

**AMENDMENT IN THE NATURE OF A SUBSTITUTE
 TO H.R. 1088, AS REPORTED
 OFFERED BY MR. LAFALCE OF NEW YORK, MR.
 KANJORSKI OF PENNSYLVANIA, MR. FRANK
 OF MASSACHUSETTS, MS. WATERS OF CALI-
 FORNIA, MR. DINGELL OF MICHIGAN, MR.
 TOWNS OF NEW YORK, OR MR. MARKEY OF
 MASSACHUSETTS**

Strike all after the enacting clause and insert the
 following:

1 SECTION 1. SHORT TITLE; FINDINGS.

2 (a) SHORT TITLE.—This Act may be cited as the
 3 “Fairness in Securities Transactions Act”.

4 (b) FINDINGS.—The Congress finds the following:

5 (1) The United States capital markets are rec-
 6 ognized as the most liquid, efficient, and fair in the
 7 world.

8 (2) The Securities and Exchange Commission
 9 has been charged since 1934 with maintaining the
 10 integrity of the United States capital markets and
 11 with the protection of investors in those markets.

12 (3) The majority of American households have
 13 their savings invested in those securities markets.



1 (4) A lack of pay parity for the employees of
2 the Securities and Exchange Commission with other
3 United States financial regulators poses a serious
4 threat to the ability of the Commission to recruit
5 and retain the professional staff required to carry
6 out its essential mission.

7 **SEC. 2. IMMEDIATE FEE REDUCTION.**

8 Section 31 of the Securities Exchange Act of 1934
9 (15 U.S.C. 78ee) is amended by striking “1/300 of one
10 percent” each place it appears and inserting “1/500 of one
11 percent”.

12 **SEC. 3. REVISION OF SECURITIES TRANSACTION FEE PRO-**
13 **VISIONS; ADDITIONAL FEE REDUCTIONS.**

14 (a) **POOLING AND ALLOCATION OF COLLECTIONS.—**
15 Section 31 of the Securities Exchange Act of 1934 (15
16 U.S.C. 78ee) is further amended—

17 (1) in subsection (b)—

18 (A) by striking “Every” and inserting
19 “Subject to subsection (i), each”; and

20 (B) by striking the last sentence;

21 (2) by striking subsection (c);

22 (3) in subsection (d)—

23 (A) by striking paragraphs (2) and (3);

24 (B) by striking the following:



1 “(d) OFF-EXCHANGE TRADES OF LAST-SALE-RE-
2 PORTED SECURITIES.—

3 “(1) COVERED TRANSACTIONS.—Each national
4 securities”

5 and inserting the following:

6 “(c) OFF-EXCHANGE TRADES OF EXCHANGE REG-
7 ISTERED AND LAST-SALE-REPORTED SECURITIES.—Sub-
8 ject to subsection (i), each national securities”;

9 (C) by inserting “registered on a national
10 securities exchange or” after “security futures
11 products”;

12 (D) by striking “, excluding any sales for
13 which a fee is paid under subsection (c)”;

14 (4) by redesignating subsections (e) through (h)
15 as subsections (d) through (g), respectively;

16 (5) in subsection (e) (as redesignated by para-
17 graph (4)), by striking “(b), (c), and (d)” and in-
18 serting “(b) and (c)”;

19 (6) by adding at the end the following new sub-
20 section:

21 “(h) DEPOSIT OF FEES.—

22 “(1) OFFSETTING COLLECTIONS.—Fees col-
23 lected pursuant to subsections (b) and (c) for any
24 fiscal year—



1 “(A) shall be deposited and credited as off-
2 setting collections to the account providing ap-
3 propriations to the Commission, except that the
4 amount so deposited and credited for fiscal
5 years 2007 through 2011 shall not exceed the
6 target offsetting collection amount for such fis-
7 cal year; and

8 “(B) shall not be collected for any fiscal
9 year except to the extent provided in advance in
10 appropriation Acts.

