

107TH CONGRESS
1ST SESSION

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.

IN THE HOUSE OF REPRESENTATIVES

APRIL 4, 2001

Mr. ROGERS of Michigan (for himself, Mr. OXLEY, Mrs. KELLY, Mr. BACHUS, and Mr. TIBERI) introduced the following bill; which was referred to the Committee on Financial Services, and in addition to the Committees on the Judiciary, and Agriculture, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

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.

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 “Financial Services Antifraud Network Act of 2001”.

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

Sec. 1. Short title; table of contents.
 Sec. 2. Purposes.

TITLE I—ANTIFRAUD SUBCOMMITTEE

Sec. 101. Establishment.
 Sec. 102. Duties of the Subcommittee.
 Sec. 103. Chairperson; term of chairperson; meetings; officers and staff.
 Sec. 104. Purposes of the Subcommittee.
 Sec. 105. Powers of the Subcommittee.
 Sec. 106. Agreement on cost structure.
 Sec. 107. Agency supervisory privilege.
 Sec. 108. Confidentiality of information.
 Sec. 109. Liability provisions.
 Sec. 110. Authorization for identification and criminal background check.
 Sec. 111. Definitions.
 Sec. 112. Technical and conforming amendments to other Acts.

TITLE II—SECURITIES INDUSTRY COORDINATION

Subtitle A—Disciplinary Information

Sec. 201. Investment Advisers Act of 1940.
 Sec. 202. Securities Exchange Act of 1934.

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

Sec. 211. Securities Exchange Act of 1934.
 Sec. 212. Investment Advisers Act of 1940.

3 **SEC. 2. PURPOSES.**

4 The purposes of this Act are—

5 (1) to safeguard the public from fraud in the fi-
 6 nancial services industry;

7 (2) to streamline the antifraud coordination ef-
 8 forts of Federal and State regulators and prevent
 9 failure to communicate essential information;

10 (3) to reduce duplicative information requests
 11 by, and other inefficiencies of, financial services reg-
 12 ulation;

1 (4) to assist financial regulators in detecting
2 patterns of fraud, particularly patterns that only be-
3 come apparent when viewed across the full spectrum
4 of the financial services industry; and

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

9 **TITLE I—ANTIFRAUD**
10 **SUBCOMMITTEE**

11 **SEC. 101. ESTABLISHMENT.**

12 (a) IN GENERAL.—There shall be within the Presi-
13 dent’s Working Group on Financial Markets (as estab-
14 lished by Executive Order Numbered 12631) a sub-
15 committee to be known as the ‘Antifraud Subcommittee’
16 (hereafter in this title referred to as the ‘Subcommittee’)
17 which shall consist of the following members:

18 “(1) The Secretary of the Treasury, or a des-
19 ignee of the Secretary.

20 “(2) The Chairman of the Securities and Ex-
21 change Commission or a designee of the Chairman.

22 “(3) A State insurance commissioner des-
23 ignated by the National Association of Insurance
24 Commissioners, or a designee of such commissioner.

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

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

6 (2) A representative of the Commodity Futures
7 Trading Commission appointed by the Commodity
8 Futures Trading Commission.

9 (3) A representative of the National Credit
10 Union Administration appointed by the National
11 Credit Union Administration Board.

12 (4) A representative of the Farm Credit Admin-
13 istration, appointed by the Farm Credit Administra-
14 tion Board.

15 (5) A representative of the Federal Housing Fi-
16 nance Board, appointed by such Board.

17 (6) A representative of the Office of Federal
18 Housing Enterprise Oversight of the Department of
19 Housing and Urban Development appointed by the
20 Director of such Office.

21 (7) A representative of State bank supervisors
22 designated by the Conference of State Bank Super-
23 visors.

1 (8) A representative of State credit union su-
2 pervisors designated by the National Association of
3 State Credit Union Supervisors.

4 (9) A representative of State securities adminis-
5 trators designated by the North American Securities
6 Administrators Association.

7 (10) A representative of State insurance com-
8 missioners designated by the National Association of
9 Insurance Commissioners.

10 (11) A representative of the National Associa-
11 tion of Securities Dealers appointed by the National
12 Association of Securities Dealers.

13 (12) A representative of the National Futures
14 Association appointed by the National Futures Asso-
15 ciation.

16 (13) Any other financial liaison as the Sub-
17 committee may provide to represent any other finan-
18 cial regulator, including self-regulatory agencies or
19 organizations that maintain significant databases on
20 persons engaged in the business of conducting finan-
21 cial activities, designated in the manner provided by
22 the Subcommittee.

23 (c) OTHER LIAISONS.—The following shall serve as
24 liaisons between the Subcommittee and the agencies rep-
25 resented by each such liaison:

1 (1) A representative of the Department of Jus-
2 tice appointed by the Attorney General.

3 (2) A representative of the Federal Bureau of
4 Investigation appointed by the Director of such Bu-
5 reau.

6 (3) A representative of the United States Secret
7 Service appointed by the Director of such Service.

8 (4) Any other liaison as the Subcommittee may
9 provide to represent any other regulator, including
10 self-regulatory agencies or organizations that main-
11 tain significant databases on persons engaged in the
12 business of conducting financial activities, des-
13 ignated in the manner provided by the Sub-
14 committee.

15 (d) VACANCY.—If, for any reason, the position of any
16 member of or liaison to the Subcommittee is not filled
17 within a reasonable period of time after being created or
18 becoming vacant, the President shall appoint a person to
19 fill the position after consulting the agency or entity to
20 be represented by such member or liaison, and to the ex-
21 tent possible, shall appoint such person from a list of pos-
22 sible representatives submitted by such agency or entity.

23 (e) REORGANIZATION AUTHORITY.—If the President
24 disbands the Working Group referred to in subsection (a),
25 the President shall provide for the reorganization of the

1 Subcommittee in such manner as the President determines
2 to be appropriate.

3 **SEC. 102. DUTIES OF THE SUBCOMMITTEE.**

4 (a) IN GENERAL.—The duties of the Subcommittee
5 are as follows:

6 (1) To coordinate access by the participants to
7 antifraud databases of various regulators, by facili-
8 tating the establishment, maintenance, and use of a
9 computer network of existing antifraud information
10 maintained by such regulators with respect to per-
11 sons engaged in the business of conducting financial
12 activities.

13 (2) Coordinate access by each participating regu-
14 lator to such computer network in a manner that
15 allows the regulator to review, at a minimal cost, ex-
16 isting information in the databases of other regu-
17 lators, as a part of licensure, change of control, or
18 investigation, of any person engaged in the business
19 of conducting financial activities.

20 (3) Coordinate information-sharing, where ap-
21 propriate, among State, Federal, and international
22 financial regulators and law enforcement agencies
23 where sufficient privacy and confidentiality safe-
24 guards exist.

1 (4) Coordinate development by participants of a
2 name-relationship index for persons engaged in the
3 business of conducting financial activities using ex-
4 isting information from the databases of regulators.

