

[COMMITTEE PRINT]

July 10, 2003

[Showing H.R. 2179, As Adopted by the Subcommittee on Capital Markets, Insurance and Government Sponsored Enterprises]

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”.

6 **SEC. 2. RECOVERY BY COMMISSION OF SECURITIES LAW**

7 **JUDGMENTS.**

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

11 **“SEC. 309. RECOVERY OF SECURITIES LAW JUDGMENTS;**

12 **REMOVAL OF STATE LAW IMPEDIMENTS.**

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



1 property from either foreclosure and forced sale under any
2 process of court or from any lien thereon for the payment
3 of debts.”.

4 **SEC. 3. CIVIL ENFORCEMENT PROVISIONS.**

5 (a) AUTHORITY TO IMPOSE CIVIL PENALTIES IN
6 CEASE AND DESIST PROCEEDINGS.—

7 (1) UNDER THE SECURITIES ACT OF 1934.—

8 Section 8A of the Securities Act of 1933 (15 U.S.C.
9 77h-1) is amended by adding at the end the fol-
10 lowing new subsection:

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

12 “(1) GROUNDS FOR IMPOSING.—In any cease-
13 and-desist proceeding under subsection (a), the
14 Commission may impose a civil penalty on a person
15 if it finds, on the record after notice and opportunity
16 for hearing, that—

17 “(A) such person—

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

21 “(ii) is or was a cause of the violation
22 of any provision of this title, or any rule or
23 regulation thereunder; and

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

25 “(2) MAXIMUM AMOUNT OF PENALTY.—



1 “(A) FIRST TIER.—The maximum amount
2 of penalty for each act or omission described in
3 paragraph (1) shall be \$100,000 for a natural
4 person or \$250,000 for any other person.

5 “(B) SECOND TIER.—Notwithstanding
6 paragraph (A), the maximum amount of pen-
7 alty for each such act or omission shall be
8 \$500,000 for a natural person or \$1,000,000
9 for any other person if the act or omission de-
10 scribed in paragraph (1) involved fraud, deceit,
11 manipulation, or deliberate or reckless dis-
12 regard of a regulatory requirement.

13 “(C) THIRD TIER.—Notwithstanding para-
14 graphs (A) and (B), the maximum amount of
15 penalty for each such act or omission shall be
16 \$1,000,000 for a natural person or \$2,000,000
17 for any other person if—

18 “(i) the act or omission described in
19 paragraph (1) involved fraud, deceit, ma-
20 nipulation, or deliberate or reckless dis-
21 regard of a regulatory requirement; and

22 “(ii) such act or omission directly or
23 indirectly resulted in substantial losses or
24 created a significant risk of substantial
25 losses to other persons or resulted in sub-



1 stantial pecuniary gain to the person who
2 committed the act or omission.

3 “(3) EVIDENCE CONCERNING ABILITY TO
4 PAY.—In any proceeding in which the Commission
5 may impose a penalty under this section, a respond-
6 ent may present evidence of the respondent’s ability
7 to pay such penalty. The Commission may, in its
8 discretion, consider such evidence in determining
9 whether such penalty is in the public interest. Such
10 evidence may relate to the extent of such person’s
11 ability to continue in business and the collectability
12 of a penalty, taking into account any other claims of
13 the United States or third parties upon such per-
14 son’s assets and the amount of such person’s as-
15 sets.”.

16 (2) UNDER THE SECURITIES EXCHANGE ACT
17 OF 1934.—Subsection (a) of section 21B of the Se-
18 curities Exchange Act of 1934 (15 U.S.C. 78u-2(a))
19 is amended—

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

23 “(a) COMMISSION AUTHORITY TO ASSESS MONEY
24 PENALTIES.—

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



1 (B) by redesignating paragraphs (1)
2 through (4) of such subsection as subpara-
3 graphs (A) through (D), respectively and mov-
4 ing such redesignated subparagraphs 2 ems to
5 the right; and

