

**AMENDMENT TO THE AMENDMENT IN THE  
NATURE OF A SUBSTITUTE TO H.R. 3641  
OFFERED BY MR. DAVIDSON OF OHIO**

Strike all after the enacting clause and insert the following:

**1 SECTION 1. SHORT TITLE.**

2       This Act may be cited as the “Stronger Enforcement  
3 of Civil Penalties Act of 2019”.

**4 SEC. 2. UPDATED CIVIL MONEY PENALTIES FOR SECURI-  
5 TIES LAWS VIOLATIONS.**

6       (a) SECURITIES ACT OF 1933.—

7           (1) MONEY PENALTIES IN ADMINISTRATIVE AC-  
8 TIONS.—Section 8A(g)(2) of the Securities Act of  
9 1933 (15 U.S.C. 77h–1(g)(2)) is amended—

10                   (A) in subparagraph (A)—

11                           (i) by striking “\$7,500” and inserting  
12 “\$10,000”; and

13                           (ii) by striking “\$75,000” and insert-  
14 ing “\$100,000”;

15                   (B) in subparagraph (B)—

16                           (i) by striking “\$75,000” and insert-  
17 ing “\$100,000”; and

1 (ii) by striking “\$375,000” and in-  
2 serting “\$500,000”; and

3 (C) by striking subparagraph (C) and in-  
4 serting the following:

5 “(C) THIRD TIER.—

6 “(i) IN GENERAL.—Notwithstanding  
7 subparagraphs (A) and (B), for a third  
8 tier act or omission, the amount of penalty  
9 for each such act or omission shall not ex-  
10 ceed the greater of—

11 “(I) \$1,000,000 for a natural  
12 person or \$10,000,000 for any other  
13 person;

14 “(II) 3 times the gross amount of  
15 pecuniary gain to the person who  
16 committed the act or omission; or

17 “(III) the amount of losses in-  
18 curred by victims as a result of the  
19 act or omission.

20 “(ii) THIRD TIER ACT OR OMISSION.—

21 For the purposes of this subparagraph, the  
22 term ‘third tier act or omission’ means an  
23 act or omission described in paragraph (1)  
24 that—

1                   “(I) involved fraud, deceit, ma-  
2                   nipulation, or deliberate or reckless  
3                   disregard of a regulatory requirement;  
4                   and

5                   “(II) directly or indirectly—

6                   “(aa) resulted in substantial  
7                   losses to other persons;

8                   “(bb) created a significant  
9                   risk of substantial losses to other  
10                  persons; or

11                  “(cc) resulted in substantial  
12                  pecuniary gain to the person who  
13                  committed the act or omission.”.

14                  (2) MONEY PENALTIES IN CIVIL ACTIONS.—  
15                  Section 20(d)(2) of the Securities Act of 1933 (15  
16                  U.S.C. 77t(d)(2)) is amended—

17                  (A) in subparagraph (A)—

18                         (i) by striking “\$5,000” and inserting  
19                         “\$10,000”; and

20                         (ii) by striking “\$50,000” and insert-  
21                         ing “\$100,000”;

22                  (B) in subparagraph (B)—

23                         (i) by striking “\$50,000” and insert-  
24                         ing “\$100,000”; and

1 (ii) by striking “\$250,000” and in-  
2 serting “\$500,000”; and

3 (C) by striking subparagraph (C) and in-  
4 serting the following:

5 “(C) THIRD TIER.—

6 “(i) IN GENERAL.—Notwithstanding  
7 subparagraphs (A) and (B), for a third  
8 tier violation, the amount of penalty for  
9 each violation shall not exceed the greater  
10 of—

11 “(I) \$1,000,000 for a natural  
12 person or \$10,000,000 for any other  
13 person;

14 “(II) 3 times the gross amount of  
15 pecuniary gain to the person who  
16 committed the violation; or

17 “(III) the amount of losses in-  
18 curred by victims as a result of the  
19 violation.

20 “(ii) THIRD TIER VIOLATION.—For  
21 the purposes of this subparagraph, the  
22 term ‘third tier violation’ means a violation  
23 described in paragraph (1) that—

24 “(I) involved fraud, deceit, ma-  
25 nipulation, or deliberate or reckless

1 disregard of a regulatory requirement;

2 and

3 “(II) directly or indirectly—

4 “(aa) resulted in substantial  
5 losses to other persons;

6 “(bb) created a significant  
7 risk of substantial losses to other  
8 persons; or

9 “(cc) resulted in substantial  
10 pecuniary gain to the person who  
11 committed the violation.”.

12 (b) SECURITIES EXCHANGE ACT OF 1934.—

13 (1) MONEY PENALTIES IN CIVIL ACTIONS.—

14 Section 21(d)(3)(B) of the Securities Exchange Act  
15 of 1934 (15 U.S.C. 78u(d)(3)(B)) is amended—

16 (A) in clause (i)—

17 (i) by striking “\$5,000” and inserting  
18 “\$10,000”; and

19 (ii) by striking “\$50,000” and insert-  
20 ing “\$100,000”;

21 (B) in clause (ii)—

22 (i) by striking “\$50,000” and insert-  
23 ing “\$100,000”; and

24 (ii) by striking “\$250,000” and in-  
25 serting “\$500,000”; and

1 (C) by striking clause (iii) and inserting  
2 the following:

3 “(iii) THIRD TIER.—

4 “(I) IN GENERAL.—Notwith-  
5 standing clauses (i) and (ii), for a  
6 third tier violation, the amount of  
7 penalty for each such violation shall  
8 not exceed the greater of—

9 “(aa) \$1,000,000 for a nat-  
10 ural person or \$10,000,000 for  
11 any other person;

12 “(bb) 3 times the gross  
13 amount of pecuniary gain to the  
14 person who committed the viola-  
15 tion; or

16 “(cc) the amount of losses  
17 incurred by victims as a result of  
18 the violation.

19 “(II) THIRD TIER VIOLATION.—  
20 For the purposes of this clause, the  
21 term ‘third tier violation’ means a vio-  
22 lation described in subparagraph (A)  
23 that—

24 “(aa) involved fraud, deceit,  
25 manipulation, or deliberate or

1 reckless disregard of a regulatory  
2 requirement; and

3 “(bb) directly or indirectly—

4 “(AA) resulted in sub-  
5 stantial losses to other per-  
6 sons;

7 “(BB) created a signifi-  
8 cant risk of substantial  
9 losses to other persons; or

10 “(CC) resulted in sub-  
11 stantial pecuniary gain to  
12 the person who committed  
13 the violation.”.

