Calendar No. 712

106TH CONGRESS *2d Session*	SENATE	REPORT 106–360

THE COMPETITIVE MARKET SUPERVISION ACT

REPORT

OF THE

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS
UNITED STATES SENATE

TO ACCOMPANY

S. 2107

together with

ADDITIONAL VIEWS

JULY 25, 2000.—Ordered to be printed

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JULY 25, 2000.—Ordered to be printed

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

REPORT

together with

ADDITIONAL VIEWS

[To accompany S. 2107]

The Committee on Banking, Housing, and Urban Affairs, to which was referred the bill (S. 2107) to amend the Securities Act of 1933 and the Securities Exchange Act of 1934 to reduce securities fees in excess of those required to fund the operations of the Securities and Exchange Commission, to adjust compensation provisions for employees of the Commission, and for other purposes, having considered the same, reports favorably thereon with amendments and recommends that the bill (as amended) do pass.

INTRODUCTION

On July 13, 2000, the Senate Committee on Banking, Housing, and Urban Affairs met in legislative session and marked up and ordered to be reported S. 2107, the Competitive Market Supervision Act of 2000, a bill to amend the Securities Act of 1933 and the Securities Exchange Act of 1934 to reduce securities fees in excess of those required to fund the operations of the Securities and Exchange Commission, to adjust compensation provisions for employees of the Commission, and for other purposes, with a recommendation that the bill do pass, with amendments. The Committee reported the bill favorably by voice vote.

HISTORY OF LEGISLATION

During the first session of the 106th Congress, on Wednesday, March 24, 1999, a hearing was held by the Subcommittee on Securities on the need to reduce the excess of user fees collected by the Securities and Exchange Commission (SEC or Commission). Testimony was received from Arthur Levitt, Chairman, Securities and Exchange Commission; Marc Lackritz, President, Securities Industry Association; Lee Korins, President and Chief Executive Officer, Security Traders Association; Arthur Kearney, Chairman, Security Traders Association; and Robert W. Seijas, Executive Vice President of Fleet Specialists and Co-President of the Specialists Association.

The full committee conducted a legislative hearing in New York on February 28, 2000, on S. 2107, the Competitive Market Supervision Act of 2000. Testimony was received from SEC Chairman Arthur Levitt; J. Patrick Campbell, Chief Operating Officer and Executive Vice President, Nasdaq-Amex Market Group Inc.; Keith Helsby, Senior Vice President and Chief Financial Officer, New York Stock Exchange; Hardwick Simmons, President and Chief Executive Officer, Prudential Securities Inc.; Leopold Korins, President and Chief Executive Officer of the Security Traders Association; and Robert Seijas, Executive Vice President, Fleet Specialists, and Co-President, Specialists Association.

On July 13, 2000, the Committee met in legislative session to mark up the Competitive Market Supervision Act of 2000 (S. 2107). During the mark up the Committee considered three amendments. Chairman Gramm offered an amendment to authorize appropriations for the SEC and another amendment to provide regulatory relief to the securities markets. Both of these amendments were accepted by voice vote. Senator Shelby offered an amendment designed to prohibit the buying and selling of Social Security numbers without consent. The Shelby amendment was not adopted, on a vote of 10–10 (Senators voting "Aye"—Shelby, Sarbanes, Dodd, Kerry, Bryan, Johnson, Reed, Schumer, Bayh, and Edwards; Senators voting "No"—Gramm, Mack, Bennett, Grams, Allard, Enzi, Hagel, Santorum, Bunning, and Crapo). The Committee by voice vote reported the bill as amended to the Senate for consideration.

BACKGROUND

Origins of securities fees

Since its creation, the Commission has collected securities-related fees. Section 6(b) of the Securities Act of 1933 imposed fees on the registration of securities at a rate equal to one one-hundredths percent of the offering price. In 1965, registration fee rates were increased to one fiftieth percent. These fees were deposited in the Treasury as general revenue. Section 31 of the Securities Exchange Act of 1934 imposed fees on transactions of exchange-traded securities at a rate equal to one five-hundredths percent of the aggregate amount of sales. This fee rate was later increased to one three-hundredths percent, and, like the registration fees, were deposited in the Treasury as general revenue. The 1983 Securities Exchange Act Amendments (Public Law 98–38; June 6, 1983) imposed general revenue fees on mergers, proxy solicitations, and other activities to the extent registration fees were not already imposed, at a rate equal to one fiftieth percent of the value of the securities involved.

As amended by the National Securities Markets Improvement Act of 1996, Paragraph (1) of Section 6(b) states that registration fees "are designed to recover the costs to the government of the securities registration process," while subsection (a) of Section 31 states that transaction fees "are designed to recover the costs to the government of the supervision and regulation of securities markets and securities professionals." However, since the fees were all deposited as general revenues, resources to operate the Commission had to be provided in annual appropriations acts. Beginning in fiscal year 1990, and continuing though FY 1997, annual appropriations acts contained language increasing registration fee rates to one twenty-ninth percent, with the amount of fees in excess of the one fiftieth percent rate credited as offsetting collections. By imposing new fees and dedicating them to offsetting appropriations for the Commission, the appropriations acts effectively reduced the amount of direct appropriations required to fund the Commission.

The National Securities Markets Improvement Act of 1996

To balance the goals of providing sufficient resources to the Commission and minimizing taxation of investment, Congress enacted the National Securities Markets Improvement Act of 1996 (NSMIA). This legislation began a gradual reduction in registration fee rates from the equivalent of one twenty-ninth percent in FY 1997 to one fiftieth percent in FY 2006, with a further reduction to one one-hundred-fiftieth percent in FY 2007 and thereafter. In addition, NSMIA set up a reduction in transaction fee rates, which remain at one three-hundredth percent through FY 2006 and then drop to one eight-hundredth percent in FY 2007 and thereafter.

Accompanying this reduction in fee rates was a reallocation of fees credited as offsetting collections. Registration fees credited as offsetting collections would slowly be phased out (leaving only general revenue registration fees), while transaction fees would for the first time be applied to last-reported-sale securities traded primarily on the national market systems, with these new transaction fees credited as offsetting collections. Using projections of securities market activities available at the time, total fee collections were expected to fall from $711 million in FY 1997 to $351 million in FY 2007. In the words of the Joint Explanatory Statement of the NSMIA conference report, "It is the intent of the Managers that at the end of the applicable ten year period, the SEC collect in fees a sum approximately equal to the cost of running the agency."

Since the time NSMIA was signed into law on October 11, 1996, there has been an unexpected surge in securities market activity, with growth in share values and trading volumes far outstripping the projections that guided NSMIA's authors. According to the Office of Management and Budget (OMB), Nasdaq transaction fees alone were expected to grow at a 5 percent annual rate. Instead, these fees have more than quadrupled in just three years, and are now projected to grow at an annual rate of 15 percent according to OMB, and at an annual rate of 25 percent according to the Congressional Budget Office (CBO). Registration fees and fees on exchange-traded securities transactions have also grown enormously and are now running at double the levels projected at the time of NSMIA. Thus, while the goal of NSMIA was to have fee collections approximately equal the cost of running the Commission, in actuality the Commission will collect about five hundred percent of its budget in fees in FY 2000. Moreover, while projections at the time of the enactment of NSMIA showed a significant share of total fees being allocated to offsetting collections, the bulk of these offsetting collections would be reclassified as general revenues if the NASDAQ Stock Market ceases to be a national market system and becomes a national stock exchange.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, May 11, 2000.

Hon. PHIL GRAMM,
Chairman, Committee on Banking, Housing, and Urban Affairs, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: I am pleased to provide you with the information you requested regarding the budgetary impact that would result if NASDAQ becomes a national securities exchange on September 1, 2001. CBO estimates that such a change would increase revenues (governmental receipts) and decrease offsetting collections by a total of $13.6 billion over the 2002–2010 period.

