

106TH CONGRESS
2D SESSION

S. 2107

To amend the Securities Act of 1933 and the Securities Exchange Act of 1934 to reduce securities fees in excess of those required to fund the operations of the Securities and Exchange Commission, to adjust compensation provisions for employees of the Commission, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 28, 2000

Mr. GRAMM (for himself, Mr. GRAMS, Mr. SCHUMER, and Mr. MACK) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

A BILL

To amend the Securities Act of 1933 and the Securities Exchange Act of 1934 to reduce securities fees in excess of those required to fund the operations of the Securities and Exchange Commission, to adjust compensation provisions for employees of the Commission, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Competitive Market Supervision Act”.

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

- Sec. 1. Short title; table of contents.
- Sec. 2. Reduction in registration fee rates; elimination of general revenue component.
- Sec. 3. Reduction in merger and tender fee rates; reclassification as offsetting collections.
- Sec. 4. Reduction in transaction fees; elimination of general revenue component.
- Sec. 5. Adjustments to fees.
- Sec. 6. Comparability Provisions.
- Sec. 7. Effective date.

3 **SEC. 2. REDUCTION IN REGISTRATION FEE RATES; ELIMI-**
 4 **NATION OF GENERAL REVENUE COMPONENT.**

5 Section 6(b) of the Securities Act of 1933 (15 U.S.C.
 6 77f(b)) is amended—

7 (1) by striking paragraph (2) and inserting the
 8 following:

9 “(2) FEE PAYMENT REQUIRED.—At the time of
 10 filing a registration statement, the applicant shall
 11 pay to the Commission a fee that shall be equal to
 12 the amount determined under the rate established by
 13 paragraph (3). The Commission shall publish in the
 14 Federal Register notices of the fee rate applicable
 15 under this section for each fiscal year.”;

16 (2) by striking paragraph (3);

17 (3) by redesignating paragraphs (4) and (5) as
 18 paragraphs (3) and (4), respectively;

19 (4) in paragraph (3), as redesignated—

1 (A) by striking subparagraph (A) and in-
2 serting the following:

3 “(A) IN GENERAL.—Except as provided in
4 subparagraphs (B) and (C), the rate deter-
5 mined under this paragraph is a rate equal to
6 the following amount per \$1,000,000 of the
7 maximum aggregate price at which the securi-
8 ties are proposed to be offered:

9 “(i) \$67 for each of fiscal years 2001
10 through 2006.

11 “(ii) \$33 for fiscal year 2007 and
12 each fiscal year thereafter.”; and

13 (B) in subparagraph (B), by striking “this
14 paragraph (4)” and inserting “this paragraph”;
15 and

16 (5) by striking paragraph (4), as redesignated,
17 and inserting the following:

18 “(4) PRO RATA APPLICATION OF RATE.—The
19 rate required by this subsection shall be applied pro
20 rata to amounts and balances equal to less than
21 \$1,000,000.”.

1 **SEC. 3. REDUCTION IN MERGER AND TENDER FEE RATES;**
 2 **RECLASSIFICATION AS OFFSETTING COLLEC-**
 3 **TIONS.**

4 (a) SECTION 13.—Section 13(e)(3) of the Secu-
 5 rities Exchange Act of 1934 (15 U.S.C. 78m(e)(3))
 6 is amended to read as follows:

7 “(3) FEES.—

8 “(A) IN GENERAL.—At the time of the fil-
 9 ing of any statement that the Commission may
 10 require by rule pursuant to paragraph (1), the
 11 person making the filing shall pay to the Com-
 12 mission a fee equal to—

13 “(i) \$67 for each \$1,000,000 of the
 14 value of the securities proposed to be pur-
 15 chased, for each of fiscal years 2001
 16 through 2006; and

17 “(ii) \$33 for each \$1,000,000 of the
 18 value of securities proposed to be pur-
 19 chased, for fiscal year 2007 and each fiscal
 20 year thereafter.

