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2^D SESSION

H. R. 6513

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 12, 2008

Received; read twice and referred to the Committee on Banking, Housing, and
Urban Affairs

AN ACT

To amend the Federal securities laws to enhance the effectiveness of the Securities and Exchange Commission's enforcement, corporation finance, trading and markets, investment management, and examination programs, 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,*

1 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

2 (a) SHORT TITLE.—This Act may be cited as the
3 “Securities Act of 2008”.

4 (b) TABLE OF CONTENTS.—The table of contents for
5 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Authority to impose civil penalties in cease and desist proceedings.
- Sec. 3. Formerly associated persons.
- Sec. 4. Scope of exemption from State securities regulation.
- Sec. 5. Covered securities.
- Sec. 6. Collateral bars.
- Sec. 7. Unlawful margin lending.
- Sec. 8. Securities Investor Protection Act of 1970 amendments.
- Sec. 9. Annual testimony on reducing complexity in financial reporting.
- Sec. 10. Equal treatment for self-regulatory organization rules.
- Sec. 11. Lost and stolen securities.
- Sec. 12. Fingerprinting.
- Sec. 13. Clarification that section 205 of the Investment Advisers Act of 1940
does not apply to State-registered advisers.
- Sec. 14. Amendments to section 31 of the Securities Exchange Act of 1934.
- Sec. 15. Protecting confidentiality of materials submitted to Commission.
- Sec. 16. Sharing privileged information with other authorities.
- Sec. 17. Technical corrections.
- Sec. 18. Conforming amendments for the repeal of the Public Utility Holding
Company Act of 1935.
- Sec. 19. Nationwide service of subpoenas.

6 **SEC. 2. AUTHORITY TO IMPOSE CIVIL PENALTIES IN CEASE**
7 **AND DESIST PROCEEDINGS.**

8 (a) UNDER THE SECURITIES ACT OF 1933.—Section
9 8A of the Securities Act of 1933 (15 U.S.C. 77h–1) is
10 amended by adding at the end the following new sub-
11 section:

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

13 “(1) GROUNDS FOR IMPOSING.—In any cease-
14 and-desist proceeding under subsection (a), the
15 Commission may impose a civil penalty on a person

1 if it finds, on the record after notice and opportunity
2 for hearing, that—

3 “(A) such person—

4 “(i) is violating or has violated any
5 provision of this title, or any rule or regu-
6 lation thereunder; or

7 “(ii) is or was a cause of the violation
8 of any provision of this title, or any rule or
9 regulation thereunder; and

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

11 “(2) MAXIMUM AMOUNT OF PENALTY.—

12 “(A) FIRST TIER.—The maximum amount
13 of penalty for each act or omission described in
14 paragraph (1) shall be \$6,500 for a natural
15 person or \$65,000 for any other person.

16 “(B) SECOND TIER.—Notwithstanding
17 paragraph (A), the maximum amount of pen-
18 alty for each such act or omission shall be
19 \$65,000 for a natural person or \$325,000 for
20 any other person if the act or omission de-
21 scribed in paragraph (1) involved fraud, deceit,
22 manipulation, or deliberate or reckless dis-
23 regard of a regulatory requirement.

24 “(C) THIRD TIER.—Notwithstanding para-
25 graphs (A) and (B), the maximum amount of

1 penalty for each such act or omission shall be
2 \$130,000 for a natural person or \$650,000 for
3 any other person if—

4 “(i) the act or omission described in
5 paragraph (1) involved fraud, deceit, ma-
6 nipulation, or deliberate or reckless dis-
7 regard of a regulatory requirement; and

8 “(ii) such act or omission directly or
9 indirectly resulted in substantial losses or
10 created a significant risk of substantial
11 losses to other persons or resulted in sub-
12 stantial pecuniary gain to the person who
13 committed the act or omission.

14 “(3) EVIDENCE CONCERNING ABILITY TO
15 PAY.—In any proceeding in which the Commission
16 may impose a penalty under this section, a respon-
17 dent may present evidence of the respondent’s ability
18 to pay such penalty. The Commission may, in its
19 discretion, consider such evidence in determining
20 whether such penalty is in the public interest. Such
21 evidence may relate to the extent of such person’s
22 ability to continue in business and the collectability
23 of a penalty, taking into account any other claims of
24 the United States or third parties upon such per-

1 son's assets and the amount of such person's as-
2 sets.”.

3 (b) UNDER THE SECURITIES EXCHANGE ACT OF
4 1934.—Subsection (a) of section 21B of the Securities
5 Exchange Act of 1934 (15 U.S.C. 78u-2(a)) is amend-
6 ed—

7 (1) by striking “(a) COMMISSION AUTHORITY
8 TO ASSESS MONEY PENALTIES.—In any pro-
9 ceeding” and inserting the following:

10 “(a) COMMISSION AUTHORITY TO ASSESS MONEY
11 PENALTIES.—

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

13 (2) by redesignating paragraphs (1) through
14 (4) of such subsection as subparagraphs (A) through
15 (D), respectively and moving such redesignated sub-
16 paragraphs and the matter following such subpara-
17 graphs 2 ems to the right; and

18 (3) by adding at the end of such subsection the
19 following new paragraph:

20 “(2) CEASE-AND-DESIST PROCEEDINGS.—In
21 any proceeding instituted pursuant to section 21C of
22 this title against any person, the Commission may
23 impose a civil penalty if it finds, on the record after
24 notice and opportunity for hearing, that such per-
25 son—

1 “(A) is violating or has violated any provi-
2 sion of this title, or any rule or regulation
3 thereunder; or

4 “(B) is or was a cause of the violation of
5 any provision of this title, or any rule or regula-
6 tion thereunder.”.

