

DRAFT #2, November 6, 2008

111th Congress

First Session

1 A Bill

2 To facilitate greater protections for consumers in relationships of trust and confidence with
3 their financial advisors by creating professional regulation of individual personal financial
4 advisors, providing for dual state and federal regulation, and for other purposes.

5 Be it enacted by the Senate and House of Representatives of the United States of America
6 in Congress assembled,

7 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

8 (a) Short Title.--This Act may be cited as “The Personal Financial Advisor Act of 2009.”

9 (b) Table of Contents.--The table of contents for this Act is as follows:

10 Sec. 1. Short title; table of contents.

11 Sec. 2. The Personal Financial Advisor Act of 2009.

12 Sec. 3. Amendments to the Investment Company Act of 1940.

13 Sec. 4. Amendment to the Securities Act of 1933.

14 Sec. 5. Amendments to the Securities Exchange Act of 1934.

15 Sec. 6. Amendment of the Personal financial advisors Act of 1940.

16 Sec. 7. Effective dates and applicability.

17 **SECTION 2. THE PERSONAL FINANCIAL ADVISOR ACT OF 2009.**

18 **Sec. 101. Findings.** Upon the basis of facts disclosed by the record, and facts otherwise disclosed
19 and ascertained, it is found that personal financial advisors are of national concern, in that, among
20 other things –

21 (1) their advice, counsel, publications, writings, analyses, and reports are furnished and
22 distributed, and their contracts, advisory agreements, and other arrangements with clients are
23 negotiated and performed, by the use of the mails and means and instrumentalities of interstate
24 commerce;

25 (2) their advice, counsel, publications, writings, analyses, and reports customarily relate to
26 the purchase and sale of securities traded on national securities exchanges and in interstate over-
27 the-counter markets, securities issued by companies engaged in business in interstate commerce,
28 and securities and instruments issued by national banks and member banks of the Federal Reserve
29 System; and

30 (3) the foregoing transactions occur in such volume as substantially to affect interstate
31 commerce, national securities exchanges, and other securities markets, the national banking system
32 and the national economy.

33 **Sec. 201. Definitions.**

34 **(a) In General.** When used in this subchapter, unless the context otherwise requires, the
35 following definitions shall apply:

36 (1) “Bank” means

37 (A) a banking institution organized under the laws of the United States or a Federal
38 savings association, as defined in section 1462 (5) of title 12,

39 (B) a member bank of the Federal Reserve System,

40 (C) any other banking institution, savings association (as defined in section 1462 (4) of
41 title 12), or trust company, whether incorporated or not, doing business under the
42 laws of any State or of the United States, a substantial portion of the business of
43 which consists of receiving deposits or exercising fiduciary powers similar to those
44 permitted to national banks under the authority of the Comptroller of the Currency,

45 and which is supervised and examined by State or Federal authority having
46 supervision over banks or savings associations, and which is not operated for the
47 purpose of evading the provisions of this subchapter, and

48 (D) a receiver, conservator, or other liquidating agent of any institution or firm included
49 in clauses (A), (B), or (C) of this paragraph.

50 (2) The term “broker” has the same meaning as given in section 3 of the Securities Exchange
51 Act of 1934 [15 U.S.C. 78c].

52 (3) “Board” shall mean the Personal Financial Advisor Standards Board.

53 (4) “Convicted” includes a verdict, judgment, or plea of guilty, or a finding of guilt on a plea
54 of nolo contendere, if such verdict, judgment, plea, or finding has not been reversed, set
55 aside, or withdrawn, whether or not sentence has been imposed.

56 (5) The term “dealer” has the same meaning as given in section 3 of the Securities Exchange
57 Act of 1934 [15 U.S.C. 78c], but does not include an insurance company or investment
58 company.

59 (6) “Exchange” means any organization, association, or group of persons, whether
60 incorporated or unincorporated, which constitutes, maintains, or provides a market place
61 or facilities for bringing together purchasers and sellers of securities or for otherwise
62 performing, with respect to securities, the functions commonly performed by a stock
63 exchange as that term is generally understood, and includes the market place and the
64 market facilities maintained by such exchange.

65 (7) “Federal Deposit Insurance Corporation” means

66 (8) “Foreign securities authority” means any foreign government, or any governmental body
67 or regulatory organization empowered by a foreign government to administer or enforce
68 its laws as they relate to securities matters.

69 (9) “Foreign financial regulatory authority” means any

70 (A) foreign securities authority,

71 (B) other governmental body or foreign equivalent of a self-regulatory organization
72 empowered by a foreign government to administer or enforce its laws relating to

73 the regulation of personal financial advisors, fiduciaries, trusts, commercial
74 lending, insurance, trading in contracts of sale of a commodity for future delivery,
75 or other instruments traded on or subject to the rules of a contract market, board
76 of trade or foreign equivalent, or other financial activities, or

77 (C) membership organization, a function of which is to regulate the participation of
78 its members in activities listed above.

79 (10) "Holding out" or "hold out" means any representation that a person is qualified to
80 practice as a personal financial advisor in any state or the United States, or who willfully
81 pretends to be, or willfully takes or uses any name, title, addition, or description
82 implying that he or she is qualified, or recognized by law as qualified, to practice as a
83 personal financial advisor in any state.

84 (A) A representation under this paragraph shall be deemed to include, but shall not
85 be limited to, any oral or written communication conveying the fact that the
86 person or individual holds a certificate, designation, registration, or license,
87 including, without limitation, the use of titles or legends on letterheads, business
88 cards, office doors, advertisements and listings, or the displaying of a certificate,
89 designation, registration, or license.

90 (B) A representation under this paragraph shall be deemed to include, but not be
91 limited to, the use of the adjectives "financial," "wealth," "investment," "estate,"
92 or "trust" in conjunction with the nouns "advisor," "planner," "counselor,"
93 "manager," "officer," or "director," or similar terms, unless such person is a
94 lawyer or accountant who is otherwise excluded from the definition of "personal
95 financial advisor" and who utilizes such term only in connection with the
96 activities historically associated with such professions, or unless such person is
97 an personal financial advisor who does not provide investment advisory services
98 to persons.

99 (11) "Interstate commerce" means trade, commerce, transportation, or communication among
100 the several States, or between any foreign country and any State, or between any State
101 and any place or ship outside thereof.

- 102 (12)The term “investment adviser” has the same meaning as given in section ___ of the
103 Investment Advisers Act of 1940 [15 U.S.C. 80b-1 et seq.].
- 104 (13)“Investment company”, affiliated person, and “insurance company” have the same
105 meanings as in the Investment Company Act of 1940 [15 U.S.C. 80a–1 et seq.].
- 106 (14)“Means or instrumentality of interstate commerce” includes any facility of a national
107 securities exchange.
- 108 (15)“National securities exchange” means an exchange registered under section 6 of the
109 Securities Exchange Act of 1934 [15 U.S.C. 78f].
- 110 (16)“Peer” means a licensed personal financial advisor, whether licensed by the Board under
111 the provisions of Section 301(a) of this Act or licensed by a State under the provisions of
112 Section 301(b) of this Act.
- 113 (17)“Peer review” means an evaluation of the professional practice of a personal financial
114 advisor by a peer or peers in order to assess the personal financial advisor’s adherence to
115 the laws, regulations, and standards of professional conduct applicable to personal
116 financial advisors in the delivery of personal financial advisory services, as such
117 adherence is compared to that customarily furnished by the personal financial advisor’s
118 peers and to recognized standards, to determine whether the documentation in the
119 personal financial advisor’s records is adequate, and to undertake recommendations that
120 the reviewed personal financial advisor can undertake to better his or her professional
121 practices.
- 122 (18)“Person” means a natural person or a personal trust (but shall exclude charitable trusts
123 and foundations);
- 124 (19) “Personal Financial Advisor” shall mean a person who provides advice to persons
125 relating to personal financial advisory services; but does not include any person who does
126 not hold out as a personal financial advisor and:
- 127 (A) any person whose advice, analyses or reports relate to no securities other than
128 securities which are direct obligations of or obligations guaranteed as to principal
129 or interest by the United States, or securities issued or guaranteed by
130 corporations in which the United States has a direct or indirect interest which

131 shall have been designated by the Secretary of the Treasury, pursuant to section
132 3(a)(12) of the Securities Exchange Act of 1934 [15 U.S.C. 78c (a)(12)], as
133 exempted securities for the purposes of that Act [15 U.S.C. 78a et seq.];

134 (B) any lawyer, accountant, engineer, or teacher whose performance of such services
135 is solely incidental to the practice of his profession;

136 (C) any person employed by the publisher of any bona fide newspaper, news
137 magazine, or business or financial publication of general and regular circulation;

138 (D) any person whose advice, analyses, or reports are provided solely to brokers,
139 dealers, personal financial advisors, investment companies, pension funds,
140 federal, state or local government agencies, and charitable organizations, and not
141 to the general public;

142 (E) any person whose advice, analyses, or reports relate solely to the sale of life
143 insurance which possesses no cash value nor security component, or to health,
144 disability, property, casualty, or similar forms of insurance;

145 (F) any registered representative of a broker or dealer or any agent or broker of a life
146 insurance company whose activities are solely incidental to the sale of a security
147 or a policy of life insurance and who provides only trade execution services or a
148 description of the security or insurance product to be sold, and who does not
149 provide the provision of personal financial advisory services; provided, however,
150 that once personal financial advisory services have been provided to a person by a
151 registered representative of a broker or dealer or agent or broker of a life
152 insurance company, then all further activities of such registered representative,
153 agent or broker shall remain subject to the provisions of this Act and shall not be
154 deemed solely incidental.

