

**AMENDMENT TO THE INVESTOR PROTECTION ACT
OF 2009**

OFFERED BY MR. FRANK AND MR. KANJORSKI

[Amendment is to the Discussion Draft of October 1, 2009]

Strike section 103 and insert the following:

1 **SEC. 103. ESTABLISHMENT OF A FIDUCIARY DUTY FOR**
2 **BROKERS, DEALERS, AND INVESTMENT AD-**
3 **VISERS, AND HARMONIZATION OF REGULA-**
4 **TION.**

5 (a) IN GENERAL.—

6 (1) SECURITIES EXCHANGE ACT OF 1934.—Sec-
7 tion 15 of the Securities Exchange Act of 1934 (15
8 U.S.C. 78o) is amended—

9 (A) by redesignating the second subsection
10 (i) as subsection (j); and

11 (B) by adding at the end the following new
12 subsections:

13 “(k) STANDARD OF CONDUCT.—

14 “(1) IN GENERAL.—Notwithstanding any other
15 provision of this Act or the Investment Advisers Act
16 of 1940, the Commission shall promulgate rules to
17 provide that, with respect to a broker or dealer,
18 when providing personalized investment advice to a

1 retail customer (and such other customers as the
2 Commission may by rule provide), the standard of
3 conduct for such broker or dealer with respect to
4 such customer shall be the same as the standard of
5 conduct applicable to an investment adviser under
6 the Investment Advisers Act of 1940. The receipt of
7 compensation based on commission or other stand-
8 ard compensation for the sale of securities shall not,
9 in and of itself, be considered a violation of such
10 standard applied to a broker or dealer.

11 “(2) DISCLOSURE OF RANGE OF PRODUCTS OF-
12 FERED.—Where a broker or dealer sells only propri-
13 etary or other limited range of products, as deter-
14 mined by the Commission, the Commission shall by
15 rule require that such broker or dealer provide no-
16 tice to each retail customer and obtain the consent
17 or acknowledgment of the customer.

18 “(3) RETAIL CUSTOMER DEFINED.—For pur-
19 poses of this subsection, the term ‘retail customer’
20 means a natural person, or the legal representative
21 of such natural person, who—

22 “(A) receives personalized investment ad-
23 vice from a broker or dealer; and

24 “(B) uses such advice primarily for per-
25 sonal, family, or household purposes.

1 “(1) OTHER MATTERS.—The Commission shall—

2 “(1) facilitate the provision of simple and clear
3 disclosures to investors regarding the terms of their
4 relationships with brokers, dealers, and investment
5 advisers, including any material conflicts of interest;
6 and

7 “(2) examine and, where appropriate, promul-
8 gate rules prohibiting or restricting certain sales
9 practices, conflicts of interest, and compensation
10 schemes for brokers, dealers, and investment advis-
11 ers that the Commission deems contrary to the pub-
12 lic interest and the protection of investors.”.

13 (2) INVESTMENT ADVISERS ACT OF 1940.—Sec-
14 tion 211 of the Investment Advisers Act of 1940, as
15 amended by section 102(d), is further amended by
16 adding at the end the following new subsection:

17 “(f) STANDARD OF CONDUCT.—

18 “(1) IN GENERAL.—The Commission shall pro-
19 mulgate rules to provide that the standard of con-
20 duct for all brokers, dealers, and investment advis-
21 ers, when providing personalized investment advice
22 to retail customers (and such other customers as the
23 Commission may by rule provide), shall be to act in
24 the best interest of the customer without regard to
25 the financial or other interest of the broker, dealer,

1 or investment adviser providing the advice. In ac-
2 cordance with such rules, any material conflicts of
3 interest shall be disclosed and may be consented to
4 by the customer. Such rules shall provide that such
5 standard of conduct shall be no less stringent than
6 the standard applicable to investment advisers under
7 section 206(1) and (2) of this Act when providing
8 personalized investment advice.

9 “(2) RETAIL CUSTOMER DEFINED.—For pur-
10 poses of this subsection, the term ‘retail customer’
11 means a natural person, or the legal representative
12 of such natural person, who—

13 “(A) receives personalized investment ad-
14 vice from a broker, dealer, or investment ad-
15 viser; and

16 “(B) uses such advice primarily for per-
17 sonal, family, or household purposes.