7 (c) UNDER THE INVESTMENT COMPANY ACT OF
8 1940.—Paragraph (1) of section 9(d) of the Investment
9 Company Act of 1940 (15 U.S.C. 80a-9(d)(1)) is amend-
10 ed—

11 (1) by striking “(1) AUTHORITY OF COMMIS-
12 SION.—In any proceeding” and inserting the fol-
13 lowing:

14 “(1) AUTHORITY OF COMMISSION.—

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

16 (2) by redesignating subparagraphs (A) through
17 (C) of such paragraph as clauses (i) through (iii),
18 respectively and by moving such redesignated clauses
19 and the matter following such subparagraphs 2 ems
20 to the right; and

21 (3) by adding at the end of such paragraph the
22 following new subparagraph:

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

24 In any proceeding instituted pursuant to sub-
25 section (f) against any person, the Commission

1 may impose a civil penalty if it finds, on the
2 record after notice and opportunity for hearing,
3 that such person—

4 “(i) is violating or has violated any
5 provision of this title, or any rule or regu-
6 lation thereunder; or

7 “(ii) is or was a cause of the violation
8 of any provision of this title, or any rule or
9 regulation thereunder.”.

10 (d) UNDER THE INVESTMENT ADVISERS ACT OF
11 1940.—Paragraph (1) of section 203(i) of the Investment
12 Advisers Act of 1940 (15 U.S.C. 80b–3(i)(1)) is amend-
13 ed—

14 (1) by striking “(1) AUTHORITY OF COMMIS-
15 SION.—In any proceeding” and inserting the fol-
16 lowing:

17 “(1) AUTHORITY OF COMMISSION.—

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

19 (2) by redesignating subparagraphs (A) through
20 (D) of such paragraph as clauses (i) through (iv),
21 respectively and moving such redesignated clauses
22 and the matter following such subparagraphs 2 ems
23 to the right; and

24 (3) by adding at the end of such paragraph the
25 following new subparagraph:

1 “(B) CEASE-AND-DESIST PROCEEDINGS.—

2 In any proceeding instituted pursuant to sub-
3 section (k) against any person, the Commission
4 may impose a civil penalty if it finds, on the
5 record after notice and opportunity for hearing,
6 that such person—

7 “(i) is violating or has violated any
8 provision of this title, or any rule or regu-
9 lation thereunder; or

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

13 **SEC. 3. FORMERLY ASSOCIATED PERSONS.**

14 (a) MEMBER OR EMPLOYEE OF THE MUNICIPAL SE-
15 CURITIES RULEMAKING BOARD.—Section 15B(c)(8) of
16 the Securities Exchange Act of 1934 (15 U.S.C. 78o-
17 4(c)(8)) is amended by striking “any member or em-
18 ployee” and inserting “any person who is, or at the time
19 of the alleged misconduct was, a member or employee”.

20 (b) PERSON ASSOCIATED WITH A GOVERNMENT SE-
21 CURITIES BROKER OR DEALER.—Section 15C of the Se-
22 curities Exchange Act of 1934 (15 U.S.C. 78o-5) is
23 amended—

24 (1) in subsection (c)(1)(C), by striking “or
25 seeking to become associated,” and inserting “seek-

1 ing to become associated, or, at the time of the al-
2 leged misconduct, associated or seeking to become
3 associated”;

4 (2) in subsection (c)(2)(A), by inserting “, seek-
5 ing to become associated, or, at the time of the al-
6 leged misconduct, associated or seeking to become
7 associated” after “any person associated”; and

8 (3) in subsection (c)(2)(B), by inserting “,
9 seeking to become associated, or, at the time of the
10 alleged misconduct, associated or seeking to become
11 associated” after “any person associated”.

12 (c) PERSON ASSOCIATED WITH A MEMBER OF A NA-
13 TIONAL SECURITIES EXCHANGE OR REGISTERED SECURI-
14 TIES ASSOCIATION.—Section 21(a)(1) of the Securities
15 Exchange Act of 1934 (15 U.S.C. 78u(a)(1)) is amended
16 by inserting “, or, as to any act or practice, or omission
17 to act, while associated with a member, formerly associ-
18 ated” after “member or a person associated”.

19 (d) PARTICIPANT OF A REGISTERED CLEARING
20 AGENCY.—Section 21(a)(1) of the Securities Exchange
21 Act of 1934 (15 U.S.C. 78u(a)(1)) is amended by insert-
22 ing “or, as to any act or practice, or omission to act, while
23 a participant, was a participant,” after “in which such
24 person is a participant,”.

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

4 (1) by striking “any officer or director” and in-
5 sserting “any person who is, or at the time of the al-
6 leged misconduct was, an officer or director”; and

7 (2) by striking “such officer or director” and
8 inserting “such person”.

9 (f) OFFICER OR DIRECTOR OF AN INVESTMENT COM-
10 PANY.—Section 36(a) of the Investment Company Act of
11 1940 (15 U.S.C. 80a–35(a)) is amended—

12 (1) by striking “a person serving or acting” and
13 inserting “a person who is, or at the time of the al-
14 leged misconduct was, serving or acting”; and

15 (2) by striking “such person so serves or acts”
16 and inserting “such person so serves or acts, or at
17 the time of the alleged misconduct, so served or
18 acted”.

