

117TH CONGRESS
1ST SESSION

S. 3102

To amend the Securities Exchange Act of 1934 to preserve commission-free trading and investor freedom for the people of the United States by prohibiting the Securities and Exchange Commission from banning payment for order flow, and for other purposes.

IN THE SENATE OF THE UNITED STATES

OCTOBER 28, 2021

Mr. TOOMEY introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

A BILL

To amend the Securities Exchange Act of 1934 to preserve commission-free trading and investor freedom for the people of the United States by prohibiting the Securities and Exchange Commission from banning payment for order flow, 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 “Investor Freedom Act
5 of 2021”.

1 **SEC. 2. SAFE HARBOR FOR PAYMENT FOR ORDER FLOW.**

2 Section 28 of the Securities Exchange Act of 1934
3 (15 U.S.C. 78bb) is amended by adding at the end the
4 following:

5 “(g) PAYMENT FOR ORDER FLOW.—

6 “(1) DEFINITION.—In this subsection, the term
7 ‘payment for order flow’ has the meaning given the
8 term in section 240.10b–10(d) of title 17, Code of
9 Federal Regulations, as in effect on the date of en-
10 actment of this subsection.

11 “(2) APPLICABILITY.—

12 “(A) IN GENERAL.—No broker or dealer,
13 or any person associated with a broker or deal-
14 er, using the mails, or any means or instrumen-
15 tality of interstate commerce, shall be deemed
16 to have acted unlawfully or to have breached a
17 duty under State or Federal law solely by rea-
18 son of having received payment for order flow.

19 “(B) RESTRICTION.—Neither the Commis-
20 sion nor any national securities exchange or
21 registered securities association may promul-
22 gate any rule or regulation that prohibits, lim-
23 its, or directs the receipt or use of payment for
24 order flow by—

25 “(i) a broker or dealer; or

1 “(ii) any person associated with a
2 broker or dealer.

3 “(C) RULE OF CONSTRUCTION.—Nothing
4 in this subsection may be construed to impair
5 or limit the power of the Commission, any na-
6 tional securities exchange, or any registered se-
7 curities association with respect to any other
8 duties applicable to the execution of a cus-
9 tomer’s order by a broker or dealer.”.

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