S. 799

To amend the Securities Exchange Act of 1934 to clarify that the Securities and Exchange Commission may seek disgorgement and restitution as a result of a violation of the securities laws, to establish the statute of limitations for disgorgement and equitable actions brought by the Commission, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 14, 2019

Mr. WARNER (for himself and Mr. KENNEDY) 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 Exchange Act of 1934 to clarify that the Securities and Exchange Commission may seek disgorgement and restitution as a result of a violation of the securities laws, to establish the statute of limitations for disgorgement and equitable actions brought by the Commission, 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 En-
5 forcement and Investor Compensation Act of 2019”.

SEC. 2. INVESTIGATIONS AND PROSECUTION OF OFFENSES FOR VIOLATIONS OF THE SECURITIES LAWS.

(a) In General.—Section 21(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78u(d)) is amended—

(1) in paragraph (3)—

(A) in the paragraph heading—

(i) by inserting “CIVIL” before “MONEY PENALTIES”; and

(ii) by striking “IN CIVIL ACTIONS” and inserting “AND AUTHORITY TO SEEK DISGORGEMENT”; 

(B) in subparagraph (A), by striking “jurisdiction to impose” and all that follows through the period at the end and inserting the following: “jurisdiction to—

“(i) impose, upon a proper showing, a civil penalty to be paid by the person who committed such violation; and

“(ii) require disgorgement under paragraph (7) by the person who received any unjust enrichment as a result of such violation.”;

and

(C) in subparagraph (B)—

(i) in clause (i), in the first sentence, by striking “the penalty” and inserting “a
civil penalty imposed under subparagraph (A)(i)’’;

(ii) in clause (ii), by striking “amount of penalty” and inserting “amount of a civil penalty imposed under subparagraph (A)(i)”; and

(iii) in clause (iii), in the matter preceding item (aa), by striking “amount of penalty for each such violation” and inserting “amount of a civil penalty imposed under subparagraph (A)(i) for each violation described in that subparagraph’’;

(2) in paragraph (4), by inserting “under paragraph (7)” after “funds disgorged”; and

(3) by adding at the end the following:

“(7) DISGORGEMENT.—

“(A) IN GENERAL.—In any action or proceeding brought by the Commission under any provision of the securities laws, the Commission may seek, and any Federal court may order, disgorgement of any unjust enrichment that a person obtained as a result of a violation of that provision.

“(B) CALCULATION.—Any disgorgement that is ordered with respect to a person under subparagraph (A) shall be offset by any amount of restitu-
tion that the person is ordered to pay under para-
paragraph (8).

“(8) RESTITUTION.—In any proceeding brought or
instituted by the Commission under any provision of the
securities laws, the Commission may seek, and any Fed-
eral court, or, with respect to a proceeding instituted by
the Commission, the Commission, may order restitution
to an investor in the amount of the loss that the investor
sustained as a result of a violation of that provision by
a person that is—

“(A) registered as, or required to be registered
as, a broker, dealer, investment adviser, municipal
securities dealer, municipal advisor, or transfer
agent; or

“(B) associated with or, as of the date on which
the violation occurs, seeking to become associated
with, an entity described in subparagraph (A).

“(9) LIMITATIONS PERIODS.—

“(A) DISGORGEMENT.—The Commission may
bring a claim for disgorgement under paragraph (7)
not later than 5 years after the date on which the
person against which the claim is brought receives
any unjust enrichment as a result of the violation
that gives rise to the action or proceeding in which
the Commission seeks the claim.
“(B) EQUITABLE REMEDIES.—The Commission may seek a claim for any equitable remedy, including for restitution under paragraph (8), an injunction, or a bar, suspension, or cease and desist order, not later than 10 years after the latest date on which a violation that gives rise to the claim occurs.

“(C) CALCULATION.—For the purposes of calculating any limitations period under this paragraph with respect to an action or claim, any time in which the person against which the action or claim, as applicable, is brought is outside of the United States shall not count towards the accrual of that period.

“(10) RULE OF CONSTRUCTION.—Nothing in paragraph (7) or (8) may be construed as altering any right that any private party may have to maintain a suit for a violation of this Act.”.

(b) APPLICABILITY.—The amendments made by subsection (a) shall apply with respect to any action or proceeding that is commenced on or after the date of enactment of this Act.