

106TH CONGRESS
1ST SESSION

S. 1189

To allow Federal securities enforcement actions to be predicated on State securities enforcement actions, to prevent migration of rogue securities brokers between and among financial services industries, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 9, 1999

Ms. COLLINS (for herself, Mr. CLELAND, and Mr. GREGG) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing and Urban Affairs

A BILL

To allow Federal securities enforcement actions to be predicated on State securities enforcement actions, to prevent migration of rogue securities brokers between and among financial services industries, 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 “Microcap Fraud Pre-
5 vention Act of 1999”.

1 **SEC. 2. AMENDMENTS TO THE SECURITIES EXCHANGE ACT**
2 **OF 1934.**

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

5 (1) by striking subparagraph (F) and inserting
6 the following:

7 “(F) is subject to any order of the Commission
8 barring or suspending the right of the person to be
9 associated with a broker or dealer;”;

10 (2) in subparagraph (G)—

11 (A) in clause (i), by striking “has omitted”
12 and all that follows through the semicolon and
13 inserting “omitted to state in any such applica-
14 tion, report, or proceeding any material fact
15 that is required to be stated therein;”;

16 (B) in clause (ii)—

17 (i) by striking “transactions in securi-
18 ties,” and inserting “securities, banking,
19 insurance;” and

20 (ii) by adding “or” at the end; and

21 (C) in clause (iii)—

22 (i) by inserting “other” after “viola-
23 tion by any”;

24 (ii) by striking “empowering a foreign
25 financial regulatory authority regarding
26 transactions in securities,” and inserting

1 “regarding securities, banking, insur-
2 ance,”;

3 (iii) by striking “has been found, by a
4 foreign financial regulatory authority,”;
5 and

6 (iv) by striking the period at the end
7 and inserting “; or”; and

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

9 “(H) is subject to any order of a State securi-
10 ties commission (or any agency or office performing
11 like functions), State authority that supervises or ex-
12 amines financial institutions, State insurance com-
13 mission (or any agency or office performing like
14 functions), or an appropriate Federal banking agen-
15 cy (as defined in section 3 of the Federal Deposit
16 Insurance Act) that—

17 “(i) bars such person from association with
18 an entity regulated by such commission, author-
19 ity, agency, or officer, or from engaging in the
20 business of securities, insurance, or banking; or

21 “(ii) constitutes a final order based on vio-
22 lations of any laws or regulations that prohibit
23 fraudulent, manipulative, or deceptive con-
24 duct.”.

1 **SEC. 3. AMENDMENTS TO THE INVESTMENT ADVISERS ACT**
2 **OF 1940.**

3 Section 203 of the Investment Advisers Act of 1940
4 (15 U.S.C. 80b-3) is amended—

5 (1) in subsection (e)—

6 (A) by striking paragraphs (7) and (8) and
7 inserting the following:

8 “(7) is subject to any order of the Commission
9 barring or suspending the right of the person to be
10 associated with an investment adviser;

11 “(8) has been found by a foreign financial regu-
12 latory authority to have—

13 “(A) made or caused to be made in any
14 application for registration or report required to
15 be filed with, or in any proceeding before, that
16 foreign financial regulatory authority, any
17 statement that was, at the time and in light of
18 the circumstances under which it was made,
19 false or misleading with respect to any material
20 fact, or omitted to state in any application or
21 report filed with, or in any proceeding before,
22 that foreign financial regulatory authority any
23 material fact that is required to be stated in the
24 application, report, or proceeding;

25 “(B) violated any foreign statute or regula-
26 tion regarding securities, banking, insurance, or

1 contracts of sale of a commodity for future de-
2 livery traded on or subject to the rules of a con-
3 tract market or any board of trade; or

4 “(C) aided, abetted, counseled, com-
5 manded, induced, or procured the violation by
6 any other person of any foreign statute or regu-
7 lation regarding securities, banking, insurance,
8 or contracts of sale of a commodity for future
9 delivery traded on or subject to the rules of a
10 contract market or any board of trade, or failed
11 reasonably to supervise, with a view to pre-
12 venting violations of any such statute or regula-
13 tion, another person who commits such a viola-
14 tion, if the other person is subject to its super-
15 vision; or

