

Public Law 101-550  
101st Congress

An Act

To amend the Federal securities laws in order to facilitate cooperation between the United States and foreign countries in securities law enforcement.

Nov. 15, 1990  
[H.R. 1396]

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

Securities Acts  
Amendments of  
1990.  
15 USC 78a note.

**SECTION 1. SHORT TITLE.**

This Act may be cited as the “Securities Acts Amendments of 1990”.

**TITLE I—AUTHORIZATION**

Securities and  
Exchange  
Commission  
Authorization  
Act of 1990.

**SEC. 101. SHORT TITLE.**

This title may be cited as the “Securities and Exchange Commission Authorization Act of 1990”.

**SEC. 102. AUTHORIZATION OF APPROPRIATIONS.**

Section 35 of the Securities Exchange Act of 1934 (15 U.S.C. 78kk) is amended to read as follows:

“AUTHORIZATION OF APPROPRIATIONS

“SEC. 35. There are authorized to be appropriated to carry out the functions, powers, and duties of the Commission—

- “(1) \$178,023,000 for the fiscal year ending September 30, 1990; and
- “(2) \$212,609,000 for the fiscal year ending September 30, 1991.”

**SEC. 103. LEASING AUTHORITY OF SECURITIES AND EXCHANGE COMMISSION.**

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

(1) by striking “(b)” and inserting the following:

“(b) APPOINTMENT AND COMPENSATION OF STAFF AND LEASING AUTHORITY.—

“(1) APPOINTMENT AND COMPENSATION. —”; and

(2) by adding the end the following new paragraph:

“(2) LEASING AUTHORITY.—Notwithstanding any other provision of law, the Commission is authorized to enter directly into leases for real property for office, meeting, storage, and such other space as is necessary to carry out its functions, and shall be exempt from any General Services Administration space management regulations or directives.”

Real property  
acquisition.

**SEC. 104. CONFORMING AMENDMENTS.**

(a) THE PUBLIC UTILITY HOLDING COMPANY ACT OF 1935.—Section 31 of the Public Utility Holding Company Act of 1935 (15 U.S.C. 79z-5) is amended to read as follows:

## “HIRING AND LEASING AUTHORITY OF THE COMMISSION

“SEC. 31. The provisions of section 4(b) of the Securities Exchange Act of 1934 shall be applicable with respect to the power of the Commission—

“(1) to appoint and fix the compensation of such employees as may be necessary for carrying out its functions under this title, and

“(2) to lease and allocate such real property as may be necessary for carrying out its functions under this title.”.

(b) THE TRUST INDENTURE ACT OF 1939.—Section 321(d) of the Trust Indenture Act of 1939 (15 U.S.C. 77uuu(d)) is amended to read as follows:

“(d) The provisions section 4(b) of the Securities Exchange Act of 1934 shall be applicable with respect to the power of the Commission—

“(1) to appoint and fix the compensation of such employees as may be necessary for carrying out its functions under this title, and

“(2) to lease and allocate such real property as may be necessary for carrying out its functions under this title.”.

(c) THE INVESTMENT COMPANY ACT OF 1940.—Section 46(b) of the Investment Company Act of 1940 (15 U.S.C. 80a-45(b)) is amended to read as follows:

“(b) The provisions of section 4(b) of the Securities Exchange Act of 1934 shall be applicable with respect to the power of the Commission—

“(1) to appoint and fix the compensation of such employees as may be necessary for carrying out its functions under this title, and

“(2) to lease and allocate such real property as may be necessary for carrying out its functions under this title.”.

(d) THE INVESTMENT ADVISERS ACT OF 1940.—Section 218 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-18) is amended to read as follows:

## “HIRING AND LEASING AUTHORITY OF THE COMMISSION

“SEC. 218. The provisions of section 4(b) of the Securities Exchange Act of 1934 shall be applicable with respect to the power of the Commission—

“(1) to appoint and fix the compensation of such other employees as may be necessary for carrying out its functions under this title, and

“(2) to lease and allocate such real property as may be necessary for carrying out its functions under this title.”.

International Securities  
Enforcement Cooperation  
Act of 1990.

## TITLE II—INTERNATIONAL SECURITIES LAW ENFORCEMENT

15 USC 78a note.

### SEC. 201. SHORT TITLE.

This title may be cited as the “International Securities Enforcement Cooperation Act of 1990”.

**SEC. 202. RELEASE OF RECORDS BY THE COMMISSION.**

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

(1) in subsection (b), by striking “Nothing in this subsection shall authorize the Commission to withhold information from the Congress.”; and

(2) by adding at the end thereof the following new subsections:

“(c) CONFIDENTIAL DISCLOSURES.—The Commission may, in its discretion and upon a showing that such information is needed, provide all ‘records’ (as defined in subsection (a)) and other information in its possession to such persons, both domestic and foreign, as the Commission by rule deems appropriate if the person receiving such records or information provides such assurances of confidentiality as the Commission deems appropriate.

“(d) RECORDS OBTAINED FROM FOREIGN SECURITIES AUTHORITIES.— Except as provided in subsection (e), the Commission shall not be compelled to disclose records obtained from a foreign securities authority if (1) the foreign securities authority has in good faith determined and represented to the Commission that public disclosure of such records would violate the laws applicable to that foreign securities authority, and (2) the Commission obtains such records pursuant to (A) such procedure as the Commission may authorize for use in connection with the administration or enforcement of the securities laws, or (B) a memorandum of understanding. For purposes of section 552 of title 5, United States Code, this subsection shall be considered a statute described in subsection (b)(3)(B) of such section 552.

“(e) SAVINGS PROVISIONS.—Nothing in this section shall—

“(1) alter the Commission’s responsibilities under the Right to Financial Privacy Act (12 U.S.C. 3401 et seq.), as limited by section 21(h) of this Act, with respect to transfers of records covered by such statutes, or

“(2) authorize the Commission to withhold information from the Congress or prevent the Commission from complying with an order of a court of the United States in an action commenced by the United States or the Commission.”.

(b) CONFORMING AMENDMENTS.—

(1) INVESTMENT COMPANY ACT OF 1940.—Section 45(a) of the Investment Company Act of 1940 (15 U.S.C. 80a-44) is amended by striking “It shall be unlawful” and inserting “Except as provided in section 24(c) of the Securities Exchange Act of 1934, it shall be unlawful”.

(2) INVESTMENT ADVISERS ACT OF 1940.—Section 210(b) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-10(b)) is amended by striking “subsections (c) and (e) of section 209” and inserting “subsections (c) and (d) of section 209 of this title and section 24(c) of the Securities Exchange Act of 1934”.

**SEC. 203. SANCTIONS AGAINST BROKER OR DEALER, ASSOCIATED PERSONS, OR PERSONS SEEKING ASSOCIATION.**

(a) AUTHORITY OF THE COMMISSION TO SANCTION BROKERS AND DEALERS FOR FOREIGN VIOLATIONS.—Section 15(b) (15 U.S.C. 78o(b)) of the Securities Exchange Act of 1934 is amended—

(1) in paragraph (4)(B), by inserting after “misdemeanor” the following: “or of a substantially equivalent crime by a foreign court of competent jurisdiction”;

“(C) aided, abetted, counseled, commanded, induced or procured the violation by any other person of any foreign statute or regulation regarding transactions in securities or contracts of sale of a commodity for future delivery traded on or subject to the rules of a contract market or any board of trade;

“(5) within 10 years has been convicted by a foreign court of competent jurisdiction of a crime, however denominated by the laws of the relevant foreign government, that is substantially equivalent to an offense set forth in paragraph (1) of subsection (a); or

“(6) by reason of any misconduct, is temporarily or permanently enjoined by any foreign court of competent jurisdiction from acting in any of the capacities set forth in paragraph (2) of subsection (a), or a substantially equivalent foreign capacity, or from engaging in or continuing any conduct or practice in connection with any such activity or in connection with the purchase or sale of any security.”.

