

HOUSE OFFER
TITLE IX – INVESTOR PROTECTION

The House proposes the following amendments to the base text:

1. Strike and replace the Senate provision requiring the SEC to study the standards of care applicable to broker-dealers and investment advisers. (Senate § 913, p. 1051) Replace it with the House provision requiring the SEC to impose the fiduciary duty on broker-dealers providing investment advice to retail customers. (House § 7103, p. 1276)
2. Add the House provision requiring the SEC to study the need for enhanced examination and enforcement resources for investment advisers. (House § 7107, p. 1289)
3. Amend the Senate provision on the Investor Advocate’s compensation so that it is comparable to other senior executive positions, rather than equal to the highest rate of pay for the Senior Executive Service (Senate § 914, p. 1061)
4. Amend the Senate provisions on streamlining of SRO rule filing procedures so that the SEC has the option to *disapprove* proposed rules within the applicable deadline, not just approve the rules or institute hearings on them. (Senate § 915, p. 1070 *et seq.*)
5. Amend the Senate provision on whistleblower incentives so that –
 - a. the type of original information supporting an award must have “significantly contributed” to a successful enforcement action (Senate § 922, p. 1090) and may not be “based on” allegations in judicial proceedings or news media;
 - b. mandatory minimum awards apply only to SEC enforcement actions, not to amounts obtained in related actions brought by other enforcement agencies (Senate § 922, p. 1091);
 - c. the standard applicable to a whistleblower appeal of an award is review for gross abuse of discretion by the SEC (Senate § 922, p. 1095);
 - d. the confidentiality provision is more narrow, covering just information that could reasonably be expected to reveal the identity of the whistleblower, not *all* information provided to the SEC by the whistleblower (Senate § 922, p. 1102).
6. Amend the Senate provision on production of documents by foreign auditing firms to broaden and clarify the type of work that triggers the obligation to produce work papers, and to ensure that foreign firms appoint an agent not only for service of process, but also for SEC document requests. (Senate § 929J, p. 1135-1137)

7. Amend the Senate provisions to make clear that recklessness satisfies the intent standard for aiding and abetting liability in SEC enforcement actions under the Securities Act of 1933 and the Investment Company Act. (Senate § 929M, p. 1142).
8. Add the House provision clarifying that recklessness satisfies the intent standard for aiding and abetting liability in SEC enforcement actions under the Securities Exchange Act of 1934. (House § 7215, p. 1332)
9. Amend the Senate provisions to make clear that recklessness satisfies the intent standard for aiding and abetting liability in SEC enforcement actions seeking penalties under the Investment Advisers Act. (Senate § 929N, p. 1142)
10. Add the House provision, as drafted in the Reed amendment, authorizing the SEC to seek civil penalties in cease and desist proceedings against any person, not only registrants. (House § 7211, p. 1317; Reed § 922(b))
11. Add the House provision, as drafted in the Reed amendment, extending the SEC's enforcement jurisdiction to cover significant steps in furtherance of a violation, even if the securities transactions occur outside the U.S., and to cover foreign conduct that has a foreseeable substantial effect with the U.S. (House § 7216, p. 1332; Reed § 922(d))
12. Add the House provision, as drafted in the Reed amendment, clarifying that control person liability under the Section 20(a) of the Securities Exchange Act applies in SEC enforcement actions, not only in private actions. (House § 7220, p. 7220; Reed § 922(e))
13. Add the House provision, as drafted in the Reed amendment, expanding recordkeeping and examination requirements for custodians who hold property of clients of investment companies or investment advisers. (House § 7106, p. 1287; Reed 993(a))
14. Add the House provision, as drafted in the Reed amendment, giving the SEC authority to examine all records of investment companies. (House § 7219, p. 1338; Reed § 994(a))
15. Add the House provision, as drafted in the Reed amendment, clarifying that the SEC has authority under the Securities Exchange Act, the Investment Company Act, and the Investment Advisers Act to conduct surveillance and risk assessment of the securities markets. (House § 7218, p. 1336; Reed § 994(c))
16. Add the House provision, as drafted in the Reed amendment, giving the SEC authority to adopt rules that would require more timely reporting when a person acquires more than 5% ownership interest in an issuer. (House § 7105, p. 1285; Reed § 995(a))
17. Add the House provision, as drafted in the Reed amendment, enabling the SEC to clarify the types of relationships that compromise a person's independence for purposes of serving as a mutual fund director. (House § 7412, p. 1369; Reed § 995(c))

18. Add the House provision, as drafted in the Reed amendment, extending the fingerprinting requirement to personnel of national securities exchanges and national securities associations. (House § 7403, p. 1350; Reed 995(e))
19. Add the House provision that invalidates any contractual provision requiring persons to waive compliance with any self-regulatory organization rules. (House § 7404, p. 1351)
20. Add the House provision requiring the SEC to complete investigations and examinations within certain time frames, subject to exceptions for complex cases. (House § 7209, p. 1313)
21. Add the House provision increasing the assessments on SIPC members from \$150 annually to .02% of the member's gross revenues derived from the securities business. (House § 7501, p. 1388)
22. Add the House provision increasing penalties for fraud under SIPA from \$50,000 to \$250,000. (House § 7507, p. 1393)
23. Add the House provision establishing civil and criminal penalties against any person who misrepresents membership in SIPC or who falsely claims that an account is protected under SIPA. (House § 7508, p. 1393)
24. Add the House provision enhancing notice to missing security holders. (House § 7421, p. 1381)
25. Add the House provision requiring daily reporting on short sales, prohibiting manipulative short sales, and requiring notification to customers that they may elect not to allow their securities to be used in connection with short sales and that the broker may receive compensation if the shares are so used. (House § 7422, p. 1383)
26. Add the House provision requiring the SEC to hire a consultant to study the SEC's operations and the possible need for comprehensive reform of the agency. (House § 7304, p. 1344)
27. Add the House provision requiring GAO to study issues surrounding employees who leave the SEC and become employed in the securities industry. (House § 7414, p. 1370)
28. Strike and replace the Senate's provisions in Subtitle H establishing MSRB registration and oversight of municipal advisers. Replace them with the House provisions, which (a) establish SEC registration and oversight of municipal advisers, (b) impose a fiduciary duty on municipal advisers, and (c) establish greater independence of the MSRB. (House § 7801, § 7802, § 7803, p. 1429 *et seq.*, and § 7411, p. 1366)
29. Strike the Senate provision deferring by 180 days the effective date of the PCAOB's right to assess fees on broker-dealers, to reflect the PCAOB's calendar fiscal year. (Senate § 982, p. 1295, 1293)

30. Add a provision requiring agency heads, including the Chair of the SEC, to address deficiencies identified in any Inspector General report, or certify to both Houses of Congress that no action is necessary. (House § 3303)
31. Amend the Senate provision on material loss reports by increasing the dollar thresholds that trigger the reporting obligation. (Senate § 987, p. 1311)
32. Add the House provisions that exempt small issuers (less than \$75 million in market capitalization) from the requirements of Sarbanes-Oxley Section 404(b) (House § 7606, p. 1417), and require the following studies:
 - a. An SEC study of ways to reduce the burdens of compliance with Section 404(b) on companies with \$75 million to \$250,000 million in market capitalization (House § 7606, p. 1417);
 - b. An SEC study on the use of revenue as a test for defining smaller reporting companies (House § 7416, p. 1374); and
 - c. A GAO study on reducing the Sarbanes-Oxley compliance burdens and whether reducing those burdens would encourage listings on exchanges (House § 7415, 1372).