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## Broker-Dealers

### Breach of Fiduciary Duty & Duty of Care

#### E.D.N.Y. Upholds Conviction of “Squawk Box” Defendants Despite Government’s Failure to Disclose Deposition Transcripts

[United States v. Mahaffy, No. 05-CR-00613 \(E.D.N.Y. July 21, 2010\)](#)

Following a jury’s conviction of three brokers and three day-traders for conspiring to misappropriate confidential “squawk box” information, the U.S. District Court for the Eastern District of New York denied their motion to dismiss the indictment or for a new trial. The Court determined that the trial outcome would not have been any different if the government had disclosed before trial the transcripts of 12 depositions taken by the Securities and Exchange Commission (SEC) during its squawk box investigation.

#### *Squawk Boxes*

Defendants include three brokers who worked at Merrill Lynch, Smith Barney, and Lehman Brothers (Broker Defendants), as well as three employees of A.B. Watley, Inc. (Day-Trader Defendants), a broker dealer engaged primarily in the practice of day trading. According to the Court, day trading is “a stock-trading strategy that produces a high volume of trades that consist of buying and selling securities within short periods of time, seeking to profit from slight changes in the market price during those short time periods.”

The government charged Broker Defendants with providing Day-Trader Defendants live access to their firms’ squawk boxes. The Court explained that squawk boxes are internal broadcast systems that disseminate information throughout a brokerage firm. The disseminated information includes pending orders of the firm’s clients to buy or sell blocks of stock, so that the firm’s brokers can find “the other side” of those trades. Evidence was presented at trial, explained the Court, that information disseminated across squawk boxes about actual client orders is confidential information of the brokerage firm. That information could be disseminated outside the firm but, as the testimony at trial indicated, only to the extent necessary to meet the liquidity needs of the client who had placed the order. The charges against Day-Trader Defendants included that they never took the other side of the trade, but instead, they attempted to profit by “quickly trading ahead of the block orders they learned about from the squawk boxes.” The jury convicted Broker Defendants and Day-Trader Defendants (together, Defendants) with conspiring to obtain and misappropriate confidential information belonging to the brokerage firms and conspiring to defraud the brokerage firms of their right to the honest services of their employees.

#### *Deposition Testimony*

After the jury found Defendants guilty, the SEC initiated [administrative proceedings](#) against one of the Broker Defendants, Kenneth E. Mahaffy, Jr., seeking to bar him from association with any broker, dealer, or investment advisor. In the course of those proceedings, the SEC produced to Mahaffy the disputed deposition transcripts. Defendants argue that the transcripts would have helped them to “undermine a basic premise of the government’s case, that is, that the squawk box transmissions contained confidential information belonging to the brokerage firms.” Accordingly, Defendants argued that the government in the criminal action violated its disclosure obligations under *Brady v. Maryland*, [373 U.S. 83](#) (1963).

The Court found this argument “unpersuasive” because when viewed as a whole, the deposition testimony actually supports the government’s case. Specifically, explained the Court, “the testimony at issue addressed the use of squawk box information for the legitimate purpose of getting another client of the brokerage firm to take the other side of the trade.” “None of the testimony,” continued the Court, “even remotely supports the proposition that it would be permissible to sell squawk box information to day traders so they could try to trade ahead of block orders.” Indeed, said the Court, one of the witnesses, on whose testimony Defendants relied in the motion, actually testified to the inappropriateness of using information about client orders to trade in front of those orders for the purpose of getting a better price than the client.

Accordingly, although the Court remained “mystified” as to the government’s failure to disclose the deposition transcripts, it concluded that the effect of the nondisclosure was “negligible.”

### Duties & Responsibilities

#### SEC Required to Study Impact of Creating a Broker-Dealer Fiduciary Duty Standard

[H.R. 4173, 111 Cong. \(2010\)](#)

The U.S. Senate voted 60 to 38 to pass a comprehensive financial reform bill (Bill) that will impact regulation of the financial system, including the regulation of broker-dealers. Notably, the Bill requires the Securities and Exchange Commission (SEC) to conduct a study regarding the legal and regulatory standards of care for brokers, dealers, and their associated persons. Additionally, the Bill amends [Section 15](#) of the Securities Exchange Act of 1934 (Exchange Act) to give the SEC authority to promulgate a rule that would apply to brokers and dealers the same standard of conduct as that applied to investment advisers under [Section 211](#) of the Investment Advisers Act of 1940 (Advisers Act). Among other things, the Bill also amends Exchange Act Section 15 with respect to foreign broker-dealers and requires the SEC to conduct studies on short selling and investor access to information about broker-dealers.

### *Standard of Care Study*

In conducting the standard of care study, the SEC is required to consider thirteen specific issues and has the authority to evaluate “any other considerations that [it] considers necessary and appropriate in determining” whether to engage in rulemaking on the topic. Specifically, the SEC is directed to study the effectiveness of the existing standards of care for brokers, dealers, and their associated persons and whether there are legal or regulatory gaps, shortcomings, or overlaps in those standards. The SEC must also determine whether retail customers understand that a different standard of care applies to brokers and dealers than applies to investment advisers and whether that difference is a source of confusion. Additionally, the SEC’s study must include an evaluation of the regulatory, examination, and enforcement resources currently allocated to the oversight of brokers and dealers with respect to enforcing the standard of care when providing personalized investment advice and recommendations about securities to retail customers. Along those lines, the SEC must examine any substantive differences in the regulation of brokers, dealers, and investment advisers when providing personalized investment advice and securities recommendations to retail customers and determine whether existing broker-dealer regulation and oversight currently provides greater protection than that for investment advisers, and vice versa. Similarly, the SEC is required to study existing State and other regulations intended to protect retail customers. With regard to whether it is advisable to apply the standard of care, and other requirements, applicable to investment advisers under the Advisers Act to brokers and dealers, the SEC is directed to study the impact this could have on retail customers, including the range of products that could be offered to them.