(b) INVESTMENT ADVISERS ACT OF 1940.—Section 203(e) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-3(e)) is amended—

(1) in paragraph (2) by inserting after “misdemeanor” the following: “or of a substantially equivalent crime by a foreign court of competent jurisdiction”;

(2) in paragraph (2)(A), by inserting after “burglary,” the following: “any substantially equivalent activity however denominated by the laws of the relevant foreign government.”;

(3) in paragraphs (2)(B) and (3)—

(A) by inserting after “transfer agent,” the following: “foreign person performing a function substantially equivalent to any of the above.”; and

(B) after “Commodity Exchange Act” each place it appears, the following: “or any substantially equivalent statute or regulation”;

(4) in paragraph (2)(C), by inserting after “securities” the following: “or substantially equivalent activity however denominated by the laws of the relevant foreign government”;

(5) in paragraph (2)(D) by inserting after “United States Code” the following: “, or a violation of substantially equivalent foreign statute”;

(6) in paragraph (3)—

(A) by inserting after “court of competent jurisdiction,” the following: “, including any foreign court of competent jurisdiction.”; and

(B) by inserting after “insurance company,” the following: “foreign entity substantially equivalent to any of the above.”;

(7) in paragraph (5), by inserting after “this title,” the following: “the Commodity Exchange Act.”; and

(8) by inserting after paragraph (6) the following new paragraph:

“(7) has been found by a foreign financial regulatory authority to have—

“(A) made or caused to be made in any application for registration or report required to be filed with a foreign securities authority, or in any proceeding before a foreign securities authority with respect to registration, any statement that was at the time and in light of the circumstances

under which it was made false or misleading with respect to any material fact, or has omitted to state in any application or report to a foreign securities authority any material fact that is required to be stated therein;

“(B) violated any foreign statute or regulation regarding transactions in securities or contracts of sale of a commodity for future delivery traded on or subject to the rules of a contract market or any board of trade;

“(C) aided, abetted, counseled, commanded, inducted, or procured the violation by any other person of any foreign statute or regulation regarding transactions in securities or contracts of sale of a commodity for future delivery traded on or subject to the rules of a contract market or any board of trade, or has been found, by the foreign financial regulatory authority, to have failed reasonably to supervise, with a view to preventing violations of statutory provisions, and rules and regulations promulgated thereunder, another person who commits such a violation, if such other person is subject to his supervision.”.

(c) CONFORMING AMENDMENT.—Section 203(f) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-3(f)) is amended by striking “paragraph (1), (4), or (5)” and inserting “paragraph (1), (4), (5), or (7)”.

**SEC. 206. DEFINITION OF FOREIGN SECURITIES AUTHORITY AND FOREIGN FINANCIAL REGULATORY AUTHORITY.**

(a) INVESTMENT COMPANY ACT OF 1940.—Section 2(a) of the Investment Company Act of 1940 (15 U.S.C. 80a-2(a)) is amended by inserting after paragraph (48) the following:

“(49) ‘Foreign securities authority’ means any foreign government or any governmental body or regulatory organization empowered by a foreign government to administer or enforce its laws as they relate to securities matters.

“(50) ‘Foreign financial regulatory authority’ means any (A) foreign securities authority, (B) other governmental body or foreign equivalent of a self-regulatory organization empowered by a foreign government to administer or enforce its laws relating to the regulation of fiduciaries, trusts, commercial lending, insurance, trading in contracts of sale of a commodity for future delivery, or other instruments traded on or subject to the rules of a contract market, board of trade or foreign equivalent, or other financial activities, or (C) membership organization a function of which is to regulate the participation of its members in activities listed above.”.

(b) INVESTMENT ADVISERS ACT OF 1940.—Section 202(a) of the Investment Advisers Act of 1940 (15 U.S.C. 80B-2(a)) is amended by inserting after paragraph (22) the following:

“(23) ‘Foreign securities authority’ means any foreign government, or any governmental body or regulatory organization empowered by a foreign government to administer or enforce its laws as they relate to securities matters.

“(24) ‘Foreign financial regulatory authority’ means any (A) foreign securities authority, (B) other governmental body or foreign equivalent of a self-regulatory organization empowered by a foreign government to administer or enforce its laws relating to the regulation of fiduciaries, trusts, commercial lending, insurance, trading in contracts of sale of a commodity

for future delivery, or other instruments traded on or subject to the rules of a contract market, board of trade or foreign equivalent, or other financial activities, or (C) membership organization a function of which is to regulate the participation of its members in activities listed above.”.

**SEC. 207. REIMBURSEMENT OF EXPENSES INCURRED IN PROVIDING ASSISTANCE TO A FOREIGN SECURITIES AUTHORITY.**

Section 4 of the Securities Exchange Act of 1934 (15 U.S.C. 78d) is amended by adding at the end thereof the following new subsection:

“(f) REIMBURSEMENT OF EXPENSES FOR ASSISTING FOREIGN SECURITIES AUTHORITIES.—Notwithstanding any other provision of law, the Commission may accept payment and reimbursement, in cash or in kind, from a foreign securities authority, or made on behalf of such authority, for necessary expenses incurred by the Commission, its members, and employees in carrying out any investigation pursuant to section 21(a)(2) of this title or in providing any other assistance to a foreign securities authority. Any payment or reimbursement accepted shall be considered a reimbursement to the appropriated funds of the Commission.”.

### TITLE III—SHAREHOLDER COMMUNICATIONS

Shareholder  
Communications  
Improvement Act of

1990.

15 USC 78a note.

**SEC. 301. SHORT TITLE.**

This title may be cited as the “Shareholder Communications Improvement Act of 1990”.

**SEC. 302. AMENDMENTS TO 1934 ACT.**

(a) SECTION 14(b).—Section 14(b)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78n(b)(1)) is amended by—

(1) striking “section 12 of this title” and inserting “section 12 of this title, or any security issued by an investment company registered under the Investment Company Act of 1940,”; and

(2) striking “or authorization” and inserting “authorization, or information statement”.

(b) SECTION 14(c).—Section 14(c) of the Securities Exchange Act of 1934 (15 U.S.C. 78n(c)) is amended by striking “title” and inserting “title, or a security issued by an investment company registered under the Investment Company Act of 1940,”.

**SEC. 303. EFFECTIVE DATE.**

15 USC 78n note.

The amendments made by section 302 of this title shall take effect upon the expiration of 180 days after the date of enactment of this Act.

### TITLE IV—TRUST INDENTURE ACT OF 1939

Trust Indenture  
Reform Act of 1990.

**SEC. 401. SHORT TITLE.**

15 USC 77aaa note.

This title may be cited as the “Trust Indenture Reform Act of 1990”.

