

**The Securities Act of 2008**  
**Section-by-Section of Committee Print**

**Section 1-Short title; table of contents**

This section establishes the short title of the bill as the “Securities Act of 2008” and provides for a table of contents.

**Section 2-Authority to impose civil penalties in cease and desist proceedings**

This section would streamline the Securities and Exchange Commission’s (SEC) existing enforcement authorities by permitting the SEC to seek civil money penalties in cease-and-desist proceedings. The section would ensure appropriate due process protections by making the SEC’s authority in administrative penalty proceedings coextensive with its authority to seek penalties in federal court. As is the case when a federal district court imposes a civil penalty in a Commission action, administrative civil money penalties would be subject to review by a federal court of appeals.

**Section 3-Formerly associated persons**

This section would make it explicit that the SEC has the authority to discipline persons formerly associated with a regulated or supervised entity for misconduct that occurred during that association. The regulated or supervised entities covered by the section include (1) the Municipal Securities Rulemaking Board, (2) a government securities broker or dealer, (3) a national securities exchange or registered securities association, (4) a participant of a registered clearing agency, (5) an officer or director of a self-regulatory organization, or (6) an officer or director of an investment company. These amendments would not alter or expand the SEC’s existing authority, but would expressly confirm the SEC’s implicit authority.

**Section 4-Scope of exemption from state securities regulation**

The section would amend the Securities Act of 1933 to allow national securities exchanges to establish additional tiers of listing standards, and to subject certain securities designated by the exchanges for listing on those lower tiers to state law, all contingent upon SEC approval. These amendments were passed by the House as H.R. 2868.

**Section 5-Covered securities**

This section corrects a statutory drafting omission by including warrants and options listed on a national securities exchange within the definition of “covered securities” under the Securities Act of 1933, thereby exempting these products from state “blue-sky” securities registration requirements.

**Section 6-Collateral bars**

This section expressly would authorize the SEC to bar regulated persons who violate the federal securities laws in one part of the industry from entering other segments of the securities industry. The ability to issue collateral bars would apply only to persons subject to SEC regulation, *e.g.*, persons associated with, or seeking to become associated with, broker-dealers, investment advisers, transfer agents, and municipal securities dealers. Moreover, collateral bars would be authorized only when determined to be in

the public interest for the protection of investors, and only on bases the Commission is already authorized to bar violators from entering segments of the securities industry, such as convictions, injunctions and federal securities law violations.

### **Section 7-Unlawful margin lending**

The Capital Markets Efficiency Act of 1996 amended Section 7(c) of the Securities Exchange Act of 1934, in part, by replacing the period that concluded the predecessor provision of Subsection 7(c)(1)(A) with a semicolon and an “and”. This section would clarify that a violation of either prong remains sufficient to establish a cause of action for improper margin lending. This technical amendment would match the statutory language to existing policy interpretations that provide that the two clauses represent independent requirements.

### **Section 8-SIPA amendments**

This section amends the Securities Investor Protection Act of 1970 (SIPA), the law that governs the activities of the Securities Investor Protection Corporation (SIPC). SIPC provides insurance to securities customers to protect them from losses caused by the insolvency of a broker-dealer. Under SIPA, claims of securities customers take priority over claims of general creditors. SIPC insurance, however, does not extend to futures positions, other than securities futures.

This section is a targeted amendment to SIPA that would extend SIPC insurance to futures positions held in a customer portfolio margining account under a program approved by the SEC. This amendment addresses the possibility that current law would treat a portfolio margining customer as a general creditor with respect to the proceeds from such customer’s futures positions, while the same portfolio margining customer would have priority for their securities holdings in the case of insolvency of their broker-dealer. This uneven treatment, along with the Commodity Exchange Act (CEA) requirement that futures be held in a segregated account, prevents customers from including related futures products in their portfolio margining securities accounts. These obstacles preclude those customers from taking full advantage of the efficiencies created from hedging related positions in a single account.

This section would be fully operative when the Commodity Futures Trading Commission (CFTC) provides exemptive relief from the CEA’s requirements regarding segregation of customer funds. This section does not amend the CEA nor does it limit the CFTC’s discretion in granting exemptive relief.

### **Section 9-Annual testimony on reducing complexity in financial reporting**

This section would require the SEC, the Financial Accounting Standards Board, and the Public Company Accounting Oversight Board to provide oral testimony by their respective chairpersons (or a designee), beginning in 2009, and annually for five years, to the House Committee on Financial Services on their efforts to reduce the complexity in financial reporting to provide more accurate and clearer financial information to investors. The provision is substantially similar to H.R. 755, the Promoting Transparency in Financial Reporting Act, which passed the House in February 2007.

