

111TH CONGRESS  
2D SESSION

# S. 3258

To amend the securities laws to modernize and strengthen investor protection,  
and for other purposes.

---

IN THE SENATE OF THE UNITED STATES

APRIL 26, 2010

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

---

## A BILL

To amend the securities laws to modernize and strengthen  
investor protection, 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 “Modernizing and  
5 Strengthening Investor Protection Act of 2010”.

6 **SEC. 2. STRENGTHENING ENFORCEMENT BY THE COMMIS-**  
7 **SION.**

8 (a) NATIONWIDE SERVICE OF SUBPOENAS.—

9 (1) SECURITIES ACT OF 1933.—Section 22(a) of  
10 the Securities Act of 1933 (15 U.S.C. 77v(a)) is

1 amended by inserting after the second sentence the  
2 following: “In any action or proceeding instituted by  
3 the Commission under this title in a United States  
4 district court for any judicial district, a subpoena  
5 issued to compel the attendance of a witness or the  
6 production of documents or tangible things (or both)  
7 at a hearing or trial may be served at any place  
8 within the United States. Rule 45(c)(3)(A)(ii) of the  
9 Federal Rules of Civil Procedure shall not apply to  
10 a subpoena issued under the preceding sentence.”.

11 (2) SECURITIES EXCHANGE ACT OF 1934.—Sec-  
12 tion 27 of the Securities Exchange Act of 1934 (15  
13 U.S.C. 78aa) is amended by inserting after the third  
14 sentence the following: “In any action or proceeding  
15 instituted by the Commission under this title in a  
16 United States district court for any judicial district,  
17 a subpoena issued to compel the attendance of a wit-  
18 ness or the production of documents or tangible  
19 things (or both) at a hearing or trial may be served  
20 at any place within the United States. Rule  
21 45(c)(3)(A)(ii) of the Federal Rules of Civil Proce-  
22 dure shall not apply to a subpoena issued under the  
23 preceding sentence.”.

24 (3) INVESTMENT COMPANY ACT OF 1940.—Sec-  
25 tion 44 of the Investment Company Act of 1940 (15

1 U.S.C. 80a–43) is amended by inserting after the  
2 fourth sentence the following: “In any action or pro-  
3 ceeding instituted by the Commission under this title  
4 in a United States district court for any judicial dis-  
5 trict, a subpoena issued to compel the attendance of  
6 a witness or the production of documents or tangible  
7 things (or both) at a hearing or trial may be served  
8 at any place within the United States. Rule  
9 45(c)(3)(A)(ii) of the Federal Rules of Civil Proce-  
10 dure shall not apply to a subpoena issued under the  
11 preceding sentence.”.

12 (4) INVESTMENT ADVISERS ACT OF 1940.—Sec-  
13 tion 214 of the Investment Advisers Act of 1940 (15  
14 U.S.C. 80b–14) is amended by inserting after the  
15 third sentence the following: “In any action or pro-  
16 ceeding instituted by the Commission under this title  
17 in a United States district court for any judicial dis-  
18 trict, a subpoena issued to compel the attendance of  
19 a witness or the production of documents or tangible  
20 things (or both) at a hearing or trial may be served  
21 at any place within the United States. Rule  
22 45(c)(3)(A)(ii) of the Federal Rules of Civil Proce-  
23 dure shall not apply to a subpoena issued under the  
24 preceding sentence.”.

1 (b) AUTHORITY TO IMPOSE CIVIL PENALTIES IN  
2 CEASE-AND-DESIST PROCEEDINGS.—

3 (1) UNDER THE SECURITIES ACT OF 1933.—

4 Section 8A of the Securities Act of 1933 (15 U.S.C.  
5 77h–1) is amended by adding at the end the fol-  
6 lowing new subsection:

7 “(g) AUTHORITY TO IMPOSE MONEY PENALTIES.—

8 “(1) GROUNDS.—In any cease-and-desist pro-  
9 ceeding under subsection (a), the Commission may  
10 impose a civil penalty on a person if the Commission  
11 finds, on the record, after notice and opportunity for  
12 hearing, that—

13 “(A) such person—

14 “(i) is violating or has violated any  
15 provision of this title, or any rule or regu-  
16 lation issued under this title; or

17 “(ii) is or was a cause of the violation  
18 of any provision of this title, or any rule or  
19 regulation thereunder; and

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

21 “(2) MAXIMUM AMOUNT OF PENALTY.—

22 “(A) FIRST TIER.—The maximum amount  
23 of a penalty for each act or omission described  
24 in paragraph (1) shall be \$7,500 for a natural  
25 person or \$75,000 for any other person.

1           “(B) SECOND TIER.—Notwithstanding  
2 subparagraph (A), the maximum amount of  
3 penalty for each such act or omission shall be  
4 \$75,000 for a natural person or \$375,000 for  
5 any other person, if the act or omission de-  
6 scribed in paragraph (1) involved fraud, deceit,  
7 manipulation, or deliberate or reckless dis-  
8 regard of a regulatory requirement.

9           “(C) THIRD TIER.—Notwithstanding sub-  
10 paragraphs (A) and (B), the maximum amount  
11 of penalty for each such act or omission shall  
12 be \$150,000 for a natural person or \$725,000  
13 for any other person, if—

14           “(i) the act or omission described in  
15 paragraph (1) involved fraud, deceit, ma-  
16 nipulation, or deliberate or reckless dis-  
17 regard of a regulatory requirement; and

18           “(ii) such act or omission directly or  
19 indirectly resulted in—

20           “(I) substantial losses or created  
21 a significant risk of substantial losses  
22 to other persons; or

23           “(II) substantial pecuniary gain  
24 to the person who committed the act  
25 or omission.

1           “(3) EVIDENCE CONCERNING ABILITY TO  
2 PAY.—In any proceeding in which the Commission  
3 may impose a penalty under this section, a respond-  
4 ent may present evidence of the ability of the re-  
5 spondent to pay such penalty. The Commission may,  
6 in its discretion, consider such evidence in deter-  
7 mining whether such penalty is in the public inter-  
8 est. Such evidence may relate to the extent of the  
9 ability of the respondent to continue in business and  
10 the collectability of a penalty, taking into account  
11 any other claims of the United States or third par-  
12 ties upon the assets of the respondent and the  
13 amount of the assets of the respondent.”.

14           (2) UNDER THE SECURITIES EXCHANGE ACT  
15 OF 1934.—Section 21B(a) of the Securities Ex-  
16 change Act of 1934 (15 U.S.C. 78u-2(a)) is amend-  
17 ed—

18                   (A) by striking the matter immediately fol-  
19 lowing paragraph (4);

20                   (B) in the matter preceding paragraph (1),  
21 by inserting after “opportunity for hearing,”  
22 the following: “that such penalty is in the pub-  
23 lic interest and”;

24                   (C) by redesignating paragraphs (1)  
25 through (4) as subparagraphs (A) through (D),

1           respectively, and adjusting the subparagraph  
2           margins accordingly;

3           (D) by striking “In any proceeding” and  
4           inserting the following:

5           “(1) IN GENERAL.—In any proceeding”; and

6           (E) by adding at the end the following:

7           “(2) CEASE-AND-DESIST PROCEEDINGS.—In  
8           any proceeding instituted under section 21C against  
9           any person, the Commission may impose a civil pen-  
10          alty, if the Commission finds, on the record after no-  
11          tice and opportunity for hearing, that such person—

12           “(A) is violating or has violated any provi-  
13          sion of this title, or any rule or regulation  
14          issued under this title; or

15           “(B) is or was a cause of the violation of  
16          any provision of this title, or any rule or regula-  
17          tion issued under this title.”.