THE SECURITIES ACTS AMENDMENTS OF 1989

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OCTOBER 2 (legislative day, SEPTEMBER 18), 1989. – Ordered to be printed

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Mr. RIEGLE, from the Committee on Banking, Housing, and Urban Affairs, submitted the following

R E P O R T

[To accompany S. 1712]

INTRODUCTION

On September 20, 1989, the Senate Committee on Banking, Housing, and Urban Affairs marked up and ordered to be reported a bill, the Securities Acts Amendments of 1989, to authorize appropriations for fiscal years 1990 and 1991, and for certain other purposes.

The Securities Acts Amendments of 1989 includes, in addition to provisions authorizing appropriations for the Securities and Exchange Commission (“SEC” or “Commission”) and authorizing the commission to determine compensation for its employees, revised or versions of S. 646, “The International Securities Enforcement Cooperation Act of 1989”; S. 649, “The Shareholder Communications Improvement Act of 1989”; and S. 651, “The Trust Indenture Reform Act of 1989”. The Committee voted to adopt the bill by a voice vote, without opposition, and to report the bill to the Senate.

PURPOSE AND SUMMARY

The Securities Acts Amendments of 1989 has four major purposes. First, the legislation seeks to address the Commission’s funding and personnel needs by authorizing appropriations for fiscal years 1990 and 1991 in the amounts of \$178,023,000 and \$212,609,000, respectively, and providing the Commission authority to determine the compensation of its employees. Second, the legislation seeks to address the problem of international securities fraud by giving the Commission additional authority to improve coordination of international enforcement efforts. Third, the legisla-

ly 500 securities firms in 1989, less than 4 percent of all firms. The SROs, therefore, are an essential first line of defense in policing securities firms.

In its 1990 Budget Estimate, the SEC has requested funds sufficient to add 36 staff positions to this important program area. The Committee believes additional staff in this amount is needed to protect the integrity of the capital markets.

*Investment companies and investment advisers, and public utility holding company regulation*

The Commission also regulates and examines all investment companies and investment advisers. These include small financial planners working with unsophisticated customers, to firms managing billions of dollars in mutual fund and pension fund assets.

Since 1980, the number of investment companies has grown 146 percent and assets of these companies increased 411 percent, to \$1.2 trillion. Shares of mutual funds are now owned by approximately 30 million individuals, or 25 percent of the households in the United States. The number of investment advisers, some of which are financial planners, has more than tripled since 1980, and assets under management increased over 1,000 percent, now totaling \$5.3 trillion—greater than the combined deposits of banks and savings and loans, and amounting to 20-25 percent of all financial assets owned by Americans. Increasing numbers of funds are operating offshore, further complicating regulatory and supervisory problems for the SEC.

During this phenomenal period of growth, SEC staff assigned to this area has increased only 13 percent. The SEC's 1990 budgeted estimate states that this program area is "now critically understaffed." The SEC inspects investment advisers on average once every 12 years and inspects assets under management about once every 20 years. As a result, according to the SEC, "the program is already at a point where inspections may have lost much of their deterrent effect." Investment companies are being inspected approximately once every five years.

Given the complexity of the investment environment, the number of investment companies and investment advisers is expected to continue to grow, as individuals increasingly turn to professionals for advice. Thus, in recent years, Congress has explored with the SEC and various industry groups the feasibility of establishing industry self-regulatory organizations in this area, or using existing SROs such as the NASD, to inspect investment advisers. The Commission recently submitted a legislative proposal entitled "The Investment Adviser Self-Regulation Act," which was introduced as S. 1410. Should the measure be adopted, staffing needs in this area will not diminish, since additional staff resources will be required to direct the implementation of the legislation and the initial rulemaking under the law. Moreover, as debate over this measure continues into the next session, the SEC continues to experience pressing staffing needs in this area.

The SEC also regulates certain public utility holding companies, under the Public Utility Holding Company Act. Interstate holding companies are required to register with the SEC if they have subsidiaries engaged in generating, transmitting, or distributing elec-



thority represents to the Commission that it has made a good faith determination that the disclosure of the documents would violate the confidentiality requirements of its country's laws. Section 202 also would make explicit the Commission's rulemaking authority to provide documents and other information to foreign authorities as well as to domestic authorities. Clarification of this authority will assist in the Commission's efforts to cooperate with both foreign and domestic securities and law enforcement officials.

Sections 203 through 206 would amend the Exchange Act, the Investment Advisers Act of 1940, and the Investment Company Act of 1940 to permit the Commission, after an opportunity for a hearing, to exercise discretionary authority to utilize the findings of a foreign court or foreign securities authority in order to censure, revoke the registration of, or impose employment restrictions upon securities professionals registered to do business in the United States. The Commission already has such authority with respect to illegal or improper activity in the United States under these acts. Certain provisions of the federal securities laws also have been used to support the imposition of limitations on activities of securities professionals based upon the findings of a foreign court as to illegal activity abroad.

In view of the rapid internationalization of the markets and the Commission's new authority to investigate on behalf of foreign securities authorities under Section 21(a)(2) of the Exchange Act,<sup>2</sup> the Committee believes it would be appropriate to make explicit, and to add to, the Commission's existing authority the discretionary ability to utilize the findings of a foreign court or securities authority to sanction securities professionals in the United States. It would be ironic and inconsistent with the Commission's mandate to protect investors if the Commission were to provide assistance leading to a finding that a securities professional had violated foreign securities laws substantially similar to U.S. laws, but could not prevent that securities professional from conducting business in the U.S. securities markets. The provisions of Sections 203 through 206 would protect against such a result.

Section 203(b) of this Title would expand the class of persons subject to "statutory disqualification" pursuant to section 3(a)(39) of the Exchange Act. The amendment would add "any other felony" to the list of crimes that subject a person to the statutory disqualification and the associated review process. It would effectively authorize the Commission or a self-regulatory organization ("SRO") under its jurisdiction to prohibit a person who has been convicted of a felony from becoming a member of the SRO or associating with a member, or to place conditions upon his membership or association. This provision would not necessarily exclude a convicted felon from the securities business, but would permit the Commission and SROs to consider whether a particular felony conviction warrants exclusion or appropriate limitations.

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<sup>2</sup> Section 21(a)(2) of the Exchange Act was originally proposed by the Commission in 1988 in conjunction with three of the proposals that are included in Title II. It was enacted as part of the Insider Trading and Securities Fraud Enforcement Act of 1988. Pub. L. No. 100—704, 102 Stat. 4677.

foreign governmental authorities, self-regulatory organizations, and other specified persons. The Commission also has rules which authorize designated members of the Commission staff to “engage in discussions” concerning the nonpublic materials with the persons specified in Rule 30-4(a)(7). These rules have frequently provided the basis for making otherwise nonpublic material available for prosecutions of securities law violations by other enforcement agencies and SROs.

Notwithstanding the Commission’s long-standing access rules, Section 24(b) of the Exchange Act, 15 U.S.C. 78x(b), enacted in 1975, by its express terms makes it unlawful “for any member, officer, or employee of the Commission to disclose to any person other than a member, officer, or employee of the Commission, or to use for personal benefit, any information contained in any application, statement, report, contract, correspondence, notice, or other document filed with or otherwise obtained by the Commission, (a) in contravention of the rules and regulations of the Commission under [the FOIA], or (2) in circumstances where the Commission has determined pursuant to such rules to accord confidential treatment of information.” Section 24(b) was intended to make all requests for confidential treatment of information subject to the FOIA rules. There is nothing in the legislative history suggesting that Congress intended to restrict the Commission’s authority to provide information to other authorities. In most situations, the Commission receives an access request before the staff makes a determination to accord confidential treatment to the relevant information, so that Section 24(b) is not at issue. Nevertheless, the literal language of Section 24(b) can pose an obstacle to compliance with an access request.