21 “(B) REDUCTION.—The fee required by
 22 this paragraph shall be reduced with respect to
 23 securities in an amount equal to any fee paid
 24 with respect to any securities issued in connec-
 25 tion with the proposed transaction under sec-
 26 tion 6(b) of the Securities Act of 1933, or the

1 fee paid under that section shall be reduced in
2 an amount equal to the fee paid to the Commis-
3 sion in connection with such transaction under
4 this paragraph.

5 “(C) LIMITATION; DEPOSIT OF FEES.—

6 “(i) LIMITATION.—Except as provided
7 in subparagraph (D), no amounts shall be
8 collected pursuant to this paragraph for
9 any fiscal year, except to the extent pro-
10 vided in advance in appropriations Acts.

11 “(ii) DEPOSIT OF FEES.—Fees col-
12 lected during any fiscal year pursuant to
13 this paragraph shall be deposited and cred-
14 ited as offsetting collections in accordance
15 with appropriations Acts.

16 “(D) LAPSE OF APPROPRIATIONS.—If, on
17 the first day of a fiscal year, a regular appro-
18 priation to the Commission has not been en-
19 acted for that fiscal year, the Commission shall
20 continue to collect fees (as offsetting collec-
21 tions) under this paragraph at the rate in effect
22 during the preceding fiscal year, until such a
23 regular appropriation is enacted.

24 “(E) PRO RATA APPLICATION OF RATE.—

25 The rate required by this paragraph shall be

1 applied pro rata to amounts and balances equal
2 to less than \$1,000,000.”.

3 (b) SECTION 14.—

4 (1) PRELIMINARY PROXY SOLICITATIONS.—Sec-
5 tion 14(g)(1) of the Securities Exchange Act of
6 1934 (15 U.S.C. 78n(g)(1)) is amended—

7 (A) in subparagraph (A), by striking
8 “Commission the following fees” and all that
9 follows through the end of the subparagraph
10 and inserting “Commission—

11 “(i) for preliminary proxy solicitation
12 material involving an acquisition, merger,
13 or consolidation, if there is a proposed pay-
14 ment of each or transfer of securities or
15 property to shareholders, a fee equal to—

16 “(I) \$67 for each \$1,000,000 of
17 such proposed payment, or of the
18 value of such securities or other prop-
19 erty proposed to be transferred, for
20 each of fiscal years 2001 through
21 2006; and

22 “(II) \$33 for each \$1,000,000 of
23 such proposed payment, or of the
24 value of such securities or other prop-
25 erty proposed to be transferred, for

1 fiscal year 2007 and each fiscal year
2 thereafter; and

3 “(ii) for preliminary proxy solicitation
4 material involving a proposed sale or other
5 disposition of substantially all of the assets
6 of a company, a fee equal to—

7 “(I) \$67 for each \$1,000,000 of
8 the cash or of the value of any securi-
9 ties or other property proposed to be
10 received upon such sale or disposition,
11 for each of fiscal years 2001 through
12 2006; and

13 “(II) \$33 for each \$1,000,000 of
14 the cash or of the value of any securi-
15 ties or other property proposed to be
16 received upon such sale or disposition,
17 for fiscal year 2007 and each fiscal
18 year thereafter.”;

19 (B) in subparagraph (B), by inserting
20 “REDUCTION.—” before “The fee”; and

21 (C) by adding at the end the following:

22 “(C) LIMITATION; DEPOSIT OF FEES.—

23 “(i) LIMITATION.—Except as provided
24 in subparagraph (D), no amounts shall be
25 collected pursuant to this paragraph for

any fiscal year, except to the extent provided in advance in appropriations Acts.

“(ii) DEPOSIT OF FEES.—Fees collected during any fiscal year pursuant to this paragraph shall be deposited and credited as offsetting collections in accordance with appropriations Acts.

“(D) LAPSE OF APPROPRIATIONS.—If, on the first day of a fiscal year, a regular appropriation to the Commission has not been enacted for that fiscal year, the Commission shall continue to collect fees (as offsetting collections) under this paragraph at the rate in effect during the preceding fiscal year, until such a regular appropriation is enacted.

“(E) PRO RATA APPLICATION OF RATE.—The rate required by this paragraph shall be applied pro rata to amounts and balances equal to less than \$1,000,000.”.