5 (5) Advise regulators in updating their anti-
6 fraud databases to better coordinate with the com-
7 puter network.

8 (6) Consider establishing a tracking and record-
9 keeping procedure that allows a record of the inquir-
10 ies made through the network and the information
11 transferred through the network by one regulator to
12 another to be maintained, in such manner as the
13 Subcommittee considers to be appropriate.

14 (7) After the end of each year, transmit to the
15 Congress a summary of the coordination efforts un-
16 dertaken by the Subcommittee during the preceding
17 year and a description of any impediments to or rec-
18 ommended legislation for facilitating such efforts.

19 (b) CRITERIA FOR NETWORK WITH RESPECT TO
20 ANY PERSON ENGAGED IN THE BUSINESS OF CON-
21 DUCTING FINANCIAL ACTIVITIES.—

22 (1) FINAL DISCIPLINARY AND FORMAL EN-
23 FORCEMENT ACTIONS.—Each regulator that is rep-
24 resented by a member of the Subcommittee under
25 section 101(a) or by a financial liaison to the Sub-

1 committee under section 101(b) shall allow any par-
2 ticipant access, through the network, to any public
3 final disciplinary or formal enforcement action by
4 the member or financial liaison which is accessible
5 electronically relating to fraudulent, wrongful, or
6 dishonest conduct of persons engaged in the business
7 of conducting financial activities.

8 (2) OTHER INFORMATION.—Subject to such
9 limitations and criteria that may be established by
10 any participant in accordance with subsection (c) re-
11 garding the access to information maintained by
12 such participant and the requirements of subsection
13 (d), each participant may permit access through the
14 network to the following information as it relates to
15 persons engaged in the business of conducting finan-
16 cial activities:

17 (A) To the extent the regulator determines
18 the disclosure to be appropriate and cost-effec-
19 tive, information concerning—

20 (i) the registrations, licenses, ap-
21 proved applications, or notices that have
22 been granted or approved by, or are other-
23 wise within the regulatory jurisdiction of,
24 the participant and are in effect with re-

1 spect to any person engaged in the busi-
2 ness of conducting financial activities; and

3 (ii) any significant affiliations or
4 name-relationships of such person on
5 which the participant maintains records.

6 (B) To the extent the regulator determines
7 the disclosure to be appropriate, information
8 concerning investigations conducted by the par-
9 ticipant, such as the issuance of a notice of
10 charges or on-going investigations after notice
11 has been provided to the subject of the inves-
12 tigation, public notice has been given, or some
13 public action has been taken in connection with
14 the investigation.

15 (C) To the extent the participant deter-
16 mines the disclosure to be appropriate, con-
17 sumer complaints relating to fraudulent activi-
18 ties or matters within the jurisdiction of the re-
19 questing member or liaison.

20 (D) To the extent the appropriate Federal
21 banking agency and the Secretary of the Treas-
22 ury may determine the disclosure to be appro-
23 priate, suspicious activity reports filed in ac-
24 cordance with section 5318(g) of title 31,
25 United States Code, and regulations prescribed

1 by the Secretary under such section, or pursu-
2 ant to regulations prescribed by the appropriate
3 Federal banking agency, particularly where
4 such reports reference persons engaged in the
5 business of conducting financial activities other
6 than a depository institution or an institution-
7 affiliated party (as defined in section 3 of the
8 Federal Deposit Insurance Act).

9 (E) To the extent the appropriate State in-
10 surance commissioner determines the disclosure
11 to be appropriate, special activity reports from
12 any State insurance commissioner, including
13 the National Association of Insurance Commis-
14 sioners only to the extent such association is
15 acting as the agent of, and is subject to the
16 oversight of, such insurance commissioner.

17 (F) Any other regulatory or supervisory in-
18 formation that any participant may determine
19 to be appropriate to provide access to through
20 the network, including financial records or ex-
21 amination reports.

22 (3) USE OF CENTRALIZED DATABASES.—

23 (A) IN GENERAL.—A member or financial
24 liaison shall be deemed to have met the require-
25 ments of paragraph (1) if the Subcommittee de-

1 termines that the participants have access to a
2 centralized database that contains information
3 on public final disciplinary or formal enforce-
4 ment actions sufficiently similar to that de-
5 scribed in paragraph (1).

6 (B) FACTORS FOR DETERMINATION.—The
7 Subcommittee shall make the determination
8 under subparagraph (A) on an ongoing basis,
9 considering both short-term costs and techno-
10 logical limitations, as well as the need for long-
11 term comprehensive coverage, and other appro-
12 priate factors.

13 (C) STATE SUPERVISORS.—It is the sense
14 of the Congress that the National Association
15 of Insurance Commissioners, the Conference of
16 State Bank Supervisors, the National Associa-
17 tion of State Credit Union Supervisors, and the
18 North American Securities Administrators As-
19 sociation should develop model guidelines for
20 their respective regulated financial industries,
21 where appropriate, to promote uniform stand-
22 ards for sharing information with the network
23 under this section.

24 (c) FINANCIAL REGULATOR CONTROL OF ACCESS.—

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

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

10 (B) the participants that may have access
11 to the database or any specific type or category
12 of information in the database; and

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

16 (2) PROCEDURES.—Any action by a participant
17 under paragraph (1) may be established by regula-
18 tions, orders, or guidelines or on a case-by-case
19 basis.

20 (3) DISCLAIMER.—

21 (A) IN GENERAL.—The Subcommittee and
22 a participant shall ensure that any transfer of
23 information under this section, other than in-
24 formation described in subsection (b)(1), from
25 such participant to another participant be sub-

1 ject to a disclaimer that the information
2 accessed may be unsubstantiated and may not
3 be relied on as the sole basis for denying any
4 application or license.

5 (B) SUBCOMMITTEE FLEXIBILITY.—The
6 Subcommittee may prescribe such guidelines or
7 procedures as the Subcommittee determines to
8 be appropriate governing the location and fre-
9 quency of disclaimers under this paragraph and
10 the manner in which any such disclaimer shall
11 be made.

12 (4) FINAL DISCIPLINARY AND FORMAL EN-
13 FORCEMENT ACTIONS NOT SUBJECT TO LIMITA-
14 TION.—This subsection, and standards or proce-
15 dures adopted by any participant under this sub-
16 section, shall not apply with respect to information
17 described in subsection (b)(1).

18 (5) NO EFFECT ON PUBLIC OR COMPANY AC-
19 CESS.—It is the sense of the Congress that it is not
20 the intent of this section to replace, supersede, or
21 otherwise affect access to any databases existing on
22 the date of the enactment of this Act which are ac-
23 cessible by the public or persons engaged in the
24 business of conducting financial activities.

