures to detect the Madoff and Stanford Financial frauds demonstrated deep deficiencies and flaws in our existing securities regulatory structure. The section therefore requires an expeditious, independent, comprehensive study of the present structure of securities regulation by a high-caliber entity with expertise in organizational change. The study will identify structural and operational reforms, and offer administrative and regulatory recommendations designed to identify further modifications aimed at enhancing investor protection at the SEC, FINRA, and other self-regulatory organizations.

Not later than the end of the 6-month period beginning on the date the external consultant releases the organizational reform study, the SEC shall issue a report to the House Financial Services Committee and the Senate Banking Committee about what steps the agency is taking to implement the report's recommendations and reorganize securities regulation. The SEC shall continue via reports to update the two congressional panels on its progress every 6 months for 2 years after the issuance of the initial organizational reform study.

TITLE IV—ADDITIONAL COMMISSION REFORMS

Section 401. Regulation of securities lending

The securities lending program of American International Group (AIG) contributed greatly to its downfall. In response, this section would clarify the SEC's authority to regulate stock loans and stock borrowing. Such rules would enhance market transparency, limit collateral risk exposures, and limit conflicts of interest in the securities lending process.

Section 402. Lost and stolen securities

The section would expand the scope of securities that must be reported to the SEC or its designee under the Lost and Stolen Securities Program, to include cancelled, missing or counterfeit securities certificates.

Section 403. Fingerprinting

This section would require fingerprinting for the personnel of registered securities information processors, national securities exchanges, and national securities associations. This change would bring these entities in line with the entities already listed in the statute, and would aid in ensuring that these entities are aware of whether their personnel have criminal backgrounds.

Section 404. Equal treatment of self-regulatory organization rules

Section 29(a) of the Exchange Act voids any condition, stipulation, or provision binding any person to waive compliance with any provision of the Exchange Act, any rule or regulation thereunder, or any rule of an exchange. This section would extend this safeguard to the rules of other self-regulatory organizations – specifically registered securities associations (*e.g.*, FINRA) and registered clearing agencies. This change is consistent with provisions of the Exchange Act that encourage allocation of self-regulatory responsibilities among self-regulatory organizations to avoid overlapping and duplicative regulation. The change is particularly important now that FINRA has taken over the regulation of New York Stock Exchange's members' conduct in relation to customers.

Section 405. Clarification that section 205 of the Investment Advisers Act of 1940 does not apply to State-registered advisers

As part of the National Securities Markets Improvements Act of 1996, Congress determined that the SEC should regulate larger investment advisers while States should oversee smaller investment advisers. This section seeks to eliminate any remaining application of Federal law to investment adviser firms that the States now solely regulate.

Section 406. Conforming amendments for the repeal of the Public Utility Holding Company Act of 1935

In 2005, Congress repealed the Public Utility Holding Company Act of 1935 but failed to remove all references in Federal securities laws. This section amends the following statutes to make conforming amendments resulting from the 2005 repeal of the Public Utility Holding Company Act: the Exchange Act, the Trust Indenture Act, the Investment Company Act; and the Investment Advisers Act.

Section 407. Promoting transparency in financial reporting

This section would require the SEC, the Financial Accounting Standards Board, and the Public Company Accounting Oversight Board to provide oral

testimony by their respective chairpersons (or a designee), beginning in 2010, and annually for 5 years, to the House Committee on Financial Services on their efforts to reduce the complexity in financial reporting to provide more accurate and clearer financial information to investors.

Section 408. Unlawful margin lending

The Capital Markets Efficiency Act of 1996 amended Section 7(c) of the Exchange Act, in part, by replacing the period that concluded the predecessor provision of Subsection 7(c)(1)(A) with a semicolon and an "and". This section would change the "and" to an "or" in order to clarify that a violation of either prong remains sufficient to establish a cause of action for improper margin lending. This technical amendment would match the statutory language to existing SEC policy interpretations that provide that the two clauses represent independent requirements.

Section 409. Protecting confidentiality of materials submitted to the Commission

This section would amend the Exchange Act, the Investment Company Act, and the Investment Advisers Act to protect the confidentiality of other sensitive business records and information obtained by SEC staff during the supervisory process. The section also would protect the confidentiality of sensitive business records and information that the staff obtains during examinations of investment companies and investment advisers.

Section 410. Technical corrections

This section makes numerous technical corrections to the Securities Act, the Exchange Act, the Trust Indenture Act, the Investment Company Act, and the Investment Advisers Act.