(2) OTHER FILINGS.—Section 14(g)(3) of the Securities Exchange Act of 1934 (15 U.S.C. 78n(g)(3)) is amended—

(A) by striking “At the time” and inserting the following: “OTHER FILINGS.—

“(A) FEE RATE.—At the time”;

1 (B) by striking “the Commission a fee of”
2 and all that follows through “The fee” and in-
3 serting the following: “the Commission a fee
4 equal to—

5 “(i) \$67 for each \$1,000,000 of the
6 aggregate amount of cash or of the value
7 of securities or other property proposed to
8 be offered, for each of fiscal years 2001
9 through 2006; and

10 “(ii) \$33 for each \$1,000,000 of the
11 aggregate amount of cash or of the value
12 of securities or other property proposed to
13 be offered, for fiscal year 2007 and each
14 fiscal year thereafter.

15 “(B) REDUCTION.—The fee required under
16 subparagraph (A)’”; and

17 (C) by adding at the end the following:

18 “(C) LIMITATION; DEPOSIT OF FEES.—

19 “(i) LIMITATION.—Except as provided
20 in subparagraph (D), no amounts shall be
21 collected pursuant to this paragraph for
22 any fiscal year, except to the extent pro-
23 vided in advance in appropriations Acts.

24 “(ii) DEPOSIT OF FEES.—Fees col-
25 lected during any fiscal year pursuant to

1 this paragraph shall be deposited and cred-
 2 ited as offsetting collections in accordance
 3 with appropriations Acts.

4 “(D) LAPSE OF APPROPRIATIONS.—If, on
 5 the first day of a fiscal year, a regular appro-
 6 priation to the Commission has not been en-
 7 acted for that fiscal year, the Commission shall
 8 continue to collect fees (as offsetting collec-
 9 tions) under this paragraph at the rate in effect
 10 during the preceding fiscal year, until such a
 11 regular appropriations is enacted.

12 “(E) PRO RATA APPLICATION OF RATE.—
 13 The rate required by this paragraph shall be
 14 applied pro rata to amounts and balances equal
 15 to less than \$1,000,000.”.

16 **SEC. 4. REDUCTION IN TRANSACTION FEES; ELIMINATION**
 17 **OF GENERAL REVENUE COMPONENT.**

18 Section 31 of the Securities Exchange Act of 1934
 19 (15 U.S.C. 78ee) is amended—

20 (1) by striking subsections (b) through (d) and
 21 inserting the following:

22 “(b) TRANSACTION FEES.—

23 “(1) IN GENERAL.—Each national securities ex-
 24 change and national securities association shall pay
 25 to the Commission a fee at a rate equal to the trans-

1 action offsetting collection rate described in para-
2 graph (2) of the aggregate dollar amount of sales of
3 securities (other than bonds, debentures, and other
4 evidences of indebtedness)—

5 “(A) transacted on such national securities
6 exchange;

7 “(B) transacted by or through any member
8 of such association otherwise than on a national
9 securities exchange of securities registered on
10 such an exchange; and

11 “(C) transacted by or through any member
12 of such association otherwise than on a national
13 securities exchange of securities that are subject
14 to prompt last sale reporting pursuant to the
15 rules of the Commission or a registered national
16 securities association, excluding any sales for
17 which a fee is paid under subparagraph (B).

18 “(2) FEE RATE.—

19 “(A) TRANSACTION OFFSETTING COLLEC-
20 TION RATE.—For purposes of this subsection,
21 the ‘transaction offsetting collection rate’ for a
22 fiscal year is the uniform rate required to reach
23 the transaction fee cap for that fiscal year.

1 “(B) TRANSACTION FEE CAP.—For pur-
2 poses of this paragraph, the ‘transaction fee
3 cap’ shall be equal to—

4 “(i) \$413,000,000 for fiscal year
5 2001;

6 “(ii) \$497,000,000 for fiscal year
7 2002;

8 “(iii) \$607,000,000 for fiscal year
9 2003;

10 “(iv) \$706,000,000 for fiscal year
11 2004;

12 “(v) \$896,000,000 for fiscal year
13 2005;

14 “(vi) \$1,094,000,000 for fiscal year
15 2006;

16 “(vii) \$554,000,000 for fiscal year
17 2007;

18 “(viii) \$580,000,000 for fiscal year
19 2008;

20 “(ix) \$719,000,000 for fiscal year
21 2009; and

22 “(x) \$884,000,000 for fiscal year
23 2010 and each fiscal year thereafter.

