107TH CONGRESS } HOUSE OF REPRESENTATIVES { REPT. 107–192
1st Session } { Part 1

FINANCIAL SERVICES ANTIFRAUD NETWORK ACT OF 2001

AUGUST 2, 2001.—Ordered to be printed

Mr. OXLEY, from the Committee on Financial Services, submitted the following

R E P O R T

[To accompany H.R. 1408]

[Including cost estimate of the Congressional Budget Office]

The Committee on Financial Services, to whom was referred the bill (H.R. 1408) to safeguard the public from fraud in the financial services industry, to streamline and facilitate the antifraud information-sharing efforts of Federal and State regulators, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

CONTENTS

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Financial Services Antifraud Network Act of 2001".

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

SEC. 2. PURPOSES.

The purposes of this Act are—

(1) to safeguard the public from fraud in the financial services industry;

(2) to streamline the antifraud coordination efforts of Federal and State regulators and prevent failure to communicate essential information;

(3) to reduce duplicative information requests by, and other inefficiencies of, financial services regulation;

(4) to assist financial regulators in detecting patterns of fraud, particularly patterns that only become apparent when viewed across the full spectrum of the financial services industry; and

(5) to take advantage of Internet technology and other advanced data-sharing technology to modernize the fight against fraud in all of its evolving manifestations and permutations.

TITLE I—ANTIFRAUD NETWORK

Subtitle A—Direction to Financial Regulators

SEC. 100. CREATION AND OPERATION OF THE NETWORK.

(a) SHARING OF PUBLIC INFORMATION.—The financial regulators shall, to the extent practicable and appropriate and in consultation with other relevant and appropriate agencies and parties—

(1) develop procedures to provide for a network for the sharing of antifraud information; and

(2) coordinate to further improve upon the antifraud efforts of the participants in the network as such participants deem appropriate over time.

(b) MINIMUM REQUIREMENTS.—The procedures described in subsection (a) shall—

(1) provide for the sharing of public final disciplinary and formal enforcement actions taken by the financial regulators that are accessible electronically relating to the conduct of persons engaged in the business of conducting financial activities that is fraudulent, dishonest, or involves a breach of trust or relates to the failure to register with the appropriate financial regulator as required by law;

(2) include a plan for considering the sharing among the participants of other relevant and useful antifraud information relating to companies and other persons engaged in conducting financial activities, to the extent practicable and ap-

propriate when adequate privacy, confidentiality, and security safeguards governing access to, and the use of, such information have been developed that—

(A) is accessible by the public; or

(B) pertains to information, that does not include personally identifiable information on consumers, on—

(i) licenses and applications, financial affiliations and name-relationships, aggregate trend data, appraisals, or reports filed by a regulated entity with a participant; or

(ii) similar information generated by or for a participant if—

(I) such information is being shared for the purpose of verifying an application or other report filed by a regulated entity; and

(II) the participant determines such information is factual and substantiated; and

(3) provide that, if a financial regulator takes an adverse action against a person engaged in the business of conducting financial activities on the basis of information described in paragraph (1) or (2) that was received from another participant through the network, the regulator shall—

(A) notify the person of the identity of the participant from whom such information was received;

(B) provide the person with a specific and detailed description of the information that was received from the other participant through the network and would be relied on in taking the adverse action; and

(C) notify the person of the right to a reasonable opportunity to respond to such information.

(c) PROVISIONS RELATING TO REQUIREMENTS.—

(1) TIME OF NOTICE.—The notice to any person, and the opportunity to respond, under subsection (b)(3) shall be provided to the person a reasonable period of time before any final action against the person which is based on information referred to in such paragraph is completed, unless the financial regulator determines that such advance notice and opportunity to respond is impracticable or inappropriate, in which case the notice and opportunity to respond shall be provided at the time of such final action.

(2) VERIFICATION OR SUBSTANTIATION OF INFORMATION.—With respect to subsection (b)(3), a delay in the consideration of a license, application, report, or other request for the purpose of verifying or substantiating information relating to such license, application, report, or other request shall not be treated as an adverse action if the verification or substantiation of such information is completed within a reasonable time.

(d) IMPLEMENTATION.—

(1) SUBMISSION OF PLAN.—Before the end of the 6-month period beginning on the date of the enactment of this Act, the Federal financial regulators shall submit to Congress a plan detailing how the financial regulators (and any association representing financial regulators) will meet the requirements of subsections (a) and (b).

(2) DEADLINE FOR IMPLEMENTATION.—Before the end of the 2-year period beginning on the date of the enactment of this Act, the financial regulators shall establish the network described in subsections (a) and (b).

(e) FINANCIAL REGULATORS DEFINED.—For the purposes of this section, the term "financial regulators" means the financial regulators described in subparagraphs (A) through (Q) of section 115(3).

(f) DETERMINATION OF IMPLEMENTATION OF SUBTITLE B.—

(1) IN GENERAL.—The provisions of subtitle B shall take effect only if the Secretary of the Treasury, or a designee of the Secretary, before the end of the 30-day period beginning at the end of the period referred to in—

(A) subsection (d)(1), does not determine that the Federal financial regulators have submitted a plan which substantially meets the requirements of such subsection; or

(B) subsection (d)(2), does not determine that the financial regulators have established a network that substantially complies with the requirements of subsections (a) and (b).

(2) SCOPE OF APPLICATION.—This subtitle shall cease to apply as of the date subtitle B takes effect.

(g) USE OF CENTRALIZED DATABASES.—

(1) IN GENERAL.—A financial regulator shall be deemed to have met the requirements of subsection (b)(1) if—

(A) the participants have access to a centralized database that contains information on public final disciplinary or formal enforcement actions similar to that described in such subsection; or

(B) the financial regulator makes the information described in such subsection available to the public over the Internet.

(2) STATE SUPERVISORS.—It is the sense of the Congress that the National Association of Insurance Commissioners, the Conference of State Bank Supervisors, the American Council of State Savings Supervisors, the National Association of State Credit Union Supervisors, and the North American Securities Administrators Association should develop model guidelines for regulators in their respective regulated financial industries, where appropriate, to promote uniform standards for sharing information with the network under this section.

(h) FINANCIAL REGULATOR CONTROL OF ACCESS.—

(1) IN GENERAL.—Except as provided in paragraph (4), each participant that allows access to its databases or information by other participants through the network may establish parameters for controlling or limiting such access, including the regulation of—

(A) the type or category of information that may be accessed by other participants and the extent to which any such type or category of information may be accessed;

(B) the participants that may have access to the database or any specific type or category of information in the database (whether for reasons of cost reimbursement, data security, efficiency, or otherwise); and

(C) the disclosure by any other participant of any type or category of information that may be accessed by the participant.

(2) PROCEDURES.—A participant may establish the parameters described in paragraph (1) by regulation, order, or guideline or on a case-by-case basis.

(3) DISCLAIMER.—

(A) IN GENERAL.—Each participant shall ensure that any transfer of information through the network under this section, other than information described in paragraphs (1) and (2) of subsection (b), from such participant to another participant is subject to a disclaimer that the information accessed may be unsubstantiated and may not be relied on as the basis for denying any application or license.

(B) REGULATORY FLEXIBILITY.—Each financial regulator may develop guidelines, as the regulator determines to be appropriate, governing the location, wording, and frequency of disclaimers under this paragraph and the manner in which any such disclaimer shall be made.

(4) FINAL DISCIPLINARY AND FORMAL ENFORCEMENT ACTIONS NOT SUBJECT TO LIMITATION.—This subsection, and standards or procedures adopted by any participant under this subsection, shall not apply with respect to information described in paragraphs (1) and (2) of subsection (b).

(5) NO EFFECT ON PUBLIC OR COMPANY ACCESS.—No provision of this section shall replace, supersede, or otherwise affect access to any databases maintained by any Federal or State regulator, or any entity representing any such regulator, which are accessible by the public or persons engaged in the business of conducting financial activities.

(i) ELIGIBILITY REQUIREMENTS FOR STATE SECURITIES ADMINISTRATORS.—

(1) IN GENERAL.—No State securities administrator shall be eligible to be a participant and access the network unless—

(A) such State securities administrator participates in a centralized database for broker-dealers, broker-dealer agents, investment advisers, and investment advisor representatives, registered or required to be registered, as designated by the North American Securities Administrators Association; and

(B) such State securities administrator requires the broker-dealer, broker-dealer agent, investment adviser, or investment adviser representative, currently registered or required to be registered, to file any application, amendment to an application, or a renewal of an application through the centralized registration database.

(2) TIME DELAY FOR PARTICIPATION IN DATABASES.—The provisions of paragraph (1) shall not become effective until 3 years after the date of enactment of this Act.

(j) ELIGIBILITY REQUIREMENTS FOR STATE INSURANCE COMMISSIONERS.—

(1) PARTICIPATION IN DATABASES.—No State insurance commissioner shall be eligible to access the network unless such commissioner participates with other State insurance commissioners—

(A) in a centralized database addressing disciplinary or enforcement actions taken against persons engaged in the business of insurance, such as the Regulatory Information Retrieval System maintained by the National Association of Insurance Commissioners or any network or database designated by such Association as a successor to such System; and

(B) in centralized databases addressing, with respect to persons engaged in the business of insurance—

(i) corporate and other business affiliations or relationships, such as the Producer Database maintained by the National Association of Insurance Commissioners or any network or database designated by such Association as a successor to such Database; and

(ii) consumer complaints, such as the Complaints Database maintained by the National Association of Insurance Commissioners or any network or database designated by such Association as a successor to such Database.

(2) TIME DELAY FOR PARTICIPATION IN DATABASES.—The provisions of subparagraph (1)(B) of this section shall not become effective until 3 years after the date of enactment of this Act.

(3) ACCREDITATION.—No State insurance commissioner shall be eligible to access the network unless the State insurance department which such commissioner represents meets 1 of the following accreditation requirements at the time of access to the network:

(A) Is accredited by the National Association of Insurance Commissioners.

(B) Has an application for accredited status pending with the National Association of Insurance Commissioners.

(C) Has a determination by the Subcommittee in effect that such State insurance department meets or exceeds the standards established by the National Association of Insurance Commissioners for accreditation.

(k) STANDARDS.—Each financial regulator shall consider developing guidelines for participants on—

(1) how to denote which types of information are to receive different levels of confidentiality protection; and

(2) how entities or associations that act as agents for financial regulators should denote such agency status when acting in that capacity.

(l) OTHER SHARING ARRANGEMENTS NOT AFFECTED.—No provision of this section shall be construed as limiting or otherwise affecting the authority of a financial regulator to provide any person, including another participant, access to any information in accordance with any provision of law other than this Act.

Subtitle B—Potential Establishment of Antifraud Subcommittee

SEC. 101. ESTABLISHMENT.

(a) IN GENERAL.—Unless the determinations described in section 100(f) are made, after the applicable date described in such section there shall be established within the President's Working Group on Financial Markets (as established by Executive Order No. 12631) a subcommittee to be known as the "Antifraud Subcommittee" (hereafter in this title referred to as the "Subcommittee") which shall consist of the following members:

(1) The Secretary of the Treasury, or a designee of the Secretary.

(2) The Chairman of the Securities and Exchange Commission or a designee of the Chairman.

(3) A State insurance commissioner designated by the National Association of Insurance Commissioners, or a designee of such commissioner.

(4) The Chairman of the Commodity Futures Trading Commission or a designee of such Chairman.

(5) A designee of the Chairman of the Federal Financial Institutions Examination Council.

(b) FINANCIAL LIAISONS.—The following shall serve as liaisons between the Subcommittee and the agencies represented by each such liaison:

(1) A representative of each Federal banking agency appointed by the head of each such agency.

(2) A representative of the National Credit Union Administration appointed by the National Credit Union Administration Board.

(3) A representative of the Farm Credit Administration, appointed by the Farm Credit Administration Board.

(4) A representative of the Federal Housing Finance Board, appointed by such Board.

(5) A representative of the Office of Federal Housing Enterprise Oversight of the Department of Housing and Urban Development appointed by the Director of such Office.

(6) A representative of the Appraisal Subcommittee of the Financial Institutions Examination Council.

(7) A representative of State bank supervisors designated by the Conference of State Bank Supervisors.

(8) A representative of State savings association supervisors designated by the American Council of State Savings Supervisors.

(9) A representative of State credit union supervisors designated by the National Association of State Credit Union Supervisors.

(10) A representative of State securities administrators designated by the North American Securities Administrators Association.

(11) A representative of the National Association of Securities Dealers appointed by the National Association of Securities Dealers.

(12) A representative of the National Futures Association appointed by the National Futures Association.

(13) Any other financial liaison as the Subcommittee may provide to represent any other financial regulator or foreign financial regulator, including self-regulatory agencies or organizations that maintain significant databases on persons engaged in the business of conducting financial activities, designated in the manner provided by the Subcommittee.

(c) OTHER LIAISONS.—

(1) LAW ENFORCEMENT LIAISONS.—The following shall serve as liaisons between the Subcommittee and the agencies represented by each such liaison:

(A) A representative of the Department of Justice appointed by the Attorney General.

(B) A representative of the Federal Bureau of Investigation appointed by the Director of such Bureau.

(C) A representative of the United States Secret Service appointed by the Director of such Service.

(D) A representative of the Financial Crimes Enforcement Network (as established by the Secretary of the Treasury) appointed by the Secretary of the Treasury.

(2) SUBCOMMITTEE APPOINTED LIAISONS.—The Subcommittee may provide for any other liaison to represent any other regulator, including self-regulatory agencies or organizations that maintain databases on persons engaged in the business of conducting financial activities, designated in the manner provided by the Subcommittee.

(d) VACANCY.—If, for any reason, the position of any member of or liaison to the Subcommittee is not filled within a reasonable period of time after being created or becoming vacant, the President shall appoint an individual to fill the position after consulting the agency or entity to be represented by such member or liaison, and to the extent possible, shall appoint such individual from a list of possible representatives submitted by such agency or entity.

(e) REORGANIZATION AUTHORITY.—

(1) IN GENERAL.—If the President disbands or otherwise significantly modifies the Working Group referred to in subsection (a), the President shall provide for the continuation of the Subcommittee's coordination functions.

(2) MEMBER AND LIAISON WITHDRAWAL.—If the President materially alters the structure or duties of the Subcommittee, any member of or liaison to the Subcommittee may withdraw from the Subcommittee.

SEC. 102. PURPOSES OF THE SUBCOMMITTEE.

(a) IN GENERAL.—The purposes of the Subcommittee are as follows:

(1) Coordinate access by the participants to antifraud databases of various regulators, by facilitating the establishment, maintenance, and use of a network of existing antifraud information maintained by such regulators with respect to persons engaged in the business of conducting financial activities.

(2) Coordinate access by each participant to such network in a manner that allows the participant to review, at a minimal cost, existing information in the databases of other regulators, as a part of licensure, change of control, or investigation, concerning any person engaged in the business of conducting financial activities.

(3) Coordinate information sharing, where appropriate, among State, Federal, and foreign financial regulators, and law enforcement agencies, where sufficient privacy and confidentiality safeguards exist.

(4) Consider coordinating development by participants of a networked name-relationship index for persons engaged in the business of conducting financial activities using information from the databases of regulators, to the extent such information is available.

(5) Advise participants on coordinating their antifraud databases with the network.

(6) Coordinate development of guidelines by participants for ensuring appropriate privacy, confidentiality, and security of shared information, including tracking systems or testing audits, as appropriate.

(b) CRITERIA FOR NETWORK WITH RESPECT TO ANY PERSON ENGAGED IN THE BUSINESS OF CONDUCTING FINANCIAL ACTIVITIES.—

(1) FINAL DISCIPLINARY AND FORMAL ENFORCEMENT ACTIONS.—Each financial regulator that is represented by a member of the Subcommittee under section 101(a) or by a financial liaison to the Subcommittee under section 101(b) shall allow any participant access, through the network, to any public final disciplinary or formal enforcement action by such regulator which is accessible electronically relating to the conduct of persons engaged in the business of conducting financial activities that is fraudulent or dishonest, involves a breach of trust, or relates to the failure to register with the appropriate financial regulator as required by law.

(2) SENSE OF THE CONGRESS ON OTHER INFORMATION.—It is the sense of the Congress that the financial regulators should consider sharing through the network other relevant and useful antifraud information relating to companies and other persons engaged in conducting financial activities, to the extent practicable and appropriate when adequate privacy, confidentiality, and security safeguards governing access to and the use of such information have been developed that—

(A) is accessible by the public; or

(B) consists of information, that does not include personally identifiable information on consumers, on—

(i) licenses and applications, financial affiliations and name-relationships, aggregate trend data, or reports filed by a regulated entity with the participant; or

(ii) similar information generated by or for a participant if—

(I) such information is being shared for the purpose of verifying an application or other report filed by a regulated entity; and

(II) the participant determines such information is factual and substantiated; and

(3) NOTICE AND RESPONSE.—If a financial regulator takes an adverse action against a person engaged in the business of conducting financial activities on the basis of information described in paragraph (1) or (2) that was received from another participant through the network, the regulator shall—

(A) notify the person of the identity of the participant from whom such information was received;

(B) provide the person with a specific and detailed description of the information that was received from the other participant through the network and would be relied on in taking the adverse action; and

(C) notify the person of the right to a reasonable opportunity to respond to such information.

