[DISCUSSION DRAFT]

116TH CONGRESS
1ST SESSION
H. R. ______

To enhance civil penalties under the Federal securities laws, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Ms. PORTER introduced the following bill; which was referred to the Committee on ________________________

A BILL

To enhance civil penalties under the Federal securities laws, 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 “Stronger Enforcement
5 of Civil Penalties Act of 2019”.

6 SEC. 2. UPDATED CIVIL MONEY PENALTIES FOR SECURI-
7 TIES LAWS VIOLATIONS.

8 (a) Securities Act of 1933.—
(1) Money penalties in administrative actions.—Section 8A(g)(2) of the Securities Act of 1933 (15 U.S.C. 77h–1(g)(2)) is amended—

(A) in subparagraph (A)—

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

(ii) by striking “$75,000” and inserting “$100,000”;

(B) in subparagraph (B)—

(i) by striking “$75,000” and inserting “$100,000”; and

(ii) by striking “$375,000” and inserting “$500,000”; and

(C) by striking subparagraph (C) and inserting the following:

“(C) Third tier.—

“(i) In general.—Notwithstanding subparagraphs (A) and (B), for a third tier act or omission, the amount of penalty for each such act or omission shall not exceed the greater of—

“(I) $1,000,000 for a natural person or $10,000,000 for any other person;
“(II) 3 times the gross amount of pecuniary gain to the person who committed the act or omission; or

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

“(ii) THIRD TIER ACT OR OMISSION.—

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

“(I) involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement; and

“(II) directly or indirectly—

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

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

“(cc) resulted in substantial pecuniary gain to the person who committed the act or omission.”.
(2) Money penalties in civil actions.—

Section 20(d)(2) of the Securities Act of 1933 (15 U.S.C. 77t(d)(2)) is amended—

(A) in subparagraph (A)—

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

(ii) by striking “$50,000” and inserting “$100,000”;

(B) in subparagraph (B)—

(i) by striking “$50,000” and inserting “$100,000”; and

(ii) by striking “$250,000” and inserting “$500,000”; and

(C) by striking subparagraph (C) and inserting the following:

“(C) Third tier.—

“(i) In general.—Notwithstanding subparagraphs (A) and (B), for a third tier violation, the amount of penalty for each violation shall not exceed the greater of—

“(I) $1,000,000 for a natural person or $10,000,000 for any other person;
“(II) 3 times the gross amount of pecuniary gain to the person who committed the violation; or

“(III) the amount of losses incurred by victims as a result of the violation.

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

“(I) involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement; and

“(II) directly or indirectly—

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

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

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

(b) SECURITIES EXCHANGE ACT OF 1934.—

(A) in clause (i)—

(i) by striking "$5,000" and inserting "$10,000"; and

(ii) by striking "$50,000" and inserting "$100,000";

(B) in clause (ii)—

(i) by striking "$50,000" and inserting "$100,000"; and

(ii) by striking "$250,000" and inserting "$500,000"; and

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

"(iii) Third Tier.—

"(I) In General.—Notwithstanding clauses (i) and (ii), for a third tier violation, the amount of penalty for each such violation shall not exceed the greater of—

"(aa) $1,000,000 for a natural person or $10,000,000 for any other person;
“(bb) 3 times the gross amount of pecuniary gain to the person who committed the violation; or

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

“(II) THIRD TIER VIOLATION.—

For the purposes of this clause, the term ‘third tier violation’ means a violation described in subparagraph (A) that—

“(aa) involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement; and

“(bb) directly or indirectly—

“(AA) resulted in substantial losses to other persons;

“(BB) created a significant risk of substantial losses to other persons; or

“(CC) resulted in substantial pecuniary gain to
the person who committed
the violation.”.

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

(A) in paragraph (1)—

(i) by striking “$5,000” and inserting

“$10,000”; and

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

(B) in paragraph (2)—

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

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

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

“(3) THIRD TIER.—

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

“(i) $1,000,000 for a natural person

or $10,000,000 for any other person;
“(ii) 3 times the gross amount of pecuniary gain to the person who committed the act or omission; or

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

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

“(i) involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement; and

“(ii) directly or indirectly—

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

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

“(III) resulted in substantial pecuniary gain to the person who committed the act or omission.”.

