

109<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

# H. R. 4618

To amend the Securities Exchange Act of 1934 to establish rules and procedures for the delegation of compliance and inspections authority to the operating divisions of the Securities and Exchange Commission, and for other purposes.

---

## IN THE HOUSE OF REPRESENTATIVES

DECEMBER 17, 2005

Mr. FOSSELLA (for himself and Mr. CASTLE) introduced the following bill;  
which was referred to the Committee on Financial Services

---

## A BILL

To amend the Securities Exchange Act of 1934 to establish rules and procedures for the delegation of compliance and inspections authority to the operating divisions of the Securities and Exchange 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 “Compliance, Examina-  
5 tions, and Inspections Restructuring Act of 2005”.

1 **SEC. 2. ORGANIZATION AND CONDUCT OF THE DIVISIONS**  
2 **AND OFFICES OF THE SECURITIES AND EX-**  
3 **CHANGE COMMISSION.**

4 Section 4 of the Securities Exchange Act of 1934 (15  
5 U.S.C. 78d) is amended by adding at the end the following  
6 new subsections:

7 “(g) DIVISIONS AND OFFICES OF THE COMMIS-  
8 SION.—

9 “(1) COMPLIANCE, INSPECTIONS, AND EXAMI-  
10 NATIONS.—The authority that the Commission has  
11 to conduct inspections and examinations of reg-  
12 istered brokers or dealers (15 U.S.C. 78q(b)), reg-  
13 istered investment companies (15 U.S.C. 80a-  
14 30(b)), and registered investment advisers (15  
15 U.S.C. 80b-4) shall be vested in the administrative  
16 divisions or offices to which the Commission has del-  
17 egated pursuant to section 4A of this Act the au-  
18 thority to administer its responsibilities under this  
19 Act, the Investment Company Act of 1940 (15  
20 U.S.C. 80a), and the Investment Advisers Act of  
21 1940 (15 U.S.C. 80b). The Commission shall report  
22 to Congress pursuant to section 21(a) of this Act no  
23 less frequently than every 5 years from the enact-  
24 ment of this subsection, and shall in that report  
25 state its views on the continuing efficacy, effective-  
26 ness, and efficiency of requiring the administrative

1 divisions or offices to conduct inspections and exami-  
2 nations of registered brokers or dealers, registered  
3 investment companies, and registered investment ad-  
4 visers.

5 “(2) CLOSURE OF OPEN MATTERS.—Not less  
6 frequently than every 120 days during a period in  
7 which an enforcement division or office of the Com-  
8 mission with respect to a formal or informal inquiry,  
9 or an administrative division or office of the Com-  
10 mission with respect to an inspection or examina-  
11 tion, is conducting an inquiry or inspection, that di-  
12 vision or office shall notify in writing the person who  
13 is the subject of that inquiry or inspection to inform  
14 such person of the status of the inquiry or inspec-  
15 tion. When that division or office has completed its  
16 inquiry or inspection, that division or office shall,  
17 within 10 days of completing that inquiry or inspec-  
18 tion, notify in writing the person who was the sub-  
19 ject of that inquiry or inspection that the inquiry or  
20 inspection has been completed.

21 “(3) SWEEP EXAMINATIONS OR INSPECTIONS.—

22 “(A) NOTICE AND APPROVAL.—Before an  
23 administrative division or office of the Commis-  
24 sion may conduct an inspection of registered  
25 brokers or dealers, registered investment com-

1           panies, or registered investment advisers, it  
2           shall provide written notification in such form  
3           determined by the Chairman. Before an admin-  
4           istrative division or office of the Commission  
5           may conduct a sweep examination of registered  
6           brokers or dealers, registered investment com-  
7           panies, or registered investment advisers, it  
8           shall seek authority from the Commission to  
9           conduct such a sweep examination or inspection  
10          in the same manner and subject to the same  
11          procedures that the enforcement divisions or of-  
12          fices of the Commission must follow in seeking  
13          the authority to conduct a formal investigation  
14          or inquiry regarding a registered brokers or  
15          dealer, a registered investment company, or a  
16          registered investment adviser.

17               “(B) CONTENT.—An administrative divi-  
18          sion or office of the Commission shall confine  
19          the content of a sweep examination or inspec-  
20          tion to those existing books and records that  
21          the registered broker or dealer, registered in-  
22          vestment company, or registered investment ad-  
23          viser is required to keep and maintain under  
24          applicable rules and regulations, and may not  
25          require the creation of a new document or the

1 calculation or presentation of data that is not  
2 required to be kept or maintained under appli-  
3 cable rules and regulations.