(4) PROVISIONS RELATING TO REQUIREMENTS.—

(A) TIME OF NOTICE.—Any notice to any person, and an opportunity to respond, under paragraph (3) shall be provided to the person a reasonable period of time before any final action against the person which is based on information referred to in such paragraph is completed, unless the financial regulator determines that such advance notice and opportunity to respond is impracticable or inappropriate, in which case the notice and opportunity to respond shall be provided at the time of such final action.

(B) VERIFICATION OR SUBSTANTIATION OF INFORMATION.—With respect to information referred to in paragraph (3), a delay in the consideration of a license, application, report, or other request for the purpose of verifying or substantiating information relating to such license, application, report, or other request shall not be treated as an adverse action if the verification or substantiation of such information is completed within a reasonable time.

(5) USE OF CENTRALIZED DATABASES.—

(A) IN GENERAL.—A financial regulator shall be deemed to have met the requirements of paragraph (1) if the Subcommittee determines that the participants have access to a centralized database that contains information on public final disciplinary or formal enforcement actions similar to that described in paragraph (1) or if the financial regulator makes the information described in paragraph (1) available to the public over the Internet.

(B) FACTORS FOR DETERMINATION.—The Subcommittee shall make the determination under subparagraph (A) on an ongoing basis, considering both

short-term costs and technological limitations, as well as the need for long-term comprehensive coverage, and other appropriate factors.

(C) STATE SUPERVISORS.—It is the sense of the Congress that the National Association of Insurance Commissioners, the Conference of State Bank Supervisors, the American Council of State Savings Supervisors, the National Association of State Credit Union Supervisors, and the North American Securities Administrators Association should develop model guidelines for regulators in their respective regulated financial industries, where appropriate, to promote uniform standards for sharing information with the network under this section.

(c) FINANCIAL REGULATOR CONTROL OF ACCESS.—

(1) IN GENERAL.—Except as provided in paragraph (4), each participant that allows access to its databases or information by other participants through the network may establish parameters for controlling or limiting such access, including the regulation of—

(A) the type or category of information that may be accessed by other participants and the extent to which any such type or category of information may be accessed;

(B) the participants that may have access to the database or any specific type or category of information in the database (whether for reasons of cost reimbursement, data security, efficiency, or otherwise); and

(C) the disclosure by any other participant of any type or category of information that may be accessed by the participant.

(2) PROCEDURES.—A participant may establish the parameters described in paragraph (1) by regulation, order, or guideline or on a case-by-case basis.

(3) DISCLAIMER.—

(A) IN GENERAL.—Each participant shall ensure that any transfer of information through the network under this section, other than information described in paragraphs (1) and (2) of subsection (b), from such participant to another participant is subject to a disclaimer that the information accessed may be unsubstantiated and may not be relied on as the basis for denying any application or license.

(B) SUBCOMMITTEE FLEXIBILITY.—The Subcommittee may prescribe such guidelines as the Subcommittee determines to be appropriate governing the location, wording, and frequency of disclaimers under this paragraph and the manner in which any such disclaimer shall be made.

(4) FINAL DISCIPLINARY AND FORMAL ENFORCEMENT ACTIONS NOT SUBJECT TO LIMITATION.—This subsection, and standards or procedures adopted by any participant under this subsection, shall not apply with respect to information described in paragraphs (1) and (2) of subsection (b).

(5) NO EFFECT ON PUBLIC OR COMPANY ACCESS.—No provision of this section shall replace, supersede, or otherwise affect access to any databases maintained by any Federal or State regulator, or any entity representing any such regulator, which are accessible by the public or persons engaged in the business of conducting financial activities.

(d) ELIGIBILITY REQUIREMENTS FOR STATE SECURITIES ADMINISTRATORS.—

(1) IN GENERAL.—No State securities administrator shall be eligible to be a participant and access the network unless—

(A) such State securities administrator participates in a centralized database for broker-dealers, broker-dealer agents, investment advisers, and investment advisor representatives, registered or required to be registered, as designated by the North American Securities Administrators Association; and

(B) such State securities administrator requires the broker-dealer, broker-dealer agent, investment adviser, or investment adviser representative, currently registered or required to be registered, to file any application, amendment to an application, or a renewal of an application through the centralized registration database.

(2) TIME DELAY FOR PARTICIPATION IN DATABASES.—The provisions of paragraph (1) shall not become effective until 3 years after the date of enactment of this Act.

(e) ELIGIBILITY REQUIREMENTS FOR STATE INSURANCE COMMISSIONERS.—

(1) PARTICIPATION IN DATABASES.—No State insurance commissioner shall be eligible to access the network unless such commissioner participates with other State insurance commissioners—

(A) in a centralized database addressing disciplinary or enforcement actions taken against persons engaged in the business of insurance, such as the Regulatory Information Retrieval System maintained by the National

Association of Insurance Commissioners or any network or database designated by such Association as a successor to such System; and

(B) in centralized databases addressing, with respect to persons engaged in the business of insurance—

(i) corporate and other business affiliations or relationships, such as the Producer Database maintained by the National Association of Insurance Commissioners or any network or database designated by such Association as a successor to such Database; and

(ii) consumer complaints, such as the Complaints Database maintained by the National Association of Insurance Commissioners or any network or database designated by such Association as a successor to such Database.

(2) TIME DELAY FOR PARTICIPATION IN DATABASES.—The provisions of subparagraph (1)(B) of this section shall not become effective until 3 years after the date of enactment of this Act.

(3) ACCREDITATION.—No State insurance commissioner shall be eligible to access the network unless the State insurance department which such commissioner represents meets 1 of the following accreditation requirements at the time of access to the network:

(A) Is accredited by the National Association of Insurance Commissioners.

(B) Has an application for accredited status pending with the National Association of Insurance Commissioners.

(C) Has a determination by the Subcommittee in effect that such State insurance department meets or exceeds the standards established by the National Association of Insurance Commissioners for accreditation.

(f) SUBCOMMITTEE STANDARDS.—The Subcommittee shall consider developing guidelines for participants on—

(1) how to denote which types of information are to receive different levels of confidentiality protection; and

(2) how entities or associations that act as agents for financial regulators should denote such agency status when acting in that capacity.

(g) REPORTING AND FEASIBILITY REQUIREMENTS AND REVIEW OF OPTIMAL NETWORKING METHODS.—

(1) REPORT.—Before the end of the 180-day period beginning on the date this subtitle takes effect in accordance with section 101(a), and again before the end of the 2-year period beginning on such date, the Subcommittee shall submit a report to the Congress regarding the methods the regulators plan to use to network information, and a description of any impediments to (or recommended additional legislation for) facilitating the appropriate sharing of such information.

(2) TIMEFRAME FOR NETWORKING.—

(A) IN GENERAL.—The networking of information required under subsection (b)(1) shall be established before the end of the 2-year period beginning on the date this subtitle takes effect, unless the Subcommittee determines, in conjunction with the liaisons, that such a network cannot be established within such time period in a practicable and cost-effective manner.

(B) REPORTS ON EFFORTS IF TIMEFRAME IS NOT MET.—If the Subcommittee makes such a determination, the Subcommittee shall report annually to the Congress on its efforts to coordinate the sharing of appropriate information among the regulators until the networking requirements are fulfilled.

(h) OTHER SHARING ARRANGEMENTS NOT AFFECTED.—No provision of this section shall be construed as limiting or otherwise affecting the authority of a financial regulator or other member or liaison of the Subcommittee to provide any person, including another participant, access to any information in accordance with any provision of law other than this Act.

(i) NO NEW DATABASES OR EXPENDITURES MANDATED.—In implementing this Act, the Subcommittee shall not have any authority to require a member or liaison to create a new database or otherwise incur significant costs in modifying existing databases for the networking of information.

SEC. 103. CHAIRPERSON; TERM OF CHAIRPERSON; MEETINGS; OFFICERS AND STAFF.

(a) CHAIRPERSON.—

(1) SELECTION.—The members of the Subcommittee shall select the Chairperson from among the members of the Subcommittee.

(2) TERM.—The term of the Chairperson shall be 2 years.

(b) MEETINGS.—The Subcommittee shall meet at the call of the Chairperson or a majority of the members when there is business to be conducted.

(c) QUORUM.—A majority of members of the Subcommittee shall constitute a quorum.

(d) MAJORITY VOTE.—Decisions of the Subcommittee shall be made by the vote of a majority of the members of the Subcommittee.

(e) OFFICERS AND STAFF.—The Chairperson of the Subcommittee may appoint such officers and staff as may be necessary to carry out the purposes of the Subcommittee.

SEC. 104. NONAGENCY STATUS.

The Subcommittee shall not be considered an advisory committee for purposes of the Federal Advisory Committee Act or as an agency for purposes of subchapter II of chapter 5 of title 5, United States Code.

SEC. 105. POWERS OF THE SUBCOMMITTEE.

(a) IN GENERAL.—The Subcommittee shall have such powers as are necessary to carry out the purposes of the Subcommittee under this title.

(b) INFORMATION TO FACILITATE COORDINATION.—Each agency and entity represented by a member or liaison shall, to the extent permitted by law, provide the Subcommittee with a description of the types of databases maintained by the agency or entity to assist the Subcommittee in carrying out the purposes described in section 102(a).

(c) SERVICE OF MEMBERS AND LIAISONS.—Members of and liaisons to the Subcommittee shall serve without additional compensation for their work on the Subcommittee.

(d) ADMINISTRATIVE AND TECHNICAL SUPPORT.—The Subcommittee may request that any agency or entity represented by a member or liaison provide the Subcommittee with any administrative, technical, or other support service that the Subcommittee determines is necessary or appropriate for it to carry out the purposes described in section 102(a).

SEC. 106. AGREEMENT ON COST STRUCTURE.

(a) IN GENERAL.—The Subcommittee shall determine, after consultation with the affected participants or their representatives, the means for providing for any costs the Subcommittee may incur in carrying out the purposes of this subtitle.

(b) CONSULTATION AND AGREEMENT ON FEES AND CONTRIBUTIONS.—Notwithstanding any other provision of this subtitle, the Subcommittee may not impose any fee or assessment on, or apportion any contribution against, any member or liaison under this section unless—

(1) the Subcommittee consults with such member or liaison; and

(2) the member or liaison consents to the amounts, or to a schedule, of such fees, assessments, or contributions.

(c) REIMBURSEMENT OF PARTICIPANT COSTS.—Before allowing access by the Subcommittee or a participant to any information described in section 102, other than access described in subsection (b)(1) of such section, a member or liaison may request the reimbursement of reasonable costs for providing such access.

Subtitle C—Regulatory Provisions

SEC. 111. AGENCY SUPERVISORY PRIVILEGE.

(a) DEFINITIONS.—For purposes of this section, the following definitions shall apply:

(1) SUPERVISORY PROCESS.—The term "supervisory process" means any activity engaged in by a financial regulator to carry out the official responsibilities of the financial regulator with regard to the regulation or supervision of persons engaged in the business of conducting financial activities, including examinations, inspections, visitations, investigations, consumer complaints, or any other regulatory or supervisory activities.

(2) CONFIDENTIAL SUPERVISORY INFORMATION.—Subject to paragraph (3), the term "confidential supervisory information" means any of the following information which is treated as, or considered to be, confidential information by a financial regulator, regardless of the form or format in which the information is created, conveyed, or maintained:

(A) Any report of examination, inspection, visitation, or investigation, and information prepared or collected by the financial regulator in connection with the supervisory process, including—

(i) any file, work paper, or similar information;

(ii) any correspondence, communication, or information exchanged, in connection with the supervisory process, between a financial regulator and a person engaged in the business of conducting financial activities; and

(iii) any information, including any report, created by or on behalf of a person engaged in the business of conducting financial activities that is required by, or is prepared at the request of, a financial regulator in connection with the supervisory process.

(B) Any record to the extent it contains information derived from any report, correspondence, communication or other information described in subparagraph (A).

(C) Any consumer complaints filed with the financial regulator by a consumer with respect to a person engaged in the business of conducting financial activities that have been identified by the financial regulator as requiring confidential treatment to protect the integrity of an investigation or the safety of an individual.

(3) EXCLUSIONS.—The term "confidential supervisory information" shall not include—

(A) any book, record, or other information, in the possession of, or maintained on behalf of, the person engaged in the business of conducting financial activities that—

(i) is not a report required by, or prepared at the request of, a financial regulator; and

(ii) is not, and is not derived from, confidential supervisory information that was created or prepared by a financial regulator; or

(B) any information required to be made publicly available by—

(i) any applicable Federal law or regulation; or

(ii) in the case of confidential supervisory information created by a State financial regulator or requested from a person engaged in the business of conducting financial activities by a State financial regulator, any applicable State law or regulation that specifically refers to such type of information.

(b) FINANCIAL REGULATOR SUPERVISORY PRIVILEGE.—

(1) PRIVILEGE ESTABLISHED.—

(A) IN GENERAL.—All confidential supervisory information shall be privileged from disclosure to any person except as provided in this section.

(B) PROHIBITION ON UNAUTHORIZED DISCLOSURES.—No person in possession of confidential supervisory information may disclose such information, in whole or in part, without the prior authorization of the financial regulator that created the information, or requested the information from a person engaged in the business of conducting financial activities, except for a disclosure made in published statistical material that does not disclose, either directly or when used in conjunction with publicly available information, the affairs of any person or other personally identifiable information.

(C) AGENCY WAIVER.—The financial regulator that created the confidential supervisory information, or requested the confidential supervisory information from a person engaged in the business of conducting financial activities, may waive, in whole or in part, in the discretion of the regulator, any privilege established under this paragraph with respect to such information.

(2) EXCEPTIONS.—

(A) ACCESS BY GOVERNMENTAL BODIES.—

(i) CONGRESS AND GENERAL ACCOUNTING OFFICE.—No provision of paragraph (1) shall be construed as preventing access to confidential supervisory information by duly authorized committees of the Congress or the Comptroller General of the United States.

(ii) FINANCIAL REGULATOR OVERSIGHT.—No financial regulator which is described in subparagraph (P), (Q), or (R) of section 115(3) and is subject to the oversight of a Federal financial regulator may assert the privilege described in paragraph (1) to prevent access to confidential supervisory information by such Federal financial regulator.

(B) PRIVILEGE NOT WAIVED.—If a financial regulator provides access to confidential supervisory information to the Congress, the Comptroller General, or another financial regulator, such action shall not affect the ability of the financial regulator to assert any privilege associated with such information against any other person.

(c) TREATMENT OF FOREIGN SUPERVISORY INFORMATION.—In any proceeding before a Federal or State court of the United States, in which a person seeks to compel production or disclosure by a financial regulator of information or documents prepared or collected by a foreign financial regulator that would, had the information or document been prepared or collected by a financial regulator, be confidential supervisory information for purposes of this section, the information or document shall

be privileged to the same extent that the information and documents of financial regulators are privileged under this title.

(d) OTHER PRIVILEGES NOT WAIVED BY DISCLOSURE TO FINANCIAL REGULATOR.—The submission by a person engaged in the business of conducting financial activities of any information to a financial regulator or a foreign financial regulator in connection with the supervisory process of such financial regulator or foreign financial regulator shall not waive, destroy, or otherwise affect any privilege such person may claim with respect to such information under Federal or State law as to a party other than such financial regulator or foreign financial regulator.

(e) DISCOVERY AND DISCLOSURE OF INFORMATION.—

(1) INFORMATION AVAILABLE ONLY FROM FINANCIAL REGULATOR.—

(A) IN GENERAL.—No person (other than the financial regulator that created the information or requested the information from a person engaged in the business of conducting financial activities) may disclose, in whole or in part, any confidential supervisory information to any person who seeks such information through subpoena, discovery procedures, or otherwise.

(B) PROCEDURE FOR REQUESTS SUBMITTED TO FINANCIAL REGULATOR.—

(i) IN GENERAL.—Any request for discovery or disclosure of confidential supervisory information shall be made to the financial regulator that created the information, or requested the information from a person engaged in the business of conducting financial activities.

(ii) PROCEDURE.—Upon receiving a request for confidential supervisory information, the financial regulator shall determine within a reasonable time period whether to disclose such information pursuant to procedures and criteria established by the financial regulator.