18          (3) UNDER THE INVESTMENT COMPANY ACT OF  
19          1940.—Section 9(d)(1) of the Investment Company  
20          Act of 1940 (15 U.S.C. 80a–9(d)(1)) is amended—

21           (A) by striking the matter immediately fol-  
22          lowing subparagraph (C);

23           (B) in the matter preceding subparagraph  
24          (A), by inserting after “opportunity for hear-

1 ing,” the following: “that such penalty is in the  
2 public interest, and”;

3 (C) by redesignating subparagraphs (A)  
4 through (C) as clauses (i) through (iii), respec-  
5 tively, and adjusting the clause margins accord-  
6 ingly;

7 (D) by striking “In any proceeding” and  
8 inserting the following:

9 “(A) IN GENERAL.—In any proceeding”;  
10 and

11 (E) by adding at the end the following:

12 “(B) CEASE-AND-DESIST PROCEEDINGS.—  
13 In any proceeding instituted pursuant to sub-  
14 section (f) against any person, the Commission  
15 may impose a civil penalty if the Commission  
16 finds, on the record, after notice and oppor-  
17 tunity for hearing, that such person—

18 “(i) is violating or has violated any  
19 provision of this title, or any rule or regu-  
20 lation issued under this title; or

21 “(ii) is or was a cause of the violation  
22 of any provision of this title, or any rule or  
23 regulation issued under this title.”.

1           (4) UNDER THE INVESTMENT ADVISERS ACT OF  
2           1940.—Section 203(i)(1) of the Investment Advisers  
3           Act of 1940 (15 U.S.C. 80b–3(i)(1)) is amended—

4                   (A) by striking the undesignated matter  
5                   immediately following subparagraph (D);

6                   (B) in the matter preceding subparagraph  
7                   (A), by inserting after “opportunity for hear-  
8                   ing,” the following: “that such penalty is in the  
9                   public interest and”;

10                  (C) by redesignating subparagraphs (A)  
11                  through (D) as clauses (i) through (iv), respec-  
12                  tively, and adjusting the clause margins accord-  
13                  ingly;

14                  (D) by striking “In any proceeding” and  
15                  inserting the following:

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

17                  and

18                  (E) by adding at the end the following new  
19                  subparagraph:

20                   “(B) CEASE-AND-DESIST PROCEEDINGS.—

21                   In any proceeding instituted pursuant to sub-  
22                   section (k) against any person, the Commission  
23                   may impose a civil penalty if the Commission  
24                   finds, on the record, after notice and oppor-  
25                   tunity for hearing, that such person—

1           “(i) is violating or has violated any  
2           provision of this title, or any rule or regu-  
3           lation issued under this title; or

4           “(ii) is or was a cause of the violation  
5           of any provision of this title, or any rule or  
6           regulation issued under this title.”.

7           (c) FORMERLY ASSOCIATED PERSONS.—

8           (1) MEMBER OR EMPLOYEE OF THE MUNICIPAL  
9           SECURITIES       RULEMAKING       BOARD.—Section  
10          15B(c)(8) of the Securities Exchange Act of 1934  
11          (15 U.S.C. 78o-4(c)(8)) is amended by striking  
12          “any member or employee” and inserting “any per-  
13          son who is, or at the time of the alleged violation or  
14          abuse was, a member or employee”.

15          (2) PERSON ASSOCIATED WITH A GOVERNMENT  
16          SECURITIES BROKER OR DEALER.—Section 15C(c)  
17          of the Securities Exchange Act of 1934 (15 U.S.C.  
18          78o-5(c)) is amended—

19               (A) in paragraph (1)(C), by striking “any  
20               person associated, or seeking to become associ-  
21               ated,” and inserting “any person who is, or at  
22               the time of the alleged misconduct was, associ-  
23               ated or seeking to become associated”; and

24               (B) in paragraph (2)—

1 (i) in subparagraph (A), by inserting  
2 “, seeking to become associated, or, at the  
3 time of the alleged misconduct, associated  
4 or seeking to become associated” after  
5 “any person associated”; and

6 (ii) in subparagraph (B), by inserting  
7 “, seeking to become associated, or, at the  
8 time of the alleged misconduct, associated  
9 or seeking to become associated” after  
10 “any person associated”.

11 (3) PERSON ASSOCIATED WITH A MEMBER OF A  
12 NATIONAL SECURITIES EXCHANGE OR REGISTERED  
13 SECURITIES ASSOCIATION.—Section 21(a)(1) of the  
14 Securities Exchange Act of 1934 (15 U.S.C.  
15 78u(a)(1)) is amended, in the first sentence, by in-  
16 serting “, or, as to any act or practice, or omission  
17 to act, while associated with a member, formerly as-  
18 sociated” after “member or a person associated”.

19 (4) PARTICIPANT OF A REGISTERED CLEARING  
20 AGENCY.—Section 21(a)(1) of the Securities Ex-  
21 change Act of 1934 (15 U.S.C. 78u(a)(1)) is amend-  
22 ed, in the first sentence, by inserting “or, as to any  
23 act or practice, or omission to act, while a partici-  
24 pant, was a participant,” after “in which such per-  
25 son is a participant,”.

1           (5) OFFICER OR DIRECTOR OF A SELF-REGU-  
2           LATORY ORGANIZATION.—Section 19(h)(4) of the  
3           Securities Exchange Act of 1934 (15 U.S.C.  
4           78s(h)(4)) is amended—

5                   (A) by striking “any officer or director”  
6                   and inserting “any person who is, or at the  
7                   time of the alleged misconduct was, an officer  
8                   or director”; and

9                   (B) by striking “such officer or director”  
10                  and inserting “such person”.

11           (6) OFFICER OR DIRECTOR OF AN INVESTMENT  
12           COMPANY.—Section 36(a) of the Investment Com-  
13           pany Act of 1940 (15 U.S.C. 80a–35(a)) is amend-  
14           ed—

15                   (A) by striking “a person serving or act-  
16                   ing” and inserting “a person who is, or at the  
17                   time of the alleged misconduct was, serving or  
18                   acting”; and

19                   (B) by striking “such person so serves or  
20                   acts” and inserting “such person so serves or  
21                   acts, or at the time of the alleged misconduct,  
22                   so served or acted”.

