

109<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 5956

To make all civil penalties collected by the Securities and Exchange Commission in securities law enforcement actions available for the benefit of victims of securities law violations, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

JULY 28, 2006

Mr. BAKER (for himself, Mr. KANJORSKI, Mr. OXLEY, Mr. FRANK of Massachusetts, and Mr. SHAYS) introduced the following bill; which was referred to the Committee on Financial Services

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## A BILL

To make all civil penalties collected by the Securities and Exchange Commission in securities law enforcement actions available for the benefit of victims of securities law violations, 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 “Fair Fund Improve-  
5       ment Act”.

1 **SEC. 2. FAIR FUND IMPROVEMENTS.**

2 (a) AMENDMENT.—Subsection (a) of section 308 of  
3 the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7246(a)) is  
4 amended to read as follows:

5 “(a) CIVIL PENALTIES TO BE USED FOR THE RE-  
6 LIEF OF VICTIMS.—If in any judicial or administrative ac-  
7 tion brought by the Commission under the securities laws  
8 (as such term is defined in section 3(a)(47) of the Securi-  
9 ties Exchange Act of 1934 (15 U.S.C. 78c(a)(47)), the  
10 Commission obtains a civil penalty against any person for  
11 a violation of such laws, the amount of such civil penalty  
12 shall, on the motion or at the direction of the Commission,  
13 be added to and become part of a disgorgement fund or  
14 other fund established for the benefit of the victims of  
15 such violation.”.

16 (b) CONFORMING AMENDMENTS.—

17 (1) Section 308(b) of such Act is amended—

18 (A) by striking “for a disgorgement fund  
19 described in subsection (a)” and inserting “for  
20 a disgorgement fund or other fund described in  
21 subsection (a)”;

22 (B) by striking “in the disgorgement fund”  
23 and inserting “in such fund”.

24 (2) Section 308 of such Act is further amended  
25 by striking subsection (e).

1 **SEC. 3. AUTHORITY TO CONTRACT WITH PRIVATE COUN-**  
2 **SEL FOR LEGAL SERVICES TO COLLECT DE-**  
3 **LINQUENT JUDGMENTS AND ORDERS.**

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

6 (1) in the subsection heading by striking “AND  
7 LEASING AUTHORITY” and inserting “, LEASING  
8 AUTHORITY, AND CONTRACTING AUTHORITY”; and

9 (2) by adding at the end of such subsection the  
10 following new paragraph:

11 “(4) CONTRACTING AUTHORITY.—

12 “(A) IN GENERAL.—Notwithstanding any  
13 other provision of law, the Commission is au-  
14 thorized to enter into contracts to retain private  
15 legal counsel to furnish legal services, including  
16 representation in litigation, negotiation, com-  
17 promise, and settlement, in the case of any  
18 claim of indebtedness resulting from any judg-  
19 ment or order (either by litigation or settle-  
20 ment) obtained by the Commission in any judi-  
21 cial action or administrative proceeding brought  
22 by or on behalf of the Commission. Private  
23 counsel retained under this paragraph may rep-  
24 resent the Commission in such debt collection  
25 matters to the same extent as the Commission  
26 may represent itself.

1           “(B) TERMS AND CONDITIONS OF CON-  
2 TRACT.—Each such contract shall include such  
3 terms and conditions as the Commission con-  
4 siders necessary and appropriate, and shall in-  
5 clude provisions specifying—

6                   “(i) the amount of the fee to be paid  
7 to the private counsel under such contract  
8 or the method for calculating that fee;

9                   “(ii) that the Commission retains the  
10 authority to represent itself, resolve a dis-  
11 pute, compromise a claim, end collection  
12 efforts, and refer a matter to other private  
13 counsel or to the Attorney General; and

14                   “(iii) that the Commission may termi-  
15 nate either the contract or the private  
16 counsel’s representation of the Commission  
17 in particular cases for any reason, includ-  
18 ing for the convenience of the Commission.

19           “(C) PAYMENT OF FEES.—Notwith-  
20 standing section 3302(b) of title 31, United  
21 States Code, a contract under this paragraph  
22 may provide that fees and costs incurred by pri-  
23 vate counsel under such contracts are payable  
24 from the amounts recovered.

1           “(D) COMPETITION REQUIREMENTS.—  
2           Nothing in this paragraph shall relieve the  
3           Commission of the competition requirements set  
4           forth in title III of the Federal Property and  
5           Administrative Services Act of 1949 (41 U.S.C.  
6           251 et seq.).

7           “(E) COUNTERCLAIMS.—In any action to  
8           recover indebtedness which is brought on behalf  
9           of the Commission by private counsel retained  
10          under this paragraph, no counterclaim may be  
11          asserted against the Commission unless the  
12          counterclaim is served directly on the Commis-  
13          sion. Such service shall be made in accordance  
14          with the rules of procedure of the court in  
15          which the action is brought.”.

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