UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

In re:	)	
YOUTOO TECHNOLOGIES, LLC,	)	
	)	**Case No. 17-14849-JDL**
	)	**Chapter 7**
Debtor(s)	)	
	)	

YOUTOO TECHNOLOGIES, LLC'S RESPONSE AND OBJECTION TO TWITTER, INC'S MOTION TO LIFT THE AUTOMATIC STAY

Youtoo Technologies, LLC ("Youtoo") hereby responds and objects to the Motion of Twitter, Inc. ("Twitter") to lift the automatic stay (Doc. 21). The automatic stay ***does*** apply to the *inter partes* review proceedings ("IPR Proceedings") of the Patent and Trial Appeal Board ("PTAB") of the United States Patent and Trademark Office ("USPTO"). The IPR proceedings are not an exercise of the PTAB's regulatory or police power, do not primarily serve a public interest, and are not an exception under 11 U.S.C § 362(b)(4). More importantly, lifting the stay upon the IPR Proceedings would defeat the purposes of bankruptcy by damaging the assets and any potential recovery by the creditors. A motion by the U.S. Bankruptcy Trustee for the acceptance of an 11 U.S.C. § 363 sale will be before this Court very soon. This sale offers the best chance to give value to the assets and payments to creditors. Lifting the stay on the IPR Proceedings would place Youtoo in a position where it is unable to defend the value of its assets and would likely destroy the sale. Granting Twitter's Motion would only serve to benefit Twitter at the creditors' expense. The Motion should be denied.

INTRODUCTION

Youtoo's assets are six or more interactive television and gaming patents. Three patents are the subject of patent infringement litigation in the Northern District of Texas, which Youtoo filed against Twitter in order to protect the value of the patents and prevent misuse of their content. Twitter then filed petitions with PTAB for *inter partes* reviews, which were granted. Without the stay, Youtoo will face immediate deadlines to file responses in the IPR Proceedings, complete with expert testimony and evidence. Youtoo is unable to pay for the services needed to prepare such response and faces the untenable position of being powerless to defend the value of its assets should this Court grant Twitter's Motion. Twitter has no pecuniary interest in Youtoo or the patents. It's relationship to this bankruptcy is solely through its involvement in the patent litigation.

There are several creditors who do have significant pecuniary interest in Youtoo and the patents, including the two investment funds Covenant Global Alpha Fund, L.P., a creditor, and Covenant Global Alpha Fund, Ltd. (collectively, the "Funds"), and other entities owned by these Funds that are creditors. Youtoo is an asset of the Funds, and a majority of investors are local Oklahoma residents. These Funds acquired ownership of Youtoo and its patents while the Funds were under the management of CFS, LLC and its sole owner Steve Shafer (collectively, "CFS"). Many investors are depending on their investments for retirement, daily living expenses, and medicine, but they have been unable to make any redemptions for more than two years and have suffered significant loss. On April 28, 2017, the Oklahoma County District Court granted the motion of the Funds' investors for a receiver, and shortly thereafter, CFS resigned. Left with little

choice in light of the overwhelming amount of payables dating back to 2013, the new manager of Youtoo filed for bankruptcy in order to protect the remaining value of the assets both for the investors and creditors.

A motion by U.S. Bankruptcy Trustee's to accept an 11 U.S.C. § 363 sale will be filed soon. This sale is dependent on the temporary stay of the IPR proceedings in order to protect the value of the patents during the pendency of the sale. Granting Twitter's motion and lifting the stay when Youtoo is unable to defend the patents in the IPR Proceedings would destroy the sale.