1 (d) ELIGIBILITY REQUIREMENTS FOR STATE SECU-
2 RITIES ADMINISTRATORS.—No State securities adminis-
3 trator shall be eligible to be a participant and access the
4 network maintained by the Subcommittee unless—

5 (1) such State securities administrator partici-
6 pates in a centralized database for broker-dealers,
7 broker-dealer agents, investment advisers, and in-
8 vestment advisor representatives, registered or re-
9 quired to be registered, as designated by the North
10 American Securities Administrators Association; and

11 (2) such State securities administrator requires
12 the broker-dealer, broker-dealer agent, investment
13 adviser, or investment adviser representative, cur-
14 rently registered or required to be registered, to file
15 any application, amendment to an application, or a
16 renewal of an application through the centralized
17 registration database.

18 (e) ELIGIBILITY REQUIREMENTS FOR STATE INSUR-
19 ANCE COMMISSIONERS.—

20 (1) IN GENERAL.—No State insurance commis-
21 sioner shall be eligible to access the network main-
22 tained by the Subcommittee unless—

23 (A) such State insurance commissioner
24 participates with other State insurance commis-
25 sioners in a centralized database that, with re-

1 spect to persons engaged in the business of in-
2 surance, address—

3 (i) disciplinary actions taken against
4 persons engaged in the business of insur-
5 ance;

6 (ii) suspicious activities or ongoing in-
7 vestigations of persons engaged in the
8 business of insurance;

9 (iii) consumer complaints concerning
10 a person engaged in the business of insur-
11 ance; and

12 (iv) corporate and other business af-
13 filiations or relationships; and

14 (B) the State insurance department which
15 such commissioner represents meets one of the
16 following accreditation requirements at the time
17 of access to the network:

18 (i) Is accredited by the National Asso-
19 ciation of Insurance Commissioners.

20 (ii) Has an application for accredited
21 status pending with the National Associa-
22 tion of Insurance Commissioners.

23 (iii) Has a determination by the Sub-
24 committee in effect that such State insur-
25 ance department meets or exceeds the

1 standards established by the National As-
2 sociation of Insurance Commissioners for
3 accreditation.

4 (2) QUALIFICATION OF NAIC NETWORKS.—A
5 State insurance commissioner shall be deemed to
6 have met the requirements of paragraph (1)(A) if
7 the commissioner participates in—

8 (A) the following networks maintained by
9 the National Association of Insurance Commis-
10 sioners:

11 (i) Producer Database.

12 (ii) Regulatory Information Retrieval
13 System.

14 (iii) Special Activities Database.

15 (iv) Complaints Database; or

16 (B) each network or database designated
17 by the National Association of Insurance Com-
18 missioners as a successor to any network de-
19 scribed in subparagraph (A).

20 (f) SUBCOMMITTEE STANDARDS.—The Sub-
21 committee shall consider developing policies or guidelines
22 for participants setting forth—

23 (1) how to denote which types of information
24 are to receive different levels of privileges or con-
25 fidential treatment; and

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

4 (g) DEADLINE FOR ESTABLISHING NETWORK.—The
5 computer network which is required under subsection
6 (a)(1) shall be established before the end of the 2-year
7 period beginning on the date of the enactment of the Fi-
8 nancial Services Antifraud Network Act of 2001 or such
9 other time as the Subcommittee may determine to be ap-
10 propriate.

11 (h) OTHER SHARING ARRANGEMENTS NOT AF-
12 FECTED.—No provision of this section shall be construed
13 as limiting or otherwise affecting the authority of a partic-
14 ipant to provide any person, including another participant,
15 access to any information in accordance with any provision
16 of law other than this Act.

17 **SEC. 103. CHAIRPERSON; TERM OF CHAIRPERSON; MEET-**
18 **INGS; OFFICERS AND STAFF.**

19 (a) CHAIRPERSON.—

20 (1) SELECTION.—The Subcommittee shall se-
21 lect the Chairperson of the Subcommittee from
22 among the members of the Subcommittee.

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

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

4 (c) QUORUM.—A majority of members of the Sub-
5 committee shall constitute a quorum.

6 (d) MAJORITY VOTE.—Decisions of the Sub-
7 committee shall be made by the vote of a majority of the
8 members of the Subcommittee.

9 (e) OFFICERS AND STAFF.—The Chairperson of the
10 Subcommittee shall appoint such officers and staff as may
11 be necessary to carry out the functions of this title.

12 **SEC. 104. PURPOSES OF THE SUBCOMMITTEE.**

13 The purposes of the Subcommittee shall include the
14 purposes of this Act and the promotion of greater cross-
15 industry efficiency, effectiveness, and coordination, in gen-
16 eral, across all sectors of our Nation's financial markets.

17 **SEC. 105. POWERS OF THE SUBCOMMITTEE.**

18 (a) IN GENERAL.—The Subcommittee shall have
19 such powers as are necessary to carry out the duties and
20 functions under this section.

21 (b) INFORMATION TO FACILITATE COORDINATION.—
22 Each agency and entity represented by a member or liai-
23 son shall, to the extent permitted by law, provide the Sub-
24 committee such information, concerning the databases
25 maintained by the agency or entity, as the Subcommittee

1 may require to perform the duties described in section
2 102(a).

3 (c) SERVICE OF MEMBERS AND LIAISONS.—Members
4 of and liaisons to the Subcommittee shall serve without
5 additional compensation for their work on the Sub-
6 committee.

7 (d) ADMINISTRATIVE AND TECHNICAL SUPPORT.—
8 The Subcommittee may request that any agency or entity
9 represented by a member or liaison provide the Sub-
10 committee with any administrative, technical, or other
11 support service that the Subcommittee determines is nec-
12 essary or appropriate for it to perform the duties described
13 in section 102(a).

14 **SEC. 106. AGREEMENT ON COST STRUCTURE.**

15 (a) IN GENERAL.—The Subcommittee shall deter-
16 mine the means for providing for the necessary costs of
17 carrying out the purposes of this title.

18 (b) CONSULTATION AND AGREEMENT ON FEES AND
19 CONTRIBUTIONS.—Notwithstanding any other provision
20 of this title, the Subcommittee may not impose any fee
21 or assessment on, or apportion any contribution against,
22 any member or liaison under this section in connection
23 with allowing such member or liaison access through the
24 network unless—

1 (1) the Subcommittee consults with such mem-
2 ber or liaison; and

3 (2) the member or liaison consents to the
4 amounts, or on a schedule, of such fees, assess-
5 ments, or contributions.

6 (c) REIMBURSEMENT OF PARTICIPANT COSTS.—Be-
7 fore allowing access by the Subcommittee or a participant
8 to any information described in section 102, other than
9 access described in subsection (b)(1) of such section, a
10 member or liaison may request the reimbursement of rea-
11 sonable costs for providing such access.

12 (d) REVIEW OF OPTIMAL NETWORKING METHODS.—
13 Before the end of the 120-day period beginning on the
14 date of the enactment of this Act, the Comptroller General
15 shall submit a report to the Committee on Financial Serv-
16 ices of the House of Representatives and the Committee
17 on Banking, Housing, and Urban Affairs of the Senate
18 regarding the most efficient and cost-effective methods for
19 the Subcommittee to fulfill its duties under this title.

