

Title V – Capital Markets

- The financial crisis exposed the US capital markets and its participants to the vulnerabilities of financial regulatory regime. The capital markets measures set forth in this legislation will reform and bolster the regulatory regime for the protection of investors and the further monitoring of systemic risk.
- The bill closes the regulatory loopholes for hedge funds and private pools of capital, enhances the transparency and accountability of the credit rating agencies, and sets forth a myriad of provisions to enhance the authority and reach of the SEC needed to further protect investors and the financial system.

The Private Fund Investment Advisers Registration Act:

Registers previously unregulated hedge funds, private equity companies and private pools of capital by mandating the registration of the funds' private advisers

- All investment advisers to private funds with over \$150 million in assets under management will be registered with the US Securities and Exchange Commission (“SEC”). The registration of these advisers will enable capital regulators to better understand how the entities operate and whether their actions pose a threat to the financial system as a whole.
- Loopholes exploited by private funds in the past are closed by eliminating the private adviser exemption and limiting other exemptions for foreign private fund advisers and intrastate advisers. Venture capital companies are exempt from registration although reports and recordkeeping are mandated by the SEC to continue to monitor business activities and how they may contribute to systemic risk. Small Business Investment Companies (SBIC) are exempt.

Establishes a framework for collecting and sharing information by regulators and recordkeeping by the private fund advisers

- New recordkeeping and disclosure requirements for private advisers will give regulators the information needed to evaluate both individual firms and entire market segments that have until this time largely escaped any meaningful regulation, without posing undue burdens on those industries.
- The SEC will share information with the Board of Governors of the Federal Reserve System (Fed) and the Financial Services Oversight Council as it deems necessary or appropriate in the public interest and for the protection of investors or the assessment of systemic risk.

The Accountability and Transparency in Rating Agencies Act :

The rating agencies (nationally recognized statistical ratings organizations or NRSROs) have assumed a central role in the global capital markets. They faced growing criticism over the past

years which reached a crescendo in the recent financial crisis. In response, the Act enhances the SEC's oversight and regulation of NRSROs. The legislation also:

Enhances accountability of the NRSROs by clarifying and reforming aspects of their liability under the securities laws:

- The bill enhances the accountability of NRSROs by clarifying the ability of individuals to sue NRSROs. The bill also amends provision of Rule 436(g) of the Securities Act of 1933 to remove the "expert" exemption for credit ratings included in a registration statement. NRSROs will now have greater liability under the securities laws if a rating is included in a registration statement.

Increases information available to investors and users of credit ratings by requiring greater public disclosure

- Transparency is a hallmark of this legislation. Investors will gain access to more information about the internal operations and procedures of NRSROs, methodologies, ratings performance and short-comings in ratings assessment. In addition, the public will now learn more about how NRSROs get paid.

Creates a new regime of enhanced corporate governance

- The bill requires each NRSRO to have a Board with at least one-third independent directors. The independent directors will oversee policies and procedures aimed at preventing conflicts of interest and improving internal controls, among other things. The bill adds a new duty to supervise an NRSRO's employees and authorizes the SEC to sanction supervisors for failing to do so.

Mitigates conflicts of interests

- The issuer-pay model has long created inherent conflicts of interest for which NRSROs have been criticized. The legislation contains new requirements designed to mitigate these conflicts of interest. Additionally, the bill significantly enhances the responsibilities of NRSRO compliance officers to address conflicts of interest. The bill also includes revolving-door protections when certain NRSRO employees go to work for an issuer.

Addresses the immense reliance on ratings by federal regulators and users of ratings

- The bill removes all references to credit ratings in federal statutes under the jurisdiction of the Committee on Financial Services. The bill directs the agencies to devise a standard of creditworthiness to serve as a substitute for ratings in rules and regulations.

The Investor Protection Act of 2009

Recent events – the massive \$65 billion Madoff Ponzi scheme, the \$8 billion Stanford Financial investment fraud, AIG’s troubled securities lending program, the freezing up of the auction-rate securities market, the breaking of the buck by the Reserve Primary Fund, and fraud in the municipal markets – highlight the need for comprehensive reforms that better protect investors.