ARGUMENTS AND AUTHORITIES

I. PURSUANT TO 11 U.S.C. § 362(a)(1), THE AUTOMATIC STAY APPLIES TO THE IPR PROCEEDING

Youtoo filed a voluntary Chapter 7 bankruptcy under 11 U.S.C. § 301. Pursuant to 11 U.S.C. § 362(a)(1), that petition operates as an automatic stay—applicable to all entities including ***governmental units*** (*ie.* United States' agencies)—on:

> the commencement or continuation, ***including the issuance or employment of process, of a judicial, administrative, or other action or proceedings against the debtor***, that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title;

11 U.S.C. § 362(a)(1) (emphasis added); 11 U.S.C. § 101(15) & (27). "The sweep of the automatic stay is broad and 'serves as one of the most important protections in bankruptcy law.'" *Porter v. Nabors Drilling USA, L.P.*, 854 F.3d 1057, 1061 (9th Cir. 2017) (citing *Eskanos & Adler, P.C. v. Leetien*, 309 F.3d 1210, 1214 (9th Cir. 2002)). The PTAB is a part of the Patent and Trademark Office, which is an administrative

agency that oversees administrative proceedings, including i*nter partes* reviews. *See* 35 U.S.C. §§ 1, 6. "Inter partes review is a ***trial proceeding*** conducted at the Board to review the patentability of one or more claims in a patent only on a ground that could be raised under [35 U.S.C.] §§ 102 or 103, and only on the basis of prior art consisting of patents or printed publications." USPTO, *Inter Partes Review*, https://www.uspto.gov/patents-application-process/appealing-patent-decisions/trials/inter-partes-review (last visited Feb. 13, 2018) (emphasis added) (attached as **Ex. 1**); 35 U.S.C. § 311. It is an administrative process, and its purpose is to resolve patents more quickly and cheaply outside of court and to give courts the benefit of the USPTO's expertise. *See* 157 Cong. Rec. S1053 (Mar. 1, 2011) (attached as **Ex. 2**) (stating "the entire purpose of the transitional program at the PTO is to reduce the burden of litigation" and would "improve administrative processes so that disputes over patents can be resolved quickly and cheaply without patents being tied up for years in expensive litigation"); *NFC Tech. LLC v. HTC Am., Inc.*, Case No. 2:13-CV-1058-WCB, 2015 U.S. Dist. LEXIS 29573, at *12 (E.D. Tex. Mar. 11, 2015) ("Giving the agency the authority to consider the validity of patents in the inter partes review process was designed in large measure to simplify proceedings before the courts and to give the courts the benefit of the expert agency's full and focused consideration of the effect of prior art on patents being asserted in litigation."). The *inter partes* reviews of Youtoo's patents are adversarial proceedings initiated by Twitter against the Youtoo. They clearly fall under 11 U.S.C. § 362(a)(1), and thus, their continuation is automatically stayed.

II. THE IPR PROCEEDING IS NOT EXCEPTED FROM THE AUTOMATIC STAY UNDER 11 U.S.C. § 362(b)(4).

Unlike the broad language in 11 U.S.C. § 362(a), the language in subsection (b) governing exceptions to the automatic stay is more specific and limited. Subsection (b)(4) only excepts from the automatic stay "the commencement or continuation of an action or proceeding ***by a governmental unit*** . . . ***to enforce such governmental unit's or organization's police and regulatory power*** . . . ." 11 U.S.C. § 362(b)(4) (emphasis added). This exception was enacted to protect public health and safety and includes actions where the government is suing the debtor to stop violations of fraud, environmental protection, and consumer protection—proceedings that bear no similarity to *inter partes* reviews described above. *In re Edison Mission Energy*, 502 B.R. 830, 835 (Bankr. N.D. Ill. 2013); 11 U.S.C. § 362 House Judiciary Report cmt. to subsection b(4). "This exception requires both that: 1) the proceeding be brought by a governmental unit and (2) the proceeding be brought to enforce . . . police or regulatory power of the governmental unit." *In re Edison Mission Energy*, 502 B.R. at 835. In this case, neither element is satisfied.

