

116TH CONGRESS
1ST SESSION

S. 799

To amend the Securities Exchange Act of 1934 to clarify that the Securities and Exchange Commission may seek disgorgement and restitution as a result of a violation of the securities laws, to establish the statute of limitations for disgorgement and equitable actions brought by the Commission, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 14, 2019

Mr. WARNER (for himself and Mr. KENNEDY) 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 clarify that the Securities and Exchange Commission may seek disgorgement and restitution as a result of a violation of the securities laws, to establish the statute of limitations for disgorgement and equitable actions brought by the Commission, 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 “Securities Fraud En-
5 forcement and Investor Compensation Act of 2019”.

1 **SEC. 2. INVESTIGATIONS AND PROSECUTION OF OFFENSES**
2 **FOR VIOLATIONS OF THE SECURITIES LAWS.**

3 (a) IN GENERAL.—Section 21(d) of the Securities
4 Exchange Act of 1934 (15 U.S.C. 78u(d)) is amended—

5 (1) in paragraph (3)—

6 (A) in the paragraph heading—

7 (i) by inserting “CIVIL” before
8 “MONEY PENALTIES”; and

9 (ii) by striking “IN CIVIL ACTIONS”
10 and inserting “AND AUTHORITY TO SEEK
11 DISGORGEMENT”;

12 (B) in subparagraph (A), by striking “ju-
13 risdiction to impose” and all that follows
14 through the period at the end and inserting the
15 following: “jurisdiction to—

16 “(i) impose, upon a proper showing, a civil
17 penalty to be paid by the person who committed
18 such violation; and

19 “(ii) require disgorgement under para-
20 graph (7) by the person who received any un-
21 just enrichment as a result of such violation.”;
22 and

23 (C) in subparagraph (B)—

24 (i) in clause (i), in the first sentence,
25 by striking “the penalty” and inserting “a

1 civil penalty imposed under subparagraph
2 (A)(i)”;

3 (ii) in clause (ii), by striking “amount
4 of penalty” and inserting “amount of a
5 civil penalty imposed under subparagraph
6 (A)(i)”; and

7 (iii) in clause (iii), in the matter pre-
8 ceding item (aa), by striking “amount of
9 penalty for each such violation” and insert-
10 ing “amount of a civil penalty imposed
11 under subparagraph (A)(i) for each viola-
12 tion described in that subparagraph”;

13 (2) in paragraph (4), by inserting “under para-
14 graph (7)” after “funds disgorged”; and

15 (3) by adding at the end the following:

16 “(7) DISGORGEMENT.—

17 “(A) IN GENERAL.—In any action or pro-
18 ceeding brought by the Commission under any provi-
19 sion of the securities laws, the Commission may
20 seek, and any Federal court may order, disgorge-
21 ment of any unjust enrichment that a person ob-
22 tained as a result of a violation of that provision.

23 “(B) CALCULATION.—Any disgorgement that is
24 ordered with respect to a person under subpara-
25 graph (A) shall be offset by any amount of restitu-

1 tion that the person is ordered to pay under para-
2 graph (8).

3 “(8) RESTITUTION.—In any proceeding brought or
4 instituted by the Commission under any provision of the
5 securities laws, the Commission may seek, and any Fed-
6 eral court, or, with respect to a proceeding instituted by
7 the Commission, the Commission, may order restitution
8 to an investor in the amount of the loss that the investor
9 sustained as a result of a violation of that provision by
10 a person that is—

11 “(A) registered as, or required to be registered
12 as, a broker, dealer, investment adviser, municipal
13 securities dealer, municipal advisor, or transfer
14 agent; or

15 “(B) associated with or, as of the date on which
16 the violation occurs, seeking to become associated
17 with, an entity described in subparagraph (A).

18 “(9) LIMITATIONS PERIODS.—

19 “(A) DISGORGEMENT.—The Commission may
20 bring a claim for disgorgement under paragraph (7)
21 not later than 5 years after the date on which the
22 person against which the claim is brought receives
23 any unjust enrichment as a result of the violation
24 that gives rise to the action or proceeding in which
25 the Commission seeks the claim.

1 “(B) EQUITABLE REMEDIES.—The Commission
2 may seek a claim for any equitable remedy, includ-
3 ing for restitution under paragraph (8), an injunc-
4 tion, or a bar, suspension, or cease and desist order,
5 not later than 10 years after the latest date on
6 which a violation that gives rise to the claim occurs.

7 “(C) CALCULATION.—For the purposes of cal-
8 culating any limitations period under this paragraph
9 with respect to an action or claim, any time in which
10 the person against which the action or claim, as ap-
11 plicable, is brought is outside of the United States
12 shall not count towards the accrual of that period.

13 “(10) RULE OF CONSTRUCTION.—Nothing in para-
14 graph (7) or (8) may be construed as altering any right
15 that any private party may have to maintain a suit for
16 a violation of this Act.”.

17 (b) APPLICABILITY.—The amendments made by sub-
18 section (a) shall apply with respect to any action or pro-
19 ceeding that is commenced on or after the date of enact-
20 ment of this Act.

○