20 **SEC. 107. AGENCY SUPERVISORY PRIVILEGE.**

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

23 (1) SUPERVISORY PROCESS.—The term ‘super-
24 visory process’ means any activity engaged in by a
25 financial regulator to carry out the official respon-

sibilities of the financial regulator with regard to the regulation or supervision of persons engaged in the business of conducting financial activities.

(2) CONFIDENTIAL SUPERVISORY INFORMATION.—Subject to paragraph (3), the term ‘confidential supervisory information’ means any of the following information, or any portion of any such 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 any computer file, work paper, or similar information.

(B) Any correspondence or communication from a financial regulator to a person engaged in the business of conducting financial activities relating to an examination, inspection, visitation, or investigation by a financial regulator.

(C) Any correspondence, communication, or document, including any compliance and other reports, created by or on behalf of a per-

son engaged in the business of conducting financial activities in response to any request, inquiry, or directive from a financial regulator in connection with any examination, inspection, visitation, or investigation and provided to a financial regulator.

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

(3) ORDINARY BUSINESS RECORDS EXCLUDED.—The term ‘confidential supervisory information’ shall not include—

(A) any book or record in the possession of the person engaged in the business of conducting financial activities that is routinely prepared by or on behalf of such person and maintained in the ordinary course of business; or

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

(i) by any applicable Federal law or regulation; or

(ii) in the case of confidential supervisory information of a State financial reg-

1 ulator, any applicable State law or regula-
2 tion that specifically refers to such type of
3 information.

4 (b) FINANCIAL REGULATOR SUPERVISORY PRIVI-
5 LEGE.—

6 (1) PRIVILEGE ESTABLISHED.—

7 (A) IN GENERAL.—All confidential super-
8 visory information shall be the property of the
9 financial regulator that created the information,
10 or requested the information from a person en-
11 gaged in the business of conducting financial
12 activities, and shall be privileged from disclo-
13 sure to any other person.

14 (B) PROHIBITION ON UNAUTHORIZED DIS-
15 CLOSURES.—No person in possession of con-
16 fidential supervisory information may disclose
17 such information, in whole or in part, without
18 the prior authorization of the financial regu-
19 lator that created the information, or requested
20 the information from a person engaged in the
21 business of conducting financial activities, ex-
22 cept for a disclosure made in published statis-
23 tical material that does not disclose, either di-
24 rectly or when used in conjunction with publicly
25 available information, the affairs of any person.

1 (C) AGENCY WAIVER.—The financial regu-
2 lator described in subparagraph (A) may waive,
3 in whole or in part, in the discretion of the reg-
4 ulator, any privilege established under this
5 paragraph.

6 (2) EXCEPTIONS.—

7 (A) IN GENERAL.—No provision of para-
8 graph (1) shall be construed as preventing ac-
9 cess to confidential supervisory information by
10 duly authorized committees of the United
11 States Congress or the Comptroller General of
12 the United States.

13 (B) AGENCY OVERSIGHT.—No financial
14 regulator which is subject to the oversight of a
15 Federal agency may assert the privilege de-
16 scribed in paragraph (1) to prevent access to
17 confidential supervisory information by such
18 Federal agency.

19 (c) TREATMENT OF FOREIGN SUPERVISORY INFOR-
20 MATION.—In any proceeding before a Federal or State
21 court of the United States, in which a person seeks to
22 compel production or disclosure by a foreign financial reg-
23 ulator with network access in accordance with section
24 102(a)(3), any other financial regulator, or any other per-
25 son, of information or a document prepared or collected

1 by a foreign financial regulator that would, had they been
2 prepared or collected by a Federal financial regulator, be
3 confidential supervisory information for purposes of this
4 section, the information or document shall be privileged
5 to the same extent that the information and documents
6 of Federal financial regulators are privileged under this
7 title.

8 (d) OTHER PRIVILEGES NOT WAIVED BY DISCLO-
9 SURE TO FINANCIAL REGULATOR.—The submission by a
10 person engaged in the business of conducting financial ac-
11 tivities of any information to a Federal financial regulator,
12 a State financial regulator, or a foreign financial regulator
13 described in subsection (c) for any purpose in the course
14 of the supervisory process of such financial regulator shall
15 not waive, destroy, or otherwise affect any privilege such
16 person may claim with respect to such information under
17 Federal or State law.

18 (e) DISCOVERY AND DISCLOSURE OF INFORMA-
19 TION.—

20 (1) INFORMATION AVAILABLE ONLY FROM FI-
21 NANCIAL REGULATOR.—

22 (A) IN GENERAL.—No person or financial
23 regulator may disclose, in whole or in part, any
24 confidential supervisory information to any per-
25 son who seeks such information through sub-

1 poena, discovery procedures, or other process
2 from any such person or regulator, except that
3 such information may be sought in accordance
4 with this section from the financial regulator
5 that created the information or requested the
6 information from a person engaged in the busi-
7 ness of conducting financial activity.

8 (B) PROCEDURE FOR REQUESTS SUB-
9 MITTED TO FINANCIAL REGULATOR.—Any re-
10 quest for discovery or disclosure of confidential
11 supervisory information shall be made to the fi-
12 nancial regulator that created the information,
13 or requested the information from a person en-
14 gaged in the business of conducting financial
15 activities, which shall determine within a rea-
16 sonable time period whether to disclose such in-
17 formation pursuant to procedures and criteria
18 established by the financial regulator.

19 (C) NOTIFICATION.—

20 (i) IN GENERAL.—Before any finan-
21 cial regulator releases information that was
22 requested from a person engaged in the
23 business of conducting financial activities
24 to a person under subparagraph (B), no-
25 tice and a reasonable time for comment

1 shall be provided to the person from whom
2 such information was requested unless
3 such information—

4 (I) is being provided to another
5 financial regulator, liaison, or Federal
6 or State government (or any agency
7 or instrumentality of any such govern-
8 ment);

9 (II) is being sought for use in a
10 criminal proceeding or investigation or
11 a regulatory or supervisory enforce-
12 ment or disciplinary action or inves-
13 tigation; or

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

17 (ii) PROCEDURES AND REQUIRE-
18 MENTS.—The notice and time period re-
19 quired by clause (i) shall be in accordance
20 with the procedures and requirements that
21 the financial regulator releasing the infor-
22 mation may establish by regulation or oth-
23 erwise.

24 (2) FEDERAL COURT JURISDICTION OVER DIS-
25 PUTES.—

1 (A) IN GENERAL.—In any action or pro-
2 ceeding in which a party seeks to compel disclo-
3 sure of confidential supervisory information, a
4 financial regulator may, in its sole discretion,
5 elect to remove the action or proceeding on the
6 disclosure issue to Federal court, and any such
7 Federal court shall have exclusive jurisdiction.