18 “(g) OTHER MATTERS.—The Commission shall—

19 “(1) facilitate the provision of simple and clear
20 disclosures to investors regarding the terms of their
21 relationships with brokers, dealers, and investment
22 advisers, including any material conflicts of interest;
23 and

24 “(2) examine and, where appropriate, promul-
25 gate rules prohibiting or restricting certain sales

1 practices, conflicts of interest, and compensation
2 schemes for brokers, dealers, and investment advis-
3 ers that the Commission deems contrary to the pub-
4 lic interest and the protection of investors.”.

5 (b) HARMONIZATION OF ENFORCEMENT.—

6 (1) SECURITIES EXCHANGE ACT OF 1934.—Sec-
7 tion 15 of the Securities Exchange Act of 1934, as
8 amended by subsection (a)(1), is further amended by
9 adding at the end the following new subsection:

10 “(m) HARMONIZATION OF ENFORCEMENT.—The en-
11 forcement authority of the Commission with respect to vio-
12 lations of the standard of conduct applicable to a broker
13 or dealer providing personalized investment advice to a re-
14 tail customer shall include—

15 “(1) the enforcement authority of the Commis-
16 sion with respect to such violations provided under
17 this Act, and

18 “(2) the enforcement authority of the Commis-
19 sion with respect to violations of the standard of
20 conduct applicable to an investment advisor under
21 the Investment Advisers Act of 1940, including the
22 authority to impose sanctions for such violations,
23 and

24 the Commission shall seek to prosecute and sanction viola-
25 tors of the standard of conduct applicable to a broker or

1 dealer providing personalized investment advice to a retail
2 customer under this Act to same extent as the Commission
3 prosecutes and sanctions violators of the standard of con-
4 duct applicable to an investment advisor under the Invest-
5 ment Advisers Act of 1940.”.

6 (2) INVESTMENT ADVISERS ACT OF 1940.—Sec-
7 tion 211 of the Investment Advisers Act of 1940, as
8 amended by section (a)(2), is further amended by
9 adding at the end the following new subsection:

10 “(h) HARMONIZATION OF ENFORCEMENT.—The en-
11 forcement authority of the Commission with respect to vio-
12 lations of the standard of conduct applicable to an invest-
13 ment adviser shall include—

14 “(1) the enforcement authority of the Commis-
15 sion with respect to such violations provided under
16 this Act, and

17 “(2) the enforcement authority of the Commis-
18 sion with respect to violations of the standard of
19 conduct applicable to a broker or dealer providing
20 personalized investment advice to a retail customer
21 under the Securities Exchange Act of 1934, includ-
22 ing the authority to impose sanctions for such viola-
23 tions, and

24 the Commission shall seek to prosecute and sanction viola-
25 tors of the standard of conduct applicable to an invest-

1 ment advisor under this Act to same extent as the Com-
2 mission prosecutes and sanctions violators of the standard
3 of conduct applicable to a broker or dealer providing per-
4 sonalized investment advice to a retail customer under the
5 Securities Exchange Act of 1934.”.

Page 17, line 7, after “laws” insert the following: “,
the rules and regulations thereunder,”.

Page 17, line 20, after “laws” insert the following:
“, the rules and regulations thereunder,”.

Page 19, line 17, insert after “Department of Jus-
tice,” the following “the Public Company Accounting
Oversight Board,”.

Page 21, beginning on line 23, strike “pursuant to
section 308 of the Sarbanes-Oxley Act of 2002 or other
fund” and insert “or other fund pursuant to section 308
of the Sarbanes-Oxley Act of 2002”.

Page 22, beginning on line 6, strike “pursuant to
section 308 of the Sarbanes-Oxley Act of 2002 or other
fund” and insert “or other fund pursuant to section 308
of the Sarbanes-Oxley Act of 2002”.

Page 22, line 9, after “disgorgement fund” insert
the following: “or other fund”.

Page 23, line 19, after “awards” insert “were”.

Page 25, line 14, strike “(i)” and insert “(ii)”.

Page 25, line 19, strike “(ii)” and insert “(iii)”.

Page 27, beginning on line 5, strike “public”.

