

108TH CONGRESS
1ST SESSION

H. R. 2179

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

IN THE HOUSE OF REPRESENTATIVES

MAY 21, 2003

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

A BILL

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

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “The Securities Fraud
5 Deterrence and Investor Restitution Act of 2003”.

1 **SEC. 2. RECOVERY BY COMMISSION OF SECURITIES LAW**
2 **JUDGMENTS.**

3 Title III of the Sarbanes-Oxley Act of 2002 is amend-
4 ed by adding after section 308 (15 U.S.C. 7246) the fol-
5 lowing new section:

6 **“SEC. 309. RECOVERY OF SECURITIES LAW JUDGMENTS;**
7 **REMOVAL OF STATE LAW IMPEDIMENTS.**

8 “If in any judicial or administrative action brought
9 by the Commission under the securities laws the Commis-
10 sion obtains a judgment or order (either by litigation or
11 settlement) against any person based upon an alleged
12 fraudulent, deceptive, or manipulative act or practice in
13 violation of such laws or the rules or regulations there-
14 under, the Commission may obtain the foreclosure and
15 forced sale of any property owned in whole or in part by
16 that person, or by any person to whom such ownership
17 was transferred without adequate consideration, to satisfy
18 that judgment or order in a Federal or State court not-
19 withstanding any homestead provision of any State con-
20 stitution or any other State law that exempts or protects
21 property from either foreclosure and forced sale under any
22 process of court or from any lien thereon for the payment
23 of debts.”.

24 **SEC. 3. CIVIL ENFORCEMENT PROVISIONS.**

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

1 (1) UNDER THE SECURITIES ACT OF 1933.—
2 Section 8A of the Securities Act of 1933 (15 U.S.C.
3 77h–1) is amended by adding at the end the fol-
4 lowing new subsection:

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

6 “(1) GROUNDS FOR IMPOSING.—In any cease-
7 and-desist proceeding under subsection (a), the
8 Commission may impose a civil penalty on a person
9 if it finds, on the record after notice and opportunity
10 for hearing, that—

11 “(A) such person—

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

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

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

19 “(2) MAXIMUM AMOUNT OF PENALTY.—

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

24 “(B) SECOND TIER.—Notwithstanding
25 paragraph (A), the maximum amount of pen-

1 alty for each such act or omission shall be
2 \$500,000 for a natural person or \$1,000,000
3 for any other person if the act or omission de-
4 scribed in subsection (1) involved fraud, deceit,
5 manipulation, or deliberate or reckless dis-
6 regard of a regulatory requirement.

7 “(C) THIRD TIER.—Notwithstanding para-
8 graphs (A) and (B), the maximum amount of
9 penalty for each such act or omission shall be
10 \$1,000,000 for a natural person or \$2,000,000
11 for any other person if—

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

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

22 “(3) EVIDENCE CONCERNING ABILITY TO
23 PAY.—In any proceeding in which the Commission
24 may impose a penalty under this section, a respond-
25 ent may present evidence of the respondent’s ability

1 to pay such penalty. The Commission may, in its
2 discretion, consider such evidence in determining
3 whether such penalty is in the public interest. Such
4 evidence may relate to the extent of such person's
5 ability to continue in business and the collectability
6 of a penalty, taking into account any other claims of
7 the United States or third parties upon such per-
8 son's assets and the amount of such person's as-
9 sets.".

10 (2) UNDER THE SECURITIES EXCHANGE ACT
11 OF 1934.—Subsection (a) of section 21B of the Secu-
12 rities Exchange Act of 1934 (15 U.S.C. 78u-2(a))
13 is amended—

14 (A) by striking “(a) COMMISSION AUTHOR-
15 ITY TO ASSESS MONEY PENALTIES.—In any
16 proceeding” and inserting the following:

17 “(a) COMMISSION AUTHORITY TO ASSESS MONEY
18 PENALTIES.—

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

20 (B) by redesignating paragraphs (1)
21 through (4) of such subsection as subpara-
22 graphs (A) through (D), respectively; and

23 (C) by adding at the end of such sub-
24 section the following new paragraph:

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

7 “(A) is violating or has violated any provi-
8 sion of this title, or any rule or regulation
9 thereunder; or

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

13 (3) UNDER THE INVESTMENT COMPANY ACT OF
14 1940.—Paragraph (1) of section 9(d) of the Invest-
15 ment Company Act of 1940 (15 U.S.C. 80a-
16 9(d)(1))) is amended—