14 (2) MONEY PENALTIES IN ADMINISTRATIVE AC-  
15 TIONS.—Section 21B(b) of the Securities Exchange  
16 Act of 1934 (15 U.S.C. 78u–2(b)) is amended—

17 (A) in paragraph (1)—

18 (i) by striking “\$5,000” and inserting  
19 “\$10,000”; and

20 (ii) by striking “\$50,000” and insert-  
21 ing “\$100,000”;

22 (B) in paragraph (2)—

23 (i) by striking “\$50,000” and insert-  
24 ing “\$100,000”; and

1 (ii) by striking “\$250,000” and in-  
2 serting “\$500,000”; and

3 (C) by striking paragraph (3) and insert-  
4 ing the following:

5 “(3) THIRD TIER.—

6 “(A) IN GENERAL.—Notwithstanding  
7 paragraphs (1) and (2), for a third tier act or  
8 omission, the amount of penalty for each such  
9 act or omission shall not exceed the greater  
10 of—

11 “(i) \$1,000,000 for a natural person  
12 or \$10,000,000 for any other person;

13 “(ii) 3 times the gross amount of pe-  
14 cuniary gain to the person who committed  
15 the act or omission; or

16 “(iii) the amount of losses incurred by  
17 victims as a result of the act or omission.

18 “(B) THIRD TIER ACT OR OMISSION.—For  
19 the purposes of this paragraph, the term ‘third  
20 tier act or omission’ means an act or omission  
21 described in paragraph (1) that—

22 “(i) involved fraud, deceit, manipula-  
23 tion, or deliberate or reckless disregard of  
24 a regulatory requirement; and

25 “(ii) directly or indirectly—



1                   “(I) resulted in substantial losses  
2                   to other persons;

3                   “(II) created a significant risk of  
4                   substantial losses to other persons; or

5                   “(III) resulted in substantial pe-  
6                   cuniary gain to the person who com-  
7                   mitted the act or omission.”.

8           (c) INVESTMENT COMPANY ACT OF 1940.—

9                   (1) MONEY PENALTIES IN ADMINISTRATIVE AC-  
10                   TIONS.—Section 9(d)(2) of the Investment Company  
11                   Act of 1940 (15 U.S.C. 80a–9(d)(2)) is amended—

12                   (A) in subparagraph (A)—

13                   (i) by striking “\$5,000” and inserting  
14                   “\$10,000”; and

15                   (ii) by striking “\$50,000” and insert-  
16                   ing “\$100,000”;

17                   (B) in subparagraph (B)—

18                   (i) by striking “\$50,000” and insert-  
19                   ing “\$100,000”; and

20                   (ii) by striking “\$250,000” and in-  
21                   serting “\$500,000”; and

22                   (C) by striking subparagraph (C) and in-  
23                   serting the following:

24                   “(C) THIRD TIER.—

1           “(i) IN GENERAL.—Notwithstanding  
2           subparagraphs (A) and (B), for a third  
3           tier act or omission, the amount of penalty  
4           for each such act or omission shall not ex-  
5           ceed the greater of—

6                       “(I) \$1,000,000 for a natural  
7                       person or \$10,000,000 for any other  
8                       person;

9                       “(II) 3 times the gross amount of  
10                      pecuniary gain to the person who  
11                      committed the act or omission; or

12                      “(III) the amount of losses in-  
13                      curred by victims as a result of the  
14                      act or omission.

15           “(ii) THIRD TIER ACT OR OMISSION.—  
16           For the purposes of this subparagraph, the  
17           term ‘third tier act or omission’ means an  
18           act or omission described in paragraph (1)  
19           that—

20                      “(I) involved fraud, deceit, ma-  
21                      nipulation, or deliberate or reckless  
22                      disregard of a regulatory requirement;  
23                      and

24                      “(II) directly or indirectly—

1                   “(aa) resulted in substantial  
2                   losses to other persons;

3                   “(bb) created a significant  
4                   risk of substantial losses to other  
5                   persons; or

6                   “(cc) resulted in substantial  
7                   pecuniary gain to the person who  
8                   committed the act or omission.”.

9                   (2) MONEY PENALTIES IN CIVIL ACTIONS.—  
10                  Section 42(e)(2) of the Investment Company Act of  
11                  1940 (15 U.S.C. 80a–41(e)(2)) is amended—

12                   (A) in subparagraph (A)—

13                   (i) by striking “\$5,000” and inserting  
14                   “\$10,000”; and

15                   (ii) by striking “\$50,000” and insert-  
16                   ing “\$100,000”;

17                   (B) in subparagraph (B)—

18                   (i) by striking “\$50,000” and insert-  
19                   ing “\$100,000”; and

20                   (ii) by striking “\$250,000” and in-  
21                   serting “\$500,000”; and

22                   (C) by striking subparagraph (C) and in-  
23                   serting the following:

24                   “(C) THIRD TIER.—

1           “(i) IN GENERAL.—Notwithstanding  
2           subparagraphs (A) and (B), for a third  
3           tier violation, the amount of penalty for  
4           each such violation shall not exceed the  
5           greater of—

6                       “(I) \$1,000,000 for a natural  
7                       person or \$10,000,000 for any other  
8                       person;

9                       “(II) 3 times the gross amount of  
10                      pecuniary gain to the person who  
11                      committed the violation; or

12                      “(III) the amount of losses in-  
13                      curred by victims as a result of the  
14                      violation.

15           “(ii) THIRD TIER VIOLATION.—For  
16           the purposes of this subparagraph, the  
17           term ‘third tier violation’ means a violation  
18           described in paragraph (1) that—

19                      “(I) involved fraud, deceit, ma-  
20                      nipulation, or deliberate or reckless  
21                      disregard of a regulatory requirement;  
22                      and

23                      “(II) directly or indirectly—

24                               “(aa) resulted in substantial  
25                               losses to other persons;

1                   “(bb) created a significant  
2                   risk of substantial losses to other  
3                   persons; or

4                   “(cc) resulted in substantial  
5                   pecuniary gain to the person who  
6                   committed the violation.”.