A. THE IPR WAS NOT BROUGHT BY A GOVERNMENTAL UNIT.

IPR Proceedings can only be initiated by a third party. 35 U.S.C. § 311. In this case, Twitter brought the proceedings, and Twitter is not a governmental unit. *See* 11 U.S.C. § 101(27). Neither the USPTO nor the PTAB can bring the proceeding or even join in or commence their own proceeding. Despite Twitter's assertions to the contrary, the PTAB does not have autonomy over the proceedings. Although the PTAB is able to

choose to produce a final written decision after a petitioner withdraws from the proceeding it can only do so after an IPR Proceeding has been instituted, and it is still ***required*** to terminate the proceeding "upon the join request of the petitioner and patent owner." 35 U.S.C. § 317(a).

The cases Twitter relies on are distinguishable and do not support its arguments. Unlike the case at hand, they involve instances where the proceedings instituted by private parties were allowed to proceed under the "police power exception" and the governmental unit joined in or commenced its own proceeding. *See In Re Halo Wireless Inc.*, 684 F.3d 581 (5th Cir. 2012) (involving Public Utility Commission actions against telephone companies and finding 11 U.S.C. § 362(b)(4) applied only because the proceedings were being continued by governmental units to enforce state laws and regulations); *see also United States ITC v. Jaffe*, 433 B.R. 538 (E.D. Va. 2010) (finding the International Trade Commission investigation fits within the § 362(b)(4) exception because the ITC independently chose to commence and investigation and controlled the investigation). In the instance case, PTAB is not a party to the *inter partes* review, did not initiate the proceeding, is not continuing the proceeding independently or as party, and does not control the proceeding. Thus, the Court should find that § 362(b)(4) does not apply. *See In re Edison Mission Energy,* 502 B.R. at 837 (finding § 362(b)(4) did not apply because the movant had independently initiated the proceeding before the Illinois Pollution Control Board and no governmental unit had or was going to intervene); *see also Porter*, 854 F.3d at 1062 (finding that private action under the California Labor Code Private Attorneys General Act did not fall within the governmental unit exception

because the proceeding remained within the control of the private citizen and the government "did not request, direct, or join in the filing); *In re Taylor*, Case No. 15-02730-5-SWH, 2017 Bankr. LEXIS 2392, at *4-7 (Bankr. E.D. N.C. Aug. 24, 2017) (rejecting movant's police powers argument and finding § 362(b)(4) did not apply to private entity).

B. IPR PROCEEDINGS ARE NOT BROUGHT TO ENFORCE THE USPTO'S POLICE OR REGULATORY POWER AND ARE PRIMARILY A DISPUTE BETWEEN PRIVATE PARTIES.

Even in cases where IPR Proceedings are brought by a governmental unit, the bankruptcy court must determine whether the proceeding is "brought to enforce … police or regulatory power of the governmental unit." *In re Edison Mission Energy,* 502 B.R. at 836. Although proceedings that are authorized by Congress "necessarily effectuate the public policy of the United States," the court must determine whether on balance, the proceeding is in furtherance of public policies or private interests. *Chao v. Hospital Staffing Servs., Inc.*, 270 F.3d 374, 389 (6th Cir. 2001).

> These inquiries contemplate that the bankruptcy court, after assessing the totality of the circumstances, will determine whether the particular regulatory proceeding at issue is designed primarily to protect the public safety and welfare or represents a governmental attempt to recover from property of the debtor estate, whether on its own claim, or on the nongovernmental debts of private parties.

In re McMullen, 386 F.3d 320, 325 (1st Cir. 2004); *see also In Re Halo Wireless Inc.*, 684 F.3d at 588. The IPR Proceedings are an adjudication of private rights. The very name of reveals that the proceedings are *inter partes*, or "between the parties." The primary purpose of IPR Proceedings is not to enforce any police or regulatory power or

serve the public interest. Rather IPR Proceedings serve as an alternate forum for patent disputes and are a mechanism by which the USPTO provides expertise to, and relieves the burden on, district courts in patent litigation. *See* 157 Cong. Rec. S1053 (Mar. 1, 2011); *NFC Tech. LLC*, 2015 U.S. Dist. LEXIS 29573, at *12. The statutory law governing IPR Proceedings specifically contemplates that the proceedings are frequently related to, and intertwined with, ongoing litigation between the parties. 35 U.S.C. § 315. For example, an *inter partes* review is completed barred if the petitioner, a private actor, has already filed a civil action challenging the validity of the patent. *Id.* This contradicts any notion that the purpose of IRP Proceedings are for the USPTO to re-examine its own actions or regulate patent monopolies. *Id.*