In addition, Section 210(b) of the Investment Advisors Act bars the staff from making public information relating to a Commission investigation if it was obtained pursuant to the Act, unless the Commission expressly authorizes such disclosure (with an exception for public hearings and disclosure to Congress). Section 45(a) of the Investment Company Act imposes a bar on the disclosure of non-public documents obtained by the Commission pursuant to the Act, except insofar as disclosure is made to federal or state government officials.

In order to remove any statutory obstacles, and to make clear the Commission’s authority to grant access to its files to domestic and foreign authorities, the legislation would provide the Commission with explicit authority in this area. The legislation would amend Section 24 of the Exchange Act by adding subsection (c) to grant the Commission rulemaking authority so as to provide the SEC with the flexibility to adjust its regulations governing access requests in the future. In addition, by specifying that the Commission may provide access to foreign persons, the Commission’s authority as to this matter will be made explicit. The provision as to confidentiality of records is intended to ensure that the Commission will not provide records to persons who will make the records public for purposes other than those stated in an access request.

15(b) (4) and (6) and thus permit similar disciplinary action to be taken against municipal securities dealers, government securities brokers and dealers, and transfer agents, as well as associated persons of each. Subsections 203 (e) and (f) of the Investment Advisers Act provide the Commission with disciplinary authority as to investment advisers, similar to that in Section 15(b) (4) and (6) of the Exchange Act.

In addition, Section 9(a) of the Investment Company Act generally prohibits a person convicted of a securities-related crime or subject to a securities-related injunction from serving as an employee, officer, director, member of an advisory board, investment adviser, or depositor of a registered investment company, or principal underwriter for any registered open-end company, unit investment trust, or face-amount certificate company. The automatic statutory disqualification in Section 9(a) is supplemented by the Commission's authority under Section 9(b). Under Section 9(b), the Commission may prohibit a person from serving in any of the capacities cited in section 9(a) or as an affiliated person of a registered investment company's investment adviser, depositor, or principal underwriter if the person willfully has caused a false or misleading statement to be made in any registration statement or report filed with the Commission or if the person has willfully violated or aided and abetted a violation of any provision of the federal securities or commodities laws.

Although the foregoing provisions do not mention the Commission's authority to impose sanctions based on foreign misconduct, certain of the provisions can be so applied. In particular, Sections 15(b)(4)(B) of the Exchange Act, 203(e)(2) of the Investment Advisers Act, and 9(a)(1) of the Investment Company Act refer to a "felony or misdemeanor" conviction for specified crimes; neither the statutes nor their legislative histories specify that the crime or conviction must take place in the United States. Thus, pursuant to Section 15(b)(4)(B), the Commission revoked the U.S. registration of a Canadian broker-dealer who was convicted of crimes in Canada involving the purchases or sale of securities. Likewise, under Sections 14(b)(4)(C) of the Exchange Act and 203(e)(3) of the Investment Advisers Act, the Commission may impose sanctions based upon a securities-related injunction entered by a "court of competent jurisdiction," and under Section 9(a)(2) of the Investment Company Act, such as enjoined person's association with a registered investment company is limited. These statutes are not explicitly limited to injunctions entered by U.S. courts.

As to other provision, however, the Committee believes that such authority needs to be clarified or expanded. First, the Commission's authority to impose sanctions on a professional and to restrict association with a registered investment company for a misstatement in an application for registration or report filed with the Commission does not extend to misstatements made to foreign regulatory authorities. Second, the Commission's authority to impose sanctions on the professional or to restrict association with a registered investment company for willful violation of the U.S. securities and commodities laws does not extend to violations of foreign securities laws. Finally, the Commission's authority to impose sanc-

tions on professionals for aiding and abetting a violation or failing reasonably to supervise a person subject to the professional's control in violation of the U.S. securities laws and to restrict association with a registered investment company of personnel who are found to have aided and abetted such violations does not extend to activities that violate foreign securities and commodities laws. The legislation would provide the Commission with authority to act in each of these circumstances.

In addition, as to the provisions under which, as discussed above, the Commission has authority to impose sanctions, the legislation would make such authority explicit and would preclude certain challenges which might be possible under the existing statutes. In particular, Section 15(b)(4)(B) of the Exchange Act, Section 203(e)(2) of the Investment Advisers Act, and Section 9(a)(1) of the Investment Company Act refer to convictions for a "felony or misdemeanor" as the basis for a Commission sanction. A securities professional who was convicted in a country that does not define crimes as "felonies" or "misdemeanors" might challenge the Commission's authority under these sections. A Commission administrative sanction also could be challenged when the foreign offense for which the securities professional was convicted is not one of the exact offenses specifically covered by the statutory provisions. As discussed below, the proposed legislation would undercut such defenses by providing for Commission sanctions based upon foreign convictions for crimes "substantially equivalent" to those listed in the statute. The legislation also would foreclose the potential argument that the statutory provisions that allow the Commission to impose sanctions on professionals who have been enjoined from acting in specific capacities, such as underwriters or investment advisers, do not apply to persons whose profession is not so defined in a foreign country. The proposed amendments would resolve the potential difficulties posed by differences in employment terms by permitting sanctions based upon an injunction entered against a professional who performs a "substantially equivalent" function to the activities currently listed in the statute.

The Commission's action against a securities professional would not be automatic. The statutory procedure for imposing sanctions for foreign misconduct would be the same as that currently in place for imposing sanctions on domestic misconduct. The Commission would provide the securities professional with notice and an opportunity for a hearing prior to taking such action. The securities professional thus would have an opportunity to present evidence on his own behalf, in order to demonstrate that the imposition of sanctions would not be in the public interest. In addition, if the professional makes a persuasive due process or jurisdictional attack on the foreign adjudicative proceedings, the Commission may be required to permit relitigation of the underlying offense. In such a case, the foreign finding of misconduct would provide the basis for a Commission administrative proceeding even though principles of collateral estoppel might not be available to the Commission.

In addition, the legislation would amend newly redesignated sub-paragraph (F) of Section 3(a)(39) of the Exchange Act, which by cross reference to Section 15(b)(4) of that Act makes persons con-

victed of specified felonies and misdemeanors subject to statutory disqualification, by adding “any other felony” to the crimes listed as possible bases for denial of SRO membership or participation or association with an SRO member. This provision would permit the Commission and the SROs to scrutinize persons who have been convicted of crimes that are not currently specified. This provision would not necessarily exclude every convicted felon from the securities business. It addresses the need to permit the regulatory scrutiny of felony convictions, such as drug trafficking, theft or [sic] property, and violent crimes, and would permit the SROs and the Commission to prohibit a person who has been convicted of a felony from becoming a member or participant of an SRO or associating with a member or participant, or to impose appropriate safeguards to protect the markets and investors from unreasonable risks. SRO examination staff could oversee the activities of those persons convicted of felonies who are permitted to work in the securities business, just as they currently can for other persons subject to statutory disqualification. This would make it possible to learn whether any conditions imposed were being adhered to, or whether the person was complying with the federal securities laws.