155 i. When used in the paragraph immediately above, the term “solely
156 incidental to the sale of a security or a policy of life insurance” means
157 only that communication in connection with the sale of a security, such as
158 explaining the fees, costs and characteristics of a security or policy of life
159 insurance and the risks of the security or policy of life insurance in which
160 the advice is discrete, minor, casual, and at all times subordinate to the

161 sale process, and only when it is affirmatively and clearly disclosed to the
162 customer that no personal financial advisory services are to be provided
163 by the registered representative, agent, or broker, and only when the
164 registered representative, agent, or broker receives no special
165 compensation paid by the client.

166 ii. When used in the paragraph immediately above, the term “special
167 compensation” shall include any payment of fees directly by the customer
168 to the registered representative, agent, or broker, and shall also include
169 any indirect payment of fees paid through deduction from accounts or
170 products (including but not limited to 12b-1 fees); provided, however, that
171 a sales Board in association with the purchase of the security or
172 insurance product, or the provision by the customer of additional
173 purchase amounts resulting in additional Boards, shall not be deemed
174 special compensation.

175 (G) any person employed by any nationally recognized statistical rating organization,
176 as that term is defined in section 3(a)(62) of the Securities Exchange Act of 1934
177 [15 U.S.C. 78c (a)(62)], unless such organization engages in issuing
178 recommendations as to purchasing, selling, or holding securities or in managing
179 assets, consisting in whole or in part of securities, on behalf of others; or

180 (H) such other persons not within the intent of this paragraph, as the Board may
181 designate by rules and regulations or order.

182 (20)“Personal financial advisory services” means advice, analyses, or reports to persons
183 regarding:

184 (A) strategic asset allocation, which means advice, analyses, or reports regarding the
185 division of assets within an investment portfolio among asset classes with
186 regards to the long term view of the risk and return profile of those asset classes;

187 (B) tactical asset allocation, which means advice, analyses or reports regarding the
188 modification of an asset allocation according to the valuation of the markets in
189 which they are invested or other valuation or economic factors

- 190 (C) the monitoring of such person’s investment portfolio for purposes of advising to
191 switch investments between various securities;
- 192 (D) any discretionary authority to effect a trade in a security for such person,
193 including discretion which is either permanent or temporary in nature, and
194 including discretion which relates to the identity of the security to be traded or
195 the timing of the trade;
- 196 (E) preparing or presenting a financial plan or any portion thereof addressing the
197 extent, amount, or timing of withdrawals during such person’s retirement;
- 198 (F) preparing or presenting to such person a financial plan or any portion thereof
199 advising as to the amount necessary to accumulate to reach any particular
200 financial goal, such as the funding of retirement or educational expenses, or
201 advising as to what type of account (i.e., traditional or Roth IRA or taxable
202 account) to be utilized to effect savings or investing for any particular goal,
203 whether or not followed by a recommendation for the sale of any security or life
204 insurance product or annuity;
- 205 (G) preparing a financial plan for such person, which addresses one of more of the
206 following: risk management issues (asset protection planning, whether through
207 insurance or other means), estate planning, and/or tax planning, if followed by a
208 recommendation or the sale of any security or life insurance product (excluding
209 insurance which has no cash value nor security component) or annuity product;
210 and
- 211 (H) discrete (e.g., one-time or modular), regular, periodic, or other reviews of a
212 person’s portfolio of securities or any material portion thereof.

213 (21)“Security” means any note, stock, treasury stock, security future, bond, debenture,
214 evidence of indebtedness, certificate of interest or participation in any profit-sharing
215 agreement, collateral-trust certificate, preorganization certificate or subscription,
216 transferable share, investment contract, voting-trust certificate, certificate of deposit for
217 a security, fractional undivided interest in oil, gas, or other mineral rights, any put, call,
218 straddle, option, or privilege on any security (including a certificate of deposit) or on any
219 group or index of securities (including any interest therein or based on the value thereof),

220 or any put, call, straddle, option, or privilege entered into on a national securities
221 exchange relating to foreign currency, or, in general, any interest or instrument
222 commonly known as a “security”, or any certificate of interest or participation in,
223 temporary or interim certificate for, receipt for, guaranty of, or warrant or right to
224 subscribe to or purchase any of the foregoing.

225 (22)The term “security future” shall have the same meaning as provided in section 3(a)(55) of
226 the Securities Exchange Act of 1934 [15 U.S.C. 78c (a)(55)].

227 (23)“Standards of Professional Conduct” shall mean the standards governing the conduct of
228 personal financial advisors as adopted by the Board from time to time.

229 (24)“State” means any State of the United States, the District of Columbia, Puerto Rico, the
230 Virgin Islands, or any other possession of the United States.

231 (25)“Securities Act of 1933” [15 U.S.C. 77a et seq.], “Securities Exchange Act of 1934” [15
232 U.S.C. 78a et seq.], “Investment Advisors Act of 1940” [[15 U.S.C. 80b-1 et seq.];
233 Investment Company Act of 1940 [15 U.S.C. 80a–1 et seq.], and “Trust Indenture Act of
234 1939” [15 U.S.C. 77aaa et seq.], mean those Acts, respectively, as heretofore or hereafter
235 amended.

236 **(b) Applicability to Federal or State government, agency, or instrumentality, or to**
237 **officers, agents, or employees thereof**

238 No provision in this subchapter shall apply to, or be deemed to include, the United States, a
239 State, or any political subdivision of a State, or any agency, authority, or instrumentality of
240 any one or more of the foregoing, or any corporation which is wholly owned directly or
241 indirectly by any one or more of the foregoing, or any officer, agent, or employee of any of the
242 foregoing acting as such in the course of his official duty, unless such provision makes
243 specific reference thereto.

244 **(c) Consideration of promotion of efficiency, competition, and capital formation**

245 Whenever pursuant to this subchapter, the Board is engaged in rulemaking and is required
246 to consider or determine whether an action is necessary or appropriate in the public interest,
247 the Board shall also consider, in addition to the primary goal of protection of consumers of

248 personal financial advisory services, whether the action will promote efficiency, competition,
249 and capital formation.

250 **Section 301. Registration of Personal Financial Advisors; Educational and Testing**

251 **Requirements, Penalties and Fines.**

252 (a) **Necessity of Registration.** Except as provided in subsection (b) of this section, it shall be
253 unlawful for any personal financial advisor, unless registered under this section, to make use
254 of the mails or any means or instrumentality of interstate commerce in connection with his
255 or its business as a personal financial advisor.

256 **(b) Personal Financial Advisors Who Need Not Be Registered.**

257 The provisions of subsection (a) of this section shall not apply to:

258 (1) any personal financial advisor who is registered under the laws of any State which
259 provide for registration of personal financial advisors as such; provided that such State
260 shall adopt, at a minimum, substantially the same educational and testing requirements
261 for registration as set forth in Section 301(c) of this Act and provided further that said
262 State shall adopt, at a minimum, substantially the same conduct standards as set forth
263 in Section 401 of this Act; or

264 (2) any personal financial advisor who, during the course of the preceding twelve months,
265 has had fewer than six clients and who neither holds out himself or herself generally to
266 the public as a personal financial advisor.

267 (c) **Educational and Testing Requirements Required for Registration as a Personal**
268 **Financial Advisor.** The Board shall certify for licensure any applicant who:

269 (1) successfully passes either:

270 (A) a comprehensive licensure examination addressing all of the major subject areas
271 affecting the practice of personal financial advisory services; or

272 (B) for applicants who have already attained the Certified Financial Planner™
273 certification as of the date of application, a licensure examination limited to the laws,
274 regulations, and standards of conduct relating to the practice of personal financial
275 advisory services;

276 (2) is of good moral character, determined by application of the requirements of Section
277 301(c) of this Act and who is otherwise possessing of a personal history of honesty,
278 fairness, and respect for the rights of others and for the laws of the United States and the
279 various states;

280 (3) has attained the following educational requirements:

281 (A) obtained from an accredited college or university a baccalaureate degree with a major
282 in personal financial planning or its equivalent; or

283 (B) obtained from an accredited college or university a baccalaureate degree in any
284 major, and has completed with passing grades a course of study equivalent to the
285 registered programs promulgated as of the date of passage of this Act by the Certified
286 Financial Planner Board of Standards, Inc.;

287 (4) for current licensees, such continuing education requirements as the Board may require
288 on an annual basis.