Section 411. Municipal securities

In recent years, the composition of the governing bodies of most self-regulatory organizations has become more independent. Consistent with these changes, the section would give the SEC greater flexibility in determining the make-up of the Municipal Securities Rulemaking Board (a statutorily mandated self-regulatory organization), director independence, and how the board functions.

Section 412. Interested person definition

The change would eliminate a technicality allowing directors who meet the definition of "independent" but are not in fact independent to meet the definition of "independent director".

Section 413. Rulemaking authority to protect redeeming investors

There is currently no requirement that mutual funds hold liquid securities. This section would permit the SEC by rules and regulations to limit the extent to

which a registered open-end investment company may own, hold or invest in illiquid securities or other illiquid property.

TITLE V—SECURITIES INVESTOR PROTECTION ACT AMENDMENTS

Section 501. Increasing the minimum assessment paid by SIPC members

This section would update the Securities Investor Protection Act (SIPA) to increase the minimum assessments paid by members of the Securities Investor Protection Corporation (SIPC) to the SIPC Fund. Currently, SIPA provides that the minimum assessment of a SIPC member shall not exceed $150 per year, regardless of the size of the SIPC member. This limit was imposed when SIPA was first enacted in 1970 and has never been adjusted to reflect either inflation or the substantial growth of the securities industry. The section strikes this current minimum assessment level and sets a new minimum assessment at 2 basis points of a SIPC member's gross revenues.

Section 502. Increasing the borrowing limit on Treasury loans

In the event that the SIPC Fund is or may reasonably appear to be insufficient to satisfy its statutory requirements, the SEC is authorized to make loans to the SIPC Fund by issuing notes or other obligations to the Secretary of the Treasury. The current limit of $1 billion was imposed at the time of SIPA's enactment in 1970 and has never been adjusted to reflect either inflation or the substantial growth of the securities industry. This section would increase the SEC's authority to issue notes or other obligations to $2.5 billion.

Section 503. Increasing the cash limit of protection

This section would increase the maximum cash advance amount to $250,000 and authorize SIPC, subject to the approval of the SEC, to make inflationary adjustments every 5 years to that amount starting in 2010. Since the establishment of SIPC in 1970, Congress has generally increased the SIPC cash advance amount each time it has increased the amount of Federal Deposit Insurance Corporation (FDIC) coverage. Consistent with changes to FDIC coverage levels made in 2005, this section would bring SIPC and FDIC coverage back in line and provide a commensurate level of protection for customers of securities brokerage firms as customers of depository institutions.

Section 504. SIPC as trustee in SIPA liquidation proceedings

Under current law, SIPC must designate an outside trustee for the liquidation of a failed SIPC member when the failed firm's liabilities to unsecured general creditors and to subordinated lenders exceed $750,000 and where the failed firm appears to have more than 500 customers. Experience has shown that administration expenses are substantially reduced when SIPC personnel perform the liquidation functions, with equal benefit to customers as when an outside trustee is appointed. Accordingly, this section would permit SIPC to designate itself

as trustee for the liquidation of a failed SIPC member regardless of the size of the firm's liabilities to unsecured general creditors and where the failed firm appears to have less than 5,000 customers.

Section 505. Insiders ineligible for SIPC advances

The section would add "insiders" (as defined under the Bankruptcy Code) to the class of customers ineligible for SIPC advances. This statutory change would thus conform the treatment of an insider's claims filed in a stockbroker liquidation under the Bankruptcy Code and in a SIPA liquidation proceeding.

Section 506. Eligibility for direct payment procedure

This section would permit SIPC to use the direct payment procedure to resolve the failure of small firms with total claims of all customers up to an aggregate of $850,000. The direct payment procedure enables SIPC to quickly, and inexpensively, resolve the failure of small firms without the need to use the more time-consuming and expensive procedures applicable in a judicial liquidation proceeding. Current law limits the use of the direct payment procedure to cases in which all customer claims of an affected SIPC member aggregate to less than $250,000. Congress imposed this limit when the direct payment procedure was added to SIPA in 1978, and the figure has not been adjusted since then.

Section 507. Increasing the fine for prohibited acts under SIPA

SIPA currently identifies and prescribes criminal penalties up to $50,000 for several prohibited acts and for fraudulent conversion. The maximum penalty amount has remained constant since the enactment of the provisions concerning prohibited acts and fraudulent conversions, more than 3 decades ago. This section would increase the maximum fine under SIPA to $250,000.

Section 508. Penalty for misrepresentation of SIPC membership or protection

This section would add false advertising and misrepresentation regarding SIPC membership or protection to the list of prohibited acts under SIPA. This section would also prescribe civil liability for damages caused by such misrepresentations and criminal liability in the form of a fine up to $250,000 or imprisonment up to 5 years. Finally, this section would extend civil liability to Internet service providers who knowingly transmit such misrepresentations and provide for court jurisdiction to issue injunctions.