Furthermore, any potential public interest is significantly outweighed by the pecuniary benefit to Twitter and the potential damage to Youtoo's creditors. As the defendant in the patent infringement litigation in the Northern District of Texas, Twitter faces potential liability for significant damages. Twitter filed the *inter partes* review in hopes that the PTAB would find the patents invalid and give Twitter ammunition to defeat Youtoo's claim. To lift the stay on those proceedings now when Youtoo is unable to pay for the services necessary to defend the value of the patents, which are significant assets of the bankruptcy estate, would only benefit Twitter. "[W]hen the action incidentally serves public interests but more substantially adjudicates private rights, courts should regard the suit as outside the police power exception, particularly when a successful suit would result in a pecuniary advantage." *Chao*, 270 F.3d at 390 (finding that suit by Secretary of Labor under the FLSA for same wages and damages primarily

benefitted the private rights of the employee and was not excepted from the automatic stay under § 362(b)(4) despite the public interest in enforcing wage laws); *see also Missouri v. U.S. Bankruptcy Court for E.D.*, 647 F.2d 768, 776 (finding State's attempt to enforce grain laws related to pecuniary interests in the debtor's property and was therefore outside the police power exception of § 362(b)(4)). An assessment of all the circumstances, the nature of the *inter partes* review, and the applicable law establishes that the IPR Proceedings are not excepted from the automatic stay under 11 U.S.C. § 362(b)(4).

III. LIFTING THE STAY WOULD PREJUDICE THE ASSETS AND THE CREDITORS AND TWITTER HAS NOT SHOWN SUFFICIENT CAUSE UNDER 11 U.S.C. § 362(d)(1).

Twitter asks this Court to lift the stay under 11 U.S.C. § 362(d)(1), which allows a stay to be terminated only "for cause, including the lack of adequate protection of an interest in property of such party in interest." 11 U.S.C. § 362(d)(1). This provision contemplates that there are circumstances in which a creditor may not be sufficiently protected by bankruptcy or in which an outside proceeding bears no relation to the bankruptcy or the purpose of the stay, such as a child custody proceeding. *See* 11 U.S.C. § 362 House Judiciary Report cmt. to Subsection d. A decision under this statute lies within the Court's discretion. *In re Towner Petroleum Co.*, 48 B.R. 182, 186 (Bankr. W.D. Okla. 1985). "The power to modify or vacate the stay is exercised by the bankruptcy court 'according to the particular circumstances of the case and is to be guided by considerations that under the law make for the ascertainment of what is just to the claimants, the debtor and the estate." *Id.* (citing *Foust v. Munson Steamship Lines*,

299 U.S. 77, 83 (1936)). The most important factor is the effect of the outside litigation on the administration of the estate. *Id.* at 190. Another part of that consideration is the purpose of the automatic stay, which is to give the debtor "a breathing spell" from creditors and to protect the creditors by preventing the diminution or dissipation of the estate's assets. 11 U.S.C. § 362 House Judiciary Report cmt.; *In re Towner Petroleum Co.*, 48 B.R. at 185.

Lifting the stay could significantly damage Youtoo's assets and destroy the 11 U.S.C. § 363 sale that represents the best opportunity to bring value to the estate and payment to the creditors. It would not be just to Youtoo or its creditors, would not benefit the administration of the estate, and would defy the very purpose of the automatic stay. The harm posed to estate and creditors far outweighs any potential harm caused by preserving the status quo. Importantly, Twitter itself admits the *inter partes* review will eventually be completed and does not assert that it will suffer any harm from the delay. Twitter's has failed to establish cause, and its motion should be denied.

IV. WAIVING THE 14-DAY STAY UNDER FEDERAL RULE OF BANKRUPTCY PROCEDURE 4001(A)(3) WOULD PREJUDICE THE ASSETS AND CREDITORS.