11 “(2) GENERAL REVENUES.—Fees collected pur-
12 suant to subsections (b) and (c) for fiscal years
13 2007 through 2011 in excess of the amount depos-
14 ited and credited as offsetting collections pursuant
15 to paragraph (1) for such fiscal year shall be depos-
16 ited and credited as general revenue of the Treasury.
17 No fees collected pursuant to such subsections for
18 fiscal years 2002 through 2006, fiscal year 2012, or
19 any succeeding fiscal year shall be deposited and
20 credited as general revenue of the Treasury.”.

21 (b) ADDITIONAL REDUCTIONS OF FEES.—

22 (1) AMENDMENT.—Section 31 of the Securities
23 Exchange Act of 1934 (15 U.S.C. 78ee) is further
24 amended by adding after subsection (h) (as added
25 by subsection (a)(6)) the following new subsections:



1 “(i) RECAPTURE OF PROJECTION WINDFALLS FOR
2 FURTHER RATE REDUCTIONS.—

3 “(1) ANNUAL ADJUSTMENT.—For each of the
4 fiscal years 2003 through 2011, the Commission
5 shall by order adjust each of the rates applicable
6 under subsections (b) and (c) for such fiscal year to
7 a uniform adjusted rate that, when applied to the
8 baseline estimate of the aggregate dollar amount of
9 sales for such fiscal year, is reasonably likely to
10 produce aggregate fee collections under this section
11 that are equal to the sum of—

12 “(A) the target offsetting collection
13 amount for such fiscal year; and

14 “(B) the target general revenue amount
15 for such fiscal year.

16 “(2) FINAL RATE ADJUSTMENT.—For fiscal
17 year 2012 and all of the succeeding fiscal years, the
18 Commission shall by order adjust each of the rates
19 applicable under subsections (b) and (c) for all of
20 such fiscal years to a uniform adjusted rate that,
21 when applied to the baseline estimate of the aggregate
22 dollar amount of sales for fiscal year 2012, is
23 reasonably likely to produce aggregate fee collections
24 under this section in fiscal year 2012 equal to the



1 target offsetting collection amount for fiscal year
2 2011.

3 “(3) LIMITATION ON RATE ADJUSTMENT.—
4 Notwithstanding paragraphs (1) and (2), no ad-
5 justed rate established under this subsection for any
6 fiscal year shall exceed the rate that would otherwise
7 be applicable under subsections (b) and (c) for such
8 fiscal year.

9 “(4) REVIEW AND EFFECTIVE DATE.—An ad-
10 justed rate prescribed under paragraph (1) or (2)
11 and published under subsection (g) shall not be sub-
12 ject to judicial review. Subject to subsections
13 (h)(1)(B) and (j), an adjusted rate prescribed under
14 paragraph (1) shall take effect on the first day of
15 the fiscal year to which such rate applies and an ad-
16 justed rate prescribed under paragraph (2) shall
17 take effect on the first day of fiscal year 2012.

18 “(j) LAPSE OF APPROPRIATION.—If on the first day
19 of a fiscal year a regular appropriation to the Commission
20 has not been enacted, the Commission shall continue to
21 collect fees (as offsetting collections) under subsections (b)
22 and (c) at the rate in effect during the preceding fiscal
23 year, until such a regular appropriation is enacted.

24 “(k) DEFINITIONS.—For purposes of this section:



1 “(1) TARGET OFFSETTING COLLECTION
 2 AMOUNT.—The target offsetting collection amount is
 3 an amount equal to—

- 4 “(A) \$976,000,000 for fiscal year 2002;
- 5 “(B) \$1,132,000,000 for fiscal year 2003;
- 6 “(C) \$1,370,000,000 for fiscal year 2004;
- 7 “(D) \$1,627,000,000 for fiscal year 2005;
- 8 “(E) \$1,913,000,000 for fiscal year 2006;
- 9 “(F) \$1,110,000,000 for fiscal year 2007;
- 10 “(G) \$1,144,000,000 for fiscal year 2008;
- 11 “(H) \$1,327,000,000 for fiscal year 2009;
- 12 “(I) \$1,523,000,000 for fiscal year 2010;

13 and

- 14 “(J) \$1,745,000,000 for fiscal year 2011.

