

POSEY 001

AMENDMENT TO THE DISCUSSION DRAFT OF OCTOBER 1, 2009 [INVESTOR PROTECTION ACT OF 2009]

OFFERED BY MR. POSEY OF FLORIDA

Page 60, after line 10, insert the following new section:

**1 SEC. 221. AUTHORITY TO CONTRACT FOR COLLECTION OF
2 DELINQUENT JUDGMENTS AND ORDERS.**

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

5 (1) in the heading, by striking “and Leasing
6 Authority” and inserting “, Leasing Authority, and
7 Contracting Authority”; and

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

9 “(4) CONTRACTING AUTHORITY.—

10 “(A) IN GENERAL.—Notwithstanding any
11 other provision of law, the Commission is au-
12 thorized to enter into contracts to assist in the
13 collection of any claim of indebtedness resulting
14 from any judgment or order (either by litigation
15 or settlement) obtained by the Commission in
16 any judicial action or administrative proceeding
17 brought by or on behalf of the Commission.

1 This authority includes the retention of private
2 legal counsel to furnish legal services, including
3 representation in litigation, negotiation, com-
4 promise, and settlement. Private counsel re-
5 tained under this paragraph may represent the
6 Commission in such debt collection matters to
7 the same extent as the Commission may rep-
8 resent itself.

9 “(B) TERMS AND CONDITIONS OF CON-
10 TRACT.—Each such contract shall include such
11 terms and conditions as the Commission con-
12 siders necessary and appropriate, and shall in-
13 clude provisions specifying—

14 “(i) the amount of the fee to be paid
15 under such contract or the method for cal-
16 culating that fee;

17 “(ii) that the Commission retains the
18 authority to represent itself, resolve a dis-
19 pute, compromise a claim, end collection
20 efforts, and refer a matter to other counsel
21 or to the Attorney General; and

22 “(iii) that the Commission may termi-
23 nate either the contract or the private
24 counsel’s representation of the Commission

1 in particular cases for any reason, includ-
2 ing for the convenience of the Commission.

3 “(C) PAYMENT OF FEES.—Notwith-
4 standing section 3302(b) of title 31, United
5 States Code, a contract under this paragraph
6 may provide that fees and costs incurred by pri-
7 vate counsel under such contracts are payable
8 from the amounts recovered.

9 “(D) COMPETITION REQUIRED.—Nothing
10 in this paragraph shall relieve the Commission
11 of the competition requirements set forth in
12 title III of the Federal Property and Adminis-
13 trative Services Act of 1949 (41 U.S.C. 251 et
14 seq.).

15 “(E) COUNTERCLAIMS.—In any action to
16 recover indebtedness which is brought on behalf
17 of the Commission by private counsel retained
18 under this paragraph, no counterclaim may be
19 asserted against the Commission unless the
20 counterclaim is served directly on the Commis-
21 sion. Such service shall be made in accordance
22 with the rules of procedure of the court in
23 which the action is brought.”