Rule 4001(a)(3) provides that the effect of an order granting relief from an automatic stay is stayed for 14 days after entry of the order. Twitter's only argument in support of its request that the Court waive this stay is its false assertion that the continuing IPR Proceedings will not prejudice the estate. As set forth above, the continuation of that proceeding would harm the estates' assets and creditors, and Twitter's request should be denied.

CONCLUSION

WHEREFORE, Youtoo Technologies, LLC requests that the Court deny Twitter, Inc.'s Motion (Doc. 21) in its entirety and award such further and equitable relief as the Court deems proper.

YOUTOO TECHNOLOGIES, LLC

By: */s/ O. Clifton Gooding*
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NOTICE OF HEARING

You are hereby notified that a hearing on Twitter, Inc.'s Motion for Order Holding Automatic Stay does not Apply and for Relief from the Automatic Stay is set for preliminary hearing on Thursday February 22, 2018 at 9:30 a.m., with a Final Hearing to be held on Wednesday March 21, 2018 at 1:30 p.m., all before the Honorable Janice D. Loyd, 2nd Floor Courtroom, US Bankruptcy Court, 215 Dean A. McGee, Oklahoma City, Oklahoma.

CERTIFICATE OF SERVICE

I hereby certify that on the 16th day of February, 2018 copies of the above referenced document were forwarded via the Court's Electronic Filings System to the following, and all parties receiving notice thereon:

Douglas N. Gould, Esq.
Tami J. Hines, Esq.
Steven W. Soule, Esq.
Office of the UST

/s/ O. Clifton Gooding
O. Clifton Gooding

UNITED STATES PATENT AND TRADEMARK OFFICE

Inter Partes Review

Inter partes review is a trial proceeding conducted at the Board to review the patentability of one or more claims in a patent only on a ground that could be raised under §§ 102 or 103, and only on the basis of prior art consisting of patents or printed publications. For first-inventor-to-file patents, inter partes review process begins with a third party (a person who is not the owner of the patent) filing a petition after the later of either: (1) 9 months after the grant of the patent or issuance of a reissue patent; or (2) if a post grant review is instituted, the termination of the post grant review. These deadlines do not apply to first-to-invent patents. The patent owner may file a preliminary response to the petition. An inter partes review may be instituted upon a showing that there is a reasonable likelihood that the petitioner would prevail with respect to at least one claim challenged. If the proceeding is instituted and not dismissed, a final determination by the Board will be issued within 1 year (extendable for good cause by 6 months). The procedure for conducting inter partes review took effect on September 16, 2012, and applies to any patent issued before, on, or after September 16, 2012.

- 35 USC Ch. 31 §311 - §319
- Inter Partes Review Rules (37 CFR Ch. 42, Subpart B)
- Inter Partes Review FAQs
- To search for an IPR, click on the system link for PTAB E2E. Additional information is located on the PTAB E2E information page.

beyond the jurisdiction of the Judiciary Committee and as a result was not considered previously, but I trust it will win the support of our colleagues on the floor. I am glad that this provision has been included in the managers' amendment, of which I am a cosponsor.

My conversations with Rhode Island inventors also made clear that the fear of protracted litigation also dampens innovation. Unfortunately, numerous poor-quality patents have issued in recent years, resulting in seemingly endless litigation that casts a cloud over patent ownership. Administrative processes that should serve as an alternative to litigation also have broken down, resulting in further delay, cost, and confusion.

The America Invents Act will take on these problems by ensuring that higher quality patents issue in the future. This will produce less litigation and create greater incentives for innovators to commit the effort and resources to create the next big idea. Similarly, the bill will improve administrative processes so that disputes over patents can be resolved quickly and cheaply without patents being tied up for years in expensive litigation.