23           (7) PERSON ASSOCIATED WITH A PUBLIC AC-  
24           COUNTING FIRM.—

1 (A) SARBANES-OXLEY ACT OF 2002 AMEND-  
2 MENT.—Section 2(a)(9) of the Sarbanes-Oxley  
3 Act of 2002 (15 U.S.C. 7201(9)) is amended by  
4 adding at the end the following:

5 “(C) INVESTIGATIVE AND ENFORCEMENT  
6 AUTHORITY.—For purposes of sections 3(c),  
7 101(c), 105, and 107(c) and the rules of the  
8 Board and Commission issued thereunder, ex-  
9 cept to the extent specifically excepted by such  
10 rules, the terms defined in subparagraph (A)  
11 shall include any person associated, seeking to  
12 become associated, or formerly associated with  
13 a public accounting firm, except that—

14 “(i) the authority to conduct an inves-  
15 tigation of such person under section  
16 105(b) shall apply only with respect to any  
17 act or practice, or omission to act, by the  
18 person while such person was associated or  
19 seeking to become associated with a reg-  
20 istered public accounting firm; and

21 “(ii) the authority to commence a dis-  
22 ciplinary proceeding under section  
23 105(c)(1), or impose sanctions under sec-  
24 tion 105(c)(4), against such person shall  
25 apply only with respect to—

1           “(I) conduct occurring while such  
2           person was associated or seeking to  
3           become associated with a registered  
4           public accounting firm; or

5           “(II) non-cooperation, as de-  
6           scribed in section 105(b)(3), with re-  
7           spect to a demand in a Board inves-  
8           tigation for testimony, documents, or  
9           other information relating to a period  
10          when such person was associated or  
11          seeking to become associated with a  
12          registered public accounting firm.”.

13           (B) SECURITIES EXCHANGE ACT OF 1934  
14          AMENDMENT.—Section 21(a)(1) of the Securi-  
15          ties Exchange Act of 1934 (15 U.S.C.  
16          78u(a)(1)) is amended by striking “or a person  
17          associated with such a firm” and inserting “, a  
18          person associated with such a firm, or, as to  
19          any act, practice, or omission to act, while asso-  
20          ciated with such firm, a person formerly associ-  
21          ated with such a firm”.

22           (8) SUPERVISORY PERSONNEL OF AN AUDIT  
23          FIRM.—Section 105(c)(6) of the Sarbanes-Oxley Act  
24          of 2002 (15 U.S.C. 7215(c)(6)) is amended—

1 (A) in subparagraph (A), by striking “the  
2 supervisory personnel” and inserting “any per-  
3 son who is, or at the time of the alleged failure  
4 reasonably to supervise was, a supervisory per-  
5 son”; and

6 (B) in subparagraph (B)—

7 (i) by striking “No associated person”  
8 and inserting “No current or former super-  
9 visory person”; and

10 (ii) by striking “any other person”  
11 and inserting “any associated person”.

12 (9) MEMBER OF THE PUBLIC COMPANY AC-  
13 COUNTING OVERSIGHT BOARD.—Section 107(d)(3)  
14 of the Sarbanes-Oxley Act of 2002 (15 U.S.C.  
15 7217(d)(3)) is amended by striking “any member”  
16 and inserting “any person who is, or at the time of  
17 the alleged misconduct was, a member”.

18 (d) EXTRATERRITORIAL JURISDICTION OF THE  
19 ANTIFRAUD PROVISIONS OF THE FEDERAL SECURITIES  
20 LAWS.—

21 (1) UNDER THE SECURITIES ACT OF 1933.—  
22 Section 22 of the Securities Act of 1933 (15 U.S.C.  
23 77v(a)) is amended by adding at the end the fol-  
24 lowing new subsection:

1       “(c) EXTRATERRITORIAL JURISDICTION.—The dis-  
 2       trict courts of the United States and the United States  
 3       courts of any Territory shall have jurisdiction of an action  
 4       or proceeding brought or instituted by the Commission or  
 5       the United States alleging a violation of section 17(a) in-  
 6       volving—

7               “(1) conduct within the United States that con-  
 8       stitutes significant steps in furtherance of the viola-  
 9       tion, even if the securities transaction occurs outside  
 10       the United States and involves only foreign inves-  
 11       tors; or

12               “(2) conduct occurring outside the United  
 13       States that has a foreseeable substantial effect with-  
 14       in the United States.”.

15               (2) UNDER THE SECURITIES EXCHANGE ACT  
 16       OF 1934.—Section 27 of the Securities Exchange Act  
 17       of 1934 (15 U.S.C. 78aa) is amended—

18               (A) by striking “The district” and insert-  
 19       ing the following:

20               “(a) IN GENERAL.—The district”; and

21               (B) by adding at the end the following new  
 22       subsection:

23               “(b) EXTRATERRITORIAL JURISDICTION.—The dis-  
 24       trict courts of the United States and the United States  
 25       courts of any Territory shall have jurisdiction of an action

1 or proceeding brought or instituted by the Commission or  
2 the United States alleging a violation of the antifraud pro-  
3 visions of this title involving—

4 “(1) conduct within the United States that con-  
5 stitutes significant steps in furtherance of the viola-  
6 tion, even if the securities transaction occurs outside  
7 the United States and involves only foreign inves-  
8 tors; or

9 “(2) conduct occurring outside the United  
10 States that has a foreseeable substantial effect with-  
11 in the United States.”.

12 (3) UNDER THE INVESTMENT ADVISERS ACT OF  
13 1940.—Section 214 of the Investment Advisers Act  
14 of 1940 (15 U.S.C. 80b–14) is amended—

15 (A) by striking “The district” and insert-  
16 ing the following:

17 “(a) IN GENERAL.—The district”; and

18 (B) by adding at the end the following new  
19 subsection:

20 “(b) EXTRATERRITORIAL JURISDICTION.—The dis-  
21 trict courts of the United States and the United States  
22 courts of any Territory shall have jurisdiction of an action  
23 or proceeding brought or instituted by the Commission or  
24 the United States alleging a violation of section 206 in-  
25 volving—

1           “(1) conduct within the United States that con-  
 2           stitutes significant steps in furtherance of the viola-  
 3           tion, even if the violation is committed by a foreign  
 4           adviser and involves only foreign investors; or

5           “(2) conduct occurring outside the United  
 6           States that has a foreseeable substantial effect with-  
 7           in the United States.”.

8           (e) CONTROL PERSON LIABILITY UNDER THE SECU-  
 9           RITIES EXCHANGE ACT OF 1934.—Section 20(a) of the  
 10          Securities Exchange Act of 1934 (15 U.S.C. 78t(a)) is  
 11          amended by inserting after “controlled person is liable”  
 12          the following: “(including to the Commission in any action  
 13          brought under paragraph (1) or (3) of section 21(d))”.

14          (f) AIDING AND ABETTING UNDER THE SECURITIES  
 15          LAWS.—

16                 (1) UNDER THE SECURITIES ACT OF 1933.—  
 17          Section 15 of the Securities Act of 1933 (15 U.S.C.  
 18          77o) is amended—

19                         (A) by striking “Every person who” and  
 20                         inserting “(a) CONTROLLING PERSONS.—Every  
 21                         person who”; and

22                         (B) by adding at the end the following:

23           “(b) PROSECUTION OF PERSONS WHO AID AND  
 24          ABET VIOLATIONS.—For purposes of any action brought  
 25          by the Commission under subparagraph (b) or (d) of sec-

1 tion 20, any person that knowingly or recklessly provides  
2 substantial assistance to another person in violation of a  
3 provision of this Act, or of any rule or regulation issued  
4 under this Act, shall be deemed to be in violation of such  
5 provision to the same extent as the person to whom such  
6 assistance is provided.”.