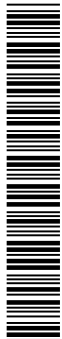
6 (C) by adding at the end of such sub-
7 section the following new paragraph:

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

14 “(A) is violating or has violated any provi-
15 sion of this title, or any rule or regulation
16 thereunder; or

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

20 (3) UNDER THE INVESTMENT COMPANY ACT OF
21 1940.—Paragraph (1) of section 9(d) of the Invest-
22 ment Company Act of 1940 (15 U.S.C. 80a-
23 9(d)(1)) is amended—



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

4 “(1) AUTHORITY OF COMMISSION.—

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

6 (B) by redesignating subparagraphs (A)
7 through (C) of such paragraph as clauses (i)
8 through (iii), respectively and by moving such
9 redesignated clauses 2 ems to the right; and

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

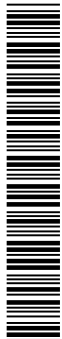
12 “(B) CEASE-AND-DESIST PROCEEDINGS.—

13 In any proceeding instituted pursuant to sub-
14 section (f) against any person, the Commission
15 may impose a civil penalty if it finds, on the
16 record after notice and opportunity for hearing,
17 that such person—

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

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

24 (4) UNDER THE INVESTMENT ADVISERS ACT OF
25 1940.—Paragraph (1) of section 203(i) of the In-



1 vestment Advisers Act of 1940 (15 U.S.C. 80b-
2 3(i)(1)) is amended—

3 (A) by striking “(1) AUTHORITY OF COM-
4 MISSION.—In any proceeding” and inserting the
5 following:

6 “(1) AUTHORITY OF COMMISSION.—

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

8 (B) by redesignating subparagraphs (A)
9 through (D) of such paragraph as clauses (i)
10 through (iv), respectively and moving such re-
11 designated clauses 2 ems to the right; and

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

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

15 In any proceeding instituted pursuant to sub-
16 section (k) against any person, the Commission
17 may impose a civil penalty if it finds, on the
18 record after notice and opportunity for hearing,
19 that such person—

20 “(i) is violating or has violated any
21 provision of this title, or any rule or regu-
22 lation thereunder; or

23 “(ii) is or was a cause of the violation
24 of any provision of this title, or any rule or
25 regulation thereunder.”.



1 (b) INCREASED MAXIMUM CIVIL MONEY PEN-
2 ALTIES.—

3 (1) SECURITIES ACT OF 1933.—Section
4 20(d)(2) of the Securities Act of 1933 (15 U.S.C.
5 77t(d)(2)) is amended—

6 (A) in subparagraph (A)(i)—

7 (i) by striking “\$5,000” and inserting
8 “\$100,000”; and

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

11 (B) in subparagraph (B)(i)—

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

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

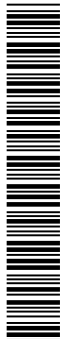
16 (C) in subparagraph (C)(i)—

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

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

21 (2) SECURITIES EXCHANGE ACT OF 1934.—

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



1 (i) in subsection (b), by striking
2 “\$100” and inserting “\$10,000”; and

3 (ii) in subsection (c)—

4 (I) in paragraph (1)(B), by strik-
5 ing “\$10,000” and inserting
6 “\$500,000”; and

7 (II) in paragraph (2)(B), by
8 striking “\$10,000” and inserting
9 “\$500,000”.

10 (B) INSIDER TRADING.—Section 21A(a)(3)
11 of the Securities Exchange Act of 1934 (15
12 U.S.C. 78u-1(a)(3)) is amended by striking
13 “\$1,000,000” and inserting “\$2,000,000”.