19 **SEC. 4. SCOPE OF EXEMPTION FROM STATE SECURITIES**
20 **REGULATION.**

21 Section 18(b)(1) of the Securities Act of 1933 (15
22 U.S.C. 77r(b)(1)) is amended—

23 (1) in subparagraph (A)—

24 (A) by striking “or the American Stock
25 Exchange, or listed, or authorized for listing, on

1 the National Market System of the Nasdaq
2 Stock Market (or any successor to such enti-
3 ties)” and inserting “, the American Stock Ex-
4 change, or the Nasdaq Stock Market (or any
5 successor to such entities)”;

6 (B) by inserting before the semicolon the
7 following: “, except that a security listed, or au-
8 thorized for listing, on the New York Stock Ex-
9 change, the American Stock Exchange, or the
10 Nasdaq Stock Market (or any successor to such
11 entities) shall not be a covered security if the
12 exchange adopts listing standards pursuant to
13 section 19(b) of the Securities Exchange Act of
14 1934 (15 U.S.C. 78s(b)) that designates a tier
15 or segment of such securities as securities that
16 are not covered securities for purposes of this
17 section and such security is listed, or authorized
18 for listing, on such tier or segment”;

19 (2) in subparagraph (B), by inserting “covered”
20 after “applicable to”.

21 **SEC. 5. COVERED SECURITIES.**

22 (a) WARRANTS AND RIGHTS.—Section 18(b)(1) of
23 the Securities Act of 1933 (15 U.S.C. 77r(b)(1)) is
24 amended—

1 (1) in subparagraph (B), by striking “or” at
2 the end;

3 (2) in subparagraph (C), by striking the period
4 at the end and inserting “; or”; and

5 (3) by adding at the end the following:

6 “(D) a warrant or right to subscribe to or
7 purchase any of the foregoing.”.

8 (b) EXEMPT OFFERINGS.—Section 18(b)(4)(D) of
9 the Securities Act of 1933 (15 U.S.C. 77r(b)(4)(D)) is
10 amended to read as follows:

11 “(D) Commission rules or regulations
12 issued under section 4(2), except that this sub-
13 paragraph does not prohibit a State from im-
14 posing notice filing requirements that are sub-
15 stantially similar to those required by rule or
16 regulation under section 4(2) that are in effect
17 on September 1, 1996, including information
18 corresponding to that in all the parts and the
19 appendix to Form D.”.

20 **SEC. 6. COLLATERAL BARS.**

21 (a) SECTION 15(b)(6)(A) OF THE SECURITIES EX-
22 CHANGE ACT OF 1934.—Section 15(b)(6)(A) of the Secu-
23 rities Exchange Act of 1934 (15 U.S.C. 78o(b)(6)(A)) is
24 amended by striking “12 months, or bar such person from
25 being associated with a broker or dealer,” and inserting

1 “12 months, or bar any such person from being associated
2 with a broker, dealer, investment adviser, municipal secu-
3 rities dealer, or transfer agent,”.

4 (b) SECTION 15B(c)(4) OF THE SECURITIES EX-
5 CHANGE ACT OF 1934.—Section 15B(c)(4) of the Securi-
6 ties Exchange Act of 1934 (15 U.S.C. 78o–4(c)(4)) is
7 amended by striking “twelve months or bar any such per-
8 son from being associated with a municipal securities deal-
9 er,” and inserting “twelve months or bar any such person
10 from being associated with a broker, dealer, investment
11 adviser, municipal securities dealer, or transfer agent,”.

12 (c) SECTION 17A(e)(4)(C) OF THE SECURITIES EX-
13 CHANGE ACT OF 1934.—Section 17A(e)(4)(C) of the Se-
14 curities Exchange Act of 1934 (15 U.S.C. 78q–1(e)(4)(C))
15 is amended by striking “twelve months or bar any such
16 person from being associated with the transfer agent,”
17 and inserting “twelve months or bar any such person from
18 being associated with any transfer agent, broker, dealer,
19 investment adviser, or municipal securities dealer,”.

20 (d) SECTION 203(f) OF THE INVESTMENT ADVISERS
21 ACT OF 1940.—Section 203(f) of the Investment Advisers
22 Act of 1940 (15 U.S.C. 80b–3(f)) is amended by striking
23 “twelve months or bar any such person from being associ-
24 ated with an investment adviser,” and inserting “twelve
25 months or bar any such person from being associated with

1 an investment adviser, broker, dealer, municipal securities
2 dealer, or transfer agent,”.

3 **SEC. 7. UNLAWFUL MARGIN LENDING.**

4 Section 7(c)(1)(A) of the Securities Exchange Act of
5 1934 (15 U.S.C. 78g(c)(1)(A)) is amended by striking “;
6 and” and inserting “; or”.

7 **SEC. 8. SECURITIES INVESTOR PROTECTION ACT OF 1970**
8 **AMENDMENTS.**

9 (a) SIPC ADVANCES.—Section 9(a)(1) of the Securi-
10 ties Investor Protection Act of 1970 (15 U.S.C. 78fff-
11 3(a)(1)) is amended by inserting “or options on com-
12 modity futures contracts” after “claim for securities”.

13 (b) DEFINITIONS.—Section 16 of such Act (15
14 U.S.C. 78ll) is amended—

15 (1) by amending paragraph (2) to read as fol-
16 lows:

17 “(2) CUSTOMER.—

18 “(A) IN GENERAL.—The term ‘customer’
19 of a debtor means any person (including any
20 person with whom the debtor deals as principal
21 or agent) who has a claim on account of securi-
22 ties received, acquired, or held by the debtor in
23 the ordinary course of its business as a broker
24 or dealer from or for the securities accounts of
25 such person for safekeeping, with a view to sale,

1 to cover consummated sales, pursuant to pur-
2 chases, as collateral, security, or for purposes of
3 effecting transfer.