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

20 “(1) AUTHORITY OF COMMISSION.—

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

22 (B) by redesignating subparagraphs (A)
23 through (D) of such paragraph as clauses (i)
24 through (iv), respectively; and

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

3 “(B) CEASE-AND-DESIST PROCEEDINGS.—

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

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

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

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

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

22 “(1) AUTHORITY OF COMMISSION.—

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

1 (B) by redesignating subparagraphs (A)
2 through (D) of such paragraph as clauses (i)
3 through (iv), respectively; and

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

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

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

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

18 (b) INCREASED MAXIMUM CIVIL MONEY PEN-
19 ALTIES.—

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

23 (A) in subparagraph (A)(i)—

24 (i) by striking “\$5,000” and inserting
25 “\$100,000”; and

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

3 (B) in subparagraph (B)(i)—

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

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

8 (C) in subparagraph (C)(i)—

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

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

13 (2) SECURITIES EXCHANGE ACT OF 1934.—

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

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

19 (ii) in subsection (c)—

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

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

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

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

8 (i) in paragraph (1)—

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

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

13 (ii) in paragraph (2)—

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

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

18 (iii) in paragraph (3)—

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

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

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

- 1 (i) in clause (i)—
2 (I) by striking “\$5,000” and in-
3 serring “\$100,000”; and
4 (II) by striking “\$50,000” and
5 inserting “\$250,000”;
6 (ii) in clause (ii)—
7 (I) by striking “\$50,000” and in-
8 serring “\$500,000”; and
9 (II) by striking “\$250,000” and
10 inserting “\$1,000,000”; and
11 (iii) in clause (iii)—
12 (I) by striking “\$100,000” and
13 inserting “\$1,000,000”; and
14 (II) by striking “\$500,000” and
15 inserting “\$2,000,000”.

16 (3) INVESTMENT COMPANY ACT OF 1940.—

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

- 20 (i) in subparagraph (A)—
21 (I) by striking “\$5,000” and in-
22 serring “\$100,000”; and
23 (II) by striking “\$50,000” and
24 inserting “\$250,000”;
25 (ii) in subparagraph (B)—

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

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

5 (iii) in subparagraph (C)—

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

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

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

14 (i) in subparagraph (A)—

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

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

19 (ii) in subparagraph (B)—

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

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

24 (iii) in subparagraph (C)—

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

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

5 (4) INVESTMENT ADVISERS ACT OF 1940.—

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

9 (i) in subparagraph (A)—

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

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

14 (ii) in subparagraph (B)—

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

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

19 (iii) in subparagraph (C)—

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

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

24 (B) ENFORCEMENT OF INVESTMENT AD-
25 VISERS ACT.—Section 209(e)(2) of the Invest-

1 ment advisers Act of 1940 (15 U.S.C. 80b–
2 9(e)(2)) is amended—

3 (i) in subparagraph (A)—

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

6 (II) by striking “\$50,000” and
7 inserting “\$250,000”;

8 (ii) in subparagraph (B)—

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

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

13 (iii) in subparagraph (C)—

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

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

18 (c) AUTHORITY TO OBTAIN FINANCIAL RECORDS.—

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

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

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

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

3 “(2) ACCESS TO FINANCIAL RECORDS.—

4 “(A) IN GENERAL.—Notwithstanding sec-
5 tion 1105 or 1107 of the Right to Financial
6 Privacy Act of 1978, the Commission may ob-
7 tain access to and copies of, or the information
8 contained in, financial records of any person
9 held by a financial institution, including the fi-
10 nancial records of a customer, without notice to
11 that person, when it acts pursuant to a sub-
12 poena authorized by a formal order of investiga-
13 tion of the Commission and issued under the
14 securities laws or pursuant to an administrative
15 or judicial subpoena issued in a proceeding or
16 action to enforce the securities laws.

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

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

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

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

9 “(iv) endanger the life or physical
10 safety of an individual;

11 “(v) result in flight from prosecution;

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

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

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

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

1 shall not be required under subsection (b) or (c)
2 of that section 1112, if the Commission deter-
3 mines that there is reason to believe that such
4 notification may result in or lead to any of the
5 factors identified under clauses (i) through
6 (viii) of subparagraph (B) of this paragraph.”;
7 (4) by striking paragraph (10); and
8 (5) by redesignating paragraphs (11), (12), and
9 (13) as paragraphs (4), (5), and (6), respectively.