This amendment would respond to concerns brought to the Commission’s attention by the National Association of Securities Dealers (“NASD”). The National Business Conduct Committee of the NASD, which is responsible for all NASD disciplinary actions, has endorsed this provision of the proposed legislation as a desirable means of improving ethics in the securities industry. Of particular concern to the NASD was the recent association of a convicted drug dealer with an NSAD [sic] member firm in a principal capacity. The committee expects that the national securities exchanges also will find it appropriate to review the qualifications of persons seeking membership or association who have been convicted of felonies.

Title II would also add sanctions based upon foreign convictions or disciplinary action by a foreign financial regulatory authority to the list of offenses included within the definition of a person subject to a “statutory disqualification” in Section 3(a)(39) of the Exchange Act. The amendment would effectively permit the Commission or an SRO to prohibit a person subject to the foreign sanction from becoming a member or participant of the SRO or associating with a member or participant, or to place conditions upon his membership, participation or association.

New subsections 15(b)(4)(G) of the Exchange Act, 203(e)(7) to the Investment Advisers Act, and 9(b)(4) to the Investment Advisers Act, and Section 9(b)(1)-(3) of the Investment Company Act would apply the proscriptions of Section 15(b)(4) (A), (D), and (E) of the Exchange Act, Section 203(e) (1), (4), and (5) of the Investment Company Act to an international context. Thus, the Commission would be able to impose sanctions on the professional if he has been found by a “foreign financial regulatory authority” (a defined term in the Acts) to have made false or misleading statements in registration statements or reports filed with a foreign securities authority; violated foreign statutory or regulatory provisions regarding securities or commodities transactions; or aided, abetted, or otherwise caused another person’s violation of such foreign securities or commodities provisions or failed to supervise a person who has commit-

ted a violation of such provisions. The term “foreign financial regulatory authority” would be defined in new Sections 3(a)(51) of the Exchange Act, 202(a)(24) of the Investment Advisers Act, and 2(a)(50) of the Investment Company Act. It would include a “foreign securities authority,” which is defined in section 3(a)(50) of the Exchange Act, or an organization that is essentially equivalent to a SRO. The term would also be defined under this legislation in Section 202(a)(23) of the Advisers Act and Section 2(a)(49) of the Investment Company Act, as it is defined in Section 3(a)(50) of the Exchange Act; as “any foreign government or any governmental body or regulatory organization empowered by a foreign government to administer or enforce its laws relating to securities.”

Subsection 15(b)(4)(G), 203(e)(7), and 9(b)(4) are substantially similar to the aforementioned subsections of 15(b)(4), 203(e), and 9(b). The most significant difference between the existing and the new provisions is that the legislation would not require that the foreign authorities find “willful” misconduct, i.e., “willful” false filing, a “willful” statutory violation, or “willful” secondary liability. The Committee believes that this change is appropriate because of a potential disparity of willfulness in different countries and because some countries may not require a “willful” violation. The proposed language would provide the Commission with flexibility in deciding whether the facts of a particular case indicate a state of mind comparable to willfulness so as to warrant imposition of sanctions.

In addition, Section 15(b)(4)(B) of the Exchange Act and Section 203(e)(2) of the Investment Advisers Act would be amended to grant the Commission explicit authority to consider convictions by a foreign court of competent jurisdiction of any crime enumerated in current Section 15(b)(4)(B) and section 203(e)(2) or a “substantially equivalent” foreign crime. Section 15(b)(4)(C) of the Exchange Act and Section 203(e)(3) of the Investment Advisers Act would be amended to state explicitly that the Commission may consider injunctions imposed by a foreign court of competent jurisdiction in connection with any of the activities designated in the statute, or a “substantially equivalent” foreign activity. The Commission would have authority to restrict association with a registered investment company based on the same factors in new subsection 9(b)(5) and (6).

It should be noted that this Title would not amend Section 9(a) of the Investment Company Act, which prohibits association [sic] in certain capacities with a registered investment company by persons who have been convicted of certain offenses or who have been subject to specified injunctions. Section 9(a) is a self-policing mechanism, the purpose of which “is to prevent persons with unsavory records from occupying these positions where they have so much power and where faithfulness to the fiduciary obligations is so important.”<sup>4</sup> The automatic disqualification provisions of Section 9(a), coupled with the Commission’s exemptive authority under Section 9(c) to avoid any inequitable results, are indispensable means of safeguarding the integrity of registered investment companies. However, due process concerns may be presented by legislation

<sup>4</sup> Hearings on S. 3580 Before a Subcomm. of the Sen. Comm. on Banking Currency, 76th Cong., 3d Sess. 46. (1940).

to withhold from disclosure documents furnished to the Commission by foreign securities officials upon certain conditions.

*Section 202(a)(1).* Section 202(a)(1) is an amendment necessitated by the scheme of amended Section 24 of the Exchange Act, to which the Act adds several subsections. It strikes from Section 24(b) the sentence, “Nothing in this subsection shall authorize the Commission to withhold information from the Congress.” That sentence becomes part of new Section 24(e) of the Exchange Act under Section 202(a)(2) of the Act.

*Section 202(a)(2).* Section 202(a)(2) adds new subsections (c), (d), and (e) to Section 24 of the Exchange Act. New Section 24(c) clarifies the Commission’s authority to provide records, as defined in Section 24(a) of the Exchange Act, in its discretion and upon showing that the information is needed, to any persons deemed appropriate by the Commission by rule. The subsection conditions this discretionary authority on the person receiving the information assuring its confidentiality as the Commission deems appropriate. Section 202(a)(2) of the Act also adds new Section 24(d) to the Exchange Act. Section 24(d) provides that the Commission shall not be compelled to disclose records obtained from a foreign securities authority, if (1) the foreign authority has in good faith determined and represented to the Commission that public disclosure of such records would violate the laws applicable to that foreign securities authority and (2) the Commission obtains the records under either a procedure authorized by the Commission for use in securities law enforcement or administration or a memorandum of understanding. This amendment will allow the Commission to obtain otherwise unobtainable confidential documents from foreign countries for law enforcement purposes. New Section 24(e) clarifies that nothing in Section 24 authorizes the Commission to withhold information from Congress or not to comply with an order of a United States court in an action initiated by the United States or the Commission. It also clarifies that this section does not alter the Commission’s responsibilities under the Right to Financial Privacy Act, 12 U.S.C. 3401 et. seq., as limited by Section 21(h) of the Exchange Act, with respect to transfers of records covered by these statutes.

*Section 202(b).* Section 202(b) contains conforming amendments to section 45(a) of the Investment Company Act and Section 210(b) of the Investment Advisers Act, conforming those sections to new Section 24(c) of the Exchange Act so that records may be provided to other persons under the conditions stated in Section 24(c).

*Section 203.* Section 203 of the Act amends the Exchange Act to authorize the Commission to impose sanctions on brokers or dealers, their associated persons, and individuals seeking to become associated persons of brokers or dealers on the basis of misconduct in a foreign country.

*Section 203(a).* Section 203(a) of the Act amends Section 15(b) of the Exchange Act, the Exchange Act’s registration provision. Subsection (a)(1) provides for commission censure of, limitation on the activities of or revocation or suspension of the registration of brokers or dealers, based upon a conviction rendered by a foreign court of competent jurisdiction of a crime which is substantially equivalent to a felony or misdemeanor as provided by Section 15(b)(4)(B). As in the case of a conviction by a U.S. court, the for-

Sections 15C(c)(1) (A) and (C), which concern the Commission's sanctioning authority over government securities brokers and dealers and their associated persons, and which also parallel Sections 15(b)(4) and (6) are amended to include a reference to new section 15(b)(4)(G), for the same reason as above.