289 (d) **Board Authority to Establish Exam and Educational Requirements.** The Board shall
290 have the authority to establish the standards for determining and shall determine:

291 (1) the content of the comprehensive licensure examination;

292 (2) for persons who have already obtained the Certified Financial Planner™ designation
293 the content of a limited licensure examination directed at the laws, regulations, and
294 standards governing the practice of personal financial advisory services;

295 (3) what constitutes a passing grade for each subject or part of the licensure
296 examinations;

297 (4) which educational institutions, in addition to the state universities of the various
298 States of the United States, shall be deemed to be accredited colleges or universities;

299 (5) what courses and number of hours constitute a major in personal financial planning;

300 (6) the number of hours of continuing education credits, and the areas of practice in
301 which such continuing education must occur; and

302 (7) which educational programs shall qualify for continuing education credit and the
303 extent of such qualification.

304 **(e) Procedure for registration; filing of application; effective date of registration;**
305 **amendment of registration.**

306 (1) A personal financial advisor, or any person who presently contemplates becoming a
307 personal financial advisor, may be registered by filing with the Board an application for
308 registration in such form and containing such of the following information and
309 documents as the Board, by rule, may prescribe as necessary or appropriate in the public
310 interest or for the protection of consumers:

311 (A) the name and home address(es) of the personal financial advisor;

312 (B) the location of his or her principal business office and other offices, if any;

313 (C) the education, the business affiliations for the past ten years, and the present
314 business affiliations of such personal financial advisor;

315 (D) the nature of the business of such personal financial advisor, including the
316 manner of giving advice and rendering analyses or reports;

317 (E) the nature and scope of the authority of such personal financial advisor with
318 respect to clients' funds and accounts;

319 (F) the basis or bases upon which such personal financial advisor is compensated;

320 (G) whether such personal financial advisor, or any person associated with such
321 personal financial advisor, is subject to any disqualification which would be a
322 basis for denial, suspension, or revocation of registration of such personal
323 financial advisor under the provisions of 602(a) of this Act; and

324 (H) a statement as to whether the principal business of such personal financial
325 advisor consists or is to consist of acting as personal financial advisor and a
326 statement as to whether a substantial part of the business of such personal
327 financial advisor, consists or is to consist of rendering personal financial advisory
328 services.

329 (2) Within forty-five days of the date of the filing of such application (or within such longer
330 period as to which the applicant consents) the Board shall—

331 a. by order grant such registration, and the Board shall grant such registration if
332 the Board finds that the requirements of this section are satisfied and that the
333 applicant is not prohibited from registering as a personal financial advisor under
334 this Act.; or

335 b. institute proceedings to determine whether registration should be denied. Such
336 proceedings shall include notice of the grounds for denial under consideration
337 and opportunity for hearing and shall be concluded within one hundred twenty
338 days of the date of the filing of the application for registration. At the conclusion
339 of such proceedings, the Board, by order, shall grant or deny such registration.
340 The Board may extend the time for conclusion of such proceedings for up to
341 ninety days if it finds good cause for such extension and publishes its reasons for
342 so finding or for such longer period as to which the applicant consents. The Board
343 shall deny such registration if it does not make such a finding or if it finds that if
344 the applicant were so registered, his or her registration would be subject to
345 suspension or revocation under Section 602(a) of this Act.

346 (f) **Other acts prohibited by this Act.** Any provision of this Act which prohibits any act,
347 practice, or course of business if the mails or any means or instrumentality of interstate
348 commerce are used in connection therewith shall also prohibit any such act, practice, or
349 course of business by any personal financial advisor registered pursuant to this section or
350 any person acting on behalf of such an personal financial advisor, irrespective of any use of
351 the mails or any means or instrumentality of interstate commerce in connection therewith.

352 (g) **Withdrawal of registration.** Any person registered under this section may, upon such
353 terms and conditions as the Board finds necessary in the public interest or for the protection
354 of consumers, withdraw from registration by filing a written notice of withdrawal with the
355 Board. If the Board finds that any person registered under this section, or who has pending
356 an application for registration filed under this section, is not engaged in business as a
357 personal financial advisor, or is prohibited from registering as a personal financial advisor
358 under Section 301(b) of this Act, the Board shall by order cancel the registration of such
359 person.

360 **Section 401. Duties of Personal Financial Advisors; Prohibited Transactions.**

361 (a) **Fiduciary Standards of Conduct, Generally.** A personal financial advisor is a fiduciary
362 with respect to his or her clients, and shall at all times owe to such clients the broad
363 fiduciary duties of due care, loyalty, and utmost good faith. Not by way of limitation thereof,
364 a personal financial advisor shall: (1) at all times place and maintain his or her client's best
365 interests first and paramount; (2) not mislead his or her clients; (3) provide full and fair
366 disclosure of all material facts to his or her client, including but not limited to all fees and
367 costs associated with any investment, securities and insurance products recommended to a
368 client and the fees and other material compensation paid to the personal financial advisor or
369 to any firm or person with whom he or she may be affiliated; and (4) shall full disclose all
370 material conflicts of interest to his or her clients in writing, and shall prudently manage the
371 conflict of interest and seek the informed consent of his or her client with regard thereto.

372 (b) **Fraudulent or Deceitful Conduct Prohibited.** It shall be unlawful for any personal
373 financial advisor by use of the mails or any means or instrumentality of interstate commerce,
374 directly or indirectly –

375 (1) to employ any device, scheme, or artifice to defraud any client or prospective client;

376 (2) to engage in any transaction, practice, or course of business which operates as a
377 fraud or deceit upon any client or prospective client; or

378 (3) to engage in any act, practice, or course of business which is fraudulent, deceptive, or
379 manipulative.

380 For purposes of this Section 401(b), a violation of the fiduciary duties of a personal
381 financial advisor to his or her client shall constitute shall be considered an act, practice
382 or course of business which is fraudulent, deceptive, or manipulative.

383 (c) **Material Mistatements of Facts Prohibited.** It shall be unlawful for any person to
384 willfully make any untrue statement of a material fact in any registration application or
385 report filed with the Board under this Act or with any State under the provisions of any
386 State statute or regulation governing the regulation of personal financial advisors, or to
387 willfully omit to state in any such application or report any material fact which is required to
388 be stated therein.

389 (d) **Disclosures Required to Clients and Prospective Clients.** Before a personal financial
390 advisor enters into a professional relationship with a client, all material disclosures relating
391 to the relationship must be made including but not limited to the following:

392 (1) The educational background, professional employment history and experience, and areas
393 of competence, specialization, and/or special concentration of the personal financial
394 advisor and any other persons who are expected to provide financial planning services to
395 the client or prospective client;

396 (2) A description of the professional services to be received by the client;

397 (3) The basis and a fair estimate of the amount of compensation to be received by the
398 personal financial advisor;

399 (4) Any and all material conflicts of interest existing between the personal financial advisor
400 and the client which affect the professional services to be received by the client;

401 (5) A listing of any pending or prior disciplinary actions against the licensee by the Board or
402 by any other federal or state securities regulator or self-regulatory organization or
403 professional regulatory organization which has, or previously has had, jurisdiction over
404 the personal financial advisor; and

405 (6) Such other disclosures as may be required by the Board.

406 (e) **Misuse of NonPublic Information Prohibited.** Every personal financial advisor shall
407 establish, maintain, and enforce written policies and procedures reasonably designed, taking
408 into consideration the nature of such personal financial advisor's practice, to prevent the
409 misuse in violation of this chapter or the Securities Exchange Act of 1934 [15 U.S.C. 78a et
410 seq.], or the rules or regulations thereunder, of material, nonpublic information by such
411 personal financial advisor or any person associated with such personal financial advisor.
412 The Board, as it deems necessary or appropriate in the public interest or for the protection of
413 consumers, shall adopt rules or regulations to require specific policies or procedures
414 reasonably designed to prevent misuse in violation of this Act or the Securities Exchange Act
415 of 1934 (or the rules or regulations thereunder) of material, nonpublic information.

416 (f) **Statement of Sponsorship Prohibited.** It shall be unlawful for any person registered as
417 a personal financial advisor under this Act to represent or imply in any manner whatsoever

418 that such person has been sponsored, recommended, or approved, or that his abilities or
419 qualifications have in any respect been passed upon by the United States or any agency or
420 any officer thereof.

421 (g) **Indirect Means Prohibited.** It shall be unlawful for any person indirectly, or through or
422 by any other person, to do any act or thing which it would be unlawful for such person to do
423 directly under the provisions of this Act or any rule or regulation promulgated by the Board
424 thereunder.

425 (h) **Waiver Prohibited.** Any condition, stipulation, or provision purporting to bind any client of
426 a personal financial advisor to waive compliance with any provision of this Act, or with any
427 rule, regulation, or order thereunder, including but not limited to the duties affirmatively
428 imposed upon personal financial advisors under this Section 301 or the regulations or
429 Standards of Professional Conduct promulgated by the Board as authorized herein, shall be
430 void.

