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1ST SESSION

H. R. 1987

To amend the Securities Investor Protection Act of 1970 to provide insurance coverage for certain indirect investors caught in Ponzi schemes, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 25, 2011

Mr. ACKERMAN introduced the following bill; which was referred to the Committee on Financial Services

A BILL

To amend the Securities Investor Protection Act of 1970 to provide insurance coverage for certain indirect investors caught in Ponzi schemes, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Ponzi Scheme Investor
5 Protection Act of 2011”.

1 **SEC. 2. ADDITIONAL PROTECTIONS FOR INVESTORS IN**
2 **PONZI SCHEMES.**

3 (a) IN GENERAL.—The Securities Investor Protec-
4 tion Act of 1970 (15 U.S.C. 78aaa et seq.) is amended
5 by inserting after section 8 the following new section:

6 **“SEC. 8A. SPECIAL PROVISIONS RELATED TO PONZI**
7 **SCHEMES.**

8 “(a) DETERMINATION BY TRUSTEE.—Promptly after
9 the appointment of the trustee, such trustee shall deter-
10 mine if the debtor is a Ponzi scheme. If the trustee deter-
11 mines that the debtor is a Ponzi scheme—

12 “(1) the trustee shall notify SIPC;

13 “(2) SIPC shall make such determination pub-
14 licly available, including on SIPC’s Web site; and

15 “(3) if the trustee determines that customers
16 invested more than \$1,000,000,000 in such Ponzi
17 scheme, the trustee and SIPC shall, not later than
18 30 days after such determination is made, jointly
19 submit to the Committee on Financial Services of
20 the House, the Committee on Banking, Housing,
21 and Urban Affairs of the Senate, and the Secretary
22 of the Treasury a reasonable expected timeline for
23 the consideration of claims made under this section.

24 “(b) STATEMENT OF CLAIM.—

25 “(1) IN GENERAL.—An indirect Ponzi scheme
26 investor may, not later than the end of the 1-year

1 period beginning on the date SIPC makes a deter-
2 mination publicly available under subsection (a), file
3 with the trustee a written claim—

4 “(A) stating the type of securities held by
5 the Ponzi scheme on behalf of the Ponzi scheme
6 investor on behalf of the indirect Ponzi scheme
7 investor;

8 “(B) stating the number of such securities,
9 or in the case of a pooled investment, the per-
10 centage of such securities;

11 “(C) stating the amount of any funds in-
12 vested by the indirect Ponzi scheme investor
13 with the Ponzi scheme investor that were in-
14 vested with the Ponzi scheme, but for which the
15 indirect Ponzi scheme investor has not received
16 a statement or other documentation that would
17 allow the indirect Ponzi scheme investor to
18 identify in which securities the Ponzi scheme
19 stated such funds were invested; and

20 “(D) containing such other information as
21 SIPC may determine necessary to carry out the
22 provisions of this section.

23 “(2) NOTICE.—At the time an indirect Ponzi
24 scheme investor makes a claim under paragraph (1),
25 the indirect Ponzi scheme investor shall also file a

1 copy of the claim with the appropriate Ponzi scheme
2 investor.

3 “(c) COORDINATION WITH PONZI SCHEME INVES-
4 TOR.—To the extent necessary, the trustee shall coordi-
5 nate with Ponzi scheme investors to ensure proper pay-
6 ments to indirect Ponzi scheme investors under this sec-
7 tion.

8 “(d) PAYMENTS TO INDIRECT PONZI SCHEME INVES-
9 TORS.—

10 “(1) IN GENERAL.—After receipt of a written
11 statement of claim pursuant to subsection (b), un-
12 less the trustee determines such claim to be fraudu-
13 lent, the trustee shall, with respect to the securities
14 that are the subject of such claim, take the following
15 actions in the following order:

16 “(A) With respect to a claim relating to se-
17 curities of a class and series of an issuer which
18 are ascertainable from the books and records of
19 the Ponzi scheme or are otherwise established
20 to the satisfaction of the trustee, deliver securi-
21 ties of such class and series to the indirect
22 Ponzi scheme investor if and to the extent
23 available to satisfy such claims in whole or in
24 part, with partial deliveries to be made pro rata

1 to the greatest extent considered practicable by
2 the trustee.