Page 28, insert after line 4 the following new clause
(and redesignate succeeding clauses accordingly):

1 “(iii) the Public Company Accounting
2 Oversight Board,”.

Page 28, after line 18, insert the following new sub-
section (and redesignate succeeding subsections accord-
ingly):

3 “(h) PROVISION OF FALSE INFORMATION.—Any
4 whistleblower who knowingly and willfully makes any
5 false, fictitious, or fraudulent statement or representation,
6 or makes or uses any false writing or document knowing
7 the same to contain any false, fictitious, or fraudulent
8 statement or entry, shall not be entitled to an award under
9 this section and shall be subject to prosecution under sec-
10 tion 1001 of title 18, United States Code.”.

Page 29, line 7, insert before the semicolon the fol-
lowing: “, unless the whistleblower is the initial source of
the information”.

Page 29, line 22, after “fund” insert the following:
“or other fund”.

Page 36, strike lines 6 through 21 and insert the following:

1 **“SEC. 4E. DEADLINE FOR COMPLETING ENFORCEMENT IN-**
2 **VESTIGATIONS AND COMPLIANCE EXAMINA-**
3 **TIONS AND INSPECTIONS.**

4 “(a) ENFORCEMENT INVESTIGATIONS.—

5 “(1) IN GENERAL.—Not later than 180 days
6 after the date on which Commission staff provide a
7 written Wells notification to any person, the Com-
8 mission staff shall either file an action against such
9 person or provide notice to the Director of the Divi-
10 sion of Enforcement of its intent to not file an ac-
11 tion.

12 “(2) EXCEPTIONS FOR CERTAIN COMPLEX AC-
13 TIONS.—Notwithstanding paragraph (1), if the head
14 of any division or office within the Commission or
15 his designee determines that a particular enforce-
16 ment investigation is sufficiently complex such that
17 a determination regarding the filing of an action
18 against a person cannot be completed within the
19 deadline specified in paragraph (1), the head of any
20 division or office within the Commission or his des-
21 ignee may, after providing notice to the Chairman of

1 the Commission, extend such deadline as needed for
2 one additional 180-day period. If after the additional
3 180-day period the head of any division or office
4 within the Commission or his designee determines
5 that a particular enforcement investigation is suffi-
6 ciently complex such that a determination regarding
7 the filing of an action against a person cannot be
8 completed within the additional 180-day period, the
9 head of any division or office within the Commission
10 or his designee may, after providing notice to and
11 receiving approval of the Commission, extend such
12 deadline as needed for one or more additional suc-
13 cessive 180-day periods.

14 “(b) COMPLIANCE EXAMINATIONS AND INSPEC-
15 TIONS.—

16 “(1) IN GENERAL.—Not later than 180 days
17 after the date on which Commission staff completes
18 the on-site portion of its compliance examination or
19 inspection or receives all records requested from the
20 entity being examined or inspected, whichever is
21 later, Commission staff shall provide the entity being
22 examined or inspected with written notification indi-
23 cating either that the examination or inspection has
24 concluded without findings or that the staff requests
25 the entity undertake corrective action.

1 “(2) EXCEPTION FOR CERTAIN COMPLEX AC-
2 TIONS.—Notwithstanding paragraph (1), if the head
3 of any division or office within the Commission or
4 his designee determines that a particular compliance
5 examination or inspection is sufficiently complex
6 such that a determination regarding concluding the
7 examination or inspection or regarding the staff re-
8 quests the entity undertake corrective action cannot
9 be completed within the deadline specified in para-
10 graph (1), the head of any division or office within
11 the Commission or his designee may, after providing
12 notice to the Chairman of the Commission, extend
13 such deadline as needed for one additional 180-day
14 period.”.

Page 47, line 25, strike “that” and insert “a reg-
istered public accounting”.

Page 48, line 3, strike “disciplinary”.

Page 48, line 6, strike “misconduct” and insert
“conduct”.

Page 48, line 9, strike “that” and insert “a reg-
istered public accounting”.

Page 48, strike lines 10 and 11 and insert the fol-
lowing:

1 “(II) non-cooperation as de-
2 scribed in section 105(b)(3) with re-
3 spect to a demand in a Board inves-
4 tigation for testimony, documents, or
5 other information relating to a period
6 when such person was associated or
7 seeking to become associated with a
8 registered public accounting firm.”.