Under current law, the Securities and Exchange Commission (SEC) charges national securities exchanges, national securities associations, brokers, and dealers transaction fees equal to 1/300 of a percent of the aggregate dollar amount of securities sales. Fees from national securities associations are collected subject to appropriation action and are recorded as an offset to discretionary spending (offsetting collections), while fees from national securities exchanges, dealers, and brokers do not require appropriation action and are recorded as revenues (governmental receipts).

The National Association of Securities Dealers (NASD) is the only national securities association, and NASDAQ is a subsidy of NASD. Currently, transactions for three types of securities flow through NASD: national market securities, small-capitalization stocks, and over-the-counter (OTC) stocks. If NASDAQ becomes an exchange, CBO expects all of the fees generated from transactions of national market securities and small-capitalization stocks would be recorded as revenues. It is not clear whether OTC stocks would qualify as exchange-listed securities, even if NASDAQ were an exchange.

For the purposes of this estimate, CBO assumes that OTC stocks would qualify as exchange-listed securities and that transaction fees collected on those issues would be recorded as revenues. In 1999, the SEC collected $51 million for transactions involving OTC stocks—about 9 percent of its total offsetting collections. CBO does not anticipate that the volume of securities traded would change if NASDAQ becomes a national securities exchange.

The SEC collects transaction fees twice each fiscal year—in March and September. If the NASDAQ becomes an exchange on September 1, 2001, the change would first affect how collections are recorded in the budget beginning in fiscal year 2002 because the revenues that would reflect this change would initially be collected in March 2002. Based on the historical growth in the volume of trades executed, CBO estimates that SEC collections from NASDAQ will be about $1 billion in fiscal year 2002. Thus, if NASDAQ becomes a national securities exchange, revenues would increase and offsetting collections would decrease by about $1 billion in 2002. This amount would be about 90 percent of the total offsetting collections anticipated for the SEC in that year. The shift in subsequent years would be greater.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Market Hadley and Hester Grippando.

Sincerely,

DAN L. CRIPPEN, *Director.*

Securities Markets Enhancement Act of 2000

Early last year, Senators Gramm, Grams, Sarbanes and Dodd began an extensive effort to solicit from a broad range of market participants suggestions to reform the U.S. securities statutes to update outdated and unneeded provisions in the securities statutes. By the end of April, suggestions had been received from individual investors, professional groups, the New York Stock Exchange, the National Association of Securities Dealers, the Securities Industry Association, the Bond Market Association, the Investment Counsel Association of America, the Financial Planning Association, the National Association of Personal Financial Advisors, the Certified Financial Planner Board of Standards, and the American Bankers Association. The SEC and the North American Securities Administrators Association also provided suggestions. On June 28, 1999, the Committee published a list of suggested changes and requested comments from interested parties. Those comments and the original suggestions were used to craft the Securities Markets Enhancement Act of 2000, that was accepted on a voice vote as an amendment during mark up and is now contained as Title II of the legislation.

PURPOSE AND SCOPE OF LEGISLATION

Reduction of securities user fees

The original objective of the user fees collected by the SEC was to provide a funding source for the agency's operations. However, increases in stock market volume and valuation have spawned revenues that far surpass what is needed to operate the agency. For example, aggregate fee revenue in FY 1999 was $1.76 billion while the SEC's budget totaled only $341 million. The latest Congressional Budget Office (CBO) projections predict that this imbalance will worsen even further, with total SEC fee revenues increasing to over $3.5 billion by FY 2006.

The Committee believes that, rather than user fees, these revenues have become taxes on savings and investment that fund general government operations. In the Committee's view, the excess collections of Section 31 fees are simply a tax that lowers the returns of every investor who buys stock, owns a mutual fund, or plans to use Individual Retirement Accounts, 401(k) plans, or pensions to retire. Furthermore, excess Section 6(b) fees are particularly harmful since these taxes are imposed at the beginning of the investment cycle, subtracting from the economy monies that could be leveraged into several times their value to finance companies' efforts to spur growth, employment, and wealth creation.

Section 101 of the reported legislation amends Section 6(b) of the Securities Act of 1933 to lower registration fee rates. In addition, this section eliminates the general revenue portion of the registration fee. The offsetting collection rate is set at $67 per $1 million of securities registered for FY 2001–06, and at $33 per $1 million for FY 2007 and thereafter. Section 102 reduces merger and tender fee rates in Section 13(e)(3) and Section 14(g) of the Securities Exchange Act of 1934 from one fiftieth percent under current law to $67 per $1 million of securities involved for the period FY 2001–06, and reduces rates further to $33 per $1 million for FY 2007 and thereafter, and all fees are also reclassified from general revenues to offsetting collections. The Committee realizes the importance of harmonizing the fee registration, and merger and tender fee rates so as to provide no distortions or inject any unintended incentives into the managerial decision as to when a merger should occur.

Under Section 103, all transactions included in Section 31 of the Securities Exchange Act of 1934 are consolidated, with the same fee rate applied to each as an offsetting collection. Transaction fees in any particular fiscal year will be set in appropriations acts at a rate estimated to collect the target dollar amount set in Section 103 for that year. The target dollar amount is calculated to approximate the amount of transaction fees required so that, when combined with anticipated registration and merger/tender fees, total offsetting collections will approximately equal the offsetting collections produced by NSMIA. If current projections prove accurate, this will reduce transaction fee rates by as much as two-thirds.

Authority of SEC to adjust to fee rates

Given the difficulty in predicting fee revenues, the Committee realizes the importance of providing a framework that ensures full funding for the SEC. Therefore, Section 104 of this legislation provides the SEC with the authority to adjust fee rates to ensure that the agency is fully funded in the event that reductions in market valuations or volume bring about revenues below the legislative targets. In addition, Section 104 requires the agency to lower fee rates when fees are projected to bring in revenues that are in excess of the cap on fee collections laid out in the bill. To provide a safeguard against misuse of the authority granted in Section 104, the legislation requires the agency to report to Congress before it exercises any authority to adjust fees.

SEC pay comparability

Section 105 amends the Securities Exchange Act of 1934 to permit the Commission to adjust base rates of compensation for all of its employees outside the Civil Service's General Schedule (GS). Under existing law, the SEC may do so only for its economists. The provisions allow parity among the SEC and Federal banking agency compensation programs. An amendment also is made to the Federal Deposit Insurance Act to bring the SEC within the consultation and information-sharing requirements of other agencies mentioned at 12 U.S.C. 1833b with respect to rates of employee compensation. A further technical amendment to section 1833b deletes references to entities that have been abolished.

Although the Committee believes in the need to provide parity of compensation to the SEC, the legislation does not require the SEC to institute such changes. In testimony earlier this year before the Congress, SEC Chairman Arthur Levitt stated that during the past two years, the Commission lost 25 percent of its attorneys, accountants, and examiners.[1] During FY 1999, SEC records reflect an overall staff attrition rate of 13 percent, "nearly twice the government-wide average. * * *"[2] According to Chairman Levitt, the level of staff turnover and inability to attract qualified staff adversely affects the productivity of the Commission.[3] Indeed, during FY 1999, only 46 percent of the Commission's available accountant positions were filled.[4]

The legislation assures that reductions, if any, in the base pay of an SEC employee represented by a labor organization with exclusive recognition in accordance with Chapter 71 of Title 5 of the United States Code, result from negotiations between such organization and SEC management, rather than by reason of the enactment of this amendment.

Securities markets enhancement

The Committee strongly endorses the practice of continually reviewing statutes, rules, and regulations under its jurisdiction. Therefore, in addition to creating a new framework for fee collections and providing pay comparability for employees of the agency, the Securities Markets Enhancement Act of 2000 (Title II of the reported legislation) is designed to eliminate unnecessary, outdated, and duplicative regulation in the securities markets.