The SEC is also to consider the potential impact of removing the broker-dealer exclusion from the definition of investment adviser in [Section 202\(a\)\(11\)\(C\)](#) of the Advisers Act. In particular, the SEC must consider the elimination of this exclusion in terms of the potential beneficial and harmful impact it could have on retail customers, including their ability to access personalized investment advice and recommendations about securities. The SEC must also determine the number of additional entities and individuals who would be required to register under, or become subject to, the Advisers Act if the exclusion is eliminated. Related to that, the SEC must evaluate the potential impact on licensing, registration, and examination of these persons and the associated additional costs. Finally, the SEC is required to study the cost impacts on the SEC and State regulators if brokers and dealers are held to the same standard of care as investment advisers, including the resources required to examine these additional entities and enforce the standard of care.

The SEC is directed to study the level and scope of services provided by brokers, dealers, investment advisers, and their associated persons to retail customers. Additionally, the SEC must research the potential impact on retail customers of changing the regulatory structure for brokers, dealers,

and their associated persons, including any impact on fraud protection, access to personalized investment advice and recommendations, and the availability of such advice. Finally, with regard to imposing a standard of care on brokers and dealers, the SEC is required to study the potential additional costs and expenses to retail customers—and how this would impact the profitability of their investment decisions—and to brokers, dealers, and investment advisers.

The SEC will have six months from the date the Bill is enacted to submit a report on the study to the Senate’s Committee on Banking, Housing, and Urban Affairs and the House’s Committee on Financial Services (Senate Committees). As part of the study and to aid its preparation of the report, the SEC is required to seek public input, comments, and data.

### *Rulemaking Authority*

Related to the standard of care study, the Bill amends Section 15 of the Exchange Act and grants the SEC authority to establish a standard of care for brokers and dealers. This rulemaking authority is discretionary but provides that the standard of care must be the same as that applied to investment advisers under Section 211 of the Advisers Act. Notably, the amendment specifies that “[n]othing in this section shall require a broker or dealer or registered representative to have a continuing duty of care of loyalty to the customer after providing personalized investment advice about securities.” The Exchange Act amendments also provide that the SEC may promulgate a rule requiring that brokers and dealers who sell only proprietary “or other limited range of products” provide notice to each retail customer and obtain the consent or acknowledgement of the customer. Finally, the amendments require the SEC to (1) facilitate the provision of enhanced disclosures to investors regarding the terms of their relationships with brokers, dealers, and investment advisers, including any material conflicts of interest and (2) examine and, where appropriate, promulgate rules prohibiting or restricting certain sales practices, conflicts of interest, and compensation schemes for brokers, dealers, and investment advisers that the SEC determines are contrary to the public interest and the protection of investors.

### *Foreign Broker-Dealers*

The Bill also amends Section 15 of the Exchange Act to add two new subsections regarding the registration or succession to a U.S. broker or dealer by foreign brokers and dealers and termination of such registration. First, when determining whether to permit a foreign person or affiliate of a foreign person to register as a U.S. broker or dealer or succeed to such a registration, the SEC would be able to take into account whether the person “presents a risk to the stability of the U.S. financial system” and whether the person’s home country has adopted or “made demonstrable progress toward adopting” a regulatory system designed to mitigate such risk. Second, the SEC would be permitted to terminate the registration of a foreign broker or dealer

who presents a risk to the stability of the U.S. financial system if it determines that the person's home country has not adopted or made progress toward adopting a system to mitigate that risk.

#### *Additional Studies*

The SEC's Division of Risk, Strategy, and Financial Innovation (Division) is required to conduct two studies on the state of short selling on the exchanges and in the over-the-counter markets. The first study must focus on the impact of recent short sale rulemaking and the incidence of (1) failures to deliver shares sold short or (2) delivery of shares on the fourth day following the short sale transaction. The Division must also conduct a second short sales study, focusing on the feasibility, benefits, and costs of requiring entities to report, in real time, short sale positions of publicly listed securities to the public or, in the alternative, to the SEC and the Financial Industry Regulatory Authority. That study should also examine the feasibility, benefits, and costs of conducting a voluntary pilot program in which public companies will agree to have all trades of their shares marked "short," "market maker short," "buy," "buy-to-cover," or "long," and reported in real time through the Consolidated Tape. The SEC must submit the results of the first study to the Senate Committees within two years of the Bill's enactment and has one year to submit the results of the second study.

Within six months of the Bill's enactment, the SEC must also conduct a study on improved investor access to information on investment advisers and broker-dealers. This study should include recommendations of ways to improve investor access to registration information, including the advantages and disadvantages of "further centralizing" the information contained in the Central Registration Depository and the Investment Adviser Registration Depository. The SEC is required to implement any recommendations issuing from the study no later than 18 months after its completion.