(C) NOTIFICATION.—

(i) IN GENERAL.—Before any financial regulator releases information that was requested from a person engaged in the business of conducting financial activities to a person under subparagraph (B), notice and a reasonable time for comment shall be provided to the person from whom such information was requested unless such information—

(I) is being provided to another financial regulator, an agency or entity represented by a liaison to the Subcommittee, or a Federal, State, or foreign government (or any agency or instrumentality of any such government acting in any capacity);

(II) is being sought for use in a criminal proceeding or investigation, or a regulatory, supervisory, enforcement, or disciplinary administrative proceeding, civil action, or investigation; or

(III) was originally created, or included in information created, by the financial regulator.

(ii) PROCEDURES AND REQUIREMENTS.—A financial regulator may prescribe regulations, or issue orders, guidelines, or procedures, governing the notice and time period required by clause (i).

(2) FEDERAL COURT JURISDICTION OVER DISPUTES.—

(A) REMOVAL AUTHORITY.—In any action or proceeding in which a party seeks to compel disclosure of confidential supervisory information, a financial regulator may, in its sole discretion, elect to remove the matter relating to the disclosure issue to Federal court, and, if the action is so removed, the appropriate Federal court shall have exclusive jurisdiction over such matter.

(B) JUDICIAL REVIEW.—Judicial review of the final action of a financial regulator with regard to the disposition of a request for confidential supervisory information shall be before a district court of the United States of competent jurisdiction, subject to chapter 7 of part I of title 5, United States Code.

(f) AUTHORITY TO INTERVENE.—In the case of any action or proceeding to compel compliance with a subpoena, order, discovery request, or other judicial or administrative process with respect to any confidential supervisory information of a financial regulator concerning any person engaged in the business of conducting financial activities, the financial regulator may intervene in such action or proceeding, and such person may intervene with such regulator, for the purpose of—

(1) enforcing the limitations established in paragraph (1) of subsections (b) and (e);

(2) seeking the withdrawal of any compulsory process with respect to such information; and

(3) registering appropriate objections with respect to the action or proceeding to the extent the action or proceeding relates to or involves such information.

(g) RIGHT TO APPEAL.—Any court order that compels production of confidential supervisory information may be immediately appealed by the financial regulator

and the order compelling production shall be automatically stayed, pending the outcome of such appeal.

(h) REGULATIONS.—

(1) AUTHORITY TO PRESCRIBE.—Each financial regulator may prescribe such regulations as the regulator considers to be appropriate, after consultation with the other financial regulators (to the extent the prescribing financial regulator considers appropriate and feasible), to carry out the purposes of this section.

(2) AUTHORITY TO REQUIRE NOTICE.—Any regulations prescribed by a financial regulator under paragraph (1) may require any person in possession of confidential supervisory information to notify the financial regulator whenever the person is served with a subpoena, order, discovery request, or other judicial or administrative process requiring the personal attendance of such person as a witness or requiring the production of such information in any proceeding.

(i) ABILITY TO PARTIALLY WAIVE PRIVILEGE WHERE NO OTHER PRIVILEGE APPLIES.—A financial regulator may, to the extent permitted by applicable law governing the disclosure of information by the regulator, authorize a waiver of the privilege established by this section to allow access by a person to confidential supervisory information created by such regulator (or requested by such regulator from any person engaged in the business of conducting financial activities), except that—

(1) the regulator may place appropriate limits on the use and disclosure of the information shared, and may continue to assert the privilege with respect to any other person that seeks access to the information; and

(2) such waiver shall not affect any other privilege or confidentiality protection that any party may assert against any person other than such financial regulator.

(j) SHARING OF REPORTS.—

(1) IN GENERAL.—Subject to subsection (k), no provision of this section shall be construed as preventing a person engaged in the business of conducting financial activities from providing a report that is required by, or prepared at the request of, a financial regulator (the originating financial regulator) to another financial regulator that has the authority to obtain the information from the person under any other provision of law.

(2) PRIVILEGE PRESERVED.—If a person provides a report referred to in paragraph (1) to a financial regulator other than the originating financial regulator, such action shall not affect the ability of the originating financial regulator to assert any privilege that such financial regulator may claim with respect to the report against any person that is not a financial regulator.

(k) REQUESTS FOR INFORMATION INVOLVING ANOTHER FINANCIAL REGULATOR.—

(1) IN GENERAL.—Before any financial regulator requests information from a person engaged in the business of conducting financial activities that is confidential supervisory information contained in a report that was created by another financial regulator, or that was derived from confidential supervisory information that was created by another financial regulator, (hereafter in this subsection referred to as the "originating financial regulator"), the financial regulator seeking such information (hereafter in this subsection referred to as the "requesting financial regulator") shall first request such information directly from the originating financial regulator.

(2) NOTICE OF INTENT TO REQUEST INFORMATION FROM FINANCIAL INSTITUTION.—If, pursuant to a request from a requesting financial regulator under paragraph (1), an originating financial regulator refuses to provide the information described in such paragraph, the requesting financial regulator may not request or compel the production of such information from a person engaged in the business of conducting financial activities unless the requesting financial regulator first provides notice of such regulator's intention (to make such request or compel such production) to the originating financial institution and provides the originating financial regulator with reasonable opportunity to respond.

(3) DECLARATORY JUDGMENT.—The opportunity to respond described in paragraph (2) shall include the right of the originating financial regulator to bring an action in the United States District Court for the District of Columbia for a declaratory judgment of the rights and privileges of the requesting and originating financial regulators with respect to the information described in paragraph (1), and such relief as may be appropriate.

(4) STANDARDS.—In any action brought under paragraph (3), the United States District Court for the District of Columbia shall decide the matter de novo based on applicable law, other than this title, including any protections or privileges that would be available to the originating financial regulator if such regulator were to intervene in an action brought by the requesting financial reg-

ulator to compel the production of such information from the person engaged in the business of conducting financial activity referred to in paragraph (1).

(5) PROHIBITION ON REQUESTING INFORMATION WHILE ACTION IS PENDING.—While any action under paragraph (3) is pending with respect to any information described in paragraph (1), the requesting financial regulator may not make any request for such information from any person engaged in the business of conducting financial activity.

(6) RULE OF CONSTRUCTION.—No provision of this subsection may be construed as creating any new authority for any financial regulator to request or compel the production of any information from any person engaged in the business of conducting financial activities.

(l) NO WAIVER OF ANY PRIVILEGE OF ANY OTHER PARTY.—No provision of this Act shall provide a financial regulator with any new authority to disclose information in contravention of applicable law governing disclosure of information.

SEC. 112. CONFIDENTIALITY OF INFORMATION.

(a) IN GENERAL.—

(1) FINANCIAL REGULATORS.—Except as otherwise provided in this section or section 111, any requirement under Federal or State law regarding the privacy or confidentiality of any information or material in the possession of any participant, and any privilege arising under Federal or State law (including the rules of any Federal or State court) with respect to such information or material, shall continue to apply to such information or material after the information or material has been disclosed through the network to another participant or, if subtitle B has taken effect, the Subcommittee.

(2) CERTAIN INSURANCE INFORMATION.—Except as otherwise provided in this section or section 111, any requirement under Federal or State law regarding the privacy or confidentiality of any information or material in the possession of the National Association of Insurance Commissioners, or any member or affiliate of the Association, and any privilege arising under Federal or State law (including the rules of any Federal or State court) with respect to such information or material, shall continue to apply to such information or material after the information has been disclosed to the Association, or any other member or affiliate of the Association, through the computer databases maintained by the Association.

(3) NONAPPLICABILITY OF CERTAIN REQUIREMENTS.—Information or material that is subject to a privilege or confidentiality under any other paragraph of this subsection shall not be subject to—

(A) disclosure under any Federal or State law governing the disclosure to the public of information held by an officer or an agency of the Federal Government or the respective State; or

(B) subpoena or discovery, or admission into evidence, in any private civil action or administrative process,

unless with respect to any privilege held by a participant with respect to such information or material, the participant waives, in whole or in part, in the discretion of the participant, such privilege.

(b) PREEMPTION OF STATE LAW.—Any State law, including any State open record law, relating to the disclosure of confidential supervisory information or any information or material to which subsection (a) applies that is inconsistent with any provision of section 111 or subsection (a) of this section shall be superseded by the requirements of such provision to the extent State law provides less confidentiality or a weaker privilege.

(c) DUTY OF FINANCIAL REGULATOR TO MAINTAIN CONFIDENTIALITY.—A participant may not receive, download, copy, or otherwise maintain any information or material from any other member of or liaison to the Subcommittee through the network unless—

(1) the participant maintains a system that enables the participant to maintain full compliance with the requirements of sections 100, 102, and 111 and this section, with respect to such information and material; and

(2) if and to the extent required by the guidelines established under sections 100 and 102, a record is maintained of each attempt to access such information and material, and the identity of the person making the attempt, in order to prevent evasions of such requirements.

SEC. 113. LIABILITY PROVISIONS.

(a) NO LIABILITY FOR GOOD FAITH DISCLOSURES.—Any financial regulator, and any officer or employee of any financial regulator, shall not be subject to any civil action or proceeding for monetary damages by reason of the good faith action or omission of any officer or employee, while acting within the scope of office or employment, relating to collecting, furnishing, or disseminating regulatory or super-

visory information concerning persons engaged in the business of conducting financial activities, to or from another financial regulator, whether directly or through the network.

(b) CRIMINAL LIABILITY FOR INTENTIONAL UNLAWFUL DISCLOSURES.—

(1) IN GENERAL.—It shall be unlawful to willfully disclose to any person any information concerning any person engaged in the business of conducting financial activities knowing the disclosure to be in violation of any provision of this title—

(A) requiring the confidentiality of such information; or

(B) establishing a privilege from disclosure for such information that has not been waived by the relevant financial regulator.

(2) PENALTY.—Notwithstanding section 3571 of title 18, United States Code, any person who violates paragraph (1) shall be fined an amount not to exceed the greater of $100,000 or the amount of the actual damages sustained by any person as a result of such violation, or imprisoned not more than 5 years, or both.

(c) FULL, CONTINUED PROTECTION UNDER THE SO-CALLED "FEDERAL TORT CLAIMS ACT".—No provision of this Act shall be construed as reducing or limiting any protection provided for any Federal agency, or any officer or employee of any Federal agency, under section 2679 of title 28, United States Code.

(d) PROTECTION APPLIED TO THE SUBCOMMITTEE.—For the purposes of this section, the term "financial regulator" includes the Subcommittee after subtitle B has taken effect.

SEC. 114. AUTHORIZATION FOR IDENTIFICATION AND CRIMINAL BACKGROUND CHECK.

(a) SHARING OF CRIMINAL RECORDS.—

(1) ATTORNEY GENERAL AUTHORIZATION.—Upon receiving a request from a financial regulator, the Attorney General shall—

(A) search the records of the Criminal Justice Information Services Division of the Federal Bureau of Investigation, and any other similar database over which the Attorney General has authority and deems appropriate, for any criminal background records (including wanted persons information) corresponding to the identification information provided under subsection (b); and

(B) either—

(i) shall provide any such records to any authorized agent of the financial regulator, which shall provide the relevant information to such regulator; or

(ii) may provide such records directly to the financial regulator if the Attorney General limits such provision of records to relevant information.

(2) AUTHORIZED AGENT DEFINED.—For purposes of this section, the term "authorized agent" means—

(A) any agent which has been recognized by the Attorney General for such purpose and authorized by at least 3 other financial regulators to receive such records and perform the information sharing requirements of paragraph (3);

(B) the State attorney general for the State in which the regulator is primarily located, and

(C) any law enforcement designee of the Attorney General or such State attorney general.

(3) INFORMATION SHARED.—

(A) IN GENERAL.—The authorized agent shall provide to the requesting financial regulator only any records that are relevant information.

(B) RELEVANT INFORMATION DEFINED.—For purposes of this section, the term "relevant information" means any of the following records:

(i) All felony convictions.

(ii) All misdemeanor convictions involving—

(I) violation of a law involving financial activities;

(II) dishonesty or breach of trust, within the meaning of section 1033 of title 18, United States Code, including taking, withholding, misappropriating, or converting money or property;

(III) failure to comply with child support obligations;

(IV) failure to pay taxes; and

(V) domestic violence, child abuse, or a crime of violence.

(C) CRIME OF VIOLENCE DEFINED.—For purposes of subparagraph (B)(ii)(V), the term "crime of violence" means a burglary of a dwelling and a criminal offense that has as an element, the use or attempted use of physical force, or threat of great bodily harm, or the use, attempted use, or

threatened use of a deadly weapon, against an individual, including committing or attempting to commit murder, manslaughter, kidnapping, aggravated assault, forcible sex offenses, robbery, arson, extortion, and extortionate extension of credit.

(4) STATE UNIFORM OR RECIPROCITY LAWS REQUIREMENT.—

(A) IN GENERAL.—The Attorney General may not provide any records under this subsection to an insurance regulator of a State, or agent of such regulator, if such State does not have in effect uniform or reciprocity laws and regulations governing the licensure of individuals and entities authorized to sell and solicit the purchase of insurance within the State as set forth in section 321 of P.L. 106–102.

(B) DETERMINATION OF RECIPROCITY.—The determination of whether or not a State has uniform or reciprocity laws or regulations in effect for purposes of subparagraph (A) shall be made by the Attorney General, with the advice and counsel of the National Association of Insurance Commissioners.

(C) EXCEPTION UNDER CERTAIN CIRCUMSTANCES.—Notwithstanding subparagraph (B), the Attorney General may provide records under this section to an insurance regulator of a State, or agent of such regulator, on the basis of a specific determination by the National Association of Insurance Commissioners that such State has in effect uniform or reciprocity laws and regulations referred to in subparagraph (A) if—

(i) a determination by the Attorney General under subparagraph (B) is pending; or

(ii) the Attorney General considers whether such State has in effect such uniform or reciprocity laws or regulations and fails to make a determination, unless the Attorney General subsequently determines that such State does not have in effect uniform or reciprocity laws or regulations.

(b) FORM OF REQUEST.—A request under subsection (a) shall include a copy of any necessary identification information required by the Attorney General, such as the name and fingerprints of the person about whom the record is requested and a statement signed by the person acknowledging that the regulator (or such regulator's designated agent under subsection (g)(1)) may request the search.

(c) LIMITATION ON PERMISSIBLE USES OF INFORMATION.—Information obtained under this section may—

(1) be used only for regulatory or law enforcement purposes; and

(2) be disclosed—

(A) only to other financial regulators or Federal or State law enforcement agencies; and

(B) only if the recipient agrees to—

(i) maintain the confidentiality of such information; and

(ii) limit the use of such information to appropriate regulatory and law enforcement purposes.

(d) PENALTY FOR IMPROPER USE.—

(1) IN GENERAL.—Whoever uses any information obtained under this section knowingly and willfully for an unauthorized purpose shall be fined under title 18, United States Code, imprisoned for not more than 2 years, or both.

(2) ADDITIONAL PENALTIES AND WAIVERS.—

(A) IN GENERAL.—Any authorized agent who violates paragraph (1), or any individual who directs such agent to violate such paragraph, shall be barred from engaging in or regulating any activities related to the business of insurance.

(B) WAIVER AUTHORIZED.—The Attorney General, in the discretion of the Attorney General, may waive the bar in subparagraph (A), as appropriate.

(e) RELIANCE ON INFORMATION.—A financial regulator (or such regulator's designated agent under subsection (g)(1)) who reasonably relies on information provided under this section shall not be liable in any action for using information as permitted under this section in good faith.

(f) CLARIFICATION OF SECTION 1033.—With respect to any action brought under section 1033(e)(1)(B) of title 18, United States Code, no person engaged in the business of conducting financial activities shall be subject to any penalty resulting from such section if the individual who the person permitted to engage in the business of insurance is licensed, or approved (as part of an application or otherwise), by a State insurance regulator that performs criminal background checks under this section, unless such person knows that the individual is in violation of section 1033(e)(1)(A) of such title.

(g) DESIGNATION OF AGENT.—

(1) IN GENERAL.—A financial regulator may designate an agent for facilitating requests and exchanges of information under this section between or among the financial regulator, the Attorney General, and any other authorized agent.

(2) SENSE OF CONGRESS REGARDING AGENTS OF INSURANCE REGULATORS.—It is the sense of the Congress that—

(A) each State insurance commissioner should designate the National Association of Insurance Commissioners as an agent under paragraph (1);

(B) persons engaged in the business of insurance should be able to use the National Association of Insurance Commissioners to facilitate obtaining fingerprints and supplying identification information for use in background checks under this section on a multijurisdictional basis;

(C) the National Association of Insurance Commissioners should maintain a database to obtain records under this section for use by State insurance commissioners to reduce multiple or duplicative fingerprinting requirements and criminal background checks, except that any such record shall not be maintained for more than 1 year without performing a new background check to determine if the criminal background record has changed;

(D) other financial regulators that require fingerprints and criminal background checks should similarly coordinate efforts to reduce duplication for persons engaged in the business of conducting multiple types of financial activities; and

(E) the National Association of Insurance Commissioners, and other financial regulators that use this section, should consult with the Attorney General to consider the feasibility of developing an on-going notification system that would allow the Attorney General to notify such Association when a licensed or approved insurance professional is convicted of a relevant crime.