16 “(9) is subject to any order of a State securities
17 commission (or any agency or office performing like
18 functions), State authority that supervises or exam-
19 ines financial institutions, State insurance commis-
20 sion (or any agency or office performing like func-
21 tions), or an appropriate Federal banking agency (as
22 defined in section 3 of the Federal Deposit Insur-
23 ance Act) that—

24 “(A) bars such investment adviser or per-
25 son from association with an entity regulated by

1 such commission, authority, agency, or officer,
2 or from engaging in the business of securities,
3 insurance, or banking; or

4 “(B) constitutes a final order based on vio-
5 lations of any laws or regulations that prohibit
6 fraudulent, manipulative, or deceptive con-
7 duct.”; and

8 (2) in subsection (f)—

9 (A) by striking “(6), or (8)” and inserting
10 “(6), (8), or (9)”; and

11 (B) by striking “paragraph (2)” and in-
12 serting “paragraph (2) or (3)”.

13 **SEC. 4. AMENDMENTS TO THE INVESTMENT COMPANY ACT**
14 **OF 1940.**

15 Section 9(b) of the Investment Company Act of 1940
16 (15 U.S.C. 80a-9(b)) is amended—

17 (1) in paragraph (4), by striking subparagraphs
18 (A) through (C) and inserting the following:

19 “(A) made or caused to be made in any
20 application for registration or report required to
21 be filed with, or in any proceeding before, that
22 foreign financial regulatory authority, any
23 statement that was, at the time and in light of
24 the circumstances under which it was made,
25 false or misleading with respect to any material

1 fact, or omitted to state in any application or
2 report filed with, or in any proceeding before,
3 that foreign financial regulatory authority any
4 material fact that is required to be stated in the
5 application, report, or proceeding;

6 “(B) violated any foreign statute or regula-
7 tion regarding securities, banking, insurance, or
8 contracts of sale of a commodity for future de-
9 livery traded on or subject to the rules of a con-
10 tract market or any board of trade; or

11 “(C) aided, abetted, counseled, com-
12 manded, induced, or procured the violation by
13 any other person of any foreign statute or regu-
14 lation regarding securities, banking, insurance,
15 or contracts of sale of a commodity for future
16 delivery traded on or subject to the rules of a
17 contract market or any board of trade;”;

18 (2) in paragraph (5), by striking “or” at the
19 end; and

20 (3) in paragraph (6), by striking the period at
21 the end and inserting the following: “; or

22 “(7) is subject to any order of a State securities
23 commission (or any agency or office performing like
24 functions), State authority that supervises or exam-
25 ines financial institutions, State insurance commis-

1 sion (or any agency or office performing like func-
2 tions), or an appropriate Federal banking agency (as
3 defined in section 3 of the Federal Deposit Insur-
4 ance Act) that—

5 “(A) bars such person from association
6 with an entity regulated by such commission,
7 authority, agency, or officer, or from engaging
8 in the business of securities, insurance, or
9 banking; or

10 “(B) constitutes a final order based on vio-
11 lations of any laws or regulations that prohibit
12 fraudulent, manipulative, or deceptive con-
13 duct.”.

14 **SEC. 5. CONFORMING AMENDMENTS.**

15 (a) MUNICIPAL SECURITIES DEALERS.—Section
16 15B(c) of the Securities Exchange Act of 1934 (15 U.S.C.
17 78o–4(c)) is amended—

18 (1) in paragraph (2), by striking “act or omis-
19 sion” and all that follows through the period and in-
20 serting “act, or is subject to an order or finding,
21 enumerated in subparagraph (A), (D), (E), (G), or
22 (H) of section 15(b)(4), has been convicted of any
23 offense specified in section 15(b)(4)(B) within 10
24 years of the commencement of the proceedings under
25 this paragraph, or is enjoined from any action, con-

1 duct, or practice specified in section 15(b)(4)(C).”;
2 and

3 (2) in paragraph (4), in the first sentence, by
4 striking “any act or omission” and all that follows
5 through the period and inserting “or omitted any
6 act, or is subject to an order or finding, enumerated
7 in subparagraph (A), (D), (E), (G), or (H) of sec-
8 tion 15(b)(4), has been convicted of any offense
9 specified in section 15(b)(4)(B) within 10 years of
10 the commencement of the proceedings under this
11 paragraph, or is enjoined from any action, conduct,
12 or practice specified in section 15(b)(4)(C).”.