8 (B) JUDICIAL REVIEW.—Judicial review of
9 the final action of a financial regulator with re-
10 gard to the disposition of a request for con-
11 fidential supervisory information shall be before
12 a district court of the United States of com-
13 petent jurisdiction, subject to chapter 7 of part
14 I of title 5, United States Code.

15 (f) AUTHORITY TO INTERVENE.—In the case of any
16 action or proceeding to compel compliance with a sub-
17 poena, order, discovery request, or other judicial or admin-
18 istrative process with respect to any confidential super-
19 visory information relating to any person engaged in the
20 business of conducting financial activities, a financial reg-
21 ulator may intervene in such action or proceeding, and
22 such person may intervene with such regulator, for the
23 purpose of—

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

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

3 (3) registering appropriate objections with re-
4 spect to the action or proceeding to the extent the
5 action or proceeding relates to or involves such infor-
6 mation.

7 (g) RIGHT TO APPEAL.—Any court order that com-
8 pels production of confidential supervisory information
9 may be immediately appealed by the financial regulator
10 and the order compelling production shall be automatically
11 stayed, pending the outcome of such appeal.

12 (h) REGULATIONS.—

13 (1) AUTHORITY TO PRESCRIBE.—Each financial
14 regulator may prescribe such regulations as the reg-
15 ulator considers to be appropriate, after consultation
16 with the other financial regulators (to the extent the
17 prescribing financial regulator considers appropriate
18 and feasible), to carry out the purposes of this sec-
19 tion.

20 (2) AUTHORITY TO REQUIRE NOTICE.—Any
21 regulations prescribed by a financial regulator under
22 paragraph (1) may require any person in possession
23 of confidential supervisory information to notify the
24 financial regulator whenever the person is served
25 with a subpoena, order, discovery request, or other

1 judicial or administrative process requiring the per-
 2 sonal attendance of such person as a witness or re-
 3 quiring the production of such information in any
 4 proceeding.

5 (i) ACCESS IN ACCORDANCE WITH REGULATIONS
 6 AND ORDERS.—Notwithstanding any other provision of
 7 this section, a financial regulator may, without waiving
 8 any privilege, authorize access to confidential supervisory
 9 information created by such agency, or requested by such
 10 regulator from any person engaged in the business of con-
 11 ducting financial activities, for any appropriate govern-
 12 mental, law enforcement, or public purpose in accordance
 13 with agency regulations or orders.”.

14 **SEC. 108. CONFIDENTIALITY OF INFORMATION.**

15 (a) IN GENERAL.—

16 (1) FINANCIAL REGULATORS.—Except as other-
 17 wise provided in this section or section 107, any re-
 18 quirement under Federal or State law regarding the
 19 privacy or confidentiality of any information or ma-
 20 terial in the possession of any participant to the
 21 Subcommittee, and any privilege arising under Fed-
 22 eral or State law (including the rules of any Federal
 23 or State court) with respect to such information or
 24 material, shall continue to apply to such information
 25 or material—

1 (A) after the information or material has
2 been disclosed to another participant through
3 the network; and

4 (B) while the information or material is
5 held by the Subcommittee, whether acquired di-
6 rectly or through the network.

7 (2) CERTAIN INSURANCE INFORMATION.—Ex-
8 cept as otherwise provided in this section or section
9 107, any requirement under Federal or State law re-
10 garding the privacy or confidentiality of any infor-
11 mation or material in the possession of the National
12 Association of Insurance Commissioners, or any
13 member or affiliate of the Association, and any
14 privilege arising under Federal or State law (includ-
15 ing the rules of any Federal or State court) with re-
16 spect to such information or material, shall continue
17 to apply to such information or material after the in-
18 formation has been disclosed to the Association, or
19 any other member or affiliate of the Association,
20 through the computer network maintained by the
21 Association.

22 (3) NONAPPLICABILITY OF CERTAIN REQUIRE-
23 MENTS.—

24 (A) IN GENERAL.—Information or material
25 that is subject to a privilege or confidentiality

1 under any other paragraph of this subsection
2 shall not be subject to—

3 (i) disclosure under any Federal or
4 State law governing the disclosure to the
5 public of information held by an officer or
6 an agency of the Federal Government or
7 the respective State; or

8 (ii) subpoena or discovery, or admis-
9 sion into evidence, in any private civil ac-
10 tion or administrative process,

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

16 (4) TREATMENT OF CERTAIN INTERNATIONAL
17 FINANCIAL REGULATORS.—Except as otherwise pro-
18 vided in this section or section 107, any inter-
19 national regulator that is allowed by the Sub-
20 committee, pursuant to section 103(a)(3), to access
21 the network shall be considered to be a participant
22 financial regulator for purposes of this section and
23 section 107.

24 (b) PREEMPTION OF STATE LAW.—Any State law re-
25 lating to the disclosure of confidential supervisory infor-

1 mation that is the property of any participant or any in-
 2 formation or material to which subsection (a) applies that
 3 is inconsistent with any provision of section 107 or sub-
 4 section (a) of this section shall be superseded by the re-
 5 quirements of such provision to the extent of the inconsis-
 6 tency.

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

12 (1) the participant maintains a system that en-
 13 ables the participant to maintain full compliance
 14 with the requirements of sections 102 and 107 and
 15 this section, with respect to such information and
 16 material; and

17 (2) if and to the extent required by the Sub-
 18 committee, a record is maintained of each attempt
 19 to access such information and material, and the
 20 identity of the person making the attempt, in order
 21 to prevent evasions of such requirements.

22 **SEC. 109. LIABILITY PROVISIONS.**

23 (a) NO LIABILITY FOR GOOD FAITH DISCLO-
 24 SURES.—

1 (1) IN GENERAL.—An entity described in para-
2 graph (2), the members and affiliates of such entity,
3 the officers and employees of such entity, member,
4 or affiliate, the Subcommittee, and officers and em-
5 ployees of the Subcommittee shall not be subject to
6 any civil action or proceeding for monetary damages
7 by reason of the action or omission of any officer or
8 employee of such entity, member, affiliate, or Sub-
9 committee, while acting within the scope of his or
10 her office or employment, relating to collecting, fur-
11 nishing, or disseminating, directly or through any
12 network maintained by the entity or the Sub-
13 committee, regulatory information, including sus-
14 picious or special activity reports, concerning or re-
15 lated to persons engaged in the business of con-
16 ducting financial activities.

17 (2) ENTITIES DESCRIBED.—The entities re-
18 ferred to in paragraph (1) are as follows:

19 (A) The National Association of Insurance
20 Commissioners.

21 (B) The Conference of State Bank Super-
22 visors.

23 (C) The North American Securities Ad-
24 ministrators Association.

1 (D) The National Association of Securities
2 Dealers.

3 (E) The National Futures Association.

4 (F) The National Association of State
5 Credit Union Supervisors.