This body must not pass up this chance to enhance innovation and energize our economy. We must see this bill through the Senate, and we must work with the House to see it passed promptly into law. It is true that the bill is a compromise and may not reflect all of everyone's priorities. Improvements to the bill may still be possible. To that end, I expect a productive debate on the floor and a constructive dialog with the House. I look forward to continuing to work with the chairman, my colleagues, and all interested parties to craft a bill that generates the broadest consensus possible.

But we must not lose sight of the need for action. Our patent system has gone 60 years without improvements. It needs repair. Now is the time to energize our innovation economy, to create jobs, and to secure continuing American leadership in the fields of medicine, science, and technology. Hard work and ingenuity long have been the backbone of this country. Let's not get in their way.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. MENENDEZ. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. BENNET). Without objection, it is so ordered.

MORNING BUSINESS

Mr. MENENDEZ. Mr. President, I ask unanimous consent that the Senate proceed to a period for the transaction of morning business, with Senators permitted to speak therein for up to 10 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MENENDEZ. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. SCHUMER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMERICA INVENTS ACT

Mr. SCHUMER. Mr. President, I rise to speak in support of the America Invents Act generally and about the managers' amendment specifically. The America Invents Act, also known as the patent reform bill, has been pending for many years and has been the subject of extensive debate, negotiation, and revisions. In its current draft, it does much needed good to help protect the American innovation economy by updating and modernizing our patent system.

The patent system in the United States is designed to protect innovation and inventions and investment. But over the last several decades, the Patent and Trademark Office has become bogged down and overburdened by inefficient process and outdated law. The result is a heavy burden on the innovative work that is the engine of our economy.

I wish to commend Senator LEAHY. He has gone the extra mile for this bill for many years. I am proud and glad he is seeing his work come to fruition as we finally debate the bill on the floor. Passage of the bill is in sight. I also wish to commend the ranking member of the Judiciary Committee, Senator GRASSLEY, who worked with him, as well as Senator KYL, who has taken a leading role on the Republican side, for their hard work in crafting a bill that effectively modernizes the patent system, while paying attention to the many and varied demands different sectors of the economy exert upon it.

I am particularly pleased the chairman has decided to adopt the Schumer-Kyl amendment on business method patents into the managers' amendment. It is a critical change that this bill finally begins to address the scourge of business method patents currently plaguing the financial sector. Business method patents are anathema to the protection the patent system provides because they apply not to novel products or services but to abstract and common concepts of how to do business.

Often, business method patents are issued for practices that have been in widespread use in the financial industry for years, such as check imaging or one-click checkout. Because of the nature of the financial services industry, those practices aren't identifiable by the PTO as prior art and bad patents are issued. The holders of business method patents then attempt to extract settlements from the banks by suing them in plaintiff-friendly courts and tying them up in years of extremely costly litigation.

This is not a small problem. Around 11,000 new applications for patents on business methods are filed every year, and financial patents are being litigated almost 30 times more than patents as a whole. This is not right, it is not fair, and it is taking desperately needed money and energy out of the economy and putting it into the hands of a few litigants. So I am very pleased Congress is going to fight it.

The Schumer-Kyl amendment, which was included in the managers' package we just adopted, will allow companies that are the target of one of these frivolous business method patent lawsuits to go back to the PTO and demonstrate, with the appropriate prior art, that the patent shouldn't have been issued in the first place. That way bad patents can be knocked out in an efficient administrative proceeding, avoiding costly litigation.

One of the most critical elements of this amendment has to do with the stay of litigation while review of the patent is pending at the PTO. The amendment includes a four-factor test for the granting of a stay that places a very heavy thumb on the scale in favor of the stay. Indeed, the test requires the court to ask whether a stay would reduce the burden of the litigation on the parties and the court. Since the entire purpose of the transitional program at the PTO is to reduce the burden of litigation, it is nearly impossible to imagine a scenario in which a district court would not issue a stay.

In response to concerns that earlier versions of the amendment were too broad, we have modified it so it is narrowly targeted. We want to make sure to capture the business method patents which are at the heart of the problem and avoid any collateral circumstances.

