

Union Calendar No. 298

108TH CONGRESS
2^D SESSION

H. R. 2179

[Report No. 108–475, Part I]

To enhance the authority of the Securities and Exchange Commission to investigate, punish, and deter securities laws violations, and to improve its ability to return funds to defrauded investors, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 21, 2003

Mr. BAKER (for himself, Mr. OXLEY, Mr. TIBERI, Mr. OSE, and Mrs. KELLY) introduced the following bill; which was referred to the Committee on Financial Services

APRIL 27, 2004

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in *italic*]

JUNE 1, 2004

Additional sponsor: Mr. SCOTT of Georgia

JUNE 1, 2004

The Committee on the Judiciary discharged; committed to the Committee of the Whole House on the State of the Union and ordered to be printed

[For text of introduced bill, see copy of bill as introduced on May 21, 2003]

A BILL

To enhance the authority of the Securities and Exchange Commission to investigate, punish, and deter securities

laws violations, and to improve its ability to return funds to defrauded investors, 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.**

4 *This Act may be cited as the “Securities Fraud Deter-*
5 *rence and Investor Restitution Act of 2004”.*

6 **SEC. 2. RECOVERY BY COMMISSION OF SECURITIES LAW**
7 **JUDGMENTS.**

8 *(a) AMENDMENT.—Title III of the Sarbanes-Oxley Act*
9 *of 2002 is amended by adding after section 308 (15 U.S.C.*
10 *7246) the following new section:*

11 **“SEC. 309. RECOVERY OF SECURITIES LAW JUDGMENTS; RE-**
12 **MOVAL OF STATE LAW IMPEDIMENTS.**

13 *“(a) REMOVAL OF STATE LAW IMPEDIMENTS.—The*
14 *Commission’s authority to enforce, collect upon, or other-*
15 *wise satisfy in a Federal or State court a judgment or order*
16 *obtained, either by litigation or settlement, in any judicial*
17 *action or administrative proceeding under the securities*
18 *laws against any person based upon an alleged fraudulent,*
19 *deceptive, or manipulative act or practice in violation of*
20 *such laws, or the rules and regulations thereunder, or*
21 *against any gratuitous or fraudulent transferee, shall not*
22 *be subject to—*

1 “(1) a debtor’s election to exempt property under
2 State or local law pursuant to section 3014(a)(2) of
3 title 28, United States Code; or

4 “(2) any homestead provision of any State con-
5 stitution or any other State law that exempts or pro-
6 tects property from foreclosure, forced sale, or any
7 other procedure to satisfy a judgment or order under
8 any process of court for the payment of debts.

9 “(b) *DEFINITIONS.*—For purposes of subsection (a)—

10 “(1) a ‘gratuitous transferee’ is any person to
11 whom an ownership interest in property is trans-
12 ferred without adequate consideration; and

13 “(2) a ‘fraudulent transferee’ is any person liable
14 to the Commission under applicable fraudulent trans-
15 fer laws.”.

16 (b) *CONFORMING AMENDMENT.*—The table of contents
17 in section 1(b) of the Sarbanes-Oxley Act of 2002 is amend-
18 ed by inserting after the item relating to section 308 the
19 following:

 “Sec. 309. Recovery of securities law judgments; removal of state law impedi-
 ments.”.

20 **SEC. 3. CIVIL ENFORCEMENT PROVISIONS.**

21 (a) *AUTHORITY TO IMPOSE CIVIL PENALTIES IN*
22 *CEASE AND DESIST PROCEEDINGS.*—

23 (1) *UNDER THE SECURITIES ACT OF 1934.*—Sec-
24 tion 8A of the Securities Act of 1933 (15 U.S.C. 77h–

1 1) is amended by adding at the end the following new
2 subsection:

3 “(g) *AUTHORITY TO IMPOSE MONEY PENALTIES.*—

4 “(1) *GROUND FOR IMPOSING.*—*In any cease-*
5 *and-desist proceeding under subsection (a), the Com-*
6 *mission may impose a civil penalty on a person if it*
7 *finds, on the record after notice and opportunity for*
8 *hearing, that—*

9 “(A) *such person—*

10 “(i) *is violating or has violated any*
11 *provision of this title, or any rule or regula-*
12 *tion thereunder; or*

13 “(ii) *is or was a cause of the violation*
14 *of any provision of this title, or any rule or*
15 *regulation thereunder; and*

16 “(B) *such penalty is in the public interest.*

17 “(2) *MAXIMUM AMOUNT OF PENALTY.*—

18 “(A) *FIRST TIER.*—*The maximum amount*
19 *of penalty for each act or omission described in*
20 *paragraph (1) shall be \$100,000 for a natural*
21 *person or \$250,000 for any other person.*

22 “(B) *SECOND TIER.*—*Notwithstanding*
23 *paragraph (A), the maximum amount of penalty*
24 *for each such act or omission shall be \$500,000*
25 *for a natural person or \$1,000,000 for any other*

1 *person if the act or omission described in para-*
2 *graph (1) involved fraud, deceit, manipulation,*
3 *or deliberate or reckless disregard of a regulatory*
4 *requirement.*

5 “(C) *THIRD TIER.*—*Notwithstanding para-*
6 *graphs (A) and (B), the maximum amount of*
7 *penalty for each such act or omission shall be*
8 *\$1,000,000 for a natural person or \$2,000,000 for*
9 *any other person if—*

10 “(i) *the act or omission described in*
11 *paragraph (1) involved fraud, deceit, ma-*
12 *nipulation, or deliberate or reckless dis-*
13 *regard of a regulatory requirement; and*

14 “(ii) *such act or omission directly or*
15 *indirectly resulted in substantial losses or*
16 *created a significant risk of substantial*
17 *losses to other persons or resulted in sub-*
18 *stantial pecuniary gain to the person who*
19 *committed the act or omission.*

20 “(3) *EVIDENCE CONCERNING ABILITY TO PAY.*—
21 *In any proceeding in which the Commission may im-*
22 *pose a penalty under this section, a respondent may*
23 *present evidence of the respondent’s ability to pay*
24 *such penalty. The Commission may, in its discretion,*
25 *consider such evidence in determining whether such*