24 “(c) LIMITATION; DEPOSIT OF FEES.—

1 “(1) LIMITATION.—Except as provided in sub-
 2 section (d), no amount may be collected pursuant to
 3 subsection (b) for any fiscal year, except to the ex-
 4 tent provided in advance in appropriation Acts.

5 “(2) DEPOSIT OF FEES.—Fees collected during
 6 any fiscal year pursuant to this section shall be de-
 7 posited and credited as offsetting collections in ac-
 8 cordance with appropriations Acts.

9 “(d) LAPSE OF APPROPRIATIONS.—If, on the first
 10 day of a fiscal year, a regular appropriation to the Com-
 11 mission has not been enacted for that fiscal year, the Com-
 12 mission shall continue to collect fees (as offsetting collec-
 13 tions) under this section at the rate in effect during the
 14 preceding fiscal year (prior to adjustments, if any, under
 15 subsections (b) and (c) of section 5 of the Competitive
 16 Market Supervision Act), until such a regular appropria-
 17 tions is enacted.”;

18 (2) in subsection (e), by striking “subsections
 19 (b), (c), and (d)” and inserting “subsection (b)”;
 20 and

21 (3) in subsection (g), by striking “rates” and
 22 inserting “rate”.

23 **SEC. 5. ADJUSTMENTS TO FEE RATES.**

24 (a) ESTIMATES OF COLLECTIONS.—

1 (1) The Securities and Exchange Commission
2 (hereafter in this Act referred to as the “Commis-
3 sion”) shall, 1 month after submission of its initial
4 report under subsection (e)(1) and on a monthly
5 basis thereafter, project the aggregate amount of
6 fees from all sources likely to be collected by the
7 Commission during the current fiscal year.

8 (2) Each national securities exchange and na-
9 tional securities association shall file with the Com-
10 mission within 10 days after the end of each month
11 an estimate of the fee required to be paid pursuant
12 to section 31 of the Securities Exchange Act of 1934
13 by such national securities exchange or national se-
14 curities association for transactions and sales occur-
15 ring during such month and such other information
16 and documents as the Commission may require as
17 necessary or appropriate to project the aggregate
18 amount of fees pursuant to paragraph (1).

19 (b) FLOOR FOR TOTAL FEE COLLECTIONS.—If, at
20 any time the end of the first half of the fiscal year, the
21 Commission projects under subsection (a) that the aggre-
22 gate amount of fees collected by the Commission will, dur-
23 ing that fiscal year, fall below an amount equal to the floor
24 for total fee collections, the Commission may by order,
25 subject to subsection (e), increase the fee rate established

1 under section 31 of the Securities Exchange Act of 1934
2 to the extent necessary to bring estimated collections to
3 an amount equal to the floor for total fee collections. Such
4 increase shall apply only to transactions and sales occur-
5 ring on or after the effective date specified in such order
6 through August 31 of that fiscal year. Such increase shall
7 not affect the obligation of each national securities ex-
8 change and national securities association to pay the Com-
9 mission the fee required by section 31 of the Securities
10 Exchange Act of 1934 at the fee rate in effect prior to
11 the effective date of such order for transactions and sales
12 occurring prior to the effective date of such order. In exer-
13 cising its authority under this subsection, the Commission
14 shall not be required to comply with the provisions of sec-
15 tion 553 of title 5, United States Code.

