

INVESTOR PROTECTION REFORM

as of July 2011

The financial crisis took many investors by surprise. It became clear that investors in certain financial products did not fully understand their risks. Action has now been taken in a number of areas—most importantly relating to the whistleblower rules, described below. The SEC's Dodd-Frank Act-mandated study on standards of care not surprisingly concluded that broker-dealers should be subjected to a higher standard of care; however, careful additional consideration will need to be given to the framework for such a standard.

Broker-Dealer, Investment Adviser and Market Regulation

Broker-Dealer and Investment Adviser Relationships

- Requires the SEC to undertake a study of the standard of conduct applicable to broker-dealers and investment advisers and authorizes the SEC to adopt a fiduciary duty standard for broker-dealers. The SEC's study recommends uniform protection for retail investors when receiving personalized investment advice or recommendations about securities, and that such advice be given in the investor's best interests in accordance with a uniform fiduciary duty standard.
- Prohibits or limits use of mandatory arbitration; requires disclosures to and consents from retail investors if a broker-dealer sells only proprietary products; requires disclosures regarding the terms of relationships with broker-dealers, conflicts of interest and compensation schemes for broker-dealers and investment advisers; and requires rules mandating point-of-sale disclosures for retail investors.

Investment Adviser Registration

- The SEC adopted rules to: require that advisers to hedge funds and other private funds register with the SEC; establish new exemptions from SEC registration and reporting requirements for certain advisers; and change the allocation of regulatory responsibility for investment advisers between the SEC and states.

Securities Lending and Short Sales

- Requires the SEC to adopt rules increasing the transparency of information regarding securities lending.
- Requires the SEC to adopt rules requiring disclosure of the amount of short sales by institutional investment managers and requires a study on short selling.

SEC Administrative Matters

- Changes the self-regulatory organization rule filing process and establishes that the SEC may engage in consumer testing.

Related Studies

- The SEC completed studies on improved investor access to registration information about investment advisers and broker-dealers, as well as enhanced investment adviser examinations.
- The GAO completed studies on consumer finance (concluding that additional regulation of financial planners was not necessary) and person-to-person lending.

Private Placements

- The SEC has proposed revisions to net-worth standards for accredited investors to exclude the fair market value of an individual's primary residence, net of debt secured by the residence.
- The SEC has proposed rules would disqualify certain securities offering from qualifying for the Rule 506 of Regulation D safe harbor for private placements if the offerings involve certain felons and other bad actors, similar to disqualification provisions applicable to Regulation A offerings.

SEC Enforcement

- The SEC adopted rules providing for the payment of bounties to those individuals who voluntarily provide the SEC with original information that leads to a successful enforcement action, and establishing anti-retaliation protections for whistleblowers.
- Expands aiding and abetting and control person liability, while extending the SEC's extraterritorial jurisdiction in certain antifraud actions; authorizes the SEC to impose civil monetary penalties in cease and desist proceedings and expands the scope of collateral bars for persons associated with regulated entities; and authorizes parties in proceedings instituted by the SEC to serve subpoenas nationwide.