1 *penalty is in the public interest. Such evidence may*
2 *relate to the extent of such person’s ability to continue*
3 *in business and the collectability of a penalty, taking*
4 *into account any other claims of the United States or*
5 *third parties upon such person’s assets and the*
6 *amount of such person’s assets.”.*

7 (2) *UNDER THE SECURITIES EXCHANGE ACT OF*
8 *1934.—Subsection (a) of section 21B of the Securities*
9 *Exchange Act of 1934 (15 U.S.C. 78u-2(a)) is*
10 *amended—*

11 (A) *by striking “(a) COMMISSION AUTHOR-*
12 *ITY TO ASSESS MONEY PENALTIES.—In any*
13 *proceeding” and inserting the following:*

14 *“(a) COMMISSION AUTHORITY TO ASSESS MONEY*
15 *PENALTIES.—*

16 *“(1) IN GENERAL.—In any proceeding”;*

17 (B) *by redesignating paragraphs (1)*
18 *through (4) of such subsection as subparagraphs*
19 *(A) through (D), respectively and moving such*
20 *redesignated subparagraphs and the matter fol-*
21 *lowing such subparagraphs 2 ems to the right;*
22 *and*

23 (C) *by adding at the end of such subsection*
24 *the following new paragraph:*

1 “(2) *CEASE-AND-DESIST PROCEEDINGS.*—*In any*
2 *proceeding instituted pursuant to section 21C of this*
3 *title against any person, the Commission may impose*
4 *a civil penalty if it finds, on the record after notice*
5 *and opportunity for hearing, that such person—*

6 “(A) *is violating or has violated any provi-*
7 *sion of this title, or any rule or regulation there-*
8 *under; or*

9 “(B) *is or was a cause of the violation of*
10 *any provision of this title, or any rule or regula-*
11 *tion thereunder.”.*

12 (3) *UNDER THE INVESTMENT COMPANY ACT OF*
13 *1940.*—*Paragraph (1) of section 9(d) of the Investment*
14 *Company Act of 1940 (15 U.S.C. 80a–9(d)(1)) is*
15 *amended—*

16 (A) *by striking “(1) AUTHORITY OF COM-*
17 *MISSION.*—*In any proceeding” and inserting the*
18 *following:*

19 “(1) *AUTHORITY OF COMMISSION.*—

20 “(A) *IN GENERAL.*—*In any proceeding”;*

21 (B) *by redesignating subparagraphs (A)*
22 *through (C) of such paragraph as clauses (i)*
23 *through (iii), respectively and by moving such*
24 *redesignated clauses and the matter following*
25 *such subparagraphs 2 ems to the right; and*

1 (C) by adding at the end of such paragraph
2 the following new subparagraph:

3 “(B) *CEASE-AND-DESIST PROCEEDINGS.*—
4 *In any proceeding instituted pursuant to sub-*
5 *section (f) against any person, the Commission*
6 *may impose a civil penalty if it finds, on the*
7 *record after notice and opportunity for hearing,*
8 *that such person—*

9 “(i) *is violating or has violated any*
10 *provision of this title, or any rule or regula-*
11 *tion thereunder; or*

12 “(ii) *is or was a cause of the violation*
13 *of any provision of this title, or any rule or*
14 *regulation thereunder.”.*

15 (4) *UNDER THE INVESTMENT ADVISERS ACT OF*
16 *1940.—Paragraph (1) of section 203(i) of the Invest-*
17 *ment Advisers Act of 1940 (15 U.S.C. 80b–3(i)(1)) is*
18 *amended—*

19 (A) *by striking “(1) AUTHORITY OF COM-*
20 *MISSION.—In any proceeding” and inserting the*
21 *following:*

22 “(1) *AUTHORITY OF COMMISSION.*—

23 “(A) *IN GENERAL.—In any proceeding”;*

24 (B) *by redesignating subparagraphs (A)*
25 *through (D) of such paragraph as clauses (i)*

1 through (iv), respectively and moving such redес-
2 igned clauses and the matter following such
3 subparagraphs 2 ems to the right; and

4 (C) by adding at the end of such paragraph
5 the following new subparagraph:

6 “(B) CEASE-AND-DESIST PROCEEDINGS.—
7 In any proceeding instituted pursuant to sub-
8 section (k) against any person, the Commission
9 may impose a civil penalty if it finds, on the
10 record after notice and opportunity for hearing,
11 that such person—

12 “(i) is violating or has violated any
13 provision of this title, or any rule or regula-
14 tion thereunder; or

15 “(ii) is or was a cause of the violation
16 of any provision of this title, or any rule or
17 regulation thereunder.”.

18 (b) INCREASED MAXIMUM CIVIL MONEY PENALTIES.—

19 (1) SECURITIES ACT OF 1933.—Section 20(d)(2)
20 of the Securities Act of 1933 (15 U.S.C. 77t(d)(2)) is
21 amended—

22 (A) in subparagraph (A)(i)—

23 (i) by striking “\$5,000” and inserting
24 “\$100,000”; and

1 (ii) by striking “\$50,000” and insert-
2 ing “\$250,000”;

3 (B) in subparagraph (B)(i)—

4 (i) by striking “\$50,000” and inserting
5 “\$500,000”; and

6 (ii) by striking “\$250,000” and insert-
7 ing “\$1,000,000”; and

8 (C) in subparagraph (C)(i)—

9 (i) by striking “\$100,000” and insert-
10 ing “\$1,000,000”; and

11 (ii) by striking “\$500,000” and insert-
12 ing “\$2,000,000”.

13 (2) *SECURITIES EXCHANGE ACT OF 1934.*—

14 (A) *PENALTIES.*—Section 32 of the *Securi-*
15 *ties Exchange Act of 1934 (15 U.S.C. 78ff)* is
16 amended—

17 (i) in subsection (b), by striking
18 “\$100” and inserting “\$10,000”; and

19 (ii) in subsection (c)—

20 (I) in paragraph (1)(B), by strik-
21 ing “\$10,000” and inserting
22 “\$500,000”; and

23 (II) in paragraph (2)(B), by
24 striking “\$10,000” and inserting
25 “\$500,000”.

