

110TH CONGRESS
2D SESSION

S. 3033

To protect investors by fostering transparency and accountability of attorneys
in private securities litigation.

IN THE SENATE OF THE UNITED STATES

MAY 19, 2008

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

A BILL

To protect investors by fostering transparency and
accountability of attorneys in private securities litigation.

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 “Securities Litigation
5 Attorney Accountability and Transparency Act”.

1 **SEC. 2. DISCLOSURES OF PAYMENTS, FEE ARRANGEMENTS,**
2 **CONTRIBUTIONS, AND OTHER POTENTIAL**
3 **CONFLICTS OF INTEREST BETWEEN PLAIN-**
4 **TIFF AND ATTORNEYS.**

5 (a) SECURITIES EXCHANGE ACT OF 1934.—Section
6 21D(a) of the Securities Exchange Act of 1934 (15 U.S.C.
7 78u-4(a)) is amended by adding at the end the following
8 new paragraphs:

9 “(10) DISCLOSURES REGARDING PAYMENTS.—
10 “(A) SWORN CERTIFICATIONS RE-
11 QUIRED.—In any private action arising under
12 this title, each plaintiff and any attorney for
13 such plaintiff shall provide sworn certifications,
14 which shall be personally signed by such plain-
15 tiff and such attorney, respectively, and filed
16 with the complaint, that identify any direct or
17 indirect payment, or promise of any payment,
18 by such attorney, or any person affiliated with
19 such attorney, to such plaintiff, or any person
20 affiliated with such plaintiff, beyond the plain-
21 tiff’s pro rata share of any recovery, except as
22 ordered or approved by the court in accordance
23 with paragraph (4). Upon disclosure of any
24 such payment or promise of payment, the court
25 shall disqualify the attorney from representing
26 the plaintiff.

1 “(B) DEFINITION.—For purposes of this
2 paragraph, the term ‘payment’ shall include the
3 transfer of money and any other thing of value,
4 including the provision of services, other than
5 representation of the plaintiff in the private ac-
6 tion arising under this title.

7 “(11) DISCLOSURES REGARDING LEGAL REP-
8 RESENTATIONS.—In any private action arising
9 under this title, each plaintiff and any attorney for
10 such plaintiff shall provide sworn certifications,
11 which shall be personally signed by such plaintiff
12 and such attorney, respectively, and filed with the
13 complaint, that identifies the nature and terms of
14 any legal representation provided by such attorney,
15 or any person affiliated with such attorney, to such
16 plaintiff, or any person affiliated with such plaintiff
17 other than the representation of the plaintiff in the
18 private action arising under this title. The court may
19 allow such certifications to be made under seal. The
20 court shall make a determination whether the nature
21 or terms of the fee arrangement for any other mat-
22 ter influenced the selection and retention of counsel
23 in any private action arising under this title and, if
24 the court so finds, shall disqualify the attorney from
25 representing the plaintiff in any such action.

1 “(12) DISCLOSURES REGARDING CONTRIBU-
2 TIONS.—In any private action arising under this
3 title, each plaintiff and any attorney for such plain-
4 tiff shall provide sworn certifications, which shall be
5 personally signed by such plaintiff and such attor-
6 ney, respectively, and filed with the complaint, that
7 identifies any contribution made within five years
8 prior to the filing of the complaint by such attorney,
9 any person affiliated with such attorney, or any po-
10 litical action committee controlled by such attorney,
11 to any elected official with authority to retain coun-
12 sel for such plaintiff or to select or appoint, influ-
13 ence the selection or appointment of, or oversee any
14 individual or group of individuals with that author-
15 ity.

16 “(13) DISCLOSURE REGARDING OTHER CON-
17 FLICTS OF INTEREST.—In any private action arising
18 under this title, each plaintiff and any attorney for
19 such plaintiff shall provide sworn certifications,
20 which shall be personally signed by such plaintiff
21 and such attorney, respectively, and filed with the
22 complaint, that identifies any other conflict of inter-
23 est (other than one specified in paragraphs (10)
24 through (12)) between such attorney and such plain-
25 tiff. The court shall make a determination of wheth-

1 er such conflict is sufficient to disqualify the attor-
2 ney from representing the plaintiff.”.

3 (b) SECURITIES ACT OF 1933.—Section 27(a) of the
4 Securities Act of 1933 (15 U.S.C. 77z–1(a)) is amended
5 by adding at the end the following new paragraph:

6 “(9) DISCLOSURES REGARDING PAYMENTS.—

7 “(A) SWORN CERTIFICATIONS RE-
8 QUIRED.—In any private action arising under
9 this title, each plaintiff and any attorney for
10 such plaintiff shall provide sworn certifications,
11 which shall be personally signed by such plain-
12 tiff and such attorney, respectively, and filed
13 with the complaint, that identify any direct or
14 indirect payment, or promise of any payment,
15 by such attorney, or any person affiliated with
16 such attorney, to such plaintiff, or any person
17 affiliated with such plaintiff, beyond the plain-
18 tiff’s pro rata share of any recovery, except as
19 ordered or approved by the court in accordance
20 with paragraph (4). Upon disclosure of any
21 such payment or promise of payment, the court
22 shall disqualify the attorney from representing
23 the plaintiff.