6 (b) CRIMINAL LIABILITY FOR INTENTIONAL UNLAW-
7 FUL DISCLOSURES.—Whoever willfully discloses to any
8 person any information or material maintained by a par-
9 ticipant concerning any person engaged in the business of
10 conducting financial activities knowing the disclosure to
11 be in violation of any provision of this title requiring the
12 confidentiality of such information or material, or estab-
13 lishing a privilege from disclosure for any participant
14 which has not been waived by the participant, shall be
15 fined in accordance with title 18, United States Code, or
16 imprisoned not more than 5 years, or both.

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

1 **SEC. 110. AUTHORIZATION FOR IDENTIFICATION AND**
2 **CRIMINAL BACKGROUND CHECK.**

3 (a) AUTHORIZATION AND DUTIES OF THE ANTI-
4 FRAUD SUBCOMMITTEE.—Upon the request of a financial
5 regulator, the Antifraud Subcommittee shall—

6 (1) obtain from the Attorney General criminal
7 background records corresponding to fingerprints or
8 other biometric identification provided by the Sub-
9 committee; and

10 (2) screen the records obtained under para-
11 graph (1) to provide to the requesting financial reg-
12 ulator (or such regulator’s designated representative
13 under subsection (i)(1)) any information relating to
14 any crime for which a person could be barred under
15 Federal law by such regulator with respect to the fi-
16 nancial activities over which the regulator has juris-
17 diction.

18 (b) FORM OF REQUEST.—A request under subsection
19 (a) shall include a copy of any necessary identification in-
20 formation required by the Attorney General, such as the
21 name and fingerprints of the person about whom the
22 record is requested and a statement signed by the person
23 acknowledging that the regulator (or such regulator’s des-
24 ignated representative under subsection (i)(1)) may re-
25 quest the search.

1 (c) ATTORNEY GENERAL AUTHORIZATION.—Upon
2 receiving a request described in subsection (b), the Attor-
3 ney General shall—

4 (1) search the records of the Criminal Justice
5 Information Services Division of the Federal Bureau
6 of Investigation, and any other similar database over
7 which the Attorney General has authority and deems
8 appropriate, for any criminal background records
9 (including wanted persons information) cor-
10 responding to the identification information provided
11 under subsection (b); and

12 (2) provide such records to the Subcommittee
13 for screening.

14 (d) PERMISSIBLE USES OF INFORMATION.—A finan-
15 cial regulator may use information obtained under this
16 section for regulatory or law enforcement purposes and
17 disclose such information to any other financial regulator
18 or Federal or State governmental agency, for regulatory
19 or law enforcement purposes, if the recipient agrees to
20 maintain the confidentiality of such records.

21 (e) LIMITATION ON USE OF INFORMATION.—Infor-
22 mation obtained under this section may be used only—

23 (1) by the authorized recipient of such informa-
24 tion; and

1 (2) for the purpose of determining the suit-
2 ability of the person about whom the information is
3 obtained for engaging in the business of conducting
4 financial activities.

5 (f) PENALTY FOR IMPROPER USE.—Whoever know-
6 ingly uses any information obtained under this section for
7 an unauthorized purpose shall be imprisoned for not more
8 than 2 years or fined under title 18, United States Code,
9 or both.

10 (g) RELIANCE ON INFORMATION.—A financial regu-
11 lator (or such regulator’s designated representative under
12 subsection (i)(1)) who reasonably relies on information
13 provided under this section shall not be liable in any action
14 based on an employment determination resulting from the
15 incompleteness or inaccuracy of such information.

16 (h) SAFE HARBOR.—No person engaged in the busi-
17 ness of conducting financial activities shall be subject to
18 any civil action or proceeding for monetary damages or
19 any action brought under section 1033(e)(1)(B) of title
20 18, United States Code, for permitting an individual to
21 engage in the business of conducting financial activities
22 in violation of section 1033(e)(1)(A) of such title, if such
23 individual is licensed, or approved (as part of an applica-
24 tion or otherwise), by a financial regulator that performs
25 criminal background checks under this section, unless

1 such person has actual knowledge that the individual is
2 in violation of section 1033(e)(1)(A) of such title and that
3 the violation would not be known to the financial regu-
4 lator.

5 (i) DESIGNATION OF REPRESENTATIVE.—

6 (1) IN GENERAL.—A financial regulator may
7 designate a representative, to be approved by the
8 Antifraud Subcommittee, for facilitating requests
9 and exchanges of information under this section be-
10 tween the financial regulator and the Subcommittee.

11 (2) SENSE OF CONGRESS REGARDING REP-
12 RESENTATIVES OF INSURANCE REGULATORS.—It is
13 the sense of the Congress that—

14 (A) each State insurance commissioner
15 should designate the National Association of In-
16 surance Commissioners as a representative
17 under paragraph (1);

18 (B) persons engaged in the business of in-
19 surance should be able to use the National As-
20 sociation of Insurance Commissioners to facili-
21 tate obtaining fingerprints and supplying identi-
22 fication information for use in background
23 checks under this section on a multijuris-
24 dictional basis;

1 (C) the National Association of Insurance
2 Commissioners should maintain a database to
3 obtain records under this section for use by
4 State insurance commissioners to reduce mul-
5 tiple or duplicative fingerprinting requirements
6 and criminal background checks; and

7 (D) other financial regulators that require
8 fingerprints and criminal background checks
9 should similarly coordinate efforts to reduce du-
10 plication for persons engaged in the business of
11 conducting multiple types financial activities.

12 (j) SENSE OF CONGRESS REGARDING USE OF
13 DETAILEES.—It is the sense of the Congress that a crimi-
14 nal background records screening described in subsection
15 (a)(2) may be performed by a detailee of the requesting
16 financial regulator (or such regulator’s designated rep-
17 resentative under subsection (i)(1)), if such detailee does
18 not disclose to such regulator (or representative) informa-
19 tion from such records other than the resulting screened
20 information described in subsection (a)(2).

21 (k) FEES.—The Attorney General and the Antifraud
22 Subcommittee may charge a reasonable fee for the provi-
23 sion of information under this section.

24 (l) RULE OF CONSTRUCTION.—This section shall not
25 be interpreted—

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

4 (2) to require a financial regulator to perform
5 criminal background checks under this section.

6 (m) REGULATIONS.—The Attorney General may pre-
7 scribe regulations to carry out this section.

8 **SEC. 111. DEFINITIONS.**

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

11 (1) FEDERAL BANKING AGENCY.—The term
12 “Federal banking agency” has the same meaning as
13 given in section 3(z) of the Federal Deposit Insur-
14 ance Act.

15 (2) FINANCIAL ACTIVITIES.—The term “finan-
16 cial activities” means activities that are financial in
17 nature or are incidental to a financial activity (as
18 defined under section 4(k) of the Bank Holding
19 Company Act of 1956).

