

Summary of the Investor Protection Act of 2009

The white paper recommends that a number of steps be taken in order to bolster investor protections. These include: the creation a consumer financial protection agency; the delegation of expanded authority to the SEC in order to promote greater transparency in disclosures made to investors; harmonization of the regulations applicable to certain products, including OTC derivatives; and a number of actions intended to make financial institutions (whether broker-dealers or investment advisers) more accountable to investors.

On July 10, 2009, a draft of the Investor Protection Act of 2009 (IPA) was released.

What is the Investment Advisory Committee?

The SEC recently announced the formation of the Investment Advisory Committee that would consult with the SEC on a variety of matters. The IPA formalizes and makes permanent the Investment Advisory Committee. The Investment Advisory Committee provides non-binding recommendations regarding regulatory priorities and issues involving new products, trading strategies, fee structures and the effectiveness of disclosures.

Fiduciary duty standard imposed on broker-dealers

The IPA would amend various provisions of the securities laws to impose a fiduciary duty on broker-dealers. The IPA would harmonize the standards of conduct applicable to broker-dealers with those applicable to investment advisers. This is premised on the belief that investors do not distinguish between the recommendations of broker-dealers and investment advisers.

How would the proposed IPA affect disclosures?

The proposed IPA would also require the SEC to issue rules to facilitate the delivery of "simple and clear" disclosures regarding the investor's relationship with these investment professionals.

Would the proposed IPA affect compensation arrangements?

It would require the SEC to "examine, and where appropriate," promulgate rules prohibiting sales practices, conflicts of interest and compensation schemes for financial intermediaries, such as broker-dealers and investment advisers that the SEC "deems contrary to the public interest and the interest of investors."

Pre-dispute arbitration provisions

The proposed IPA would authorize the SEC to prohibit or restrict use of such agreements relating to disputes with broker-dealers, municipal securities dealers and investment advisers arising under the federal securities laws or SRO rules if it finds that the prohibition or limitation is "in the public interest and for the protection of investors."

Whistleblower protections

The proposed IPA would allow the SEC to compensate whistleblowers who voluntarily provide "original information" in connection with successful enforcement actions resulting in monetary sanctions exceeding \$1 million. Whistleblowers could receive up to 30% of the monetary sanctions imposed.

Aiding and abetting

The proposed IPA would extend the SEC's authority to pursue aiding and abetting claims under the Securities Act of 1933, the Advisers Act and the Investment Company Act.

Investment Advisory Committee

The proposed IPA would make permanent the SEC's recently organized Investor Advisory Committee to advise on the SEC's regulatory priorities, including issues concerning new products, trading strategies, fee structures and the effectiveness of disclosure.