4 “(B) INCLUDED PERSONS.—The term
5 ‘customer’ includes—

6 “(i) any person who has deposited
7 cash with the debtor for the purpose of
8 purchasing securities;

9 “(ii) any person who has a claim
10 against the debtor for cash, securities, fu-
11 tures contracts, or options on futures con-
12 tracts received, acquired, or held in a port-
13 folio margining account carried as a secu-
14 rities account pursuant to a portfolio mar-
15 gining program approved by the Commis-
16 sion; and

17 “(iii) any person who has a claim
18 against the debtor arising out of sales or
19 conversions of such securities.

20 “(C) EXCLUDED PERSONS.—The term
21 ‘customer’ does not include—

22 “(i) any person to the extent that the
23 claim of such person arises out of trans-
24 actions with a foreign subsidiary of a mem-
25 ber of SIPC; or

1 “(ii) any person to the extent that
2 such person has a claim for cash or securi-
3 ties which by contract, agreement, or un-
4 derstanding, or by operation of law, is part
5 of the capital of the debtor, or is subordi-
6 nated to the claims of any or all creditors
7 of the debtor, notwithstanding that some
8 ground exists for declaring such contract,
9 agreement, or understanding void or void-
10 able in a suit between the claimant and the
11 debtor.”;

12 (2) in paragraph (4), by inserting after the first
13 sentence the following new sentence: “In the case of
14 portfolio margining accounts of customers that are
15 carried as securities accounts pursuant to a portfolio
16 margining program approved by the Commission,
17 such term shall also include futures contracts and
18 options on futures contracts received, acquired, or
19 held by or for the account of a debtor from or for
20 such accounts, and the proceeds thereof.”;

21 (3) in paragraph (9), by inserting before “Such
22 term” in the matter following subparagraph (L) the
23 following: “The term includes revenues earned by a
24 broker or dealer in connection with transactions in
25 customers’ portfolio margining accounts carried as

1 securities accounts pursuant to a portfolio margining
2 program approved by the Commission.”; and

3 (4) in paragraph (11)—

4 (A) by amending subparagraph (A) to read
5 as follows:

6 “(A) calculating the sum which would have
7 been owed by the debtor to such customer if the
8 debtor had liquidated, by sale or purchase on
9 the filing date—

10 “(i) all securities positions of such
11 customer (other than customer name secu-
12 rities reclaimed by such customer); and

13 “(ii) all positions in futures contracts
14 and options on futures contracts held in a
15 portfolio margining account carried as a
16 securities account pursuant to a portfolio
17 margining program approved by the Com-
18 mission; minus”; and

19 (B) by inserting before “In determining”
20 in the matter following subparagraph (C) the
21 following: “A claim for a commodity futures
22 contract received, acquired, or held in a port-
23 folio margining account pursuant to a portfolio
24 margining program approved by the Commis-
25 sion, or a claim for a security futures contract,

1 shall be deemed to be a claim for the mark-to-
2 market (variation) payments due with respect
3 to such contract as of the filing date, and such
4 claim shall be treated as a claim for cash.”.

5 **SEC. 9. ANNUAL TESTIMONY ON REDUCING COMPLEXITY IN**
6 **FINANCIAL REPORTING.**

7 (a) FINDINGS.—Congress finds the following:

8 (1) Transparent and clear financial reporting is
9 integral to the continued growth and strength of our
10 capital markets and the confidence of investors.

11 (2) The increasing detail and volume of ac-
12 counting, auditing, and reporting guidance pose a
13 major challenge.

14 (3) The complexity of accounting and auditing
15 standards in the United States has added to the
16 costs and effort involved in financial reporting.

17 (b) TESTIMONY REQUIRED ON REDUCING COM-
18 PLEXITY IN FINANCIAL REPORTING.—The Securities and
19 Exchange Commission, the Financial Accounting Stand-
20 ards Board, and the Public Company Accounting Over-
21 sight Board shall annually provide oral testimony by their
22 respective Chairpersons or a designee of the Chairperson,
23 beginning in 2009, and for 5 years thereafter, to the Com-
24 mittee on Financial Services of the House of Representa-
25 tives on their efforts to reduce the complexity in financial

1 reporting to provide more accurate and clear financial in-
2 formation to investors, including—

3 (1) reassessing complex and outdated account-
4 ing standards;

5 (2) improving the understandability, consist-
6 ency, and overall usability of the existing accounting
7 and auditing literature;

8 (3) developing principles-based accounting
9 standards;

10 (4) encouraging the use and acceptance of
11 interactive data; and

12 (5) promoting disclosures in “plain English”.

13 **SEC. 10. EQUAL TREATMENT FOR SELF-REGULATORY OR-**
14 **GANIZATION RULES.**

15 Section 29(a) of the Securities Exchange Act of 1934
16 (15 U.S.C. 78cc(a)) is amended by striking “an exchange
17 required thereby” and inserting “a self-regulatory organi-
18 zation”.

19 **SEC. 11. LOST AND STOLEN SECURITIES.**

20 Section 17(f)(1) of the Securities Exchange Act of
21 1934 (15 U.S.C. 78q(f)(1)) is amended—

22 (1) in subparagraph (A), by striking “missing,
23 lost, counterfeit, or stolen securities” and inserting
24 “securities that are missing, lost, counterfeit, stolen,

1 cancelled, or any other category of securities as the
2 Commission, by rule, may prescribe”; and

3 (2) in subparagraph (B), by striking “or sto-
4 len” and inserting “stolen, cancelled, or reported in
5 such other manner as the Commission, by rule, may
6 prescribe”.

