

106TH CONGRESS
1ST SESSION

S. 921

To facilitate and promote electronic commerce in securities transactions involving broker-dealers, transfer agents, and investment advisers.

IN THE SENATE OF THE UNITED STATES

APRIL 29, 1999

Mr. ABRAHAM (for himself, Mr. MCCAIN, and Mr. LOTT) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

A BILL

To facilitate and promote electronic commerce in securities transactions involving broker-dealers, transfer agents, and investment advisers.

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.**

4 This Act may be cited as the “Electronic Securities
5 Transactions Act”.

6 **SEC. 2. FINDINGS.**

7 Congress finds that—

8 (1) the growth of electronic commerce and elec-
9 tronic transactions represent a powerful force for

1 economic growth, consumer choice and creation of
2 wealth;

3 (2) inefficient transaction procedures impose
4 unnecessary costs on investors and persons who fa-
5 cilitate transactions on their behalf;

6 (3) new techniques in electronic commerce cre-
7 ate opportunities for more efficient and safe proce-
8 dures for effecting securities transactions; and

9 (4) because the securities markets are an im-
10 portant national asset which must be preserved and
11 strengthened, it is in the national interest to estab-
12 lish a framework to facilitate the economically effi-
13 cient execution of securities transactions.

14 **SEC. 3. PURPOSES.**

15 The purposes of this Act are—

16 (1) to permit and encourage the continued ex-
17 pansion of electronic commerce in securities trans-
18 actions; and

19 (2) to facilitate and promote electronic com-
20 merce in securities transactions by clarifying the
21 legal status of electronic signatures for signed docu-
22 ments and records used in relation to securities
23 transactions involving broker-dealers, transfer agents
24 and investment advisers.

1 **SEC. 4. DEFINITIONS.**

2 For purposes of this subsection—

3 (1) “document” means any record, including
4 without limitation any notification, consent, acknowl-
5 edgment or written direction, intended, either by law
6 or by custom, to be signed by a person;

7 (2) “electronic” means of or relating to tech-
8 nology having electrical, digital, magnetic, wireless,
9 optical, electromagnetic, or similar capabilities;

10 (3) “electronic record” means a record created,
11 stored, generated, received, or communicated by
12 electronic means;

13 (4) “electronic signature” means an electronic
14 identifying sound, symbol or process attached to or
15 logically connected with an electronic record;

16 (5) “record” or “records” means the same in-
17 formation or documents defined or identified as
18 “records” under the Securities Exchange Act of
19 1934 and the Investment Advisers Act of 1940, re-
20 spectively;

21 (6) “transaction” means an action or set of ac-
22 tions relating to the conduct of business affairs that
23 involve or concern activities conducted pursuant to
24 or regulated under the Securities Exchange Act of
25 1934 or the Investment Advisers Act of 1940 and
26 occurring between two or more persons; and

1 (7) “signature” means any symbol, sound, or
2 process executed or adopted by a person or entity,
3 with intent to authenticate or accept a record.

4 **SEC. 5. SECURITIES MODERNIZATION PROVISIONS.**

5 (a) Section 15 of the Securities Exchange Act of
6 1934 (15 U.S.C. 78o) is amended by adding the following
7 new subsection thereto:

8 “(i) RELIANCE ON ELECTRONIC SIGNATURES.—

9 “(1) A registered broker or registered dealer
10 may accept and rely upon an electronic signature on
11 any application to open an account or on any other
12 document submitted to it by a customer or
13 counterparty, and such electronic signature shall not
14 be denied legal effect, validity or enforceability solely
15 because it is an electronic signature, except as the
16 Commission shall otherwise determine pursuant to
17 section 23 of this Act (15 U.S.C. 78w) or section 36
18 of this Act (15 U.S.C. 78mm).

19 “(2) Where any provision of this Act or any
20 regulation, rule, or interpretation promulgated by
21 the Commission thereunder, including any rule of a
22 self-regulatory organization approved by the Com-
23 mission, requires a signature to be provided on any
24 record such requirement shall be satisfied by an elec-
25 tronic record containing an electronic signature, ex-

1 cept as the Commission shall otherwise determine
2 pursuant to section 23 of this Act (15 U.S.C. 78w)
3 or section 36 of this Act (15 U.S.C. 78mm).