15 “(2) TARGET GENERAL REVENUE AMOUNT.—
 16 The target general revenue amount is an amount
 17 equal to—

- 18 “(A) zero for each of the fiscal years 2002
 19 through 2006;
- 20 “(B) \$463,000,000 for fiscal year 2007;
- 21 “(C) \$449,000,000 for fiscal year 2008;
- 22 “(D) \$500,000,000 for fiscal year 2009;
- 23 “(E) \$551,000,000 for fiscal year 2010;

24 and

- 25 “(F) \$614,000,000 for fiscal year 2011.



1 “(3) BASELINE ESTIMATE OF THE AGGREGATE
2 DOLLAR AMOUNT OF SALES.—The baseline estimate
3 of the aggregate dollar amount of sales for any fiscal
4 year is the baseline estimate of the aggregate dollar
5 amount of sales of securities (other than bonds, de-
6 bentures, other evidences of indebtedness, and secu-
7 rity futures products) to be transacted on each na-
8 tional securities exchange and by or through any
9 member of each national securities association (oth-
10 erwise than on a national securities exchange) dur-
11 ing such fiscal year as determined by the Congres-
12 sional Budget Office in making projections pursuant
13 to section 257 of the Balanced Budget and Emer-
14 gency Deficit Control Act of 1985 and as contained
15 in the projection required to be made in March of
16 the preceding fiscal year.”.

17 (2) CONFORMING AMENDMENT.—Section 31(g)
18 of such Act is amended by inserting before the pe-
19 riod at the end the following: “not later than April
20 30 of the fiscal year preceding the fiscal year to
21 which such rate applies”.

22 **SEC. 4. COMPARABILITY PROVISIONS.**

23 (a) COMMISSION DEMONSTRATION PROJECT.—Sub-
24 part C of part III of title 5, United States Code, is amend-
25 ed by adding at the end the following:



1 **“CHAPTER 48—AGENCY PERSONNEL**
 2 **DEMONSTRATION PROJECT**

“Sec.
 “4801. Nonapplicability of chapter 47.
 “4802. Securities and Exchange Commission.

3 **“§ 4801. Nonapplicability of chapter 47.**

4 “Chapter 47 shall not apply to this chapter.

5 **“§ 4802. Securities and Exchange Commission**

6 “(a) In this section, the term ‘Commission’ means the
 7 Securities and Exchange Commission.

8 “(b) The Commission may appoint and fix the com-
 9 pensation of such officers, attorneys, economists, exam-
 10 iners, and other employees as may be necessary for car-
 11 rying out its functions under the securities laws as defined
 12 under section 3 of the Securities Exchange Act of 1934
 13 (15 U.S.C. 78c).

14 “(c) Rates of basic pay for all employees of the Com-
 15 mission may be set and adjusted by the Commission with-
 16 out regard to the provisions of chapter 51 or subchapter
 17 III of chapter 53.

18 “(d) The Commission may provide additional com-
 19 pensation and benefits to employees of the Commission if
 20 the same type of compensation or benefits are then being
 21 provided by any agency referred to under section 1206 of
 22 the Financial Institutions Reform, Recovery, and Enforce-
 23 ment Act of 1989 (12 U.S.C. 1833b) or, if not then being



1 provided, could be provided by such an agency under ap-
2 plicable provisions of law, rule, or regulation. In setting
3 and adjusting the total amount of compensation and bene-
4 fits for employees, the Commission shall consult with, and
5 seek to maintain comparability with, the agencies referred
6 to under section 1206 of the Financial Institutions Re-
7 form, Recovery, and Enforcement Act of 1989 (12 U.S.C.
8 1833b).

9 “(e) The Commission shall consult with the Office of
10 Personnel Management in the implementation of this sec-
11 tion.

12 “(f) This section shall be administered consistent
13 with merit system principles.”.

14 (b) EMPLOYEES REPRESENTED BY LABOR ORGANI-
15 ZATIONS.—To the extent that any employee of the Securi-
16 ties and Exchange Commission is represented by a labor
17 organization with exclusive recognition in accordance with
18 chapter 71 of title 5, United States Code, no reduction
19 in base pay of such employee shall be made by reason of
20 enactment of this section (including the amendments
21 made by this section).