Section 509. Limitations on customer status

This section would clarify that claims for cash or securities arising out of repurchase agreements and reverse repurchase agreements are ineligible for customer relief under SIPA.

Section 510. Futures held in a portfolio margin securities account protection

Under SIPA, claims of securities customers take priority over claims of general creditors. SIPC insurance, however, does not extend to futures positions, other than securities futures.

This section would extend SIPC insurance to futures positions held in a customer portfolio margining account under a program approved by the SEC. This amendment addresses the possibility that current law would treat a portfolio margining customer as a general creditor with respect to the proceeds from such customer's futures positions, while the same portfolio margining customer would have priority for their securities holdings in the case of insolvency of their broker-dealer. This uneven treatment, along with the Commodity Exchange Act (CEA) requirement that futures be held in a segregated account, prevents customers from including related futures products in their portfolio margining securities accounts. These obstacles preclude those customers from taking full advantage of the efficiencies created from hedging related positions in a single account.

This section would be fully operative when the Commodity Futures Trading Commission (CFTC) provides exemptive relief from the CEA's requirements regarding segregation of customer funds. This section neither amends the CEA nor limits the CFTC's discretion in granting exemptive relief.

Section 511. Risk-based premiums

This section would direct SIPC to levy risk-based premiums on SIPC members. SIPC would use a variety of factors such as the size of the brokerage, number of enforcement and compliance actions in recent years, and years in operation to establish a risk-based system of assessments.

Section 512. Budgetary treatment of Commission loans to SIPC

This section would clarify that SIPC is a budgetary entity as defined by the Federal Credit Reform Act, codifying a recent Office of Management and Budget determination to this effect. This provision would neither affect the status of SIPC staff as non-government employees nor subject SIPC to Federal procurement law. It would, however, require an accounting of SIPC expenses and revenues in monthly Treasury statements. This clarification is needed because, for the first time, SIPC may need to borrow money from the SEC as a result of the Madoff fraud.

TITLE VI—SARBANES-OXLEY ACT AMENDMENTS

Section 601. Public Company Accounting Oversight Board oversight of auditors of non-public brokers and dealers

The $65 billion Madoff Ponzi scheme revealed a loophole in Federal securities laws with respect to the oversight of the auditors of non-public broker-dealers. This section would close this loophole by providing the Public Company Accounting

Oversight Board (PCAOB) with oversight authorities over the auditors of all brokers-dealers, not just the auditors of public broker-dealers.

The auditors of non-public brokers-dealers would have 180 days to register with the PCAOB. Additionally, like public companies, brokers-dealers would pay an accounting support fee in proportion to the broker-dealer's net capital compared to the total net capital of all brokers and dealers that are not issuers. PCAOB would also be authorized to refer investigations to FINRA or other defined self-regulatory organizations and share relevant information with them.

Section 602. Foreign regulatory information sharing

This section would allow the PCAOB to share information with foreign regulatory and law enforcement agencies engaged in the investigation and prosecution of violations of applicable accounting and auditing laws without waiving any privileges the SEC may have with respect to such information.

Section 603. Expansion of audit information to be produced and exchanged with foreign counterparts

This section would enhance the ability of the PCAOB to access the audit work of foreign public accounting firms when the foreign public accounting firm performs audit work, conducts interim reviews, or performs other material services upon which a registered public accounting firm relies in the conduct of an audit or interim review. This statutory change will resolve international conflicts that have impaired the PCAOB's ability to fulfill its statutory obligation to inspect non-U.S. registered public accounting firms.

Section 604. Fair fund amendments

This section would increase the money available to compensate defrauded investors by revising the Fair Fund provisions to permit the SEC to use penalties obtained from a securities fraudster to recompense victims of the fraud even if the SEC does not obtain an order requiring the fraudster to disgorge ill-gotten gains. In some cases, a defendant may engage in a securities law violation that harms investors, but the SEC cannot obtain disgorgement from the defendant because the defendant did not personally benefit from the violation.

Section 605. Whistleblower protection against retaliation by a subsidiary of an issuer

This section would create additional protections for whistleblowers who report securities fraud and other wrongdoing. Currently, the statute could be read as providing a remedy only for retaliation by the issuer, and not by the subsidiaries or affiliates of an issuer. This section would eliminate a defense now raised in a substantial number of actions brought by whistleblowers and apply the whistleblower protections under the Sarbanes-Oxley Act to both issuers and their subsidiaries and affiliates.