Under Section 3(b) of the Securities Act of 1933, the SEC has discretionary authority to establish exemptions from registration under Section 5 of the Securities Act of 1933 for offerings not exceeding $5,000,000. This maximum dollar amount has not been increased for a substantial period of time, and the utility of some of the exemptions under this section has been questioned given the current maximum dollar limitation. Therefore, Section 211 was included to increase the exemption threshold to $12 million, as well as provide for subsequent inflation adjustments.

In addition, Section 211 proposes an amendment to the exemptive provisions of the Securities Exchange Act of 1934 that would exempt from the broker-dealer provisions certain persons who market and sell exempt securities on behalf of charitable organizations. This provision would amend Section 3(e) of the Securities Exchange Act of 1934 to permit a person registered, licensed, or certified by a federal or state agency, self regulatory organization or professional licensing authority as an attorney, financial planner, insurance agent, or other enumerated professional is not subject to the broker-dealer provisions of the Securities Exchange Act of 1934, provided that the criteria in Section 3(e)(2)(B) are met.

Section 212 is designed to rationalize the treatment of certain securities under Section 18(b)(1) of the Securities Act of 1933. Currently, issuance of a warrant or subscription right not listed on an exchange where the underlying security is listed may be subject to state registration requirements. The result is that the exemption

[1] Testimony of Chairman Arthur Levitt, before the Committee on Banking, Housing, and Urban Affairs, United States Senate, February 28, 2000, p. 8.
[2] Id., p. 9.
[3] Id., pp. 8–9.
[4] Id., p. 12.

from the registration requirements of state securities laws in NSMIA is inconsistent with that of exchange-listed securities described in Section 18(b)(1) of the Securities Act of 1933. The Committee believes that this anomaly should be remedied by including as a covered security any warrant or right to purchase or subscribe to any security described in Section 18(b)(1) (A), (B), or (C).

Also under Section 212, the treatment of interests in employee benefit plans is changed to lower regulatory burden. In the past, some states have required exemption filings to be made for participation interests in employee benefit plans because the interests were not covered securities under NSMIA, even though the underlying securities to be issued pursuant to the plan were covered securities under Section 18(b)(1). It is the Committee's belief that there are no investor protection issues at stake to compel registration filing of an employee benefit plan where the securities to be issued pursuant to the plan are covered securities. Therefore, the legislation amends Section 18(b)(1) to include interests of employee benefit plans whose underlying securities are covered securities under Section 18(b)(1) (A), (B), or (C).

Section 212 also addresses the problem encountered by securities brokerage firms when they need to verify whether foreign stocks are covered securities under Section 18(b)(1) or (b)(4)(A) before they effect a customer trade. These transactions are known as secondary market, non-issuer transactions. In these instances, brokers must check the laws of each state to insure that there is a secondary market transaction exemption available prior to executing a customer's order. It is the intent of the Committee to eliminate the need for brokers to check for state secondary market exemptions for a foreign equity security that is defined as a margin security. The Committee does not believe that this section diminishes investor protection, as persons effecting these transactions remain subject to state and federal laws requiring broker-dealer and agent registration.

Section 212 clarifies the original intent of NSMIA with respect to notice filings and fees. It is the Committee's intent that the states are permitted to receive the entire SEC Form D, including those items of Form D which are not required to be filed with the SEC. Section 212 also amends Section 18(c)(2) of the Securities Act of 1933 to address the fact that, under NSMIA, states were allowed to continue to receive notice filings and fees with respect to certain transactions exempted under Section 3(a) of the Securities Act of 1933. With this provision, states would be prohibited from imposing notice filings or fees for these transactions. However, it is the intent of the Committee that this provision shall not preclude application of state notice filing or fee requirements to certain municipal securities exempt under Section 3(a)(2) of the Securities Act of 1933, and state registration provisions applicable to securities exempt under Sections 3(a)(4) and 3(a)(11) and expressly deemed not to be covered securities under Section 18(b)(4)(C) of Securities Act of 1933.

Section 212 creates Section 18(e) of the Securities Act of 1933. This new subsection clarifies the intent of Congress in NSMIA that states cannot require registration of individuals as agents if they represent an issuer in a Rule 506 offering and if the individual receives no compensation in connection with the offering.

Section 221 amends Section 203A(b)(2) of the Investment Advisers Act of 1940 to reaffirm Congress' intent when it enacted NSMIA. Specifically, nothing was meant to prohibit states from (1) investigating and bringing enforcement actions with respect to fraud or deceit against, or (2) receiving a notice filing, consent to service of process, and a fee from a federally registered adviser, provided the de minimis provisions enacted in this legislation are honored. It is the intent of the Committee that Section 203A(b)(1) (A) and (B) and Section 203A(b)(2) (A) and (B) not be read as requiring a state to exercise one of these grants of authority to the exclusion of the other. With regard to notice filings, Section 221 clarifies Congress' original intent in NSMIA that states can only require those documents from federally registered advisers that they file with the SEC under the Investment Advisers Act of 1940.

Under Section 222, a new subsection, Section 203A(e), is added to the Investment Advisers Act of 1940 to create de minimis provisions relating to prohibitions on states from requiring notice filings, fees and registrations. The Committee believes that adoption of a single statutory section provides an effective and efficient way to identify restrictions applicable to the states for all investment advisers. Section 203A(e)(1) prohibits states from requiring the filing of documents, or payment of fees, from a supervised person of a federally registered adviser if that individual has no place of business in the state. While the vast majority of states do not subject these individuals to multi-state licensure, a few states have required notice filings and fees from these persons. In adopting this provision, the Committee intends to stop this practice and insure that these prohibitions apply not only with respect to a supervised person directly, but also to anyone who might be required to make a filing or pay a fee on behalf of a supervised person. Section 203A(e)(2) establishes a national de minimis provision applicable to federally registered advisers. This section creates an exemption from state notice filing, fee, and consent to service requirements when the adviser has a place of business in another state and has a de minimis number of clients in the state which seeks to impose the requirements. Section 203A(e)(3) is the national de minimis provision that was originally enacted in NSMIA as Section 222(d) of the Investment Advisers Act of 1940 pertaining to state registered advisers. The Committee has moved this provision and has incorporated it within the single provision for all investment advisers.

Section 222 also creates the new subsection Section 203A(f), that preserves the ability of states to collect filing, registration, and licensing fees for federally registered advisers. It is the Committee's intent that this subsection be construed as permitting states to receive fees, consistent with the limitations provided in the Investment Advisers Act of 1940, no matter how such fees may be characterized in state law. For example, this subsection shall not be construed as prohibiting a state from receiving a filing fee from a federally registered investment adviser even where such fee is denominated in state law as a "registration" fee, provided that the other limitations imposed on the states by the Investment Advisers Act of 1940 are observed. That is to say, a state may continue to receive a "registration" fee even though it cannot continue to require registration.

Section 223 will prohibit states from enforcing their financial reporting requirements when out-of-state advisers are in compliance with their home state's laws and have not taken custody of any assets of a client residing in the other state within the prior 12 months. Currently, a few states require investment advisers to supply certain financial information, even though the advisers have their principal place of business in another state. Section 223 is consistent with Congress' intent in NSMIA to reduce reporting burdens on investment advisers.

Section 223 also creates a new subsection, 222(e) of the Investment Advisers Act of 1940, that will prohibit states from imposing certain filing requirements or fee payment requirements if the state does not accept filings in the new Investment Adviser Registration Depository (IARD) designated under Section 224 of this Act. The Committee believes that universal state participation in IARD will maximize efficiency of the regulatory system while imposing the least cost upon the industry. Investors also will benefit from having access to a complete public disclosure database for both state and federally registered advisers.

Section 224 embodies the Committee's recognition that in the last few years the Internet has become an integral part of the communications infrastructure of the United States and is regularly used by millions of Americans. In light of this development, the National Association of Securities Dealers (NASD) has developed a means to make its Public Disclosure Program available over the Internet. Currently, investors and others can only access administrative and disciplinary information about a registered person or firm over a telephone hotline. Section 224 creates a legal environment whereby the NASD can make this information available on its web site by extending the immunity from liability that is set forth in Section 15A(i) of the Securities Exchange Act of 1934. Immunity will now apply to the information disclosed over the Internet, or any other electronic system that may be developed. In addition, immunity is provided to national securities exchanges that provide such information pertaining to its members and associated persons into the NASD's Public Disclosure Program.