(h) FEES.—The Attorney General may charge a reasonable fee for the provision of information under this section.

(i) RULE OF CONSTRUCTION.—This section shall not—

(1) provide independent authorization for a financial regulator to require fingerprinting as a part of a licensure or other application;

(2) require a financial regulator to perform criminal background checks under this section; or

(3) supersede or otherwise limit any other authority that allows access to criminal background records.

(j) REGULATIONS.—The Attorney General may prescribe regulations to carry out this section.

SEC. 115. DEFINITIONS.

For purposes of this title, the following definitions shall apply:

(1) FEDERAL BANKING AGENCY.—The term "Federal banking agency" has the same meaning as given in section 3(z) of the Federal Deposit Insurance Act.

(2) FINANCIAL ACTIVITIES.—

(A) IN GENERAL.—The term "financial activities"—

(i) means banking activities (including the ownership of a bank), securities activities, insurance activities, or commodities activities; and

(ii) includes all activities that are financial in nature or are incidental to a financial activity (as defined under section 4(k) of the Bank Holding Company Act of 1956).

(B) RULE OF CONSTRUCTION.—Subparagraph (A) shall not be construed as creating any inference, including any negative inference, concerning the types or extent of activities that are appropriately recognized as activities that are financial in nature, or are incidental to a financial activity, for purposes of section 4 of the Bank Holding Company Act of 1956.

(3) FINANCIAL REGULATOR.—The term "financial regulator" means—

(A) each Federal banking agency;

(B) the Securities and Exchange Commission;

(C) the Commodity Futures Trading Commission;

(D) the National Credit Union Administration;

(E) the Farm Credit Administration;

(F) the Federal Housing Finance Board;

(G) the Federal Trade Commission, to the extent the Commission has jurisdiction over financial activities being conducted by a person engaged in the business of conducting financial activities;

(H) the Secretary of the Treasury, to the extent the Secretary has jurisdiction over financial activities being conducted by a person engaged in the business of conducting financial activities;

(I) the Office of Federal Housing Enterprise Oversight of the Department of Housing and Urban Development;

(J) the Appraisal Subcommittee of the Financial Institutions Examination Council;

(K) any State bank supervisor (as defined in section 3(r) of the Federal Deposit Insurance Act), including the Conference of State Bank Supervisors only to the extent such conference is acting as an agent of, and is subject to the oversight of, any such State bank supervisor;

(L) any State savings association supervisor, including the American Council of State Savings Supervisors only to the extent such conference is acting as an agent of, and is subject to the oversight of, any such State savings association supervisor;

(M) any State insurance commissioner, including the National Association of Insurance Commissioners only to the extent such association is acting as the agent of, and is subject to the oversight of, any such insurance commissioner;

(N) any State securities administrator, including the North American Securities Administrators Association only to the extent such association is acting as the agent of, and is subject to the oversight of, any such securities administrator;

(O) any State credit union supervisor, including the National Association of State Credit Union Supervisors only to the extent such association is acting as the agent of, and is subject to the oversight of, any such credit union supervisor;

(P) the National Association of Securities Dealers, only to the extent that—

(i) such association is acting in connection with the financial services industry; and

(ii) the association and the relevant actions are subject to the oversight of the Securities and Exchange Commission;

(Q) the National Futures Association, only to the extent that—

(i) such association is acting in connection with the financial services industry; and

(ii) the association and the relevant actions are subject to the oversight of the Commodity Futures Trading Commission or the Securities and Exchange Commission; and

(R) any other self-regulatory organization that engages in or coordinates regulatory and supervisory activities, with respect to any person engaged in the business of conducting financial activities, and is subject to the oversight of the Securities and Exchange Commission or the Commodity Futures Trading Commission, but only to the extent that the organization engages in such activities and is subject to such oversight.

(4) FOREIGN FINANCIAL REGULATOR.—The term "foreign financial regulator" means any agency, entity, or body (including a self-regulatory organization) that is empowered by the laws of a foreign country to supervise and regulate persons engaged in the business of conducting financial activities, but only to the extent of such supervisory and regulatory activities.

(5) PARTICIPANT.—The term "participant" means any entity described in section 101 as being represented by a member of, or a liaison to, the Subcommittee (regardless of whether subtitle B has taken effect) but only to the extent the regulator provides or obtains access to information through the network.

(6) PERSON.—The term "person" includes any financial regulator.

(7) PERSON ENGAGED IN THE BUSINESS OF CONDUCTING FINANCIAL ACTIVITIES.—The term "person engaged in the business of conducting financial activities" includes, to the extent appropriate under the laws applicable to the jurisdiction of a financial regulator over such person—

(A) any director, officer, employee, or controlling stockholder of, or agent for, any such person;

(B) any other person who has filed or is required to file a change-in-control notice with the appropriate financial regulator before acquiring control of such person; and

(C) any person who has sought approval from a financial regulator to engage in the business of conducting financial activities, or that was engaged in such business and subject to the jurisdiction of a financial regulator; and

(D) any shareholder, consultant, joint venture partner, and any other person, including an independent contractor, as determined by the appropriate financial regulator (by regulation or case-by-case) who participates in the conduct of the affairs of such person.

(8) STATE INSURANCE COMMISSIONER.—The term "State insurance commissioner" means any officer, agency, or other entity of any State which has primary regulatory authority over the business of insurance and over any person engaged in the business of insurance to the extent of such activities, in such State.

(9) STATE SECURITIES ADMINISTRATOR.—The term "State securities administrator" means the securities commission (or any agency or office performing like functions) of any State.

SEC. 116. TECHNICAL AND CONFORMING AMENDMENTS TO OTHER ACTS.

(a) Subsection (b) of section 552a of title 5, United States Code, is amended—

(1) by striking "or" at the end of paragraph (11);

(2) by striking the period at the end of paragraph (12) and inserting "; or"; and

(3) by inserting after paragraph (12) the following new paragraph:

"(13) for recordkeeping, licensing, and other regulatory and law enforcement purposes in accordance with title I of the Financial Services Antifraud Network Act of 2001—

"(A) through a network or name-relationship index maintained under such title; or

"(B) to a multistate database maintained by the National Association of Insurance Commissioners and any subsidiary or affiliate of such association, subject to the requirements of such title.".

(b) Section 1113 of the Financial Institutions Regulatory and Interest Rate Control Act of 1978 (12 U.S.C. 3413) is amended by adding at the end the following new subsection:

"(r) This title shall not apply to disclosure by a financial regulator of information pursuant to subtitle A or B of the Financial Services Antifraud Network Act of 2001 to the extent the disclosure is made in accordance with the requirements of such Act.".

(c) Section 602 of the Consumer Credit Protection Act (15 U.S.C. 1681) is amended by adding at the end the following new subsection:

"(c) This title shall not apply to a communication between participants, as defined in the Financial Services Antifraud Network Act of 2001, to the extent the communication is made in accordance with such Act.".

SEC. 117. AUDIT OF STATE INSURANCE REGULATORS.

(a) IN GENERAL.—At the request of the Congress, the Comptroller General shall audit a State insurance regulator or any person who maintains information on behalf of such regulator.

(b) LIMITATIONS ON DISCLOSURE OF INFORMATION.—Except as provided in this subsection, an officer or employee of the General Accounting Office may not disclose information identifying an open insurance company or a customer of an open or closed insurance company. The Comptroller General may disclose information related to the affairs of a closed insurance company only if the Comptroller General believes the customer had a controlling influence in the management of the closed insurance company or was related to or affiliated with a person or group having a controlling influence.

(c) COORDINATION WITH STATE REGULATOR.—An officer or employee of the Office may discuss a customer or insurance company with an official of a State insurance regulator and may report an apparent criminal violation to an appropriate law enforcement authority of the United States Government or a State.

(d) CONGRESSIONAL OVERSIGHT.—This subsection shall not be construed as authorizing an officer or employee of a State insurance regulator to withhold information from a committee of the Congress authorized to have the information.

(e) ADMINISTRATIVE ASPECTS OF AUDIT.—

(1) IN GENERAL.—To carry out this section, all records and property of or used by a State insurance regulator, including samples of reports of examinations of an insurance company the Comptroller General considers statistically meaningful and workpapers and correspondence related to the reports shall be made available to the Comptroller General. The Comptroller General shall give a State insurance regulator a current list of officers and employees to whom, with proper identification, records and property may be made available, and who may make notes or copies necessary to carry out an audit.

(2) PREVENTION OF UNAUTHORIZED ACCESS.—The Comptroller General shall prevent unauthorized access to records or property of or used by a State insurance regulator that the Comptroller General obtains during an audit.

(f) CONFIDENTIALITY.—

(1) IN GENERAL.—The Comptroller General shall maintain the same level of confidentiality for a record made available under this section as is required of the head of the State insurance regulator from which it is obtained.

(2) PREVENTION OF INVASION OF PERSONAL PRIVACY.—The Comptroller General shall keep information described in section 552(b)(6) of title 5, United States Code, that the Comptroller General obtains in a way that prevents unwarranted invasions of personal privacy.

(3) AVAILABILITY OF INFORMATION.—Except as provided in subsection (b), no provision of this section shall be construed as authorizing any information to be withheld from the Congress.

(g) AVAILABILITY OF INFORMATION AND INSPECTION OF RECORDS.—The right of access of the Comptroller General to information under this section shall be enforceable under section 716 of title 31, United States Code.

(h) DEFINITIONS.—For purposes of this section, the following definitions shall apply:

(1) STATE INSURANCE REGULATOR DEFINED.—The term "State insurance regulator" means the principal insurance regulatory authority of a State, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands.

(2) INSURANCE COMPANY.—The term "insurance company" includes any person engaged in the business of insurance to the extent of such activities.

TITLE II—SECURITIES INDUSTRY COORDINATION

Subtitle A—Disciplinary Information

SEC. 201. INVESTMENT ADVISERS ACT OF 1940.

Section 204 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–4) is amended—

(1) by striking "Every investment" and inserting the following:

"(a) IN GENERAL.—Every investment"; and

(2) by adding at the end the following:

"(b) FILING DEPOSITORIES.—The Commission, by rule, may require an investment adviser—

"(1) to file with the Commission any fee, application, report, or notice required to be filed by this title or the rules issued under this title through any entity designated by the Commission for that purpose; and

"(2) to pay the reasonable costs associated with such filing and the establishment and maintenance of the systems required by subsection (c).

"(c) ACCESS TO DISCIPLINARY AND OTHER INFORMATION.—

"(1) MAINTENANCE OF SYSTEM TO RESPOND TO INQUIRIES.—The Commission shall require the entity designated by the Commission under subsection (b)(1)—

"(A) to establish and maintain a toll-free telephone listing or other readily accessible electronic process to receive inquiries regarding disciplinary actions and proceedings and other information involving investment advisers and persons associated with investment advisers; and

"(B) to respond promptly to such inquiries.

"(2) RECOVERY OF COSTS.—An entity designated by the Commission under subsection (b)(1) may charge persons, other than individual investors, reasonable fees for responses to inquiries made under paragraph (1).

"(3) LIMITATION ON LIABILITY.—An entity designated by the Commission under subsection (b)(1) shall not have any liability to any person for any actions taken or omitted in good faith under this subsection.".

SEC. 202. SECURITIES EXCHANGE ACT OF 1934.

Subsection (i) of section 15A of the Securities Exchange Act of 1934 (15 U.S.C. 78o–3) is amended to read as follows:

"(i) OBLIGATION TO MAINTAIN DISCIPLINARY AND OTHER DATA.—

"(1) MAINTENANCE OF SYSTEM TO RESPOND TO INQUIRIES.—A registered securities association shall—

"(A) establish and maintain a toll-free telephone listing or other readily accessible electronic process to receive inquiries regarding disciplinary actions and proceedings and other information involving its members and their associated persons and regarding disciplinary actions and proceedings and other information that has been reported to the Central Registration

Depository by any registered national securities exchange involving its members and their associated persons; and

"(B) promptly respond to such inquiries.

"(2) RECOVERY OF COSTS.—Such association may charge persons, other than individual investors, reasonable fees for responses to such inquiries.

"(3) LIMITATION ON LIABILITY.—Such an association or exchange shall not have any liability to any person for any actions taken or omitted in good faith under this subsection.".

Subtitle B—Preventing Migration of Rogue Financial Professionals to the Securities Industry

SEC. 211. SECURITIES EXCHANGE ACT OF 1934.

(a) BROKERS AND DEALERS.—Section 15(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b)) is amended—

(1) in paragraph (4), by striking subparagraphs (F) and (G) and inserting the following:

"(F) is subject to any order of the Commission barring or suspending the right of the person to be associated with a broker or dealer.

"(G) has been found by a foreign financial regulatory authority to have—

"(i) made or caused to be made in any application for registration or report required to be filed with a foreign financial regulatory authority, or in any proceeding before a foreign financial regulatory authority with respect to registration, any statement that was at the time and in the light of the circumstances under which it was made false or misleading with respect to any material fact, or omitted to state in any such application, report, or proceeding any material fact that is required to be stated therein;

"(ii) violated any foreign statute or regulation regarding securities, banking, thrift activities, credit union activities, insurance, or contracts of sale of a commodity for future delivery, traded on or subject to the rules of a contract market or any board of trade; or

"(iii) aided, abetted, counseled, commanded, induced, or procured the violation by any other person of any provision of any statutory provisions enacted by a foreign government, or rules or regulations thereunder, regarding securities, banking, thrift activities, credit union activities, insurance, or contracts of sale of a commodity for future delivery traded on or subject to the rules of a contract market or any board of trade, or to have failed reasonably to supervise, with a view to preventing violations of such statutory provisions, rules, and regulations, another person who commits such a violation, if such other person is subject to his supervision.

"(H) is subject to any final order of a State securities commission (or any agency or officer performing like functions), State authority that supervises or examines banks, thrifts, or credit unions, State insurance commission (or any agency or office performing like functions), an appropriate Federal banking agency (as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)), or the National Credit Union Administration, that—

"(i) bars such person from association with an entity regulated by such commission, authority, agency, or officer, or from engaging in the business of securities, insurance, banking, thrift activities, or credit union activities; or

"(ii) constitutes a final order based on violations of any laws or regulations that prohibit fraudulent, manipulative, or deceptive conduct."; and

(2) in paragraph (6)(A)(i), by striking "or omission enumerated in subparagraph (A), (D), (E), or (G)" and inserting ", or is subject to an order or finding, enumerated in subparagraph (A), (D), (E), (G), or (H)".

(b) MUNICIPAL SECURITIES BROKERS AND DEALERS.—Section 15B(c) of the Securities Exchange Act of 1934 (15 U.S.C. 78o–4(c)) is amended—

(1) in paragraph (2)—

(A) by striking "or omission enumerated in subparagraph (A), (D), (E), or (G)" and inserting ", or is subject to an order or finding, enumerated in subparagraph (A), (D), (E), (G), or (H)"; and

(B) by striking "ten" and inserting "10"; and

(2) in paragraph (4) by striking "or omission enumerated in subparagraph (A), (D), (E), or (G)" and inserting ", or is subject to an order or finding, enumerated in subparagraph (A), (D), (E), (G), or (H)".

(c) GOVERNMENT SECURITIES BROKERS AND DEALERS.—Section 15C(c)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78o–5(c)(1)) is amended—

(1) in subparagraph (A), by striking "or omission enumerated in subparagraph (A), (D), (E), or (G)" and inserting ", or is subject to an order or finding, enumerated in subparagraph (A), (D), (E), (G), or (H)"; and

(2) in subparagraph (C), by striking "or omission enumerated in subparagraph (A), (D), (E), or (G)" and inserting ", or is subject to an order or finding, enumerated in subparagraph (A), (D), (E), (G), or (H)".

(d) CLEARANCE AND SETTLEMENT.—Section 17A(c) of the Securities Exchange Act of 1934 (15 U.S.C. 78q–1(c)) is amended—

(1) in paragraph (3)(A), by striking "enumerated in subparagraph (A), (D), (E), or (G)" and inserting ", or is subject to an order or finding, enumerated in subparagraph (A), (D), (E), (G), or (H)"; and

(2) in paragraph (4)(C)—

(A) by striking "enumerated in subparagraph (A), (D), (E), or (G)" and inserting ", or is subject to an order or finding, enumerated in subparagraph (A), (D), (E), (G), or (H)"; and

(B) by striking "ten years" and inserting "10 years".