7           (2) UNDER THE INVESTMENT COMPANY ACT OF  
8           1940.—Section 48 of the Investment Company Act of  
9           1940 (15 U.S.C. 80a–48) is amended by redesignating  
10          subsection (b) as subsection (c) and inserting  
11          after subsection (a) the following:

12          “(b) For purposes of any action brought by the Com-  
13          mission under subsection (d) or (e) of section 42, any per-  
14          son that knowingly or recklessly provides substantial as-  
15          sistance to another person in violation of a provision of  
16          this Act, or of any rule or regulation issued under this  
17          Act, shall be deemed to be in violation of such provision  
18          to the same extent as the person to whom such assistance  
19          is provided.”.

20           (3) UNDER THE INVESTMENT ADVISERS ACT.—  
21          Section 209 of the Investment Advisers Act of 1940  
22          (15 U.S.C. 80b–9) is amended by inserting at the  
23          end the following new subsection:

24          “(f) AIDING AND ABETTING.—For purposes of any  
25          action brought by the Commission under subsection (e),

1 any person that knowingly or recklessly has aided, abetted,  
 2 counseled, commanded, induced, or procured a violation  
 3 of any provision of this Act, or of any rule, regulation,  
 4 or order hereunder, shall be deemed to be in violation of  
 5 such provision, rule, regulation, or order to the same ex-  
 6 tent as the person that committed such violation.”.

7 (4) UNDER THE SECURITIES EXCHANGE ACT  
 8 OF 1934.—Section 20(e) of the Securities Exchange  
 9 Act of 1934 (15 U.S.C. 78t(e)) is amended by in-  
 10 sserting “or recklessly” after “knowingly”.

11 **SEC. 3. ADDRESSING ISSUES REVEALED BY THE MADOFF**  
 12 **FRAUD.**

13 (a) REVISION TO RECORDKEEPING RULE.—

14 (1) INVESTMENT COMPANY ACT OF 1940  
 15 AMENDMENTS.—Section 31 of the Investment Com-  
 16 pany Act of 1940 (15 U.S.C. 80a–30) is amended—

17 (A) in subsection (a)(1), by adding at the  
 18 end the following: “Each person having custody  
 19 or use of the securities, deposits, or credits of  
 20 a registered investment company shall maintain  
 21 and preserve all records that relate to the cus-  
 22 tody or use by such person of the securities, de-  
 23 posits, or credits of the registered investment  
 24 company for such period or periods as the Com-  
 25 mission, by rule or regulation, may prescribe, as

1 necessary or appropriate in the public interest  
2 or for the protection of investors.”; and

3 (B) in subsection (b), by adding at the end  
4 the following:

5 “(4) RECORDS OF PERSONS WITH CUSTODY OR  
6 USE.—

7 “(A) IN GENERAL.—Records of persons  
8 having custody or use of the securities, depos-  
9 its, or credits of a registered investment com-  
10 pany that relate to such custody or use, are  
11 subject at any time, or from time to time, to  
12 such reasonable periodic, special, or other ex-  
13 aminations and other information and docu-  
14 ment requests by representatives of the Com-  
15 mission, as the Commission deems necessary or  
16 appropriate in the public interest or for the pro-  
17 tection of investors.

18 “(B) CERTAIN PERSONS SUBJECT TO  
19 OTHER REGULATION.—Any person that is sub-  
20 ject to regulation and examination by a Federal  
21 financial institution regulatory agency (as such  
22 term is defined under section 212(c)(2) of title  
23 18, United States Code) may satisfy any exam-  
24 ination request, information request, or docu-  
25 ment request described under subparagraph

1 (A), by providing to the Commission a detailed  
2 listing, in writing, of the securities, deposits, or  
3 credits of the registered investment company  
4 within the custody or use of such person.”.

5 (2) INVESTMENT ADVISERS ACT OF 1940  
6 AMENDMENT.—Section 204 of the Investment Advis-  
7 ers Act of 1940 (15 U.S.C. 80b–4) is amended by  
8 adding at the end the following new subsection:  
9 “(d) RECORDS OF PERSONS WITH CUSTODY OR  
10 USE.—

11 “(1) IN GENERAL.—Records of persons having  
12 custody or use of the securities, deposits, or credits  
13 of a client, that relate to such custody or use, are  
14 subject at any time, or from time to time, to such  
15 reasonable periodic, special, or other examinations  
16 and other information and document requests by  
17 representatives of the Commission, as the Commis-  
18 sion deems necessary or appropriate in the public in-  
19 terest or for the protection of investors.

20 “(2) CERTAIN PERSONS SUBJECT TO OTHER  
21 REGULATION.—Any person that is subject to regula-  
22 tion and examination by a Federal financial institu-  
23 tion regulatory agency (as such term is defined  
24 under section 212(c)(2) of title 18, United States  
25 Code) may satisfy any examination request, informa-

1       tion request, or document request described under  
 2       paragraph (1), by providing the Commission with a  
 3       detailed listing, in writing, of the securities, deposits,  
 4       or credits of the client within the custody or use of  
 5       such person.”.

6       (b) STREAMLINED HIRING AUTHORITY FOR MARKET  
 7 SPECIALISTS.—

8               (1) APPOINTMENT AUTHORITY.—Section 3114  
 9       of title 5, United States Code, is amended by strik-  
 10       ing the section heading and all that follows through  
 11       the end of subsection (a) and inserting the following:

12       **“§ 3114. Appointment of candidates to certain posi-**  
 13               **tions in the competitive service by the**  
 14               **Securities and Exchange Commission**

15       “(a) APPLICABILITY.—This section applies with re-  
 16       spect to any position of accountant, economist, and securi-  
 17       ties compliance examiner at the Commission that is in the  
 18       competitive service, and any position at the Commission  
 19       in the competitive service that requires specialized knowl-  
 20       edge of financial and capital market formation or regula-  
 21       tion, financial market structures or surveillance, or infor-  
 22       mation technology.”.

23               (2) CLERICAL AMENDMENT.—The table of sec-  
 24       tions for chapter 31 of title 5, United States Code,

1 is amended by striking the item relating to section  
2 3114 and inserting the following:

“3114. Appointment of candidates to positions in the competitive service by the  
Securities and Exchange Commission.”.

3 (3) PAY AUTHORITY.—The Commission may set  
4 the rate of pay for experts and consultants ap-  
5 pointed under the authority of section 3109 of title  
6 5, United States Code, in the same manner in which  
7 it sets the rate of pay for employees of the Commis-  
8 sion.

9 (c) SIPC REFORMS.—

10 (1) REMOVING THE DISTINCTION BETWEEN  
11 CLAIMS FOR CASH AND CLAIMS FOR SECURITIES.—  
12 The Securities Investor Protection Act of 1970 (15  
13 U.S.C. 78aaa et seq.) is amended—

14 (A) in section 8(e)(4)(B) (15 U.S.C. 78fff-  
15 2(e)(4)(B)), by striking “for cash or securities”;

16 (B) in section 9(a) (15 U.S.C. 78fff-  
17 3(a))—

18 (i) by striking paragraph (1); and

19 (ii) by redesignating paragraphs (2)  
20 through (5) as paragraphs (1) through (4),  
21 respectively; and

22 (C) in section 16(2)(B) (15 U.S.C.  
23 78lll(2)(B)), by striking “for cash or securi-  
24 ties”.