Section 224 also repeals the provision of NSMIA in which Congress mandated that the SEC provide for the establishment of a public disclosure program for investment advisers, and it codifies the provision as part of the Investment Advisers Act of 1940. In its place, a provision is inserted that permits the Commission to designate the NASD to carry out its plans to administer the investment adviser public disclosure program—known as the Investment Adviser Registration Depository. This provision also is conformed to the terms of Section 15A(i) of the Securities Exchange Act of 1934 so that the disclosure programs for brokers and firms, as well as investment advisers, will be subject to consistent statutory provisions.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

Designates this title as the "Competitive Market Supervision Act."

Title I—Fees and Comparability

Section 101. Reduction in registration fees; elimination of general revenue component

Registration fee rates in Section 6(b) of the Securities Act of 1933 (15 U.S.C. 77f(b)) are reduced. The general revenue portion of the registration fee is eliminated. The offsetting collection rate is set at $67 per $1 million of securities registered for FY 2001–2006, and at $33 per $1 million for FY 2007 and thereafter.

Section 102. Reduction in merger and tender fees; reclassification as offsetting collections

Section 102 reduces merger and tender fee rates in Section 13(e)(3) and Section 14(g) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(e)(3) and 78n(g), respectively) from one fiftieth percent under current law, to $67 per $1 million of securities involved for the period FY 2001–2006, and reduces rates further to $33 per $1 million for FY 2007 and thereafter. All fees are reclassified from general revenues to offsetting collections.

Section 103. Reduction in transaction fees; elimination of general revenue component

Under this section, all transactions included in Section 31 of the Securities Exchange Act of 1934 (15 U.S.C. 79z–5) are consolidated, with the same fee rate applied to each as an offsetting collection. Transaction fees in any particular fiscal year will be set in appropriations acts at a rate estimated to collect the target dollar amount set for that year. The target dollar amount is calculated to approximate the amount, when combined with anticipated registration and merger/tender fees, that will approximately equal the offsetting collections anticipated to be produced under current law.

Section 104. Adjustment to fee rates

The Commission is given authority to increase or decrease transaction fee rates after the first half of the fiscal year if projections show that either the cap or floor for total fee collections will be breached. To provide a safeguard against misuse of the authority granted in Section 104, the legislation requires the agency to report to Congress before it exercises any authority to adjust fees.

Section 105. Comparability provisions

Section 105(a) amends Section 4(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78d(b)) to authorize, but not require, the SEC to compensate its employees according to a scale outside the Federal Government's General Schedule (GS) rates. Pursuant to this authority, the SEC may provide additional compensation and benefits to its employees on the same comparable basis as do the agencies referred to under Section 1206(a) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 1833b). Such agencies include the federal banking agencies, the National Credit Union Administration, the Federal Housing Finance Board, and the Farm Credit Administration. The amendment ensures that reductions, if any, in base pay for an employee of the SEC represented by a labor organization with exclusive recognition in accordance with Chapter 71 of Title 5 of the United

States Code, result from negotiations between such organization and SEC management, as opposed to by reason of the enactment of this amendment.

In establishing and adjusting schedules of compensation and benefits for its employees, Section 105(b) requires the SEC to inform the heads of the agencies mentioned above and to maintain comparability with such agencies regarding compensation and benefits. A technical change is made to strike from Section 1206(a) the reference to the Thrift Depositor Protection Oversight Board of the Resolution Trust Corporation, which was abolished on December 31, 1995. Section 105(c) provides certain conforming amendments to Title 5 of the United States Code to reflect changes made under Subsection (a).

Section 106. Authorization for appropriations

Appropriations for the SEC are authorized for $422,800,000 for fiscal year 2001.

Section 107. Effective date

In general, Title I becomes effective on October 1, 2000. However, the authorities provided by Section 13(e)(3)(D), Section 14(g)(1)(D), Section 14(g)(3)(D), and Section 31(d) of the Securities Exchange Act of 1934, as so designated by this title shall not apply until October 1, 2001.

Title II—Securities Markets Enhancement

Section 201. Short title

Designates this title as the "Securities Markets Enhancement Act of 2000."

Subtitle A—Reducing the Cost of Capital Formation

Section 211. Exempted securities and organizations

Section 211(a) raises the exemption threshold under Section 3(b) of the Securities Act of 1933 (15 U.S.C. 77c(b)). Currently, the SEC has the ability to exempt certain offerings from registration, but not exceeding an amount of $5 million. Section 211(a) raises the maximum size that the SEC can exempt to $12 million. Section 211(b) amends the Securities Exchange Act of 1934 (15 U.S.C. 78c(e)(2)) to provide an exception to individuals from broker-dealer registration who are compensated in connection with the issuance by charitable organizations of exempt securities described in Section 3(a)(12)(A)(v) of the Securities Exchange Act of 1934. Individuals receiving such compensation do not have to register as a broker-dealer, provided that the charitable organization, and the individual, meet the criteria laid out in Section 3(e)(2)(B) of the Securities Exchange Act of 1934.

Section 212. National market treatment for certain securities

Section 212 expands the definition of covered securities under Section 18 of the Securities Act of 1933 (15 U.S.C. 77r) to include new categories of securities that are offered and exchanged nationally (and even internationally) or are products where the underlying security is a covered security. The list of new covered securities includes certain rights and warrants, securities of foreign governments, any foreign equity security that qualifies as a "margin security" under the rules and regulations of the Board of Governors of the Federal Reserve System, and interests in employee benefit plans. Section 212 also eliminates the ability of states to collect fees on secondary market transactions involving the securities outlined in Section 18 as amended by this legislation. Further, Section 212 will allow officers and directors of firms that offer the securities described in Section 18(b)(4)(D) of the Securities Act of 1933 (15 U.S.C. 77r(b)(4)(D)) to avoid state registration and licensing as issuer agents, provided that they receive no compensation in connection with such offerings.

Subtitle B—Enhancement of Disclosure and Investment Adviser Regulation

Section 221. Ensuring adequate record keeping

Section 221 amends Section 203A(b)(2) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–3a(b)(2)) to reaffirm Congress' intent when it enacted NSMIA, that nothing was meant to prohibit states from (1) investigating and bringing enforcement actions with respect to fraud or deceit against, or (2) receiving a notice filing, consent to service of process, and a fee from a federally registered adviser, provided the de minimis provisions enacted in this legislation are honored.

Section 222. Elimination of barriers to providing services

Section 222 adds a new subsection, Section 203A(e), to the Investment Advisers Act of 1940 to create de minimis provisions relating to prohibitions on states from requiring notice filings, fees, and registrations for all investment advisers.

Section 223. Reducing financial reporting burdens

Currently, a few states require investment advisers to supply financial information, even though the advisers have their principal place of business in another state. Section 223 will prohibit states from enforcing these reporting requirements as long as advisers are in compliance with their home state's laws and have not taken custody of any assets of clients residing in the other state in the prior 12 months. Section 223 also provides an incentive to states to use the new Investment Adviser Registration Database (IARD) by not allowing a state to collect fees or require filings from certain investment advisers unless the state uses the one-stop electronic filing system currently being designed by the SEC and the NASAA pursuant to Section 204(b) of the Investment Advisers Act of 1940.

Section 224. Enhancing transparency of records

Section 224 will foster better disclosure of violations by broker-dealers and investment advisers by granting immunity protection to disclosures of such information over the Internet. Similar disclosures that currently occur over established telephone hotlines are already granted immunity. In 1996, as part of the NSMIA, Congress mandated that the SEC provide for the establishment of a public disclosure program for investment advisers. Section 224 repeals this provision of NSMIA and codifies it as part of the Investment Advisers Act of 1940 by permitting the SEC to designate an entity, such as the NASD, to administer the forthcoming IARD program.