(e) DEFINITION OF STATUTORY DISQUALIFICATION.—Section 3(a)(39)(F) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(39)(F)) is amended by striking "has committed or omitted any act enumerated in subparagraph (D), (E), or (G)" and inserting "has committed or omitted any act, or is subject to an order or finding, enumerated in subparagraph (D), (E), (G), or (H)".

SEC. 212. INVESTMENT ADVISERS ACT OF 1940.

(a) AUTHORITY TO DENY OR REVOKE REGISTRATION BASED ON STATE (AND OTHER GOVERNMENTAL) ADMINISTRATIVE ACTIONS.—Section 203(e) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–3(e)) is amended by striking paragraphs (7) and (8) and inserting the following:

"(7) is subject to any order of the Commission barring or suspending the right of the person to be associated with an investment adviser.

"(8) has been found by a foreign financial regulatory authority to have—

"(A) made or caused to be made in any application for registration or report required to be filed with a foreign securities authority, or in any proceeding before a foreign securities authority with respect to registration, any statement that was at the time and in light of the circumstances under which it was made false or misleading with respect to any material fact, or has omitted to state in any such application, report, or proceeding any material fact that is required to be stated therein;

"(B) violated any foreign statute or regulation regarding securities, banking, thrift activities, credit union activities, insurance, or contracts of sale of a commodity for future delivery traded on or subject to the rules of a contract market or any board of trade;

"(C) aided, abetted, counseled, commanded, induced, or procured the violation by any other person of any foreign statute or regulation regarding securities, banking, thrift activities, credit union activities, insurance, or contracts of sale of a commodity for future delivery traded on or subject to the rules of a contract market or any board of trade, or to have failed reasonably to supervise, with a view to preventing violations of statutory provisions, and rules and regulations promulgated thereunder, another person who commits such a violation, if such other person is subject to his supervision.

"(9) is subject to any final order of a State securities commission (or any agency or officer performing like functions), State authority that supervises or examines banks, thrifts, or credit unions, State insurance commission (or any agency or office performing like functions), an appropriate Federal banking agency (as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)), or the National Credit Union Administration, that—

"(A) bars such person from association with an entity regulated by such commission, authority, agency, or officer, or from engaging in the business of securities, insurance, banking, thrift activities, or credit union activities; or

"(B) constitutes a final order based on violations of any laws or regulations that prohibit fraudulent, manipulative, or deceptive conduct.".

(b) BARS ON FELONS ASSOCIATED WITH INVESTMENT ADVISERS.—Section 203(f) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–3(f)) is amended—

(A) by striking "or (8)" and inserting "(8), or (9)"; and

(B) by inserting "or (3)" after "paragraph (2)".

PURPOSE AND SUMMARY

H.R. 1408, the Financial Services Antifraud Network Act of 2001, will improve protections for consumers and businesses by coordinating the antifraud efforts of Federal and State financial regulators. The financial regulators are directed, to the extent practicable and appropriate, to develop procedures to provide for a network for the sharing of antifraud information. In addition to coordinating the different regulators' computer systems, H.R. 1408 establishes the first industry-wide comprehensive protections for confidentiality, privacy, and security, of government information shared through the network on regulated entities. It also directs the regulators to provide certain minimum due process rights where adverse actions are taken against a person.

To further protect information shared between regulators, H.R. 1408 establishes certain limited legal privileges and confidentiality and liability protections for regulatory and supervisory information.

H.R. 1408 also allows State insurance regulators to perform FBI fingerprint background checks on insurance applicants to obtain relevant criminal records, subject to certain limitations and protections against misuse. The fingerprinting section also clarifies that employers relying on a State insurance regulator's background approval of an insurance agent pursuant to section 114 of this legislation are not subject to liability resulting from section 1033 of title 18 of the United States Code, unless such employer knows that the person hired is in violation of that section.

Finally, H.R. 1408 limits the ability of persons to work in the securities industry if they have been disciplined by banking, thrift, credit union, or insurance regulators.

BACKGROUND AND NEED FOR LEGISLATION

There are over 250 Federal and State financial regulators and self-regulating financial organizations, each using different systems without a coordinated interface to share information and keep track of each other's antifraud efforts. Most regulators have already computerized their records and have been working on efforts to coordinate their databases internally. Recently, some of the larger regulators have even begun developing individual information-sharing agreements with other regulators across the financial industry. There are, however, no comprehensive cross-industry coordination efforts underway, and there are no comprehensive guidelines for safeguards to protect the confidentiality, privacy, and security of shared information. Effectuating individual coordination among all of the more than 250 financial regulators would require tens of thousands of separate agreements—something that would be neither efficient nor effective for protecting consumers.

Furthermore, at a joint March 6, 2001 hearing of the Subcommittee on Financial Institutions and the Subcommittee on Oversight and Investigation, several regulators testified that Federal legislation is necessary to establish confidentiality and liability protections so that financial regulators do not compromise existing legal privileges when sharing supervisory data with other regulators and law enforcement agencies. Iowa Insurance Commissioner Terri Vaughan testified:

> We need to create a national information antifraud network based on information-sharing agreements among functional regulators and law enforcement agencies * * * [with] technical standards for sharing * * * [and] with legal immunity for good-faith reporting and handling of regulator information.

Fraud artists have been able to successfully exploit the regulatory gaps in our current system, a gap that can be closed with greater coordination among the regulators. The Financial Services Roundtable testified at the March hearing that financial fraud costs consumers and the financial industry over $100 billion annually, and that greater information sharing would significantly reduce this fraud. The National Futures Association (NFA) testified that integrating their information systems has reduced the number of rogue brokers in the futures industry by an astounding 70 percent.

Similarly, at the March hearing the General Accounting Office (GAO) testified that coordinating regulatory history data would be useful to prevent rogue migration and limit fraud. In a subsequent analysis of H.R. 1408, the GAO estimated that a computer network meeting the basic information sharing requirements of H.R. 1408 would cost approximately $2–3 million to establish, and $260,000–$360,000 annually to operate. In just one recent case, Martin Frankel, a fraud artist barred from the securities industry, was able to enter into the insurance industry and cause hundreds of thousands of dollars in losses. Even if an anti-fraud network only prevented a small percentage of ongoing fraudulent activities it would pay for itself many times over.

At the March hearing, the Chairwoman of the Subcommittee on Oversight and Investigation Sue Kelly asked the witnesses specifically about the need for an information sharing network among regulators with appropriate liability and confidentiality protections. She received nearly unanimous agreement from the witnesses that:

1. Consumers would be better protected if the financial regulators use an automated background check of all agency databases for all financial licenses and applications, as opposed to making specific occasional inquiries;
2. Consumers would be better protected if all background checks for licenses and applications included a check of all financial regulator's databases for comprehensive and seamless coverage and not just those where individual information sharing agreements exist;
3. It would be cheaper and more effective to create one coordinated antifraud network to exchange information than to rely on numerous individual agreements and computer connections;
4. Regulators would be better able to fight fraud if they could share materials without risk of losing critical confidentiality and liability protections;
5. It would be more efficient for financial institutions to allow the regulators to use a single coordinated entity for sharing information to reduce duplicative examinations and reporting;
6. A coordinated network could be used by the regulators as it evolved over time to share other materials and financial data to reduce duplicative filings and examinations; and
7. It would improve consumer protection in the financial services industry if Congress created an anti-fraud network coordinating

limited information among regulators with full confidentiality protections.

Responding to this consensus, the Committee developed legislation directing the financial regulators to coordinate their computer systems to facilitate the sharing of appropriate antifraud information. The Committee contemplates that the financial regulators may accomplish this by coordinating their computer protocols so that their systems can seamlessly communicate and share critical antifraud information on a comprehensive basis.

This will help enable the regulators to prevent fraud artists from moving from one industry to another, detect patterns of fraud early on, and take advantage of Internet technology to modernize and streamline their antifraud efforts. It will also create a mechanism to reduce duplicative information requests by regulators and to increase the efficiency and effectiveness of financial regulation.

H.R. 1408 does not contemplate the creation of a database. Rather, it would network different existing systems so that they can easily communicate with each other. The regulators are currently undertaking this coordination of information on an ad hoc basis. This section directs that this coordination be done in a comprehensive fashion with proper safeguards. No new regulations are contemplated. No new collection of information is desired. And the direction to coordinate information is limited to data on financial companies and professionals, not consumers.

HEARINGS

The Subcommittee on Financial Institutions and Consumer Credit and the Subcommittee on Oversight and Investigations held a joint hearing entitled "Protecting Consumers: What can Congress do to help financial regulators coordinate efforts to fight fraud" on March 6, 2001.

The Subcommittees received testimony from: Julie Williams, First Senior Deputy Comptroller and Chief Counsel, Office of the Comptroller of the Currency; Scott Albinson, Managing Director, Examination and Supervision, Office of Thrift Supervision; Terri M. Vaughan, Iowa Commissioner of Insurance, Vice President of the National Association of Insurance Commissioners; Dennis Lormel, Section Chief, Financial Crimes Section, Federal Bureau of Investigation; David M. Becker, General Counsel, Securities and Exchange Commission; Richard J. Hillman, Director, Financial Markets and Community Investment, U.S. General Accounting Office; Karen Wuertz, Senior Vice President, Strategic Planning and Development, National Futures Association; Thomas Rodell, Executive Vice President and Chief Operating Officer of Aon Risk Services, Inc. and Chairman of The Council of Insurance Agents and Brokers; Ronald A. Smith, President, Smith, Sawyer and Smith, Inc., State Government Affairs Chairman of Independent Insurance Agents of America on behalf of IIAA, National Association of Insurance and Financial Advisors and the National Association of Professional Insurance Agents; and Steve Bartlett, President, The Financial Services Roundtable.

COMMITTEE CONSIDERATION

On June 13, 2001, the Subcommittee on Financial Institutions and Consumer Credit met in open session and approved H.R. 1408 for full Committee consideration, with an amendment, by a record vote of 20 yeas and 1 nay.

On June 27, 2001, the Committee met in open session and ordered H.R. 1408 reported to the House, with an amendment, with a favorable recommendation by a voice vote.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. No record votes were taken with in conjunction with the consideration of this legislation by the full Committee. A motion by Mr. Oxley to report the bill to the House with a favorable recommendation was agreed to by a voice vote. The following amendments were considered and agreed to by a voice vote:

An amendment in the nature of a substitute by Mr. Rogers, no. 1, making various changes, including increasing safeguards and protections related to information sharing through the anti-fraud network, further defining the information to be shared, and allowing more flexibility for the regulators in planning and implementing the anti-fraud network; and

An amendment to the amendment in the nature of a substitute by Mr. Oxley, no. 1a, to reinsert the confidential supervisory information privilege language from the Subcommittee print with some minor changes.

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee held a hearing and made findings that are reflected in this report.

PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee establishes the following performance related goals and objectives for this legislation:

The financial regulators will establish a network to better safeguard the public from fraud in the financial services industry and streamline and facilitate the antifraud information-sharing efforts of Federal and State regulators.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee finds that this legislation would result in no new budget authority, entitlement authority, or tax expenditures or revenues.

COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

H.R. 1408—Financial Services Antifraud Network Act of 2001

Summary: CBO estimates that enacting H.R. 1408 would have no significant impact on the budget. Enacting the legislation could affect direct spending and receipts, so pay-as-you-go procedures would apply; however, we estimate that any such impacts would not be significant. H.R. 1408 contains intergovernmental and private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA), but CBO estimates that the costs would not be significant and would not exceed the thresholds established in that act ($56 million for intergovernmental mandates and $113 million for private-sector mandates in 2001, adjusted annually for inflation).

H.R. 1408 would require financial regulators to coordinate their computer systems to share information about fraud. The affected regulators would include private regulatory organizations, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation (FDIC), the National Credit Union Administration (NCUA), the Office of the Comptroller of the Currency (OCC), the Office of Thrift Supervision (OTS), the Securities and Exchange Commission (SEC), and state regulators of the banking, insurance, and securities industries.

Estimated cost to the Federal Government: CBO estimates that coordinating computer systems among the affected regulatory organizations would cost about $2 million over the 2002–2003 period and insignificant amounts in subsequent years. Furthermore, we estimate that these costs could be partially offset by fees, and any net direct spending would be exempt from pay-as-you-go procedures.

The bill also would establish criminal penalties for regulators who intentionally disclose confidential or privileged information to the public. Finally, the bill would authorize these regulators to request the Federal Bureau of Investigation (FBI) to conduct criminal background checks on individuals in the financial services industry, and it would impose criminal penalties for the improper use of such information. Those prosecuted and convicted under H.R. 1408 could be subject to criminal fines; therefore, the federal government might collect additional fines if the bill is enacted. Collections of such fines are recorded in the budget as governmental receipts (revenues), which are deposited in the Crime Victims Fund and spent in subsequent years. CBO estimates that any impact of this legislation on collections of fines (and subsequent spending) would not be significant.

Basis of estimate: Federal financial regulators currently provide information about enforcement and disciplinary actions via the Internet. Under the bill, CBO expects that the financial regulators would create a search engine to share information about fraud, and that the FDIC, the NCUA, the OCC, or the OTS would bear the costs of this new system. The NCUA, the OCC, and the OTS, charge fees to cover all their administrative costs; therefore, additional spending by those agencies would have no significant net budgetary effect. That is not the case with the FDIC, however, which uses deposit insurance premiums paid by all banks to cover the expenses it incurs to supervise state-chartered banks. Because the balances in the deposit insurance funds exceed the levels required under current law, very few banks or savings and loans pay premiums for deposit insurance at this time. Therefore, CBO expects that under the bill the FDIC would not recover its costs from premium income.

The Federal Reserve remits its profits to the Treasury, and those payments are classified as governmental receipts in the federal budget. To the extent that the Federal Reserve bears the costs of sharing information, H.R. 1408 would reduce receipts, but CBO estimates that any such impact would be negligible. If federal regulators that receive annual appropriations, such as the SEC, bear the costs of sharing information, H.R. 1408 could increase discretionary spending, subject to the availability of appropriated funds.

Pay-as-you-go considerations: The Balanced Budget and Emergency Deficit Control Act sets up pay-as-you-go procedures for legislation affecting direct spending or receipts. Under the Balanced Budget and Emergency Deficit Control Act, Congressional actions to provide funding necessary to meet the government's deposit insurance commitment are excluded from pay-as-you-go procedures. CBO expects that the cost to the FDIC and other financial regulators to establish a system to share information on fraud would be related to the safety and soundness of deposit insurance, and thus, would be excluded. Although H.R. 1408 would establish new criminal penalties, CBO estimates that any impact of this legislation of the collection of criminal fines and subsequent spending would not be significant.

Intergovernmental and private-sector impact: The bill would require state and private financial regulators to:

—Participate in a network that links databases containing information on final enforcement and disciplinary actions they take. The bill does not require regulators to create new databases; rather, if such databases of public information exist, those regulators must make the contents available to the network.

—Provide notice to persons against whom enforcement or disciplinary action is taken based on information from the network. Such notice would include the identity of the network participant who provided the information, a description of the information received, and an opportunity to respond to the information.

The requirement to make information available to the network and to meet certain notice requirements would constitute both private-sector and intergovernmental mandates.

The bill also would exempt certain state disclosure laws that would apply to the regulatory information released to the network, to the extent that state laws provide less confidentiality or a weak-

er privilege than the bill provides. The bill would require state insurance regulators, when being audited by the General Accounting Office (GAO), to make all records available to GAO as part of the audit. The preemption and new requirement would be intergovernmental mandates.

Based on information from governmental and industry sources, CBO estimates that the costs of these mandates would not be significant. Because the regulators would be required to provide information from databases that already exist, the costs to regulators would be incurred only to bring those databases into compliance with the network design. The notice requirements would expand the procedures states already follow in their regulatory process and would impose minimal costs.

The bill would place certain eligibility requirements on state insurance commissioners and state securities administrators in order to access information from the network. These eligibility provisions affect voluntary access to network information and therefore are not mandates.

Estimate prepared by: Federal costs: Mark Hadley and Ken Johnson; impact on State, local, and tribal governments: Susan Sieg Tompkins; impact on the private sector: Paige Piper/Bach.

Estimate approved by: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds that the Constitutional Authority of Congress to enact this legislation is provided by Article 1, section 8, clause 1 (relating to the general welfare of the United States); Article 1, section 8, clause 3 (relating to the power to regulate interstate commerce); Article 1, section 8, clause 5 (relating to the power to coin money and regulate the value thereof); and Article I, section 8, clause 18 (relating to making all laws necessary and proper for carrying into execution powers vested by the Constitution in the government of the United States).