## SRO Reporting Requirements

### FINRA Proposes Rule to Supplement FOCUS Reporting

[FINRA Regulatory Notice 10-33 \(July 19, 2010\)](#)

The Financial Industry Regulatory Authority (FINRA) issued a regulatory notice requesting comments on a proposed rule that would supplement FOCUS report filing obligations. FINRA explained that FOCUS reports serve as an important source of information with respect to a member firm's financial and operational condition. While member firms already submit monthly and quarterly FOCUS reports pursuant to [Rule 17a-5](#) under the Securities Exchange Act of 1934 and [FINRA Rule 2010](#), FINRA

indicated that proposed FINRA Rule 4524 (Supplemental FOCUS Information) would allow for a more expansive view of a member firm's business and facilitate regulatory oversight.

In particular, FINRA Rule 4524 would require member firms to submit such additional financial or operational information as FINRA considers necessary to ensure investor protection and serve the public interest. FINRA explained that the content, format, and frequency requirements for future proposed supplemental reports or schedules would be specified in a future regulatory notice to be filed with the Securities and Exchange Commission. Comments on the proposal are due by August 18, 2010.

#### *Supplementary Schedule*

Additionally, FINRA seeks comments on a proposed supplementary schedule to the Statement of Income (Loss) Page of FOCUS Report Parts II and IIA that would require member firms to report more detailed information concerning their revenues and expenses. FINRA explained that the current forms do not adequately provide for reporting of revenues earned and expenses incurred by product. Consequently, member firms disclose this information under a general "other" category. The detailed information captured in the proposed supplementary schedule would increase understanding of a member firm's business and provide insight into industry trends that would result in more tailored examinations, said FINRA.

#### *Operational Page*

Finally, FINRA proposes to establish additional FOCUS reporting requirements for member firms that engage in underwriting activities. Specifically, FINRA explained that if a member firm's revenue from underwriting or selling group activities from unregistered offerings exceeds 10 percent of its total revenue, then the member firm would be required to complete the new Operational Page referred to in the proposed supplementary schedule.

## Bloomberg News

### Deutsche Bank Fined \$7.5 Million for Subprime Errors

*By Joshua Gallu, Bloomberg News*

July 21 (Bloomberg) — Deutsche Bank AG's investment-bank unit will pay \$7.5 million to settle claims that it misled investors by understating delinquency rates on subprime mortgage-backed securities it sold in 2006, a U.S. brokerage regulator said.

New York-based Deutsche Bank Securities calculated past-due rates for six subprime securitizations worth

\$2.2 billion using a different method than it described in offering materials, the Financial Industry Regulatory Authority said in a statement today. The case is part of a wider probe of possible misstatements related to subprime-linked securities, James Shorris, Finra's acting chief of enforcement said today in an interview.

Defaults on residential mortgages to people with poor credit histories helped spur a financial crisis that led to more than \$1.7 trillion in writedowns and losses worldwide. Investors relied on reported delinquency rates to evaluate the fair market value and yields of mortgage-backed securities, Finra said.

In one case, Deutsche Bank reported 8.75 percent of loans were 30 to 59 days past due when its described method would have shown 24 percent of mortgages at that stage of delinquency.

"Delinquency rates constitute material information for investors," Shorris said in a statement. "Deutsche Bank Securities' failure to ensure that the delinquency information was accurate is an unacceptable failure to meet this important obligation."

Washington-based Finra has been probing since at least 2007 whether brokers made inaccurate disclosures about securities backed by subprime mortgages. In the aftermath of the financial crisis, Finra has investigated the accuracy of marketing materials for other financial products, including the sale of auction-rate securities and variable annuities to smaller investors.

Deutsche Bank, which didn't admit or deny the allegations, also failed to correct errors by a third-party vendor that underreported historical delinquency rates for 16 subprime securities it sold in 2007, Finra said. While Deutsche Bank detected errors and gave the vendor corrected information, it never ensured that the accurate data appeared on a website for investors.

"We have cooperated with FINRA throughout its investigation and we are pleased to have resolved this matter," Deutsche Bank spokeswoman Renee Calabro said today in an interview.

—With assistance from Craig Trudell in New York. Editors: Gregory Mott, William Ahearn

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## Commodities & Derivatives

### Regulators

#### Rule Proposal for Same-Day Recovery of Trading and Clearing Activities by Critical Financial Markets Published by CFTC

[CFTC Press Release No. 5853-10 \(July 14, 2010\)](#)

The Commodity Futures Trading Commission (CFTC) proposed a regulation that would establish standards, in the event of a wide-scale disruption, for recovery and resumption of trading and clearing operations by designated contract markets (DCMs) and derivatives clearing organizations (DCOs) that the CFTC determines are critical financial markets. The proposal would require such DCMs and DCOs to maintain a business continuity and disaster recovery plan and resources sufficient to satisfy same-day recovery for trading and clearing. The proposal would also require geographic dispersal of infrastructure and personnel sufficient to achieve that objective.

#### *Critical Financial Markets*

The CFTC stressed the importance of taking regulatory steps to improve the resilience and recovery capabilities of registered entities, particularly those meeting the definitions of "critical financial markets" and "core clearing and settlement organizations," as defined in the 2003 [Interagency Paper on Sound Practices to Strengthen the Resilience of the U.S. Financial System](#) (White Paper).