REGULATORY IMPACT STATEMENT

In accordance with Paragraph 11(g), rule XXVI of the Standing Rules of the Senate, the Committee makes the following statement regarding the regulatory impact of the bill.

Title I of the bill dramatically lowers user fees on securities transactions and registrations, as well as mergers and tender offerings. The reduction of these fees lowers the cost of savings and investment for consumers, and reduces fee burden on businesses that raise capital in the securities markets. According to the Congressional Budget Office, beginning in FY 2001, the savings to investors and issuers from this bill are expected to be $10.4 billion over five years. The savings are expected to be $19.7 billion over ten years.

Title I also provides the SEC with authority to compensate its employees according to a scale outside of the Federal Government's General Schedule rates. This compensation parity provision will result in no increase in regulatory burden. Neither does it necessitate any increase in the SEC budget, since the increase is not mandatory. That is to say, the SEC would exercise this authority on a discretionary basis within the context of funds made available to the Commission by Congress through the normal authorization and appropriations process.

Title II of the bill makes many significant changes that lower the impact of regulation and its associated costs on issuers, broker-dealers, investment advisers, investors, and other participants in the securities markets.

The bill reduces regulatory burden by providing a greater opportunity for issuers of securities to avail themselves of exemptions from registration of their offerings. Greater use of such exemptions allow issuers to avert the paperwork and legal costs associated with the registration process.

The legislation will exempt individuals involved in offering certain qualifying securities on behalf of charitable organizations from registering as broker-dealers. The regulatory burden will be reduced for those individuals who previously had to register and for the charities that rely on the offering process.

By expanding the definition of covered securities, and thus allowing a greater number of offerings to qualify for a single registration (rather than multiple registrations with different states), the bill streamlines the offering process and eases regulatory burden on issuers. In addition, the regulatory burden will be reduced on brokers who participate in secondary market transactions involving these securities. Under current law, brokers are required to verify that a given security was registered in the particular state where the investor resided before the brokers could consummate a secondary transaction involving securities affected by this provision. Brokers will be able to avoid this extra step when engaging in transactions involving securities that will become covered securities upon enactment of this bill.

The bill eliminates the authority of states to collect paperwork and fees on secondary market transactions involving covered securities. No states currently require such paperwork or fees, therefore, this provision is viewed to be a technical correction that will have no regulatory impact but serves rather to prevent an unneeded regulatory burden from being added in the future.

The bill preserves the ability of states to collect certain filings, fees, and documents from investment advisers. This provision is simply a reaffirmation of current practice and will not have any regulatory impact.

Directors and officers of issuing firms sometimes assist in the offering of their firm's securities. This bill will lower regulatory burden on these individuals by allowing them to avoid registration as issuer agents, provided that they receive no compensation particularly related to the offering.

The legislation creates specific guidelines that will allow investment advisers to avoid filings, fees, registrations, and the providing of financial information to states where they have no place of business and only a de minimis number of clients. This provision significantly lowers regulatory costs on investment advisers who qualify for such treatment.

The legislation provides a legal environment that will allow self regulatory organizations (SROs) to provide disclosures over the Internet to investors about the administrative and disciplinary backgrounds of broker-dealers, investment advisers, and other market participants. By realizing the efficiency of communicating such information electronically, regulators will avoid certain paperwork, as well as receive disclosures in a more timely fashion and at lower cost. Using such an electronic process lowers the burden on members of SROs and investment advisers who must fund the disclosure programs, and improves investor access to such information.

The bill creates a one-stop system to allow investment advisers to fulfill their registration, filing, and other regulatory obligations without having to do so state-by-state. This system will maximize efficiency of the regulatory system while lowering fees and regulatory cost incurred by the investment adviser industry.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

Senate rule XXVI, Section 11(b) of the Standing Rules of the Senate, and Section 403 of the Congressional Budget Impoundment and Control Act, require that each committee report on a bill containing a statement estimating the cost of the proposed legislation, which was prepared by the Congressional Budget Office. The Congressional Budget Office Cost Estimate and its Estimate of Costs of Private-Sector Mandates, both dated July 24, 2000, are hereby included in this report.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 24, 2000.

Hon. PHIL GRAMM,
Chairman, Committee on Banking, Housing, and Urban Affairs, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 2107, the Competitive Market Supervision Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Mark Hadley and Kenneth Johnson.

Sincerely,

STEVEN LIEBERMAN
(For Dan L. Crippen, Director).

Enclosure.

S. 2107—Competitive Market Supervision Act

Summary: S. 2107 would adjust the fees that the Securities and Exchange Commission (SEC) is authorized to collect for registrations, mergers, and transactions of securities. Under current law, some of those fees are recorded in the budget as governmental receipts (revenues) and some are recorded as offsetting collections that are credited against discretionary appropriations for the SEC. The bill would eliminate SEC fees that are recorded as revenues and would limit the amount of fees that can be collected as an offset to discretionary spending. If implemented, S. 2107 would reduce total SEC fees from an estimated $2.1 billion in fiscal year 2000 to about $0.7 billion in 2001.

The bill would authorize the appropriation of $423 million for the SEC in 2001. Under S. 2107, the SEC would be allowed to adjust employees' compensation and benefits to make them comparable to agencies that regulate banking, such as the Federal Deposit Insurance Corporation (FDIC) and the National Credit Union Administration. Finally, the bill would exempt certain market participants and types of securities from state registration requirements.

CBO estimates that implementing S. 2107 in 2001 would increase net SEC spending, relative to 2000 spending. For 2001, the bill would authorize an increase of $40 million in the gross SEC appropriation, relative to 2000, but it also would limit the amount of fees that would be credited against gross SEC spending will total $864 million. Without any limitation, we expect those fee collections would grow to $988 million in 2001. Under S. 2107, however, we estimate that SEC fees that are credited against gross agency spending would be limited to $677 million. CBO estimates that net SEC spending would increase by $275 million from 2000 to 2001, assuming appropriation of the amount authorized by the bill for 2001. (Estimated budgetary effects of S. 2107 after 2001 would depend on gross appropriations provided to the SEC. This bill would not authorize such spending beyond 2001.)

Finally, CBO estimates that enactment of S. 2107 would reduce governmental receipts by $1.3 billion in 2001 and by $7.9 billion over the 2001–2005 period. Because S. 2107 would reduce governmental receipts, pay-as-you-go procedures would apply.

S. 2107 contains intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA) because it would preempt several states' securities laws. While data are very limited, CBO estimates that complying with these mandates would not exceed the threshold established by that act ($55 million in 2000, adjusted annually for inflation). S. 2107 would impose private-sector mandates on the national securities exchanges, national securities associations, and investment advisors. CBO estimates that the direct costs of these mandates would be below the annual threshold established by UMRA for private-sector mandates ($109 million in 2000, adjusted for inflation).

Estimated cost to the Federal Government: The estimated budgetary impact of S. 2107 on revenues is shown in Table 1. The effect of the bill on spending subject to appropriation after 2001 would depend on the gross amounts appropriated to the SEC. The costs of this legislation fall within budget function 370 (commerce and housing credit).

Basis of estimate

CBO estimates that implementing S. 2107 would increase net SEC spending from 2000 to 2001 by $275 million, assuming appropriation of the bill's authorized amount. We estimate that enactment of the bill would reduce revenues by $1.3 billion in 2001 and by $7.9 billion over the 2001–2005 period by eliminating SEC fees that are currently recorded in the budget as revenues.

Spending subject to appropriation

S. 2107 would authorize the appropriation of $423 million in 2001 for the SEC, and would reduce the amount of fees the agency is authorized to charge, subject to appropriation action. In addition, the bill would establish upper and lower limits on the total amount of fees the SEC could collect each year to offset its appropriated spending.