Page 48, line 18, after “act”, strike the comma.

Page 49, strike lines 3 through 8.

Page 49, line 9, strike “(4)” and insert “(2)”.

Page 49, line 14, strike “current or former”.

Page 49, line 15, strike “; and” and insert a period.

Page 49, strike lines 16 and 17.

Page 50, after line 20, insert the following new sub-
paragraphs (and redesignate succeeding subparagraphs
accordingly):

9 “(B) the Public Company Accounting
10 Oversight Board;
11 “(C) any self-regulatory organization;”.

Page 51, beginning on line 10, strike “No Federal agency or State securities or law enforcement authority shall” insert the following:

1 “(A) IN GENERAL.—Federal agencies,
2 State securities and law enforcement authori-
3 ties, self-regulatory organizations, and the Pub-
4 lic Company Accounting Oversight Board shall
5 not”.

Page 51, after line 15, insert the following:

6 “(B) EXCEPTION WITH RESPECT TO CER-
7 TAIN ACTIONS.—The provisions of subpara-
8 graph (A) shall not apply to a self-regulatory
9 organization or the Public Company Accounting
10 Oversight Board with respect to information
11 used by the Commission in an action against
12 such organization.”.

Page 56, beginning on line 1, strike “securities transaction occurs outside the United States” and insert “violation is committed by a foreign adviser”.

Page 56, strike lines 10 through 24 and insert the following:

13 “(g) FIDELITY BONDING.—

1 “(1) IN GENERAL.—The Commission is author-
2 ized to require that a registered management com-
3 pany provide and maintain a fidelity bond against
4 loss as to any officer or employee who has access to
5 securities or funds of the company, either directly or
6 through authority to draw upon such funds or to di-
7 rect generally the disposition of such securities (un-
8 less the officer or employee has such access solely
9 through his position as an officer or employee of a
10 bank), in such form and amount as the Commission
11 may prescribe by rule, regulation, or order for the
12 protection of investors.

13 “(2) DEFINITIONS.—For purposes of this sub-
14 section:

15 “(A) MANAGEMENT COMPANY.—The term
16 ‘management company’ has the meaning given
17 such term under section 4 of the Investment
18 Company Act of 1940.

19 “(B) OFFICER OR EMPLOYEE.—The term
20 ‘officer or employee’ means—

21 “(i) any officer or employee of the
22 management company; and;

23 “(ii) any officer or employee of any
24 investment adviser to the management
25 company, or of any affiliated company of

1 any such investment adviser, as the Com-
2 mission may prescribe by rule, regulation,
3 or order for the protection of investors.

4 “(C) OTHER DEFINITIONS.—The terms
5 ‘affiliated company’ and ‘investment adviser’
6 shall have the meaning given such terms under
7 sections 2 of the Investment Company Act of
8 1940.”.

Page 61, line 8, after “subsection,” insert the following: “promulgate rules pursuant to which it may”.

Page 61, line 20, after “consider” insert the following: “objective factors, such as”.

Page 61, line 22, strike “risk profile” and insert “number of clients”.

Page 64, line 2, strike “60-day” and insert “90-day”.

Page 64, line 7, after “restructuring” insert the following: “and the operations of the capital markets”.

Page 64, line 8, before “need” insert “the”.

Page 64, line 9, strike “self-regulatory organizations,” and insert “as well as the SEC’s relationship with the reliance on self-regulatory organizations”.

Page 64, line 11, before the period insert “that are under the SEC’s oversight”.

Page 64, lines 19 and 20, strike “chain of command” and insert “chain-of-command”.

Page 64, line 22, strike “policies and personal” and insert “authorities, workplace policies, and personnel”.

Page 65, strike lines 5 through 8 and insert the following:

1 (iii) the diversity of skill sets of SEC
2 employees and whether the present skill set
3 diversity efficiently and effectively fosters
4 the SEC’s mission of investor protection;
5 and

Page 65, line 10, strike “and”

Page 65, beginning on line 11, strike “the present self-regulatory organizational structure and a determination of whether a present” and insert “whether the SEC’s oversight and”.

Page 65, line 15, strike the period and insert “; and”.