1           (2) LIQUIDATION OF A CARRYING BROKER-  
2           DEALER.—Section 5(a)(3) of the Securities Investor  
3           Protection Act of 1970 (15 U.S.C. 78eee(a)(3)) is  
4           amended—

5                   (A) by striking the undesignated matter  
6           immediately following subparagraph (B);

7                   (B) in subparagraph (A), by striking “any  
8           member of SIPC” and inserting “the member”;

9                   (C) in subparagraph (B), by striking the  
10          comma at the end and inserting a period;

11                  (D) by striking “If SIPC” and inserting  
12          the following:

13                   “(A) IN GENERAL.—SIPC may, upon no-  
14          tice to a member of SIPC, file an application  
15          for a protective decree with any court of com-  
16          petent jurisdiction specified in section 21(e) or  
17          27 of the Securities Exchange Act of 1934, ex-  
18          cept that no such application shall be filed with  
19          respect to a member, the only customers of  
20          which are persons whose claims could not be  
21          satisfied by SIPC advances pursuant to section  
22          9, if SIPC”; and

23                  (E) by adding at the end the following:

24                   “(B) CONSENT REQUIRED.—No member of  
25          SIPC that has a customer may enter into an in-

1           solvency, receivership, or bankruptcy pro-  
2           ceeding, under Federal or State law, without  
3           the specific consent of SIPC.”.

4 **SEC. 4. ENHANCED ABILITY OF COMMISSION TO OBTAIN**  
5 **NEEDED INFORMATION.**

6           (a) INVESTMENT COMPANY EXAMINATION.—Section  
7 31(b)(1) of the Investment Company Act of 1940 (15  
8 U.S.C. 80a–30(b)(1)) is amended to read as follows:

9           “(1) IN GENERAL.—The following records shall  
10          be subject, at any time, or from time to time, to  
11          such reasonable periodic, special, or other examina-  
12          tions by representatives of the Commission as the  
13          Commission deems necessary or appropriate in the  
14          public interest or for the protection of investors:

15                 “(A) All records of a registered investment  
16                 company.

17                 “(B) All records of a underwriter, broker,  
18                 dealer, or investment adviser that is a majority-  
19                 owned subsidiary of a registered investment  
20                 company.

21                 “(C) All records required to be maintained  
22                 and preserved by a investment adviser that is  
23                 not a majority-owned subsidiary of a registered  
24                 investment company.

1           “(D) All records required to be maintained  
2           and preserved by a depositor of a registered in-  
3           vestment company.

4           “(E) All records required to be maintained  
5           and preserved by a principal underwriter for a  
6           registered investment company (other than a  
7           closed-end company).”.

8           (b) EXPANDED ACCESS TO GRAND JURY INFORMA-  
9           TION.—Chapter 215 of title 18, United States Code, is  
10          amended by adding at the end the following:

11        **“§ 3323. Access to grand jury information**

12           “(a) DISCLOSURE.—

13                “(1) IN GENERAL.—Upon motion of an attor-  
14                ney for the government, a court may direct disclo-  
15                sure of matters occurring before a grand jury during  
16                an investigation of conduct that may constitute a  
17                violation of any provision of the securities laws to  
18                the Securities and Exchange Commission for use in  
19                relation to any matter within the jurisdiction of the  
20                Commission.

21                “(2) SUBSTANTIAL NEED REQUIRED.—A court  
22                may issue an order under paragraph (1) only upon  
23                a finding of a substantial need in the public interest.

24           “(b) USE OF MATTER.—A person to whom a matter  
25          has been disclosed under this section shall not use such

1 matter, other than for the purpose for which such dislo-  
2 sure was authorized.

3 “(c) DEFINITIONS.—As used in this section—

4 “(1) the terms ‘attorney for the government’  
5 and ‘grand jury information’ have the meanings  
6 given to those terms in section 3322 of title 18,  
7 United States Code; and

8 “(2) the term ‘securities laws’ has the same  
9 meaning as in section 3(a)(47) of the Securities Ex-  
10 change Act of 1934.”.

11 (c) ENHANCED AUTHORITY OF THE SECURITIES AND  
12 EXCHANGE COMMISSION TO CONDUCT SURVEILLANCE  
13 AND RISK ASSESSMENT.—

14 (1) SECURITIES EXCHANGE ACT OF 1934.—Sec-  
15 tion 17(b) of the Securities Exchange Act of 1934  
16 (15 U.S.C. 78q(b)) is amended by adding at the end  
17 the following:

18 “(5) SURVEILLANCE AND RISK ASSESSMENT.—  
19 All persons described in subsection (a) are subject,  
20 at any time, or from time to time, to such reason-  
21 able periodic, special, or other information and docu-  
22 ment requests by representatives of the Commission  
23 as the Commission, by rule or order, deems nec-  
24 essary or appropriate to conduct surveillance or risk  
25 assessments of the securities markets, persons reg-

1       istered with the Commission under this title, or oth-  
2       erwise in furtherance of the purposes of this title.”.

3           (2) INVESTMENT COMPANY ACT OF 1940.—Sec-  
4       tion 31(b) of the Investment Company Act of 1940  
5       (15 U.S.C. 80a–30(b)) is amended by adding at the  
6       end the following:

7           “(5) SURVEILLANCE AND RISK ASSESSMENT.—  
8       All persons described in subsection (a) are subject at  
9       any time, or from time to time, to such reasonable  
10      periodic, special, or other information and document  
11      requests by representatives of the Commission as the  
12      Commission, by rule or order, deems necessary or  
13      appropriate to conduct surveillance or risk assess-  
14      ments of the securities markets, persons registered  
15      with the Commission under this title, or otherwise in  
16      furtherance of the purposes of this title.”.

17           (3) DOCUMENT REQUESTS.—Section 204 of the  
18      Investment Advisers Act of 1940 (15 U.S.C. 80b–4)  
19      is amended by adding at the end the following:

20           “(e) SURVEILLANCE AND RISK ASSESSMENT.—All  
21      persons described in subsection (a) are subject at any  
22      time, or from time to time, to such reasonable periodic,  
23      special, or other information and document requests by  
24      representatives of the Commission as the Commission, by  
25      rule or order, deems necessary or appropriate to conduct

1 surveillance or risk assessments of the securities markets,  
2 persons registered with the Commission under this title,  
3 or otherwise in furtherance of the purposes of this title.”.

4 (d) PROTECTING CONFIDENTIALITY OF MATERIALS  
5 SUBMITTED TO THE COMMISSION.—

6 (1) SECURITIES EXCHANGE ACT OF 1934.—Sec-  
7 tion 24 of the Securities Exchange Act of 1934 (15  
8 U.S.C. 78x) is amended—

9 (A) in subsection (d), by striking “sub-  
10 section (e)” and inserting “subsection (f)”;

11 (B) by redesignating subsection (e) as sub-  
12 section (f); and

13 (C) by inserting after subsection (d) the  
14 following:

15 “(e) RECORDS OBTAINED FROM REGISTERED PER-  
16 SONS.—

17 “(1) IN GENERAL.—Except as provided in sub-  
18 section (f), the Commission shall not be compelled to  
19 disclose records or information obtained pursuant to  
20 section 17(b), or records or information based upon  
21 or derived from such records or information, if such  
22 records or information have been obtained by the  
23 Commission for use in furtherance of the purposes  
24 of this title, including surveillance, risk assessments,  
25 or other regulatory and oversight activities.