In response, the Investor Protection Act of 2009 contains a number of reforms that strengthen oversight of U.S. securities activities, close regulatory loopholes, better safeguard investors, and efficiently regulate global capital markets.

Specifically, the Investor Protection Act of 2009 includes reforms that:

- **Harmonize Fiduciary Duty of Brokers, Dealers and Investment Advisers:** In the future, every financial intermediary that provides personalized investment advice to retail customers will have a fiduciary duty to the investor.
- **End Mandatory Arbitration:** For too long, pre-dispute mandatory arbitration clauses inserted into contracts have restricted the ability of defrauded investors to seek redress in the courts for wrongdoing. The SEC will be enabled to restrict or even prohibit the use of mandatory arbitration clauses in contracts with broker-dealers.
- **Double SEC Funding:** SEC funding will double over the next five years from \$1.115 billion in FY-2010 to \$2.25 billion in FY 2015. This will provide the SEC with the ability to hire additional staff with industry expertise. In total, nearly \$10 billion over the next 6 years will help the SEC better oversee America’s multi-trillion dollar securities markets. In addition, the SEC will obtain additional funding via assessments on investment advisers.
- **Enhance Enforcement Powers, Rulemaking Authorities, and Global Coordination:** The SEC will be better able to bring actions against individuals who aid and abet securities fraud and to impose collateral bars on individual to prevent wrongdoers in one securities industry from entering another. The bill provides and/or clarifies several important rule-making authorities, including:
 - Municipal Bond Market: The SEC will now regulate and establish formal rules for municipal financial advisors.
 - Illiquid Investments: The legislation clarifies that the SEC may impose limits on illiquid investments by mutual funds.
 - Securities Lending: The SEC’s authority to regulate stock loans and borrowing will be clarified in order to enhance market transparency, reduce collateral risk exposures, and limit conflicts of interest in the securities lending process.
 - Anti-Fraud Rules: The SEC’s existing anti-fraud rulemaking powers will be expanded to cover short sales in the over-the-counter markets and of non-equity securities, as well as all options on securities.
 - Information Collection: The SEC will have broader authority to collect information from and coordinate with foreign regulatory bodies, as well as to pursue legal cases across national borders.

- **Close Statutory Loopholes and Fix Faulty Laws:** Closing a statutory loophole revealed by the Madoff scandal, the Public Company Accounting Oversight Board will gain the power needed to flexibly examine the auditors of broker-dealers. The Securities Investor Protection Corporation (SIPC), a semi-private entity that returns money to the customers of insolvent fraudulent broker-dealers, will provide increased protection to investors. In this regard, the bill:
 - Increases SIPC's cash advance limits to levels of coverage that are similar to those provided by the FDIC;
 - Provides SIPC coverage for futures held in portfolio margin accounts;
 - Increases minimum assessments paid by SIPC members; and
 - Expands SIPC's borrowing authority.
- **Reward Tipsters and Protect Whistleblowers:** A new Investor Protection Fund will create incentives to identify wrongdoing in the securities markets and reward individuals whose information leads to successful enforcement actions. This fund will also pay for educational initiatives designed to help investors protect themselves against securities fraud. Whistleblowers will be better protected from retaliation as well.
- **Democratize and Reform Corporate Governance:** The SEC will have the clear authority to issue proxy access regulations regarding the nomination of directors by shareholders to serve on a company's board of directors, thereby further democratizing corporate governance.
- **Force a Comprehensive Review and Reorganization of Securities Regulation:** An independent and comprehensive study of securities regulation by an experienced organizational consultant will identify reforms the SEC and securities regulators will make to further augment investor protection.
- **Expedite SEC Cases:** To expedite cases against violators of securities laws, the SEC will generally need to complete enforcement investigations, compliance inspections and exams, within 180 days.
- **Exempt Small Companies from External Audit Requirements:** The bill was amended in Committee to exempt public companies with less than \$75 million in market capitalization from the Sarbanes-Oxley Act's external audit of internal control requirements.
- **Increase Funding for Defrauded Investors:** The SEC will be able to provide additional compensation to an increased number of defrauded investors as a result of this bill.