20 (3) FINANCIAL REGULATOR.—The term “finan-
21 cial regulator” means—

22 (A) each Federal banking agency;

23 (B) the Securities and Exchange Commis-
24 sion;

1 (C) the Commodity Futures Trading Com-
2 mission;

3 (D) the National Credit Union Administra-
4 tion;

5 (E) the Farm Credit Administration;

6 (F) the Federal Housing Finance Board;

7 (G) the Federal Trade Commission, with
8 respect to creditors subject to the jurisdiction of
9 the Commission under section 108(c) of the
10 Truth in Lending Act;

11 (H) the Director of the Office of Federal
12 Housing Enterprise Oversight of the Depart-
13 ment of Housing and Urban Development;

14 (I) any State bank supervisor (as defined
15 in section 3(r) of the Federal Deposit Insurance
16 Act), including the Conference of State Bank
17 Supervisors only to the extent—

18 (i) such conference is acting as an
19 agent of, and is subject to the oversight of,
20 any such State bank supervisor; and

21 (ii) the conference provides notice to
22 the Subcommittee when it is acting in such
23 capacity as an agent;

1 (J) any State insurance commissioner, in-
2 cluding the National Association of Insurance
3 Commissioners only to the extent—

4 (i) such association is acting as the
5 agent of, and is subject to the oversight of,
6 any such insurance commissioner; and

7 (ii) the association provides notice to
8 the Subcommittee when it is acting in such
9 capacity as an agent;

10 (K) any State securities administrator, in-
11 cluding the North American Securities Adminis-
12 trators Association only to the extent—

13 (i) such association is acting as the
14 agent of, and is subject to the oversight of,
15 any such securities administrator; and

16 (ii) the association provides notice to
17 the Subcommittee when it is acting in such
18 capacity as an agent;

19 (L) any State credit union supervisor, in-
20 cluding the National Association of State Credit
21 Union Supervisors only to the extent—

22 (i) such association is acting as the
23 agent of, and is subject to the oversight of,
24 any such credit union supervisor; and

1 (ii) the association provides notice to
2 the Subcommittee when it is acting in such
3 capacity as an agent;

4 (M) the National Association of Securities
5 Dealers, only to the extent that—

6 (i) such association is acting in con-
7 nection with the financial services industry
8 and is subject to the oversight of the Secu-
9 rities and Exchange Commission; and

10 (ii) the association provides notice to
11 the Subcommittee when it is acting in such
12 capacity;

13 (N) the National Futures Association, only
14 to the extent that—

15 (i) such association is acting in con-
16 nection with the financial services industry
17 and is subject to the oversight of the Com-
18 modity Futures Trading Commission or
19 the Securities and Exchange Commission;
20 and

21 (ii) the association provides notice to
22 the Subcommittee when it is acting in such
23 capacity; and

24 (O) any other self-regulatory organization
25 that engages in or coordinates regulatory and

1 enforcement activities, with respect to any per-
2 son engaged in the business of conducting fi-
3 nancial activities, that is subject to the over-
4 sight of the Securities and Exchange Commis-
5 sion or the Commodity Futures Trading Com-
6 mission.

7 (4) PARTICIPANT.—The term “participant”
8 means any regulator which—

9 (A) is represented by a member of, or a li-
10 aison to, the Subcommittee; and

11 (B) is allowed access to the network by the
12 Subcommittee.

13 (5) PERSON ENGAGED IN THE BUSINESS OF
14 CONDUCTING FINANCIAL ACTIVITIES.—The term
15 “person engaged in the business of conducting finan-
16 cial activities” includes, to the extent appropriate
17 under the laws applicable to the jurisdiction of a fi-
18 nancial regulator over such person—

19 (A) any director, officer, employee, or con-
20 trolling stockholder of, or agent for, any such
21 person;

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

1 (C) any shareholder, consultant, joint ven-
 2 ture partner, and any other person, including
 3 an independent contractor, as determined by
 4 the appropriate financial regulator (by regula-
 5 tion or case-by-case) who participates in the
 6 conduct of the affairs of such person.

7 (6) STATE INSURANCE COMMISSIONER.—The
 8 term “State insurance commissioner” means any of-
 9 ficer, agency, or other entity of any State which has
 10 primary regulatory authority over the business of in-
 11 surance and over any person engaged in the business
 12 of insurance to the extent of such activities, in such
 13 State.

14 (7) STATE SECURITIES ADMINISTRATOR.—The
 15 term “State securities administrator” means the se-
 16 curities commission (or any agency or office per-
 17 forming like functions) of any State.

18 **SEC. 112. TECHNICAL AND CONFORMING AMENDMENTS TO**
 19 **OTHER ACTS.**

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

22 (1) by striking “or” at the end of paragraph
 23 (11);

24 (2) by striking the period at the end of para-
 25 graph (12) and inserting “; or”; and

1 (3) by inserting after paragraph (12) the fol-
2 lowing new paragraph:

3 “(13) for recordkeeping, licensing, and other
4 regulatory and law enforcement purposes in accord-
5 ance with title I of the Financial Services Antifraud
6 Network Act of 2001—

7 “(A) through a computer network or
8 name-relationship index maintained by the
9 Antifraud Subcommittee under such title; or

10 “(B) to a multistate database maintained
11 by the National Association of Insurance Com-
12 missioners and any subsidiary or affiliate of
13 such association, subject to the requirements of
14 such title.”.

15 (b) Section 1113 of the Financial Institutions Regu-
16 latory and Interest Rate Control Act of 1978 (12 U.S.C.
17 3413) is amended by adding at the end the following new
18 subsection:

19 “(r) This title shall not apply to disclosure by a finan-
20 cial regulator represented by a member of or liaison to
21 the Antifraud Subcommittee of information which is sub-
22 ject to section 107 or 108 of the Financial Services Anti-
23 fraud Network Act of 2001 to the extent the disclosure
24 is made in accordance with the requirements of such
25 Act.”.

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

1 entity designated by the Commission under sub-
2 section (b)(1)—

3 “(A) to establish and maintain a toll-free
4 telephone listing or other readily accessible elec-
5 tronic process to receive inquiries regarding dis-
6 ciplinary actions and proceedings and other in-
7 formation involving investment advisers and
8 persons associated with investment advisers;
9 and

10 “(B) to respond promptly to such inquir-
11 ies.

12 “(2) RECOVERY OF COSTS.—An entity des-
13 ignated by the Commission under subsection (b)(1)
14 may charge persons, other than individual investors,
15 reasonable fees for responses to inquiries made
16 under paragraph (1).

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

22 **SEC. 202. SECURITIES EXCHANGE ACT OF 1934.**

23 Subsection (i) of section 15A of the Securities Ex-
24 change Act of 1934 (15 U.S.C. 78o–3) is amended to read
25 as follows:

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

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

6 “(A) establish and maintain a toll-free tele-
7 phone listing or other readily accessible elec-
8 tronic process to receive inquiries regarding dis-
9 ciplinary actions and proceedings and other in-
10 formation involving its members and their asso-
11 ciated persons and regarding disciplinary ac-
12 tions and proceedings and other information
13 that has been reported to the Central Registra-
14 tion Depository by any registered national secu-
15 rities exchange involving its members and their
16 associated persons; and

17 “(B) promptly respond to such inquiries.