7 **SEC. 12. FINGERPRINTING.**

8 Section 17(f)(2) of the Securities Exchange Act of
9 1934 (15 U.S.C. 78q(f)(2)) is amended—

10 (1) by striking “and registered clearing agen-
11 cy,” and inserting “registered clearing agency, reg-
12 istered securities information processor, national se-
13 curities exchange, and national securities associa-
14 tion”; and

15 (2) by striking “or clearing agency,” and insert-
16 ing “clearing agency, securities information proc-
17 essor, national securities exchange, or national secu-
18 rities association,”.

19 **SEC. 13. CLARIFICATION THAT SECTION 205 OF THE IN-**
20 **VESTMENT ADVISERS ACT OF 1940 DOES NOT**
21 **APPLY TO STATE-REGISTERED ADVISERS.**

22 Section 205(a) of the Investment Advisers Act of
23 1940 (15 U.S.C. 80b–5(a)) is amended—

24 (1) by striking “, unless exempt from registra-
25 tion pursuant to section 203(b),” and inserting

1 “registered or required to be registered with the
2 Commission”;

3 (2) by striking “make use of the mails or any
4 means or instrumentality of interstate commerce, di-
5 rectly or indirectly, to”; and

6 (3) by striking “to” after “in any way”.

7 **SEC. 14. AMENDMENTS TO SECTION 31 OF THE SECURITIES**

8 **EXCHANGE ACT OF 1934.**

9 Section 31 of the Securities Exchange Act of 1934
10 (15 U.S.C. 78ee) is amended—

11 (1) in subsection (e)(2), by striking “September
12 30” and inserting “September 25”; and

13 (2) in subsection (g), by striking “April 30”
14 and inserting “August 31”.

15 **SEC. 15. PROTECTING CONFIDENTIALITY OF MATERIALS**

16 **SUBMITTED TO COMMISSION.**

17 (a) SECURITIES EXCHANGE ACT OF 1934.—Section
18 17(j) of the Securities Exchange Act of 1934 (15 U.S.C.
19 78q(j)) is amended to read as follows:

20 “(j) AUTHORITY TO LIMIT DISCLOSURE OF INFOR-
21 MATION.—Notwithstanding any other provision of law, the
22 Commission shall not be compelled to disclose any infor-
23 mation, documents, records, or reports that relate to an
24 examination of a person subject to or described in this
25 section, including subsection (i)(5)(A), or the financial or

1 operational condition of such persons, or any information
2 supplied to the Commission by any domestic or foreign
3 regulatory agency that relates to the financial or oper-
4 ational condition of such persons, of any associated person
5 of such persons, or any affiliate of an investment bank
6 holding company. Nothing in this subsection shall author-
7 ize the Commission to withhold information from Con-
8 gress, or prevent the Commission from complying with a
9 request for information from any other Federal depart-
10 ment or agency or any self-regulatory organization re-
11 questing the information for purposes within the scope of
12 its jurisdiction. Nothing in this subsection shall prevent
13 the Commission from complying with an order of a court
14 of the United States in an action brought by the United
15 States or the Commission against such a person to
16 produce information, documents, records, or reports relat-
17 ing directly to the examination of that person or the finan-
18 cial or operational condition of that person or an associ-
19 ated or affiliated person of that person. For purposes of
20 section 552 of title 5, United States Code, this subsection
21 shall be considered a statute described in subsection
22 (b)(3)(B) of such section 552. In prescribing regulations
23 to carry out the requirements of this subsection, the Com-
24 mission shall designate information described in or ob-
25 tained pursuant to subparagraphs (A), (B), and (C) of

1 subsection (i)(3) as confidential information for purposes
2 of section 24(b)(2) of this title.”.

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

6 “(4) CONFIDENTIALITY.—Notwithstanding any
7 other provision of law, the Commission shall not be
8 compelled to disclose any information, documents,
9 records, or reports that relate to an examination of
10 a person subject to or described in this section.
11 Nothing in this subsection shall authorize the Com-
12 mission to withhold information from Congress, or
13 prevent the Commission from complying with a re-
14 quest for information from any other Federal de-
15 partment or agency requesting the information for
16 purposes within the scope of its jurisdiction. Nothing
17 in this subsection shall prevent the Commission from
18 complying with an order of a court of the United
19 States in an action brought by the United States or
20 the Commission against such a person to produce in-
21 formation, documents, records, or reports relating
22 directly to the examination of that person or the fi-
23 nancial or operational condition of that person or an
24 associated or affiliated person of that person. For
25 purposes of section 552 of title 5, United States

1 Code, this subsection shall be considered a statute
2 described in subsection (b)(3)(B) of such section
3 552.”.

4 (c) INVESTMENT ADVISERS ACT OF 1940.—Section
5 204 of the Investment Advisers Act of 1940 (15 U.S.C.
6 80b–4) is amended by adding at the end the following new
7 subsection:

8 “(d) CONFIDENTIALITY.—Notwithstanding any other
9 provision of law, the Commission shall not be compelled
10 to disclose any information, documents, records, or reports
11 that relate to an examination of a person subject to or
12 described in this section. Nothing in this subsection shall
13 authorize the Commission to withhold information from
14 Congress, or prevent the Commission from complying with
15 a request for information from any other Federal depart-
16 ment or agency requesting the information for purposes
17 within the scope of its jurisdiction. Nothing in this sub-
18 section shall prevent the Commission from complying with
19 an order of a court of the United States in an action
20 brought by the United States or the Commission against
21 such a person to produce information, documents, records,
22 or reports relating directly to the examination of that per-
23 son or the financial or operational condition of that person
24 or an associated or affiliated person of that person. For
25 purposes of section 552 of title 5, United States Code,

1 this subsection shall be considered a statute described in
2 subsection (b)(3)(B) of such section 552.”.