22 (c) IMPLEMENTATION PLAN AND REPORT.—

23 (1) IMPLEMENTATION PLAN.—

24 (A) IN GENERAL.—The Securities and Ex-
25 change Commission shall develop a plan to im-



1 plement section 4802 of title 5, United States
2 Code, as added by this section.

3 (B) INCLUSION IN ANNUAL PERFORMANCE
4 PLAN AND REPORT.—The Securities and Ex-
5 change Commission shall include—

6 (i) the plan developed under this para-
7 graph in the annual program performance
8 plan submitted under section 1115 of title
9 31, United States Code; and

10 (ii) the effects of implementing the
11 plan developed under this paragraph in the
12 annual program performance report sub-
13 mitted under section 1116 of title 31,
14 United States Code.

15 (2) IMPLEMENTATION REPORT.—

16 (A) IN GENERAL.—Before implementing
17 the plan developed under paragraph (1), the Se-
18 curities and Exchange Commission shall submit
19 a report to the Committee on Governmental Af-
20 fairs and the Committee on Banking, Housing,
21 and Urban Affairs of the Senate, the Com-
22 mittee on Government Reform and the Com-
23 mittee on Financial Services of the House of
24 Representatives, and the Office of Personnel
25 Management on the details of the plan.



1 (B) CONTENT.—The report under this
2 paragraph shall include—

3 (i) evidence and supporting docu-
4 mentation justifying the plan; and

5 (ii) budgeting projections on costs and
6 benefits resulting from the plan.

7 (d) TECHNICAL AND CONFORMING AMENDMENTS.—

8 (1) AMENDMENTS TO TITLE 5, UNITED STATES
9 CODE.—

10 (A) The table of chapters for part III of
11 title 5, United States Code, is amended by add-
12 ing at the end of subpart C the following:

“48. Agency Personnel Demonstration Project 4801.”.

13 (B) Section 3132(a)(1) of title 5, United
14 States Code, is amended—

15 (i) in subparagraph (C), by striking
16 “or” after the semicolon;

17 (ii) in subparagraph (D), by inserting
18 “or” after the semicolon; and

19 (iii) by adding at the end the fol-
20 lowing:

21 “(E) the Securities and Exchange Commis-
22 sion;”.

23 (C) Section 5373(a) of title 5, United
24 States Code, is amended—



1 (i) in paragraph (2), by striking “or”
2 after the semicolon;

3 (ii) in paragraph (3), by striking the
4 period and inserting “; or”; and

5 (iii) by adding at the end the fol-
6 lowing:

7 “(4) section 4802.”.

8 (2) AMENDMENT TO SECURITIES EXCHANGE
9 ACT OF 1934.—Section 4(b) of the Securities Ex-
10 change Act of 1934 (15 U.S.C. 78d(b)) is amended
11 by striking paragraphs (1) and (2) and inserting the
12 following:

13 “(1) APPOINTMENT AND COMPENSATION.—The
14 Commission shall appoint and compensate officers,
15 attorneys, economists, examiners, and other employ-
16 ees in accordance with section 4802 of title 5,
17 United States Code.

18 “(2) REPORTING OF INFORMATION.—In estab-
19 lishing and adjusting schedules of compensation and
20 benefits for officers, attorneys, economists, exam-
21 iners, and other employees of the Commission under
22 applicable provisions of law, the Commission shall
23 inform the heads of the agencies referred to under
24 section 1206 of the Financial Institutions Reform,
25 Recovery, and Enforcement Act of 1989 (12 U.S.C.



1 1833b) and Congress of such compensation and ben-
2 efits and shall seek to maintain comparability with
3 such agencies regarding compensation and bene-
4 fits.”.

5 (3) AMENDMENT TO FIRREA OF 1989.—Section
6 1206 of the Financial Institutions Reform, Recov-
7 ery, and Enforcement Act of 1989 (12 U.S.C.
8 1833b) is amended by striking “the Thrift Depositor
9 Protection Oversight Board of the Resolution Trust
10 Corporation”.

11 **SEC. 5. EFFECTIVE DATE.**

12 This Act and the amendments made by this Act shall
13 take effect on October 1, 2001.