TABLE 1.—ESTIMATED BUDGETARY EFFECTS OF S. 2107

	By fiscal year, in millions of dollars—					
	2000	2001	2002	2003	2004	2005
SPENDING SUBJECT TO APPROPRIATION [1]						
SEC spending under current law:						
Estimated budget authority [2]	−496	0	0	0	0	0
Estimated outlays	−515	111	0	0	0	0
Proposed Changes:						
Gross SEC spending:						
Authorization Level	0	423	0	0	0	0
Estimated outlays	0	326	93	0	0	0
Offsetting collections:						
Estimated authorization level	0	−677	0	0	0	0
Estimated outlays	0	−677	0	0	0	0
Net SEC spending:						
Estimated authorization level	0	−254	0	0	0	0
Estimated outlays	0	−351	93	0	0	0
SEC Spending under S. 2107:						
Estimated authorization level [3]	−496	−254	0	0	0	0
Estimated outlays	−515	−240	93	0	0	0
CHANGES IN REVENUES						
Estimated revenues	0	−1,306	−1,420	−1,545	−1,717	−1,910

[1] After 2001, the impact on discretionary spending or the changes in SEC for rates that would be made by S. 2107 would depend on the gross appropriation provided for the agency. This bill only authorizes such funding for 2001.
[2] The 2000 level is the estimated net amount appropriated for that year, the gross SEC appropriationf or 2000 was $383 million.

Changes in Gross Spending.—S. 2107 would authorize a gross SEC appropriation for 2001 that is $40 million more than the 2000 level. Based on historical spending patterns of the agency, CBO estimates implementing this provision would cost about $420 million over the 2001–2002 period.

Changes in Offsetting Collections.—The bill would reduce offsetting collections by reducing the current statutory rates on all three types of SEC fees: registration fees, merger and tender fees, and transaction fees. The bill also would establish an upper and lower limit on the total amount of offsetting collections the SEC may collect in any year.

Based on historical information from the securities industry and the likelihood that offsetting collections would exceed the upper limit that would be established by the bill, CBO estimates that the lower fee rates authorized by S. 2107 would reduce offsetting collections relative to CBO's baseline by about $311 million in 2001 and by $2.5 billion over the 2001–2005 period, subject to future appropriation action. Table 2 compares CBO's baseline estimates of SEC fee collections with our estimates of fee collections under S. 2107.

TABLE 2.—ESTIMATED OFFSETTING COLLECTIONS FROM SEC FEES, RELATIVE TO CBO BASELINE ESTIMATES

	Outlays in millions of dollars by fiscal year—					
	2000	2001	2002	2003	2004	2005
CBO baseline estimates of SEC offsetting collections	−864	−988	−1,154	−1,360	−1,582	−1,919
Estimated reduction in fees authorized by S. 2107	0	311	388	479	591	723
Estimated SEC offsetting collections under S. 2107	−864	−677	−766	−881	−991	−1,196

Registration fees.—Under current law, the SEC collects a fee on the registration of securities. The current registration fee is $200 per $1 million of the maximum aggregate price for securities that are proposed to be offered during the 2000–2006 period. After 2006, the fee drops to $67 per $1 million of the maximum aggregate price for securities that are proposed to be offered. These fees are recorded as governmental receipts (revenues). Current law also requires, subject to appropriation, that the SEC charge an additional registration fee of $50 per $1 million of the maximum aggregate price for securities that are proposed to be offered in 2001. Under current law, this added registration fee gradually declines after 2001, until it ends at the end of 2005. These additional fees are recorded as offsetting collections.

S. 2107 would eliminate all registration fees that are recorded as governmental receipts and would set fees that are recorded as offsetting collections at $67 per $1 million of the maximum aggregate price for securities that are proposed to be offered during the 2001–2006 period. The bill also would change the registration fees for 2007 and thereafter to $33 per $1 million of the maximum aggregate price for securities that are proposed to be offered. CBO estimates that under the bill the SEC would collect $229 million in registration fees in 2001, subject to appropriation action.

Merger and tender fees.—Under current law, the SEC charges a merger fee equal to $200 per $1 million of the value of securities proposed to be purchased as part of a merger. These current fees are also recorded revenues. S. 2107 would eliminate those merger fees and establish new merger fees to be recorded as offsetting collections at the rate of $67 per $1 million of the aggregate value of securities proposed to be purchased during the 2001–2006 period. The bill also would establish merger fees for 2007 and thereafter at the rate of $33 per $1 million of the aggregate value of securities proposed to be purchased as part of a merger. CBO estimates that under S. 2107 the SEC would collect about $46 million in merger fees in 2001, subject to appropriation.

Transaction fees.—Under current law, the SEC collects 1/300th of a percent of the aggregate dollars traded through national securities exchanges, national securities associations, brokers, and dealers. The fee rate will decline to 1/800th of a percent for 2007 and thereafter. Fees collected from national securities associations are recorded as offsetting collections. (Fees from other sources are recorded as revenues.)

Under the bill, all transactions fees would be recorded as offsetting collections. Furthermore, the bill would require the SEC to set the transaction fee rate at the beginning of each fiscal year so that transaction fee collections in a given fiscal year will equal a specified amount. For 2001, this amount would be $413 million. By comparison, under our baseline assumptions, CBO estimates the SEC will collect $817 million of offsetting collections from transaction fees in 2001.

S. 2107 would require that the SEC adjust the transaction fee rate during the year so that total SEC fee collections (including fees for registrations, mergers, and transactions) would not fall below a specified floor amount of collections, nor exceed a specified ceiling amount of collections. The bill would set the floor amount equal to the amount appropriated to the SEC for fiscal year 2001, and adjust it annually for changes in inflation thereafter, or at the amount authorized to be appropriated for the SEC in a given year, whichever is greater. The bill would set the ceiling amount equal to the most recent CBO baseline for total SEC collections, plus 5 percent above this level, for fiscal years 2001 through 2010. The bill would set the ceiling equal to the amount authorized to be appropriated for the SEC, plus an additional 5 percent, for fiscal years 2011 and thereafter.

By changing the fee rates paid for registrations, mergers, and transactions, the bill would reduce total offsetting collections from the CBO baseline estimates of $988 million to about $688 million in 2001. Offsetting collections, however, could be higher or lower depending on the volume of each of those activities. By limiting the total amount the SEC could collect through a floor and ceiling, the bill would eliminate the possibility that offsetting collections could be less than $423 million or more than $1,037 million in 2001. Based on the historical growth of SEC fees, CBO does not expect fees would be less than the floor in any year. Based on the likelihood that SEC fees under the bill would be greater than the ceiling in 2001, CBO estimates these provisions would cost about $11 million in that year. CBO estimates the ceiling provisions would reduce expected fees by about $90 million over the 2001–2005 period.

Revenues

S. 2107 would eliminate all registration, merger and tender, and transaction fees that are currently recorded as revenues. CBO estimates that S. 2107 would reduce revenues by $7.9 billion over the 2001–2005 period and by $14.4 billion over the 2001–2010 period.

Pay-as-you-go considerations: The Balanced Budget and Emergency Deficit Control Act sets up pay-as-you-go procedures for legislation affecting direct spending or receipts. The net changes in governmental receipts that are subject to pay-as-you-go procedures are shown in Table 3. For the purposes of enforcing pay-as-you-go procedures, only the effects in the current year, the budget year, and the succeeding four years are counted.

TABLE 3.—ESTIMATED IMPACT OF S. 2107 ON DIRECT SPENDING AND RECEIPTS

	By fiscal year, in millions of dollars—										
	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
Changes in outlays	Not applicable										
Changes in receipts	0	–1,306	–1,420	–1,545	–1,717	–1,910	–2,108	–1,000	–1,026	–1,129	–1,241

Estimated impact on state, local, and tribal governments: S. 2107 would preempt state laws to prohibit states from imposing certain filing and fee requirements on specified securities and securities providers. Such preemptions would be mandates as defined in UMRA. Because states vary significantly in filing requirements, fee structures, and scope of regulation, CBO cannot determine precisely the total revenue loss they would experience as a result of this bill. However, based on information provided by groups representing securities administrators, securities attorneys, and a sample of states most likely to be affected, we estimate that those losses would not exceed the threshold established by UMRA ($55 million in 2000, adjusted annually for inflation).

