

117TH CONGRESS  
1ST SESSION

# S. 3102

To amend the Securities Exchange Act of 1934 to preserve commission-free trading and investor freedom for the people of the United States by prohibiting the Securities and Exchange Commission from banning payment for order flow, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

OCTOBER 28, 2021

Mr. TOOMEY introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

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## A BILL

To amend the Securities Exchange Act of 1934 to preserve commission-free trading and investor freedom for the people of the United States by prohibiting the Securities and Exchange Commission from banning payment for order flow, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Investor Freedom Act  
5 of 2021”.

1 **SEC. 2. SAFE HARBOR FOR PAYMENT FOR ORDER FLOW.**

2 Section 28 of the Securities Exchange Act of 1934  
3 (15 U.S.C. 78bb) is amended by adding at the end the  
4 following:

5 “(g) PAYMENT FOR ORDER FLOW.—

6 “(1) DEFINITION.—In this subsection, the term  
7 ‘payment for order flow’ has the meaning given the  
8 term in section 240.10b–10(d) of title 17, Code of  
9 Federal Regulations, as in effect on the date of en-  
10 actment of this subsection.

11 “(2) APPLICABILITY.—

12 “(A) IN GENERAL.—No broker or dealer,  
13 or any person associated with a broker or deal-  
14 er, using the mails, or any means or instrumen-  
15 tality of interstate commerce, shall be deemed  
16 to have acted unlawfully or to have breached a  
17 duty under State or Federal law solely by rea-  
18 son of having received payment for order flow.

19 “(B) RESTRICTION.—Neither the Commis-  
20 sion nor any national securities exchange or  
21 registered securities association may promul-  
22 gate any rule or regulation that prohibits, lim-  
23 its, or directs the receipt or use of payment for  
24 order flow by—

25 “(i) a broker or dealer; or

1                   “(ii) any person associated with a  
2                   broker or dealer.

3                   “(C) RULE OF CONSTRUCTION.—Nothing  
4                   in this subsection may be construed to impair  
5                   or limit the power of the Commission, any na-  
6                   tional securities exchange, or any registered se-  
7                   curities association with respect to any other  
8                   duties applicable to the execution of a cus-  
9                   tomer’s order by a broker or dealer.”.

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