Sections 17A(c)(3) (A) and (C), which concern the Commission's sanctioning authority over transfer agents and their associated persons, and which further parallel Sections 15(b) (4) and (6), are amended to include a reference to new Section 15(b)(4)(G) for the same reason.

Section 15C(f)(2) of the Exchange Act currently forbids the Commission from investigating or taking any other action under the Exchange Act against a government securities broker or dealer or its associated persons for violations of Section 15C or the rules or regulations thereunder. The exception is where the Commission, rather than one of the banking regulators (Comptroller of the Currency for national banks, Board of Governors of the Federal Reserve System for state member banks, Federal Deposit Insurance Corporation for insured state non-member banks, and the Office of Thrift Supervision for federally insured savings and loan associations), is the appropriate regulatory agency for the government securities broker or dealer. Section 15C(f)(2), by its own terms, also does not limit the Commission's authority with respect to violations of any other provisions of the Exchange Act or of corresponding rules or regulations. Section 6(c) of the Act extends this exception by forbidding limitations on investigations pursuant to Section 21(a)(2) of the Exchange Act to assist a foreign securities authority.

*Section 204.* In order to ensure that orders of any regulatory body, foreign or domestic, with authority to suspend or revoke registration or its equivalent are available to the Commission, Section 204 of the Act adds a new definition of the term "foreign financial regulatory authority," as Section 3(a)(51) of the Exchange Act. A "foreign financial regulatory authority" is defined to include any foreign securities authority, which is defined in Section 3(a)(50) of the Exchange Act; governmental or regulatory bodies empowered to administer or enforce laws relating to enumerated financial matters; and membership organizations that regulate members' participation in financial matters. Pursuant to the Act's amendment's to Section 3(a)(39) of the Exchange Act, orders of foreign financial regulatory authorities are deemed sufficient to result in "statutory disqualification," as will such an order limiting registration of the foreign equivalent of any of the enumerated entities.

*Section 205.* Section 205 of the Act makes parallel amendments to the Investment Company Act of 1940 ("1940 Act") and the Investment Advisers Act of 1940 ("Advisers Act") to clarify and strengthen the Commission's authority to impose sanctions, on the basis of violations of foreign law, on investment advisers or on persons associated or seeking to become associated with an investment adviser or a registered investment company.

*Section 205(a).* Section 205(a) of the Act amends Section 9(b) of the 1940 Act. Section 9(a) of the 1940 Act generally prohibits a person convicted of a felony or misdemeanor involving securities or the securities business or subject to a temporary or permanent injunction restricting his ability to engage in the securities business



ing of a violation of foreign law without any prior notice or opportunity for hearing by a U.S. court or administrative agency. Instead, amended Section 9(b) provides that the Commission may impose a bar on a case-by-case basis if it determines that the foreign finding justifies such a sanction. The amendment does not create competitive disparities because, just as Section 9(a) applies equally to U.S. and foreign persons that have been convicted or enjoined in a manner specified in the statute, Section 9(b), as amended, grants the Commission authority to institute an administrative proceeding against either a U.S. or foreign person that has committed an equivalent foreign violation and has been sanctioned by a foreign authority.

*Section 205(b).* Section 205(b) of the Act amends Section 203(e) of the Advisers Act. Section 203(e) authorizes the Commission to censure, place limitations on the activities or, suspend for up to twelve months, or revoke the registration of an investment adviser where the adviser or an associated person of the adviser has committed, or has been sanctioned for, certain specified violations. Section 205(b) of the Act amends Section 203(e) to include, among the factors that the Commission may consider, violations of foreign law that are substantially equivalent to a violation currently set forth in the statute.

Subsection 203(e)(2) of the Advisers Act authorizes the Commission to consider convictions within the past ten years of certain felonies and misdemeanors. Section 205(b)(1) of the Act amends this section to include convictions by a foreign court of competent jurisdiction of crimes substantially equivalent to a felony or misdemeanor. The Act thus clarifies the Commission's authority to consider foreign criminal findings that the foreign jurisdiction may not classify as a "felony" or "misdemeanor".

Section 203(e)(2)(A) of the Advisers Act lists offenses involving the purchase or sale of any security, the taking of a false oath, the making of a false report, bribery, perjury, burglary, or conspiracy to commit any such offense as within the class of felonies and misdemeanors that authorize the Commission to discipline investment advisers. Section 205(b)(2) of the Act amends Section 203(e)(A) by including within this list any substantially equivalent activity, however denominated by the laws of a foreign government.

Section 203(e)(2)(B) of the Advisers Act authorizes the Commission to consider offenses arising out of the conduct of various securities-related businesses. Included is any broker, dealer, municipal securities dealer, government securities broker, government securities dealer, investment adviser, bank, insurance company, fiduciary, transfer agent, or entity or person required to be registered under the Commodity Exchange Act. Subsection 205(b)(3) of the Act amends Sections 203 (e)(2)(B) and (e)(3) to include offenses arising out of the conduct of any foreign person performing a function substantially equivalent to any of the above.

Section 203(e)(2)(C) of the Advisers Act includes larceny, theft, robbery, extortion, forgery, counterfeiting, fraudulent concealment, embezzlement, fraudulent conversion, and misappropriation of funds or securities within the list of offenses that may trigger Commission sanctions. Section 205(b)(4) of the Act adds any substantial-

ly equivalent offense, however denominated by the laws of a foreign government.

Section 203(e)(2)(D) of the Advisers Act includes violations of Section 152, 1341, 134, or 1343 of Chapter 25 or 47 of title 18 of the U.S. Code within the list of offenses that the Commission may consider. These provisions concern concealment of assets, false oaths and claims, and bribery in connection with bankruptcy; mail fraud; wire fraud; counterfeiting and forgery [sic]; and fraud and false statements, respectively. Section 205(b)(5) of the Act amends Section 203(e)(2)(D) to include a violation of a substantially equivalent foreign statute.

Section 203(e)(3) of the Advisers Act authorizes the Commission to impose sanctions where an investment adviser or associated person has been enjoined from acting as an investment adviser, underwriter, broker, dealer, municipal securities dealer, government securities broker, government securities dealer, or entity or person required to be registered under the Commodity Exchange Act, or as an affiliated person or employee of any investment company, bank, or insurance company or entity or person required to be registered under the Commodity Exchange Act, or as an affiliated person or entity or person required to be registered under the Commodity Exchange Act, or from engaging in any practice in connection with any of these activities or in connection with the purchase or sale of any security. Section 205(b)(3) and 205(b)(6) of the Act amend Advisers Act Section 203(e)(3) to include injunctions issued by any foreign court of competent jurisdiction that concern substantially equivalent activities.

Section 205(b)(7) of the Act is a technical amendment to Section 203(e)(5) of the Advisers Act. Section 203(e)(5) is amended to include violations of the Commodity Exchange Act. This technical amendment conforms Section 203(e)(5) with Section 203(e)(4) of the Advisers Act and Section 15(b)(4)(D) and 15(b)(4)(E) of the Exchange Act.

