

**AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 4344
OFFERED BY MR. MCADAMS OF UTAH**

In the matter relating to disgorgement of unjust enrichment

Strike all after the enacting clause and insert the
following:

1 SECTION 1. SHORT TITLE.

2 This Act may be cited as the “Investor Protection
3 and Capital Market Fairness Act”.

4 SEC. 2. ADDITIONAL RELIEF.

5 (a) IN GENERAL.—Section 21(d) of the Securities
6 Exchange Act of 1934 (15 U.S.C. 78u(d)) is amended by
7 adding at the end the following:

8 “(7) ADDITIONAL RELIEF.—

9 “(A) IN GENERAL.—In any action or pro-
10 ceeding brought or instituted by the Commis-
11 sion under any provision of the securities laws,
12 the Commission may seek, and any Federal
13 court may grant the following additional relief:

14 “(i) Disgorgement in the amount of
15 any unjust enrichment obtained as a result
16 of the act or practice with respect to which

1 the Commission is bringing such an action
2 or proceeding.

3 “(ii) Injunctions, including officer and
4 director bars.

5 “(B) RULE OF CONSTRUCTION.—Addi-
6 tional relief sought under this paragraph may
7 not be construed to be a civil fine, penalty, or
8 forfeiture subject to chapter 163 of part VI of
9 title 28, United States Code.

10 “(C) STATUTE OF LIMITATIONS.—A Fed-
11 eral court may not issue relief under this para-
12 graph if the action or proceeding brought or in-
13 stituted by the Commission was commenced
14 more than 14 years after the alleged violation.”.

15 (b) EFFECTIVE DATE.—The amendment made by
16 this section shall apply with respect to any actions or pro-
17 ceedings pending or commenced on or after the date of
18 the enactment of this section.

19 (c) REPORT.—

20 (1) IN GENERAL.—Not later than 10 years
21 after the date of the enactment of this Act, the Se-
22 curities Exchange Commission shall submit to Con-
23 gress data about each enforcement action brought by
24 the Commission in the 10 years following the date
25 of the enactment of this Act.

1 (2) CONTENTS.—In submitting data pursuant
2 to paragraph (1), the Commission shall—

3 (A) with regard to each enforcement ac-
4 tion—

5 (i) categorize the type of enforcement
6 action;

7 (ii) categorize the type of issuer in-
8 volved in the enforcement action;

9 (iii) identify the approximate duration
10 of the misconduct that gave rise to the en-
11 forcement action; and

12 (iv) identify the approximate duration
13 of the investigation; and

14 (B) identify the 10 enforcement actions
15 with the longest durations of misconduct that
16 gave rise to enforcement actions.

