107TH CONGRESS
1st Session

HOUSE OF REPRESENTATIVES

REPORT
107–283

EMERGENCY SECURITIES RESPONSE ACT OF 2001

NOVEMBER 13, 2001.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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

REPORT

[To accompany H.R. 3060]

[Including cost estimate of the Congressional Budget Office]

The Committee on Financial Services, to whom was referred the bill (H.R. 3060) to amend the Securities Exchange Act of 1934 to augment the emergency authority of the Securities and Exchange Commission, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

CONTENTS

PURPOSE AND SUMMARY

The purpose of H.R. 3060, the Emergency Securities Response Act, is to provide the Securities and Exchange Commission (SEC or Commission) with enhanced authority to respond to extraordinary market disturbances. The legislation extends the duration of

99–006

a Commission emergency order issued pursuant to section 12(k)(2) of the Securities Exchange Act of 1934 (15 U.S.C. 78*l*(k)(2)) from ten to 30 business days, and under certain circumstances, up to a total of 90 calendar days.

BACKGROUND AND NEED FOR LEGISLATION

The terrorist attacks of September 11, 2001, inflicted great human and physical loss in New York City, the financial capital of the world. The damage to lower Manhattan, home of the world's largest stock market—the New York Stock Exchange—suspended the operation of the U.S. equities markets for the longest period since World War I. The U.S. securities markets reopened for trading on September 17, 2001. The markets resumed business without incident, in part due to the emergency relief orders issued by the SEC.

To facilitate the reopening of the equities markets, the Commission used—for the first time—its emergency powers under section 12(k)(2) of the 1934 Act to ease certain regulatory restrictions temporarily. Most significantly, the SEC action permitted public companies to repurchase their own securities without meeting the volume and timing restrictions that ordinarily would apply. Most commentators believe this measure served its intended purpose of increasing liquidity in the markets. Additionally, in order to limit the impact of the market closure and settlement problems on securities firms, the SEC issued orders allowing brokerage firms to disregard the days the markets were closed in calculating their net capital. The SEC also took action under other authority, such as relaxing requirements applicable to mutual funds for in-person board meetings, which would have been impossible during the period in which the Federal Aviation Administration grounded all flights.

Under current law, the duration of emergency orders granted by the Commission pursuant to section 12(k)(2) of the 1934 Act is limited to ten days. The Commission also has general exemptive authority applying to all of the Federal securities laws under various sections of each of those laws, including section 36 of the 1934 Act, which it used in the wake of the September 11 attacks to extend the duration of its emergency authority relief. The Committee commends the Commission for its responsive and appropriate use of its emergency and exemptive authority to help ensure the smooth reopening of the securities markets.

The Committee wishes to underscore that the Commission was entirely within its statutory authority to extend the duration of the relief it granted pursuant to section 12(k)(2) of the 1934 Act beyond ten days through use of its broad exemptive authority under section 36 of that Act. It is the Committee's view that the exemptive authority of section 36, as well as the corresponding provisions in other Federal securities laws granted pursuant to the National Securities Markets Improvement Act of 1996 (Public Law 104–290), were designed to provide the Commission with the maximum flexibility to reduce and otherwise alter regulatory requirements under those statutes for emergency, as well as more quotidian purposes. Nevertheless, granting the Commission greater flexibility to extend the duration of emergency authority pursuant to section 12(k)(2) will further ensure the Commission's continued ability to respond as necessary to emergencies affecting our nation's securities markets.

Accordingly, H.R. 3060 extends the time frame under section 12(k)(2) to 30 business days. The legislation also allows the Commission, in certain circumstances, to extend emergency orders under section 12(k) for more than 30 business days, up to a total of 90 calendar days. In order to do so, however, the SEC must find, at the time of the extension, that the emergency still exists and determine that the continuation of the order beyond 30 business days is necessary in the public interest and for the protection of investors to (i) maintain or restore fair and orderly securities markets, (ii) ensure prompt, accurate, and safe clearance and settlement of transactions in securities, or (iii) reduce, eliminate, or prevent a substantial disruption of securities markets, investment companies, or securities transaction processing.

HEARINGS

The Committee held a hearing on September 26, 2001 on the state of the nation's financial markets in the wake of the terrorist attacks of September 11, at which SEC Chairman Harvey L. Pitt testified with respect to the nation's securities markets. Pursuant to requests by Members of the Committee at that hearing, Chairman Pitt submitted a request for expanded emergency authority under section 12(k)(2).

COMMITTEE CONSIDERATION

On October 11, 2001, the Committee met in open session and ordered H.R. 3060 reported to the House, without 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 in conjunction with the consideration of this legislation. A motion by Mr. Oxley to report the bill to the House with a favorable recommendation was agreed to by a voice vote.

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 Commission will continue to use its emergency powers to ensure the effective functioning of the securities markets.