13 (b) GOVERNMENT SECURITIES BROKERS AND DEAL-
14 ERS.—Section 15C(e)(1) of the Securities Exchange Act
15 of 1934 (15 U.S.C. 78o–5(e)(1)) is amended—

16 (1) in subparagraph (A), by striking “or omis-
17 sion enumerated in subparagraph (A), (D), (E), or
18 (G) of paragraph (4) of section 15(b) of this title”
19 and inserting “, or is subject to an order or finding,
20 enumerated in subparagraph (A), (D), (E), (G), or
21 (H) of section 15(b)(4)”; and

22 (2) in subparagraph (C), by striking “or omis-
23 sion enumerated in subparagraph (A), (D), (E), or
24 (G) of paragraph (4) of section 15(b) of this title”
25 and inserting “, or is subject to an order or finding,

1 enumerated in subparagraph (A), (D), (E), (G), or
2 (H) of section 15(b)(4)”.

3 (c) CLEARING AGENCIES.—Section 17A(c) of the Se-
4 curities Exchange Act of 1934 (15 U.S.C. 78q–1(c)) is
5 amended—

6 (1) in paragraph (3)(A), by striking “any act
7 enumerated in subparagraph (A), (D), (E), or (G) of
8 paragraph (4) of section 15(b) of this title” and in-
9 serting “any act, or is subject to an order or finding,
10 enumerated in subparagraph (A), (D), (E), (G), or
11 (H) of section 15(b)(4)”;

12 (2) in paragraph (4)(C), in the first sentence,
13 by striking “any act enumerated in subparagraph
14 (A), (D), (E), or (G) of paragraph (4) of section
15 15(b) of this title” and inserting “any act, or is sub-
16 ject to an order or finding, enumerated in subpara-
17 graph (A), (D), (E), (G), or (H) of section
18 15(b)(4)”.

19 (d) STATUTORY DISQUALIFICATIONS.—Section
20 3(a)(39) of the Securities Exchange Act of 1934 (15
21 U.S.C. 78c(a)(39)) is amended—

22 (1) in subparagraph (B)(i), by striking “order
23 to” and inserting “order of”; and

24 (2) in subparagraph (F)—

1 (A) by striking “any act enumerated in
2 subparagraph (D), (E), or (G) of paragraph (4)
3 of section 15(b) of this title” and inserting
4 “any act, or is subject to an order or finding,
5 enumerated in subparagraph (D), (E), (G), or
6 (H) of section 15(b)(4)”;

7 (B) by striking “subparagraph (B) of such
8 paragraph (4)” and inserting “section
9 15(b)(4)(B)”;

10 (C) by striking “subparagraph (C) of such
11 paragraph (4)” and inserting “section
12 15(b)(4)(C)”.

13 **SEC. 6. BROADENING OF PENNY STOCK BAR.**

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

16 (1) in subparagraph (A)—

17 (A) by striking “of any penny stock” and
18 inserting “of any noncovered security”;

19 (B) by striking “of penny stock” and in-
20 serting “of any noncovered security”; and

21 (C) in clause (i), by striking “or omission
22 enumerated in subparagraph (A), (D), (E), or
23 (G) of paragraph (4) of this subsection” and in-
24 serting “, or is subject to an order or finding,

1 enumerated in subparagraph (A), (D), (E), (G),
2 or (H) of paragraph (4)”;

3 (2) in subparagraph (B)—

4 (A) by striking “an offering of penny
5 stock” each place it appears and inserting “any
6 securities offering”; and

7 (B) in clause (iii), by striking “such a per-
8 son” and inserting “a person as to whom an
9 order under section 21(d)(5) or subparagraph
10 (A) of this paragraph is in effect”; and