14 (C) ADMINISTRATIVE PROCEEDINGS.—Sec-
15 tion 21B(b) of the Securities Exchange Act of
16 1934 (15 U.S.C. 78u-2(b)) is amended—

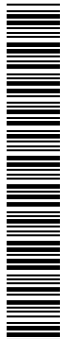
17 (i) in paragraph (1)—

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

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

22 (ii) in paragraph (2)—

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



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

3 (iii) in paragraph (3)—

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

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

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

11 (i) in clause (i)—

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

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

16 (ii) in clause (ii)—

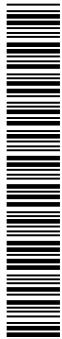
17 (I) by striking “\$50,000” and in-
18 serting “\$500,000”; and

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

21 (iii) in clause (iii)—

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

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



1 (3) INVESTMENT COMPANY ACT OF 1940.—

2 (A) INELIGIBILITY.—Section 9(d)(2) of the
3 Investment Company Act of 1940 (15 U.S.C.
4 80a-9(d)(2)) is amended—

5 (i) in subparagraph (A)—

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

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

10 (ii) in subparagraph (B)—

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

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

15 (iii) in subparagraph (C)—

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

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

20 (B) ENFORCEMENT OF INVESTMENT COM-
21 PANY ACT.—Section 42(e)(2) of the Investment
22 Company Act of 1940 (15 U.S.C. 80a-
23 41(e)(2)) is amended—

24 (i) in subparagraph (A)—



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

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

5 (ii) in subparagraph (B)—

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

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

10 (iii) in subparagraph (C)—

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

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

15 (4) INVESTMENT ADVISERS ACT OF 1940.—

16 (A) REGISTRATION.—Section 203(i)(2) of
17 the Investment advisers Act of 1940 (15 U.S.C.
18 80b-3(i)(2)) is amended—

19 (i) in subparagraph (A)—

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

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

24 (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 AD-
11 VISERS ACT.—Section 209(e)(2) of the Invest-
12 ment advisers Act of 1940 (15 U.S.C. 80b-
13 9(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 (c) AUTHORITY TO OBTAIN FINANCIAL RECORDS.—

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

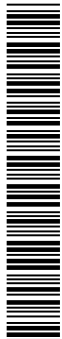
8 (1) by striking paragraphs (2) through (8);

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

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

14 “(2) ACCESS TO FINANCIAL RECORDS.—

15 “(A) IN GENERAL.—Notwithstanding sec-
16 tion 1105 or 1107 of the Right to Financial
17 Privacy Act of 1978, the Commission may ob-
18 tain access to and copies of, or the information
19 contained in, financial records of any person
20 held by a financial institution, including the fi-
21 nancial records of a customer, without notice to
22 that person, when it acts pursuant to a sub-
23 poena authorized by a formal order of investiga-
24 tion of the Commission and issued under the
25 securities laws or pursuant to an administrative



1 or judicial subpoena issued in a proceeding or
2 action to enforce the securities laws.

3 “(B) NONDISCLOSURE OF REQUESTS.—If
4 the Commission so directs in its subpoena, no
5 financial institution, or officer, director, part-
6 ner, employee, shareholder, representative or
7 agent of such financial institution, shall, di-
8 rectly or indirectly, disclose that records have
9 been requested or provided in accordance with
10 subparagraph (A), if the Commission finds rea-
11 son to believe that such disclosure may—

12 “(i) result in the transfer of assets or
13 records outside the territorial limits of the
14 United States;

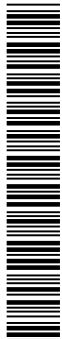
15 “(ii) result in improper conversion of
16 investor assets;

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

20 “(iv) endanger the life or physical
21 safety of an individual;

22 “(v) result in flight from prosecution;

23 “(vi) result in destruction of or tam-
24 pering with evidence;



1 “(vii) result in intimidation of poten-
2 tial witnesses; or

3 “(viii) otherwise seriously jeopardize
4 an investigation or unduly delay a trial.