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:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, October 15, 2001.

Hon. MICHAEL G. OXLEY,
Chairman, Committee on Financial Services,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 3060, the Emergency Securities Response Act of 2001.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Ken Johnson.

Sincerely,

BARRY B. ANDERSON,
(For Dan L. Crippen, Director).

Enclosure.

H.R. 3060—Emergency Securities Response Act of 2001

H.R. 3060 would lengthen the amount of time during which the Securities and Exchange Commission (SEC) can exercise special authority over securities markets in the event of an emergency. The bill also would expand the definition of an emergency to include major disturbances that disrupt the functioning of securities markets.

Based on information from the SEC, CBO estimates that implementing H.R. 3060 would have no significant budgetary effect. The bill would not affect receipts or direct spending; therefore, pay-as-you-go procedures would not apply.

H.R. 3060 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

The CBO staff contact for this estimate is Ken Johnson. The estimate was approved by Robert A. Sunshine, 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) and clause 3 (relating to the power to regulate interstate commerce).

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.

Section-by-Section Analysis of the Legislation

Section 1. Short title

This section establishes the short title of the bill, the "Emergency Securities Response Act."

Section 2. Extension of emergency order authority of the securities exchange commission

Section 2 modifies the authority of the Securities and Exchange Commission to issue emergency orders under section 12(k)(2) of the Securities Exchange Act of 1934 (15 U.S.C. 78l(k)(2)). The section modifies section 12(k)(2) to grant the Commission authority to take emergency action with respect to any matter or action subject to regulation by the Commission or a self-regulatory organization under the securities laws, not just under the Securities Exchange Act of 1934. The Committee recognizes that emergency conditions can necessitate emergency relief under securities laws other than the Securities Exchange Act of 1934 and is broadening the emergency measures the Commission can take under section 12(k)(2) accordingly.

The section also modifies the findings required for the Commission to enter an emergency order by adding a third finding that may support emergency action. Under new section 12(k)(2)(A)(iii), the Commission may take emergency action if it determines that action is necessary in the public interest and for the protection of investors "to reduce, eliminate, or prevent the substantial disruption by the emergency of (I) securities markets, investment companies, or any other significant portion or segment of such markets, or (II) the transmission or processing of securities transactions."

The first of these two findings—in section 12(k)(2)(A)(iii)(I)—covers situations in which emergency relief is warranted to reduce, eliminate or prevent the substantial disruption by the emergency of securities markets broadly defined, including investment companies or any other significant portion or segment of the securities markets (such as broker-dealers or investment advisers, or a class thereof). As illustrated by the aftermath of the terrorist attacks of September 11, 2001, the effects of transportation and communication problems, no less than market disruptions, can require emergency relief. If transportation or communication problems or other circumstances substantially disrupt or threaten to substantially disrupt the operation of investment companies, broker-dealers, or any other significant portion or segment of the securities markets, and constitute an "emergency" under section 12(k)(6) of the Securities Exchange Act of 1934 (15 U.S.C. 78l(k)(6)), section 12(k)(2)(A)(iii)(I) allows the Commission to take emergency action under section 12(k)(2) even if the securities secondary-trading markets and the national system for clearance and settlement of securities transactions are not threatened or disrupted.

The second of these two findings—in section 12(k)(2)(A)(iii)(II)—covers situations in which emergency relief is warranted to reduce, eliminate or prevent the substantial disruption by the emergency of the transmission or processing of securities transactions. The Committee is aware that certain market participants experienced difficulties in transmitting and processing securities transactions, including government securities transactions, in the aftermath of the attacks of September 11, 2001. In the future, should these or other circumstances substantially disrupt or threaten to substantially disrupt the transmission or processing of securities transactions and constitute an "emergency" under section 12(k)(6), section 12(k)(2)(A)(iii)(II) allows the Commission to take emergency action under section 12(k)(2) even if the national system for clearance and settlement of securities transactions is not threatened or disrupted.

The section modifies the statute's definition of "emergency" to reflect the broader scope of findings that may support an emergency order. Specifically, the definition of "emergency" in section 12(k)(6) of the Securities Exchange Act (15 U.S.C. 78*l*(k)(6)) is modified to include a major disturbance that substantially disrupts, or threatens to substantially disrupt, the functioning of securities markets, investment companies, or any other significant portion or segment of such markets, or the transmission or processing of securities transactions. This modification of section 12(k)(6) mirrors the changes to the findings under section 12(k)(2)(A) and, as discussed above, is designed to account for emergencies that substantially disrupt, or threaten to substantially disrupt, the securities markets broadly defined, including the functioning of investment companies or any other significant portion or segment of the securities markets or the transmission or processing of securities transactions, even in the absence of a major market disturbance under section 12(k)(6)(A).