The CFTC noted that, although it did not participate in preparing the White Paper, it is appropriate to apply analogous standards to DCMs and DCOs. Specifically, consistent with definitions in the White Paper, some of the registered entities regulated by the CFTC provide the means for financial institutions to adjust their financial positions and those of customers in order to manage liquidity, market, and other risks, and their products include futures on assets such as U.S. government and agency securities, that comprise critical components of the world financial system. If these entities were to become inoperative for an extended period of time, there could be unacceptable risks to the U.S. financial system. Accordingly, the ability of critical financial markets and core clearing and settlement organizations to recover and resume trading and clearing promptly is important to the U.S. economy.

#### *Same-day Recovery Time Objective*

The CFTC noted that the White Paper calls for core clearing and settlement organizations to have the capacity to recover and resume clearing and settlement activities within the business day on which the disruption occurs. The White Paper also calls for these organizations to maintain backup facilities that are a sufficient distance away from their primary facilities

to address the risk that the organization's labor pool across an entire metropolitan area could be unavailable to achieve the same-day recovery time objective in the event of a wide-scale disruption.

### *Core Principles*

The CFTC emphasized that, under [Section 3\(b\)](#) of the Commodity Exchange Act (CEA), ensuring the integrity of futures markets and avoiding systemic risks are critical functions of the CFTC. [Parts 38](#) and [39](#) of the CFTC's regulations, together with relevant core principles, set forth the business continuity and disaster recovery requirements for DCMs and DCOs, respectively. However, since the core principles were established by the 2000 Commodity Futures Modernization Act, business continuity standards have changed, and the CFTC therefore proposed amendments to [Part 40](#) of its regulations, including a new Regulation 40.9, to set forth the same-day recovery time objective, as well as a new Appendix E providing guidance on the CFTC's determination of critical financial markets and core clearing and settlement organizations.

## Rulemaking for Over-the-Counter Derivatives Markets to be Subject to Broad Consultation, CFTC Chairman Emphasizes

[CFTC Speech, Gary Gensler, Remarks Before SIFMA Post-Financial Reform Conference \(July 15, 2010\)](#)

Commodity Futures Trading Commission (CFTC) Chairman Gary Gensler spoke before the Securities Industry and Financial Markets Association on regulatory reform of financial markets, where he discussed anticipated rulemaking by the CFTC, the Securities and Exchange Commission (SEC), and others, pending passage of the [Conference Report on H.R. 4173](#). Gensler noted that, at the CFTC, there are about 30 areas where rules will likely be necessary, some requiring only one rule, others more. Gensler noted that the CFTC will generally be required to complete these rules in 360 days, though in some cases sooner.

### *New Responsibilities and Authorities*

Gensler noted that the CFTC, the primary regulator of derivatives since its predecessor was created in the 1930s, ensures that futures and commodity options exchanges have procedures to protect market participants and to facilitate fair and orderly trading, free from fraud, manipulation and other abuses. The CFTC also oversees futures clearinghouses to ensure that they have appropriate risk management standards.

Gensler emphasized that, if the financial reform Conference Report becomes law, it will present new responsibilities and authorities for the CFTC. Some will be consistent with the CFTC's current authorities, such as overseeing exchanges

and clearinghouses, but will expand those authorities to cover swaps. Others will be new responsibilities, such as regulating swap dealers and swap data repositories.

### *Two Core Principles*

Teams of CFTC staff have been assigned to analyze the Conference Report's requirements, and to make rulemaking proposals, engage in consultation, and publish final rules. Gensler indicated that two core principles will guide the CFTC in the rule-writing process. First the CFTC intends to comply fully with the Conference Report's provisions and Congressional intent to lower risk and bring transparency to over-the-counter derivatives markets. Second, the CFTC intends to consult heavily both with other regulators and with the broader public.

### *Joint Rules and Harmonization*

In some circumstances, Gensler noted, the CFTC will write rules jointly with the SEC, including to define "swap," "swap dealer," and "major swap participant" along with similar terms on the security-based side. The Conference Report also directs the CFTC to work jointly with the SEC on rules related to investment adviser reporting and mixed swaps. Gensler commented that this process will build off the close work on harmonization by the CFTC and SEC over the last year, and the agencies' joint work to review the unusual market volatility that took place on May 6, 2010. See [Bloomberg Law Reports®—Securities Law, SEC and CFTC Issue Joint Report on Regulatory Harmonization \(Oct. 21, 2009\)](#), and [Bloomberg Law Reports®—Securities Law, CFTC and SEC Staff Issue Joint Report of Preliminary Findings on May 6 Market Events; Announce Advisory Committee Meeting Date \(May 24, 2010\)](#).

### *Broad Consultation*

For rules that will not be written jointly, Gensler stressed that the CFTC will consult with the SEC to ensure the greatest consistency among the agencies' rules, and will also work closely with the Federal Reserve Board, the Federal Reserve Bank of New York, and other prudential regulators to utilize their expertise and judgment. Gensler indicated that the CFTC is also reaching out to international regulators to harmonize the approach to swaps oversight. Further, Gensler noted that the CFTC will solicit broad public input into the rules, including input from investors, market participants, end-users, exchanges, and clearinghouses on key topics. These public meetings will begin in September.

### *Tight Deadlines*

The CFTC aims to publish proposed rules beginning in the fall, using regular public CFTC meetings for this purpose. The CFTC will solicit public comments during a comment period of at least 30 days for each proposed rulemaking.

Because of tight statutory deadlines, it will likely not be possible to extend the comment period to accommodate late submitters.