1           “(2) TREATMENT OF INFORMATION.—For pur-  
2           poses of section 552 of title 5, United States Code,  
3           this subsection shall be considered a statute de-  
4           scribed in subsection (b)(3)(B) of such section 552.  
5           Collection of information pursuant to section 17  
6           shall be an administrative action involving an agency  
7           against specific individuals or agencies pursuant to  
8           section 3518(c)(1) of title 44, United States Code.”.

9           (2) INVESTMENT COMPANY ACT OF 1940.—Sec-  
10          tion 31 of the Investment Company Act of 1940 (15  
11          U.S.C. 80a–30) is amended—

12                       (A) by striking subsection (c) and inserting  
13                       the following:

14          “(c) LIMITATIONS ON DISCLOSURE BY COMMIS-  
15          SION.—Notwithstanding any other provision of law, the  
16          Commission shall not be compelled to disclose any records  
17          or information provided to the Commission under this sec-  
18          tion, or records or information based upon or derived from  
19          such records or information, if such records or information  
20          have been obtained by the Commission for use in further-  
21          ance of the purposes of this title, including surveillance,  
22          risk assessments, or other regulatory and oversight activi-  
23          ties. Nothing in this subsection authorizes the Commission  
24          to withhold information from the Congress or prevent the  
25          Commission from complying with a request for informa-

1 tion from any other Federal department or agency re-  
2 questing the information for purposes within the scope of  
3 jurisdiction of that department or agency, or complying  
4 with an order of a court of the United States in an action  
5 brought by the United States or the Commission. For pur-  
6 poses of section 552 of title 5, United States Code, this  
7 section shall be considered a statute described in sub-  
8 section (b)(3)(B) of such section 552. Collection of infor-  
9 mation pursuant to section 31 shall be an administrative  
10 action involving an agency against specific individuals or  
11 agencies pursuant to section 3518(e)(1) of title 44, United  
12 States Code.”;

13 (B) by striking subsection (d); and

14 (C) by redesignating subsections (e) and  
15 (f) as subsections (d) and (e), respectively.

16 (3) INVESTMENT ADVISERS ACT OF 1940.—Sec-  
17 tion 210 of the Investment Advisers Act of 1940 (15  
18 U.S.C. 80b–10) is amended by adding at the end the  
19 following:

20 “(d) LIMITATIONS ON DISCLOSURE BY THE COMMIS-  
21 SION.—Notwithstanding any other provision of law, the  
22 Commission shall not be compelled to disclose any records  
23 or information provided to the Commission under this sec-  
24 tion, or records or information based upon or derived from  
25 such records or information, if such records or information

1 have been obtained by the Commission for use in further-  
2 ance of the purposes of this title, including surveillance,  
3 risk assessments, or other regulatory and oversight activi-  
4 ties. Nothing in this subsection authorizes the Commission  
5 to withhold information from the Congress or prevent the  
6 Commission from complying with a request for informa-  
7 tion from any other Federal department or agency re-  
8 questing the information for purposes within the scope of  
9 jurisdiction of that department or agency, or complying  
10 with an order of a court of the United States in an action  
11 brought by the United States or the Commission. For pur-  
12 poses of section 552 of title 5, United States Code, this  
13 section shall be considered a statute described in sub-  
14 section (b)(3)(B) of such section 552. Collection of infor-  
15 mation pursuant to section 31 shall be an administrative  
16 action involving an agency against specific individuals or  
17 agencies pursuant to section 3518(e)(1) of title 44, United  
18 States Code.”.

19 (e) EXPANSION OF AUDIT INFORMATION TO BE  
20 PRODUCED AND EXCHANGED.—Section 106 of the Sar-  
21 banes-Oxley Act of 2002 (15 U.S.C. 7216) is amended—

22 (1) by striking subsection (b) and inserting the  
23 following:

24 “(b) PRODUCTION OF DOCUMENTS.—

1           “(1) PRODUCTION BY FOREIGN FIRMS.—If a  
2 foreign public accounting firm issues an audit re-  
3 port, performs audit work, conducts interim reviews,  
4 or performs material services upon which a reg-  
5 istered public accounting firm relies in the conduct  
6 of an audit or interim review, the foreign public ac-  
7 counting firm shall—

8           “(A) produce its audit work papers and all  
9 other documents related to any such audit work  
10 or interim review to the Commission or the  
11 Board; and

12           “(B) be subject to the jurisdiction of the  
13 courts of the United States for purposes of en-  
14 forcement of any request for such documents.

15           “(2) OTHER PRODUCTION.—Any registered  
16 public accounting firm that relies, in whole or in  
17 part, on the work of a foreign public accounting firm  
18 in issuing an audit report, performing audit work, or  
19 conducting an interim review, shall—

20           “(A) produce the audit work papers of the  
21 foreign public accounting firm and all other  
22 documents related to any such work in response  
23 to a request for production by the Commission  
24 or the Board; and

1           “(B) secure the agreement of any foreign  
2           public accounting firm to such production, as a  
3           condition of the reliance by the registered public  
4           accounting firm on the work of that foreign  
5           public accounting firm.”;

6           (2) by redesignating subsection (d) as sub-  
7           section (g); and

8           (3) by inserting after subsection (c) the fol-  
9           lowing:

10          “(d) SERVICE OF REQUESTS OR PROCESS.—

11           “(1) IN GENERAL.—Any foreign public account-  
12           ing firm that performs work for a domestic reg-  
13           istered public accounting firm shall furnish to the  
14           domestic registered public accounting firm a written  
15           irrevocable consent and power of attorney that des-  
16           ignates the domestic registered public accounting  
17           firm as an agent upon whom may be served any  
18           process, pleadings, or other papers in any action  
19           brought to enforce this section.

20           “(2) SPECIFIC AUDIT WORK.—Any foreign pub-  
21           lic accounting firm that issues an audit report, per-  
22           forms audit work, performs interim reviews, or per-  
23           forms material services upon which a registered pub-  
24           lic accounting firm relies in the conduct of an audit  
25           or interim review, shall designate to the Commission

1 or the Board an agent in the United States upon  
2 whom may be served any process, pleading, or other  
3 papers in any action brought to enforce this section  
4 or any request by the Commission or the Board  
5 under this section.

6 “(e) SANCTIONS.—A willful refusal to comply, in  
7 whole in or in part, with any request by the Commission  
8 or the Board under this section, shall be deemed a viola-  
9 tion of this Act.

10 “(f) OTHER MEANS OF SATISFYING PRODUCTION  
11 OBLIGATIONS.—Notwithstanding any other provisions of  
12 this section, the staff of the Commission or the Board may  
13 allow a foreign public accounting firm that is subject to  
14 this section to meet production obligations under this sec-  
15 tion through alternate means, such as through foreign  
16 counterparts of the Commission or the Board.”.