Estimated impact on the private sector: S. 2107 would require each national securities exchange and national securities association to file monthly with the SEC an estimate of fees that they are required to pay. The bill would also impose requirements on a registered securities association and investment advisors by requiring electronic access to disciplinary and other information. Based on information from government and industry sources, CBO estimates that the direct costs of the mandates would be below the annual threshold established by UMRA for private-sector mandates ($109 million in 2000, adjusted for inflation).

Estimate prepared by: Federal costs: Mark Hadley and Kenneth Johnson; revenues: Hester Grippando and Erin Whitaker; impact on State, local, and tribal governments: Shelly Finlayson; impact on the private sector: Jean Wooster.

Estimate approved by: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis; Roberton Williams, Deputy Assistant Director Tax Analysis.

CHANGES IN EXISTING LAW

In the opinion of the Committee, it is necessary to dispense with the requirement of Section 12 of rule XXVI of the Standing Rules of the Senate in order to expedite the business of the Senate.

ADDITIONAL VIEWS OF SENATOR SHELBY

Last year, this Committee tore down the legal barriers separating banking, securities and insurance and passed into law the Gramm-Leach-Bliley Act. As hard as I tried, I could not convince the Committee to adopt strong privacy provisions to provide individuals any real ability to control the use of their most personal financial and medical information. At that time, I was essentially told that "this is not the time, or the place."

During the markup of S. 2107, I offered an amendment which would have disallowed financial institutions from purchasing or selling Social Security numbers and would have expanded the definition of the term "nonpublic personal information" in the Gramm-Leach-Bliley Act to include Social Security numbers. Again, I was told this is not the time or the place and that my amendment may have "unintended consequences." On this basis, my amendment was voted down by a vote of 10 to 10.

While opponents of my amendment talked about unintended consequences of adopting the amendment, I would like to discuss the unintended consequences of not adopting my amendment and instead choosing the status quo.

According to a New York Times article on April 3rd of this year, "Law enforcement authorities are becoming increasingly worried about a sudden, sharp rise in the incidence of identity theft, the outright pilfering of peoples personal information for use in obtaining credit cards, loans and other goods." The article goes onto say that the "Social Security Administration reported that they had received more than 30,000 complaints about the misuse of Social Security numbers last year, most of which had to do with identity theft."

Ironically, on the very same day of the markup, the Washington Post featured an article on the front page of the Business section that read, "ID Theft Becoming Public Fear No. 1." The article reported that "Consumers are besieging federal agencies with complaints about fraudulent loans taken out in their names, misuse of Social Security numbers and falsified credit card accounts."

Identity theft is real. At the markup, I told the story of Mr. Bob Hartle, a factory worker in Arizona. One day, much to Mr. Hartle's dismay, he found out that an individual had obtained his personal information and used that information to steal his identity, apply for credit cards and open accounts. That individual ran up over $100,000 in credit card debt under Mr. Hartle's name, purchased motorcycles, even a home, filed for bankruptcy, obtained a drivers license, and was even fired from his job—all in Mr. Hartle's name. Mr. Hartle spent $15,000 and moved to Phoenix just to track down the thief.

The thief was ultimately prosecuted for fraud, but only after the criminal had obtained four life insurance policies in Hartle's name and had even assumed his status as a Vietnam veteran.

In addition, I shared the story of Amy Boyer, a girl whose social security number was bought on the Internet for $45 and was subsequently murdered by a stalker.

The economic toll of identity theft is not insignificant. In 1997, the Secret Service made nearly 9,500 arrests amounting to $745 million in losses to individuals and financial institutions. Indeed, ninety-five percent of financial crimes arrests involve identity theft.

While financial institutions have used the Social Security number as an identifier, the sale and purchase of these numbers facilitates criminal activity and can result in significant invasions of individual privacy. These are the unintended consequences of having no federal law that prohibits the buying and selling of Social Security numbers. I would argue these unintended consequences far outweigh any inconvenience my amendment would cause financial institutions.

What gives companies the right to buy and sell your Social Security number, anyway? The Social Security number was created by the federal government in 1936 as a means of tracking workers earnings and eligibility for Social Security benefits. There was never any intention or consideration for financial institutions to use a person's Social Security number as a universal access number.

However, the financial services industry has come to use and depend on an individual's private Social Security number, both as an identifier and in order to conduct transactions. Indeed, banks use the last four digits of the Social Security number as the default PIN number for ATM cards and for telephone banking access. It has been reported that many insurance companies use an individual's Social Security number as the account number which is printed on the member card that individuals carry in their wallet. Again, no federal law prohibits the buying and selling of individual Social Security numbers.

Last year, a reputable Fortune 500 company, U.S. Bancorp, sold account information—including Social Security numbers—of one million of its customers to MemberWorks, a telemarketer of membership programs that offer discounts on such things as travel to health care services. Now some may believe we stopped such activity by including a provision, Section 502 (d), in the Gramm-Leach-Bliley Act limiting the ability of institutions to share account information with telemarketers.

That provision, however, does not stop a financial institution from buying and selling individual Social Security numbers. Indeed, it is even legal to sell an individual's birth date, and mother's maiden name. If you have those three things, you have the keys to the kingdom—not to mention any and every account that individual has.

While it is true identity theft is against the law, the sponsor of the law, Senator Jon Kyl admitted just one day before our markup that, "Almost two years after the passage of the Act (Identity Theft and Assumption Deterrence Act of 1998, P.L. No. 105–318 (1998)), identity theft unfortunately continues to grow. * * *" There is no question that this increase in criminal activity is due to the proliferation of using Social Security numbers at financial institutions.

In addition, my amendment included Social Security numbers as nonpublic personal information for the purpose of the Gramm-Leach-Bliley Act, thereby subjecting the sharing of Social Security numbers to the privacy protections in that Act. Current regulations say that Social Security numbers are not considered nonpublic personal information if the number is "publicly available," as in bankruptcy filings, etc.

I just cannot find a reason as to why Congress should aid and abet criminals in attaining individual Social Security numbers by having a law on the books that treats Social Security numbers as "public information." Indeed, no American would agree the public good is being served by making their personal Social Security number available for anyone who wants to see it.

Last year, during the debate on financial modernization, the financial industry argued they needed the ability to share information among affiliates. To be clear, my amendment would not have limited a financial institution's ability to share an individual's Social Security number among affiliates.

I believe the time to protect Social Security numbers is now. The evolution of technology is making the collection, aggregation, and dissemination of vast amounts of personal information easier and cheaper. The longer we wait to act on this very important issue—an issue that is supported by a vast majority of Americans—the more the American people lose confidence in the U.S. Congress and our ability to lead.

I am disappointed the Committee did not concur with me on the urgency of this issue. I hope we can add significant privacy protections on S. 2107 before this legislation is passed into law.

RICHARD SHELBY.

ADDITIONAL VIEWS OF SENATORS SARBANES, DODD, KERRY, AND REED

We support the provisions in S. 2107 that permit the Securities and Exchange Commission (SEC) to compensate employees in a manner comparable to that of employees at the other Federal financial regulators. We also support amendments to the Federal securities laws that remove unnecessary restrictions and requirements and make the markets more efficient.

However, we share the Administration's "deep concerns" that reducing the registration and transaction fees collected by the SEC will come at the expense of other Administration priorities, including "strengthening Social Security and Medicare, providing tax relief to middle-income families, funding critical initiatives, and paying off the debt by 2013."

We are also concerned that, as OMB points out in its letter to the Committee, this legislation "is subject to the pay-as-you-go requirements of the Omnibus Budget Reconciliation Act of 1990" and "the absence of any offsets could cause a significant sequester of mandatory programs." A copy of OMB Director Jacob J. Lew's letter to the Committee is included below.