1 (B) *INSIDER TRADING*.—Section 21A(a)(3)
2 of the Securities Exchange Act of 1934 (15
3 U.S.C. 78u-1(a)(3)) is amended by striking
4 “\$1,000,000” and inserting “\$2,000,000”.

5 (C) *ADMINISTRATIVE PROCEEDINGS*.—Sec-
6 tion 21B(b) of the Securities Exchange Act of
7 1934 (15 U.S.C. 78u-2(b)) is amended—

8 (i) in paragraph (1)—

9 (I) by striking “\$5,000” and in-
10 sserting “\$100,000”; and

11 (II) by striking “\$50,000” and in-
12 sserting “\$250,000”;

13 (ii) in paragraph (2)—

14 (I) by striking “\$50,000” and in-
15 sserting “\$500,000”; and

16 (II) by striking “\$250,000” and
17 inserting “\$1,000,000”; and

18 (iii) in paragraph (3)—

19 (I) by striking “\$100,000” and
20 inserting “\$1,000,000”; and

21 (II) by striking “\$500,000” and
22 inserting “\$2,000,000”.

23 (D) *CIVIL ACTIONS*.—Section 21(d)(3)(B) of
24 the Securities Exchange Act of 1934 (15 U.S.C.
25 78u(d)(3)(B)) is amended—

1 (i) in clause (i)(I)—

2 (I) by striking “\$5,000” and in-
3 serting “\$100,000”; and

4 (II) by striking “\$50,000” and in-
5 serting “\$250,000”;

6 (ii) in clause (ii)(I)—

7 (I) by striking “\$50,000” and in-
8 serting “\$500,000”; and

9 (II) by striking “\$250,000” and
10 inserting “\$1,000,000”; and

11 (iii) in clause (iii)(I)—

12 (I) by striking “\$100,000” and
13 inserting “\$1,000,000”; and

14 (II) by striking “\$500,000” and
15 inserting “\$2,000,000”.

16 (3) INVESTMENT COMPANY ACT OF 1940.—

17 (A) INELIGIBILITY.—Section 9(d)(2) of the
18 Investment Company Act of 1940 (15 U.S.C.
19 80a-9(d)(2)) is amended—

20 (i) in subparagraph (A)—

21 (I) by striking “\$5,000” and in-
22 serting “\$100,000”; and

23 (II) by striking “\$50,000” and in-
24 serting “\$250,000”;

25 (ii) in subparagraph (B)—

1 (I) by striking “\$50,000” and in-
2 serting “\$500,000”; and

3 (II) by striking “\$250,000” and
4 inserting “\$1,000,000”; and

5 (iii) in subparagraph (C)—

6 (I) by striking “\$100,000” and
7 inserting “\$1,000,000”; and

8 (II) by striking “\$500,000” and
9 inserting “\$2,000,000”.

10 (B) *ENFORCEMENT OF INVESTMENT COM-*
11 *PANY ACT.*—Section 42(e)(2) of the *Investment*
12 *Company Act of 1940 (15 U.S.C. 80a–41(e)(2))*
13 *is amended—*

14 (i) in subparagraph (A)(i)—

15 (I) by striking “\$5,000” and in-
16 serting “\$100,000”; and

17 (II) by striking “\$50,000” and in-
18 serting “\$250,000”;

19 (ii) in subparagraph (B)(i)—

20 (I) by striking “\$50,000” and in-
21 serting “\$500,000”; and

22 (II) by striking “\$250,000” and
23 inserting “\$1,000,000”; and

24 (iii) in subparagraph (C)(i)—

1 (I) by striking “\$100,000” and
2 inserting “\$1,000,000”; and

3 (II) by striking “\$500,000” and
4 inserting “\$2,000,000”.

5 (4) INVESTMENT ADVISERS ACT OF 1940.—

6 (A) REGISTRATION.—Section 203(i)(2) of
7 the Investment Advisers Act of 1940 (15 U.S.C.
8 80b-3(i)(2)) is amended—

9 (i) in subparagraph (A)—

10 (I) by striking “\$5,000” and in-
11 serting “\$100,000”; and

12 (II) by striking “\$50,000” and in-
13 serting “\$250,000”;

14 (ii) in subparagraph (B)—

15 (I) by striking “\$50,000” and in-
16 serting “\$500,000”; and

17 (II) by striking “\$250,000” and
18 inserting “\$1,000,000”; and

19 (iii) in subparagraph (C)—

20 (I) by striking “\$100,000” and
21 inserting “\$1,000,000”; and

22 (II) by striking “\$500,000” and
23 inserting “\$2,000,000”.

24 (B) ENFORCEMENT OF INVESTMENT ADVIS-
25 ERS ACT.—Section 209(e)(2) of the Investment

1 *Advisers Act of 1940 (15 U.S.C. 80b-9(e)(2)) is*
2 *amended—*

3 *(i) in subparagraph (A)(i)—*

4 *(I) by striking “\$5,000” and in-*
5 *serting “\$100,000”; and*

6 *(II) by striking “\$50,000” and in-*
7 *serting “\$250,000”;*

8 *(ii) in subparagraph (B)(i)—*

9 *(I) by striking “\$50,000” and in-*
10 *serting “\$500,000”; and*

11 *(II) by striking “\$250,000” and*
12 *inserting “\$1,000,000”; and*

13 *(iii) in subparagraph (C)(i)—*

14 *(I) by striking “\$100,000” and*
15 *inserting “\$1,000,000”; and*

16 *(II) by striking “\$500,000” and*
17 *inserting “\$2,000,000”.*

18 *(c) AUTHORITY TO OBTAIN FINANCIAL RECORDS.—*

19 *Section 21(h) of the Securities Exchange Act of 1934 (15*
20 *U.S.C. 78u(h)) is amended—*