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

EXCHANGE OF COMMITTEE CORRESPONDENCE

HOUSE OF REPRESENTATIVES,
COMMITTEE ON AGRICULTURE,
Washington, DC, July 31, 2001.

Hon. MICHAEL G. OXLEY,
Chairman, House Committee on Financial Services, Rayburn House Office Building, Washington, DC.

DEAR CHAIRMAN OXLEY: I understand that the Committee on Financial Services recently ordered reported H.R. 1408, the Financial Services Antifraud Network Act of 2001. As you know, the legislation contains provisions which fall within the jurisdiction of the Committee on Agriculture pursuant to clause 1(a) of Rule X of the Rules of the House of Representatives.

Because of your willingness to consult with the Committee on Agriculture regarding this matter and the need to move this legislation expeditiously, I will waive consideration of the bill by the Committee on Agriculture. By agreeing to waive its consideration of the bill, the Agriculture Committee does not waive its jurisdiction over H.R. 1408. In addition, the Committee reserves its authority to seek conferees on any provisions of the bill that are within the Agriculture Committee's jurisdiction during any House-Senate conference that may be convened on this legislation.

I request that you include this letter and your response as part of your committee's report on the bill and the Congressional Record during consideration of the legislation on the House floor.

Thank you for your attention to these matters.

Sincerely,

LARRY COMBEST, *Chairman.*

HOUSE OF REPRESENTATIVES,
COMMITTEE ON FINANCIAL SERVICES,
Washington, DC, August 1, 2001.

Hon. LARRY COMBEST,
Chairman, House Committee on Agriculture, Longworth House Office Building, Washington, DC.

DEAR CHAIRMAN COMBEST: Thank you for your letter regarding your Committee's jurisdictional interest in H.R. 1408, the Financial Services Antifraud Network Act of 2001.

I acknowledge your committee's jurisdictional interest in this legislation and appreciate your cooperation in moving the bill to the House floor expeditiously. I agree that your decision to forego further action on the bill will not prejudice the Committee on Agriculture with respect to its jurisdictional prerogatives on this or similar legislation. I will include a copy of your letter and this response in the Committee's report on the bill and the Congressional Record when the legislation is considered by the House. Additionally, I will support any request you might make for conferees, should a conference be necessary.

Thank you again for your cooperation.

Sincerely,

MICHAEL G. OXLEY, *Chairman.*

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title; table of contents

This section establishes the short title of the bill, the "Financial Services Antifraud Network Act of 2001" and provides a table of contents.

Section 2. Purposes

This section explains the purposes of the legislation.

Title I—Antifraud Network

SUBTITLE A—DIRECTION TO FINANCIAL REGULATORS

Section 100. Creation and operation of the network

This section directs the financial regulators to develop procedures to provide for a network for the sharing of antifraud information. The Committee contemplates that the financial regulators may accomplish this by coordinating their computer systems to facilitate the sharing of appropriate antifraud information. There are more than 250 different financial regulators each using different computer systems without a coordinated interface to share information and keep track of each other's antifraud efforts. This section begins the process both of coordinating the different regulators' computer systems and establishing appropriate protections for confidentiality, privacy, and security, on a comprehensive basis. This section does not contemplate the creation of a database, but rather looks to network different existing systems so that they can easily communicate with each other. In fact, the regulators are currently undertaking this coordination of information on an ad hoc basis. This section directs that this coordination be done in a comprehensive fashion with proper safeguards. The Committee does not contemplate the promulgation of new regulations, nor does it believe that the collection of new information is necessary or desirable to fulfill the networking requirements of this legislation. The direction to coordinate information is limited to data on financial companies and professionals, not consumers.

Subsection (a) directs the financial regulators to develop procedures to provide for a network for the sharing of antifraud information. The regulators are also directed to develop an ongoing process to continue coordinating and improving their antifraud efforts over time. The Committee expects this ongoing process to include some facilitation of regular or periodic meetings where appropriate to discuss further process or technology upgrades.

Subsection (b) sets forth the minimum level of coordination required by the regulators. The networking of information must include the sharing of certain final disciplinary and formal enforcement actions. However, this requirement only applies where the actions are public, electronically accessible (already in a database or other existing computer format), and related to conduct of financial companies or professionals that is fraudulent, dishonest, or involves a breach of trust or failure to be properly registered or licensed.

The regulators are further instructed to consider sharing other relevant and useful anti-fraud information so long as adequate privacy, confidentiality, and security safeguards can be established to

govern such information sharing. The regulators are directed to develop a plan to share such information where it is already publicly accessible or does not include personally identifiable information on consumers. In the latter category, the subsection contemplates information will be shared by regulators on licenses and applications, financial affiliations and name-relationships, aggregate trend data, and reports generated by or for or filed with the regulator, or similar information that is filed with a regulator (or generated by a regulator) that is factual and substantiated and being shared for the purpose of verifying an application or other declaration filed by a regulated company or financial professional. For example, this would allow a regulator to cross check information filed by a company with information provided to another regulator by the company's affiliates.

This subsection also outlines certain minimum protections that the Committee expects the regulators to provide for their regulatees through the network when sharing information on a comprehensive basis. Specifically, when any regulator uses information as described in the subsection to take an adverse action against a person, the regulator must notify the person of the right to reasonably respond to the use of the information in taking the adverse action. The regulator must also notify the person, revealing the identity of the regulator that provided the information, and provide a specific and detailed description of the information relied upon in taking the adverse action.

For example, where a financial regulator suggests that a person should consider withdrawing an application or other request for agency action based on information that was received from another regulator through the network, the Committee contemplates that the regulator will still make every reasonable effort to provide a specific and detailed description of the relevant portions of the information to the person, so that the person is made aware of exactly what negative information is being considered. Where practicable, the regulators must provide the notice and the opportunity to respond before any final action against the person is completed, except where substantial or material harm would result, in which case the notice and opportunity to respond will be provided at the time of such action. The Committee recognizes that many agencies will already have due process protections in place that a regulator will determine are sufficiently similar or stronger, and does not intend to supercede such protections. The Committee also understands that there are circumstances, such as issuance of Summary Orders under State securities laws, where it would be impracticable or inappropriate for financial regulators to provide the advance notice required by section 100(b)(3), but financial regulators in such circumstances are still obligated to provide a reasonable opportunity to respond to the network information used. Additionally, these due process protections are not intended to allow individuals to re-open final public decisions merely because they are referred to on the network.

The Committee expects that participants in the network will maintain procedures and safeguards for controlling and limiting access to any confidential information. Such procedures and safeguards should include measures to limit the risk of unauthorized disclosure of information shared through the network.

Subsections (d) through (f) provide that the Federal financial regulators have 6 months to submit a networking plan to Congress and all the financial regulators have 2 years to implement it. The Secretary of the Treasury must determine at the end of the 6 months whether the regulators have submitted a plan that substantially meets the requirements of this legislation, and again at the end of 2 years whether the regulators have established a network that substantially complies with this legislation. If they do not meet these requirements, then a decision-making subcommittee structure is created in subtitle B. If the Secretary does not submit either affirmative determination within 30 days of the specified time period, then subtitle B will take effect. These subsections are intended to allow the financial regulators the opportunity to coordinate their computer systems on their own, but if they fail to meet the time deadlines, then subtitle B establishes a process (i.e., the Subcommittee) to facilitate decisions on how to perform the networking of information.

Subsection (g) provides that a financial regulator may meet the requirement to share final disciplinary or formal enforcement actions if the other regulators have access to a centralized database containing sufficiently similar information (such as a database maintained by the NASD or NAIC containing that information) or the financial regulator makes the information available to the public over the Internet. It announces the sense of the Congress that the NAIC, the Conference of State Bank Supervisors (CSBS), the American Council of State Savings Supervisors (ACSSS), the National Association of State Credit Union Supervisors (NASCUS), and the North American Securities Administrators Association (NASAA) should develop model guidelines for their respective regulated financial industries to promote uniform standards for sharing information with the network.

Subsection (h) establishes that each participant that allows access to its databases may establish parameters for controlling or limiting such access, with the exception of final disciplinary or formal enforcement actions. Limitations include the type or category of information that may be accessed, the participants that may have access to the database or any specific type or category of information, and the subsequent disclosure of the accessed information by any other participant. Any transfer of information other than final disciplinary or formal enforcement actions must be accompanied by a disclaimer that the information may be unsubstantiated and may not be relied on as the basis for denying any application or license. The creation and use of the anti-fraud network is not intended to replace access to any current databases by the public or financial entities.

Subsection (i) establishes eligibility requirements for State securities administrators to access the network. The ability to access the network is intended to reflect the ability to obtain information from other regulators through the coordinated computer systems. A limit on a regulator's ability to access the network does not relieve the regulator of the obligation to share final disciplinary and formal enforcement actions. To be eligible to access the network, a State securities administrator must (within 3 years of enactment) meet two requirements: (1) participate in a centralized database for broker-dealers, broker-dealer agents, investment advisers, and in-

vestment adviser representatives as designated by NASAA; and (2) require the broker-dealer, broker-dealer agent, investment adviser, and investment adviser representative to file applications and follow-up documentation through the centralized registration database.

The Committee notes the unfortunate development that several state regulatory authorities are refusing to require state-registered investment advisers to use the Investment Advisor Registration Depository (IARD). The Committee believes that a significant goal of the IARD will remain unfulfilled until all States mandate uniform rules that require investment advisers to make filings on the IARD. The Committee applauds the North American Securities Administrators Association for adopting a model rule that urges full and complete participation in the IARD by the states, and urges all the states to do so. The Committee emphasizes that it is critically important that all states require all investment advisers to utilize the IARD in order to provide a more valuable resource for investors, regulators, and others. With that goal in mind, this section makes state securities administrators' access to the network established in this Act contingent on the state mandating electronic filing by advisers through the IARD.

Subsection (j) establishes eligibility requirements for State insurance commissioners to access the network. To be eligible, a State must meet two requirements. First, the State insurance department must participate with other States in the NAIC database on disciplinary actions. Also, within 3 years of enactment, the department must participate in the NAIC databases on business affiliations and consumer complaints. Second, the State must be accredited by the NAIC or have an application for accredited status pending. Inclusion in the following databases maintained by the NAIC meets this participation requirement: Regulatory Information Retrieval System, Producer Database, and Complaints Database.

Subsection (k) provides that each financial regulator must consider developing guidelines for participants on denoting which types of information are to receive different levels of confidentiality protection and how entities or associations that act on behalf of financial regulators (such as associations of State regulators) should denote such agency status.

Subsection (l) provides that creation or use of the network does not affect the authority of a financial regulator to provide any person, including another participant, access to any information in accordance with any provision of law other than this legislation.

SUBTITLE B—POTENTIAL ESTABLISHMENT OF ANTIFRAUD SUBCOMMITTEE

Subtitle B gives the financial regulators 6 months to develop a proposal and 2 years to implement it to coordinate certain computer information. If they fail to do this on their own, then a subcommittee is created within the President's Working Group on Financial Markets with representative regulators from each of the financial industries to make decisions regarding the network protocols. This subcommittee would then have a similar time frame to plan and establish the network in conjunction with the other regulators, unless they determine that it is impracticable or not cost efficient. The subcommittee does not have any regulatory power or

authority, but rather is intended by the Committee merely to help the more than 250 regulators make decisions on creating a cross-industry Internet search engine and developing computer data protocols and recommended guidelines for regulator information sharing.

Section 101. Establishment

If the regulators are unable to develop an antifraud computer network on their own as set forth in section 100, then this section establishes the Antifraud Subcommittee (hereafter referred to as the Subcommittee) within the President's Working Group on Financial Markets. The Secretary of the Treasury, Chairman of the Securities and Exchange Commission (SEC), a State insurance commissioner designated by the National Association of Insurance Commissioners (NAIC), the Chairman of the Commodity Futures Trading Commission (CFTC), and a designee of the Chairman of the Federal Financial Institutions Examination Council (currently made up of the 5 Federal banking agencies) are members of the Subcommittee. Representatives of various financial regulators serve as financial liaisons while representatives of the Department of Justice, the Federal Bureau of Investigation, the United States Secret Service, and the Financial Crimes Enforcement Network serve as law enforcement liaisons. The Subcommittee may recognize additional regulators as other liaisons. If a membership position on the Subcommittee is not filled, whether by unwillingness, circumstance, or operation of law, then the President is required to appoint someone to fill such role with the missing regulator's guidance. Since the existence of the Working Group is at the direction of the President, the President may move the Subcommittee coordinating function to another appropriate place. However, if the Subcommittee's structure or duties are significantly altered, the Subcommittee members can withdraw from their direct involvement.

Section 102. Purposes of the subcommittee

Subsection (a) describes the general duties of the Subcommittee which include coordinating access by the participants to financial regulator antifraud databases through the network; coordinate information sharing, where appropriate, among State, Federal, and foreign financial regulators and law enforcement agencies where sufficient privacy and confidentiality safeguards exist; consider coordinating development by participants of a name-relationship index for determining cross-industry affiliations and relationships; and the development of guidelines for ensuring appropriate privacy, confidentiality, and security of shared information.

Subsection (b) requires that the financial regulators allow participants in the network to access their records on public final disciplinary or formal enforcement actions relating to fraudulent or wrongful conduct, a breach of trust, or a failure to register with the appropriate financial regulator. Those records do not have to be made accessible if they are not already computerized. It also announces the sense of the Congress that the participants should, to the extent they consider practicable and appropriate, consider sharing other antifraud information similar to that described in section 100. The subsection also creates a due process right to be notified

of and respond to information obtained through the network that is used to take an adverse action, similar to section 100.

The remainder of subsection (b) and subsections (c) through (f) set forth similar requirements and directions as in the parallel provisions in section 100.

Subsection (g) requires the Subcommittee to report to Congress within 6 months regarding the methods that the regulators will use to network antifraud information and what impediments exist to that networking. The Subcommittee and the regulators are required to establish the network within 2 years of subtitle B taking effect. If the Subcommittee, in conjunction with the liaisons, determines that the network would not be practicable or cost-effective, then the Subcommittee must report annually to Congress on its efforts to coordinate regulator antifraud information sharing efforts until the networking requirements are fulfilled.

Subsection (h) provides that the creation or use of the network will not affect the authority of a participant to provide any person, including another participant, access to any information in accordance with any provision of law other than this legislation. Subsection (i) clarifies that the Subcommittee will not be able to force a member or liaison to create a new database or otherwise incur significant costs in modifying its databases. Instead, the members or liaison can merely allow the network access to the required information (the ability to connect to their systems via Internet or otherwise to search and/or download the relevant information from their database).

Section 103. Chairperson; term of chairperson; meetings; officers and staff

This section provides that a Chairperson of the Subcommittee is to be selected from the members to serve a term of 2 years. The Chairperson is empowered to appoint Subcommittee staff as may be necessary. The Chairperson or a majority of the members may call meetings. A majority of the members is required to constitute a quorum and to make decisions.

Section 104. Nonagency status

Section 104 clarifies that the Subcommittee is not an advisory committee pursuant to the Federal Advisory Committee Act, nor a federal agency with respect to certain administrative procedures that apply to federal agencies.

Section 105. Powers of the subcommittee

The Subcommittee has the powers necessary to carry out its duties and functions. Each agency and entity represented by a member or liaison is required, to the extent permitted by law, to provide information concerning its databases to facilitate coordination. Members and liaisons will serve without additional compensation. The Subcommittee may request that each agency or entity represented by a member or liaison provide administrative, technical, or other support service.

Section 106. Agreement on cost structure

Under this section, the Subcommittee is to determine the means for providing for any necessary costs of carrying out the purposes

of this subtitle in consultation and agreement with each member or liaison concerning its respective contribution. With the exception of final disciplinary and formal enforcement actions, a member or liaison may request the reimbursement of reasonable costs for providing access to its databases.

SUBTITLE C—REGULATORY PROVISIONS

Section 111. Agency supervisory privilege

Section 111 clarifies that confidential supervisory information (CSI) prepared or collected by bank, securities, insurance, and other financial regulators as part of their supervisory responsibilities is privileged from unauthorized disclosure. CSI includes confidential reports of examination or investigation prepared by a financial regulator in fulfilling its supervisory responsibilities, as well as correspondence and other documents related to these reports that a regulator treats as confidential, such as confidential examiner work-papers. CSI does not include certain information that is not prepared at the request of financial regulators or information required to be made available under applicable Federal or State law.

CSI prepared by a financial regulator or collected by a financial regulator from a person engaged in financial activities in the course of the supervisory process is privileged. As such, only the regulator who created the information or requested it can authorize its disclosure. Moreover, if a regulated entity provides information to the regulator in the course of the supervisory process, the regulated entity does not waive any privilege it may otherwise assert.