We note also that the SEC fees would be reduced in a period when the securities industry and securities investors have been enjoying great economic prosperity. According to the Securities Industry Association, "The securities industry posted record results in almost every financial parameter during the first quarter of 2000. Pretax profits reached a new record $8.2 billion, a 20% increase over the previous quarter's then record $6.8 billion profit and an 82% increase from year earlier levels." New York Stock Exchange members in 1999 earned a record $461 million in profits, up over 50% from 1998 profits.

We believe that the overall impact on individual investors and public companies of the proposed fee reduction would be negligible because the amount of the SEC fee charged on each transaction or offering is small. When an investor sells stock, he or she is charged a Section 31 transaction fee amounting to 1/300 of 1%. This means, by way of example, that an investor who sells stock worth $3,000 pays a fee of about 10 cents; when $15,000 is sold, the fee is about 50 cents. When a company registers stock to be sold, it pays a Section 6(b) registration fee of 1/50 of 1%. By way of example, a company that registers $10 million of stock pays $400. The SEC fees already are scheduled to decline in 2007, as a result of the National Securities Markets Improvement Act.

From these examples, it appears that few if anyone is deterred from making an investment in a stock because of the fees incurred and, similarly, companies are not deterred from selling stock because of the size of the SEC fee.

For these reasons and, more importantly, because we do not know the budget implications, we express reservations about those provisions in this legislation which would reduce the registration and transaction fees collected by the SEC.

PAUL SARBANES.
CHRISTOPHER J. DODD.
JOHN F. KERRY.
JACK REED.

EXECUTIVE OFFICE OF THE PRESIDENT,
OFFICE OF MANAGEMENT AND BUDGET,
Washington, DC, June 15, 2000.

Hon. PAUL S. SARBANES,
Committee on Banking, Housing, and Urban Affairs,
U.S. Senate, Washington, DC.

DEAR SENATOR SARBANES: I am writing to express the Administration's deep concerns with S. 2107, the "Competitive Market Supervision Act," which would substantially reduce the registration and transaction fees collected by the Securities and Exchange Commission (SEC).

The President has proposed a balanced and responsible framework for maintaining fiscal discipline. Any additional reduction in SEC fees will necessarily come at the expense of strengthening Social Security and Medicare, providing tax relief to middle-income families, funding critical initiatives, and paying off the debt by 2013. This proposal was not included in the Administration's FY 2001 budget and we are concerned over the many bills introduced in Congress that would affect governmental revenues.

In 1996, Congress and the President collaborated on legislation—the National Securities Markets Improvement Act (NSMIA)—that established a calendar for reducing SEC fee rates. This legislation also required that approximately two-thirds of the total fee collections be deposited as general revenue of the Treasury and one-third as offsetting collections of the SEC. The Administration continues to support the declining fee rates agreed to in the NSMIA legislation. Proposals to further reduce these fees should be considered in the context of overall fiscal policy that balances the importance of debt reduction and competing priorities such as strengthening Social Security and Medicare, providing tax relief to middle-income families, and other critical initiatives called for in the President's FY 2001 budget request.

Finally, please note that S. 2107 would affect receipts; therefore, it is subject to the pay-as-you-go requirements of the Omnibus Budget Reconciliation Act of 1990. OMB's preliminary estimate is that the bill would reduce general revenue by approximately $1.3 billion per year; the absence of any offsets could cause a significant sequester of mandatory programs.

Sincerely,

JACOB J. LEW, *Director.*

ADDITIONAL VIEWS OF SENATORS BRYAN, SARBANES, DODD, KERRY, REED, AND EDWARDS

During last year's consideration of the Financial Services Modernization Act, repeated assurances were given to members of the Senate Banking Committee that the issue of financial privacy would be considered and examined by the committee at a reasonable date. With just a few short weeks remaining in the second session of the 106th Congress, it appears that the committee has failed to address this important issue at all, and it would be reasonable to assume that we will continue to be inundated with media reports of privacy intrusions and unauthorized information-sharing.

It has been suggested that pursuing privacy legislation would be an unnecessary and even hazardous exercise in light of last year's passage of the landmark Financial Services Modernization Act. Opponents of privacy legislation argue that the provisions in the Gramm-Leach-Bliley bill addressing consumer privacy should be provided sufficient time to take effect before we discuss or consider additional legislative measures.

This argument, however, wrongly assumes that the G–L–B privacy provisions are likely to play a meaningful role in protecting consumer privacy. They will not. The minimal requirements that were included in G–L–B merely require financial institutions to disclose their privacy policies to their customers and to provide timely notification when information is being shared. Moreover, while the legislation did require these institutions to provide their customers the ability to "opt-out" of information-sharing agreements with third parties, an exception was provided for institutions and third parties that enter into "Joint Marketing Agreements." Every major consumer organization has concluded that this watered-down restriction is virtually meaningless, and that the "Joint Marketing Agreement" exception is the proverbial loophole that is so enormous it has swallowed the rule.

In short, although we support disclosure and believe that financial institutions have a responsibility to keep their customers informed of how and when their information is shared or sold, such provisions can hardly be referred to as privacy "protections."

It has also been argued that further legislation is not necessary because the financial institutions are voluntarily adopting privacy policies. First, it should be noted that most of these policies provide consumers very little protection. Most only notify consumers when their information is being shared, and only a few banks provide their customers the opportunity to "opt-out" of information-sharing agreements. Virtually no major institutions have adopted the more extensive privacy protection; that is, the requirement that the bank obtain the express permission of their customers prior to the sharing or sale of information—so-called "opt-in."

Second, even when banks do have voluntary policies in place, how are consumers to know that such policies are being adhered to? Consider the case of Chase Manhattan, the third largest bank in the country and one of our Nation's most revered and storied financial institutions. The Attorney General of the State of New York found that Chase Manhattan was violating its own publicly-stated privacy policy, sharing confidential customer account information—without any notification to their customers—to a third-party telemarketing outfit. Eventually, Chase Manhattan avoided litigation on this matter by entering into a consent agreement with the Attorney General that established a tough, enforceable privacy policy for millions of Chase Manhattan customers across the country.

Given the volume of anecdotal evidence, the numerous cases of banks sharing or selling confidential customer information, the investigations concluded by the State Attorneys General in New York and Minnesota, and perhaps most important, the clear, unequivocal support of the American people for strong privacy legislation, we are disappointed that the committee has missed an opportunity to address the issue of privacy in a meaningful way.

Opponents of privacy legislation are clinging to the misguided notion that the marketplace will fall apart if financial institutions are barred from selling or sharing the most confidential information of their customers without seeking permission first.

But consider that two of the most successful banks in America, Chase Manhattan and U.S. Bancorp, already provide strong privacy protections to their customers pursuant to consent agreements they have entered into. Their ability to compete in the financial marketplace has hardly been diminished. Moreover, American banks operating in the European Community are required to seek their customers' permission prior to sharing their financial information. And yet their overseas operations continue to thrive. One must ask, why shouldn't the American customers of an American bank have the same rights and legal protections as the European customers of that same American bank?

Support for strong privacy legislation cuts across all partisan and ideological lines. Two of the leading privacy advocates in the Congress, our colleague Senator Richard Shelby (R–AL) and Rep. Joe Barton (R–TX), are also two of the more conservative members. Groups ranging from the ACLU and Consumers Union to the Eagle Forum and the Free Congress Foundation have formed a coalition in support of meaningful privacy legislation.

Momentum for privacy reform will continue to grow, and though it appears unlikely that any substantive legislation can pass before the adjournment of this Congress, the 107th Congress will surely be compelled to address this issue. It is our hope that the Senate Banking Committee will reverse course next year, and identify financial privacy as a top priority in 2001. If so, the Senate Banking Committee will have an opportunity to address perhaps the most critical issue facing American consumers today. We hope that opportunity is not lost.

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