### *Re-proposing Rules*

According to Gensler, there are numerous outstanding rules that the CFTC will move to complete, such as a proposed rulemaking to regulate the trading of retail foreign exchange transactions published in January 2010. Gensler noted that the Conference Report would require the CFTC to publish a final rule within 90 days of the bill's enactment, otherwise certain retail off-exchange foreign currency transactions will be prohibited. However, the CFTC will need to re-propose other rules. For example, the Conference Report would require the CFTC to enact a rule to set aggregate position limits across markets. As such, the CFTC would re-propose position limits based upon Congress's direction across all markets, notwithstanding its publication, also in January 2010, of a proposed rulemaking to set position limits in the regulated futures marketplace. For background, see [Bloomberg Law Reports®—Securities Law, CFTC Requests Comments on Proposed Rules Governing Retail Foreign Exchange Transactions \(Jan. 19, 2010\)](#), and [Bloomberg Law Reports®—Securities Law, CFTC Publishes Proposed Rules to Establish Energy Position Limits \(Feb. 2, 2010\)](#).

## CFTC Publishes Roadmap for Rulemaking under Wall Street Reform and Consumer Protection Act

[CFTC Press Release No. 5856-10 \(July 21, 2010\)](#)

The Commodity Futures Trading Commission (CFTC) released a list of 30 areas of rulemaking to implement the [Dodd-Frank Wall Street Reform and Consumer Protection Act](#) (Act), noting that some of these areas will require only one rule, others more. Under the Act, the CFTC is required to complete these rules generally in 360 days, though some are required to be completed within 90, 180 or 270 days. In comments at President Obama's signing of the Act, CFTC Chairman Gary Gensler lauded the comprehensive regulation the Act will bring to over-the-counter (OTC) derivatives markets, including robust oversight of derivatives dealers, and mandating central clearing of standardized derivatives.

### *Eight Groups of Rulemaking*

Gensler noted that the CFTC has begun preparing for the task of writing rules, assigning teams of staff within the agency to each of the 30 rule-writing areas. These teams will see the process through, from analyzing the Act's requirements, to broad consultation, recommending proposed rulemakings, and publishing final rules. Gensler

reiterated that the CFTC is requesting input from the public on each of the rule-writing areas. Gensler explained that the rule-writing has been divided into eight broad groups: (1) comprehensive regulation of swap dealers (SDs) and major swap participants (MSPs); (2) clearing; (3) trading; (4) data; (5) particular products; (6) enforcement; (7) position limits; and (8) other titles.

### *Comprehensive Regulation of SDs and MSPs*

Under Title VII of the Act (dealing with regulation of OTC derivatives), a SD is any person who holds itself out as a dealer in swaps, makes a market in swaps, regularly enters into swaps with counterparties as an ordinary course of business for its account, or engages in any activity causing the person to be commonly known in the trade as a dealer or market maker in swaps. A MSP includes any person who is not a swap dealer, and (1) who maintains a substantial position in swaps for any of the major swap categories as determined by the CFTC (excluding positions held for hedging or mitigating commercial risk, or for hedging positions of an employee benefit plan); (2) whose outstanding swaps create substantial counterparty exposure that could have serious adverse effects on the financial stability of the United States banking system or financial markets; or (3) who is a highly leveraged financial entity that is not subject to federal bank capital requirements, and that maintains a substantial position in outstanding swaps in any major swap category as determined by the CFTC.

The CFTC will write new definitions jointly with the Securities and Exchange Commission (SEC) to define terms such as SD and MSP, as well as their security-based swap equivalents. Other rulemaking by the CFTC for SDs and MSPs will include (1) registration requirements; (2) business conduct standards when dealing with counterparties; (3) internal business conduct standards; (4) capital margin requirements for non-bank SDs and MSPs; and (5) rules regarding segregation of swap customer property, and regarding bankruptcy of SDs and MSPs, for both cleared and uncleared swaps.

### *Clearing*

The Act amends [Section 2](#) of the Commodity Exchange Act (CEA) to provide that it "shall be unlawful for any person to engage in a swap unless that person submits such swap for clearing to a derivatives clearing organization that is registered under this Act or a derivatives clearing organization that is exempt from registration under this Act if the swap is required to be cleared."

The CFTC will make rules relating to (1) core principles for derivatives clearing organizations (DCOs), (2) the process for reviewing whether particular swaps should be subject to mandatory clearing, (3) governance and possible limits on ownership and control of DCOs and other clearing

entities (to avoid conflicts of interest), (4) additional rules for systemically important DCOs (pursuant to Title VIII of the Act), (5) and an exception to clearing requirements for certain types of end-users.

### *Trading*

The Act also amends Section 2 of the CEA to provide that, with respect to the new clearing requirement, swap counterparties generally must execute the relevant transaction on a board of trade designated as a contract market (DCMs) or on a registered swap execution facility (SEF), or a SEF exempt from registration.

The CFTC will engage in rulemaking addressing (1) core principles for DCMs, (2) registration requirements and core principles for SEFs, (3) new registration requirements for foreign boards of trade, and (4) rule certification and approval procedures for DCOs, DCMs, and SEFs.

### *Data*

The Act amends the CEA to include a new Section 21 titled “Swap Data Repositories” (SDRs), defined in the Act as “any person that collects and maintains information or records with respect to transactions or positions in, or the terms and conditions of, swaps entered into by third parties for the purpose of providing a centralized recordkeeping facility for swaps.”

The CFTC’s rulemaking for SDRs will include (1) registration standards and core principles, (2) data recordkeeping and reporting requirements, and (3) real time reporting.