3 **SEC. 16. SHARING PRIVILEGED INFORMATION WITH OTHER**
4 **AUTHORITIES.**

5 Section 24 of the Securities Exchange Act of 1934
6 (15 U.S.C. 78x) is amended—

7 (1) by redesignating subsections (d) and (e) as
8 subsections (e) and (f), respectively;

9 (2) in subsection (e), as redesignated, by strik-
10 ing “as provided in subsection (e)” and inserting “as
11 provided in subsection (f)”;

12 (3) by inserting after subsection (c) the fol-
13 lowing new subsection (d)—

14 “(d) SHARING PRIVILEGED INFORMATION WITH
15 OTHER AUTHORITIES.—

16 “(1) PRIVILEGED INFORMATION PROVIDED BY
17 THE COMMISSION.—The Commission shall not be
18 deemed to have waived any privilege applicable to
19 any information by transferring that information to
20 or permitting that information to be used by—

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

23 “(B) any foreign securities authority;

24 “(C) any foreign law enforcement author-
25 ity; or

1 “(D) any State securities or law enforce-
2 ment authority.

3 “(2) NON-DISCLOSURE OF PRIVILEGED INFOR-
4 MATION PROVIDED TO THE COMMISSION.—Except as
5 provided in subsection (f), the Commission shall not
6 be compelled to disclose privileged information ob-
7 tained from any foreign securities authority, or for-
8 eign law enforcement authority, if the authority has
9 in good faith determined and represented to the
10 Commission that the information is privileged.

11 “(3) NON-WAIVER OF PRIVILEGED INFORMA-
12 TION PROVIDED TO THE COMMISSION.—No Federal
13 agency or State securities or law enforcement au-
14 thority shall be deemed to have waived any privilege
15 applicable to any information by transferring that
16 information to or permitting that information to be
17 used by the Commission.

18 “(4) DEFINITIONS.—For purposes of this sub-
19 section:

20 “(A) The term ‘privilege’ includes any
21 work-product privilege, attorney-client privilege,
22 governmental privilege, or other privilege recog-
23 nized under Federal, Foreign, or State law.

24 “(B) The term ‘foreign law enforcement
25 authority’ means any foreign authority that is

1 empowered under foreign law to detect, inves-
2 tigate or prosecute potential violations of law.

3 “(C) The term ‘State securities or law en-
4 forcement authority’ means the authority of any
5 State or territory that is empowered under
6 State or territory law to detect, investigate or
7 prosecute potential violations of law.”.

8 **SEC. 17. TECHNICAL CORRECTIONS.**

9 (a) SECURITIES ACT OF 1933.—The Securities Act
10 of 1933 (15 U.S.C. 77a et seq.) is amended—

11 (1) in section 3(a)(4) (15 U.S.C. 77c(a)(4)), by
12 striking “individual;” and inserting “individual;”;

13 (2) in section 18(b)(1)(C) (15 U.S.C.
14 77r(b)(1)(C)), by striking “is a security” and insert-
15 ing “a security”;

16 (3) in section 18(c)(2)(B)(i) (15 U.S.C.
17 77r(c)(2)(B)(i)), by striking “State, or” and insert-
18 ing “State or”;

19 (4) in section 19(d)(6)(A) (15 U.S.C.
20 77s(d)(6)(A)), by striking “in paragraph (1) of (3)”
21 and inserting “in paragraph (1) or (3)”;

22 (5) in section 27A(c)(1)(B)(ii) (15 U.S.C. 77z-
23 2(c)(1)(B)(ii)), by striking “business entity;” and in-
24 serting “business entity;”.

1 (b) SECURITIES EXCHANGE ACT OF 1934.—The Se-
2 curities Exchange Act of 1934 (15 U.S.C. 78 et seq.) is
3 amended—

4 (1) in section 2(1)(a) (15 U.S.C. 78b(1)(a)), by
5 striking “affected” and inserting “effected”;

6 (2) in section 3(a)(55)(A) (15 U.S.C.
7 78c(a)(55)(A)), by striking “section 3(a)(12) of the
8 Securities Exchange Act of 1934” and inserting
9 “section 3(a)(12) of this Act”;

10 (3) in section 3(g) (15 U.S.C. 78c(g)), by strik-
11 ing “company, account person, or entity” and insert-
12 ing “company, account, person, or entity”;

13 (4) in section 10A(i)(1)(B)(i) (15 U.S.C. 78j-
14 1(i)(1)(B)(i)), by striking “nonaudit” and inserting
15 “non-audit”;

16 (5) in section 13(b)(1) (15 U.S.C. 78m(b)(1)),
17 by striking “earning statement” and inserting
18 “earnings statement”;

19 (6) in section 15(b)(1) (15 U.S.C. 78o(b)(1))—

20 (A) by striking the sentence beginning
21 “The order granting” and ending “from such
22 membership.” in subparagraph (B); and

23 (B) by inserting such sentence in the mat-
24 ter following such subparagraph after “are sat-
25 isfied.”;

1 (7) in section 15 (15 U.S.C. 78o), by redesignig-
2 nating subsection (i), as added by section 303(f) of
3 the Commodity Futures Modernization Act of 2000
4 (114 Stat. 2763A–455), as subsection (j);

5 (8) in section 15C(a)(2) (15 U.S.C. 78o–
6 5(a)(2))—

7 (A) by redesignating clauses (i) and (ii) as
8 subparagraphs (A) and (B), respectively;

9 (B) by striking the sentence beginning
10 “The order granting” and ending “from such
11 membership.” in such subparagraph (B), as re-
12 designated; and

13 (C) by inserting such sentence in the mat-
14 ter following such redesignated subparagraph
15 after “are satisfied.”;

16 (9) in section 16(a)(2)(C) (15 U.S.C.
17 78p(a)(2)(C)), by striking “section 206(b)” and in-
18 serting “section 206B”;

19 (10) in section 17(b)(1)(B) (15 U.S.C.
20 78q(b)(1)(B)), by striking “15A(k) gives” and in-
21 serting “15A(k), give”; and

22 (11) in section 21C(c)(2) (15 U.S.C. 78u–
23 3(c)(2)), by striking “paragraph (1) subsection” and
24 inserting “Paragraph (1)”.