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

21 “(3) LIMITATION ON LIABILITY.—Such an asso-
22 ciation or exchange shall not have any liability to
23 any person for any actions taken or omitted in good
24 faith under this subsection.”.

1 **Subtitle B—Preventing Migration**
2 **of Rogue Financial Profes-**
3 **sionals to the Securities Indus-**
4 **try**

5 **SEC. 211. SECURITIES EXCHANGE ACT OF 1934.**

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

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

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

14 “(G) has been found by a foreign financial reg-
15 ulatory authority to have—

16 “(i) made or caused to be made in any ap-
17 plication for registration or report required to
18 be filed with a foreign financial regulatory au-
19 thority, or in any proceeding before a foreign fi-
20 nancial regulatory authority with respect to reg-
21 istration, any statement that was at the time
22 and in the light of the circumstances under
23 which it was made false or misleading with re-
24 spect to any material fact, or omitted to state
25 in any such application, report, or proceeding

1 any material fact that is required to be stated
2 therein;

3 “(ii) violated any foreign statute or regula-
4 tion regarding securities, banking, thrift activi-
5 ties, credit union activities, insurance, or con-
6 tracts of sale of a commodity for future deliv-
7 ery, traded on or subject to the rules of a con-
8 tract market or any board of trade; or

9 “(iii) aided, abetted, counseled, com-
10 manded, induced, or procured the violation by
11 any other person of any provision of any statu-
12 tory provisions enacted by a foreign govern-
13 ment, or rules or regulations thereunder, re-
14 garding securities, banking, thrift activities,
15 credit union activities, insurance, or contracts
16 of sale of a commodity for future delivery trad-
17 ed on or subject to the rules of a contract mar-
18 ket or any board of trade, or to have failed rea-
19 sonably to supervise, with a view to preventing
20 violations of such statutory provisions, rules,
21 and regulations, another person who commits
22 such a violation, if such other person is subject
23 to his supervision.

24 “(H) is subject to any final order of a State se-
25 curities commission (or any agency or officer per-

forming 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)—

1 (A) by striking “or omission enumerated in
 2 subparagraph (A), (D), (E), or (G)” and insert-
 3 ing “, or is subject to an order or finding, enu-
 4 merated in subparagraph (A), (D), (E), (G), or
 5 (H)”; and

6 (B) by striking “ten” and inserting “10”;
 7 (2) in paragraph (4)—

8 (A) by striking “or omission enumerated in
 9 subparagraph (A), (D), (E), or (G)” and insert-
 10 ing “, or is subject to an order or finding, enu-
 11 merated in subparagraph (A), (D), (E), (G), or
 12 (H)” and

13 (B) by striking “ten” and inserting “10”;

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

17 (1) in subparagraph (A), by striking “or omis-
 18 sion enumerated in subparagraph (A), (D), (E), or
 19 (G)” and inserting “, or is subject to an order or
 20 finding, enumerated in subparagraph (A), (D), (E),
 21 (G), or (H)”; and

22 (2) in subparagraph (C), by striking “or omis-
 23 sion enumerated in subparagraph (A), (D), (E), or
 24 (G)” and inserting “, or is subject to an order or

1 finding, enumerated in subparagraph (A), (D), (E),
 2 (G), or (H)’’.

3 (d) CLEARANCE AND SETTLEMENT.—Section 17A(c)
 4 of the Securities Exchange Act of 1934 (15 U.S.C. 78q–
 5 1(c)) is amended—

6 (1) in paragraph (3)(A), by striking “enumer-
 7 ated in subparagraph (A), (D), (E), or (G)” and in-
 8 serting “, or is subject to an order or finding, enu-
 9 merated in subparagraph (A), (D), (E), (G), or
 10 (H)’”; and

11 (2) in paragraph (4)(C)—

12 (A) by striking “enumerated in subpara-
 13 graph (A), (D), (E), or (G)” and inserting “,
 14 or is subject to an order or finding, enumerated
 15 in subparagraph (A), (D), (E), (G), or (H)’”;
 16 and

17 (B) by striking “ten years” and inserting
 18 “10 years”.

19 (e) DEFINITION OF STATUTORY DISQUALIFICA-
 20 TION.—Section 3(a)(39)(F) of the Securities Exchange
 21 Act of 1934 (15 U.S.C. 78c(a)(39)(F)) is amended by
 22 striking “has committed or omitted any act enumerated
 23 in subparagraph (D), (E), or (G)” and inserting “has
 24 committed or omitted any act, or is subject to an order

1 or finding, enumerated in subparagraph (D), (E), (G), or
 2 (H)''.

3 **SEC. 212. INVESTMENT ADVISERS ACT OF 1940.**

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

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

13 “(8) has been found by a foreign financial regu-
 14 latory authority, State securities commission (or any
 15 State agency or officer performing similar func-
 16 tions), State authority that supervises or examines
 17 banks, thrifts, or credit unions, State insurance com-
 18 mission (or any State agency or officer performing
 19 similar functions), any appropriate Federal banking
 20 agency (as such term is defined in section 3 of the
 21 Federal Deposit Insurance Act (12 U.S.C. 1813(q)),
 22 or the National Credit Union Administration to
 23 have—

24 “(A) made or caused to be made in any
 25 application for registration or report required to

1 be filed with, or in any proceeding before, the
2 authority, commission, or agency any statement
3 that was, at the time and in light of the cir-
4 cumstances under which it was made, false or
5 misleading with respect to any material fact, or
6 omitted to state in any application or report
7 filed with, or in any proceeding before, the au-
8 thority, commission, or agency any material
9 fact that is required to be stated in the applica-
10 tion, report, or proceeding;

11 “(B) violated any foreign, State, or Fed-
12 eral statute or regulation regarding securities,
13 insurance, banking, thrift activities, credit
14 union activities, or contracts of sale of a com-
15 modity for future delivery traded on or subject
16 to the rules of a contract market or any board
17 of trade; or

18 “(C) aided, abetted, counseled, com-
19 manded, induced, or procured the violation by
20 any other person of any foreign, State, or Fed-
21 eral statute or regulation regarding securities,
22 insurance, banking, thrift activities, credit
23 union activities, or contracts of sale of a com-
24 modity for future delivery traded on or subject
25 to the rules of a contract market or any board

1 of trade, or failed reasonably to supervise, with
2 a view to preventing violations of any such stat-
3 ute or regulation, another person who commits
4 such a violation, if the other person is subject
5 to his or its supervision.”.

6 (b) BARS ON FELONS ASSOCIATED WITH INVEST-
7 MENT ADVISERS.—Section 203(f) of the Investment Ad-
8 visers Act of 1940 (15 U.S.C. 80b–3(f)) is amended by
9 inserting “or (3)” after “paragraph (2)”.

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