### *Particular Products*

The CFTC also indicated that it will engage in rulemaking related to particular products, such as agricultural swaps and retail, off exchange foreign currency transactions, as well as making joint rules with the SEC on key terms under the Act, such as “swap” and “security-based swap.”

The Act also amends [Section 15\(c\)\(3\)](#) of the Securities Exchange Act of 1934 and [Section 4d](#) of the CEA to permit (1) cash and securities held by a registered broker-dealer that is also registered as a futures commission merchant (FCM) to be held in a portfolio margining account carried as a futures account, and (2) contracts for the purchase or sale of a commodity for future delivery, as well as options on such contracts held by a dually registered FCM/broker-dealer to be held in a portfolio margining account carried as a securities account. The CFTC will engage in rulemaking regarding such portfolio margining. For background on CFTC and SEC harmonization of portfolio margining regimes, see [Bloomberg Law Reports®—Securities Law, SEC and CFTC Issue Joint Report on Regulatory Harmonization \(Oct. 21, 2009\)](#).

### *Enforcement*

Under the Act, [Section 4c\(a\)](#) of the CEA is amended to include a provision making it unlawful for any person to engage in any trading, practice, or conduct on or subject to the rules of a registered entity that (1) violates bids or offers, (2) demonstrates intentional or reckless disregard for the orderly execution of transactions during the closing period, or (3) is of the character of “spoofing” (bidding or offering with the intent to cancel the bid or offer before execution).

The Act gives the CFTC authority to make rules on such disruptive trading practices. The CFTC also intends to make rules regarding anti-manipulation and whistleblowing provisions. Regarding the latter, the Act adds a new Section 23 to the CEA, which calls for the CFTC to pay an award—in an aggregate amount equal to not less than 10 percent and not more than 30 percent, in total—from monetary sanctions collected as a result of an action for which one or more whistleblowers voluntarily provided the CFTC original information that led to successful enforcement.

### *Position Limits*

With respect to physical commodities other than excluded commodities, the Act calls for the CFTC to establish limits on the amount of positions, other than bona fide hedge positions, that may be held by any person with respect to contracts of sale for future delivery, options on such contracts, or commodities traded on or subject to the rules of a DCM. The CFTC will write rules related to such position limits, including large trader reporting, a definition of bona fide hedging, and aggregate limits.

### *Other Titles*

The Act includes the popularly-named “Volcker Rule,” which, subject to exceptions, prohibits a banking entity from engaging in proprietary trading, or acquiring or retaining any equity, partnership, or other ownership interest in, or sponsoring, a hedge fund or a private equity fund. The Act calls for the Financial Stability Oversight Council, not later than six months after the date of enactment of the relevant section of the Act, to conduct a study and make recommendations on implementing the provisions of the Volcker Rule. Not later than nine months after the completion of the study, the appropriate Federal banking agencies, the SEC, and the CFTC are to consider the findings of the study and adopt rules to carry out the Volcker Rule. The CFTC is called upon to make rules with respect to any entity for which it is the primary financial regulatory agency.

The CFTC also has indicated that it will engage in rulemaking regarding (1) investment adviser reporting, (2) reliance on

credit ratings, and (3) the Fair Credit Reporting Act and disclosure of non-public personal information.

## Bloomberg News

### Commodity Manipulation May Be Easier to Prove After Overhaul

By Asjlynn Loder, *Bloomberg News*

July 19 (Bloomberg) — Traders will face new rules aimed at making it easier for regulators to prove manipulation in markets for commodities such as oil, wheat and natural gas under the financial overhaul awaiting President Barack Obama's signature.

The regulations, written in part by Senator Maria Cantwell, a Democrat from Washington state, attempt to relieve the Commodity Futures Trading Commission of the burden of proving a trader intended to manipulate prices. Instead, the CFTC will have to show the trading was "reckless."

"It will make it easier for the CFTC to bring cases and get people to settle, because people will be reluctant to go to court," said Geoffrey Aronow, former director of enforcement at the commission and a partner at the Washington law firm Bingham McCutchen LLP.

Proving manipulation has challenged courts and lawmakers since the early attempts to regulate U.S. commodity markets in the 1920s. The financial overhaul of the \$615 trillion derivatives market, approved by the U.S. Senate last week and the House on June 30, redraws rules that have been determined for decades by a patchwork of case law.

The legislation will allow the CFTC to better police manipulation, while also expanding its jurisdiction to the over-the-counter derivatives market, said Michael Greenberger, a former director of trading and markets and now a professor at the University of Maryland law school in Baltimore.

#### *Lower Standard*

"The standard of proof is lower," Greenberger said. "If you can't police for manipulation, you've effectively got one hand tied behind your back. The Cantwell amendment unties the hand of the CFTC."

Derivatives are contracts whose value is derived from stocks, bonds, loans, currencies and commodities, or linked to specific events such as changes in interest rates or weather. Futures are traded on regulated exchanges, while over-the-counter contracts are privately negotiated.

The financial overhaul will push most of the off-exchange contracts to be processed, or cleared, through third-party clearinghouses and traded on exchanges or similar systems.

All trades will have to be reported to trade repositories, which will allow regulators a view of the overall risk in the market.

"The problem I've got with it is you have no guidance for your traders," said Jerry Markham, a professor at Florida International University law school in Miami and an expert witness. "Traders have to be aggressive. This is trading, not tiddlywinks."