17 (f) SHARING PRIVILEGED INFORMATION WITH  
18 OTHER AUTHORITIES.—Section 24 of the Securities Ex-  
19 change Act of 1934 (15 U.S.C. 78x) is amended—

20 (1) in subsection (d), as amended by subsection  
21 (d)(1)(A), by striking “subsection (f)” and inserting  
22 “subsection (g)”;

23 (2) in subsection (e), as added by subsection  
24 (d)(1)(C), by striking “subsection (f)” and inserting  
25 “subsection (g)”;

1           (3) by redesignating subsection (f) as sub-  
2           section (g); and

3           (4) by inserting after subsection (e) the fol-  
4           lowing:

5           “(f) SHARING PRIVILEGED INFORMATION WITH  
6 OTHER AUTHORITIES.—

7           “(1) PRIVILEGED INFORMATION PROVIDED BY  
8 THE COMMISSION.—The Commission shall not be  
9 deemed to have waived any privilege applicable to  
10 any information by transferring that information to  
11 or permitting that information to be used by—

12                   “(A) any agency (as defined in section 6 of  
13 title 18, United States Code);

14                   “(B) the Public Company Accounting  
15 Oversight Board;

16                   “(C) any self-regulatory organization;

17                   “(D) any foreign securities authority;

18                   “(E) any foreign law enforcement author-  
19 ity; or

20                   “(F) any State securities or law enforce-  
21 ment authority.

22           “(2) NONDISCLOSURE OF PRIVILEGED INFOR-  
23 MATION PROVIDED TO THE COMMISSION.—The Com-  
24 mission shall not be compelled to disclose privileged  
25 information obtained from any foreign securities au-

1       thority, or foreign law enforcement authority, if the  
2       authority has in good faith determined and rep-  
3       resented to the Commission that the information is  
4       privileged.

5               “(3) NONWAIVER OF PRIVILEGED INFORMATION  
6       PROVIDED TO THE COMMISSION.—

7               “(A) IN GENERAL.—Federal agencies,  
8       State securities and law enforcement authori-  
9       ties, self-regulatory organizations, and the Pub-  
10      lic Company Accounting Oversight Board shall  
11      not be deemed to have waived any privilege ap-  
12      plicable to any information by transferring that  
13      information to or permitting that information  
14      to be used by the Commission.

15              “(B) EXCEPTION.—The provisions of sub-  
16      paragraph (A) shall not apply to a self-regu-  
17      latory organization or the Public Company Ac-  
18      counting Oversight Board with respect to infor-  
19      mation used by the Commission in an action  
20      against such organization.

21              “(4) DEFINITIONS.—For purposes of this sub-  
22      section—

23              “(A) the term ‘privilege’ includes any  
24      work-product privilege, attorney-client privilege,

1 governmental privilege, or other privilege recog-  
 2 nized under Federal, State, or foreign law;

3 “(B) the term ‘foreign law enforcement au-  
 4 thority’ means any foreign authority that is em-  
 5 powered under foreign law to detect, investigate  
 6 or prosecute potential violations of law; and

7 “(C) the term ‘State securities or law en-  
 8 forcement authority’ means the authority of any  
 9 State or territory that is empowered under  
 10 State or territory law to detect, investigate, or  
 11 prosecute potential violations of law.”.

12 **SEC. 5. MODERNIZATION OF INVESTOR PROTECTIONS.**

13 (a) MUNICIPAL SECURITIES.—Section 15B of the Se-  
 14 curities Exchange Act of 1934 (15 U.S.C. 78o–4) is  
 15 amended—

16 (1) by striking “(b)(1) Not later” and all that  
 17 follows through “succeed such initial members.” and  
 18 inserting the following:

19 “(b) MUNICIPAL SECURITIES RULEMAKING  
 20 BOARD.—

21 “(1) COMPOSITION OF THE MUNICIPAL SECURI-  
 22 TIES RULEMAKING BOARD.—Not later than October  
 23 1, 2010, the Municipal Securities Rulemaking Board  
 24 (hereinafter in this section referred to as the  
 25 ‘Board’), shall—

1           “(A) be composed of members who shall  
2 perform the duties set forth in this section; and

3           “(B) shall consist of—

4                   “(i) a majority of independent public  
5 representatives, at least 1 of whom shall be  
6 representative of investors in municipal se-  
7 curities and at least 1 of whom shall be  
8 representative of issuers of municipal secu-  
9 rities (which members are hereinafter re-  
10 ferred to as ‘public representatives’);

11                   “(ii) at least 1 individual who is rep-  
12 resentative of municipal securities brokers  
13 and municipal securities dealers that are  
14 not banks or subsidiaries, departments or  
15 divisions of banks (which members are  
16 hereinafter referred to as ‘broker-dealer  
17 representatives’); and

18                   “(iii) at least 1 individual who is rep-  
19 resentative of municipal securities dealers  
20 that are banks or subsidiaries, depart-  
21 ments or divisions of banks (which mem-  
22 bers are hereinafter referred to as ‘bank  
23 representatives’).”;

24           (2) in paragraph (2), by amending subpara-  
25 graph (B) to read as follows:

1           “(B) establish fair procedures for the nomina-  
2           tion and election of members of the Board and as-  
3           sure fair representation in such nominations and  
4           elections of municipal securities brokers and munic-  
5           ipal securities dealers. Such rules—

6                   “(i) shall establish requirements regarding  
7                   the independence of public representatives;

8                   “(ii) shall provide that the number of pub-  
9                   lic representatives of the Board shall at all  
10                  times exceed the total number of broker-dealer  
11                  representatives and bank representatives;

12                  “(iii) shall establish minimum knowledge,  
13                  experience, and other appropriate qualifications  
14                  for individuals to serve as public representa-  
15                  tives, which may include prior work experience  
16                  in the securities, municipal finance, or munic-  
17                  ipal securities industries;

18                  “(iv) shall specify the term members shall  
19                  serve; and

20                  “(v) may increase or decrease the number  
21                  of members which shall constitute the whole  
22                  Board, except that in no case may the number  
23                  of members of the whole Board be an even  
24                  number.”.

1 (b) BENEFICIAL OWNERSHIP AND SHORT-SWING  
2 PROFIT REPORTING.—

3 (1) BENEFICIAL OWNERSHIP REPORTING.—Sec-  
4 tion 13 of the Securities Exchange Act of 1934 (15  
5 U.S.C. 78m) is amended—

6 (A) in subsection (d)—

7 (i) in paragraph (1)—

8 (I) by inserting after “within ten  
9 days after such acquisition,” the fol-  
10 lowing: “or within such shorter period  
11 as the Commission may establish, by  
12 rule,”; and

13 (II) by striking “send to the  
14 issuer of the security at its principal  
15 executive office, by registered or cer-  
16 tified mail, send to each exchange on  
17 which the security is traded, and”;  
18 and

19 (ii) in paragraph (2)—

20 (I) by striking “in the statements  
21 to the issuer and the exchange, and”;  
22 and

23 (II) by striking “shall be trans-  
24 mitted to the issuer and the exchange  
25 and”; and

1 (B) in subsection (g)—

2 (i) in paragraph (1), by striking  
3 “shall send to the issuer of the security  
4 and”; and

5 (ii) in paragraph (2)—

6 (I) by striking “sent to the issuer  
7 and”; and

8 (II) by striking “shall be trans-  
9 mitted to the issuer and”.