11 (3) by striking subparagraph (C) and inserting
12 the following:

13 “(C) For purposes of this paragraph—

14 “(i) the term ‘noncovered security’ means any
15 security other than those described in paragraphs
16 (1) and (2) of section 18(b) of the Securities Act of
17 1933; and

18 “(ii) the term ‘participation in an offering of
19 noncovered securities’—

20 “(I) means acting as a promoter, finder,
21 consultant, or agent, or engaging in activities
22 with a broker, dealer, or issuer for purposes of
23 the issuance of or trading in any noncovered se-
24 curity, or inducing or attempting to induce the
25 purchase or sale of any noncovered security;

1 “(II) includes other activities that the
2 Commission specifies by rule or regulation; and

3 “(III) excludes any person or class of per-
4 sons, in whole or in part, conditionally or un-
5 conditionally, that the Commission, by rule, reg-
6 ulation, or order, may exclude.”.

7 **SEC. 7. COURT AUTHORITY TO PROHIBIT OFFERINGS OF**
8 **NONCOVERED SECURITIES.**

9 Section 21(d) of the Securities Exchange Act of 1934
10 (15 U.S.C. 78u(d)) is amended by adding at the end the
11 following:

12 “(5) COURT AUTHORITY TO PROHIBIT PERSONS
13 FROM PARTICIPATING IN OFFERING OF NON-
14 COVERED SECURITIES.—

15 “(A) IN GENERAL.—In any proceeding
16 under paragraph (1), the court may prohibit,
17 conditionally or unconditionally, and perma-
18 nently or for such period of time as it shall de-
19 termine, any person that violated section 10(b)
20 or the rules or regulations issued thereunder in
21 connection with any transaction in any non-
22 covered security from participating in an offer-
23 ing of a noncovered security.

24 “(B) DEFINITIONS.—For purposes of this
25 paragraph—

1 “(i) the term ‘noncovered security’
2 means any security other than those de-
3 scribed in paragraphs (1) and (2) of sec-
4 tion 18(b) of the Securities Act of 1933;
5 and

6 “(ii) the term ‘participation in an of-
7 fering of noncovered securities’—

8 “(I) means acting as a promoter,
9 finder, consultant, or agent, or engag-
10 ing in activities with a broker, dealer,
11 or issuer for purposes of the issuance
12 of or trading in any noncovered secu-
13 rity, or inducing or attempting to in-
14 duce the purchase or sale of any non-
15 covered security;

16 “(II) includes other activities
17 that the Commission specifies by rule
18 or regulation; and

19 “(III) excludes any person or
20 class of persons, in whole or in part,
21 conditionally or unconditionally, that
22 the Commission, by rule, regulation,
23 or order, may exempt.”.

1 **SEC. 8. BROADENING OF OFFICER AND DIRECTOR BAR.**

2 Section 21(d)(2) of the Securities Exchange Act of
3 1934 (15 U.S.C. 78u(d)(2)) is amended—

4 (1) by striking “of this title or that” and insert-
5 ing “, that”; and

6 (2) by striking “of this title if” and inserting “,
7 or the securities of which are quoted in any
8 quotation medium, if”.

9 **SEC. 9. VIOLATIONS OF COURT ORDERED BARS.**

10 (a) **IN GENERAL.**—Section 21 of the Securities Ex-
11 change Act of 1934 (15 U.S.C. 78u) is amended by adding
12 at the end the following:

13 “(i) **BAR ON PARTICIPATION.**—It shall be unlawful
14 for any person, against which an order under paragraph
15 (2) or (5) of subsection (d) is in effect, to serve as officer,
16 director, or participant in any offering involving a non-
17 covered security (as defined in subsection (d)(5)(B)) in
18 contravention of such order.”.

19 (b) **CONFORMING AMENDMENT.**—Section
20 21(d)(3)(D) of the Securities Exchange Act of 1934 (15
21 U.S.C. 78u(d)(3)(D)) is amended by inserting “or relating
22 to a violation of subsection (i) of this section,” before
23 “each separate”.

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