In conclusion, I believe the amendment takes an important step in the direction of eliminating the kinds of frivolous lawsuits the jurisprudence on business method patents have allowed. I am very grateful to the chairman and the ranking member, Senator KYL, and I support the managers' amendment and the America Invents Act as a whole.

Finally, I would like to say a few words about Senator COBURN's proposal on fee diversion. I think his idea, which is incorporated in the managers' amendment, makes a lot of sense; that is, to let the PTO keep the fees they charge so they are self-funded and we don't have to spend taxpayer money to fund them every year.

Last year, when we were debating the Wall Street reform bill, Senator JACK REED and I made a similar proposal for the SEC, which ultimately didn't make it into the final bill. I just wanted to

take this time to make a few points about this commonsense proposal.

First, for the last 15 years, the SEC hasn't spent a dime of taxpayer money. For 15 years, the SEC has had no impact on the deficit. This is because Congress, in 1996, amended the securities laws to provide that 100 percent of the SEC's funding comes from registration and filing fees charged by the Commission.

Second, even though the SEC collects more in fees every year than it spends, the amount of the SEC's annual budget is determined by Congress, which has continually shortchanged the SEC. The SEC's budget has been in the crosshairs for years, and their funding has been so inadequate that they have been compromised in their ability to pursue their core mission.

Third, the budget proposal in the House would continue the shortchanging of the SEC, cutting $40 million from its existing budget at a time when it needs resources more than ever.

Finally, a word about the current demands on the SEC. We gave that agency significant new responsibilities under the Dodd-Frank Act, in particular to oversee the previously unregulated derivative markets. That is an enormous undertaking that everybody agrees is necessary after seeing the role that unregulated derivatives played in the financial crisis.

In closing, I would strongly suggest to my colleagues that if self-funding makes sense for the PTO, it makes sense for the SEC. I am not going to call up my amendment now or my bill now, but I urge my colleagues to support this commonsense proposal Senator REED and I are pushing and ensure it gets a full hearing in the Senate.

I thank the Chair for his time and attention.

COMMITTEE ON APPROPRIATIONS RULES OF PROCEDURE

Mr. INOUYE. Mr. President, the Senate Appropriations Committee has adopted rules governing its procedures for the 112th Congress. Pursuant to rule XXVI, paragraph 2, of the Standing Rules of the Senate, on behalf of myself and Senator COCHRAN, I ask unanimous consent that a copy of the committee rules be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

SENATE APPROPRIATIONS COMMITTEE RULES—112TH CONGRESS

I. MEETINGS

The Committee will meet at the call of the Chairman.

II. QUORUMS

1. Reporting a bill. A majority of the members must be present for the reporting of a bill.

2. Other business. For the purpose of transacting business other than reporting a bill or taking testimony, one-third of the members of the Committee shall constitute a quorum.

3. Taking testimony. For the purpose of taking testimony, other than sworn testimony, by the Committee or any subcommittee, one member of the Committee or subcommittee shall constitute a quorum. For the purpose of taking sworn testimony by the Committee, three members shall constitute a quorum, and for the taking of sworn testimony by any subcommittee, one member shall constitute a quorum.

III. PROXIES

Except for the reporting of a bill, votes may be cast by proxy when any member so requests.

IV. ATTENDANCE OF STAFF MEMBERS AT CLOSED SESSIONS

Attendance of staff members at closed sessions of the Committee shall be limited to those members of the Committee staff who have a responsibility associated with the matter being considered at such meeting. This rule may be waived by unanimous consent.

V. BROADCASTING AND PHOTOGRAPHING OF COMMITTEE HEARINGS

The Committee or any of its subcommittees may permit the photographing and broadcast of open hearings by television and/or radio. However, if any member of a subcommittee objects to the photographing or broadcasting of an open hearing, the question shall be referred to the full Committee for its decision.

VI. AVAILABILITY OF SUBCOMMITTEE REPORTS

To the extent possible, when the bill and report of any subcommittee are available, they shall be furnished to each member of the Committee thirty-six hours prior to the Committee's consideration of said bill and report.