3 “(B) Pay the indirect Ponzi scheme inves-
4 tor a cash amount equal to—

5 “(i) the value of any securities identi-
6 fied in the claim and not otherwise deliv-
7 ered to the indirect Ponzi scheme investor
8 under subparagraph (A); and

9 “(ii) the value of any funds identified
10 in the claim as being invested in the Ponzi
11 scheme by the Ponzi scheme investor on
12 behalf of the indirect Ponzi scheme inves-
13 tor, but for which the indirect Ponzi
14 scheme investor is unable to identify in
15 which specific securities the Ponzi scheme
16 stated such funds were invested.

17 “(2) MAXIMUM AMOUNT.—The aggregate
18 amount of the value of all securities and cash deliv-
19 ered under paragraph (1) may not exceed, for each
20 indirect Ponzi scheme investor, an amount equal
21 to—

22 “(A) \$100,000, minus

23 “(B) the aggregate amount of all cash and
24 securities invested in the Ponzi scheme by the
25 Ponzi scheme investor on behalf of the indirect

1 Ponzi scheme investor that is recovered by the
2 Ponzi scheme investor from the trustee.

3 “(3) ADVANCES BY SIPC.—With respect to pay-
4 ments made pursuant to this section, the trustee
5 may satisfy claims out of moneys made available to
6 the trustee by SIPC notwithstanding the fact that
7 there has not been any showing or determination
8 that there are sufficient funds of the Ponzi scheme
9 available to satisfy such claims.

10 “(4) WAIVER.—By accepting any security or
11 cash from the trustee under this section, the indirect
12 Ponzi scheme investor agrees to waive the right to
13 sue the Ponzi scheme investor with respect to such
14 security or with respect to the security that was the
15 basis for such cash payment.

16 “(5) SECURITY VALUATION.—For purposes of
17 this subsection, the value of a security shall be
18 deemed to be the amount listed for such security on
19 the last statement the indirect Ponzi scheme investor
20 received from the Ponzi scheme investor before the
21 trustee determined the debtor was a Ponzi scheme
22 pursuant to subsection (a).

23 “(e) PROHIBITION ON DOUBLE PAYMENTS.—Securi-
24 ties delivered pursuant to subsection (d), and securities,
25 or percentages of securities, which were the basis for cash

1 paid pursuant to subsection (d), may not be the basis for
2 any other payment by the trustee or SIPC under this Act.

3 “(f) RECOVERY OF FUNDS.—The trustee of a Ponzi
4 scheme may not seek to recover money, including profits,
5 from any investor in the Ponzi scheme unless such inves-
6 tor—

7 “(1) was complicit in the Ponzi scheme; or

8 “(2) was registered, or should have been reg-
9 istered, with the Commission under the securities
10 laws as an investment adviser, broker, dealer, or
11 other person with a fiduciary duty to the customers
12 or investors of the person.

13 “(g) NON-APPLICABILITY IF LAWSUIT FILED.—This
14 section shall not apply to a claim filed by an indirect Ponzi
15 scheme investor if such investor has filed a lawsuit against
16 the Ponzi scheme investor, the Ponzi scheme, or the trust-
17 ee in connection with the securities that are the basis of
18 such claim.

19 “(h) RETROACTIVE APPLICABILITY.—With respect to
20 the appointment of a trustee made before the date of the
21 enactment of this section, such trustee shall make the de-
22 termination required under subsection (a) not later than
23 30 days after such date of enactment, and only if such
24 trustee makes a determination that the debtor is a Ponzi

1 scheme and customers invested more than \$1,000,000,000
2 in the Ponzi scheme.

3 “(i) INTEREST PAYMENTS.—If the Secretary of the
4 Treasury makes a determination that claims under this
5 section are not being considered in accordance with the
6 timeline submitted to the Secretary under subsection
7 (a)(3), the Secretary may require any future payments
8 made under this section to be made with interest.

9 “(j) TREATMENT OF INTEREST ON CASH.—SIPC
10 shall issue regulations to ensure that any adjustment in
11 the net equity of a Ponzi scheme investor required under
12 the last sentence of section 16(11) is passed to the appro-
13 priate indirect Ponzi scheme investors.

14 “(k) RULEMAKING.—SIPC shall issue regulations to
15 carry out the provisions of this section.”.

16 (b) SIPC AUTHORITY TO ADVANCE FUNDS.—Sec-
17 tion 9 of such Act (15 U.S.C. 78fff-3) is amended by add-
18 ing at the end the following new subsection:

19 “(d) ADVANCES RELATED TO PONZI SCHEMES.—
20 SIPC shall advance to the trustee—

21 “(1) such moneys as may be required to pay
22 claims made under section 8A; and

23 “(2) such moneys as may be required to carry
24 out section 8A.”.