431 (i) **Authority of Board to Promulgate Regulations, Including Standards of**
432 **Professional Conduct.** The Board shall, for the purposes of this Section 301, by rules and
433 regulations, define and prescribe means reasonably designed to prevent, such acts, practices,
434 and courses of business as are fraudulent, deceptive, or manipulative, and shall promulgate
435 Standards of Professional Conduct for all personal financial advisors, whether such personal
436 financial advisors are registered with the Board or with any State.

437 **Section 402. Records; Peer Review; Data Filing and Sharing.**

438 (a) **Records.** Every personal financial advisor who makes use of the mails or of any means or
439 instrumentality of interstate commerce in connection with his or her business as a personal
440 financial advisor shall make and keep for prescribed periods such records, furnish such
441 copies thereof, and make and disseminate such reports as the Board, by rule, may prescribe
442 as necessary or appropriate in the public interest or for the protection of consumers. All
443 records (as so defined) of such personal financial advisors are subject at any time, or from
444 time to time, to such reasonable periodic, special, or other examinations by representatives of
445 the Board as the Board deems necessary or appropriate in the public interest or for the
446 protection of consumers.

447 (b) **Peer review.** The Board shall adopt regulations establishing guidelines for peer reviews of
448 personal financial advisors and their business practices that shall require that a peer review
449 of each personal financial advisor be conducted pursuant to a program and standards
450 approved by the Board at least once every four years, unless by regulation the Board reduces
451 or extends the period for peer review to reflect circumstances involving lesser or greater risk
452 to consumers or to the reputation of the profession of personal financial advisors.

453 a. The Board shall approve only peer reviewers that the Board finds comply with such
454 standards for performing and reporting on peer reviews as the Board may establish
455 from time to time, and who have significantly engaged in the practice of personal
456 financial advisory services for the preceding five years prior to approval as a peer
457 reviewer.

458 b. The Board shall require that a peer review be conducted by a reviewer that is
459 independent of the firm reviewed, qualified pursuant to Board rules, and approved by
460 the Board to act as such.

461 c. Peer review records shall not be filed with the Board, but shall be available for
462 inspection upon examination of the personal financial advisor by the Board.

463 d. Information obtained by the Board from peer review records shall not be subject to
464 discovery or introduction into evidence in any disciplinary proceeding against a
465 personal financial advisor licensee. Further, an organization or person who conducts
466 a peer review shall not be permitted and shall not be required to testify in any such
467 disciplinary proceeding as to any evidence or other matters produced or presented
468 during the peer review or as to any findings, recommendations, evaluations, opinions,
469 or other actions of such peer reviewer. However, nothing in this section shall be
470 construed to mean that information, documents, or records otherwise available and
471 obtained from original sources are immune from discovery or use in any such
472 disciplinary proceeding merely because they were presented during the peer review
473 process.

474 e. There shall be no monetary liability on the part of, and no cause of action for
475 damages shall arise against, any peer reviewer, for any act or proceeding undertaken
476 or performed within the scope of the functions of such peer reviewer, provided that
477 the peer reviewer acts in good faith and without intentional fraud.

478 f. The investigations, proceedings, and records of a peer reviewer as described in the
479 preceding subsections shall not be subject to discovery or introduction into evidence
480 in any civil action against a provider of personal financial advisory services arising
481 out of the matters which are the subject of evaluation and review by such peer
482 reviewer, and no peer reviewer shall be permitted or required to testify in any such
483 civil action as to any evidence or other matters produced or presented during the peer
484 review process or as to any findings, recommendations, evaluations, opinions, or
485 other actions of such peer reviewer. However, information, documents, or records
486 otherwise available from original sources are not to be construed as immune from
487 discovery or use in any civil action merely because they were presented during the
488 peer review process, nor should any person who provides information to a peer
489 reviewer be prevented from testifying as to matters within his or her knowledge, but
490 the said witness cannot be asked about his or her communications to a peer reviewer.

491 **(c) Filings with Board.** The Board may, by rule, require a personal financial advisor –

- 492 (1) to file with the Board any fee, application, report, or notice required to be filed by this
493 subchapter or the rules issued under this subchapter through any entity designated by
494 the Board for that purpose; and
- 495 (2) to pay the reasonable costs associated with such filing and the establishment and
496 maintenance of the systems required by Section 402(d) of this Act.

497 **(d) Access to disciplinary and other information.**

498 (1) Maintenance of system to respond to inquiries.

499 (A) In general. The Board shall require the entity designated by the Board under
500 Section 402(c) of this Act to establish and maintain a toll-free telephone listing, or a
501 readily accessible electronic or other process, to receive and promptly respond to
502 inquiries regarding registration information (including disciplinary actions,
503 regulatory, judicial, and arbitration proceedings, and other information required by
504 law or rule to be reported) involving personal financial advisors.

505 (B) Applicability. This Section 402(d) shall apply to any personal financial advisor,
506 whether the personal financial advisor is registered with the Board under Section

507 301(a) of this Act or regulated solely by a State as described in Section 301(b)(1) of
508 this Act.

509 (2) Recovery of costs. An entity designated by the Board under Section 402(c) of this Act
510 may charge persons making inquiries, other than individual consumers, reasonable fees
511 for responses to inquiries described in Section 402(d)(1).

512 (3) Limitation on liability. An entity designated by the Board under Section 402(c) shall not
513 have any liability to any person for any actions taken or omitted in good faith under this
514 subsection.

515 **Section 403. Applicability of Certain Provisions of this Act to All Personal Financial**
516 **Advisors.** The duties imposed upon personal financial advisors under Section 401 or Section 402(a)
517 of this Act shall apply to all personal financial advisors, whether registered with the Board pursuant
518 to the provisions of Section 301(a) of this Act, whether registered with a State pursuant to the
519 provisions of Section 301(b)(1) of this Act, or whether not registered with either the Board or any
520 State pursuant to the provisions of Section 301(b)(2) of this Act.

521 **Section 501. Personal Financial Advisor Standards Board, Subdivisions and Funding.**

522 (a) **Board.** There is created the Personal Financial Advisor Standards Board.

523 (1) The Board shall consist of five members, all of whom must be Personal Financial
524 Advisors licensed under the provisions of this Act or the laws of any State, except
525 that prior to the July 1, 2012 the Board members need not be licensed under the
526 provisions of this Act but must be holders of the Certified Financial Planner™
527 certification. The Board members must have practiced personal financial advisory
528 services on a substantially full-time basis for at least five years of the preceding ten
529 years prior to appointment to the Board.

530 (2) The members of the Board shall be nominated by the North American Securities
531 Administrators Association, who shall provide the President of the United States
532 with three names for each Board position then open. The members of the Board shall
533 be appointed by the President from such names by and with the advice and consent
534 of the Senate.

535 (3) Each Board member shall hold office for a term of five years and until his or her
536 successor is appointed and has qualified, except that he or she shall not so continue
537 to serve beyond the expiration of the next session of Congress subsequent to the
538 expiration of said fixed term of office, and except: (A) any Boarder appointed to fill a
539 vacancy occurring prior to the expiration of the term for which his predecessor was
540 appointed shall be appointed for the remainder of such term, and (B) the terms of
541 office of the Boarders first taking office after the date of this Act, shall expire as
542 designated by the President at the time of nomination, one at the end of one year, one
543 at the end of two years, one at the end of three years, one at the end of four years,
544 and one at the end of five years, after the date of this Act.

545 (4) Any Board member may be renominated and reappointed, with the advice and
546 consent of the Senate, in the manner set forth above in Section 501(b)(2) of this Act .

547 (5) Not more than three of such Board members shall be members of the same political
548 party, and in making appointments members of different political parties shall be
549 appointed alternately as nearly as may be practicable.

550 (6) The Chairman of the Board shall not engage in any other business, vocation, or
551 employment than that of serving as Chairman of the Board.

552 (7) The Board members other than the Chairman may engage in other businesses,
553 vocations, or employment, including the practice of personal financial planning
554 services.

555 **(b) General Authority of the Board: Rules, Regulations and Orders of the Board.** In
556 addition to the special powers and authority granted under the provisions of this Act, the
557 Board shall have authority from time to time to make, amend, and rescind such rules and
558 regulations as may be necessary to carry out the provisions of this Act, including rules and
559 regulations governing the examination, educational, and good character requirements for
560 licensees, the establishment of Standards of Professional Conduct to govern the conduct of
561 personal financial advisors, defining the financial, technical, and trade terms used in this
562 Act, and to prescribe the form or forms in which required information shall be set forth by
563 applicants or licensees.

564 (1) The Board shall have authority from time to time to make, issue, amend, and rescind
565 such rules and regulations and such orders as are necessary or appropriate to the
566 exercise of the functions and powers conferred upon the Board elsewhere in this Act.

567 (2) For the purposes of its rules or regulations, the Board may classify persons and
568 matters within its jurisdiction and prescribe different requirements for different
569 classes of persons or matters.

570 (3) Subject to the provisions of chapter 15 of title 44 and regulations prescribed under
571 the authority thereof, the rules and regulations of the Board under this subchapter,
572 and amendments thereof, shall be effective upon publication in the manner which the
573 Board shall prescribe, or upon such later date as may be provided in such rules and
574 regulations.