21 *(1) by striking paragraphs (2) through (8);*

22 *(2) in paragraph (9), by striking “(9)(A)” and*
23 *all that follows through “(B) The” and inserting “(3)*
24 *The”;*

1 (3) *by inserting after paragraph (1), the fol-*
2 *lowing:*

3 “(2) *ACCESS TO FINANCIAL RECORDS.—*

4 “(A) *IN GENERAL.—Notwithstanding sec-*
5 *tion 1105 or 1107 of the Right to Financial Pri-*
6 *vacy Act of 1978, the Commission may obtain*
7 *access to and copies of, or the information con-*
8 *tained in, financial records of any person held*
9 *by a financial institution, including the finan-*
10 *cial records of a customer, without notice to that*
11 *person, when it acts pursuant to a subpoena au-*
12 *thorized by a formal order of investigation of the*
13 *Commission and issued under the securities laws*
14 *or pursuant to an administrative or judicial*
15 *subpoena issued in a proceeding or action to en-*
16 *force the securities laws.*

17 “(B) *NONDISCLOSURE OF REQUESTS.—If*
18 *the Commission so directs in its subpoena, no fi-*
19 *nancial institution, or officer, director, partner,*
20 *employee, shareholder, representative or agent of*
21 *such financial institution, shall, directly or indi-*
22 *rectly, disclose that records have been requested*
23 *or provided in accordance with subparagraph*
24 *(A), if the Commission finds reason to believe*
25 *that such disclosure may—*

1 “(i) result in the transfer of assets or
2 records outside the territorial limits of the
3 United States;

4 “(ii) result in improper conversion of
5 investor assets;

6 “(iii) impede the ability of the Com-
7 mission to identify, trace, or freeze funds
8 involved in any securities transaction;

9 “(iv) endanger the life or physical safe-
10 ty of an individual;

11 “(v) result in flight from prosecution;

12 “(vi) result in destruction of or tam-
13 pering with evidence;

14 “(vii) result in intimidation of poten-
15 tial witnesses; or

16 “(viii) otherwise seriously jeopardize
17 an investigation or unduly delay a trial.

18 “(C) *TRANSFER OF RECORDS TO GOVERN-*
19 *MENT AUTHORITIES.*—*The Commission may*
20 *transfer financial records or the information*
21 *contained therein to any government authority,*
22 *if the Commission proceeds as a transferring*
23 *agency in accordance with section 1112 of the*
24 *Right to Financial Privacy Act of 1978 (12*
25 *U.S.C. 3412), except that a customer notice shall*

1 *not be required under subsection (b) or (c) of*
2 *that section 1112, if the Commission determines*
3 *that there is reason to believe that such notifica-*
4 *tion may result in or lead to any of the factors*
5 *identified under clauses (i) through (viii) of sub-*
6 *paragraph (B) of this paragraph.”;*

7 *(4) by striking paragraph (10); and*

8 *(5) by redesignating paragraphs (11), (12), and*
9 *(13) as paragraphs (4), (5), and (6), respectively.*

10 **SEC. 4. AUTHORITY TO ACCEPT PRIVILEGED AND PRO-**
11 **TECTED INFORMATION.**

12 *Section 24 of the Securities Exchange Act of 1934 (15*
13 *U.S.C. 78x) is amended—*

14 *(1) by redesignating subsection (e) as subsection*
15 *(f); and*

16 *(2) by inserting after subsection (d) the following*
17 *new subsection:*

18 *“(e) AUTHORITY TO ACCEPT PRIVILEGED AND PRO-*
19 *TECTED INFORMATION.—*

20 *“(1) AUTHORITY.—Notwithstanding any other*
21 *provision of law, whenever the Commission or an ap-*
22 *propriate regulatory agency and any person agree in*
23 *writing to terms pursuant to which such person will*
24 *produce or disclose to the Commission or the appro-*
25 *priate regulatory agency any document or informa-*

1 *tion that is subject to any Federal or State law privi-*
2 *lege, or to the protection provided by the work product*
3 *doctrine, such production or disclosure shall not con-*
4 *stitute a waiver of the privilege or protection as to*
5 *any person other than the Commission or the appro-*
6 *priate regulatory agency to which the document or in-*
7 *formation is provided.*

8 *“(2) DEFINITION.—For purposes of this sub-*
9 *section, the term ‘appropriate regulatory agency’*
10 *means the Federal Deposit Insurance Corporation, the*
11 *Office of the Comptroller of the Currency, the Office*
12 *of Thrift Supervision, or the Board of Governors of*
13 *the Federal Reserve System.”.*

14 **SEC. 5. ACCESS TO GRAND JURY INFORMATION.**

15 *(a) AMENDMENT.—Title VI of the Sarbanes-Oxley Act*
16 *of 2002 is amended by adding at the end thereof the fol-*
17 *lowing new section:*

18 **“SEC. 605. ACCESS TO GRAND JURY INFORMATION.**

19 *“(a) DISCLOSURE OF CERTAIN MATTERS OCCURRING*
20 *BEFORE GRAND JURY FOR USE IN ENFORCING SECURITIES*
21 *LAWS.—*

22 *“(1) IN GENERAL.—Upon motion of an attorney*
23 *for the government, a court may direct disclosure of*
24 *matters occurring before a grand jury during an in-*
25 *vestigation of conduct that may constitute a violation*

1 of any provision of the securities laws to identified
2 personnel of the Commission for use in relation to
3 any matter within the jurisdiction of the Commission.

4 “(2) *FINDING OF SUBSTANTIAL NEED RE-*
5 *QUIRED.—A court may issue an order under para-*
6 *graph (1) only upon a finding of a substantial need*
7 *in the public interest.*

8 “(b) *RESTRICTED USE OF INFORMATION.—A person to*
9 *whom a matter has been disclosed under this section shall*
10 *not use such matter other than for the purpose for which*
11 *such disclosure was authorized.*

12 “(c) *DEFINITIONS.—As used in this section, the terms*
13 *‘attorney for the government’ and ‘grand jury information’*
14 *have the meanings given to those terms in section 3322 of*
15 *title 18, United States Code.”.*

16 “(b) *CONFORMING AMENDMENT.—The table of contents*
17 *in section 1(b) of the Sarbanes-Oxley Act of 2002 is amend-*
18 *ed by inserting after the item relating to section 604 the*
19 *following:*

 “Sec. 605. *Access to grand jury information.*”.