Section 205(b)(8) of the Act adds new Section 203(e)(7) of the Advisers Act. This new subsection empowers the Commission to base sanctions on findings by a foreign financial regulatory authority of (1) false or misleading statements in registration or reporting materials filed with a foreign securities authority, (2) violations of statutory provisions concerning securities or commodities transactions, or (3) aiding, abetting, or otherwise causing another person's violation of such foreign securities or commodities provisions, or failing to supervise a person who has committed such a violation. Subsection (e)(7) substantially parallels the provisions of existing Section 203(e) (1), (4), and (5) concerning such findings by the Commission or other securities and commodities regulatory authorities. This section of the Act parallels Sections 203(a)(7) and 205(a) of the Act, which add Subsection 15(b)(4)(7) of the Exchange Act and Section 9(b)(4) of the 1940 Act.

*Section 205(c).* Section 205(c) of the Act amends Section 203(f) of the Advisers Act, which authorizes the Commission to impose sanctions upon persons associated or seeking to become associated with an investment adviser if the person has committed or omitted any act or omission set forth in Sections 203(e) (1), (4), (5) or has been convicted or enjoined as set forth in Sections 203(e)(2) or 203(e)(3).

Section 203(f) is amended to include a reference to new Section 203(e)(7), thus authorizing the Commission to consider such findings when imposing sanctions upon persons who are, or seek to become, associated with an investment adviser.

*Section 206.* Section 206 amends Sections 2(a) of the 1940 Act and Section 202(a) of the Advisers Act to include definitions of “foreign securities authority” and “foreign financial regulatory authority”. These definitions are identical to the definitions of foreign securities authority in Section 21(a)(2) of the Exchange Act and the definition of foreign financial regulatory authority added by Section 204 of the Act.

*Section 207.* Section 207 adds a new subsection (f) to Section 4 of the Exchange Act to authorize the Commission to accept reimbursement of expenses from or on behalf of foreign securities authorities for expenses incurred by the Commission in conducting investigations on their behalf or in providing other assistance.

### *Title III—Shareholder Communications Improvement Act of 1989*

*Section 301.* Section 301 contains the short title of the Act, the “Shareholder Communications Improvement Act of 1989.”

*Section 302.* Section 302 of the Act amends Section 14 of the Securities Exchange Act of 1934.

*Section 302(a)(1).* Section 302(a)(1) will extend to investment company security holders the benefits of the shareholder communication rules which require brokers and dealers, banks, associations, and other entities that exercise fiduciary powers holding securities as nominees to provide proxies, consents, and authorizations to beneficial security holders and to provide registrants, upon request, with beneficial owner information so that registrants can send annual reports and voluntary communications directly to the beneficial security holders. Currently, Section 14(b) and the rules adopted thereunder only apply with respect to securities registered under Section 12 of the Exchange Act, which most investment company securities are not. This amendment recognizes the changes that have occurred in the form of ownership of investment company securities and will facilitate communication between investment companies and beneficial owners of investment company securities.

*Section 302(a)(2).* Section 302(a)(2) of the Act will amend Section 14(b) to require broker and bank nominees to transmit information statements to the beneficial owners of securities. Currently, only proxies, consents, and authorizations are required to be delivered to beneficial owners of securities when securities are held in nominee name. This amendment will assure that beneficial owners of securities held in nominee name receive information statements as well as proxies.

*Section 302(b).* Section 302(b) of the Act will amend Section 14(c) of the Exchange Act to require investment companies, in addition to other registrants, to transmit information statements to security holders of record. Currently, Section 14(c) requires the issuance of information statements only with respect to securities registered pursuant to Section 12 of the Exchange Act. Like the amendments to Section 14(b), this amendment [sic] will facilitate communication between security holders and issuers of information statements and will provide investment company security holders the same com-

SECURITIES ACTS AMENDMENTS OF 1990

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OCTOBER 23, 1990. – Ordered to be printed

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Mr. DINGELL, from the committee of conference,  
submitted the following

CONFERENCE REPORT

[To accompany H.R. 1396]

The committee of conference on the disagreeing votes of the two Houses on the amendment of the House to the amendment of the Senate to the bill (H.R. 1396) to amend the Federal securities laws in order to facilitate cooperation between the United States and foreign countries in securities law enforcement, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its disagreement to the amendment of the House to the amendment of the Senate and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the House amendment, insert the following:

**SECTION 1. SHORT TITLE.**

*This Act may be cited as the "Securities Acts Amendments of 1990".*

**TITLE I—AUTHORIZATION**

**SEC. 101. SHORT TITLE.**

*This title may be cited as the "Securities and Exchange Commission Authorization Act of 1990."*

**SEC. 102. AUTHORIZATION OF APPROPRIATIONS**

*Section 35 of the Securities Exchange Act of 1934 (15 U.S.C. 78kk) is amended to read as follows:*

of the securities laws, or (B) a memorandum of understanding. For purposes of section 552 of title 5, United States Code, this subsection shall be considered a statute described in subsection (b)(3)(B) of such section 552.

“(e) SAVINGS PROVISIONS.—Nothing in this section shall—

“(1) alter the Commission’s responsibilities under the Right to Financial Privacy Act (12 U.S.C. 3401 et seq.), as limited by section 21(h) of this Act, with respect to transfers of records covered by such statutes, or

“(2) authorize the Commission to withhold information from the Congress or prevent the Commission from complying with an order of a court of the United States in an action commenced by the United States or the Commission.”.

(b) CONFORMING AMENDMENTS—

(1) INVESTMENT COMPANY ACT OF 1940.—Section 45(a) of the Investment Company Act of 1940 (15 U.S.C. 80a-44) is amended by striking “It shall be unlawful” and inserting “Except as provided in section 24(c) of the Securities Exchange Act of 1934, it shall be unlawful”.

(2) INVESTMENT ADVISERS ACT OF 1940.—Section 210(b) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-10(b)) is amended by striking “subsections (c) and (e) of section 209” and inserting “subsections (c) and (d) of section 209 of this title and section 24(c) of the Securities Exchange Act of 1934”.

**SEC. 203. SANCTIONS AGAINST BROKER OR DEALER, ASSOCIATED PERSONS, OR PERSONS SEEKING ASSOCIATION.**

(a) AUTHORITY OF THE COMMISSION TO SANCTION BROKERS AND DEALERS FOR FOREIGN VIOLATIONS.—Section 15(b) (15 U.S.C. 78o(b)) of the Securities Exchange Act of 1934 is amended—

(1) in paragraph (4)(B), by inserting after “misdemeanor” the following: “or of a substantially equivalent crime by a foreign court of competent jurisdiction”;

(2) in paragraph (4)(B)(i), by inserting after “burglary,” the following: “any substantially equivalent activity however denominated by the laws of the relevant foreign government”;

(3) in paragraph (4)(B)(ii)—

(A) by inserting after “transfer agent,” the following: “foreign person performing a function substantially equivalent to any of the above,”;

(B) by inserting after “(7 U.S.C. 1 et seq.)” the following: “or any substantially equivalent foreign statute or regulation”;

(4) in paragraph (4)(B)(iii), by inserting after “securities” the following: “, or substantially equivalent activity however denominated by the laws of the relevant foreign government”;

(5) in paragraph (4)(B)(iv), by inserting after “United States Code” the following: “, or a violation of a substantially equivalent foreign statute”;

(6) in paragraph (4)(C)—

(A) by inserting after “transfer agent,” the following: “foreign person performing a function substantially equivalent to any of the above,”;

**SEC. 204. DEFINITION OF FOREIGN FINANCIAL REGULATORY AUTHORITY.**

Section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)) is amended by adding at the end thereof the following new paragraph:

“(51) The term ‘foreign financial regulatory authority’ means any (A) foreign securities authority, (B) other governmental body or foreign equivalent of a self-regulatory organization empowered by a foreign government to administer or enforce its laws relating to the regulation of fiduciaries, trusts, commercial lending, insurance, trading in contracts of sale of a commodity for future delivery, or other instruments traded on or subject to the rules of a contract market, board of trade, or foreign equivalent, or other financial activities, or (C) membership organization a function of which is to regulate participation of its members in activities listed above.”.