5 “(C) TRANSFER OF RECORDS TO GOVERN-
6 MENT AUTHORITIES.—The Commission may
7 transfer financial records or the information
8 contained therein to any government authority,
9 if the Commission proceeds as a transferring
10 agency in accordance with section 1112 of the
11 Right to Financial Privacy Act of 1978 (12
12 U.S.C. 3412), except that a customer notice
13 shall not be required under subsection (b) or (c)
14 of that section 1112, if the Commission deter-
15 mines that there is reason to believe that such
16 notification may result in or lead to any of the
17 factors identified under clauses (i) through
18 (viii) of subparagraph (B) of this paragraph.”;
19 (4) by striking paragraph (10); and
20 (5) by redesignating paragraphs (11), (12), and
21 (13) as paragraphs (4), (5), and (6), respectively.

22 **SEC. 4. AUTHORITY TO ACCEPT PRIVILEGED AND PRO-**
23 **TECTED INFORMATION.**

24 Section 24 of the Securities Exchange Act of 1934
25 (15 U.S.C. 78x) is amended—



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

3 (2) by inserting after subsection (d) the fol-
4 lowing new subsection:

5 “(e) **AUTHORITY TO ACCEPT PRIVILEGED AND PRO-**
6 **TECTED INFORMATION.**—Notwithstanding any other pro-
7 vision of law, whenever the Commission and any person
8 agree in writing to terms pursuant to which such person
9 will produce or disclose to the Commission any document
10 or information that is subject to any Federal or State law
11 privilege, or to the protection provided by the work prod-
12 uct doctrine, such production or disclosure shall not con-
13 stitute a waiver of the privilege or protection as to any
14 person other than the Commission.”

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

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

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

19 “(a) **DISCLOSURE OF CERTAIN MATTERS OCCUR-**
20 **RING BEFORE GRAND JURY FOR USE IN ENFORCING SE-**
21 **CURITIES LAWS.**—

22 “(1) **IN GENERAL.**—Upon motion of an attor-
23 ney for the government, a court may direct disclo-
24 sure of matters occurring before a grand jury during
25 an investigation of conduct that may constitute a



1 violation of any provision of the securities laws to
2 identified personnel of the Commission for use in re-
3 lation to any matter within the jurisdiction of the
4 Commission.

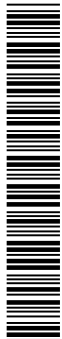
5 “(2) FINDING OF SUBSTANTIAL NEED RE-
6 QUIRED.—A court may issue an order under para-
7 graph (1) only upon a finding of a substantial need
8 in the public interest.

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

13 “(c) DEFINITIONS.—As used in this section, the
14 terms ‘attorney for the government’ and ‘grand jury infor-
15 mation’ have the meanings given to those terms in section
16 3322 of title 18, United States Code.”.

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

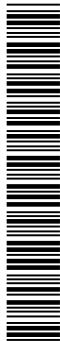
18 (a) SECURITIES ACT OF 1933.—Section 22(a) of the
19 Securities Act of 1933 (15 U.S.C. 77v(a)) is amended by
20 inserting after the second sentence the following: “In any
21 action or proceeding instituted by the Commission under
22 this title in a United States district court for any judicial
23 district, 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 second sentence
9 the following: “In any action or proceeding instituted by
10 the 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.”.

20 **SEC. 7. AUTHORITY TO CONTRACT WITH PRIVATE COUN-**
21 **SEL FOR LEGAL SERVICES TO COLLECT DE-**
22 **LINQUENT JUDGMENTS AND ORDERS.**

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



1 (1) in the subsection heading by striking “AND
2 LEASING AUTHORITY.—” and inserting “, LEASING
3 AUTHORITY, AND CONTRACTING AUTHORITY.—”;
4 and

5 (2) by adding at the end of such subsection the
6 following new paragraph:

7 “(4) CONTRACTING AUTHORITY.—

8 “(A) IN GENERAL.—Notwithstanding any
9 other provision of law, the Commission is au-
10 thorized to enter into contracts to retain private
11 legal counsel to furnish legal services, including
12 representation in litigation, negotiation, com-
13 promise, and settlement, in the case of any
14 claim of indebtedness resulting from any judg-
15 ment or order (either by litigation or settle-
16 ment) obtained by the Commission in any judi-
17 cial action or administrative proceeding brought
18 by or on behalf of the Commission. Private
19 counsel retained under this paragraph may rep-
20 resent the Commission in such debt collection
21 matters to the same extent as the Commission
22 may represent itself.