7           (d) INVESTMENT ADVISERS ACT OF 1940.—

8                   (1) MONEY PENALTIES IN ADMINISTRATIVE AC-  
9                   TIONS.—Section 203(i)(2) of the Investment Advis-  
10                   ers Act of 1940 (15 U.S.C. 80b–3(i)(2)) is amend-  
11                   ed—

12                   (A) in subparagraph (A)—

13                   (i) by striking “\$5,000” and inserting  
14                   “\$10,000”; and

15                   (ii) by striking “\$50,000” and insert-  
16                   ing “\$100,000”;

17                   (B) in subparagraph (B)—

18                   (i) by striking “\$50,000” and insert-  
19                   ing “\$100,000”; and

20                   (ii) by striking “\$250,000” and in-  
21                   serting “\$500,000”; and

22                   (C) by striking subparagraph (C) and in-  
23                   serting the following:

24                   “(C) THIRD TIER.—

1 “(i) IN GENERAL.—Notwithstanding  
2 subparagraphs (A) and (B), for a third  
3 tier act or omission, the amount of penalty  
4 for each such act or omission shall not ex-  
5 ceed the greater of—

6 “(I) \$1,000,000 for a natural  
7 person or \$10,000,000 for any other  
8 person;

9 “(II) 3 times the gross amount of  
10 pecuniary gain to the person who  
11 committed the act or omission; or

12 “(III) the amount of losses in-  
13 curred by victims as a result of the  
14 act or omission.

15 “(ii) THIRD TIER ACT OR OMISSION.—  
16 For the purposes of this subparagraph, the  
17 term ‘third tier act or omission’ means an  
18 act or omission described in paragraph (1)  
19 that—

20 “(I) involved fraud, deceit, ma-  
21 nipulation, or deliberate or reckless  
22 disregard of a regulatory requirement;  
23 and

24 “(II) directly or indirectly—

1 “(aa) resulted in substantial  
2 losses to other persons;

3 “(bb) created a significant  
4 risk of substantial losses to other  
5 persons; or

6 “(cc) resulted in substantial  
7 pecuniary gain to the person who  
8 committed the act or omission.”.

9 (2) MONEY PENALTIES IN CIVIL ACTIONS.—  
10 Section 209(e)(2) of the Investment Advisers Act of  
11 1940 (15 U.S.C. 80b-9(e)(2)) is amended—

12 (A) in subparagraph (A)—

13 (i) by striking “\$5,000” and inserting  
14 “\$10,000”; and

15 (ii) by striking “\$50,000” and insert-  
16 ing “\$100,000”;

17 (B) in subparagraph (B)—

18 (i) by striking “\$50,000” and insert-  
19 ing “\$100,000”; and

20 (ii) by striking “\$250,000” and in-  
21 serting “\$500,000”; and

22 (C) by striking subparagraph (C) and in-  
23 serting the following:

24 “(C) THIRD TIER.—

1           “(i) IN GENERAL.—Notwithstanding  
2           subparagraphs (A) and (B), for a third  
3           tier violation, the amount of penalty for  
4           each such violation shall not exceed the  
5           greater of—

6                       “(I) \$1,000,000 for a natural  
7                       person or \$10,000,000 for any other  
8                       person;

9                       “(II) 3 times the gross amount of  
10                      pecuniary gain to the person who  
11                      committed the violation; or

12                     “(III) the amount of losses in-  
13                     curred by victims as a result of the  
14                     violation.

15           “(ii) THIRD TIER VIOLATION.—For  
16           the purposes of this subparagraph, the  
17           term ‘third tier violation’ means a violation  
18           described in paragraph (1) that—

19                     “(I) involved fraud, deceit, ma-  
20                     nipulation, or deliberate or reckless  
21                     disregard of a regulatory requirement;  
22                     and

23                     “(II) directly or indirectly—

24                               “(aa) resulted in substantial  
25                               losses to other persons;



1                   “(bb) created a significant  
2                   risk of substantial losses to other  
3                   persons; or

4                   “(cc) resulted in substantial  
5                   pecuniary gain to the person who  
6                   committed the violation.”.

7 **SEC. 3. PENALTIES FOR RECIDIVISTS.**

8           (a) SECURITIES ACT OF 1933.—

9                   (1) CEASE-AND-DESIST PROCEEDINGS.—Section  
10                   8A(g)(2) of the Securities Act of 1933 (15 U.S.C.  
11                   77h–1(g)(2)) is amended by adding at the end the  
12                   following:

13                   “(D) FOURTH TIER.—Notwithstanding  
14                   subparagraphs (A), (B), and (C), the maximum  
15                   amount of penalty for each such act or omission  
16                   shall be 3 times the otherwise applicable  
17                   amount in such subparagraphs if, within the 5-  
18                   year period preceding such act or omission, the  
19                   person who committed the act or omission was  
20                   criminally convicted for securities fraud or be-  
21                   came subject to a judgment or order imposing  
22                   monetary, equitable, or administrative relief in  
23                   any Commission action alleging fraud by that  
24                   person.”.

1           (2) INJUNCTIONS AND PROSECUTION OF OF-  
2           FENSES.—Section 20(d)(2) of the Securities Act of  
3           1933 (15 U.S.C. 77t(d)(2)) is amended by adding at  
4           the end the following:

5                   “(D)   FOURTH   TIER.—Notwithstanding  
6                   subparagraphs (A), (B), and (C), the maximum  
7                   amount of penalty for each such violation shall  
8                   be 3 times the otherwise applicable amount in  
9                   such subparagraphs if, within the 5-year period  
10                  preceding such violation, the defendant was  
11                  criminally convicted for securities fraud or be-  
12                  came subject to a judgment or order imposing  
13                  monetary, equitable, or administrative relief in  
14                  any Commission action alleging fraud by that  
15                  defendant.”.