VII. AMENDMENTS AND REPORT LANGUAGE

To the extent possible, amendments and report language intended to be proposed by Senators at full Committee markups shall be provided in writing to the Chairman and Ranking Minority Member and the appropriate Subcommittee Chairman and Ranking Minority Member twenty-four hours prior to such markups.

VIII. POINTS OF ORDER

Any member of the Committee who is floor manager of an appropriations bill, is hereby authorized to make points of order against any amendment offered in violation of the Senate Rules on the floor of the Senate to such appropriations bill.

IX. EX OFFICIO MEMBERSHIP

The Chairman and Ranking Minority Member of the full Committee are ex officio members of all subcommittees of which they are not regular members but shall have no vote in the subcommittee and shall not be counted for purposes of determining a quorum.

COMMITTEE ON ARMED SERVICES RULES OF PROCEDURE

Mr. LEVIN. Mr. President, I ask unanimous consent that the rules of procedure of the Committee on Armed Services be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

RULES OF PROCEDURE OF THE COMMITTEE ON ARMED SERVICES

1. REGULAR MEETING DAY.—The Committee shall meet at least once a month when Congress is in session. The regular meeting days of the Committee shall be Tuesday and Thursday, unless the Chairman, after consultation with the Ranking Minority Member, directs otherwise.

2. ADDITIONAL MEETINGS.—The Chairman, after consultation with the Ranking Minority Member, may call such additional meetings as he deems necessary.

3. SPECIAL MEETINGS.—Special meetings of the Committee may be called by a majority of the members of the Committee in accordance with paragraph 3 of Rule XXVI of the Standing Rules of the Senate.

4. OPEN MEETINGS.—Each meeting of the Committee, or any subcommittee thereof, including meetings to conduct hearings, shall be open to the public, except that a meeting or series of meetings by the Committee or a subcommittee thereof on the same subject for a period of no more than fourteen (14) calendar days may be closed to the public on a motion made and seconded to go into closed session to discuss only whether the matters enumerated below in clauses (a) through (f) would require the meeting to be closed, followed immediately by a record vote in open session by a majority of the members of the Committee or subcommittee when it is determined that the matters to be discussed or the testimony to be taken at such meeting or meetings—

(a) will disclose matters necessary to be kept secret in the interests of national defense or the confidential conduct of the foreign relations of the United States;

(b) will relate solely to matters of Committee staff personnel or internal staff management or procedure;

(c) will tend to charge an individual with a crime or misconduct, to disgrace or injure the professional standing of an individual, or otherwise to expose an individual to public contempt or obloquy or will represent a clearly unwarranted invasion of the privacy of an individual;

(d) will disclose the identity of any informer or law enforcement agent or will disclose any information relating to the investigation or prosecution of a criminal offense that is required to be kept secret in the interests of effective law enforcement;

(e) will disclose information relating to the trade secrets or financial or commercial information pertaining specifically to a given person if—

(1) an Act of Congress requires the information to be kept confidential by Government officers and employees; or

(2) the information has been obtained by the Government on a confidential basis, other than through an application by such person for a specific Government financial or other benefit, and is required to be kept secret in order to prevent undue injury to the competitive position of such person; or

(f) may divulge matters required to be kept confidential under other provisions of law or Government regulations.

5. PRESIDING OFFICER.—The Chairman shall preside at all meetings and hearings of the Committee except that in his absence the Ranking Majority Member present at the meeting or hearing shall preside unless by majority vote the Committee provides otherwise.

6. QUORUM.—(a) A majority of the members of the Committee are required to be actually present to report a matter or measure from the Committee. (See Standing Rules of the Senate 26.7(a)(1)).

(b) Except as provided in subsections (a) and (c), and other than for the conduct of hearings, nine members of the Committee, including one member of the minority party; or a majority of the members of the Committee, shall constitute a quorum for the transaction of such business as may be considered by the Committee.

(c) Three members of the Committee, one of whom shall be a member of the minority party, shall constitute a quorum for the purpose of taking sworn testimony, unless otherwise ordered by a majority of the full Committee.