24 “(B) DEFINITION.—For purposes of this
25 paragraph, the term ‘payment’ shall include the

1 transfer of money and any other thing of value,
2 including the provision of services, other than
3 representation of the plaintiff in the private ac-
4 tion arising under this title.

5 “(10) DISCLOSURES REGARDING LEGAL REP-
6 RESENTATIONS.—In any private action arising
7 under this title, each plaintiff and any attorney for
8 such plaintiff shall provide sworn certifications,
9 which shall be personally signed by such plaintiff
10 and such attorney, respectively, and filed with the
11 complaint, that identifies the nature and terms of
12 any legal representation provided by such attorney,
13 or any person affiliated with such attorney, to such
14 plaintiff, or any person affiliated with such plaintiff
15 other than the representation of the plaintiff in the
16 private action arising under this title. The court may
17 allow such certifications to be made under seal. The
18 court shall make a determination whether the nature
19 or terms of the fee arrangement for any other mat-
20 ter influenced the selection and retention of counsel
21 in any private action arising under this title and, if
22 the court so finds, shall disqualify the attorney from
23 representing the plaintiff in any such action.

24 “(11) DISCLOSURES REGARDING CONTRIBU-
25 TIONS.—In any private action arising under this

1 title, each plaintiff and any attorney for such plain-
2 tiff shall provide sworn certifications, which shall be
3 personally signed by such plaintiff and such attor-
4 ney, respectively, and filed with the complaint, that
5 identifies any contribution made within five years
6 prior to the filing of the complaint by such attorney,
7 any person affiliated with such attorney, or any po-
8 litical action committee controlled by such attorney,
9 to any elected official with authority to retain coun-
10 sel for such plaintiff or to select or appoint, influ-
11 ence the selection or appointment of, or oversee any
12 individual or group of individuals with that author-
13 ity.

14 “(12) DISCLOSURE REGARDING OTHER CON-
15 Flicts OF INTEREST.—In any private action arising
16 under this title, each plaintiff and any attorney for
17 such plaintiff shall provide sworn certifications,
18 which shall be personally signed by such plaintiff
19 and such attorney, respectively, and filed with the
20 complaint, that identifies any other conflict of inter-
21 est (other than one specified in paragraphs (9)
22 through (11)) between such attorney and such plain-
23 tiff. The court shall make a determination of wheth-
24 er such conflict is sufficient to disqualify the attor-
25 ney from representing the plaintiff.”.

1 **SEC. 3. SELECTION OF LEAD COUNSEL.**

2 (a) SECURITIES EXCHANGE ACT OF 1934.—Section
 3 21D(a)(3)(B)(v) of the Securities Exchange Act of 1934
 4 (15 U.S.C. 78u–4(a)(3)(B)(v)) is amended by adding at
 5 the end the following: “In exercising the discretion of the
 6 court over the approval of lead counsel, the court shall
 7 employ a competitive bidding process as one of the criteria
 8 in the selection and retention of counsel for the most ade-
 9 quate plaintiff, unless the court determines on the record
 10 that such a process is not feasible.”.

11 (b) SECURITIES ACT OF 1933.—Section
 12 27(a)(3)(B)(v) of the Securities Act of 1933 (15 U.S.C.
 13 77z–1(a)(3)(B)(v)) is amended by adding at the end the
 14 following: “In exercising the discretion of the court over
 15 the approval of lead counsel, the court shall employ a com-
 16 petitive bidding process as one of the criteria in the selec-
 17 tion and retention of counsel for the most adequate plain-
 18 tiff, unless the court determines on the record that such
 19 a process is not feasible.”.

20 **SEC. 4. STUDY OF AVERAGE HOURLY FEES IN SECURITIES**
 21 **CLASS ACTIONS.**

22 (a) STUDY AND REVIEW REQUIRED.—The Comp-
 23 troller General of the United States shall conduct a study
 24 and review of fee awards to lead counsel in securities class
 25 actions over the 5-year period preceding the date of enact-

1 ment of this Act to determine the effective average hourly
2 rate for lead counsel in such actions.

3 (b) REPORT REQUIRED.—Not later than 1 year after
4 the date of enactment of this Act, the Comptroller General
5 shall submit a report to the Committee on Banking, Hous-
6 ing, and Urban Affairs of the Senate and the Committee
7 on Financial Services of the House of Representatives on
8 the results of the study and review required by this sec-
9 tion. The Comptroller General shall submit an updated
10 study every 3 years thereafter.

11 (c) DEFINITION.—For purposes of this section, the
12 term “securities class action” means a private class action
13 arising under the Securities Act of 1933 (15 U.S.C. 77
14 et seq.) or the Securities Exchange Act of 1934 (15 U.S.C.
15 78 et seq.) that is brought as a plaintiff class action pur-
16 suant to the Federal Rules of Civil Procedure.

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