16          (b) SECURITIES EXCHANGE ACT OF 1934.—

17                  (1) CIVIL ACTIONS.—Section 21(d)(3)(B) of the  
18                  Securities Exchange Act of 1934 (15 U.S.C.  
19                  78u(d)(3)(B)) is amended by adding at the end the  
20                  following:

21                   “(iv)   FOURTH   TIER.—Notwithstanding  
22                   clauses (i), (ii), and (iii), the maximum amount  
23                   of penalty for each such violation shall be 3  
24                   times the otherwise applicable amount in such  
25                   clauses if, within the 5-year period preceding

1           such violation, the defendant was criminally  
2           convicted for securities fraud or became subject  
3           to a judgment or order imposing monetary, eq-  
4           uitable, or administrative relief in any Commis-  
5           sion action alleging fraud by that defendant.”.

6           (2) ADMINISTRATIVE PROCEEDINGS.—Section  
7           21B(b) of the Securities Exchange Act of 1934 (15  
8           U.S.C. 78u–2(b)) is amended by adding at the end  
9           the following:

10           “(4) FOURTH TIER.—Notwithstanding para-  
11           graphs (1), (2), and (3), the maximum amount of  
12           penalty for each such act or omission shall be 3  
13           times the otherwise applicable amount in such para-  
14           graphs if, within the 5-year period preceding such  
15           act or omission, the person who committed the act  
16           or omission was criminally convicted for securities  
17           fraud or became subject to a judgment or order im-  
18           posing monetary, equitable, or administrative relief  
19           in any Commission action alleging fraud by that per-  
20           son.”.

21           (c) INVESTMENT COMPANY ACT OF 1940.—

22           (1) INELIGIBILITY OF CERTAIN UNDERWRITERS  
23           AND AFFILIATES.—Section 9(d)(2) of the Invest-  
24           ment Company Act of 1940 (15 U.S.C. 80a–9(d)(2))  
25           is amended by adding at the end the following:

1           “(D) FOURTH TIER.—Notwithstanding  
2           subparagraphs (A), (B), and (C), the maximum  
3           amount of penalty for each such act or omission  
4           shall be 3 times the otherwise applicable  
5           amount in such subparagraphs if, within the 5-  
6           year period preceding such act or omission, the  
7           person who committed the act or omission was  
8           criminally convicted for securities fraud or be-  
9           came subject to a judgment or order imposing  
10          monetary, equitable, or administrative relief in  
11          any Commission action alleging fraud by that  
12          person.”.

13          (2) ENFORCEMENT.—Section 42(e)(2) of the  
14          Investment Company Act of 1940 (15 U.S.C. 80a-  
15          41(e)(2)) is amended by adding at the end the fol-  
16          lowing:

17                 “(D) FOURTH TIER.—Notwithstanding  
18                 subparagraphs (A), (B), and (C), the maximum  
19                 amount of penalty for each such violation shall  
20                 be 3 times the otherwise applicable amount in  
21                 such subparagraphs if, within the 5-year period  
22                 preceding such violation, the defendant was  
23                 criminally convicted for securities fraud or be-  
24                 came subject to a judgment or order imposing  
25                 monetary, equitable, or administrative relief in

1 any Commission action alleging fraud by that  
2 defendant.”.

3 (d) INVESTMENT ADVISERS ACT OF 1940.—The In-  
4 vestment Advisers Act of 1940 (15 U.S.C. 80b–1 et seq.)  
5 is amended—

6 (1) in section 203(i)(2) (15 U.S.C. 80b–  
7 3(i)(2)), by adding at the end the following:

8 “(D) FOURTH TIER.—Notwithstanding  
9 subparagraphs (A), (B), and (C), the maximum  
10 amount of penalty for each such act or omission  
11 shall be 3 times the otherwise applicable  
12 amount in such subparagraphs if, within the 5-  
13 year period preceding such act or omission, the  
14 person who committed the act or omission was  
15 criminally convicted for securities fraud or be-  
16 came subject to a judgment or order imposing  
17 monetary, equitable, or administrative relief in  
18 any Commission action alleging fraud by that  
19 person.”; and

20 (2) in section 209(e)(2) (15 U.S.C. 80b–  
21 9(e)(2)) by adding at the end the following:

22 “(D) FOURTH TIER.—Notwithstanding  
23 subparagraphs (A), (B), and (C), the maximum  
24 amount of penalty for each such violation shall  
25 be 3 times the otherwise applicable amount in

1           such subparagraphs if, within the 5-year period  
2           preceding such violation, the defendant was  
3           criminally convicted for securities fraud or be-  
4           came subject to a judgment or order imposing  
5           monetary, equitable, or administrative relief in  
6           any Commission action alleging fraud by that  
7           defendant.”.

8   **SEC. 4. VIOLATIONS OF INJUNCTIONS AND BARS.**

9           (a) SECURITIES ACT OF 1933.—Section 20(d) of the  
10          Securities Act of 1933 (15 U.S.C. 77t(d)) is amended—

11                 (1) in paragraph (1), by inserting after “the  
12                 rules or regulations thereunder,” the following: “a  
13                 Federal court injunction or a bar obtained or en-  
14                 tered by the Commission under this title,”; and

15                 (2) by striking paragraph (4) and inserting the  
16                 following:

17                         “(4) SPECIAL PROVISIONS RELATING TO A VIO-  
18                         LATION OF AN INJUNCTION OR CERTAIN ORDERS.—

19                                 “(A) IN GENERAL.—Each separate viola-  
20                                 tion of an injunction or order described in sub-  
21                                 paragraph (B) shall be a separate offense, ex-  
22                                 cept that in the case of a violation through a  
23                                 continuing failure to comply with such injunc-  
24                                 tion or order, each day of the failure to comply

1 with the injunction or order shall be deemed a  
2 separate offense.

3 “(B) INJUNCTIONS AND ORDERS.—Sub-  
4 paragraph (A) shall apply with respect to any  
5 action to enforce—

6 “(i) a Federal court injunction ob-  
7 tained pursuant to this title;

8 “(ii) an order entered or obtained by  
9 the Commission pursuant to this title that  
10 bars, suspends, places limitations on the  
11 activities or functions of, or prohibits the  
12 activities of a person; or

13 “(iii) a cease-and-desist order entered  
14 by the Commission pursuant to section  
15 8A.”.