1 (c) TRUST INDENTURE ACT OF 1939.—The Trust
2 Indenture Act of 1939 (15 U.S.C. 77aaa et seq.) is
3 amended—

4 (1) in section 304(b) (15 U.S.C. 77ddd(b)), by
5 striking “section 2 of such Act” and inserting “sec-
6 tion 2(a) of such Act”;

7 (2) in section 313(a)(4) (15 U.S.C.
8 77mmm(a)(4)) by striking “subsection 311” and in-
9 serting “section 311(b)”; and

10 (3) in section 317(a)(1) (15 U.S.C.
11 77qqq(a)(1)), by striking “(1),” and inserting “(1)”.

12 (d) INVESTMENT COMPANY ACT OF 1940.—The In-
13 vestment Company Act of 1940 (15 U.S.C. 80a–1 et seq.)
14 is amended—

15 (1) in section 2(a)(19) (15 U.S.C. 80a–
16 2(a)(19)) by striking “clause (vi)” both places it ap-
17 pears in the last two sentences and inserting “clause
18 (vii)”;

19 (2) in section 9(b)(4)(B) (15 U.S.C. 80a–
20 9(b)(4)(B)), by inserting “or” after the semicolon at
21 the end;

22 (3) in section 12(d)(1)(J) (15 U.S.C. 80a–
23 12(d)(1)(J)), by striking “any provision of this sub-
24 section” and inserting “any provision of this para-
25 graph”;

1 (4) in section 13(a)(3) (15 U.S.C. 80a–
2 13(a)(3)), by inserting “or” after the semicolon at
3 the end;

4 (5) in section 17(f)(4) (15 U.S.C. 80a–
5 17(f)(4)), by striking “No such member” and insert-
6 ing “No member of a national securities exchange”;

7 (6) in section 17(f)(6) (15 U.S.C. 80a–
8 17(f)(6)), by striking “company may serve” and in-
9 serting “company, may serve”; and

10 (7) in section 61(a)(3)(B)(iii) (15 U.S.C. 80a–
11 60(a)(3)(B)(iii))—

12 (A) by striking “paragraph (1) of section
13 205” and inserting “section 205(a)(1)”; and

14 (B) by striking “clause (A) or (B) of that
15 section” and inserting “section 205(b)(1) or
16 (2)”.

17 (e) INVESTMENT ADVISERS ACT OF 1940.—The In-
18 vestment Advisers Act of 1940 (15 U.S.C. 80b–1 et seq.)
19 is amended—

20 (1) in each of the following sections, by striking
21 “principal business office” or “principal place of
22 business” (whichever and wherever it appears) and
23 inserting “principal office and place of business”:
24 sections 203(c)(1)(A), 203(k)(4)(B), 213(a), 222(b),
25 and 222(c) (15 U.S.C. 80b–3(c)(1)(A), 80b–

1 3(k)(4)(B), 80b-13(a), 80b-18a(b), and 80b-
2 18a(c)); and

3 (2) in section 206(3) (15 U.S.C. 80b-6(3)), by
4 inserting “or” after the semicolon at the end.

5 **SEC. 18. CONFORMING AMENDMENTS FOR THE REPEAL OF**
6 **THE PUBLIC UTILITY HOLDING COMPANY**
7 **ACT OF 1935.**

8 (a) SECURITIES EXCHANGE ACT OF 1934.—The Se-
9 curities Exchange Act of 1934 (15 U.S.C. 78 et seq.) is
10 amended—

11 (1) in section 3(a)(47) (15 U.S.C. 78c(a)(47)),
12 by striking “the Public Utility Holding Company
13 Act of 1935 (15 U.S.C. 79a et seq.)”; and

14 (2) in section 12(k) (15 U.S.C. 78l(k)), by
15 amending paragraph (7) to read as follows:

16 “(7) DEFINITION.—For purposes of this sub-
17 section, the term ‘emergency’ means—

18 “(A) a major market disturbance charac-
19 terized by or constituting—

20 “(i) sudden and excessive fluctuations
21 of securities prices generally, or a substan-
22 tial threat thereof, that threaten fair and
23 orderly markets; or

24 “(ii) a substantial disruption of the
25 safe or efficient operation of the national

1 system for clearance and settlement of
2 transactions in securities, or a substantial
3 threat thereof; or

4 “(B) a major disturbance that substan-
5 tially disrupts, or threatens to substantially dis-
6 rupt—

7 “(i) the functioning of securities mar-
8 kets, investment companies, or any other
9 significant portion or segment of the secu-
10 rities markets; or

11 “(ii) the transmission or processing of
12 securities transactions.”.

13 (3) in section 21(h)(2) (15 U.S.C. 78u(h)(2)),
14 by striking “section 18(c) of the Public Utility Hold-
15 ing Company Act of 1935,”.

