

110TH CONGRESS  
2D SESSION

# S. 3033

To protect investors by fostering transparency and accountability of attorneys  
in private securities litigation.

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IN THE SENATE OF THE UNITED STATES

MAY 19, 2008

Mr. CORNYN introduced the following bill; which was read twice and referred  
to the Committee on Banking, Housing, and Urban Affairs

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## A BILL

To protect investors by fostering transparency and  
accountability of attorneys in private securities litigation.

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 Litigation  
5 Attorney Accountability and Transparency Act”.

1 **SEC. 2. DISCLOSURES OF PAYMENTS, FEE ARRANGEMENTS,**  
2 **CONTRIBUTIONS, AND OTHER POTENTIAL**  
3 **CONFLICTS OF INTEREST BETWEEN PLAIN-**  
4 **TIFF AND ATTORNEYS.**

5 (a) SECURITIES EXCHANGE ACT OF 1934.—Section  
6 21D(a) of the Securities Exchange Act of 1934 (15 U.S.C.  
7 78u-4(a)) is amended by adding at the end the following  
8 new paragraphs:

9 “(10) DISCLOSURES REGARDING PAYMENTS.—  
10 “(A) SWORN CERTIFICATIONS RE-  
11 QUIRED.—In any private action arising under  
12 this title, each plaintiff and any attorney for  
13 such plaintiff shall provide sworn certifications,  
14 which shall be personally signed by such plain-  
15 tiff and such attorney, respectively, and filed  
16 with the complaint, that identify any direct or  
17 indirect payment, or promise of any payment,  
18 by such attorney, or any person affiliated with  
19 such attorney, to such plaintiff, or any person  
20 affiliated with such plaintiff, beyond the plain-  
21 tiff’s pro rata share of any recovery, except as  
22 ordered or approved by the court in accordance  
23 with paragraph (4). Upon disclosure of any  
24 such payment or promise of payment, the court  
25 shall disqualify the attorney from representing  
26 the plaintiff.

1           “(B) DEFINITION.—For purposes of this  
2           paragraph, the term ‘payment’ shall include the  
3           transfer of money and any other thing of value,  
4           including the provision of services, other than  
5           representation of the plaintiff in the private ac-  
6           tion arising under this title.

7           “(11) DISCLOSURES REGARDING LEGAL REP-  
8           RESENTATIONS.—In any private action arising  
9           under this title, each plaintiff and any attorney for  
10          such plaintiff shall provide sworn certifications,  
11          which shall be personally signed by such plaintiff  
12          and such attorney, respectively, and filed with the  
13          complaint, that identifies the nature and terms of  
14          any legal representation provided by such attorney,  
15          or any person affiliated with such attorney, to such  
16          plaintiff, or any person affiliated with such plaintiff  
17          other than the representation of the plaintiff in the  
18          private action arising under this title. The court may  
19          allow such certifications to be made under seal. The  
20          court shall make a determination whether the nature  
21          or terms of the fee arrangement for any other mat-  
22          ter influenced the selection and retention of counsel  
23          in any private action arising under this title and, if  
24          the court so finds, shall disqualify the attorney from  
25          representing the plaintiff in any such action.

1           “(12) DISCLOSURES REGARDING CONTRIBU-  
2           TIONS.—In any private action arising under this  
3           title, each plaintiff and any attorney for such plain-  
4           tiff shall provide sworn certifications, which shall be  
5           personally signed by such plaintiff and such attor-  
6           ney, respectively, and filed with the complaint, that  
7           identifies any contribution made within five years  
8           prior to the filing of the complaint by such attorney,  
9           any person affiliated with such attorney, or any po-  
10          litical action committee controlled by such attorney,  
11          to any elected official with authority to retain coun-  
12          sel for such plaintiff or to select or appoint, influ-  
13          ence the selection or appointment of, or oversee any  
14          individual or group of individuals with that author-  
15          ity.

16           “(13) DISCLOSURE REGARDING OTHER CON-  
17          FLICTS OF INTEREST.—In any private action arising  
18          under this title, each plaintiff and any attorney for  
19          such plaintiff shall provide sworn certifications,  
20          which shall be personally signed by such plaintiff  
21          and such attorney, respectively, and filed with the  
22          complaint, that identifies any other conflict of inter-  
23          est (other than one specified in paragraphs (10)  
24          through (12)) between such attorney and such plain-  
25          tiff. The court shall make a determination of wheth-

1 er such conflict is sufficient to disqualify the attor-  
2 ney from representing the plaintiff.”.

3 (b) SECURITIES ACT OF 1933.—Section 27(a) of the  
4 Securities Act of 1933 (15 U.S.C. 77z–1(a)) is amended  
5 by adding at the end the following new paragraph:

6 “(9) DISCLOSURES REGARDING PAYMENTS.—

7 “(A) SWORN CERTIFICATIONS RE-  
8 QUIRED.—In any private action arising under  
9 this title, each plaintiff and any attorney for  
10 such plaintiff shall provide sworn certifications,  
11 which shall be personally signed by such plain-  
12 tiff and such attorney, respectively, and filed  
13 with the complaint, that identify any direct or  
14 indirect payment, or promise of any payment,  
15 by such attorney, or any person affiliated with  
16 such attorney, to such plaintiff, or any person  
17 affiliated with such plaintiff, beyond the plain-  
18 tiff’s pro rata share of any recovery, except as  
19 ordered or approved by the court in accordance  
20 with paragraph (4). Upon disclosure of any  
21 such payment or promise of payment, the court  
22 shall disqualify the attorney from representing  
23 the plaintiff.