23 “(B) TERMS AND CONDITIONS OF CON-
24 TRACT.—Each such contract shall include such
25 terms and conditions as the Commission con-



1 siders necessary and appropriate, and shall in-
2 clude provisions specifying—

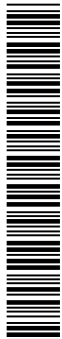
3 “(i) the amount of the fee to be paid
4 to the private counsel under such contract
5 or the method for calculating that fee;

6 “(ii) that the Commission retains the
7 authority to represent itself, resolve a dis-
8 pute, compromise a claim, end collection
9 efforts, and refer a matter to other private
10 counsel or to the Attorney General; and

11 “(iii) that the Commission may termi-
12 nate either the contract or the private
13 counsel’s representation of the Commission
14 in particular cases for any reason, includ-
15 ing for the convenience of the Commission.

16 “(C) PAYMENT OF FEES.—Notwith-
17 standing section 3302(b) of title 31, United
18 States Code, a contract under this paragraph
19 may provide that fees and costs incurred by pri-
20 vate counsel under such contracts are payable
21 from the amounts recovered.

22 “(D) COMPETITION REQUIREMENTS.—
23 Nothing in this paragraph shall relieve the
24 Commission of the competition requirements set
25 forth in title III of the Federal Property and



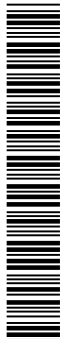
1 Administrative Services Act of 1949 (41 U.S.C.
2 251 et seq.).

3 “(E) COUNTERCLAIMS.—In any action to
4 recover indebtedness which is brought on behalf
5 of the Commission by private counsel retained
6 under this paragraph, no counterclaim may be
7 asserted against the Commission unless the
8 counterclaim is served directly on the Commis-
9 sion. Such service shall be made in accordance
10 with the rules of procedure of the court in
11 which the action is brought.”.

12 **SEC. 8. FAIR ACT AMENDMENTS.**

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

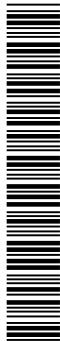
16 “(a) CIVIL PENALTIES TO BE USED FOR THE RE-
17 LIEF OF VICTIMS.—If in any judicial or administrative ac-
18 tion brought by the Commission under the securities laws
19 (as such term is defined in section 3(a)(47) of the Securi-
20 ties Exchange Act of 1934 (15 U.S.C. 78c(a)(47))) the
21 Commission obtains pursuant to such laws a civil penalty
22 against any person, such civil penalty monies shall, on the
23 motion or at the direction of the Commission, be added
24 to and become part of a fund for the benefit of the victims
25 of such violation.”.



1 (b) NATIONAL BROKER/DEALER STANDARDS.—
2 Paragraph (1) of section 15(h) of the Securities Exchange
3 Act of 1934 (15 U.S.C. 78o(h)(1)) is amended to read
4 as follows:

5 “(1) CAPITAL, MARGIN, BOOKS AND RECORDS,
6 BONDING, DISCLOSURE, AND REPORTS.—

7 “(A) IN GENERAL.—No law, rule, regula-
8 tion, judgment, agreement or order, or other ac-
9 tion of any State or political subdivision thereof
10 shall establish capital, custody, margin, finan-
11 cial responsibility, making and keeping records,
12 bonding, or financial or operational reporting,
13 disclosure, or conflict of interest requirements
14 for brokers, dealers, municipal securities deal-
15 ers, government securities brokers, or govern-
16 ment securities dealers that differ from, or are
17 in addition to, the requirements in those areas
18 established by the Commission or by any na-
19 tional securities exchange or other self-regu-
20 latory organization. The Commission shall con-
21 sult periodically with the securities commissions
22 (or any agency or office performing like func-
23 tions) of the States concerning the adequacy of
24 such requirements as established under this
25 title.