Under current law, manipulation cases hinge on a four-prong test that begins with proving that prices were "artificial," or outside the bounds of normal supply and demand, Markham said. Then the government must prove that the accused had the ability to cause an artificial price, took actions to cause it and intended it. Proving intent typically requires evidence such as traders' e-mails or taped telephone calls, he said.

#### *"Artificial" Prices*

Proving manipulation in court is tough because the statute provides little definition, including how to measure an "artificial" price and establish intent, said Craig Pirrong, director of the Global Energy Markets Institute at the University of Houston, who has written essays on the subject and served as an expert witness.

Confusion has existed since the early days of regulation, Pirrong said. He quoted a 1928 hearing where cotton trader William Clayton said manipulation seems to mean any market move "that does not suit the gentleman who is speaking at the moment."

In 2008, the year after BP Plc paid a record \$303 million to settle a CFTC claim that it cornered the propane market, the four BP traders who were individually charged in the case won a dismissal, in part because U.S. District Judge Gray Miller in Houston found that the law they were accused of violating was too vague to be enforceable.

#### *"Confusing" Regime*

"The court is sympathetic to the government's desire to discourage the types of behavior alleged here, but its ability to do so is currently limited by a confusing and incomplete statutory common-law regime," Miller wrote in his decision,

The U.S. Justice Department has appealed the case.

In addition to the anti-manipulation rules introduced by Cantwell, the law contains provisions that allow the CFTC to police trading practices with oddball names such as "spoofing" and "banging the close," and contains a measure that Commission Chairman Gary Gensler has dubbed "The Eddie Murphy Rule."

The rule is named for the 1983 movie *Trading Places*, which starred Murphy and Dan Akroyd. The plot centers on two brothers who plot to get an orange crop forecast and corner the market for orange juice. Murphy and Akroyd beat them to it,

substitute a forgery, and make a fortune while the scheming brothers go bust. The provision bans trading using non-public information misappropriated from a government source, such as crop forecasts or fuel stockpile reports.

### *Canceling Trades*

“Spoofing” is a practice where a trader enters a bid or offer with the intent of canceling it before the trade is carried out.

The legislation also targets any activity that shows a “reckless disregard” for “orderly” trading in the closing period, during which the day’s settlement prices are determined. The provision targets a practice known as “smashing” or “banging” the close, where traders attempt to bully the day’s settlement price by buying or selling large volumes just before the close.

“It’s going to be very much like the standard for pornography,” said Gary DeWaal, general counsel for Newedge USA LLC, the world’s largest futures broker. “The CFTC is going to say, we know orderly when we see it. And that’s going to be a bone of contention.”

—*With assistance from Phil Mattingly in Washington.*

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## **Federal Securities Law**

### **Financial Reform Legislation Gives SEC Explicit Proxy Access Rulemaking Authority, Mandates Shareholder Say-on-Pay**

[H.R. 4173, 111 Cong. \(2010\)](#)

The Dodd-Frank Wall Street Reform and Consumer Protection Act was passed by the House of Representatives on June 30, 2010 and the Senate on July 15, 2010, and signed into law on July 21, 2010. It is intended to comprehensively overhaul regulation of the U.S. financial system. Title IX of the bill, among other things, adds or amends provisions of the Securities Exchange Act of 1934 (Exchange Act) relating to proxy access, corporate governance, and executive compensation. Specifically, Title IX includes provisions concerning (1) shareholder say on executive compensation and “golden parachute” awards, (2) compensation committee and adviser independence, (3) pay and performance comparisons, (4) recovery of erroneously granted incentive-based compensation, (5) hedging by employees and directors,

(6) compensation structures at financial institutions, (7) broker discretionary voting, (8) the Securities and Exchange Commission’s (SEC) proxy access authority, and (9) a company’s Chairman and CEO structure.

Other sections of the legislation regulate broker-dealers, investment advisers, investment funds, and over-the-counter derivatives markets. See [Bloomberg Law Reports®—Securities Law, SEC Required to Study Impact of Creating A Broker-Dealer Fiduciary Duty Standard \(July 19, 2010\)](#); [Bloomberg Law Reports®—Securities Law, Congress Passes Financial Reform Legislation; Will Impose New Registration Requirements on Hedge Fund Managers \(July 20, 2010\)](#).

### *Shareholder Say on Pay (Section 951)*

The bill amends the Exchange Act to require companies to provide a non-binding shareholder vote to approve executive compensation as disclosed pursuant to SEC rules. In particular, the bill requires a company to include in its annual or other shareholder meeting proxy materials a resolution providing for an advisory vote on executive compensation not less than every three years, and provides for a company’s shareholders to determine not less frequently than every six years whether such vote will occur every one, two, or three years.

Companies must also disclose and permit a non-binding shareholder advisory vote on policies relating to “golden parachute” awards to a principal executive officer in connection with a change of control (such as the acquisition, merger, consolidation, sale or other disposition of all or substantially all company assets).

The bill clarifies that the shareholder advisory votes do not overrule decisions by the board of directors or alter directors’ fiduciary duties. In addition, the SEC is provided with discretionary authority to exempt companies or a class of companies from the advisory vote requirements and instructed to take into account whether a requirement disproportionately burdens small issuers.

### *Compensation Committees and Advisers (Section 952)*

The SEC must direct the national securities exchanges and associations to require, with certain exceptions, each member of the compensation committee of a listed company to be independent. The bill also sets forth a new standard for determining independence. Relevant factors for determining independence include a director’s source of compensation and whether the director is affiliated with the company or a subsidiary or affiliate of the company. Particular relationships may be exempted from the independence requirements, taking into consideration the size of the company and other relevant factors.

