

# INVESTOR PROTECTION REFORM

## (as of March 23, 2010)

The financial crisis took many investors by surprise. It became clear that investors in certain financial products, such as auction rate securities, did not understand how the secondary market for such securities functioned. Ponzi schemes were exposed at a rapid pace and clients lost faith in those with custody of their securities and/or funds. On December 30, 2009, the SEC adopted amended Rule 206(4) under the Investment Advisers Act to address certain custody issues. Congress also aims to increase investor protection as a means of bolstering investor confidence and bringing investors back to the capital markets.

	<b>The Wall Street Reform and Consumer Protection Act of 2009, passed by the House on December 2, 2009</b>	<b>Senate Discussion Draft released by Senator Dodd on November 10, 2009</b>	<b>Senate Draft Bill: Restoring American Financial Stability Act, released by Senator Dodd on March 15, 2010</b>
<b>Liability</b>	<ul style="list-style-type: none"> <li>- Broker-dealers and advisers have a fiduciary duty to retail customers</li> <li>- Prohibition or limit on use of mandatory arbitration</li> <li>- SEC will have extraterritorial jurisdiction of antifraud provisions under certain circumstances</li> <li>- Recklessness standard for proving aiding and abetting claim</li> <li>- Post-resignation actions may be brought by SEC for violations that occurred prior to resigning</li> </ul>	<ul style="list-style-type: none"> <li>- Broker-dealers and advisers have a fiduciary duty to retail customers</li> <li>- Prohibition or limit on use of mandatory arbitration</li> <li>- Recklessness standard for proving aiding and abetting claims</li> <li>- Broker-dealers and advisers must disclose certain information about products and compensation</li> </ul>	<ul style="list-style-type: none"> <li>- Study on imposing a uniform fiduciary duty on financial intermediaries who provide similar advisory services</li> <li>- Study on whether there are legal or regulatory gaps in standards in the protection of retail customers relating to the standards of care for various financial intermediaries</li> <li>- Prohibition or limit on use of mandatory arbitration</li> <li>- SEC may issue rules regarding mandatory disclosures to retain customers</li> </ul>
<b>Custody and Client Requests</b>	<ul style="list-style-type: none"> <li>- SEC authority to require exams, documents, or other information from those providing custody services</li> <li>- New custody limits of advisers imposed under 206(4) of the Advisers Act</li> <li>- More advisers subject to state registration rather than SEC registration</li> </ul>	<ul style="list-style-type: none"> <li>- SEC to review rule changes of self-regulatory organizations that affect custody of customer securities or funds</li> <li>- Advisers must use third parties for custody of certain client assets</li> <li>- Inflationary increase for definition of accredited investor</li> </ul>	<ul style="list-style-type: none"> <li>- SEC to review rule changes of self-regulatory organizations that affect custody of customer securities or funds</li> <li>- Independent verification of client assets held in custody of adviser</li> <li>- Inflationary increase for definition of accredited investor</li> </ul>
<b>Short Sales</b>	<ul style="list-style-type: none"> <li>- Section 13(f) of Exchange Act amended to provide disclosure of short sale activity on a transaction basis</li> <li>- SEC must disclose short sale activity on a monthly basis</li> <li>- Prohibition on manipulative short sales</li> <li>- Notice to customers regarding securities lending activity</li> </ul>	<ul style="list-style-type: none"> <li>- Study on short selling</li> </ul>	<ul style="list-style-type: none"> <li>- Study on short selling</li> </ul>

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<b>SEC Powers</b>	<ul style="list-style-type: none"> <li>- SEC may share information with federal, foreign and state regulators and law enforcement without waiving privilege</li> <li>- Increased SEC funding</li> <li>- SEC may engage in consumer testing</li> <li>- Oversight of municipal financial advisers</li> </ul>	<ul style="list-style-type: none"> <li>- SEC may share information with federal, foreign and state regulators and law enforcement without waiving privilege</li> <li>- SEC self-funded</li> <li>- SEC may engage in consumer testing</li> <li>- SEC subject to bi-annual GAO review</li> </ul>	<ul style="list-style-type: none"> <li>- SEC may share information with federal, foreign and state regulators and law enforcement without waiving privilege</li> <li>- SEC self-funded</li> <li>- SEC may engage in consumer testing</li> <li>- Oversight of private funds managed by investment advisers</li> </ul>
<b>Other</b>	<ul style="list-style-type: none"> <li>- Awards to whistleblowers</li> <li>- Increase SIPA assessments and increase cash advance limit to \$250,000 to be in line with FDIC insurance</li> <li>- Smaller companies exempt from certain SOX requirements</li> <li>- Creation of Consumer Financial Protection Agency</li> </ul>	<ul style="list-style-type: none"> <li>- Awards to whistleblowers</li> <li>- Creation of SEC Investment Advisory Committee and Office of Investor Advocate</li> <li>- Study of financial literacy of mutual fund investors</li> <li>- Special protection for senior investors</li> </ul>	<ul style="list-style-type: none"> <li>- Awards to whistleblowers</li> <li>- Creation of SEC Investor Advisory Committee</li> <li>- Study on appropriate criteria for determining accredited investor status and eligibility to invest in private funds</li> <li>- Special protection for senior investors</li> <li>- Creation of Bureau of Consumer Financial Protection (“BCFP”) which will have exclusive rulemaking authority of federal consumer financial protection laws</li> <li>- Creation of Office of Financial Literacy under the BCFP</li> <li>- Creation of Bureau of Fair Lending and Equal Opportunity</li> <li>- Establishment of Consumer Financial Protection Fund and Victims Relief Fund</li> </ul>