24 “(B) DEFINITION.—For purposes of this  
25 paragraph, the term ‘payment’ shall include the

1 transfer of money and any other thing of value,  
2 including the provision of services, other than  
3 representation of the plaintiff in the private ac-  
4 tion arising under this title.

5 “(10) DISCLOSURES REGARDING LEGAL REP-  
6 RESENTATIONS.—In any private action arising  
7 under this title, each plaintiff and any attorney for  
8 such plaintiff shall provide sworn certifications,  
9 which shall be personally signed by such plaintiff  
10 and such attorney, respectively, and filed with the  
11 complaint, that identifies the nature and terms of  
12 any legal representation provided by such attorney,  
13 or any person affiliated with such attorney, to such  
14 plaintiff, or any person affiliated with such plaintiff  
15 other than the representation of the plaintiff in the  
16 private action arising under this title. The court may  
17 allow such certifications to be made under seal. The  
18 court shall make a determination whether the nature  
19 or terms of the fee arrangement for any other mat-  
20 ter influenced the selection and retention of counsel  
21 in any private action arising under this title and, if  
22 the court so finds, shall disqualify the attorney from  
23 representing the plaintiff in any such action.

24 “(11) DISCLOSURES REGARDING CONTRIBU-  
25 TIONS.—In any private action arising under this

1 title, each plaintiff and any attorney for such plain-  
2 tiff shall provide sworn certifications, which shall be  
3 personally signed by such plaintiff and such attor-  
4 ney, respectively, and filed with the complaint, that  
5 identifies any contribution made within five years  
6 prior to the filing of the complaint by such attorney,  
7 any person affiliated with such attorney, or any po-  
8 litical action committee controlled by such attorney,  
9 to any elected official with authority to retain coun-  
10 sel for such plaintiff or to select or appoint, influ-  
11 ence the selection or appointment of, or oversee any  
12 individual or group of individuals with that author-  
13 ity.

14 “(12) DISCLOSURE REGARDING OTHER CON-  
15 Flicts OF INTEREST.—In any private action arising  
16 under this title, each plaintiff and any attorney for  
17 such plaintiff shall provide sworn certifications,  
18 which shall be personally signed by such plaintiff  
19 and such attorney, respectively, and filed with the  
20 complaint, that identifies any other conflict of inter-  
21 est (other than one specified in paragraphs (9)  
22 through (11)) between such attorney and such plain-  
23 tiff. The court shall make a determination of wheth-  
24 er such conflict is sufficient to disqualify the attor-  
25 ney from representing the plaintiff.”.

1 **SEC. 3. SELECTION OF LEAD COUNSEL.**

2 (a) SECURITIES EXCHANGE ACT OF 1934.—Section  
3 21D(a)(3)(B)(v) of the Securities Exchange Act of 1934  
4 (15 U.S.C. 78u–4(a)(3)(B)(v)) is amended by adding at  
5 the end the following: “In exercising the discretion of the  
6 court over the approval of lead counsel, the court shall  
7 employ a competitive bidding process as one of the criteria  
8 in the selection and retention of counsel for the most ade-  
9 quate plaintiff, unless the court determines on the record  
10 that such a process is not feasible.”.

11 (b) SECURITIES ACT OF 1933.—Section  
12 27(a)(3)(B)(v) of the Securities Act of 1933 (15 U.S.C.  
13 77z–1(a)(3)(B)(v)) is amended by adding at the end the  
14 following: “In exercising the discretion of the court over  
15 the approval of lead counsel, the court shall employ a com-  
16 petitive bidding process as one of the criteria in the selec-  
17 tion and retention of counsel for the most adequate plain-  
18 tiff, unless the court determines on the record that such  
19 a process is not feasible.”.

20 **SEC. 4. STUDY OF AVERAGE HOURLY FEES IN SECURITIES**  
21 **CLASS ACTIONS.**

22 (a) STUDY AND REVIEW REQUIRED.—The Comp-  
23 troller General of the United States shall conduct a study  
24 and review of fee awards to lead counsel in securities class  
25 actions over the 5-year period preceding the date of enact-



1 ment of this Act to determine the effective average hourly  
2 rate for lead counsel in such actions.

3 (b) REPORT REQUIRED.—Not later than 1 year after  
4 the date of enactment of this Act, the Comptroller General  
5 shall submit a report to the Committee on Banking, Hous-  
6 ing, and Urban Affairs of the Senate and the Committee  
7 on Financial Services of the House of Representatives on  
8 the results of the study and review required by this sec-  
9 tion. The Comptroller General shall submit an updated  
10 study every 3 years thereafter.

11 (c) DEFINITION.—For purposes of this section, the  
12 term “securities class action” means a private class action  
13 arising under the Securities Act of 1933 (15 U.S.C. 77  
14 et seq.) or the Securities Exchange Act of 1934 (15 U.S.C.  
15 78 et seq.) that is brought as a plaintiff class action pur-  
16 suant to the Federal Rules of Civil Procedure.

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