### **Section 10-Equal treatment for self-regulatory organization rules**

Section 29(a) of the Securities Exchange Act of 1934 voids any condition, stipulation, or provision binding any person to waive compliance with any provision of the Exchange Act, any rule or regulation thereunder, or any rule of an exchange. This section would extend this safeguard to the rules of other self-regulatory organizations – specifically registered securities associations (e.g., FINRA) and registered clearing agencies (e.g., NSCC and DTC). This change is consistent with provisions of the Securities Exchange Act of 1934 that encourage allocation of self-regulatory responsibilities among self-regulatory organizations to avoid overlapping and duplicative regulation and its attendant costs. The change is particularly important now that FINRA has taken over the regulation of NYSE members' conduct in relation to customers.

### **Section 11-Lost and stolen securities**

The section would expand the scope of securities that must be reported to the Commission or its designee under the Lost and Stolen Securities Program, to include cancelled, missing or counterfeit securities certificates.

### **Section 12-Fingerprinting**

This section would require fingerprinting for the personnel of registered securities information processors, national securities exchanges, and national securities associations. This change would bring these entities in line with the entities already listed in the statute, and would aid in ensuring that these entities are aware of whether their personnel have criminal backgrounds.

### **Section 13-Clarification that section 205 of the Investment Advisers Act of 1940 does not apply to state-registered advisers**

As part of the National Securities Markets Improvements Act of 1996, the Congress determined that the SEC should regulate larger investment advisers while states should oversee smaller investment advisers. This section seeks to eliminate any remaining application of federal law to investment adviser firms that the states now solely regulate.

### **Section 14-Amendments to section 31 of the Securities Exchange Act of 1934**

This section would ease the SEC's collection of securities transaction fees from the national securities exchanges and the NASD under Section 31 of the Securities Exchange Act of 1934. Section 31 fees are designed to offset costs to the government related to the supervision and regulation of the securities markets and securities professionals. These technical amendments would: (1) require the exchanges and the NASD to make their final payment of Section 31 fees for a fiscal year by September 25<sup>th</sup>, instead of September 30<sup>th</sup>; and (2) move the date on which the SEC announces the annual Section 31 fee rate from April 30<sup>th</sup> to August 31<sup>st</sup>.

### **Section 15-Protecting confidentiality of materials submitted to the Commission**

This section would amend the Securities Exchange Act of 1934, the Investment Company Act of 1940 and the Investment Advisers Act of 1940 to protect the confidentiality of other sensitive business records and information obtained by SEC staff during the supervisory process. It also would protect the confidentiality of

sensitive business records and information that the staff obtains during examinations of investment companies and investment advisers.

**Section 16-Sharing privileged information with other authorities**

This section would allow the SEC to share information with foreign regulators and law enforcement agencies engaged in the investigation and prosecution of violations of applicable securities laws without waiving any privileges the SEC may have with respect to such information. The language is modeled on a provision in the Federal Deposit Insurance Act that enables the federal bank regulatory agencies to share information with other regulators without waiving their privileges with respect to such information.

**Section 17-Technical corrections**

Pursuant to the recommendations of the SEC, this section makes numerous technical corrections to (1) the Securities Act of 1933; (2) the Securities Exchange Act of 1934; (3) the Trust Indenture Act of 1939; (4) the Investment Company Act of 1940; and (5) the Investment Advisers Act of 1940. These amendments were passed by the House as a part of H.R. 3505, the Securities Law Technical Corrections Act of 2007.

**Section 18-Conforming amendments for the repeal of the Public Utility Holding Company Act of 1935**

This section amends the following statutes to make conforming amendments resulting from the 2005 repeal of the Public Utility Holding Company Act of 1935: (1) the Securities Exchange Act of 1934; (2) the Trust Indenture Act of 1939; (3) the Investment Company Act of 1940; and (4) the Investment Advisers Act of 1940. These amendments were passed by the House as a part of H.R. 3505, the Securities Law Technical Corrections Act of 2007.

**Section 19-Nationwide service of subpoenas**

This section would enhance the SEC's enforcement program by providing the SEC with the ability to make nationwide service of process available in civil actions filed in federal courts. The SEC currently has nationwide service of process in administrative proceedings.