**SEC. 205. SANCTIONS AGAINST INVESTMENT ADVISERS OR PERSONS ASSOCIATED OR SEEKING ASSOCIATION WITH A REGISTERED INVESTMENT ADVISER OR INVESTMENT COMPANY.**

(a) INVESTMENT COMPANY ACT OF 1940.—Section 9(b) of the Investment Company Act of 1940 (15 U.S.C. 80a-9(b)) is amended—

(1) by striking “or” at the end of paragraphs (1) and (2);

(2) by striking the period at the end of paragraph (3) and inserting a semicolon; and

(3) by inserting after paragraph (3) the following:

“(4) has been found by a foreign financial regulatory authority to have—

“(A) made or caused to be made in any application for registration or report required to be filed with a foreign securities authority, or in any proceeding before a foreign securities authority with respect to registration, any statement that was at the time and in light of the circumstances under which it was made false or misleading with respect to any material fact, or has omitted to state in any application or report to a foreign securities authority any material fact that is required to be stated therein;

“(B) violated any foreign statute or regulation regarding transactions in securities or contracts of sale of a commodity for future delivery traded on or subject to the rules of a contract market or any board of trade;

“(C) aided, abetted, counseled, commanded, induced, or procured the violation by any other person of any foreign statute or regulation regarding transactions in securities or contracts of sale of a commodity for future delivery traded on or subject to the rules of a contract market or any board of trade;

“(5) within 10 years has been convicted by a foreign court of competent jurisdiction of a crime, however denominated by the laws of the relevant foreign government, that is substantially equivalent to an offense set forth in paragraph (1) of subsection (a); or

“(6) by reason of any misconduct, is temporarily or permanently enjoined by any foreign court of competent jurisdiction from acting in any of the capacities, set forth in paragraph (2) of subsection (a), or a substantially equivalent foreign capacity,

*or from engaging in or continuing any conduct or practice in connection with any such activity or in connection with the purchase or sale of any security.”.*

*(b) INVESTMENT ADVISERS ACT OF 1940.—Section 203(e) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-3(e)) is amended—*

*(1) in paragraph (2) by inserting after “misdemeanor” the following: “or of substantially equivalent crime by a foreign court of competent jurisdiction”;*

*(2) in paragraph (2)(A), by inserting after “burglary,” the following: “any substantially equivalent activity however denominated by the laws of the relevant foreign government,”;*

*(3) in paragraphs (2)(B) and (3)—*

*(A) by inserting after “transfer agent, “the following:” foreign person performing a function substantially equivalent to any of the above,”; and*

*(B) after “Commodity Exchange Act” each place it appears, the following: “or any substantially equivalent statute or regulation”;*

*(4) in paragraph (2)(C), by inserting after “securities” the following: “or substantially equivalent activity however denominated by the laws of the relevant foreign government”;*

*(5) in paragraph (2)(D) by inserting after “United States Code” the following: “, or a violation of a substantially equivalent foreign statute”;*

*(6) in paragraph (3)—*

*(A) by inserting after “court of competent jurisdiction” the following: “, including any foreign court of competent jurisdiction”;* and

*(B) by inserting after “insurance company,” the following: “foreign entity substantially equivalent to any of the above,”;*

*(7) in paragraph (5), by inserting after “this title,” the following: “the Commodity Exchange Act,”; and*

*(8) by inserting after paragraph (6) the following new paragraph:*

*“(7) has been found by a foreign financial regulatory authority to have—*

*“(A) made or caused to be made in any application for registration or report required to be filed with a foreign securities authority, or in any proceeding before a foreign securities authority with respect to registration, any statement that was at the time and in light of the circumstances under which it was made false or misleading with respect to any material fact, or has omitted to state in any application or report to a foreign securities authority any material fact that is required to be stated therein;*

*“(B) violated any foreign statute or regulation regarding transactions in securities or contracts of sale of a commodity for future delivery traded on or subject to the rules of a contract market or any board of trade;*

*“(C) aided, abetted, counseled, commanded, induced, or procured the violation by any other person of any foreign statute or regulation regarding transactions in securities or contracts of sale of a commodity for future delivery traded*

*on or subject to the rules of a contract market or any board of trade, or has been found, by the foreign financial regulatory authority, to have failed reasonably to supervise, with a view to preventing violations of statutory provisions, and rules and regulations promulgated thereunder, another person who commits such a violation, if such other person is subject to his supervision.”.*

(c) *CONFORMING AMENDMENT.—Section 203(f) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-3(f)) is amended by striking “paragraph (1), (4), or (5)” and inserting “paragraph (1), (4), (5), or (7)”.*

**SEC. 206. DEFINITION OF FOREIGN SECURITIES AUTHORITY AND FOREIGN FINANCIAL REGULATORY AUTHORITY**

(a) *INVESTMENT COMPANY ACT OF 1940.—Section 2(a) of the Investment Company Act of 1940 (15 U.S.C. 80a-2(a)) is amended by inserting after paragraph (48) the following:*

*“(49) ‘Foreign securities authority’ means any foreign government or any governmental body or regulatory organization empowered by a foreign government to administer or enforce its laws as they relate to securities matters.*

*“(50) ‘Foreign financial regulatory authority’ means any (A) foreign securities authority, (B) other governmental body or foreign equivalent of a self-regulatory organization empowered by a foreign government to administer or enforce its laws relating to the regulation of fiduciaries, trusts, commercial lending, insurance, trading in contracts of sale of a commodity for future delivery, or other instruments traded on or subject to the rules of a contract market, board of trade or foreign equivalent, or other financial activities, or (C) membership organization a function of which is to regulate the participation of its members in activities listed above.”*

(b) *INVESTMENT ADVISERS ACT OF 1940.—Section 202(a) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-2(a)) is amended by inserting after paragraph (22) the following:*

*“(23) ‘Foreign securities authority’ means any foreign government, or any governmental body or regulatory organization empowered by a foreign government to administer or enforce its laws as they relate to securities matters.*

*“(24) ‘Foreign financial regulatory authority’ means any (A) foreign securities authority, (B) other governmental body or foreign equivalent of a self-regulatory organization empowered by a foreign government to administer or enforce its laws relating to the regulation of fiduciaries, trusts, commercial lending, insurance, trading in contracts of sale of a commodity for future delivery, or other instruments traded on or subject to the rules of a contract market, board of trade or foreign equivalent, or other financial activities, or (C) membership organization a function of which is to regulate participation of its members in activities listed above.”*

**SEC. 207 REIMBURSEMENT OF EXPENSES INCURRED IN PROVIDING ASSISTANCE TO A FOREIGN SECURITIES AUTHORITY.**

*Section 4 of the Securities Exchange Act of 1934 (15 U.S.C. 78d) is amended by adding at the end thereof the following new subsection:*