(c) INVESTMENT COMPANY ACT OF 1940.—

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

(A) in subparagraph (A)—
(i) by striking "$5,000" and inserting "$10,000"; and
(ii) by striking "$50,000" and inserting "$100,000";
(B) in subparagraph (B)—
(i) by striking "$50,000" and inserting "$100,000"; and
(ii) by striking "$250,000" and inserting "$500,000"; and
(C) by striking subparagraph (C) and inserting the following:
"(C) THIRD TIER.—
"(i) IN GENERAL.—Notwithstanding subparagraphs (A) and (B), for a third
tier act or omission, the amount of penalty for each such act or omission shall not ex-
ceed the greater of—
"(I) $1,000,000 for a natural
person or $10,000,000 for any other
person;
"(II) 3 times the gross amount of
pecuniary gain to the person who
committed the act or omission; or
“(III) the amount of losses incurred by victims as a result of the act or omission.

“(ii) THIRD TIER ACT OR OMISSION.—

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

“(I) involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement; and

“(II) directly or indirectly—

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

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

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

(2) MONEY PENALTIES IN CIVIL ACTIONS.—

Section 42(e)(2) of the Investment Company Act of 1940 (15 U.S.C. 80a–41(e)(2)) is amended—

(A) in subparagraph (A)—
(i) by striking "$5,000" and inserting "$10,000"; and

(ii) by striking "$50,000" and inserting "$100,000";

(B) in subparagraph (B)—

(i) by striking "$50,000" and inserting "$100,000"; and

(ii) by striking "$250,000" and inserting "$500,000"; and

(C) by striking subparagraph (C) and inserting the following:

"(C) THIRD TIER.—

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

"(I) $1,000,000 for a natural person or $10,000,000 for any other person;

"(II) 3 times the gross amount of pecuniary gain to the person who committed the violation; or
“(III) the amount of losses incurred by victims as a result of the violation.

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

“(I) involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement; and

“(II) directly or indirectly—

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

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

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

(d) INVESTMENT ADVISERS ACT OF 1940.—

(1) MONEY PENALTIES IN ADMINISTRATIVE ACTIONS.—Section 203(i)(2) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–3(i)(2)) is amended—
(A) in subparagraph (A)—

   (i) by striking “$5,000” and inserting “$10,000”; and
   
   (ii) by striking “$50,000” and inserting “$100,000”;

(B) in subparagraph (B)—

   (i) by striking “$50,000” and inserting “$100,000”; and
   
   (ii) by striking “$250,000” and inserting “$500,000”; and

(C) by striking subparagraph (C) and inserting the following:

   “(C) THIRD TIER.—

   “(i) IN GENERAL.—Notwithstanding subparagraphs (A) and (B), for a third tier act or omission, the amount of penalty for each such act or omission shall not exceed the greater of—

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

   “(II) 3 times the gross amount of pecuniary gain to the person who committed the act or omission; or
“(III) the amount of losses incurred by victims as a result of the act or omission.

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

“(I) involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement; and

“(II) directly or indirectly—

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

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

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

(2) MONEY PENALTIES IN CIVIL ACTIONS.—

Section 209(e)(2) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–9(e)(2)) is amended—

(A) in subparagraph (A)—
(i) by striking “$5,000” and inserting “$10,000”; and
(ii) by striking “$50,000” and inserting “$100,000”;
(B) in subparagraph (B)—
(i) by striking “$50,000” and inserting “$100,000”; and
(ii) by striking “$250,000” and inserting “$500,000”; and
(C) by striking subparagraph (C) and inserting the following:
“(C) THIRD TIER.—
“(i) IN GENERAL.—Notwithstanding subparagraphs (A) and (B), for a third tier violation, the amount of penalty for each such violation shall not exceed the greater of—
“(I) $1,000,000 for a natural person or $10,000,000 for any other person;
“(II) 3 times the gross amount of pecuniary gain to the person who committed the violation; or
“(III) the amount of losses incurred by victims as a result of the violation.