A regulator must give the regulated entity notice if it decides to release CSI that was requested from the entity except under certain circumstances. For example, the notice provisions do not apply if the information is being provided to another financial regulator or liaison, is to be used for law enforcement purposes, or is information that was originally created or included in information created by the regulator (e.g., a report of examination).

Financial regulators may share information with each other without waiving any supervisory privilege. A regulated entity or another supervisory agency, with which a financial regulator shares information, generally may not disclose CSI without the consent of the financial regulator that holds the privilege. However, a person may still take certain types of information prepared for one regulator and provide them to a second regulator that has the authority to obtain that information under other provisions of law. The CSI provisions also do not create any new authority for regulators to disclose information in contravention of other applicable law.

There are exceptions to a financial regulator's ability to withhold CSI. A regulator cannot prevent access to CSI by Congress or the GAO. Moreover, because some financial regulators (e.g., the National Association of Securities Dealers and the National Futures Association) are subject to oversight by a Federal agency, section 111 also provides that such financial regulators may not use the privilege to prevent access to CSI by the Federal agency with oversight authority.

H.R. 1408 is not intended to limit or otherwise affect access to or sharing of confidential supervisory information as set forth by section 36(h) of the Federal Deposit Insurance Act (12 U.S.C. 1831m(h)). That section requires certain financial institutions to transmit to the institution's auditor a copy of the most recent report of examination and other confidential supervisory information received by the institution from its financial regulator.

The safety and soundness of persons engaged in the business of conducting financial activities is of paramount importance. A key component to ensuring that safety and soundness is an independent audit. In order for there to be an independent audit of a person engaged in the business of conducting financial activities, it is necessary for the person's independent auditor to have access to the person's reports of examination and other confidential supervisory information received by the person from its financial regulator. The banking agencies already allow access by independent auditors to relevant examination reports and other confidential supervisory information either by agency rule or by agency policy or practice. In order to ensure that independent audits of persons engaged in the business of conducting financial activities will continue to occur without interruption, Congress expects that financial regulators that have not already done so will immediately adopt rules or take other appropriate action consistent with this legislation to allow a person's independent auditor to have access to the person's reports of examination and other confidential supervisory information received by the person from its financial regulator.

Finally, books and records in the possession of or maintained on behalf of a regulated entity (other than reports prepared for, and information created by, a financial regulator) are not CSI for purposes of section 111. Third parties may continue to obtain ordinary books and records of a regulated entity directly from the entity subject to any lawful privilege that the regulated entity may assert.

Section 112. Confidentiality of information

Subsection (a) provides that any Federal or State privacy, confidentiality, or other privilege applying to information of a participant will continue to apply to such information after it has been shared with another participant through the network. This ensures that any existing confidentiality protections or privileges follow the information as it goes from participant to participant in the network. Subsection (a) also extends additional Federal confidentiality protections to certain insurance information shared through a computer network maintained by the NAIC.

Subsection (b) preempts State laws, including State open record laws, that are inconsistent with the confidentiality provisions of the bill and provide less confidentiality or privilege protections. Subsection (c) provides that a participant may not receive information through the network unless the participant can maintain full compliance with the confidentiality protections established in the bill. This would not, however, relieve the participant of the duty to provide access to certain required information as set forth in section 100.

Section 113. Liability protections

Subsection (a) provides liability protection, somewhat similar to the Federal Tort Claims Act, for financial regulators and their employees that are acting in good faith and within the scope of their employment, relating to communicating regulatory or supervisory information concerning persons engaged in the business of conducting financial activities with other regulators. Subsection (b) sets forth criminal penalties (imprisonment for not more than 5 years and fines) for intentional disclosures of confidential or privileged information per this title. Subsection (c) clarifies that the protections of the Federal Tort Claims Act are not limited by this Act. Subsection (d) provides that the term "financial regulator" includes the Subcommittee if subtitle B has taken effect.

Section 114. Authorization for identification and criminal background check

This section is intended to allow the Federal Bureau of Investigation (FBI) to provide certain criminal records to State regulators to help such regulators perform licensing background checks. This section does not actually authorize or require State regulators to perform such checks, nor does it require that they use this section to request such information. Under existing Federal law, States can authorize their insurance regulators to receive criminal history records from the FBI, and several States have done so. Section 114 provides additional authority that States may use without superseding their existing authority.

Subsection (a) directs the Attorney General, upon request from a financial regulator, to perform a search for criminal background records that match the fingerprints or other identifying information required to be provided. The Attorney General may then either provide such information to an authorized agent of the regulator, or if the Attorney General wants to screen the records for relevant information, the Attorney General may provide such relevant information directly to the regulator. If the Attorney General provides records to an authorized agent, then such agent must similarly screen the records for relevant information, and may only provide to the regulators the relevant information. Relevant information is defined as all felony and certain misdemeanor conviction records of the applicant. An authorized agent can be a State Attorney General, any law enforcement designee of the Attorney General or such State Attorney General, or any agent that has been recognized by the Attorney General for such purpose and appointed as agent by at least 3 other financial regulators. For example, the Committee contemplates that a sufficient number of State insurance regulators may choose to request that the Attorney General recognize the NAIC to act as their authorized agent in receiving criminal records and providing relevant portions to the State insurance regulators.

Subsection (a) also provides that State insurance regulators may only use the powers authorized under this section if they have uniform or reciprocal agent licensing laws, as set forth in the National Association of Registered Agents and Brokers provisions of the Gramm-Leach-Bliley Act (section 321 of Public Law 106–102). The determination of whether or not a State has uniform or reciprocity laws will be made by the Attorney General, with the advice and

counsel of the National Association of Insurance Commissioners, except under certain circumstances. It is the expectation of the Committee that the Attorney General will rely on a reasonable determination by the NAIC regarding a State's laws.

Subsection (b) allows the Attorney General to specify what form of identification is required to accompany a criminal record search request, and requires that the financial regulator has obtained an acknowledgement from the person whose records are being searched that the regulator may request such records. The Committee expects that the Attorney General will request the fingerprints of the person whose records are being searched, unless the Attorney General decides that some other reasonably cost-efficient identifying technology is preferable.

Subsection (c) limits the permissible uses of the criminal background information to regulatory and law enforcement purposes. It also limits disclosure of the information, beyond the transfer of screened information from the Attorney General to the authorized agent to the financial regulator. Further disclosure is allowed only from the regulator to another financial regulator or law enforcement agency, and only where the recipient agrees to similarly limit further disclosure and to maintain the confidentiality of the information.

Subsection (d) provides penalties for improper use of the criminal records. It further provides that an authorized agent who knowingly and willfully uses the information for an unauthorized purpose, or an insurance officer who directs such agent to so misuse information, will be barred from engaging in or regulating insurance activities. The Attorney General can waive that restriction as appropriate. This subsection is intended to prevent regulators from pressuring their agents to transfer criminal records to them, where the agents know that the records are irrelevant and that such transfer would thus be in violation of the law.

Subsection (e) provides additional legal protections to a financial regulator who reasonably relies on the criminal background records provided by the Attorney General. Subsection (f) clarifies the application of section 1033 of title 18, United States Code. Employers relying on a State insurance regulator's background approval of an insurance agent pursuant to section 114 of this legislation are not subject to liability resulting from section 1033 of title 18 of the United States Code, unless that employer knows that the person hired is in violation of that section.

Subsection (g) enables a financial regulator to designate a representative to facilitate requests and exchanges of information under this section. It announces the sense of the Congress that each State insurance regulator should designate the NAIC as such representative and that the NAIC and other financial regulators that require criminal background checks retain any records under this section in order to reduce multiple or duplicative criminal background checks. The Committee hopes that eventually a person seeking to obtain an insurance license in multiple states would only have to pay for and process one background check for each licensing period. The NAIC and other financial regulators are also encouraged to consult with the Attorney General to consider the feasibility of developing an on-going notification system that would

allow the Attorney General to notify them when a licensed or approved professional is convicted of a relevant crime.

Subsection (h) gives the Attorney General the authority to charge reasonable fees for the provision of information under this section. Subsection (i) clarifies that this section cannot be interpreted to provide authorization for a financial regulator to require fingerprinting as a part of a licensure or other application. There must be independent statutory authority to be able to request the information. This subsection also makes clear that no financial regulator is required to perform criminal background checks under this section—current systems used by financial regulators to perform criminal background checks are not supplanted. Subsection (j) authorizes the Attorney General to prescribe regulations to carry out this section.

Section 115. Definitions

This section provides definitions of certain terms used in title I.

Section 116. Technical and conforming amendments to other acts

This section makes necessary technical and conforming amendments to other acts.

Section 117. Audit of State insurance regulators

Section 117 gives the Comptroller General of the United States the authority to audit a State insurance regulator, although only at the request of the Congress. The auditing authority includes any entity acting on behalf of the regulator, such as the NAIC or similar associations.

Title II—Securities Industry Coordination

SUBTITLE A—DISCIPLINARY INFORMATION

Section 201. Investment Advisers Act of 1940

Section 201 amends provisions of the Investment Advisers Act of 1940 relating to the establishment of a one-stop filing system for investment advisers by the Securities and Exchange Commission (the Commission). Section 201 also provides liability protection for the system operator for statements made in reports filed on the system (based on protections afforded under similar provisions of the Securities Exchange Act of 1934 for broker-dealer filings).

Last year, the Commission adopted final rules requiring federally registered investment advisers to file Form ADV, Part 1—the basic registration document for investment advisers—via an Internet-based electronic filing system, the Investment Adviser Registration Depository (IARD). Electronic Filing by Investment Advisers; Amendments to Form ADV (Release No. IA–1897; 34–43282: File No. S7–10–00). Final rules relating to Form ADV, Part 2 are expected in the near future.

On July 28, 2000, the Commission designated NASD Regulation, Inc. as the operator of the IARD. The Commission has made clear that NASDR's role is limited to developing and operating the IARD, and that NASDR has no authority as a self-regulatory organization (SRO) over investment advisers. The Committee agrees with the limitations the Commission has imposed upon NASDR's role and emphasizes that the Commission alone has the duty under

law to carry out the various responsibilities associated with the IARD with respect to federally registered investment advisers, including providing ready access to disciplinary and other information to investors, ensuring that fees to support the IARD are reasonable, and ensuring that all costs of the IARD are appropriate and necessary (particularly the costs associated with NASDR's role in administering the system).

Section 202. Securities and Exchange Act of 1934

This section amends section 15A(i) of the Securities Exchange Act of 1934. Pursuant to section 15A(i), the NASDR operates the Central Registration Depository (CRD) which maintains regulatory information about broker-dealers and their associated persons. Section 15A(i) requires the NASDR to maintain a toll-free telephone listing to receive inquiries about disciplinary actions involving members and to promptly respond to those inquiries. It also immunizes any person for liability for actions taken or omitted in good faith under that provision. Section 202 makes clear that this liability protection encompasses other readily accessible electronic processes for distributing information, i.e. the distribution of the information over the Internet. The section also broadens the description of the information to be made available, including information about disciplinary actions reported to the CRD by a national securities exchange.

SUBTITLE B—PREVENTING MIGRATION OF ROGUE FINANCIAL PROFESSIONALS TO THE SECURITIES INDUSTRY

Section 211. Securities Exchange Act of 1934

This section amends several provisions of the Securities Exchange Act of 1934 to enhance the Commission's authority to limit the ability of persons to work in the securities industry if they have been disciplined by banking, thrift, credit union, or insurance regulators.

Section 212. Investment Advisers Act of 1940

This section amends several provisions of the Investment Advisers Act of 1940 to enhance the Commission's authority to limit the ability of persons to act as investment advisers if they have been disciplined by banking or insurance regulators, or have been convicted of certain felonies.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

SECTION 552a OF TITLE 5, UNITED STATES CODE

§ 552a. Records maintained on individuals

(a) * * *

(b) CONDITIONS OF DISCLOSURE.—No agency shall disclose any record which is contained in a system of records by any means of

communication to any person, or to another agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains, unless disclosure of the record would be—

(1) * * *

* * * * * * *

(11) pursuant to the order of a court of competent jurisdiction; [and]

(12) to a consumer reporting agency in accordance with section 3711(e) of title 31[.]*; or*

(13) for recordkeeping, licensing, and other regulatory and law enforcement purposes in accordance with title I of the Financial Services Antifraud Network Act of 2001—

(A) through a network or name-relationship index maintained under such title; or

(B) to a multistate database maintained by the National Association of Insurance Commissioners and any subsidiary or affiliate of such association, subject to the requirements of such title.

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SECTION 1113 OF THE FINANCIAL INSTITUTIONS REGULATORY AND INTEREST RATE CONTROL ACT OF 1978

EXCEPTIONS

SEC. 1113. (a) * * *

* * * * * * *

(r) This title shall not apply to disclosure by a financial regulator of information pursuant to subtitle A or B of the Financial Services Antifraud Network Act of 2001 to the extent the disclosure is made in accordance with the requirements of such Act.

SECTION 602 OF THE CONSUMER CREDIT PROTECTION ACT

§ 602. Findings and purpose

(a) * * *

* * * * * * *

(c) This title shall not apply to a communication between participants, as defined in the Financial Services Antifraud Network Act of 2001, to the extent the communication is made in accordance with such Act.

INVESTMENT ADVISERS ACT OF 1940

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TITLE II—INVESTMENT ADVISERS

* * * * * * *

REGISTRATION OF INVESTMENT ADVISERS

SEC. 203. (a) * * *

* * * * * * *

(e) The Commission, by order, shall censure, place limitations on the activities, functions, or operations of, suspend for a period not exceeding twelve months, or revoke the registration of any investment adviser if it finds, on the record after notice and opportunity for hearing, that such censure, placing of limitations, suspension, or revocation is in the public interest and that such investment adviser, or any person associated with such investment adviser, whether prior to or subsequent to becoming so associated—

(1) * * *

* * * * * * *

[(7) is subject to an order of the Commission entered pursuant to subsection (f) of this section barring or suspending the right of such person to be associated with an investment adviser which order is in effect with respect to such person.

[(8) has been found by a foreign financial regulatory authority to have—

[(A) made or caused to be made in any application for registration or report required to be filed with a foreign securities authority, or in any proceeding before a foreign securities authority with respect to registration, any statement that was at the time and in light of the circumstances under which it was made false or misleading with respect to any material fact, or has omitted to state in any application or report to a foreign securities authority any material fact that is required to be stated therein;

[(B) violated any foreign statute or regulation regarding transactions in securities or contracts of sale of a commodity for future delivery traded on or subject to the rules of a contract market or any board of trade; or

[(C) aided, abetted, counseled, commanded, induced, or procured the violation by any other person of any foreign statute or regulation regarding transactions in securities or contracts of sale of a commodity for future delivery traded on or subject to the rules of a contract market or any board of trade, or has been found, by the foreign finanical regulatory authority, to have failed reasonably to supervise, with a view to preventing violations of statutory provisions, and rules and regulations promulgated thereunder, another person who commits such a violation, if such other person is subject to his supervision.]

(7) is subject to any order of the Commission barring or suspending the right of the person to be associated with an investment adviser.

(8) has been found by a foreign financial regulatory authority to have—

(A) made or caused to be made in any application for registration or report required to be filed with a foreign securities authority, or in any proceeding before a foreign securities authority with respect to registration, any statement that was at the time and in light of the circumstances

under which it was made false or misleading with respect to any material fact, or has omitted to state in any such application, report, or proceeding any material fact that is required to be stated therein;

(B) violated any foreign statute or regulation regarding securities, banking, thrift activities, credit union activities, insurance, or contracts of sale of a commodity for future delivery traded on or subject to the rules of a contract market or any board of trade;

(C) aided, abetted, counseled, commanded, induced, or procured the violation by any other person of any foreign statute or regulation regarding securities, banking, thrift activities, credit union activities, insurance, or contracts of sale of a commodity for future delivery traded on or subject to the rules of a contract market or any board of trade, or to have failed reasonably to supervise, with a view to preventing violations of statutory provisions, and rules and regulations promulgated thereunder, another person who commits such a violation, if such other person is subject to his supervision.

(9) is subject to any final order of a State securities commission (or any agency or officer performing like functions), State authority that supervises or examines banks, thrifts, or credit unions, State insurance commission (or any agency or office performing like functions), an appropriate Federal banking agency (as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)), or the National Credit Union Administration, that—

(A) bars such person from association with an entity regulated by such commission, authority, agency, or officer, or from engaging in the business of securities, insurance, banking, thrift activities, or credit union activities; or

(B) constitutes a final order based on violations of any laws or regulations that prohibit fraudulent, manipulative, or deceptive conduct.