4 “(3) A registered broker or registered dealer
5 may use electronic signatures in the conduct of its
6 business with any customer or counterparty, and
7 such electronic signature shall not be denied legal ef-
8 fect, validity or enforceability solely because it is an
9 electronic signature.

10 “(4) With regard to the use of or reliance on
11 electronic signatures, no registered broker or reg-
12 istered dealer shall be regulated by, be required to
13 register with, or be certified, licensed, or approved
14 by, or be limited by or required to act or operate
15 under standards, rules, or regulations promulgated
16 by, a State government or agency or instrumentality
17 thereof.”.

18 (b) Section 17A of the Securities Exchange Act of
19 1934 (15 U.S.C. 78q-1) is amended by adding the fol-
20 lowing new subsection thereto:

21 “(g) RELIANCE ON ELECTRONIC SIGNATURES.—

22 “(1) A registered transfer agent may accept
23 and rely upon an electronic signature on any appli-
24 cation to open an account or on any other document
25 submitted to it by a customer or counterparty, and

1 such electronic signature shall not be denied legal
2 effect, validity or enforceability solely because it is
3 an electronic signature, except as the Commission
4 shall otherwise determine pursuant to section 23 of
5 this Act (15 U.S.C. 78w) or section 36 of this Act
6 (15 U.S.C. 78mm).

7 “(2) Where any provision of this Act or any
8 regulation or rule promulgated by the Commission
9 thereunder, including any rule of a self-regulatory
10 organization approved by the Commission, requires a
11 signature to be provided on any record such require-
12 ment shall be satisfied by an electronic record con-
13 taining an electronic signature, except as the Com-
14 mission shall otherwise determine pursuant to sec-
15 tion 23 of this Act (15 U.S.C. 78w) or section 36
16 of this Act (15 U.S.C. 78mm).

17 “(3) A registered transfer agent may use elec-
18 tronic signatures in the conduct of its business with
19 any customer or counterparty, and such electronic
20 signature shall not be denied legal effect, validity or
21 enforceability solely because it is an electronic signa-
22 ture.

23 “(4) With regard to the use of or reliance on
24 electronic signatures, no registered transfer agent
25 shall be regulated by, be required to register with,

1 or be certified, licensed, or approved by, or be lim-
2 ited by or required to act or operate under stand-
3 ards, rules, or regulations promulgated by, a State
4 government or agency or instrumentality thereof.”.

5 (c) Section 215 of the Investment Advisers Act of
6 1940 (15 U.S.C. 80b–15) is amended by adding the fol-
7 lowing new subsection thereto:

8 “(c) RELIANCE ON ELECTRONIC SIGNATURES.—

9 “(1) A registered investment adviser may ac-
10 cept and rely upon an electronic signature on any in-
11 vestment advisory contract or on any other docu-
12 ment submitted to it by a customer or counterparty,
13 and such signature shall not be denied legal effect,
14 validity or enforceability solely because it is an elec-
15 tronic signature, except as the Commission shall de-
16 termine pursuant to section 206A of this Act (15
17 U.S.C. 80b–6a) or section 211 of this Act (15
18 U.S.C. 80b–11).

19 “(2) Where any provision of this Act or any
20 regulation or rule promulgated by the Commission
21 thereunder, including any rule of a self-regulatory
22 organization approved by the Commission, requires a
23 signature to be provided on any record such require-
24 ment shall be satisfied by an electronic record con-
25 taining an electronic signature, except as the Com-

1 mission shall otherwise determine pursuant to sec-
2 tion 206A of this Act (15 U.S.C. 80b–6a) or section
3 211 of this Act (15 U.S.C. 80b–11).

4 “(3) A registered investment adviser may use
5 electronic signatures in the conduct of its business
6 with any customer or counterparty, and such elec-
7 tronic signature shall not be denied legal effect, va-
8 lidity or enforceability solely because it is an elec-
9 tronic signature.

10 “(4) With regard to the use of or reliance on
11 electronic signatures no registered investment ad-
12 viser shall be regulated by, be required to register
13 with, or be certified, licensed, or approved by, or be
14 limited by or required to act or operate under stand-
15 ards, rules, or regulations promulgated by, a State
16 government or agency or instrumentality thereof.

17 **SEC. 6. RULEMAKING AUTHORITY.**

18 The Commission is authorized to provide guidance on
19 the acceptance of, reliance on and use of electronic signa-
20 tures by any registered broker, dealer, transfer agent or
21 investment adviser, as provided in section 5 above.

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