Page 65, after line 15, insert the following:

1 (F) whether adjusting the SEC's reliance
2 on self-regulatory organizations is necessary to
3 promote more efficient and effective governance
4 for the securities markets.

Page 65, beginning on line 17, strike "180-day pe-
riod beginning on the date of the enactment of this Act,"
and insert "150-day period after being retained,".

Page 66, line 20, strike "To effect or accept" and
insert the following:

5 "(1) IN GENERAL.—To effect, accept, or facili-
6 tate".

Page 66, after line 24, insert the following:

7 "(2) SAVINGS CLAUSE.—Nothing in paragraph
8 (1) shall be construed to limit the authority of an
9 appropriate Federal banking agency (as defined in
10 section 3 of the Federal Deposit Insurance Act (12
11 U.S.C. 1813(q))), the National Credit Union Admin-
12 istration, or any other Federal department or agency
13 identified under law as having a systemic risk re-
14 sponsibility from prescribing rules or regulations to
15 impose restrictions on transactions involving the
16 loan or borrowing of securities in order to protect
17 the safety and soundness of a financial institution or
18 to protect the financial system from systemic risk.".

Page 72, beginning on line 22, strike “the Financial Accounting Standards Board, and”.

Page 72, line 24, after “Board” insert “, and the standard setting body designated pursuant to section 19(b) of the Securities Act of 1933”.

Page 74, line 6, after “examination” insert “, surveillance, or risk assessment”.

Page 74, line 11, after “agency” insert “, or any self-regulatory organization,”.

Page 74, line 20, before “or any self-regulatory” insert “, the Public Company Accounting Oversight Board,”.

Page 75, line 3, before “of that person” insert “, surveillance, or risk assessment”.

Page 76, line 2, before “of a person” insert “, surveillance, or risk assessment”.

Page 76, line 9, after “agency” insert “, or the Public Company Accounting Oversight Board,”.

Page 77, line 17, after “agency” insert “or the Public Company Accounting Oversight Board, or a self-regulatory organization,”.

Page 78, after line 12, insert the following (and re-designate succeeding paragraphs accordingly):

1 (2) in the matter following section 11(a)(5) by
2 striking “earning statement” and inserting “earn-
3 ings statement”.

Page 83, beginning on line 11, strike “the end of the 120-day period beginning on the date of the enactment of this paragraph,” and insert “October 1, 2010,”.

Page 83, line 18, after “majority of” insert “independent”.

Page 84, line 19, after “elections” insert “of municipal securities brokers and municipal securities dealers”.

Page 85, after line 2, insert the following (and re-designate succeeding clauses accordingly):

4 (iii) shall establish minimum knowl-
5 edge, experience, and other appropriate
6 qualifications for individuals to serve as
7 public representatives, which may include,
8 among other things, prior work experience
9 in the securities, municipal finance, or mu-
10 nicipal securities industries;

Page 86, line 24, after “revenues” insert “from the securities business”.

Page 87, beginning on line 5, strike “not to exceed \$2,500,000,000” and insert “the lesser of \$2,500,000,000 or the target amount of the SIPC Fund specified in the bylaws of SIPC”.

Page 90, beginning on line 19, strike “an insider (as such term is defined under section 101(31) of title 11, United States Code),” and insert “an insider,”.

Page 93, strike lines 13 through 25 (and redesignate succeeding sections accordingly).

Page 94, beginning on line 5, strike “commodity”.

Page 94, line 22, after the period, insert “The term ‘customer’ includes any person who has a claim against the debtor arising out of sales or conversions of such securities.”.

Page 95, line 18, strike “or”.

Page 96, line 4, strike the period and insert “; or”.

Page 96, after line 4, insert the following:

- 1 “(iii) any person to the extent such
- 2 person has a claim relating to any open re-
- 3 purchase or open reverse repurchase agree-
- 4 ment.

1 For purposes of this paragraph, the term ‘re-
2 purchase agreement’ means the sale of a secu-
3 rity at a specified price with a simultaneous
4 agreement or obligation to repurchase the secu-
5 rity at a specified price on a specified future
6 date.’’.