16 (b) SECURITIES EXCHANGE ACT OF 1934.—Section  
17 21(d)(3) of the Securities Exchange Act of 1934 (15  
18 U.S.C. 78u(d)(3)) is amended—

19 (1) in subparagraph (A), by inserting after “the  
20 rules or regulations thereunder,” the following: “a  
21 Federal court injunction or a bar obtained or en-  
22 tered by the Commission under this title,”; and

23 (2) by striking subparagraph (D) and inserting  
24 the following:

1           “(D) SPECIAL PROVISIONS RELATING TO A VIO-  
2           LATION OF AN INJUNCTION OR CERTAIN ORDERS.—

3           “(i) IN GENERAL.—Each separate violation  
4           of an injunction or order described in clause (ii)  
5           shall be a separate offense, except that in the  
6           case of a violation through a continuing failure  
7           to comply with such injunction or order, each  
8           day of the failure to comply with the injunction  
9           or order shall be deemed a separate offense.

10           “(ii) INJUNCTIONS AND ORDERS.—Clause  
11           (i) shall apply with respect to an action to en-  
12           force—

13           “(I) a Federal court injunction ob-  
14           tained pursuant to this title;

15           “(II) an order entered or obtained by  
16           the Commission pursuant to this title that  
17           bars, suspends, places limitations on the  
18           activities or functions of, or prohibits the  
19           activities of a person; or

20           “(III) a cease-and-desist order entered  
21           by the Commission pursuant to section  
22           21C.”.

23           (c) INVESTMENT COMPANY ACT OF 1940.—Section  
24           42(e) of the Investment Company Act of 1940 (15 U.S.C.  
25           80a–41(e)) is amended—



1           (1) in paragraph (1), by inserting after “the  
2 rules or regulations thereunder,” the following: “a  
3 Federal court injunction or a bar obtained or en-  
4 tered by the Commission under this title,”; and

5           (2) by striking paragraph (4) and inserting the  
6 following:

7           “(4) SPECIAL PROVISIONS RELATING TO A VIO-  
8 LATION OF AN INJUNCTION OR CERTAIN ORDERS.—

9           “(A) IN GENERAL.—Each separate viola-  
10 tion of an injunction or order described in sub-  
11 paragraph (B) shall be a separate offense, ex-  
12 cept that in the case of a violation through a  
13 continuing failure to comply with such injunc-  
14 tion or order, each day of the failure to comply  
15 with the injunction or order shall be deemed a  
16 separate offense.

17           “(B) INJUNCTIONS AND ORDERS.—Sub-  
18 paragraph (A) shall apply with respect to any  
19 action to enforce—

20           “(i) a Federal court injunction ob-  
21 tained pursuant to this title;

22           “(ii) an order entered or obtained by  
23 the Commission pursuant to this title that  
24 bars, suspends, places limitations on the

1 activities or functions of, or prohibits the  
2 activities of a person; or  
3 “(iii) a cease-and-desist order entered  
4 by the Commission pursuant to section  
5 9(f).”.

6 (d) INVESTMENT ADVISERS ACT OF 1940.—Section  
7 209(e) of the Investment Advisers Act of 1940 (15 U.S.C.  
8 80b–9(e)) is amended—

9 (1) in paragraph (1), by inserting after “the  
10 rules or regulations thereunder,” the following: “a  
11 Federal court injunction or a bar obtained or en-  
12 tered by the Commission under this title,”; and

13 (2) by striking paragraph (4) and inserting the  
14 following:

15 “(4) SPECIAL PROVISIONS RELATING TO A VIO-  
16 LATION OF AN INJUNCTION OR CERTAIN ORDERS.—

17 “(A) IN GENERAL.—Each separate viola-  
18 tion of an injunction or order described in sub-  
19 paragraph (B) shall be a separate offense, ex-  
20 cept that in the case of a violation through a  
21 continuing failure to comply with such injunc-  
22 tion or order, each day of the failure to comply  
23 with the injunction or order shall be deemed a  
24 separate offense.

1           “(B) INJUNCTIONS AND ORDERS.—Sub-  
2           paragraph (A) shall apply with respect to any  
3           action to enforce—

4                   “(i) a Federal court injunction ob-  
5                   tained pursuant to this title;

6                   “(ii) an order entered or obtained by  
7                   the Commission pursuant to this title that  
8                   bars, suspends, places limitations on the  
9                   activities or functions of, or prohibits the  
10                  activities of a person; or

11                  “(iii) a cease-and-desist order entered  
12                  by the Commission pursuant to section  
13                  203(k).”.

14 **SEC. 5. PROCESS FOR CLOSING INVESTIGATIONS.**

15           (a) IN GENERAL.—Not later than 180 days after the  
16           date of the enactment of this Act, the Securities and Ex-  
17           change Commission shall establish a process for closing  
18           investigations (including preliminary or informal inves-  
19           tigations) that is designed to ensure that the Commission,  
20           in a timely manner—

21                   (1) makes a determination of whether or not to  
22                   institute an administrative or judicial action in a  
23                   matter or refer the matter to the Attorney General  
24                   for potential criminal prosecution; and

1           (2) if the Commission determines not to insti-  
2           tute such an action or refer the matter to the Attor-  
3           ney General, informs the persons who are the sub-  
4           ject of the investigation that the investigation is  
5           closed.

6           (b) **RULE OF CONSTRUCTION.**—Nothing in this sec-  
7           tion shall be construed to affect the authority of the Com-  
8           mission to re-open an investigation if the Commission ob-  
9           tains new evidence after the investigation is closed, subject  
10          to any applicable statute of limitations.

11 **SEC. 6. ENFORCEMENT OMBUDSMAN.**

12          (a) **IN GENERAL.**—Section 4 of the Securities Ex-  
13          change Act of 1934 (15 U.S.C. 78d), is amended by in-  
14          serting after subsection (j) the following:

15          “(k) **ENFORCEMENT OMBUDSMAN.**—

16                 “(1) **ESTABLISHMENT.**—The Commission shall  
17                 have an Enforcement Ombudsman, who shall be ap-  
18                 pointed by and report directly to the Commission.