10 (2) SHORT-SWING PROFIT REPORTING.—Sec-  
11 tion 16(a) of the Securities Exchange Act of 1934  
12 (15 U.S.C. 78p(a)) is amended—

13 (A) in paragraph (1), by striking “(and, if  
14 such security is registered on a national securi-  
15 ties exchange, also with the exchange)”; and

16 (B) in paragraph (2)(B), by inserting after  
17 “officer” the following: “, or within such short-  
18 er period as the Commission may establish, by  
19 rule”.

20 (c) ENHANCED APPLICATION OF ANTIFRAUD PROVI-  
21 SIONS.—The Securities Exchange Act of 1934 (15 U.S.C.  
22 78a et seq.) is amended—

23 (1) in section 9—

24 (A) by striking “registered on a national  
25 securities exchange” each place that term ap-

1           pears and inserting “other than a government  
2           security”;

3           (B) in subsection (b), by striking “by use  
4           of any facility of a national securities ex-  
5           change,”; and

6           (C) in subsection (c), by inserting after  
7           “unlawful for any” the following: “broker, deal-  
8           er, or”;

9           (2) in section 10(a)(1), by striking “registered  
10          on a national securities exchange” and inserting  
11          “other than a government security”; and

12          (3) in section 15(c)(1)(A), by striking “other-  
13          wise than on a national securities exchange of which  
14          it is a member”.

15          (d) DEFINITION OF “INTERESTED PERSON”.—Sec-  
16          tion 2(a)(19)(A) of the Investment Company Act of 1940  
17          (15 U.S.C. 80a-2(a)(19)(A)) is amended—

18               (1) by striking clause (v) and inserting the fol-  
19          lowing:

20                       “(v) any natural person who is a  
21                       member of a class of persons who the  
22                       Commission, by rule or regulation, deter-  
23                       mines are unlikely to exercise an appro-  
24                       priate degree of independence as a result  
25                       of—

1                   “(I) a material business or pro-  
2                   fessional relationship with such com-  
3                   pany or any affiliated person of such  
4                   company; or

5                   “(II) a close familial relationship  
6                   with any natural person who is an af-  
7                   filiated person of such company,”;

8                   (2) by striking clause (vi);

9                   (3) by redesignating clause (vii) as clause (vi);

10                  and

11                  (4) in clause (vi), as so redesignated, by strik-  
12                  ing “two” and inserting “5”.

13                  (e) LOST AND STOLEN SECURITIES.—Section  
14                  17(f)(1) of the Securities Exchange Act of 1934 (15  
15                  U.S.C. 78q(f)(1)) is amended—

16                  (1) in subparagraph (A), by striking “missing,  
17                  lost, counterfeit, or stolen securities” and inserting  
18                  “securities that are missing, lost, counterfeit, stolen,  
19                  cancelled, or any other category of securities as the  
20                  Commission, by rule, may prescribe”; and

21                  (2) in subparagraph (B), by striking “or sto-  
22                  len” and inserting “stolen, cancelled, or reported in  
23                  such other manner as the Commission, by rule, may  
24                  prescribe”.

1 (f) FINGERPRINTING.—Section 17(f)(2) of the Secu-  
 2 rities Exchange Act of 1934 (15 U.S.C. 78q(f)(2)) is  
 3 amended—

4 (1) in the first sentence, by striking “and reg-  
 5 istered clearing agency,” and inserting “registered  
 6 clearing agency, registered securities information  
 7 processor, national securities exchange, and national  
 8 securities association”; and

9 (2) in the second sentence, by striking “or  
 10 clearing agency,” and inserting “clearing agency, se-  
 11 curities information processor, national securities ex-  
 12 change, or national securities association,”.

13 **SEC. 6. COMMISSION ORGANIZATIONAL STUDY AND RE-**  
 14 **FORM.**

15 (a) STUDY REQUIRED.—

16 (1) IN GENERAL.—Not later than 90 days after  
 17 the date of the enactment of this Act, the Securities  
 18 and Exchange Commission (in this section referred  
 19 to as the “Commission”) shall hire an independent  
 20 consultant of high caliber who has expertise in orga-  
 21 nizational restructuring and the operations of capital  
 22 markets to examine the internal operations, struc-  
 23 ture, funding, and the need for comprehensive re-  
 24 form of the Commission, as well as the relationship  
 25 of the Commission with and the reliance by the

1 Commission on self-regulatory organizations and  
2 other entities relevant to the regulation of securities  
3 and the protection of securities investors that are  
4 under the oversight of the Commission.

5 (2) SPECIFIC AREAS FOR STUDY.—The study  
6 required under paragraph (1) shall, at a minimum,  
7 include the study of—

8 (A) the possible elimination of unnecessary  
9 or redundant units at the Commission;

10 (B) improving communications between of-  
11 fices and divisions of the Commission;

12 (C) the need to put in place a clear chain-  
13 of-command structure, particularly for enforce-  
14 ment examinations and compliance inspections;

15 (D) the effect of high-frequency trading  
16 and other technological advances on the market  
17 and what the Commission requires to monitor  
18 the effect of such trading and advances on the  
19 market;

20 (E) the hiring authorities, workplace poli-  
21 cies, and personal practices of the Commission,  
22 including—

23 (i) whether there is a need to further  
24 streamline hiring authorities for those who

1 are not lawyers, accountants, compliance  
2 examiners, or economists;

3 (ii) whether there is a need for further  
4 pay reforms;

5 (iii) the diversity of skill sets of Com-  
6 mission employees and whether the present  
7 skill set diversity efficiently and effectively  
8 fosters the mission of the Commission of  
9 investor protection; and

10 (iv) the application of civil service  
11 laws by the Commission;

12 (F) whether the oversight by the Commis-  
13 sion of, and reliance by the Commission on,  
14 self-regulatory organizations promotes efficient  
15 and effective governance for the securities mar-  
16 kets; and

17 (G) whether adjusting the reliance by the  
18 Commission on self-regulatory organizations is  
19 necessary to promote more efficient and effec-  
20 tive governance for the securities markets.

21 (b) CONSULTANT REPORT.—Not later than 150 days  
22 after the independent consultant is retained under sub-  
23 section (a), the independent consultant shall submit a re-  
24 port to the Commission and to Congress containing—

1           (1) a detailed description of any findings and  
2           conclusions made while carrying out the study re-  
3           quired under subsection (a)(1); and

4           (2) recommendations for legislative, regulatory,  
5           or administrative action that the independent con-  
6           sultant determines appropriate to enable the Com-  
7           mission and other entities on which the independent  
8           consultant reports to perform the missions of the  
9           Commission, whether mandated by statute or other-  
10          wise.

11          (c) COMMISSION REPORT.—Not later than 6 months  
12          after the date on which the consultant submits the report  
13          under subsection (b), and every 6 months thereafter dur-  
14          ing the 2-year period following the date on which the con-  
15          sultant submits the report under subsection (b), the Com-  
16          mission shall submit a report to the Committee on Bank-  
17          ing, Housing, and Urban Affairs of the Senate and the  
18          Committee on Financial Services of the House of Rep-  
19          resentatives describing the implementation by the Com-  
20          mission of the regulatory and administrative recommenda-  
21          tions contained in the report of the independent consultant  
22          under subsection (b).

○