

Possible Provisions for a Securities Laws Improvements Act

	Title of Provision	Brief Description
1	Beneficial Ownership Reporting	Amend Exchange Act Section 13(d) to give the Commission the authority to accelerate the deadline for initial Schedule 13D filings. Amend Exchange Act Section 16(a)(2)(B) to make parallel changes to the reporting deadline for beneficial ownership reports of officers, directors and ten percent owners. These changes would help the markets receive more timely information concerning interests in the issuer that may be important for the purposes of accurate pricing of any listed securities. Finally, Congress should delete the requirements in Exchange Act Sections 13(d)(1), 13(d)(2), 13(g)(1), 13(g)(2) and 16(a)(1) to send initial and amended beneficial ownership reports on Schedules 13D and 13G and Section 16(a) reports to the issuer and the national securities exchange where the security is traded. These provisions impose an unnecessary burden on investors to disseminate reports that are already required to be publicly filed with the Commission.
2	Securities Whistleblower Incentives and Protection Act	To authorize the Securities and Exchange Commission to pay awards to individuals who provide information to the agency leading to the successful enforcement of the federal securities laws, and for other purposes.
3	Collateral Bars	A regulated person who violates the securities laws in one part of the industry, for example a broker-dealer who misappropriates customer funds, should be barred from access to customer funds in another part of the securities industry. <i>Passed by the House in Sec. 6 of the Securities Act of 2008.</i>
4	Nationwide Service of Subpoenas	Provide that nationwide service of process/subpoenas is available in civil SEC actions filed in federal courts, which is consistent with the SEC's investigative powers and federal court subpoena power in criminal actions. <i>Passed by the House in Sec. 19 of the Securities Act of 2008.</i>
5	Expanded Access to Grand Jury Materials	Authorize expanded access to grand jury materials when such information is critical to SEC cooperative investigations (with potential attendant safeguards to insure that the Commission maintains the confidentiality of the information) similar to access available to banking regulators per Federal Rule of Criminal Practice 6(e)(3)(iii) and 18 USC §3222.
6	PCAOB - Share confidential work papers with foreign counterparts	Amend Section 105(b)(5) (15 USC 7215(b)(5)) of the Sarbanes-Oxley Act to allow the PCAOB to share its workpapers with its foreign counterparts. This will resolve international conflicts of law issues that have been impairing the PCAOB's ability to fulfill its statutory obligation to inspect non-US registered public accounting firms.
7	Expand Scope of Audit Documentation to be Produced	Clarify the application of Section 106 of Sarbanes-Oxley (Production of Foreign Audit Documentation); expand the scope of audit documentation to be produced; and provide for service of process. <i>[NOTE: If this provision is not coupled with # 6 (amending SOX 105 to allow the PCAOB to share workpapers with its foreign counterparts), it is likely to upset the European and other foreign regulators.]</i>
8	Amendment to Financial Right to Privacy Act	Replace Section 21(h) of the Exchange Act with a general exemption from the Right to Financial Privacy Act, which would authorize the SEC to obtain records from financial institutions in the same manner as it does from other third-party record holders.

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9	Clarification to knowledge requirement for aiding and abetting provisions	Amendment to aiding and abetting provisions to clarify that knowledge requirement can be satisfied by recklessness.
10	Civil Obstruction of Justice	Authorize the Commission to bring civil actions to obtain civil remedies, including penalties, against persons who obstruct SEC investigations.
11	Aiding and Abetting Under the Securities Act and the Investment Company Act	In 1995, Congress gave express aiding and abetting authority to the Commission for violations of the Securities Exchange Act of 1934, and the rules and regulations thereunder. The addition of similar provisions for the other securities laws enforced by the Commission would assist the Commission's enforcement program.
12	Authority to Impose Penalties in Aiding Abetting Actions Under the Investment Advisers Act	Fixes a technical anomaly or oversight in Advisers Act so as explicitly to allow district courts to impose penalties on aiders and abettors in injunctive actions.
13	Authorize Commission to order penalties in cease-and-desist proceedings	Would give SEC uniform authority to seek civil penalties in cease and desist proceedings (appealable). Would amend 33 Act, 34 Act, ICA, and IAA. Clarity and efficiency objectives. <i>Similar provision passed by House as Sec. 2 of Securities Act of 2008.</i>
14	Amendment to clarify authority over persons formerly associated	Amend numerous provisions of the federal securities laws to make it explicit (clarify or confirm) that the SEC has the authority to bring actions against persons formerly associated with a regulated or supervised entity for misconduct that occurred during that association. <i>Similar provision passed by House as Sec. 3 of Securities Act of 2008.</i>
15	Extraterritorial jurisdiction of the antifraud provisions	Clarify US extraterritorial jurisdiction under antifraud provisions of securities laws, overwriting disparate judicial tests by combining both (effects and conduct). US courts would have jurisdiction over "conduct occurring outside the United States that has a foreseeable substantial effect within the United States."
16	Protection of Certain Privileges	Authorize the Commission to communicate with domestic and foreign securities authorities and law enforcement authorities without potential waiver of any privileges that would otherwise protect information provided or received. <i>Similar provision passed by House as Sec. 16 of Securities Act of 2008.</i>
17	Interested Person Definition	Grant SEC authority to define who can be an independent director.
18	Elimination of PUHCA Exclusion	Eliminates exclusion for companies registered under PUHCA. <i>Similar provision passed by House as Sec. 18 of Securities Act of 2008.</i>
19	Fidelity Bonding	Clarifies fidelity bonding requirements for funds.
20	Eliminate Retail Price Maintenance	Repeal 22(d) which prohibits BDs from competing on price when selling fund shares.
21	Illiquid Securities	Authorize the SEC to set illiquid security limits for mutual funds because of the redeemability requirement.