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

“(I) involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement; and

“(II) directly or indirectly—

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

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

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

SEC. 3. PENALTIES FOR RECIDIVISTS.

(a) Securities Act of 1933.—

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

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

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

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

(b) SECURITIES EXCHANGE ACT OF 1934.—

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

“(iv) FOURTH TIER.—Notwithstanding clauses (i), (ii), and (iii), the maximum amount of penalty for each such violation shall be 3 times the otherwise applicable amount in such clauses if, within the 5-year period preceding such violation, the defendant was criminally convicted for securities fraud or became subject to a judgment or order imposing monetary, equitable, or administrative relief in any Commission action alleging fraud by that defendant.”.

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

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

(c) INVESTMENT COMPANY ACT OF 1940.—

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

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

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

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

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

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

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

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

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

SEC. 4. VIOLATIONS OF INJUNCTIONS AND BARS.

(a) SECURITIES ACT OF 1933.—Section 20(d) of the Securities Act of 1933 (15 U.S.C. 77t(d)) is amended—
(1) in paragraph (1), by inserting after “the rules or regulations thereunder,” the following: “a Federal court injunction or a bar obtained or entered by the Commission under this title,”; and

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

“(4) SPECIAL PROVISIONS RELATING TO A VIOLATION OF AN INJUNCTION OR CERTAIN ORDERS.—

“(A) IN GENERAL.—Each separate violation of an injunction or order described in subparagraph (B) shall be a separate offense, except that in the case of a violation through a continuing failure to comply with such injunction or order, each day of the failure to comply with the injunction or order shall be deemed a separate offense.

“(B) INJUNCTIONS AND ORDERS.—Subparagraph (A) shall apply with respect to any action to enforce—

“(i) a Federal court injunction obtained pursuant to this title;

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

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


(1) in subparagraph (A), by inserting after “the rules or regulations thereunder,” the following: “a Federal court injunction or a bar obtained or entered by the Commission under this title,”; and

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

“(D) SPECIAL PROVISIONS RELATING TO A VIOLATION OF AN INJUNCTION OR CERTAIN ORDERS.—

“(i) IN GENERAL.—Each separate violation of an injunction or order described in clause (ii) shall be a separate offense, except that in the case of a violation through a continuing failure to comply with such injunction or order, each day of the failure to comply with the injunction or order shall be deemed a separate offense.
“(ii) INJUNCTIONS AND ORDERS.—Clause
(i) shall apply with respect to an action to enforce—

“(I) a Federal court injunction obtained pursuant to this title;

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

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

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

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

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

“(4) SPECIAL PROVISIONS RELATING TO A VIOLATION OF AN INJUNCTION OR CERTAIN ORDERS.—
“(A) IN GENERAL.—Each separate violation of an injunction or order described in sub-
paragraph (B) shall be a separate offense, ex-
cept that in the case of a violation through a
continuing failure to comply with such injunc-
tion or order, each day of the failure to comply
with the injunction or order shall be deemed a
separate offense.

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

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

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

“(iii) a cease-and-desist order entered
by the Commission pursuant to section
9(f).”.

(d) INVESTMENT ADVISERS ACT OF 1940.—Section
209(e) of the Investment Advisers Act of 1940 (15 U.S.C.
80b–9(e)) is amended—
(1) in paragraph (1), by inserting after “the rules or regulations thereunder,” the following: “a Federal court injunction or a bar obtained or entered by the Commission under this title,”; and

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

“(4) Special provisions relating to a violation of an injunction or certain orders.—

“(A) In general.—Each separate violation of an injunction or order described in subparagraph (B) shall be a separate offense, except that in the case of a violation through a continuing failure to comply with such injunction or order, each day of the failure to comply with the injunction or order shall be deemed a separate offense.

“(B) Injunctions and orders.—Subparagraph (A) shall apply with respect to any action to enforce—

“(i) a Federal court injunction obtained pursuant to this title;

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

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