16 (c) CAP ON TOTAL FEE COLLECTIONS.—If, at any
17 time after the end of the first half of the fiscal year, the
18 Commission projects under subsection (a) that the aggre-
19 gate amount of fees collected by the Commission will ex-
20 ceed the cap on total fee collections by more than five per-
21 cent during any fiscal year, the Commission shall by order,
22 subject to subsection (e), decrease the fee rate or suspend
23 collection of fees under section 31 of the Securities Ex-
24 change Act of 1934 to the extent necessary to bring esti-
25 mated collections to an amount equal to the cap on total

1 fee collections. Such decrease or suspension shall apply
 2 only to transactions and sales occurring on or after the
 3 effective date specified in such order through August 31
 4 of that fiscal year. Such decrease or suspension shall not
 5 affect the obligation of each national securities exchange
 6 and national securities association to pay the Commission
 7 the fee required by section 31 of the Securities Exchange
 8 Act of 1934 at the fee rate in effect prior to the effective
 9 date of such order for transactions and sales occurring
 10 prior to the effective date of such order. In exercising its
 11 authority under this subsection, the Commission shall not
 12 be required to comply with the provisions of section 553
 13 of title 5, United States Code.

14 (d) DEFINITIONS.—

15 (1) For purposes of this section, the term “floor
 16 for total fee collections” means the greater of—

17 (A) the total amount appropriated to the
 18 Commission for fiscal year 2001 (adjusted an-
 19 nually, based on the annual percentage change,
 20 if any, in the Consumer Price Index for all
 21 urban consumers, as published by the Depart-
 22 ment of Labor); or

23 (B) the amount authorized for the Com-
 24 mission pursuant to section 35 of the Securities

1 Exchange Act of 1934 (15 U.S.C. 78kk), if ap-
2 plicable.

3 (2) For purposes of this section, the term “cap
4 on total fee collections” means—

5 (A) for fiscal years 2001 through 2010,
6 the baseline amount for aggregate offsetting
7 collections for such fiscal year under section
8 6(b) of the Securities Act of 1933 and section
9 31 of the Securities Exchange Act of 1934, as
10 projected for such fiscal year by the Congres-
11 sional Budget Office pursuant to section 257 of
12 the Balanced Budget and Emergency Deficit
13 Control Act of 1985 in its most recently pub-
14 lished report of its baseline projection before
15 the date of enactment of this Act; and

16 (B) for fiscal years 2011 and thereafter,
17 the amount authorized for the Commission pur-
18 suant to section 35 of the Securities Exchange
19 Act of 1934 (15 U.S.C. 78kk).

20 (e) REPORTS TO CONGRESS; JUDICIAL REVIEW; NO-
21 TICE.—

22 (1) INITIAL REPORT.—Not later than 90 days
23 after the date of enactment of this Act, the Commis-
24 sion shall report to the Committee on Banking,
25 Housing, and Urban Affairs of the Senate and the

1 Committee on Commerce of the House of Represent-
2 atives to explain the methodology used by the Com-
3 mission to make projections under subsection (a).
4 Within 30 days after the beginning of each fiscal
5 year, the Commission may report to the Committee
6 on Banking, Housing, and Urban Affairs of the Sen-
7 ate and the Committee on Commerce of the House
8 of Representatives on revisions to the methodology
9 used by the Commission to make projections under
10 subsection (a) for such fiscal year and subsequent
11 fiscal years.

12 (2) JUDICIAL REVIEW; REPORTS OF INTENT TO
13 ACT.—The determinations made and the actions
14 taken by the Commission under this subsection shall
15 not be subject to judicial review. Not later than 45
16 days before taking action under subsection (b) or
17 (c), the Commission shall report to the Committee
18 on Banking, Housing, and Urban Affairs of the Sen-
19 ate and the Committee on Commerce of the House
20 of Representatives on its intent to take such action.

21 (3) NOTICE.—Not later than 30 days before
22 taking action under subsection (b) or (c), the Com-
23 mission shall notify each national securities ex-
24 change and national securities association of its in-
25 tent to take such action.