(f) The Commission, by order, shall censure or place limitations on the activities of any person associated, seeking to become associated, or, at the time of the alleged misconduct, associated or seeking to become associated with an investment adviser, or suspend for a period not exceeding twelve months or bar any such person from being associated with an investment adviser, if the Commission finds, on the record after notice and opportunity for hearing, that such censure, placing of limitations, suspension, or bar is in the public interest and that such person has committed or omitted any act or omission enumerated in paragraph (1), (5), (6), **[**or (8)**]** *(8), or (9)* of subsection (e) or has been convicted of any offense specified in paragraph (2) *or (3)* of subsection (e) within ten years of the commencement of the proceedings under this subsection, or is enjoined from any action, conduct, or practice specified in paragraph (4) of subsection (e). It shall be unlawful for any person as to whom such an order suspending or barring him from being associated with an investment adviser is in effect willfully to become, or to be, associated with an investment adviser without the consent of the Commission, and it shall be unlawful for any investment adviser to permit such a person to become, or remain, a person asso-

ciated with him without the consent of the Commission, if such investment adviser knew, or in the exercise of reasonable care, should have known, of such order.

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ANNUAL AND OTHER REPORTS

SEC. 204. [Every investment] *(a) IN GENERAL.—Every investment* adviser who makes use of the mails or of any means or instrumentality of interstate commerce in connection with his or its business as an investment adviser (other than one specifically exempted from registration pursuant to section 203(b) of this title), shall make and keep for prescribed periods such records (as defined in section 3(a)(37) of the Securities Exchange Act of 1934), furnish such copies thereof, and make and disseminate such reports as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors. All records (as so defined) of such investment advisers are subject at any time, or from time to time, to such reasonable periodic, special, or other examinations by representatives of the Commission as the Commission deems necessary or appropriate in the public interest or for the protection of investors.

(b) FILING DEPOSITORIES.—The Commission, by rule, may require an investment adviser—

(1) to file with the Commission any fee, application, report, or notice required to be filed by this title or the rules issued under this title through any entity designated by the Commission for that purpose; and

(2) to pay the reasonable costs associated with such filing and the establishment and maintenance of the systems required by subsection (c).

(c) ACCESS TO DISCIPLINARY AND OTHER INFORMATION.—

(1) MAINTENANCE OF SYSTEM TO RESPOND TO INQUIRIES.—The Commission shall require the entity designated by the Commission under subsection (b)(1)—

(A) to establish and maintain a toll-free telephone listing or other readily accessible electronic process to receive inquiries regarding disciplinary actions and proceedings and other information involving investment advisers and persons associated with investment advisers; and

(B) to respond promptly to such inquiries.

(2) RECOVERY OF COSTS.—An entity designated by the Commission under subsection (b)(1) may charge persons, other than individual investors, reasonable fees for responses to inquiries made under paragraph (1).

(3) LIMITATION ON LIABILITY.—An entity designated by the Commission under subsection (b)(1) shall not have any liability to any person for any actions taken or omitted in good faith under this subsection.

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SECURITIES EXCHANGE ACT OF 1934

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TITLE I—REGULATION OF SECURITIES EXCHANGES

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DEFINITIONS AND APPLICATION OF TITLE

SEC. 3. (a) When used in this title, unless the context otherwise requires—

(1) * * *

* * * * * * *

(39) A person is subject to a "statutory disqualification" with respect to membership or participation in, or association with a member of, a self-regulatory organization, if such person—

(A) * * *

* * * * * * *

(F) [has committed or omitted any act enumerated in subparagraph (D), (E), or (G)] *has committed or omitted any act, or is subject to an order or finding, enumerated in subparagraph (D), (E), (G), or (H)* of paragraph (4) of section 15(b) of this title, has been convicted of any offense specified in subparagraph (B) of such paragraph (4) or any other felony within ten years of the date of the filing of an application for membership or participation in, or to become associated with a member of, such self-regulatory organization, is enjoined from any action, conduct, or practice specified in subparagraph (C) of such paragraph (4), has willfully made or caused to be made in any application for membership or participation in, or to become associated with a member of, a self-regulatory organization, report required to be filed with a self-regulatory organization, or proceeding before a self-regulatory organization, any statement which was at the time, and in the light of the circumstances under which it was made, false or misleading with respect to any material fact, or has omitted to state in any such application, report, or proceeding any material fact which is required to be stated therein.

* * * * * * *

REGISTRATION AND REGULATION OF BROKERS AND DEALERS

SEC. 15. (a) * * *

(b)(1) * * *

* * * * * * *

(4) The Commission, by order, shall censure, place limitations on the activities, functions, or operations of, suspend for a period not exceeding twelve months, or revoke the registration of any broker or dealer if it finds, on the record after notice and opportunity for hearing, that such censure, placing of limitations, suspension, or revocation is in the public interest and that such broker or dealer, whether prior or subsequent to becoming such, or any person associated with such broker or dealer, whether prior or subsequent to becoming so associated—

(A) * * *

* * * * * * *

[(F) is subject to an order of the Commission entered pursuant to paragraph (6) of this subsection (b) barring or suspending the right of such person to be associated with a broker or dealer.

[(G) has been found by a foreign financial regulatory authority to have—

[(i) made or caused to be made in any application for registration or report required to be filed with a foreign financial regulatory authority, or in any proceeding before a foreign financial regulatory authority with respect to registration, any statement that was at the time and in the light of the circumstances under which it was made false or misleading with respect to any material fact, or has omitted to state in any application or report to the foreign financial regulatory authority any material fact that is required to be stated therein;

[(ii) violated any foreign statute or regulation regarding transactions in securities, or contracts of sale of a commodity for future delivery, traded on or subject to the rules of a contract market or any board of trade;

[(iii) aided, abetted, counseled, commanded, induced, or procured the violation by any person of any provision of any statutory provisions enacted by a foreign government, or rules or regulations thereunder, empowering a foreign financial regulatory authority regarding transactions in securities, or contracts of sale of a commodity for future delivery, traded on or subject to the rules of a contract market or any board of trade, or has been found, by a foreign financial regulatory authority, to have failed reasonably to supervise, with a view to preventing violations of such statutory provisions, rules, and regulations, another person who commits such a violation, if such other person is subject to his supervision.]

(F) is subject to any order of the Commission barring or suspending the right of the person to be associated with a broker or dealer.

(G) has been found by a foreign financial regulatory authority to have—

(i) made or caused to be made in any application for registration or report required to be filed with a foreign financial regulatory authority, or in any proceeding before a foreign financial regulatory authority with respect to registration, any statement that was at the time and in the light of the circumstances under which it was made false or misleading with respect to any material fact, or omitted to state in any such application, report, or proceeding any material fact that is required to be stated therein;

(ii) violated any foreign statute or regulation regarding securities, banking, thrift activities, credit union activities, insurance, or contracts of sale of a commodity for future delivery, traded on or subject to the rules of a contract market or any board of trade; or

(iii) aided, abetted, counseled, commanded, induced, or procured the violation by any other person of any provision of any statutory provisions enacted by a foreign govern-

ment, or rules or regulations thereunder, regarding securities, banking, thrift activities, credit union activities, insurance, or contracts of sale of a commodity for future delivery traded on or subject to the rules of a contract market or any board of trade, or to have failed reasonably to supervise, with a view to preventing violations of such statutory provisions, rules, and regulations, another person who commits such a violation, if such other person is subject to his supervision.

(H) is subject to any final order of a State securities commission (or any agency or officer performing like functions), State authority that supervises or examines banks, thrifts, or credit unions, State insurance commission (or any agency or office performing like functions), an appropriate Federal banking agency (as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)), or the National Credit Union Administration, that—

(i) bars such person from association with an entity regulated by such commission, authority, agency, or officer, or from engaging in the business of securities, insurance, banking, thrift activities, or credit union activities; or

(ii) constitutes a final order based on violations of any laws or regulations that prohibit fraudulent, manipulative, or deceptive conduct.

* * * * * * *

(6)(A) With respect to any person who is associated, who is seeking to become associated, or, at the time of the alleged misconduct, who was associated or was seeking to become associated with a broker or dealer, or any person participating, or, at the time of the alleged misconduct, who was participating, in an offering of any penny stock, the Commission, by order, shall censure, place limitations on the activities or functions of such person, or suspend for a period not exceeding 12 months, or bar such person from being associated with a broker or dealer, or from participating in an offering of penny stock, if the Commission finds, on the record after notice and opportunity for a hearing, that such censure, placing of limitations, suspension, or bar is in the public interest and that such person—

(i) has committed or omitted any act **[**or omission enumerated in subparagraph (A), (D), (E), or (G)**]**, *or is subject to an order or finding, enumerated in subparagraph (A), (D), (E), (G), or (H)* of paragraph (4) of this subsection;

* * * * * * *

REGISTERED SECURITIES ASSOCIATIONS

SEC. 15A. (a) * * *

* * * * * * *

[(i) A registered securities association shall, within one year from the date of enactment of this section, (1) establish and maintain a toll-free telephone listing to receive inquiries regarding disciplinary actions involving its members and their associated persons, and (2) promptly respond to such inquiries in writing. Such association may charge persons, other than individual investors,

reasonable fees for written responses to such inquiries. Such an association shall not have any liability to any person for any actions taken or omitted in good faith under this paragraph.]

(i) OBLIGATION TO MAINTAIN DISCIPLINARY AND OTHER DATA.—

(1) MAINTENANCE OF SYSTEM TO RESPOND TO INQUIRIES.—A registered securities association shall—

(A) establish and maintain a toll-free telephone listing or other readily accessible electronic process to receive inquiries regarding disciplinary actions and proceedings and other information involving its members and their associated persons and regarding disciplinary actions and proceedings and other information that has been reported to the Central Registration Depository by any registered national securities exchange involving its members and their associated persons; and

(B) promptly respond to such inquiries.

(2) RECOVERY OF COSTS.—Such association may charge persons, other than individual investors, reasonable fees for responses to such inquiries.

(3) LIMITATION ON LIABILITY.—Such an association or exchange shall not have any liability to any person for any actions taken or omitted in good faith under this subsection.

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MUNICIPAL SECURITIES

SEC. 15B. (a) * * *

* * * * * * *

(c)(1) * * *

(2) The Commission, by order, shall censure, place limitations on the activities, functions, or operations, suspend for a period not exceeding twelve months, or revoke the registration of any municipal securities dealer, if it finds, on the record after notice and opportunity for hearing, that such censure, placing of limitations, denial, suspension, or revocation, is in the public interest and that such municipal securities dealer has committed or omitted any act [or omission enumerated in subparagraph (A), (D), (E), or (G)], *or is subject to an order or finding, enumerated in subparagraph (A), (D), (E), (G), or (H)* of paragraph (4) of section 15(b) of this title, has been convicted of any offense specified in subparagraph (B) of such paragraph (4) within [ten] *10* years of the commencement of the proceedings under this paragraph, or is enjoined from any action, conduct, or practice specified in subparagraph (C) or such paragraph (4).

* * * * * * *

(4) The Commission, by order, shall censure or place limitations on the activities or functions of any person associated, seeking to become associated, or, at the time of the alleged misconduct, associated or seeking to become associated with a municipal securities dealer, or suspend for a period not exceeding twelve months or bar any such person from being associated with a municipal securities dealer, if the Commission finds, on the record after notice and opportunity for hearing, that such censure, placing of limitations, suspension, or bar is in the public interest and that such person has

committed any act [or omission enumerated in subparagraph (A), (D), (E), or (G)], *or is subject to an order or finding, enumerated in subparagraph (A), (D), (E), (G), or (H)* of paragraph (4) of section 15(b) of this title, has been convicted of any offense specified in subparagraph (B) of such paragraph (4) within 10 years of the commencement of the proceedings under this paragraph, or is enjoined from any action, conduct, or practice specified in subparagraph (C) of such paragraph (4). It shall be unlawful for any person as to whom an order entered pursuant to this paragraph or paragraph (5) of this subsection suspending or barring him from being associated with a municipal securities dealer is in effect willfully to become, or to be, associated with a municipal securities dealer without the consent of the Commission, and it shall be unlawful for any municipal securities dealer to permit such a person to become, or remain, a person associated with him without the consent of the Commission, if such municipal securities dealer knew, or, in the exercise of reasonable care should have known, of such order.

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GOVERNMENT SECURITIES BROKERS AND DEALERS

SEC. 15C. (a) * * *

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(c)(1) With respect to any government securities broker or government securities dealer registered or required to register under subsection (a)(1)(A) of this section—

(A) The Commission, by order, shall censure, place limitations on the activities, functions, or operations of, suspend for a period not exceeding 12 months, or revoke the registration of such government securities broker or government securities dealer, if it finds, on the record after notice and opportunity for hearing, that such censure, placing of limitations, suspension, or revocation is in the public interest and that such government securities broker or government securities dealer, or any person associated with such government securities broker or government securities dealer (whether prior or subsequent to becoming so associated), has committed or omitted any act [or omission enumerated in subparagraph (A), (D), (E), or (G)], *or is subject to an order or finding, enumerated in subparagraph (A), (D), (E), (G), or (H)* of paragraph (4) of section 15(b) of this title, has been convicted of any offense specified in subparagraph (B) of such paragraph (4) within 10 years of the commencement of the proceedings under this paragraph, or is enjoined from any action, conduct, or practice specified in subparagraph (C) of such paragraph (4).

* * * * * * *

(C) The Commission, by order, shall censure or place limitations on the activities or functions of any person associated, or seeking to become associated, with a government securities broker or government securities dealer registered or required to register under subsection (a)(1)(A) of this section or suspend for a period not exceeding 12 months or bar any such person from being associated with such a government securities broker or government securities dealer, if the Commission

finds, on the record after notice and opportunity for hearing, that such censure, placing of limitations, suspension, or bar is in the public interest and that such person has committed or omitted any act [or omission enumerated in subparagraph (A), (D), (E), or (G)], *or is subject to an order or finding, enumerated in subparagraph (A), (D), (E), (G), or (H)* of paragraph (4) of section 15(b) of this title, has been convicted of any offense specified in subparagraph (B) of such paragraph (4) within 10 years of the commencement of the proceedings under this paragraph, or is enjoined from any action, conduct, or practice specified in subparagraph (C) of such paragraph (4).

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NATIONAL SYSTEM FOR CLEARANCE AND SETTLEMENT OF SECURITIES TRANSACTIONS

SEC. 17A. (a) * * *

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(c)(1) * * *

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(3) The appropriate regulatory agency for a transfer agent, by order, shall deny registration to, censure, place limitations on the activities, functions, or operations of, suspend for a period not exceeding 12 months, or revoke the registration of such transfer agent, if such appropriate regulatory agency finds, on the record after notice and opportunity for hearing, that such denial, censure, placing of limitations, suspension, or revocation is in the public interest and that such transfer agent, whether prior or subsequent to becoming such, or any person associated with such transfer agent, whether prior or subsequent to becoming so associated—

(A) has committed or omitted any act [enumerated in subparagraph (A), (D), (E), or (G)], *or is subject to an order or finding, enumerated in subparagraph (A), (D), (E), (G), or (H)* of paragraph (4) of section 15(b) of this title, has been convicted of any offense specified in subparagraph (B) of such paragraph (4) within ten years of the commencement of the proceedings under this paragraph, or is enjoined from any action, conduct, or practice specified in subparagraph (C) of such paragraph (4); or

* * * * * * *

(4)(A) * * *

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(C) The appropriate regulatory agency for a transfer agent, by order, shall censure or place limitations on the activities or functions of any person associated, seeking to become associated, or, at the time of the alleged misconduct, associated or seeking to become associated with the transfer agent, or suspend for a period not exceeding twelve months or bar any such person from being associated with the transfer agent, if the appropriate regulatory agency finds, on the record after notice and opportunity for hearing, that such censure, placing of limitations, suspension, or bar is in the public interest and that such person has committed or omitted any act [enumerated in subparagraph (A), (D), (E), or (G)], *or is subject*

to an order or finding, enumerated in subparagraph (A), (D), (E), (G), or (H) or paragraph (4) of section 15(b) of this title, has been convicted of any offense specified in subparagraph (B) of such paragraph (4) within [ten] *10* years of the commencement of the proceedings under this paragraph, or is enjoined from any action, conduct, or practice specified in subparagraph (C) of such paragraph (4). It shall be unlawful for any person as to whom such an order suspending or barring him from being associated with a transfer agent is in effect willfully to become, or to be, associated with a transfer agent without the consent of the appropriate regulatory agency that entered the order and the appropriate regulatory agency for that transfer agent. It shall be unlawful for any transfer agent to permit such a person to become, or remain, a person associated with it without the consent of such appropriate regulatory agencies, if the transfer agent knew, or in the exercise of reasonable care should have known, of such order. The Commission may establish, by rule, procedures by which a transfer agent reasonably can determine whether a person associated or seeking to become associated with it is subject to any such order, and may require, by rule, that any transfer agent comply with such procedures.

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