20 **SEC. 6. NATIONWIDE SERVICE OF PROCESS.**

21 “(a) *SECURITIES ACT OF 1933.—Section 22(a) of the*
22 *Securities Act of 1933 (15 U.S.C. 77v(a)) is amended by*
23 *inserting after the second sentence the following: “In any*
24 *action or proceeding instituted by the Commission under*
25 *this title in a United States district court for any judicial*

1 *district, subpoenas issued by or on behalf of such court to*
2 *compel the attendance of witnesses or the production of doc-*
3 *uments or tangible things (or both) may be served in any*
4 *other district. Such subpoenas may be served and enforced*
5 *without application to the court or a showing of cause, not-*
6 *withstanding the provisions of rule 45(b)(2), (c)(3)(A)(ii),*
7 *and (c)(3)(B)(iii) of the Federal Rules of Civil Procedure.”.*

8 **(b) SECURITIES EXCHANGE ACT OF 1934.**—Section 27
9 *of the Securities Exchange Act of 1934 (15 U.S.C. 78aa)*
10 *is amended by inserting after the second sentence the fol-*
11 *lowing: “In any action or proceeding instituted by the Com-*
12 *mission under this title in a United States district court*
13 *for any judicial district, subpoenas issued by or on behalf*
14 *of such court to compel the attendance of witnesses or the*
15 *production of documents or tangible things (or both) may*
16 *be served in any other district. Such subpoenas may be*
17 *served and enforced without application to the court or a*
18 *showing of cause, notwithstanding the provisions of rule*
19 *45(b)(2), (c)(3)(A)(ii), and (c)(3)(B)(iii) of the Federal*
20 *Rules of Civil Procedure.”.*

21 **(c) INVESTMENT COMPANY ACT OF 1940.**—Section 44
22 *of the Investment Company Act of 1940 (15 U.S.C. 80a-*
23 *43) is amended by inserting after the fourth sentence the*
24 *following: “In any action or proceeding instituted by the*
25 *Commission under this title in a United States district*

1 *court for any judicial district, subpoenas issued by or on*
2 *behalf of such court to compel the attendance of witnesses*
3 *or the production of documents or tangible things (or both)*
4 *may be served in any other district. Such subpoenas may*
5 *be served and enforced without application to the court or*
6 *a showing of cause, notwithstanding the provisions of rule*
7 *45(b)(2), (c)(3)(A)(ii), and (c)(3)(B)(iii) of the Federal*
8 *Rules of Civil Procedure.”.*

9 (d) *INVESTMENT ADVISERS ACT OF 1940.—Section*
10 *214 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–*
11 *14) is amended by inserting after the third sentence the fol-*
12 *lowing: “In any action or proceeding instituted by the Com-*
13 *mission under this title in a United States district court*
14 *for any judicial district, subpoenas issued by or on behalf*
15 *of such court to compel the attendance of witnesses or the*
16 *production of documents or tangible things (or both) may*
17 *be served in any other district. Such subpoenas may be*
18 *served and enforced without application to the court or a*
19 *showing of cause, notwithstanding the provisions of rule*
20 *45(b)(2), (c)(3)(A)(ii), and (c)(3)(B)(iii) of the Federal*
21 *Rules of Civil Procedure.”.*

1 **SEC. 7. AUTHORITY TO CONTRACT WITH PRIVATE COUNSEL**
2 **FOR LEGAL SERVICES TO COLLECT DELIN-**
3 **QUENT JUDGMENTS AND ORDERS.**

4 *Subsection (b) of section 4 of the Securities Exchange*
5 *Act of 1934 (15 U.S.C. 78d(b)) is amended—*

6 *(1) in the subsection heading by striking “AND*
7 *LEASING AUTHORITY.—” and inserting “, LEASING*
8 *AUTHORITY, AND CONTRACTING AUTHORITY.—”; and*

9 *(2) by adding at the end of such subsection the*
10 *following new paragraph:*

11 *“(4) CONTRACTING AUTHORITY.—*

12 *“(A) IN GENERAL.—Notwithstanding any*
13 *other provision of law, the Commission is au-*
14 *thorized to enter into contracts to retain private*
15 *legal counsel to furnish legal services, including*
16 *representation in litigation, negotiation, com-*
17 *promise, and settlement, in the case of any claim*
18 *of indebtedness resulting from any judgment or*
19 *order (either by litigation or settlement) obtained*
20 *by the Commission in any judicial action or ad-*
21 *ministrative proceeding brought by or on behalf*
22 *of the Commission. Private counsel retained*
23 *under this paragraph may represent the Com-*
24 *mission in such debt collection matters to the*
25 *same extent as the Commission may represent*
26 *itself.*

1 “(B) *TERMS AND CONDITIONS OF CON-*
2 *TRACT.—Each such contract shall include such*
3 *terms and conditions as the Commission con-*
4 *siders necessary and appropriate, and shall in-*
5 *clude provisions specifying—*

6 “(i) *the amount of the fee to be paid to*
7 *the private counsel under such contract or*
8 *the method for calculating that fee;*

9 “(ii) *that the Commission retains the*
10 *authority to represent itself, resolve a dis-*
11 *pute, compromise a claim, end collection ef-*
12 *forts, and refer a matter to other private*
13 *counsel or to the Attorney General; and*

14 “(iii) *that the Commission may termi-*
15 *nate either the contract or the private coun-*
16 *sel’s representation of the Commission in*
17 *particular cases for any reason, including*
18 *for the convenience of the Commission.*

19 “(C) *PAYMENT OF FEES.—Notwithstanding*
20 *section 3302(b) of title 31, United States Code,*
21 *a contract under this paragraph may provide*
22 *that fees and costs incurred by private counsel*
23 *under such contracts are payable from the*
24 *amounts recovered.*