575 (4) Orders of the Board under this subchapter shall be issued only after appropriate
576 notice and opportunity for hearing. Notice to the parties to a proceeding before the
577 Board shall be given by personal service upon each party or by registered mail or
578 certified mail or confirmed telegraphic notice to the party's last known business
579 address. Notice to interested persons, if any, other than parties may be given in the
580 same manner or by publication in the Federal Register.

581 (5) No provision of this Act imposing any liability shall apply to any act done or omitted
582 in good faith in conformity with any rule or regulation of the Board, notwithstanding
583 that such rule or regulation may, after such act or omission, be amended or rescinded
584 or be determined by judicial or other authority to be invalid for any reason.

585 (c) **Annual Report.** The Board shall furnish an Annual Report to Congress and to the public.

586 (d) **Appointment and compensation of staff.**

587 (1) **Appointment and compensation of officers and employees.** The Board shall
588 appoint and compensate officers, attorneys, economists, examiners, committee
589 members, and other employees in accordance with section 4802 of title 5.

590 (2) **Standards of Professional Conduct Committee.** The Board may appoint a
591 Standards of Professional Conduct Committee for purposes of undertaking

592 recommendations to the Board as to the scope and content of the Standards of
593 Professional Conduct authorized to be promulgated by the Board.

594 (3) **Educational Advisory Committees.** The Board may appoint one or more
595 Educational Advisory Committees for purposes of undertaking recommendations to
596 the Board as to the educational and continuing educational requirements imposed by
597 this Act.

598 (4) **Examination Advisory Committee.** The Board may appoint an Examination
599 Advisory Committee for purposes of undertaken recommendations to the Board as to
600 the scope and content of the examination requirements imposed by this Act as a
601 condition of licensure.

602 (5) **Other Advisory Committees.** The Board by rule may appoint such other advisory
603 committees as it may determine from time to time.

604 (6) **Reporting of information.** In establishing and adjusting schedules of
605 compensation and benefits for officers, attorneys, economists, examiners, committee
606 members, and other employees of the Board under applicable provisions of law, the
607 Board shall inform the heads of the agencies referred to under section 1833b of title
608 12 and Congress of such compensation and benefits and shall seek to maintain
609 comparability with such agencies regarding compensation and benefits.

610 (e) **Leasing authority.** Notwithstanding any other provision of law, the Board is authorized
611 to enter directly into leases for real property for office, meeting, storage, and such other
612 space as is necessary to carry out its functions, and shall be exempt from any General
613 Services Administration space management regulations or directives.

614 (f) **Authorization; functions delegable; eligible persons; application of other laws.**

615 (1) In addition to its existing authority, the Board shall have the authority to delegate,
616 by published order or rule, any of its functions to a division of the Board, an
617 individual Board member, an administrative law judge, or an employee or employee
618 board, including functions with respect to hearing, determining, ordering, certifying,
619 reporting, or otherwise acting as to any work, business, or matter. Nothing in this
620 section shall be deemed to supersede the provisions of section 556(b) of Title 5, or to
621 authorize the delegation of the function of rule making as defined in subchapter II of

622 chapter 5 of Title 5, with reference to general rules as distinguished from rules of
623 particular applicability, or of the making of any rule pursuant to section 19(c).

624 (2) Right of review; procedure. With respect to the delegation of any of its functions, as
625 provided in subsection (1) of this section, the Board shall retain a discretionary right
626 to review the action of any such division of the Board, individual Board member,
627 administrative law judge, employee, or employee board, upon its own initiative or
628 upon petition of a party to or intervenor in such action, within such time and in such
629 manner as the Board by rule shall prescribe. The vote of one member of the Board
630 shall be sufficient to bring any such action before the Board for review. A person or
631 party shall be entitled to review by the Board if he or she or it is adversely affected
632 by action at a delegated level which (1) denies any request for action pursuant to
633 section 8(a) or section 8(c) of the Securities Act of 1933 or the first sentence of section
634 12(d); (2) suspends trading in a security pursuant to section 12(k); or (3) is pursuant
635 to any provision of this title in a case of adjudication, as defined in section 551 of
636 Title 5, not required by this title to be determined on the record after notice and
637 opportunity for hearing (except to the extent there is involved a matter described in
638 section 554(a)(1) through (6) of such Title 5).

639 (3) Finality of delegated action. If the right to exercise such review is declined, or if no
640 such review is sought within the time stated in the rules promulgated by the Board,
641 then the action of any such division of the Board, individual Board member,
642 administrative law judge, employee, or employee board, shall, for all purposes,
643 including appeal or review thereof, be deemed the action of the Board.

644 (g) **Acceptance of travel support for Board activities from non-Federal sources;**
645 **regulations.** Notwithstanding any other provision of law, in accordance with regulations
646 which the Board shall prescribe to prevent conflicts of interest, the Board may accept
647 payment and reimbursement, in cash or in kind, from non-Federal agencies, organizations,
648 and individuals for travel, subsistence, and other necessary expenses incurred by Board
649 members and employees in attending meetings and conferences concerning the functions or
650 activities of the Board. Any payment or reimbursement accepted shall be credited to the
651 appropriated funds of the Board. The amount of travel, subsistence, and other necessary
652 expenses for members and employees paid or reimbursed under this subsection may exceed

653 per diem amounts established in official travel regulations, but the Board may include in its
654 regulations under this subsection a limitation on such amounts.

655 (h) **Reimbursement of expenses for assisting foreign securities authorities.**

656 Notwithstanding any other provision of law, the Board may accept payment and
657 reimbursement, in cash or in kind, from a foreign securities authority, or made on behalf of
658 such authority, for necessary expenses incurred by the Board, its members, and employees in
659 carrying out any investigation authorized pursuant to this Act or in providing any other
660 assistance to a foreign securities authority. Any payment or reimbursement accepted shall
661 be considered a reimbursement to the appropriated funds of the Board.

662 (i) **Federal Appropriations.** For fiscal year 2009, and for each succeeding fiscal year, there
663 are authorized to be appropriated such amounts as may be necessary and appropriate to
664 carry out the policies, provisions, and purposes of this Act, taking into consideration the
665 revenue to the Board resulting from imposition of fees as set forth below. The Board shall
666 collect all fees and penalties authorized to be charged by this Act and shall account for them
667 in accordance with generally accepted accounting principles.

668 (1) All fees collected by the Board and all appropriations undertaken to the Board, and
669 not utilized by the Board in any fiscal year, shall be returned to the U.S. Treasury
670 following the end of each fiscal year.

671 (2) All revenue resulting from penalties authorized to be imposed by this Act shall be
672 paid to the U.S. Treasury, less the actual costs of investigation and enforcement,
673 following the end of each fiscal year.

674 (j) **Fee Assessments.** The Board, by rule, may establish fees to be paid for applications,
675 examination, reexamination, licensing and renewal, reinstatement, and recordmaking and
676 recordkeeping.

677 (1) The fee for the examination shall be established at an amount that covers the costs
678 for the procurement or development, administration, grading, and review of the
679 examination. The fee for the examination is refundable if the applicant is found to be
680 ineligible to sit for the examination.

- 681 (2) The fee for initial application is nonrefundable, and shall be established at an
682 amount that covers the cost of undertaking review of the application and any
683 investigation into the moral character of the applicant for licensure.
- 684 (3) The Board may also establish, by rule, the annual renewal fees, a reactivation fee,
685 late filing fees, and delinquency fee not to exceed \$100 for continuing professional
686 education reporting forms.
- 687 (4) The Board shall establish fees which are adequate to ensure the continued operation
688 of the Board. Fees shall be based on Board estimates of the revenue required to
689 implement this Act and the provisions of law with respect to the professional
690 regulation of personal financial advisors. Fees may be assessed upon all personal
691 financial advisors who are registered with either the Board or the States, with one
692 level of fees established for personal financial advisors registered with the Board and
693 another level of fees established for personal financial advisors registered with the
694 States, commensurate with the activities of the Board undertaken with regard to the
695 regulation and enforcement and other activities taken with respect to such Board-
696 registered or State-registered personal financial advisors.
- 697 (k) **Fee payments.** Notwithstanding any other provision of law, whenever any fee is required
698 to be paid to the Board pursuant to any provision of the securities laws or any other law, the
699 Board may provide by rule that such fee shall be paid in a manner other than in cash and the
700 Board may also specify the time that such fee shall be determined and paid relative to the
701 filing of any statement or document with the Board.
- 702 (l) **Federal and State Agencies and Associations – Assistance and Cooperation.** It is
703 hereby declared the public policy to ensure the maximum uniformity in Federal and State
704 regulatory standards governing the practice of personal financial advisory services and to
705 obtain the maximum effectiveness of Federal-State regulation of personal financial advisors.
- 706 (1) The Board is authorized to provide advisory opinions to the State boards, Boards,
707 agencies or subdivisions governing the profession of personal financial advisors with
708 respect to the standards of conduct adopted by the Board.
- 709 (2) The Board is authorized to cooperate with any association composed of duly
710 constituted representatives of Federal or State governments, and with agencies of

711 Federal or State Governments, and with self-regulatory organizations and
712 professional regulatory organizations whose primary assignment is the regulation of
713 the personal financial advisory profession and/or the securities business, and which,
714 in the judgment of the Board, could assist in effectuating greater uniformity in
715 Federal-State personal financial advisory and securities matters, the efficient
716 regulation of the profession of personal financial advisory services, and the efficient
717 enforcement of Federal and State laws regarding such matters. The Board shall, at
718 its discretion, cooperate, coordinate, and share information with such representatives
719 of such associations, agencies, and organizations for the purposes of carrying out the
720 public policies expressed in this Act.

