

**SENATE COUNTER-OFFER
TITLE IX – INVESTOR PROTECTION
WEDNESDAY, JUNE 16, 2010**

1. Fiduciary Duty – **Under Discussion**
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) **Accept**
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) **Counter - Change the House clarification so that the Investor Advocate’s compensation is relative to “a senior executive that reports to the Chairman.”** **Reject** – Reject lowering the Investor Advocate’s salary from the base text.
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.*) **Accept in Part – Accept providing the SEC has the ability to disapprove proposed rules. Reject- Reject changing the starting date for the period for a hearing to “after the date of receipt of a proper filing”.**
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; **Reject**
 - 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); **Reject**
 - 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); **Counter – Allow for whistleblowers to appeal an agency’s final decision but not the reward amount.**
 - 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). **Accept**
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) **Accept**
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). **Accept**

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) **Accept**
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) **Accept**
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)) **Accept**
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)) **Accept**
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)) **Accept**
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)) **Accept**
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)) **Reject**
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)) **Reject**
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)) **Accept**
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)) **Reject**
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)) **Accept**
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) **Accept**

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) **Accept**
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) **Accept**
22. Add the House provision increasing penalties for fraud under SIPA from \$50,000 to \$250,000. (House § 7507, p. 1393) **Accept**
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) **Accept**
24. Add the House provision enhancing notice to missing security holders. (House § 7421, p. 1381) **Accept**
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) **Accept in Part – Accept all of the House's offer on short sale reforms except for Page 39 Line 20 through Page 40 Line 13 (SEC.929X. (a) "(2)(A)") of the House offer. – Reject – Reject daily short sale reporting by every institutional investment manager (SEC.929X. (a) "(2)(A)").**
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) **Accept**
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) **Accept**
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) **Reject**
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) **Accept**
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) **Accept**
31. Amend the Senate provision on material loss reports by increasing the dollar thresholds that trigger the reporting obligation. (Senate § 987, p. 1311) **Reject**

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: **Reject**
- 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).

EXEC COMP

- 1. Add Shareholder Vote on Golden Parachutes. House and Senate agree on annual, non-binding, shareholder vote on executive compensation, but Senate does not include House shareholder vote on golden parachutes. **Reject**
- 2. Add House provision on Enhanced Compensation Oversight for Financial Industry. House requires all Federal financial regulators to issue and enforce joint compensation rules specifically applicable to all financial institutions with a Federal regulator. Senate bill requires only that Fed to consult with the FDIC & OCC to set safety and soundness standards for BHCs prohibiting excessive compensation plans. **Reject**
- 3. Add House mandate that SEC require that independence standards applied to compensation committee consultants are competitively neutral and treat large and small consultants equally. **Accept**
- 4. Add House mandate that SEC require institutional investor to disclose their voting in compensation-related voting. **Accept**

ADDITIONS

- 5. ADDITION: Amends Section 972 Proxy Access of the base text so that only shareholders that have owned not less than 5% of outstanding shares for not less than 2 years have access to the proxy.
- 6. ADDITION: Strike Section 971 of the Chairman's base text
- 7. ADDITION: Substitute for Sec. 978 of base text, a study on GASB funding, with a certain mechanism for annual funding of GASB
- 8. ADDITION: Amendments to add considerations in the Sec.919B Study on Financial Planners and the Use of Financial Designations

9. ADDITION: Add Section 929O – Restoration of Congressional Intent that Prospectus Is Not Restricted to Public Offerings.
10. ADDITION: Make Leahy changes to whistleblower provisions.

House Conference Amendments

1. PCAOB distinction of broker-dealers. **ACCEPT with conforming changes**
2. Stoneridge. **REJECT / offer a GAO study on the costs and benefits of creating a private right of action against aiders and abettors of securities fraud (New section 929P).**
3. SEC Ombudsman – **ACCEPT with changes to place this with the Investor Advocate**
4. Whistleblower Office. **ACCEPT**