1 (c) OVERSIGHT OF TRUSTEE COMPENSATION.—Sec-
2 tion 5(b)(5)(C) of such Act (15 U.S.C. 78eee(b)(5)(C))
3 is amended by striking “In any case in which such allow-
4 ances are to be paid by SIPC without reasonable expecta-
5 tion of recoupment thereof as provided in this Act and
6 there is no difference between the amounts requested and
7 the amounts recommended by SIPC, the court shall award
8 the amounts recommended by SIPC. In determining the
9 amount of allowances in all other cases, the court shall
10 give due consideration to the nature, extent, and value of
11 the services rendered, and shall place considerable reliance
12 on the recommendation of SIPC.” and inserting “In deter-
13 mining the amount to be awarded for allowances, the court
14 shall give due consideration to the nature, extent, and
15 value of the services rendered. In any case in which such
16 allowances are to be paid by SIPC and there is a reason-
17 able expectation of recoupment thereof as provided in this
18 Act, the court shall place considerable reliance on the rec-
19 ommendation of SIPC.”.

20 **SEC. 3. SIPC FUND ASSESSMENT.**

21 Not later than the end of the 60-day period beginning
22 on the date of the enactment of this Act, SIPC shall issue
23 regulations to modify the SIPC Fund assessment levels
24 to ensure they are adequate to cover the anticipated costs

1 to the SIPC Fund of carrying out the amendments made
2 by this Act.

3 **SEC. 4. AUDITS OF CERTAIN TRUSTEES.**

4 Section 11(c) of the Securities Investor Protection
5 Act of 1970 (15 U.S.C. 78ggg(c)) is amended by adding
6 at the end the following new paragraph:

7 “(3) AUDITS OF CERTAIN TRUSTEES.—With re-
8 spect to a liquidation proceeding for which SIPC
9 does not have a reasonable expectation of
10 recoupment of the advances made by SIPC for such
11 liquidation proceeding, SIPC shall—

12 “(A) select an independent public account-
13 ant to perform an annual audit of the trustee
14 of the debtor in such proceeding; and

15 “(B) issue a report to the Commission con-
16 taining the results of such audit.”.

17 **SEC. 5. DEFINITIONS.**

18 Section 16 of the Securities Investor Protection Act
19 of 1970 (15 U.S.C. 78lll) is amended—

20 (1) in paragraph (11), by adding at the end the
21 following: “In determining net equity under this
22 paragraph with respect to a Ponzi scheme investor,
23 the amount of cash in the account or accounts of
24 such investor, as calculated under subparagraphs
25 (A) through (C), shall be adjusted by the percentage

1 increase or decrease in the Consumer Price Index
2 for All Urban Consumers published by the Bureau
3 of Labor Statistics of the Department of Labor for
4 the period of time between when the cash was placed
5 in the account and the time the net equity is deter-
6 mined.”; and

7 (2) by adding at the end the following new
8 paragraphs:

9 “(15) SECURITIES LAWS.—The term ‘securities
10 laws’ has the meaning given such term under section
11 3 of the Securities Exchange Act of 1934.

12 “(16) DEFINITIONS RELATED TO PONZI
13 SCHEMES.—

14 “(A) PONZI SCHEME.—The term ‘Ponzi
15 scheme’ means any fraudulent investment oper-
16 ation which is managed in a manner that pro-
17 vides investors with returns (or purported re-
18 turns) derived substantially from investments
19 made by other investors rather than from prof-
20 its.

21 “(B) PONZI SCHEME INVESTOR.—The
22 term ‘Ponzi scheme investor’ means a customer
23 of a debtor, where the trustee of such debtor
24 has determined the debtor to be a Ponzi
25 scheme.

1 “(C) INDIRECT PONZI SCHEME INVES-
2 TOR.—The term ‘indirect Ponzi scheme inves-
3 tor’ means any person (including any person
4 with whom the Ponzi scheme investor deals as
5 principal or agent) who is not a customer of a
6 Ponzi scheme, but who is an investor in a Ponzi
7 scheme investor and on whose behalf the Ponzi
8 scheme investor has a claim on account of secu-
9 rities received, acquired, or held by the Ponzi
10 scheme in the ordinary course of its business as
11 a broker or dealer from or for the securities ac-
12 counts of such Ponzi scheme investor for safe-
13 keeping, with a view to sale, to cover con-
14 summated sales, pursuant to purchases, as col-
15 lateral, security, or for purposes of effecting
16 transfer.”.

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