1 **SEC. 6. COMPARABILITY PROVISIONS.**

2 (a) SECURITIES AND EXCHANGE COMMISSION EM-
3 PLOYEES.—

4 (1) IN GENERAL.—Section 4(b) of the Securi-
5 ties Exchange Act of 1934 (15 U.S.C. 78d(b)) is
6 amended by redesignating paragraph (3) as para-
7 graph (2), and by striking paragraphs (1) and (2)
8 and inserting the following:

9 “(1) APPOINTMENT AND COMPENSATION.—

10 “(A) IN GENERAL.—The Commission may
11 appoint and fix the compensation of such offi-
12 cers, attorneys, economists, examiners, and
13 other employees as may be necessary for car-
14 rying out its functions under this Act.

15 “(B) RATES OF PAY.—Rates of basic pay
16 for all employees of the Commission may be set
17 and adjusted by the Commission without regard
18 to the provisions of chapter 51 or subchapter
19 III of chapter 53 of title 5, United States Code.

20 “(C) COMPARABILITY.—The Commission
21 may provide additional compensation and bene-
22 fits to employees of the Commission if the same
23 type of compensation or benefits are then being
24 provided by any agency referred to under sec-
25 tion 1206(a) of the Financial Institutions Re-
26 form, Recovery, and Enforcement Act of 1989

1 (12 U.S.C. 1833b) or, if not then being pro-
 2 vided, could be provided by such an agency
 3 under applicable provisions of law, rule, or reg-
 4 ulation. In setting and adjusting the total
 5 amount of compensation and benefits for em-
 6 ployees, the Commission shall consult with, and
 7 seek to maintain comparability with, the agen-
 8 cies referred to under section 1206(a) of the Fi-
 9 nancial Institutions Reform, Recovery, and En-
 10 forcement Act of 1989 (12 U.S.C. 1833b).”.

11 (2) EMPLOYEES REPRESENTED BY LABOR OR-
 12 GANIZATIONS.—To the extent that any employee of
 13 the Commission is represented by a labor organiza-
 14 tion with exclusive recognition in accordance with
 15 chapter 71 of title 5, United States Code, no reduc-
 16 tion in base pay of such employee shall be made by
 17 reason of enactment of this subsection.

18 (b) REPORTING ON INFORMATION BY THE COMMIS-
 19 SION.—Section 1206 of the Financial Institutions Reform,
 20 Recovery, and Enforcement Act of 1989 (12 U.S.C.
 21 1833b) is amended—

22 (1) by inserting “(a) IN GENERAL.—” before
 23 “The Federal Deposit”;

1 (2) by striking “the Thrift Depositor Protection
2 Oversight Board of the Resolution Trust Corpora-
3 tion”; and

4 (3) by adding at the end the following:

5 “(b) In establishing and adjusting schedules of com-
6 pensation and benefits for employees of the Securities and
7 Exchange Commission under applicable provisions of law,
8 the Commission shall inform the heads of the agencies re-
9 ferred to under subsection (a) and Congress of such com-
10 pensation and benefits and shall seek to maintain com-
11 parability with such agencies regarding compensation and
12 benefits.”.

13 (c) TECHNICAL AMENDMENTS.—

14 (1) Section 3132(a)(1) of title 5, United States
15 Code, is amended—

16 (A) in subparagraph (C), by striking “or”
17 after the semicolon;

18 (B) in subparagraph (D), by inserting
19 “or” after the semicolon; and

20 (C) by adding at the end the following:

21 “(E) the Securities and Exchange Commis-
22 sion.”.

23 (2) Section 5373(a) of title 5, United States
24 Code, is amended—

1 (A) in paragraph (2), by striking “or”
 2 after the semicolon;

3 (B) in paragraph (3), by striking the pe-
 4 riod and inserting “; or”; and

5 (C) by adding at the end the following:

6 “(4) section 4(b) of the Securities Exchange
 7 Act of 1934.”.

8 **SEC. 7. EFFECTIVE DATE.**

9 (a) IN GENERAL.—Subject to subsection (b), this Act
 10 and the amendments made by this Act shall become effec-
 11 tive on October 1, 2000.

12 (b) EXCEPTIONS.—The authorities provided by sec-
 13 tion 13(e)(3)(D), section 14(g)(1)(D), section
 14 14(g)(3)(D), and section 31(d) of the Securities Exchange
 15 Act of 1934, as so designated by this Act, shall not apply
 16 until October 1, 2001.

○