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

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

14 (1) by redesignating subsection (e) as sub-
15 section (f); and

16 (2) by inserting after subsection (d) the fol-
17 lowing new subsection:

18 “(e) **AUTHORITY TO ACCEPT PRIVILEGED AND PRO-**
19 **TECTED INFORMATION.**—Notwithstanding any other pro-
20 vision of law, whenever the Commission and any person
21 agree in writing to terms pursuant to which such person
22 will produce or disclose to the Commission any document
23 or information that is subject to any Federal or State law
24 privilege, or to the protection provided by the work prod-
25 uct doctrine, such production or disclosure shall not con-

1 stitute a waiver of the privilege or protection as to any
2 person other than the Commission.”.

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

4 Title VI of the Sarbanes-Oxley Act of 2002 is amend-
5 ed by adding at the end thereof the following new section:

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

7 “(a) DISCLOSURE OF CERTAIN MATTERS OCCUR-
8 RING BEFORE GRAND JURY FOR USE IN ENFORCING SE-
9 CURITIES LAWS.—

10 “(1) IN GENERAL.—Upon motion of an attor-
11 ney for the government, a court may direct disclo-
12 sure of matters occurring before a grand jury during
13 an investigation of conduct that may constitute a
14 violation of any provision of the securities laws to
15 identified personnel of the Commission for use in re-
16 lation to any matter within the jurisdiction of the
17 Commission.

18 “(2) FINDING OF SUBSTANTIAL NEED RE-
19 QUIRED.—A court may issue an order under para-
20 graph (1) only upon a finding of a substantial need
21 in the public interest.

22 “(b) RESTRICTED USE OF INFORMATION.—A person
23 to whom a matter has been disclosed under this section
24 shall not use such matter other than for the purpose for
25 which such disclosure was authorized.

1 “(c) DEFINITION.—As used in this section, the terms
2 ‘attorney for the government’ and ‘grand jury information’
3 have the meanings given to those terms in section 3322
4 of title 18, United States Code.”.

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

6 (a) SECURITIES ACT OF 1933.—Section 22(a) of the
7 Securities Act of 1933 (15 U.S.C. 77v(a)) is amended by
8 inserting after the second sentence the following: “In any
9 action or proceeding instituted by the Commission under
10 this title in a United States district court for any judicial
11 district, subpoenas issued by or on behalf of such court
12 to compel the attendance of witnesses or the production
13 of documents or tangible things (or both) may be served
14 in any other district. Such subpoenas may be served and
15 enforced without application to the court or a showing of
16 cause, notwithstanding the provisions of rule 45(b)(2),
17 (c)(3)(A)(ii), and (c)(3)(B)(iii) of the Federal Rules of
18 Civil Procedure.”.

19 (b) SECURITIES EXCHANGE ACT OF 1934.—Section
20 27 of the Securities Exchange Act of 1934 (15 U.S.C.
21 78aa) is amended by inserting after the second 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 (c) INVESTMENT COMPANY ACT OF 1940.—Section
8 44 of the Investment Company Act of 1940 (15 U.S.C.
9 80a–43) is amended by inserting after the fourth 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.”.

20 (d) INVESTMENT ADVISERS ACT OF 1940.—Section
21 214 of the Investment Advisers Act of 1940 (15 U.S.C.
22 80b–14) is amended by inserting after the third sentence
23 the following: “In any action or proceeding instituted by
24 the Commission under this title in a United States district
25 court for any judicial district, subpoenas issued by or on

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

8 **SEC. 7. AUTHORITY TO CONTRACT WITH PRIVATE COUN-**
9 **SEL FOR LEGAL SERVICES TO COLLECT DE-**
10 **LINQUENT JUDGMENTS AND ORDERS.**

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

13 (1) in the subsection heading by striking “AND
14 LEASING AUTHORITY.—” and inserting “, LEASING
15 AUTHORITY, AND CONTRACTING AUTHORITY.—”;
16 and

17 (2) by adding at the end of such subsection the
18 following new paragraph:

19 “(4) CONTRACTING AUTHORITY.—

20 “(A) IN GENERAL.—Notwithstanding any
21 other provision of law, the Commission is au-
22 thorized to enter into contracts to retain private
23 legal counsel to furnish legal services, including
24 representation in litigation, negotiation, com-
25 promise, and settlement, in the case of any

1 claim of indebtedness resulting from any judg-
2 ment or order (either by litigation or settle-
3 ment) obtained by the Commission in any judi-
4 cial action or administrative proceeding brought
5 by or on behalf of the Commission. Private
6 counsel retained under this paragraph may rep-
7 resent the Commission in such debt collection
8 matters to the same extent as the Commission
9 may represent itself.