721 (3) In order to carry out the policy of uniformity in the standards and regulations
722 governing the profession of personal financial advisors, the Board shall conduct an
723 annual conference as well as such other meetings or forums as are deemed necessary,
724 to which representatives from such securities associations, securities self-regulatory
725 organizations, government agencies, consumer groups, and private organizations
726 involved in the regulation or education of personal financial advisors or other
727 participants in the securities industry may be invited to participate.

728 (4) Upon request of the securities Boarder (or any agency or officer performing like
729 functions) of any State, the Board may provide such training, technical assistance, or
730 other reasonable assistance in connection with the regulation of personal financial
731 advisors by the State.

732 (5) As used in this paragraph, the terms 'association', 'conference', 'meeting', 'forum',
733 'agency', 'organization', and 'group' include any committee, subgroup, or
734 representative of such entities.

735 **Section 601. Investigative Authority; Disclosure of Information; Hearings; Court Review**
736 **of Orders; Jurisdiction of Offenses and Suits.**

737 (a) **Investigative Authority.** For the purpose of all investigations which, in the opinion of the
738 Board, are necessary and proper for the enforcement of this Act, any member of the Board or
739 any officer or officers designated by it are empowered to administer oaths and affirmations,
740 subpoena witnesses, take evidence, and require the production of any books, papers, or other
741 documents which the Board deems relevant or material to the inquiry. Such attendance of

742 witnesses and the production of such documentary evidence may be required from any place
743 in the United States or any State at any designated place of hearing.

744 (b) **Hearings.** Hearings may be public and may be held before the Board, any member or
745 members thereof, or any officer or officers of the Board designated by it, and appropriate
746 records thereof shall be kept.

747 (c) **Disclosure of Information.**

748 (1) Information available to public. The information contained in any registration
749 application or report or amendment thereto filed with the Board pursuant to any
750 provision of this subchapter shall be made available to the public, unless and except
751 insofar as the Board, by rules and regulations upon its own motion, or by order upon
752 application, finds that public disclosure is neither necessary nor appropriate in the
753 public interest or for the protection of investors. Photostatic, electronic or other
754 copies of information contained in documents filed with the Board under this
755 subchapter and made available to the public shall be furnished to any person at such
756 reasonable charge and under such reasonable limitations as the Board shall
757 prescribe.

758 (2) Disclosure of fact of examination or investigation; exceptions. Subject to the
759 provisions of subsections (c) and (d) of section 80b-9 of this title and section 78x (c) of
760 this title, the Board, or any member, officer, or employee thereof, shall not make
761 public the fact that any examination or investigation under this subchapter is being
762 conducted, or the results of or any facts ascertained during any such examination or
763 investigation; and no member, officer, or employee of the Board shall disclose to any
764 person other than a member, officer, or employee of the Board any information
765 obtained as a result of any such examination or investigation except with the
766 approval of the Board. The provisions of this subsection shall not apply —

767 (A) in the case of any hearing which is public under the provisions of section 80b-
768 12 of this title; or

769 (B) in the case of a resolution or request from either House of Congress.

770 (3) Disclosure by personal financial advisor of identity of clients. No provision of this
771 subchapter shall be construed to require, or to authorize the Board to require any

772 personal financial advisor engaged in rendering personal financial advisory services
773 to disclose the identity, investments, or affairs of any client of such personal financial
774 advisor, except insofar as such disclosure may be necessary or appropriate in a
775 particular proceeding or investigation having as its object the enforcement of a
776 provision or provisions of this Act.

777 **(d) Court Review of Orders.**

778 (1) Petition; jurisdiction; findings of Board; additional evidence; finality. Any person
779 aggrieved by an order of the Board may obtain a review of such order in the court of
780 appeals of the United States, within any circuit wherein such person resides or has
781 his principal place of business, or in the United States Court of Appeals for the
782 District of Columbia, by filing in such Court, within sixty days after the entry of such
783 order, a written petition praying that the order of the Board be modified or be set
784 aside in whole or in part. A copy of such petition shall be forthwith transmitted by
785 the clerk of the court to the Board, and thereupon the Board shall file in the court the
786 record upon which the order complained of was entered, as provided in section 2112
787 of Title 28. No objection to the order of the Board shall be considered by the court
788 unless such objection shall have been urged before the Board. The finding of the
789 Board as to the facts, if supported by evidence, shall be conclusive. If either party
790 shall apply to the court for leave to adduce additional evidence, and shall show to the
791 satisfaction of the court that such additional evidence is material and that there were
792 reasonable grounds for failure to adduce such evidence in the hearing before the
793 Board, the court may order such additional evidence to be taken before the Board and
794 to be adduced upon the hearing in such manner and upon such terms and conditions
795 as to the court may seem proper. The Board may modify its findings as to the facts,
796 by reason of the additional evidence so taken, and it shall file such modified or new
797 findings, which, if supported by evidence, shall be conclusive, and its
798 recommendation, if any, for the modification or setting aside of the original order.
799 The jurisdiction of the court shall be exclusive and its judgment and decree,
800 affirming, modifying, or setting aside, in whole or in part, any order of the Board,
801 shall be final, subject to review by the Supreme Court of the United States upon
802 certiorari or certification as provided in section 1254 of Title 28.

803 (2) Stay of Board's order. The commencement of proceedings under subsection (1) of this
804 section shall not, unless specifically ordered by the court, operate as a stay of the
805 Board's order.

806 (e) **Jurisdiction of Offenses and Suits.** The district courts of the United States and the
807 United States courts of any Territory or other place subject to the jurisdiction of the United
808 States shall have jurisdiction of violations of this Act or the rules, regulations, or orders
809 thereunder, and, concurrently with State and Territorial courts, of all suits in equity and
810 actions at law brought to enforce any liability or duty created by, or to enjoin any violation of
811 this Act or the rules, regulations, or orders thereunder. Any criminal proceeding may be
812 brought in the district wherein any act or transaction constituting the violation occurred.
813 Any suit or action to enforce any liability or duty created by, or to enjoin any violation of this
814 subchapter or rules, regulations, or orders thereunder, may be brought in any such district or
815 in the district wherein the defendant is an inhabitant or transacts business, and process in
816 such cases may be served in any district of which the defendant is an inhabitant or transacts
817 business or wherever the defendant may be found. Judgments and decrees so rendered shall
818 be subject to review as provided in sections 1254, 1291, 1292, and 1294 of title 28. No costs
819 shall be assessed for or against the Board in any proceeding under this subchapter brought
820 by or against the Board in any court.

821 **Section 602. Denial of registration; suspension; penalties.**

822 (a) **Censure, denial, or suspension of registration; notice and hearing.** The Board, by
823 order, shall censure, place limitations on the activities, functions, or operations of, suspend
824 for a period not exceeding twelve months, or revoke the registration of any personal financial
825 advisor if it finds, on the record after notice and opportunity for hearing, that such censure,
826 placing of limitations, suspension, or revocation is in the public interest and that such
827 personal financial advisor –

828 (1) has failed to complete the requisite continuing education requirements as adopted by
829 the Board from time to time;

830 (2) has willfully made or caused to be made in any application for registration or report
831 required to be filed with the Board under this subchapter, or in any proceeding before
832 the Board with respect to registration, any statement which was at the time and in
833 the light of the circumstances under which it was made false or misleading with

834 respect to any material fact, or has omitted to state in any such application or report
835 any material fact which is required to be stated therein;

836 (3) has been convicted within ten years preceding the filing of any application for
837 registration or at any time thereafter of any felony or misdemeanor or of a
838 substantially equivalent crime by a foreign court of competent jurisdiction which the
839 Board finds –

840 (A) involves the purchase or sale of any security, the taking of a false oath, the
841 making of a false report, bribery, perjury, burglary, any substantially equivalent
842 activity however denominated by the laws of the relevant foreign government, or
843 conspiracy to commit any such offense;

844 (B) arises out of the conduct of the business of a broker, dealer, municipal securities
845 dealer, investment adviser, personal financial advisor, bank, insurance company,
846 government securities broker, government securities dealer, fiduciary, transfer
847 agent, credit rating agency, foreign person performing a function substantially
848 equivalent to any of the above, or entity or person required to be registered under
849 the Commodity Exchange Act [7 U.S.C. 1 et seq.] or any substantially equivalent
850 statute or regulation;