4 “(4) DEFINITIONS.—For purposes of this sub-  
5 section, the following definitions shall apply:

6 “(A) CONFIDENTIAL COMMUNICATION.—  
7 The term ‘confidential communication’ shall  
8 mean any transfer of information, regardless of  
9 the form or format in which the information is  
10 communicated to an officer or employee of a  
11 compliance and inspections office, about a reg-  
12 istered broker or dealer, registered investment  
13 company, or registered investment adviser by  
14 an officer or employee of a registered broker or  
15 dealer, registered investment company, or reg-  
16 istered investment adviser regarding whether  
17 the broker or dealer, investment company, or  
18 investment adviser is in compliance with appli-  
19 cable provisions of this Act, the Securities Act  
20 of 1933, the Investment Company Act of 1940,  
21 or the Investment Advisers Act of 1940, where-  
22 in the officer or employee transferring such in-  
23 formation reasonably believes in good faith that  
24 the information being communicated to an offi-

1 cer or employee of a compliance and inspections  
2 office of the Commission—

3 “(i) is not information required to be  
4 made publicly available by any applicable  
5 Federal law or regulation; or

6 “(ii) is information regarding any  
7 book, record, or other information in the  
8 possession of, or maintained on behalf of,  
9 the registered broker or dealer, registered  
10 investment company, or registered invest-  
11 ment adviser that is subject to the exam-  
12 ination and inspection authority of the  
13 Commission.

14 “(B) SWEEP EXAMINATION.—Not later  
15 than 60 days after the date of enactment of  
16 this subsection, the Commission shall define the  
17 term ‘sweep examination’ for purposes of this  
18 subsection.

19 “(C) ENFORCEMENT DIVISION.—The term  
20 ‘enforcement division’ means the divisions or of-  
21 fices to which the Commission has delegated  
22 pursuant to section 4A of this Act the authority  
23 to investigate and to enforce the provisions of  
24 this Act, the Investment Company Act of 1940

1 (15 U.S.C. 80a-41), and the Investment Advis-  
2 ers Act of 1940 (15 U.S.C. 80b-9).

3 “(h) OMBUDSMAN.—

4 “(1) APPOINTMENT.—Not later than 180 days  
5 after the date of enactment of this section, the  
6 Chairman of the Securities and Exchange Commis-  
7 sion shall appoint an Ombudsman who shall report  
8 directly to the Chairman.

9 “(2) DUTIES OF OMBUDSMAN.—The Ombuds-  
10 man appointed under subsection (a) shall—

11 “(A) ensure safeguards exist to encourage  
12 persons who are issuers registered brokers or  
13 dealers, registered investment companies, or  
14 registered investment advisers to present ques-  
15 tions to the Commission regarding compliance  
16 with the securities laws;

17 “(B) maintain privilege of confidential  
18 communications between such persons and the  
19 Ombudsman;

20 “(C) advise and guide such persons  
21 through the process of self-reporting, ensuring  
22 appropriate and due credit is given to the reg-  
23 istrant upon self-reporting; and

24 “(D) act as a liaison between the agency  
25 and such persons with respect to any problem

1           such registrant may have in dealing with the  
2           agency resulting from the regulatory activities  
3           of the agency.

4           “(3) LIMITATION.—In carrying out the duties  
5           under paragraph (1), the Ombudsman shall utilize  
6           personnel of the Commission to the extent prac-  
7           ticable. Nothing in this section is intended to re-  
8           place, alter, or diminish the activities of any om-  
9           budsman or similar office in any other agency.

10           “(4) DISCLOSURE OF CONFIDENTIAL COMMU-  
11           NICATIONS.—Notwithstanding any other provision of  
12           this subsection, in those circumstances where the  
13           most senior officer of the enforcement division or of-  
14           fice of the Commission has made a formal rec-  
15           ommendation in writing to the Commission that it  
16           exercise its authority in section 21(d)(1) to seek an  
17           injunction against a registered broker or dealer, its  
18           authority in section 42(d) of the Investment Com-  
19           pany Act of 1940 to seek an injunction against a  
20           registered investment company, or its authority in  
21           section 209(d) of the Investment Advisers Act of  
22           1940 to seek an injunction against a registered in-  
23           vestment adviser, the Ombudsman or an employee of  
24           the Ombudsman shall disclose to the officers and  
25           employees of any other division or office any con-



1        fiducial communications received from an officer or  
2        employee of a registered broker or dealer, a reg-  
3        istered investment company, or a registered invest-  
4        ment adviser pursuant to the provisions of Section  
5        24(b).

6            “(5) REPORT.—Each year, the Ombudsman  
7        shall submit a report to the Commission for inclu-  
8        sion in the annual report that describes the activi-  
9        ties, and evaluates the effectiveness of the Ombuds-  
10       man during the preceding year. In that report, the  
11       Ombudsman shall include solicited comments and  
12       evaluations from registrants in regards to the effec-  
13       tiveness of the Ombudsman.”.

14    **SEC. 3. SENSE OF CONGRESS.**

15        It is the sense of Congress that the Securities and  
16        Exchange Commission should develop and publish guide-  
17        lines setting forth explicitly the benefit that an issuer the  
18        securities of which are registered under section 12 of the  
19        Securities Exchange Act of 1934, a registered broker-deal-  
20        er, a registered investment company, or a registered in-  
21        vestment adviser shall receive if it self-reports to an ad-  
22        ministrative division or office of the Commission or to an  
23        enforcement division or office of the Commission an ap-  
24        parent violation of law, rules, or regulations applicable to  
25        it and is subsequently the respondent in a civil injunctive

1 action or administrative proceeding brought by the Com-  
2 mission with respect to the matter that was self-reported.

○