16 (b) TRUST INDENTURE ACT OF 1939.—The Trust
17 Indenture Act of 1939 (15 U.S.C. 77aaa et seq.) is
18 amended—

19 (1) in section 303 (15 U.S.C. 77ccc), by
20 amending paragraph (17) to read as follows:

21 “(17) The terms ‘Securities Act of 1933’ and
22 ‘Securities Exchange Act of 1934’ shall be deemed
23 to refer, respectively, to such Acts, as amended,
24 whether amended prior to or after the enactment of
25 this title.”;

1 (2) in section 308 (15 U.S.C. 77hhh), by strik-
2 ing “Securities Act of 1933, the Securities Exchange
3 Act of 1934, or the Public Utility Holding Company
4 Act of 1935” each place it appears and inserting
5 “Securities Act of 1933 or the Securities Exchange
6 Act of 1934”;

7 (3) in section 310 (15 U.S.C. 77jjj), by striking
8 subsection (c) (including the preceding heading);

9 (4) in section 311 (15 U.S.C. 77kkk) by strik-
10 ing subsection (c);

11 (5) in section 323(b) (15 U.S.C. 77www(b)), by
12 striking “Securities Act of 1933, or the Securities
13 Exchange Act of 1934, or the Public Utility Holding
14 Company Act of 1935” and inserting “Securities Act
15 of 1933 or the Securities Exchange Act of 1934”;
16 and

17 (6) in section 326 (15 U.S.C. 77zzz), by strik-
18 ing “Securities Act of 1933, or the Securities Ex-
19 change Act of 1934, or the Public Utility Holding
20 Company Act of 1935,” and inserting “Securities
21 Act of 1933 or the Securities Exchange Act of
22 1934”.

23 (c) INVESTMENT COMPANY ACT OF 1940.—The In-
24 vestment Company Act of 1940 (15 U.S.C. 80a–1 et seq.)
25 is amended—

1 (1) in section 2(a)(44) (15 U.S.C. 80a–
2 2(a)(44)), by striking “‘Public Utility Holding Com-
3 pany Act of 1935’,”;

4 (2) in section 3(c) (15 U.S.C. 80a–3(c)), by
5 amending paragraph (8) to read as follows:

6 “(8) [Repealed]”;

7 (3) in section 38(b) (15 U.S.C. 80a–37(b)), by
8 striking “the Public Utility Holding Company Act of
9 1935,”; and

10 (4) in section 50 (15 U.S.C. 80a–49), by strik-
11 ing “the Public Utility Holding Company Act of
12 1935,”.

13 (d) INVESTMENT ADVISERS ACT OF 1940.—Section
14 202(a)(21) of the Investment Advisers Act of 1940 (15
15 U.S.C. 80b–2(a)(21)) is amended by striking “‘Public
16 Utility Holding Company Act of 1935’,”.

17 **SEC. 19. NATIONWIDE SERVICE OF SUBPOENAS.**

18 (a) SECURITIES ACT OF 1933.—Section 22(a) of the
19 Securities Act of 1933 (15 U.S.C. 77v(a)) is amended by
20 inserting after the second sentence the following: “In any
21 action or proceeding instituted by the Commission under
22 this title in a United States district court for any judicial
23 district, subpoenas issued by or on behalf of such court
24 to compel the attendance of witnesses or the production
25 of documents or tangible things (or both) may be served

1 in any other district. Such subpoenas may be served and
2 enforced without application to the court or a showing of
3 cause, notwithstanding the provisions of rule 45(b)(2),
4 (c)(3)(A)(ii), and (c)(3)(B)(iii) of the Federal Rules of
5 Civil Procedure.”.

6 (b) SECURITIES EXCHANGE ACT OF 1934.—Section
7 27 of the Securities Exchange Act of 1934 (15 U.S.C.
8 78aa) is amended by inserting after the third sentence the
9 following: “In any action or proceeding instituted by the
10 Commission under this title in a United States district
11 court for any judicial district, subpoenas issued by or on
12 behalf of such court to compel the attendance of witnesses
13 or the production of documents or tangible things (or
14 both) may be served in any other district. Such subpoenas
15 may be served and enforced without application to the
16 court or a showing of cause, notwithstanding the provi-
17 sions of rule 45(b)(2), (c)(3)(A)(ii), and (c)(3)(B)(iii) of
18 the Federal Rules of Civil Procedure.”.

19 (c) INVESTMENT COMPANY ACT OF 1940.—Section
20 44 of the Investment Company Act of 1940 (15 U.S.C.
21 80a–43) is amended by inserting after the fourth sentence
22 the following: “In any action or proceeding instituted by
23 the Commission under this title in a United States district
24 court for any judicial district, subpoenas issued by or on
25 behalf of such court to compel the attendance of witnesses

1 or the production of documents or tangible things (or
2 both) may be served in any other district. Such subpoenas
3 may be served and enforced without application to the
4 court or a showing of cause, notwithstanding the provi-
5 sions of rule 45(b)(2), (c)(3)(A)(ii), and (c)(3)(B)(iii) of
6 the Federal Rules of Civil Procedure.”.

7 (d) INVESTMENT ADVISERS ACT OF 1940.—Section
8 214 of the Investment Advisers Act of 1940 (15 U.S.C.
9 80b–14) is amended by inserting after the third sentence
10 the following: “In any action or proceeding instituted by
11 the Commission under this title in a United States district
12 court for any judicial district, subpoenas issued by or on
13 behalf of such court to compel the attendance of witnesses
14 or the production of documents or tangible things (or
15 both) may be served in any other district. Such subpoenas
16 may be served and enforced without application to the
17 court or a showing of cause, notwithstanding the provi-
18 sions of rule 45(b)(2), (c)(3)(A)(ii), and (c)(3)(B)(iii) of
19 the Federal Rules of Civil Procedure.”.

Passed the House of Representatives September 11,
2008.

Attest:

LORRAINE C. MILLER,

Clerk.