851 (C) involves the larceny, theft, robbery, extortion, forgery, counterfeiting, fraudulent
852 concealment, embezzlement, fraudulent conversion, or misappropriation of funds
853 or securities or substantially equivalent activity however denominated by the
854 laws of the relevant foreign government; or

855 (D) involves the violation of section 152, 1341, 1342, or 1343 or chapter 25, section
856 152, 1341, 1342, or 1343 or chapter 25, or 47 of title 18, or a violation of [1]
857 substantially equivalent foreign statute;

858 (4) has been convicted during the 10-year period preceding the date of filing of any
859 application for registration, or at any time thereafter, of -

860 (A) any crime that is punishable by imprisonment for 1 or more years, and that is not
861 described in paragraph (2); or

862 (B) a substantially equivalent crime by a foreign court of competent jurisdiction;

- 863 (5) is permanently or temporarily enjoined by order, judgment, or decree of any court of
864 competent jurisdiction, including any foreign court of competent jurisdiction, from
865 acting as an personal financial advisor, investment adviser, underwriter, broker,
866 dealer, municipal securities dealer, government securities broker, government
867 securities dealer, transfer agent, credit rating agency, foreign person performing a
868 function substantially equivalent to any of the above, or entity or person required to
869 be registered under the Commodity Exchange Act [7 U.S.C. 1 et seq.] or any
870 substantially equivalent statute or regulation, or as an affiliated person or employee
871 of any investment company, bank, insurance company, foreign entity substantially
872 equivalent to any of the above, or entity or person required to be registered under the
873 Commodity Exchange Act or any substantially equivalent statute or regulation, or
874 from engaging in or continuing any conduct or practice in connection with any such
875 activity, or in connection with the purchase or sale of any security;
- 876 (6) has willfully violated any provision of the Securities Act of 1933 [15 U.S.C. 77a et
877 seq.], the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.], the Investment
878 Advisers Act of 1940 (15 U.S.C. 80b-1 et. seq.), the Investment Company Act of 1940
879 [15 U.S.C. 80a-1 et seq.], this Act, the Commodity Exchange Act [7 U.S.C. 1 et seq.],
880 or the rules or regulations under any such statutes or any rule of the Municipal
881 Securities Rulemaking Board, or is unable to comply with any such provision;
- 882 (7) has willfully aided, abetted, counseled, commanded, induced, or procured the
883 violation by any other person of any provision of the Securities Act of 1933 [15 U.S.C.
884 77a et seq.], the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.], the
885 Investment Company Act of 1940 [15 U.S.C. 80a-1 et seq.], the Investment Advisers
886 Act of 1940 [15 U.S.C. 80b-1 et seq.], this Act, the Commodity Exchange Act [7
887 U.S.C. 1 et seq.], the rules or regulations under any of such statutes, or the rules of
888 the Municipal Securities Rulemaking Board, or has failed reasonably to supervise,
889 with a view to preventing violations of the provisions of such statutes, rules and
890 regulations, another person who commits such a violation, if such other person is
891 subject to his supervision. For the purposes of this paragraph no person shall be
892 deemed to have failed reasonably to supervise any person, if—

- 893 (A) there have been established procedures, and a system for applying such
894 procedures, which would reasonably be expected to prevent and detect, insofar as
895 practicable, any such violation by such other person, and
- 896 (B) such person has reasonably discharged the duties and obligations incumbent
897 upon him by reason of such procedures and system without reasonable cause to
898 believe that such procedures and system were not being complied with.
- 899 (8) is subject to any order of the Board barring or suspending the right of the person to
900 be a personal financial advisor;
- 901 (9) has been found by a foreign financial regulatory authority to have—
- 902 (A) made or caused to be made in any application for registration or report required
903 to be filed with a foreign securities authority, or in any proceeding before a
904 foreign securities authority with respect to registration, any statement that was
905 at the time and in light of the circumstances under which it was made false or
906 misleading with respect to any material fact, or has omitted to state in any
907 application or report to a foreign securities authority any material fact that is
908 required to be stated therein;
- 909 (B) violated any foreign statute or regulation regarding transactions in securities or
910 contracts of sale of a commodity for future delivery traded on or subject to the
911 rules of a contract market or any board of trade; or
- 912 (C) aided, abetted, counseled, commanded, induced, or procured the violation by any
913 other person of any foreign statute or regulation regarding transactions in
914 securities or contracts of sale of a commodity for future delivery traded on or
915 subject to the rules of a contract market or any board of trade, or has been found,
916 by the foreign financial regulatory authority, to have failed reasonably to
917 supervise, with a view to preventing violations of statutory provisions, and rules
918 and regulations promulgated thereunder, another person who commits such a
919 violation, if such other person is subject to his supervision; or
- 920 (10) is subject to any final order of a State securities Board (or any agency or officer
921 performing like functions), State authority that supervises or examines banks,
922 savings associations, or credit unions, State insurance Board (or any agency or office

923 performing like functions), an appropriate Federal banking agency (as defined in
924 section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813 (q))), or the National
925 Credit Union Administration, that –

926 (A) bars such person from association with an entity regulated by such Board,
927 authority, agency, or officer, or from engaging in the business of securities,
928 insurance, banking, savings association activities, or credit union activities; or

929 (B) constitutes a final order based on violations of any laws or regulations that
930 prohibit fraudulent, manipulative, or deceptive conduct.

931 **(b) Bar or suspension from acting as personal financial advisor; notice and hearing.**

932 The Board, by order, shall censure or place limitations on the activities of any person who is
933 or seeks to become, at the time of the alleged misconduct, a personal financial advisor, or
934 suspend for a period not exceeding twelve months or bar any such person from being
935 associated with a personal financial advisor, if the Board finds, on the record after notice and
936 opportunity for hearing, that such censure, placing of limitations, suspension, or bar is in the
937 public interest and that such person has committed or omitted any act or omission
938 enumerated in paragraph (1), (5), (6), (8), or (9) of subsection (e) of this section or has been
939 convicted of any offense specified in paragraph (2) or (3) of subsection (e) of this section
940 within ten years of the commencement of the proceedings under this subsection, or is
941 enjoined from any action, conduct, or practice specified in paragraph (4) of subsection (e) of
942 this section.

943 **(c) Penalties in criminal proceedings.** Any person who willfully violates any provision of
944 this subchapter, or any rule, regulation, or order promulgated by the Commission under
945 authority thereof, shall, upon conviction, be fined not more than \$250,000, or imprisoned for
946 not more than five years, or both.

947 **(d) Money penalties in administrative proceedings.**

948 (1) Authority of Board. In any proceeding instituted pursuant to subsection (e) or (f) of this
949 section against any person, the Board may impose a civil penalty if it finds, on the record
950 after notice and opportunity for hearing, that such penalty is in the public interest and
951 that such person –

952 (A) has willfully violated any provision of the Securities Act of 1933 [15 U.S.C. 77a et
953 seq.], the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.], subchapter I of this
954 chapter, or this subchapter, or the rules or regulations thereunder;

955 (B) has willfully aided, abetted, counseled, commanded, induced, or procured such a
956 violation by any other person;

957 (C) has willfully made or caused to be made in any application for registration or report
958 required to be filed with the Board under this subchapter, or in any proceeding before
959 the Board with respect to registration, any statement which was, at the time and in
960 the light of the circumstances under which it was made, false or misleading with
961 respect to any material fact, or has omitted to state in any such application or report
962 any material fact which was required to be stated therein.

963 (2) Maximum amount of penalty

964 (A) First tier. The maximum amount of penalty for each act or omission described in
965 paragraph (1) shall be \$10,000.

966 (B) Second tier. Notwithstanding subparagraph (A), the maximum amount of
967 penalty for each such act or omission shall be \$100,000 if the act or omission
968 described in paragraph (1) involved fraud, deceit, manipulation, or deliberate or
969 reckless disregard of a regulatory requirement.

970 (C) Third tier. Notwithstanding subparagraphs (A) and (B), the maximum amount of
971 penalty for each such act or omission shall be \$200,000 if—

972 (A) the act or omission described in paragraph (1) involved fraud, deceit,
973 manipulation, or deliberate or reckless disregard of a regulatory requirement;
974 and

975 (B) such act or omission directly or indirectly resulted in substantial losses or
976 created a significant risk of substantial losses to other persons or resulted in
977 substantial pecuniary gain to the person who committed the act or omission.

978 (3) Determination of public interest. In considering under this section whether a penalty is
979 in the public interest, the Board may consider—

980 (A) whether the act or omission for which such penalty is assessed involved fraud, deceit,
981 manipulation, or deliberate or reckless disregard of a regulatory requirement;

982 (B) the harm to other persons resulting either directly or indirectly from such act or
983 omission;

984 (C) the extent to which any person was unjustly enriched, taking into account any
985 restitution made to persons injured by such behavior;

986 (D) whether such person previously has been found by the Board, another appropriate
987 regulatory agency, or a self-regulatory organization to have violated the Federal
988 securities laws, State securities laws, or the rules of a self-regulatory organization,
989 has been enjoined by a court of competent jurisdiction from violations of such laws or
990 rules, or has been convicted by a court of competent jurisdiction of violations of such
991 laws or of any felony or misdemeanor described in subsection (e)(2) of this section;

992 (E) the need to deter such person and other persons from committing such acts or
993 omissions; and

994 (F) such other matters as justice may require.