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22	Sec. 205 Inapplicability to State-Registered IAs	Clarifies that Sec. 205 of the Advisers Act (performance fees and advisory contracts) does not apply to state-registered IAs. <i>Similar provision passed by House as Sec. 13 of Securities Act of 2008.</i>
23	Recordkeeping by Custodians	Authorize the SEC to require fund and IA custodians to maintain records and inspect them.
24	Elimination of 210(c)	Eliminates a prohibition on obtaining information about about an IA's clients, including hedge funds.
25	Defining Terms	Authorize the SEC to define terms in the IA Act.
26	PCAOB authority to inspect auditors of broker dealers	Give PCAOB authority to inspect auditors of broker dealers. Already introduced by Rep. Kanjorski in HR 1212.
27	Enhanced Authority to Conduct Surveillance and Risk Assessment	Amend the 1934 Act and both 1940 Acts to clarify that the SEC has authority to collect information for surveillance or risk assessment purposes and keep it confidential.
28	Correcting an Anomaly in the SEC's Authority to Examine Investment Companies	Amend Investment Company Act Section 31(b) to give the Commission the same authority to examine "all" records of registered investment companies that it has had for other registered entities, including broker-dealers and investment advisers, since 1975.
29	Expanded Streamlined Hiring Authority	Since 7/03, SEC has had streamlined hiring authority to hire accountants, examiners, and economists. Proposal would extend that authority to to all agency positions in the competitive service, including industry experts that the SEC needs. The current prolonged hiring process lengthens the amount of time it takes to bring new staff in these categories on board, acts as a disincentive for many financial professionals considering whether to apply for SEC jobs, and prevents SEC hiring managers from being able to select from the total pool of qualified applicants.
30	Authority of SROs to Enforce Compliance with Final Disciplinary Sanctions	Amend Exchange Act to permit exchanges and FINRA to go to court on own behalf to enforce compliance with fully litigated disciplinary sanctions, including fines and restitution (rather than rely on SEC to enforce under sec. 21(e)(1)). Would create an efficiency, as courts have held SROs now lack this authority.
31	Repeal of Requirements to Fix Hearing Date	Repeal provisions of securities laws that set rigid requirements for setting hearing dates in orders instituting cease and desist proceedings. Our Office of General Counsel believes these provisions are unnecessary. (One respondent invoked them to force dismissal of cease and desist proceedings.)
32	Amendment to Sec. 31, Exchange Act	Technical changes will ensure that in making mid-year Sec. 31 fee adjustments, Commission has fee data for first 5 months of FY (per Sec. 31(j)(2) of Exch. Act); will also clarify effective date of mid-year fee adjustments.

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33	Whistleblower Protection Against Retaliation by a Subsidiary of an Issuer	Amend SOX 806 to make clear that subsidiaries and affiliates of issuers may not retaliate against whistleblowers (i.e., extending protections), eliminating a defense often raised by issuers in actions brought by whistleblowers.
34	Fair Fund Amendment	Amend SOX 308 so SEC may place penalties in a fair fund for the benefit of victims even in situations where the SEC hasn't also obtained disgorgement from defendant (e.g., because defendant did not benefit from its securities law violation that harmed investors).
35	Control Person Liability	Clarify that SEC may rely on Exchange Act Sec. 20(a) to seek to impose joint and several liability on control persons. Would override two recent court decisions that held only private parties could rely on Sec. 20(a).
36	Municipal Securities	Enhance the independence of the MSRB by requiring that the number of public representatives would at all times exceed the total number of broker-dealer and bank representatives.
37	Securities Investor Protection Act (SIPA)	Update SIPA items including borrowing of funds, distinction between securities and cash insurance, portfolio margin, and liquidation.
38	Regulation of Stock Lending	Provide clarity for the Commission and provide greater ability to regulate the stock loan market, potentially enhancing market transparency, limiting collateral exposure/risk, and governing potential conflicts of interest in the stock loan and stock borrowing process.
39	Lost and Stolen Securities Program	The amendment would expand the scope of securities that must be reported to the Commission or its designee under the Lost and Stolen Securities Program. <i>Similar provision passed by House as Sec. 11 of Securities Act of 2008.</i>
40	Fingerprinting Personnel	The amendment would require the personnel of registered securities information processors, national securities exchanges, and national securities associations to be fingerprinted. <i>Similar provision passed by House as Sec. 12 of Securities Act of 2008.</i>
41	Equal Treatment of SRO Rules	Exchange Act Section 29(a) voids any condition, stipulation, or provision binding any person to waive compliance with any provision of the Securities Exchange Act of 1934 and any exchange rule. Proposed change would apply this requirement to any self-regulatory organizations rule instead of just any exchange rule.
42	Enhance Application of Anti-fraud Provisions	Amendments to Sections 9, 10, and 15 of Exchange Act to enhance the applicability of anti-fraud provisions.