19                 “(2) **DUTIES.**—The Enforcement Ombudsman  
20                 shall—

21                         “(A) act as a liaison between the Commis-  
22                         sion and any person who is the subject of an in-  
23                         vestigation (including a preliminary or informal  
24                         investigation) by the Commission or an admin-  
25                         istrative or judicial action brought by the Com-

1 mission in resolving problems that such persons  
2 may have with the Commission or the conduct  
3 of Commission staff; and

4 “(B) establish safeguards to maintain the  
5 confidentiality of communications between the  
6 persons described in subparagraph (A) and the  
7 Enforcement Ombudsman.

8 “(3) LIMITATION.—In carrying out the duties  
9 of the Enforcement Ombudsman under paragraph  
10 (2), the Enforcement Ombudsman shall utilize per-  
11 sonnel of the Commission to the extent practicable.  
12 Nothing in this subsection shall be construed as re-  
13 placing, altering, or diminishing the activities of any  
14 ombudsman or similar office of any other agency.

15 “(4) REPORT.—The Enforcement Ombudsman  
16 shall submit to the Commission and to the Com-  
17 mittee on Financial Services of the House of Rep-  
18 resentatives and the Committee on Banking, Hous-  
19 ing, and Urban Affairs of the Senate an annual re-  
20 port that describes the activities and evaluates the  
21 effectiveness of the Enforcement Ombudsman during  
22 the preceding year.”.

23 (b) DEADLINE FOR INITIAL APPOINTMENT.—The  
24 Securities and Exchange Commission shall appoint the ini-  
25 tial Enforcement Ombudsman under subsection (k) of sec-

1 tion 4 of the Securities Exchange Act of 1934, as added  
2 by subsection (a), not later than 180 days after the date  
3 of the enactment of this Act.

4 **SEC. 7. ADEQUATE NOTICE.**

5 Section 21 of the Securities Exchange Act of 1934  
6 (15 U.S.C. 78u) is amended by adding at the end the fol-  
7 lowing:

8 “(j) ADEQUATE NOTICE REQUIRED BEFORE BRING-  
9 ING AN ENFORCEMENT ACTION.—

10 “(1) IN GENERAL.—No person shall be subject  
11 to an enforcement action by the Commission for an  
12 alleged violation of the securities laws or the rules  
13 and regulations issued thereunder if such person did  
14 not have adequate notice of such law, rule, or regu-  
15 lation.

16 “(2) PUBLISHING OF INTERPRETATION  
17 DEEMED ADEQUATE NOTICE.—With respect to an  
18 enforcement action, adequate notice of a securities  
19 law or a rule or regulation issued thereunder shall  
20 be deemed to have been provided to a person if the  
21 Commission approved a statement or guidance, in  
22 accordance with section 4I, with respect to the con-  
23 duct that is the subject of the enforcement action,  
24 prior to the time that the person engaged in the con-  
25 duct that is the subject of the enforcement action.”.

1 **SEC. 8. ADVISORY COMMITTEE ON COMMISSION'S EN-**  
2 **FORCEMENT POLICIES AND PRACTICES.**

3 (a) ESTABLISHMENT.—Not later than 6 months after  
4 the date of the enactment of this Act, the Chairman shall  
5 establish an advisory committee on the Commission's en-  
6 forcement policies and practices (in this section referred  
7 to as the "Committee").

8 (b) DUTIES.—

9 (1) ANALYSIS AND RECOMMENDATIONS.—

10 (A) IN GENERAL.—The Committee shall  
11 conduct an analysis of the policies and practices  
12 of the Commission relating to the enforcement  
13 of the securities laws and make recommenda-  
14 tions to the Commission regarding changes to  
15 such policies and practices.

16 (B) SPECIFIC MATTERS INCLUDED.—In  
17 carrying out subparagraph (A), the Committee  
18 shall analyze and make recommendations to the  
19 Commission regarding matters including the  
20 following:

21 (i) How the Commission's enforce-  
22 ment objectives and strategies may be  
23 more effective.

24 (ii) The Commission's enforcement  
25 practices and procedures from the point of  
26 view of due process, the relationship of en-

1 enforcement action to notice of legal require-  
2 ments, the attribution of responsibility for  
3 violations, and the protection of reputation  
4 and rights of privacy.

5 (iii) The Commission's enforcement  
6 policies and practices in light of its statu-  
7 tory responsibility to protect investors,  
8 maintain fair, orderly, and efficient mar-  
9 kets, and facilitate capital formation.

10 (iv) The appropriate blend of regula-  
11 tion, publicity, and formal enforcement ac-  
12 tion and on methods of furthering vol-  
13 untary compliance.

14 (v) Criteria for the selection and dis-  
15 position of enforcement actions, the ade-  
16 quacy of sanctions authorized by law, and  
17 the suitability and effectiveness of sanc-  
18 tions imposed by the Commission pro-  
19 ceedings.

20 (2) REPORT.—Not later than 1 year after the  
21 establishment of the Committee under subsection  
22 (a), the Committee shall submit to the Commission  
23 and the appropriate congressional committees a re-  
24 port containing the results of the analysis and the  
25 recommendations required by paragraph (1)(A).



1 (c) MEMBERSHIP.—

2 (1) NUMBER AND APPOINTMENT.—The Com-  
3 mittee shall be composed of not less than 3 and not  
4 greater than 7 members appointed by the Chairman.

5 (2) CHAIRPERSON.—The Chairperson of the  
6 Committee shall be designated by the Chairman at  
7 the time of appointment of the members.

8 (d) SUPPORT.—The Commission shall provide the  
9 Committee with the administrative, professional, and tech-  
10 nical support required by the Committee to carry out its  
11 responsibilities under this section.

12 (e) TERMINATION OF COMMITTEE.—The Committee  
13 established by subsection (a) shall terminate on the date  
14 that the report required by subsection (b)(2) is submitted.

15 (f) CONSIDERATION AND ADOPTION OF REC-  
16 OMMENDATIONS BY COMMISSION.—Not later than 180  
17 days after the Committee submits the report required by  
18 subsection (b)(2), the Commission shall—

19 (1) consider the analysis and recommendations  
20 included in such report;

21 (2) adopt such recommendations, with any  
22 modifications, as the Commission considers appro-  
23 priate; and

24 (3) submit to the appropriate congressional  
25 committees a report that—

1 (A) lists each recommendation included in  
2 such report that the Commission does not adopt  
3 or adopts with material modifications; and

4 (B) for each recommendation listed under  
5 subparagraph (A), explains why the Commis-  
6 sion does not consider it appropriate or does  
7 not have sufficient authority to adopt the rec-  
8 ommendation or to adopt the recommendation  
9 without material modification.