Page 98, strike line 1 through page 99, line 20, and
insert the following:

7 **SEC. 510. STUDY AND REPORT ON THE FEASIBILITY OF**
8 **RISK-BASED ASSESSMENTS FOR SIPC MEM-**
9 **BERS.**

10 (a) **STUDY REQUIRED.**—The Comptroller General of
11 the United States shall conduct a study on whether the
12 Securities Investor Protection Corporation (hereafter in
13 this section referred to as “SIPC”) should be required to
14 impose assessments, on its member brokers and dealers,
15 based on risk for the purpose of adequately maintaining
16 the SIPC Fund.

17 (b) **CONTENT.**—The Comptroller General in con-
18 ducting this study shall—

19 (1) identify and examine available approaches,
20 including modeling, to measure broker and dealer
21 operational risk;

22 (2) analyze whether the available approaches to
23 measure broker and dealer operational risk can be

1 used in managing the aggregate risk to the SIPC
2 Fund;

3 (3) explore whether objective measures like the
4 volume of assets of the SIPC member, previous en-
5 forcement and compliance actions taken by regu-
6 latory bodies against the SIPC member, or the num-
7 ber of years the SIPC member has been in oper-
8 ation, among other factors, can be used to assess the
9 probability the fund will incur a loss with respect to
10 the SIPC member;

11 (4) examine the impact that risk-based assess-
12 ments could have on large and small brokers and
13 dealers; and

14 (5) examine the impact that risk-based assess-
15 ments could have on institutional and retail brokers
16 and dealers.

17 (c) CONSULTATION.—The Comptroller General in
18 planning and conducting this study shall consult with the
19 Securities and Exchange Commission, the Federal Deposit
20 Insurance Corporation, SIPC, the Financial Industry Reg-
21 ulatory Authority, and any other public or private sector
22 organization that the Comptroller General considers ap-
23 propriate.

24 (d) REPORT REQUIRED.—Not later than one year
25 after the date of enactment of this Act, the Comptroller

1 general shall submit a report of the results of the study
2 required by this section to the Committee on Banking,
3 Housing, and Urban Affairs of the Senate and the Com-
4 mittee on Financial Services of the House of Representa-
5 tives.

Page 100, line 8, strike “**NONPUBLIC**”.

Page 100, line 18, before “or notices,” insert “, pro-
cedures or controls,”.

Page 101, line 2, before “or notices.” insert “, pro-
cedures or controls,”.

Page 106, line 23, strike “that are not issuers,”.

Page 107, line 20, strike “that are not issuers”.

Page 108, line 3, strike “that are not issuers”.

Page 111, lines 7 and 8, strike “, with respect to
any issuer or its subsidiaries,” and insert “upon which a
registered public accounting firm relies in the conduct of
an audit or interim review,”.

Page 111, line 9, strike “documentation” and insert
“work papers”.

Page 111, beginning on line 12, strike “in connec-
tion with any investigation”.

Page 111, beginning on line 22, strike “or performing material services, with respect to any issuer or its subsidiaries,”.

Page 112, line 2, strike “documentation” and insert “work papers”.

Page 112, line 11, strike “(f)” and insert “(g)”.

Page 112, line 21, after “foreign” insert “public accounting”.

Page 112, line 22, strike “material services,” and insert “other material services upon which a registered public accounting firm relies in the conduct of an audit or interim review,”.

Page 113, line 6, after “this Act.” insert the following:

1 “(f) OTHER MEANS OF SATISFYING PRODUCTION
2 OBLIGATIONS.—Notwithstanding any other provision of
3 this section, the staff of the Commission or Board may
4 allow foreign public accounting firms subject to this sec-
5 tion to meet production obligations under this section
6 though alternate means, such as through foreign counter-
7 parts of the Commission or Board.

Page 113, after line 6, insert the following (and re-designate succeeding sections accordingly):

1 **SEC. 604. CONFORMING AMENDMENT RELATED TO REG-**
2 **ISTRATION.**

3 Section 102(b)(3)(A) of the Sarbanes-Oxley Act of
4 2002 (15 U.S. Code 7212(b)(3)(A)) is amended by strik-
5 ing “by the Board” and inserting “by the Commission or
6 the Board”.

Page 113, line 19 after “under” insert “, or such
person agrees in settlement of any such action to such
civil penalty”.

Page 113, line 19, after “civil penalty” insert “or
settlement”.