1 “(D) *COMPETITION REQUIREMENTS.*—*Nothing*
2 *in this paragraph shall relieve the Commis-*
3 *sion of the competition requirements set forth in*
4 *title III of the Federal Property and Administra-*
5 *tive Services Act of 1949 (41 U.S.C. 251 et seq.).*

6 “(E) *COUNTERCLAIMS.*—*In any action to*
7 *recover indebtedness which is brought on behalf*
8 *of the Commission by private counsel retained*
9 *under this paragraph, no counterclaim may be*
10 *asserted against the Commission unless the coun-*
11 *terclaim is served directly on the Commission.*
12 *Such service shall be made in accordance with*
13 *the rules of procedure of the court in which the*
14 *action is brought.”.*

15 **SEC. 8. FAIR ACT AMENDMENTS.**

16 (a) *CIVIL PENALTIES.*—*Section 308(a) of the Sar-*
17 *banes-Oxley Act of 2002 (15 U.S.C. 7246(a)) is amended*
18 *to read as follows;*

19 “(a) *CIVIL PENALTIES TO BE USED FOR THE RELIEF*
20 *OF VICTIMS.*—*If in any judicial or administrative action*
21 *brought by the Commission under the securities laws (as*
22 *such term is defined in section 3(a)(47) of the Securities*
23 *Exchange Act of 1934 (15 U.S.C. 78c(a)(47))) the Commis-*
24 *sion obtains pursuant to such laws a civil penalty against*
25 *any person, such civil penalty monies shall, on the motion*

1 *or at the direction of the Commission, be added to and be-*
2 *come part of a fund for the benefit of the victims of such*
3 *violation.”.*

4 *(b) STUDY ON FEDERAL AND STATE SECURITIES CO-*
5 *ORDINATION, COOPERATION, AND COMMUNICATION.—*

6 *(1) STUDY.—The Securities and Exchange Com-*
7 *mission shall seek to produce a joint study in co-*
8 *operation with an association of duly constituted rep-*
9 *resentatives of State governments whose primary as-*
10 *signment is the regulation of the securities business*
11 *within those States, on improved coordination, co-*
12 *operation and communication between the Commis-*
13 *sion and State securities regulators.*

14 *(2) SUBJECT OF STUDY.—If the association re-*
15 *ferred to in paragraph (1) agrees to participate in*
16 *such a study, the study shall be prepared jointly by*
17 *the Commission and the association, and shall be*
18 *based on an initiative announced September 14,*
19 *2003, between the Commission and the association*
20 *aimed at improving coordination, cooperation, and*
21 *communication between the Commission and State se-*
22 *curities regulators.*

23 *(3) REPORT.—If the association referred to in*
24 *paragraph (1) agrees to participate in such a study,*
25 *the results of the study shall be jointly reported to the*

1 *Committee on Financial Services of the House of Rep-*
2 *resentatives and the Committee on Banking, Housing,*
3 *and Urban Affairs of the Senate by September 14,*
4 *2005, or 1 year after the date of enactment of this*
5 *Act, whichever is later.*

6 *(c) ADDITIONAL PROVISIONS.—Section 308 of the Sar-*
7 *banes-Oxley Act of 2002 (15 U.S.C. 7246) is further amend-*
8 *ed—*

9 *(1) by redesignating subsections (c), (d), and (e)*
10 *as subsections (e), (f), and (g), respectively; and*

11 *(2) by inserting the following after subsection*
12 *(b):*

13 *“(c) USE OF INVESTOR RESTITUTION FUND BY*
14 *STATES.—The Commission may allow a State that has re-*
15 *ceived penalty or disgorgement payments pursuant to an*
16 *agreement or settlement with a broker or dealer or other*
17 *party in an action concerning securities fraud to contribute*
18 *those payments to a fund administered by the Commission*
19 *for the purpose of making restitution payments to investors,*
20 *whether or not the Commission was a party to the agree-*
21 *ment or settlement or had established such fund prior to*
22 *the State’s contribution. The Commission shall have the au-*
23 *thority otherwise available to it under the securities laws*
24 *with respect to the administration and distribution of such*
25 *funds.*

1 “(d) *UNDISTRIBUTED FUNDS TO BE USED FOR IN-*
2 *VESTOR EDUCATION.—In any judicial or administrative*
3 *action in which a fund is created pursuant to subsection*
4 *(a) or in which the Commission had obtained disgorgement,*
5 *if the Commission determines (due to the size of the fund*
6 *to be distributed, the number of investors, the nature of the*
7 *underlying violation, or for other reasons) that it would be*
8 *infeasible to distribute such fund or disgorgement to the vic-*
9 *tims of the violation, or if after distribution of the fund*
10 *or disgorgement to victims there are excess monies remain-*
11 *ing, the Commission may move for an order in a judicial*
12 *action, or may issue an order in an administrative pro-*
13 *ceeding, requiring that the undistributed amount of the*
14 *fund or disgorgement be used for investor education pro-*
15 *grams administered by an established not-for-profit or gov-*
16 *ernmental organization whose purposes include investor*
17 *education and financial literacy.”.*

18 **SEC. 9. REDUCTION OF EXCESSIVE DISTRIBUTION AND**
19 **MARKETING FEES.**

20 *Within 90 days after the date of enactment of this Act,*
21 *the Securities and Exchange Commission shall, by rule or*
22 *regulation under the Investment Company Act of 1940, pro-*
23 *hibit as unreasonable or deceptive any fee by a registered*
24 *open-end investment company under a plan adopted pursu-*
25 *ant to rule 12b–1 of the Commission’s rules (17 CFR*

1 270.12b-1) that continues to include any charges for ex-
2 penses for any activity after such company has been closed
3 to new investors, other than shareholder servicing activities
4 the costs of which are collected directly and transparently
5 from the investor.