10 (g) DEFINITIONS.—In this section:

11 (1) APPROPRIATE CONGRESSIONAL COMMIT-  
12 TEES.—The term “appropriate congressional com-  
13 mittees” means the Committee on Financial Services  
14 of the House of Representatives and the Committee  
15 on Banking, Housing, and Urban Affairs of the Sen-  
16 ate.

17 (2) CHAIRMAN.—The term “Chairman” means  
18 the Chairman of the Commission.

19 (3) COMMISSION.—The term “Commission”  
20 means the Securities and Exchange Commission.

21 (4) SECURITIES LAWS.—The term “securities  
22 laws” has the meaning given such term in section  
23 3(a) of the Securities Exchange Act of 1934 (15  
24 U.S.C. 78c(a)).

1 (h) APPLICATION OF THE FEDERAL ADVISORY COM-  
2 MITTEE ACT.—The Committee is an advisory committee  
3 for purposes of the Federal Advisory Committee Act (5  
4 U.S.C. App.).

5 **SEC. 9. PROCESS TO PERMIT RECIPIENT OF WELLS NOTIFI-**  
6 **CATION TO APPEAR BEFORE COMMISSION**  
7 **STAFF IN-PERSON.**

8 (a) IN GENERAL.—Not later than 180 days after the  
9 date of the enactment of this Act, the Securities and Ex-  
10 change Commission shall establish a process under which,  
11 in any instance in which the Commission staff provides  
12 a written Wells notification to an individual informing the  
13 individual that the Commission staff has made a prelimi-  
14 nary determination to recommend that the Commission  
15 bring an administrative or judicial action against the indi-  
16 vidual, the individual shall have the right to make an in-  
17 person presentation before the Commission staff con-  
18 cerning such recommendation and to be represented by  
19 counsel at such presentation, at the individual's own ex-  
20 pense.

21 (b) ATTENDANCE BY COMMISSIONERS.—Such proc-  
22 ess shall provide that each Commissioner of the Commis-  
23 sion, or a designee of the Commissioner, may attend any  
24 such presentation.

1 (c) REPORT BY COMMISSION STAFF.—Such process  
2 shall provide that, before any Commission vote on whether  
3 to bring the administrative or judicial action against the  
4 individual, the Commission staff shall provide to each  
5 Commissioner a written report on any such presentation,  
6 including any factual or legal arguments made by the indi-  
7 vidual and any supporting documents provided by the indi-  
8 vidual.

9 **SEC. 10. PUBLICATION OF ENFORCEMENT MANUAL.**

10 (a) IN GENERAL.—Not later than 1 year after the  
11 date of the enactment of this Act, the Securities and Ex-  
12 change Commission shall approve, by vote of the Commis-  
13 sion, and publish an updated manual that sets forth the  
14 policies and practices that the Commission will follow in  
15 the enforcement of the securities laws (as defined in sec-  
16 tion 3(a) of the Securities Exchange Act of 1934 (15  
17 U.S.C. 78c(a))). Such manual shall include policies and  
18 practices required by this Act, and by the amendments  
19 made by this Act, and shall be developed so as to ensure  
20 transparency in such enforcement and uniform application  
21 of such laws by the Commission.

22 (b) ENFORCEMENT PLAN AND REPORT.—Beginning  
23 on the date that is one year after the date of enactment  
24 of this Act, and each year thereafter, the Securities and  
25 Exchange Commission shall transmit to Congress and

1 publish on its Internet website an annual enforcement  
2 plan and report that shall—

3 (1) detail the priorities of the Commission with  
4 regard to enforcement and examination activities for  
5 the forthcoming year;

6 (2) report on the Commission's enforcement  
7 and examination activities for the previous year, in-  
8 cluding an assessment of how such activities com-  
9 ported with the priorities identified for that year  
10 pursuant to paragraph (1);

11 (3) contain an analysis of litigated decisions  
12 found not in favor of the Commission over the pre-  
13 ceding year;

14 (4) contain a description of any emerging  
15 trends the Commission has focused on as part of its  
16 enforcement program, including whether and how  
17 the Commission has alerted or communicated with  
18 those who may be subject to the Commission's regu-  
19 lation of emerging trends;

20 (5) contain a description of legal theories or  
21 standards employed by the Commission in enforce-  
22 ment over the preceding year that had not previously  
23 been employed, and a summary justifying each such  
24 theory or standard; and

1           (6) provide an opportunity and mechanism for  
2 public comment.

3 **SEC. 11. PRIVATE PARTIES AUTHORIZED TO COMPEL THE**  
4 **SECURITIES AND EXCHANGE COMMISSION TO**  
5 **SEEK SANCTIONS BY FILING CIVIL ACTIONS.**

6 Title I of the Securities Exchange Act of 1934 (15  
7 U.S.C. 78a et seq.) is amended by adding at the end the  
8 following:

9 **“SEC. 41. PRIVATE PARTIES AUTHORIZED TO COMPEL THE**  
10 **COMMISSION TO SEEK SANCTIONS BY FILING**  
11 **CIVIL ACTIONS.**

12       “(a) TERMINATION OF ADMINISTRATIVE PRO-  
13 CEEDING.—In the case of any person who is a party to  
14 a proceeding brought by the Commission under a securi-  
15 ties law, to which section 554 of title 5, United States  
16 Code, applies, and against whom an order imposing a  
17 cease and desist order and a penalty may be issued at  
18 the conclusion of the proceeding, that person may, not  
19 later than 20 days after receiving notice of such pro-  
20 ceeding, and at that person’s discretion, require the Com-  
21 mission to terminate the proceeding.

22       “(b) CIVIL ACTION AUTHORIZED.—If a person re-  
23 quires the Commission to terminate a proceeding pursuant  
24 to subsection (a), the Commission may bring a civil action

1 against that person for the same remedy that might be  
2 imposed.