The section also extends the duration of a Commission emergency order to 30 business days, from the current ten business days. The section also allows the Commission to extend an emergency order for more than 30 business days, up to a total of 90 calendar days, based upon certain findings. Specifically, under new section 12(k)(2)(C) (15 U.S.C. 78*l*(k)(2)(C)), the Commission may extend the duration of an emergency order beyond 30 business days if the Commission finds, at the time of the extension, that the emergency still exists, and determines that the continuation is necessary in the public interest and for the protection of investors to attain one of the three objectives that may support the Commission's initial emergency action. The calendar day, as opposed to business day, limit on total extensions of an emergency order reflects the judgment that a total of approximately three months is a reasonable limit on Commission discretion, while providing sufficient latitude for the Commission to provide appropriate immediate relief.

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 italics, existing law in which no change is proposed is shown in roman):

SECTION 12 OF THE SECURITIES EXCHANGE ACT OF 1934

REGISTRATION REQUIREMENTS FOR SECURITIES

SEC. 12. (a) * * *

* * * * * * *

(k) TRADING SUSPENSIONS; EMERGENCY AUTHORITY.—

(1) * * *

⟦(2) EMERGENCY ORDERS.—(A) The Commission, in an emergency, may by order summarily take such action to alter, supplement, suspend, or impose requirements or restrictions with respect to any matter or action subject to regulation by the Commission or a self-regulatory organization under this title, as the Commission determines is necessary in the public interest and for the protection of investors—

⟦(i) to maintain or restore fair and orderly securities markets (other than markets in exempted securities); or

⟦(ii) to ensure prompt, accurate, and safe clearance and settlement of transactions in securities (other than exempted securities).

⟦(B) An order of the Commission under this paragraph (2) shall continue in effect for the period specified by the Commission, and may be extended, except that in no event shall the Commission's action continue in effect for more than 10 business days, including extensions. If the actions described in subparagraph (A) involve a security futures product, the Commission shall consult with and consider the views of the Commodity Futures Trading Commission. In exercising its authority under this paragraph, the Commission shall not be required to comply with the provisions of section 553 of title 5, United States Code, or with the provisions of section 19(c) of this title.⟧

(2) EMERGENCY ORDERS.—(A) The Commission, in an emergency, may by order summarily take such action to alter, supplement, suspend, or impose requirements or restrictions with respect to any matter or action subject to regulation by the Commission or a self-regulatory organization under the securities laws, as the Commission determines is necessary in the public interest and for the protection of investors—

(i) to maintain or restore fair and orderly securities markets (other than markets in exempted securities);

(ii) to ensure prompt, accurate, and safe clearance and settlement of transactions in securities (other than exempted securities); or

(iii) to reduce, eliminate, or prevent the substantial disruption by the emergency of (I) securities markets, investment companies, or any other significant portion or segment of such markets, or (II) the transmission or processing of securities transactions.

(B) An order of the Commission under this paragraph (2) shall continue in effect for the period specified by the Commission, and may be extended. Except as provided in subparagraph (C), the Commission's action may not continue in effect for more than 30 business days, including extensions. If the actions described in subparagraph (A) involve a security futures product, the Commission shall consult with and consider the views of the Commodity Futures Trading Commission. In exercising its authority under this paragraph, the Commission shall not be required to comply with the provisions of section 553 of title 5, United States Code, or with the provisions of section 19(c) of this title.

(C) An order of the Commission under this paragraph (2) may be extended to continue in effect for more than 30 business days if, at the time of the extension, the Commission finds that the emergency still exists and determines that the continuation of the order beyond 30 business days is necessary in the public interest and for the protection of investors to attain an objective described in clause (i), (ii), or (iii) of subparagraph (A). In no event shall an order of the Commission under this paragraph (2) continue in effect for more than 90 calendar days.

* * * * * * *

【(6) DEFINITION OF EMERGENCY.—For purposes of this subsection, the term "emergency" means a major market disturbance characterized by or constituting—

【(A) sudden and excessive fluctuations of securities prices generally, or a substantial threat thereof, that threaten fair and orderly markets, or

【(B) a substantial disruption of the safe or efficient operation of the national system for clearance and settlement of securities, or a substantial threat thereof.】

(6) DEFINITION OF EMERGENCY.—For purposes of this subsection, the term "emergency" means—

(A) a major market disturbance characterized by or constituting—

(i) sudden and excessive fluctuations of securities prices generally, or a substantial threat thereof, that threaten fair and orderly markets; or

(ii) a substantial disruption of the safe or efficient operation of the national system for clearance and settlement of transactions in securities, or a substantial threat thereof; or

(B) a major disturbance that substantially disrupts, or threatens to substantially disrupt—

(i) the functioning of securities markets, investment companies, or any other significant portion or segment of the securities markets; or

(ii) the transmission or processing of securities transactions.

* * * * * * *

○