6 **SEC. 10. DISCLOSURE RESPONSIBILITIES AT CONTRACT RE-**
7 **NEWAL.**

8 *Subsection (c) of section 15 of the Investment Com-*
9 *pany Act of 1940 (15 U.S.C. 80a-15(c)) is amended to read*
10 *as follows:*

11 *“(c) PROCESS FOR CONTRACT RENEWAL.—*

12 *“(1) APPROVAL BY MAJORITY OF INDEPENDENT*
13 *DIRECTORS.—In addition to the requirements of sub-*
14 *sections (a) and (b) of this section, it shall be unlaw-*
15 *ful for any registered investment company having a*
16 *board of directors to enter into, renew, or perform*
17 *any contract or agreement, written or oral, whereby*
18 *a person undertakes regularly to serve or act as in-*
19 *vestment adviser of or principal underwriter for such*
20 *company, unless the terms of such contract or agree-*
21 *ment and any renewal thereof have been approved by*
22 *the vote of a majority of directors, who are not parties*
23 *to such contract or agreement or interested persons of*
24 *any such party, cast in person at a meeting called for*
25 *the purpose of voting on such approval.*

1 “(2) *INFORMATION DISCLOSURES AND EVALUA-*
2 *TIONS.—*

3 “(A) *IN GENERAL.—It shall be the duty of*
4 *the directors of a registered investment company*
5 *to request and evaluate, and the duty of an in-*
6 *vestment adviser or principal underwriter of*
7 *such company to furnish, such information as*
8 *may reasonably be necessary to evaluate the*
9 *terms of any contract whereby a person under-*
10 *takes regularly to serve or act as investment ad-*
11 *viser or principal underwriter of such company.*

12 “(B) *INVESTMENT ADVISER DUTY.—In ad-*
13 *dition to the investment adviser’s duty under*
14 *subparagraph (A), when entering into or renew-*
15 *ing a contract or agreement, it shall be the duty*
16 *of the investment adviser—*

17 “(i) *to provide the independent direc-*
18 *tors of a registered investment company*
19 *with all material information about any of*
20 *its business practices, or the business prac-*
21 *tices of any of its affiliated persons, that*
22 *may conflict with the best interests of the*
23 *shareholders of the registered investment*
24 *company; and*

1 “(ii) to specify and commit to imple-
2 ment procedures that are reasonably de-
3 signed to ensure services are provided in the
4 best interests of such shareholders.

5 “(C) *PRINCIPAL UNDERWRITER DUTY.*—*In*
6 *addition to the principal underwriter’s duty*
7 *under subparagraph (A), when entering into or*
8 *renewing a contract or agreement, it shall be the*
9 *duty of the principal underwriter—*

10 “(i) to provide the independent direc-
11 tors of a registered investment company
12 with all material information about any of
13 its business practices that may conflict with
14 the best interests of the shareholders of the
15 registered investment company; and

16 “(ii) to specify and commit to imple-
17 ment procedures that are reasonably de-
18 signed to ensure services are provided in the
19 best interests of such shareholders.

20 “(D) *INDEPENDENT DIRECTORS DUTY.*—*In*
21 *addition to the independent directors’ duty*
22 *under subparagraph (A), it shall be the duty of*
23 *the independent directors to determine whether*
24 *the specified procedures of the investment adviser*
25 *and the principal underwriter offer a reasonable*

1 *likelihood of protecting the best interests of the*
2 *shareholders of the registered investment com-*
3 *pany.*

4 “(3) *LIMITATION ON CONSIDERATIONS.*—*It shall*
5 *be unlawful for the directors of a registered invest-*
6 *ment company, in connection with their evaluation of*
7 *the terms of any contract whereby a person under-*
8 *takes regularly to serve or act as investment adviser*
9 *of such company, to take into account the purchase*
10 *price or other consideration any person may have*
11 *paid in connection with a transaction of the type re-*
12 *ferred to in paragraph (1), (3), or (4) of subsection*
13 *(f).”*

14 **SEC. 11. METHOD OF MAINTAINING BROKER/DEALER REG-**
15 **ISTRATION, DISCIPLINARY, AND OTHER DATA.**

16 *Subsection (i) of section 15A of the Securities Ex-*
17 *change Act of 1934 (15 U.S.C. 78o-3(i)) is amended to read*
18 *as follows:*

19 “(i) *OBLIGATION TO MAINTAIN REGISTRATION, DIS-*
20 *CIPLINARY AND OTHER DATA.*—

21 “(1) *MAINTENANCE OF SYSTEM TO RESPOND TO*
22 *INQUIRIES.*—*A registered securities association*
23 *shall—*

1 “(A) establish and maintain a system for
2 collecting and retaining registration informa-
3 tion;

4 “(B) establish and maintain a toll-free tele-
5 phone listing, and a readily accessible electronic
6 or other process, to receive and promptly respond
7 to inquiries regarding—

8 “(i) registration information on its
9 members and their associated persons; and

10 “(ii) registration information on the
11 members and their associated persons of
12 any registered national securities exchange
13 that uses the system described in subpara-
14 graph (A) for the registration of its mem-
15 bers and their associated persons; and

16 “(C) adopt rules governing the process for
17 making inquiries and the type, scope, and pres-
18 entation of information to be provided in re-
19 sponse to such inquiries in consultation with
20 any registered national securities exchange pro-
21 viding information pursuant to subparagraph
22 (B)(ii).