1 “(B) PRESERVATION OF FRAUD AUTHOR-
2 ITY.—Consistent with this paragraph, and with
3 section 28(a) of this Act, the securities commis-
4 sion (or any agency or office performing like
5 functions) of any State shall retain jurisdiction
6 under the laws of such State to investigate and
7 bring enforcement actions with respect to fraud
8 or deceit in connection with securities or securi-
9 ties transactions.

10 “(C) RULEMAKING AUTHORITY.—The
11 Commission may promulgate rules setting forth
12 requirements for brokers or dealers that if es-
13 tablished by a State or political subdivision of
14 a State would be exempt from preemption
15 under this paragraph, to the extent that such
16 exemptions are necessary or appropriate in the
17 public interest and consistent with the protec-
18 tion of investors.”

19 (c) ADDITIONAL PROVISIONS.—Section 308 of the
20 Sarbanes-Oxley Act of 2002 (15 U.S.C. 7246) is further
21 amended—

22 (1) by redesignation subsections (c), (d), and
23 (e) as subsections (e), (f), and (g), respectively; and
24 (2) by inserting the following after subsection
25 (b):



1 “(c) USE OF INVESTOR RESTITUTION FUND BY
2 STATES.—The Commission may allow a State that has re-
3 ceived penalty or disgorgement payments pursuant to an
4 agreement or settlement with a broker or dealer or other
5 party in an action concerning securities fraud to con-
6 tribute those payments to a fund administered by the
7 Commission for the purpose of making restitution pay-
8 ments to investors, whether or not the Commission was
9 a party to the agreement or settlement or had established
10 such fund prior to the State’s contribution. The Commis-
11 sion shall have the authority otherwise available to it
12 under the securities laws with respect to the administra-
13 tion and distribution of such funds.

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.”.

7 **SEC. 9. ENHANCED OVERSIGHT OF PERIODIC DISCLO-**
8 **SURES BY ISSUERS.**

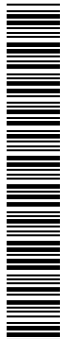
9 Within 1 year after the date of enactment of this Act,
10 the Securities and Exchange Commission—

11 (1) shall conduct a thorough review of the fi-
12 nancial statements contained in the most recent
13 periodic disclosures filed with the Commission by the
14 largest 250 reporting issuers, and as many other re-
15 porting issuers as the Commission finds appropriate;

16 (2) shall query such issuers with respect to any
17 confusing, ambiguous, or unclear statement in such
18 disclosures that would be of interest to investors;

19 (3) shall require such issuers to respond fully to
20 such queries, by such deadlines as the Commission
21 may impose, and to clarify such statements as nec-
22 essary for the protection of investors; and

23 (4) may require the issuer’s response to be ac-
24 companied by an auditor’s opinion as to—



1 (A) whether that response sets forth the
2 information presented in accordance with gen-
3 erally accepted accounting principles, and

4 (B) whether the auditor reached that con-
5 clusion after applying generally accepted audit-
6 ing standards to the information presented in
7 the response.

8 **SEC. 10. SENSE OF CONGRESS.**

9 It is the sense of Congress that the Administrator
10 of the Investor Education Fund of the 2003 Global Re-
11 search Analyst Settlement should award—

12 (1) \$5,000,000 of the Investor Education Fund
13 in the form of competitive grants to economic edu-
14 cation programs administered by national non-profit
15 educational organizations whose primary purpose is
16 improving the quality of minority and low-income in-
17 dividuals' understanding of personal finance and ec-
18 onomics; and

19 (2) \$5,000,000 of the Investor Education Fund
20 in the form of competitive grants to economic edu-
21 cation programs administered by national non-profit
22 educational organizations whose primary purpose is
23 improving the quality of elementary and secondary
24 students' understanding of personal finance and ec-
25 nomics.