995 (4) Evidence concerning ability to pay. In any proceeding in which the Board may impose a
996 penalty under this section, a respondent may present evidence of the respondent's ability
997 to pay such penalty. The Board may, in its discretion, consider such evidence in
998 determining whether such penalty is in the public interest. Such evidence may relate to
999 the extent of such person's ability to continue in business and the collectability of a
1000 penalty, taking into account any other claims of the United States or third parties upon
1001 such person's assets and the amount of such person's assets.

1002 **(e) Authority to enter order requiring accounting and disgorgement.** In any proceeding
1003 in which the Board may impose a penalty under this section, the Board may enter an order
1004 requiring accounting and disgorgement, including reasonable interest. The Board is
1005 authorized to adopt rules, regulations, and orders concerning payments to investors, rates of
1006 interest, periods of accrual, and such other matters as it deems appropriate to implement
1007 this subsection.

1008 **(f) Authority to enter order requiring payment of costs of investigation.** In any
1009 proceeding in which the Board may impose a penalty under this section, the Board may enter
1010 an order requiring payment to the Board of the reasonable costs of the Board's investigation.

1011 **(g) Cease-and-desist proceedings.**

1012 (1) Authority of Board. If the Board finds, after notice and opportunity for hearing, that any
1013 person is violating, has violated, or is about to violate any provision of this Act, or any
1014 rule or regulation promulgated by the Board thereunder, the Board may publish its
1015 findings and enter an order requiring such person, and any other person that is, was, or
1016 would be a cause of the violation, due to an act or omission the person knew or should
1017 have known would contribute to such violation, to cease and desist from committing or
1018 causing such violation and any future violation of the same provision, rule, or regulation.
1019 Such order may, in addition to requiring a person to cease and desist from committing or
1020 causing a violation, require such person to comply, or to take steps to effect compliance,
1021 with such provision, rule, or regulation, upon such terms and conditions and within such
1022 time as the Board may specify in such order. Any such order may, as the Board deems
1023 appropriate, require future compliance or steps to effect future compliance, either
1024 permanently or for such period of time as the Board may specify, with such provision,
1025 rule, or regulation with respect to any security, any issuer, or any other person.

1026 (2) Hearing. The notice instituting proceedings pursuant to paragraph (1) shall fix a hearing
1027 date not earlier than 30 days nor later than 60 days after service of the notice unless an
1028 earlier or a later date is set by the Board with the consent of any respondent so served.

1029 (3) Temporary order.

1030 (A) In general. Whenever the Board determines that the alleged violation or threatened
1031 violation specified in the notice instituting proceedings pursuant to paragraph (1), or
1032 the continuation thereof, is likely to result in significant dissipation or conversion of
1033 assets, significant harm to investors, or substantial harm to the public interest,
1034 including, but not limited to, losses to the Securities Investor Protection Corporation,
1035 prior to the completion of the proceedings, the Board may enter a temporary order
1036 requiring the respondent to cease and desist from the violation or threatened
1037 violation and to take such action to prevent the violation or threatened violation and
1038 to prevent dissipation or conversion of assets, significant harm to investors, or

1039 substantial harm to the public interest as the Board deems appropriate pending
1040 completion of such proceedings. Such an order shall be entered only after notice and
1041 opportunity for a hearing, unless the Board, notwithstanding section *80b-11 (c) of*
1042 *this title*, determines that notice and hearing prior to entry would be impracticable
1043 or contrary to the public interest. A temporary order shall become effective upon
1044 service upon the respondent and, unless set aside, limited, or suspended by the Board
1045 or a court of competent jurisdiction, shall remain effective and enforceable pending
1046 the completion of the proceedings.

1047 (B) Applicability. This paragraph shall apply only to a respondent that acts, or, at the
1048 time of the alleged misconduct acted, as a broker, dealer, personal financial advisor,
1049 investment company, municipal securities dealer, government securities broker,
1050 government securities dealer, or transfer agent, or is, or was at the time of the
1051 alleged misconduct, an associated person of, or a person seeking to become associated
1052 with, any of the foregoing.

1053 (4) Review of temporary orders.

1054 (A) Board review. At any time after the respondent has been served with a temporary
1055 cease-and-desist order pursuant to paragraph (3), the respondent may apply to the
1056 Board to have the order set aside, limited, or suspended. If the respondent has been
1057 served with a temporary cease-and-desist order entered without a prior Board
1058 hearing, the respondent may, within 10 days after the date on which the order was
1059 served, request a hearing on such application and the Board shall hold a hearing and
1060 render a decision on such application at the earliest possible time.

1061 (B) Judicial review. Within—

1062 i. 10 days after the date the respondent was served with a temporary cease-
1063 and-desist order entered with a prior Board hearing, or

1064 ii. 10 days after the Board renders a decision on an application and hearing
1065 under subparagraph (A), with respect to any temporary cease-and-desist
1066 order entered without a prior Board hearing,

1067 the respondent may apply to the United States district court for the district in which
1068 the respondent resides or has its principal place of business, or for the District of

1069 Columbia, for an order setting aside, limiting, or suspending the effectiveness or
1070 enforcement of the order, and the court shall have jurisdiction to enter such an order.
1071 A respondent served with a temporary cease-and-desist order entered without a prior
1072 Board hearing may not apply to the court except after hearing and decision by the
1073 Board on the respondent's application under subparagraph (A) of this paragraph.

1074 (C) No automatic stay of temporary order. The commencement of proceedings under
1075 subparagraph (B) of this paragraph shall not, unless specifically ordered by the court,
1076 operate as a stay of the Board's order.

1077 (D) Exclusive review. Section 80b-13 of this Act shall not apply to a temporary order
1078 entered pursuant to this section.

1079 (5) Authority to enter order requiring accounting and disgorgement. In any cease-and-desist
1080 proceeding under paragraph (1), the Board may enter an order requiring accounting and
1081 disgorgement, including reasonable interest. The Board is authorized to adopt rules,
1082 regulations, and orders concerning payments to consumers, rates of interest, periods of
1083 accrual, and such other matters as it deems appropriate to implement this subsection.

1084 **Section 701. State Regulation of Personal Financial Advisors.**

1085 **(a) Jurisdiction of State Regulators.** Nothing in this Act shall affect the jurisdiction of the
1086 securities commissioner (or any agency or officer performing like functions) of any State over
1087 any person insofar as it does not expressly conflict with Sections 701(c) and (d) of this Act.

1088 **(b) No Preemption of State Law.** The rights and remedies provided by this Act shall be in
1089 addition to any and all other rights and remedies that may exist at law or in equity; but no
1090 person permitted to maintain a suit for damages under the provisions of this title shall
1091 recover, through satisfaction of judgment in one or more actions, a total amount in excess of
1092 his actual damages on account of the act complained of. Except as otherwise specifically
1093 provided in this title, nothing in this title shall affect the jurisdiction of the securities
1094 commission (or any agency or officer performing like functions) of any State over any person
1095 insofar as it does not expressly conflict with 701(c) and (d) of this Act.

1096 **(c) Dual compliance purpose.** No State may enforce any law or regulation that would require
1097 a personal financial advisor to maintain any books or records in addition to those required

1098 under the laws of the State in which it maintains its principal place of business, if the
1099 personal financial advisor –

1100 (1) is registered or licensed as such in the State in which it maintains its principal place
1101 of business; and

1102 (2) is in compliance with the applicable books and records requirements of the State in
1103 which it maintains its principal place of business.

1104 (d) **National de minimis standard.** No law of any State or political subdivision thereof
1105 requiring the registration, licensing, or qualification as a personal financial advisor shall
1106 require a personal financial advisor to register with the securities commissioner of the State
1107 (or any agency or officer performing like functions) or to comply with such law (other than
1108 any provision thereof prohibiting fraudulent conduct) if the personal financial advisor -

1109 (1) does not have a place of business located within the State; and

1110 (2) during the preceding 12-month period, has had fewer than 6 clients who are
1111 residents of that State.

1112 **Section 801. Severability.** If any provision of this Act or the application of such provision to any
1113 person or circumstances shall be held invalid, the remainder of the subchapter and the application of
1114 such provision to persons or circumstances other than those as to which it is held invalid shall not be
1115 affected thereby.

1116 **Section 901. Effective Date.** This Act shall become effective on _____, 2009.

1117 Notwithstanding the foregoing, the Board shall not require the registration of personal financial
1118 advisors pursuant to the provisions of this Act prior to July 1, 2012, and the Board may adopt rules
1119 and regulations making registration required at such later date or dates, either in stages by
1120 geographic area of the personal financial advisor's office or through other criteria as the Board may
1121 require, in order to promote regulatory efficiency. Also notwithstanding the foregoing, the Board
1122 may adopt rules and regulations as to the commencement date of compliance by personal financial
1123 advisors with other provisions of this Act and the rules and regulations promulgated thereunder.