23 “(2) RECOVERY OF COSTS.—Such an association
24 may charge persons making inquiries, other than in-

1 *dividual investors, reasonable fees for responses to*
2 *such inquiries.*

3 “(3) *PROCESS FOR DISPUTED INFORMATION.*—
4 *Such an association shall adopt rules establishing an*
5 *administrative process for disputing the accuracy of*
6 *information provided in response to inquiries under*
7 *this subsection in consultation with any registered*
8 *national securities exchange providing information*
9 *pursuant to paragraph (1)(B)(ii).*

10 “(4) *LIMITATION OF LIABILITY.*—*Such an asso-*
11 *ciation, or exchange reporting information to such an*
12 *association, shall not have any liability to any person*
13 *for any actions taken or omitted in good faith under*
14 *this subsection.*

15 “(5) *DEFINITION.*—*For purposes of this sub-*
16 *section, the term ‘registration information’ means the*
17 *information reported in connection with the registra-*
18 *tion or licensing of brokers and dealers and their as-*
19 *sociated persons, including disciplinary actions, regu-*
20 *latory, judicial, and arbitration proceedings, and*
21 *other information required by law, or exchange or as-*
22 *sociation rule, and the source and status of such in-*
23 *formation.*”

1 **SEC. 12. FILING DEPOSITORIES FOR INVESTMENT ADVIS-**
2 **ERS.**

3 (a) *AMENDMENT.*—Section 204 of the Investment Ad-
4 visers Act of 1940 (15 U.S.C. 80b-4) is amended—

5 (1) by striking “Every investment” and insert-
6 ing the following:

7 “(a) *IN GENERAL.*—Every investment”; and

8 (2) by adding at the end the following:

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

11 “(1) to file with the Commission any fee, appli-
12 cation, report, or notice required to be filed by this
13 title or the rules issued under this title through any
14 entity designated by the Commission for that purpose;
15 and

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

19 “(c) *ACCESS TO DISCIPLINARY AND OTHER INFORMA-*
20 *TION.*—

21 “(1) *MAINTENANCE OF SYSTEM TO RESPOND TO*
22 *INQUIRIES.*—The Commission shall require the entity
23 designated by the Commission under subsection (b)(1)
24 to establish and maintain a toll-free telephone listing,
25 and a readily accessible electronic or other process, to
26 receive and promptly respond to inquiries regarding

1 registration information (including disciplinary ac-
2 tions, regulatory, judicial, and arbitration pro-
3 ceedings, and other information required by law or
4 rule to be reported) involving investment advisers and
5 persons associated with investment advisers.

6 “(2) *RECOVERY OF COSTS.*—An entity des-
7 ignated by the Commission under subsection (b)(1)
8 may charge persons making inquiries, other than in-
9 dividual investors, reasonable fees for responses to in-
10 quiries made under paragraph (1).

11 “(3) *LIMITATION ON LIABILITY.*—An entity des-
12 ignated by the Commission under subsection (b)(1)
13 shall not have any liability to any person for any ac-
14 tions taken or omitted in good faith under this sub-
15 section.”.

16 (b) *CONFORMING AMENDMENTS.*—

17 (1) *Section 203A of the Investment Advisers Act*
18 *of 1940 (15 U.S.C. 80b–3a) is amended—*

19 (A) *by striking subsection (d); and*

20 (B) *by redesignating subsection (e) as sub-*
21 *section (d).*

22 (2) *Section 306 of the National Securities Mar-*
23 *kets Improvement Act of 1996 (15 U.S.C. 80b–10,*
24 *note; Public Law 104–290; 110 Stat. 3439) is re-*
25 *pealed.*

1 **SEC. 13. LEAD INDEPENDENT DIRECTOR.**

2 *Section 10(a) of the Investment Company Act of 1940*
3 *(15 U.S.C. 80a-10(a)) is amended—*

4 *(1) by inserting “(1)” after “(a)”;* and

5 *(2) by adding at the end the following new para-*
6 *graph:*

7 *“(2) The board of directors of such a company shall*
8 *select a lead independent director who is not an interested*
9 *person and who shall (A) have authority to place items on*
10 *the agenda for consideration, call meetings, and obtain out-*
11 *side advice on behalf of the independent directors, and (B)*
12 *have such other authority as the Commission determines by*
13 *rule to be necessary or useful. This paragraph shall not*
14 *apply if the chairman of the board is an independent direc-*
15 *tor.”.*

16 **SEC. 14. ENHANCED OVERSIGHT OF PERIODIC DISCLO-**
17 **SURES BY ISSUERS.**

18 *Within 1 year after the date of enactment of this Act,*
19 *the Securities and Exchange Commission—*

20 *(1) shall conduct a thorough review of the finan-*
21 *cial statements contained in the most recent periodic*
22 *disclosures filed with the Commission by the largest*
23 *250 reporting issuers, and as many other reporting*
24 *issuers as the Commission finds appropriate;*

1 (2) shall query such issuers with respect to any
2 confusing, ambiguous, or unclear statement in such
3 disclosures that would be of interest to investors;

4 (3) shall require such issuers to respond fully to
5 such queries, by such deadlines as the Commission
6 may impose, and to clarify such statements as nec-
7 essary for the protection of investors; and

8 (4) may require the issuer's response to be ac-
9 companied by an auditor's opinion as to—

10 (A) whether that response sets forth the in-
11 formation presented in accordance with generally
12 accepted accounting principles, and

13 (B) whether the auditor reached that conclu-
14 sion after applying generally accepted auditing
15 standards to the information presented in the re-
16 sponse.

17 **SEC. 15. SENSE OF CONGRESS.**

18 It is the sense of Congress that the Administrator of
19 the Investor Education Fund of the 2003 Global Research
20 Analyst Settlement should award—

21 (1) \$5,000,000 of the Investor Education Fund
22 in the form of competitive grants to economic edu-
23 cation programs administered by national non-profit
24 educational organizations whose primary purpose is
25 improving the quality of minority and low-income

1 *individuals' understanding of personal finance and*
2 *economics; and*

3 *(2) \$5,000,000 of the Investor Education Fund*
4 *in the form of competitive grants to economic edu-*
5 *cation programs administered by national non-profit*
6 *educational organizations whose primary purpose is*
7 *improving the quality of elementary and secondary*
8 *students' understanding of personal finance and eco-*
9 *nomics.*

Union Calendar No. 298

108TH CONGRESS
2^D SESSION

H. R. 2179

[Report No. 108-475, Part I]

A BILL

To enhance the authority of the Securities and Exchange Commission to investigate, punish, and deter securities laws violations, and to improve its ability to return funds to defrauded investors, and for other purposes.

JUNE 1, 2004

The Committee on the Judiciary discharged; committed to the Committee of the Whole House on the State of the Union and ordered to be printed