10 “(B) TERMS AND CONDITIONS OF CON-
11 TRACT.—Each such contract shall include such
12 terms and conditions as the Commission con-
13 siders necessary and appropriate, and shall in-
14 clude provisions specifying—

15 “(i) the amount of the fee to be paid
16 to the private counsel under such contract
17 or the method for calculating that fee;

18 “(ii) that the Commission retains the
19 authority to represent itself, resolve a dis-
20 pute, compromise a claim, end collection
21 efforts, and refer a matter to other private
22 counsel or to the Attorney General; and

23 “(iii) that the Commission may termi-
24 nate either the contract or the private
25 counsel’s representation of the Commission

1 in particular cases for any reason, includ-
2 ing for the convenience of the Commission.

3 “(C) PAYMENT OF FEES.—Notwith-
4 standing section 3302(b) of title 31, United
5 States Code, a contract under this paragraph
6 may provide that fees and costs incurred by pri-
7 vate counsel under such contracts are payable
8 from the amounts recovered.

9 “(D) COMPETITION REQUIREMENTS.—
10 Nothing in this paragraph shall relieve the
11 Commission of the competition requirements set
12 forth in title III of the Federal Property and
13 Administrative Services Act of 1949 (41 U.S.C.
14 251 et seq.).

15 “(E) COUNTERCLAIMS.—In any action to
16 recover indebtedness which is brought on behalf
17 of the Commission by private counsel retained
18 under this paragraph, no counterclaim may be
19 asserted against the Commission unless the
20 counterclaim is served directly on the Commis-
21 sion. Such service shall be made in accordance
22 with the rules of procedure of the court in
23 which the action is brought.”.

1 **SEC. 8. FAIR ACT AMENDMENTS.**

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

5 “(a) CIVIL PENALTIES TO BE USED FOR THE RE-
6 LIEF OF VICTIMS.—If in any judicial or administrative ac-
7 tion brought by the Commission under the securities laws
8 (as such term is defined in section 3(a)(47) of the Securi-
9 ties Exchange Act of 1934 (15 U.S.C. 78c(a)(47))) the
10 Commission obtains pursuant to such laws a civil penalty
11 against any person, such civil penalty monies shall, on the
12 motion or at the direction of the Commission, be added
13 to and become part of a fund for the benefit of the victims
14 of such violation.”.

15 (b) ADDITIONAL PROVISIONS.—Section 308 of the
16 Sarbanes-Oxley Act of 2002 (15 U.S.C. 7246) is further
17 amended—

18 (1) by redesignation subsections (c), (d), and
19 (e) as subsections (e), (f), and (g), respectively; and

20 (2) by inserting the following after subsection
21 (b):

22 “(c) CIVIL PENALTIES AND DISGORGEMENT FUNDS
23 IN ACTIONS BROUGHT BY STATES.—If a State or political
24 subdivision of a State establishes, as a result of an agree-
25 ment or judgment obtained by such State or political sub-
26 division, any requirements for brokers or dealers (includ-

1 ing government securities brokers and dealers) relating to
2 capital, custody, margin, financial responsibility, record-
3 keeping, bonding, or financial or operational reporting or
4 disclosure that differ from or are in addition to the re-
5 quirements in those areas established under the securities
6 laws (as such term is defined in section 3(a)(47) of the
7 Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(47))),
8 or by the Commission or by any national securities ex-
9 change or self-regulatory organization under such laws,
10 and such agreement or judgment includes civil penalties
11 or an order requiring disgorgement, the amount of such
12 penalty or disgorgement shall be remitted to the Commis-
13 sion for distribution in accordance with subsection (a).

14 “(d) **UNDISTRIBUTED FUNDS TO BE USED FOR IN-**
15 **VESTOR EDUCATION.**—In any judicial or administrative
16 action in which a fund is created pursuant to subsection
17 (a) or in which the Commission had obtained
18 disgorgement, if the Commission determines (due to the
19 size of the fund to be distributed, the number of investors,
20 the nature of the underlying violation, or for other rea-
21 sons) that it would be infeasible to distribute such fund
22 or disgorgement to the victims of the violation, or if after
23 distribution of the fund or disgorgement to victims there
24 are excess monies remaining, the Commission may move
25 for an order in a judicial action, or may issue an order

1 in an administrative proceeding, requiring that the undis-
2 tributed amount of the fund or disgorgement be used for
3 investor education programs administered by an estab-
4 lished not-for-profit or governmental organization whose
5 purposes include investor education and financial lit-
6 eracy.”.

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