3 “(c) STANDARD OF PROOF IN ADMINISTRATIVE PRO-  
4 CEEDING.—Notwithstanding any other provision of law, in  
5 the case of a proceeding brought by the Commission under  
6 a securities law, to which section 554 of title 5, United  
7 States Code, applies, a legal or equitable remedy may be  
8 imposed on the person against whom the proceeding was  
9 brought only on a showing by the Commission of clear and  
10 convincing evidence that the person has violated the rel-  
11 evant provision of law.”.

12 **SEC. 12. CERTAIN FINDINGS REQUIRED TO APPROVE CIVIL**  
13 **MONEY PENALTIES AGAINST ISSUERS.**

14 The Securities Exchange Act of 1934 (15 U.S.C. 78a  
15 et seq.) is amended by inserting after section 4E the fol-  
16 lowing:

17 **“SEC. 4F. CERTAIN FINDINGS REQUIRED TO APPROVE**  
18 **CIVIL MONEY PENALTIES AGAINST ISSUERS.**

19 “The Commission may not seek against or impose on  
20 an issuer a civil money penalty for violation of the securi-  
21 ties laws unless the publicly available text of the order ap-  
22 proving the seeking or imposition of such penalty contains  
23 findings, supported by an analysis by the Division of Eco-  
24 nomic and Risk Analysis and certified by the Chief Econo-  
25 mist, of whether—

1           “(1) the alleged violation resulted in direct eco-  
2           nomic benefit to the issuer; and

3           “(2) the penalty will harm the shareholders of  
4           the issuer.”.

5   **SEC. 13. SUBPOENA DURATION AND RENEWAL.**

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

8           (1) by inserting “SUBPOENA.—” after the enu-  
9           merator;

10          (2) by striking “For the purpose of” and insert-  
11          ing the following:

12           “(1) IN GENERAL.—For the purpose of”; and

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

14           “(2) OMNIBUS ORDERS OF INVESTIGATION.—

15           “(A) DURATION AND RENEWAL.—An om-  
16           nibus order of investigation shall not be for an  
17           indefinite duration and may be renewed only by  
18           Commission action.

19           “(B) DEFINITION.—In subparagraph (A),  
20           the term ‘omnibus order of investigation’ means  
21           an order of the Commission authorizing 1 or  
22           more members of the Commission or its staff to  
23           issue subpoenas under paragraph (1) to mul-  
24           tiple persons in relation to a particular subject  
25           matter area.”.



1 **SEC. 14. ELIMINATION OF AUTOMATIC DISQUALIFICA-**  
2 **TIONS.**

3 The Securities Exchange Act of 1934 (15 U.S.C. 78a  
4 et seq.), as amended by this Act, is further amended by  
5 inserting after section 4F the following:

6 **“SEC. 4G. ELIMINATION OF AUTOMATIC DISQUALIFICA-**  
7 **TIONS.**

8 “(a) IN GENERAL.—Notwithstanding any other pro-  
9 vision of law, a non-natural person may not be disqualified  
10 or otherwise made ineligible to use an exemption or reg-  
11 istration provision, engage in an activity, or qualify for  
12 any similar treatment under a provision of the securities  
13 laws or the rules issued by the Commission under the se-  
14 curities laws by reason of having, or a person described  
15 in subsection (b) having, been convicted of any felony or  
16 misdemeanor or made the subject of any judicial or admin-  
17 istrative order, judgment, or decree arising out of a gov-  
18 ernmental action (including an order, judgment, or decree  
19 agreed to in a settlement), or having, or a person de-  
20 scribed in subsection (b) having, been suspended or ex-  
21 pelled from membership in, or suspended or barred from  
22 association with a member of, a registered national securi-  
23 ties exchange or a registered national or affiliated securi-  
24 ties association for any act or omission to act constituting  
25 conduct inconsistent with just and equitable principles of  
26 trade, unless the Commission, by order, on the record

1 after notice and an opportunity for hearing, makes a de-  
2 termination that such non-natural person should be so dis-  
3 qualified or otherwise made ineligible for purposes of such  
4 provision.

5 “(b) PERSON DESCRIBED.—A person is described in  
6 this subsection if the person is—

7 “(1) a natural person who is a director, officer,  
8 employee, partner, member, or shareholder of the  
9 non-natural person referred to in subsection (a) or  
10 is otherwise associated or affiliated with such non-  
11 natural person in any way; or

12 “(2) a non-natural person who is associated or  
13 affiliated with the non-natural person referred to in  
14 subsection (a) in any way.

15 “(c) RULE OF CONSTRUCTION.—Nothing in this sec-  
16 tion shall be construed to limit any authority of the Com-  
17 mission, by order, on the record after notice and an oppor-  
18 tunity for hearing, to prohibit a person from using an ex-  
19 emption or registration provision, engaging in an activity,  
20 or qualifying for any similar treatment under a provision  
21 of the securities laws, or the rules issued by the Commis-  
22 sion under the securities laws, by reason of a circumstance  
23 referred to in subsection (a) or any similar circumstance.”.

1 **SEC. 15. CLARIFICATION OF AUTHORITY TO IMPOSE SANC-**  
2 **TIONS ON PERSONS ASSOCIATED WITH A**  
3 **BROKER OR DEALER.**

4 Section 15(b)(6)(A)(i) of the Securities Exchange Act  
5 of 1934 (15 U.S.C. 78o(b)(6)(A)(i)) is amended by strik-  
6 ing “enumerated” and all that follows and inserting “enu-  
7 merated in subparagraph (A), (D), (E), (G), or (H) of  
8 paragraph (4) of this subsection;”.

9 **SEC. 16. COMPLAINT AND BURDEN OF PROOF REQUIRE-**  
10 **MENTS FOR CERTAIN ACTIONS FOR BREACH**  
11 **OF FIDUCIARY DUTY.**

12 Section 36(b) of the Investment Company Act of  
13 1940 (15 U.S.C. 80a-35(b)) is amended by adding at the  
14 end the following:

15 “(7) In any such action brought by a security  
16 holder of a registered investment company on behalf  
17 of such company—

18 “(A) the complaint shall state with par-  
19 ticularity all facts establishing a breach of fidu-  
20 ciary duty, and, if an allegation of any such  
21 facts is based on information and belief, the  
22 complaint shall state with particularity all facts  
23 on which that belief is formed; and

1                   “(B) such security holder shall have the  
2                   burden of proving a breach of fiduciary duty by  
3                   clear and convincing evidence.”.