The SEC also must “identify factors that affect the independence of a compensation consultant, legal counsel or other adviser to a compensation committee,” including

other services provided to the company by the employer of the compensation consultant, legal counsel or other adviser, the amount of fees paid by the company to such employer, and the employer's conflict of interest policies. Compensation committees are required to consider the factors identified by the SEC before selecting a compensation consultant, legal counsel or other adviser.

The bill expressly authorizes compensation committees to retain compensation consultants, legal counsel, and other advisers. The legislation clarifies, however, that a compensation committee has an obligation to exercise its own judgment and is not required to implement or act consistently with the advice provided by such advisers. Additionally, the company is required to disclose in its proxy materials for an annual meeting (or special meeting in lieu of an annual meeting) of shareholders occurring one year or more after the bill's enactment whether the compensation committee retained a compensation consultant and whether the work of the compensation committee raised any conflicts of interest, and, if so, describe the conflict and how it is being addressed.

#### *Pay and Performance Comparisons (Section 953)*

The bill amends Exchange Act [Section 14](#) to require the SEC to adopt rules providing for the disclosure in a company's proxy materials of any compensation that must be disclosed under [Item 402](#) of Regulation S-K, including information showing a relationship between "executive compensation actually paid" and the company's financial performance. In addition, the bill requires a company to disclose in any filings described in [Item 10\(a\)](#) of Regulation S-K the (1) median of the annual total compensation of employees except the CEO, (2) annual total compensation of the CEO, and (3) ratio of the former to the latter.

#### *Incentive Compensation Clawback (Section 954)*

The SEC must direct the national securities exchanges to require listed companies to implement and disclose an executive compensation clawback policy that enables the company to recover incentive-based compensation following an accounting restatement because of material noncompliance with a financial reporting requirement. The policy must permit the company to recover from current or former executives incentive compensation payments made during the three-year period preceding the accounting restatement that exceeded the amount that would have been paid to such executives based on restated financial information.

#### *Employee and Director Hedging (Section 955)*

The bill adds a new provision to Exchange Act Section 14 to require the SEC to adopt rules mandating the disclosure in company proxy materials of whether any company employee or director is permitted to hedge against a decrease in the value of equity securities granted to the employee or director as compensation or held, directly or indirectly by the employee

or director through the purchase of financial instruments such as prepaid variable forward contracts, equity swaps, collars, and exchange funds.

#### *Compensation Structures at Financial Institutions (Section 956)*

The "appropriate" federal regulators are required to establish within nine months of the bill's enactment regulations or guidelines requiring enhanced compensation structure reporting for financial institutions with assets of at least \$1 billion. Such financial institutions must disclose their incentive-based compensation arrangements in sufficient detail to determine whether the compensation structure provides an executive officer, employee, director or principal shareholder "with excessive compensation, fees, or benefits" or "could lead to material financial loss" to the financial institution. In addition, the bill requires regulators to prescribe regulations or guidelines to prohibit incentive-based compensation arrangements that "encourage[] inappropriate risks." Appropriate federal regulators include the Federal Reserve, the SEC, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Director of the Office of Thrift Supervision, the National Credit Union Administration Board and the Federal Housing Finance Agency.

#### *Broker Discretionary Voting (Section 957)*

The bill amends [Section 6\(b\)](#) of the Exchange Act to direct the national securities exchanges to adopt rules prohibiting member brokers from voting customer shares without obtaining voting instructions from the beneficial owner of the shares in connection with a shareholder vote on (1) the election of directors (other than uncontested elections of directors for a registered investment company), (2) executive compensation, or (3) "any other significant matter" as determined by SEC rule.

#### *SEC Proxy Access Authority (Section 971)*

The bill provides the SEC with explicit authority to adopt rules and regulations requiring companies to include shareholder board of director nominees in their proxy materials, and establishing procedures for the inclusion of such nominees. The legislation also gives the SEC discretionary authority to exempt companies or a class of companies from requirements established pursuant to this authority and directs the SEC to take into account when making such exemptions whether a requirement disproportionately burdens small issuers.

#### *Chairman and CEO Structure (Section 972)*

Section 972 requires the SEC to issue within 180 days of the bill's enactment rules requiring a company to disclose in its annual proxy materials its reasons for selecting the same person to serve as Chairman of the board of directors and CEO or, alternatively, for choosing different persons to fill those functions.

## Security Defined

### The Treatment of Carbon Assets under U.S. Federal Securities Laws

Contributed by Pamela K. Dayanim and Marc R. Paul, Baker & McKenzie LLP

The last five years have seen a significant increase in interest in carbon assets, including growth in the number of carbon-oriented investment funds formed for the purpose of buying and selling carbon assets. Along with this growth, an important question has surfaced now facing many of these funds—can a carbon asset, including an emission reduction unit, be considered a security and thereby trigger the application of the U.S. federal securities laws? This question has yet to be addressed by the Securities and Exchange Commission (SEC) or caselaw. With increased focus on global climate change issues, including the SEC's recent interpretive release relating to global climate change disclosure,<sup>1</sup> this issue is ripe for consideration. This article will address when a carbon asset could be considered a security under current law and the consequences of being deemed a security.

#### *Definition of "Security"*

[Section 2\(a\)\(1\)](#) of the Securities Act of 1933, as amended (Securities Act), and [Section 3\(a\)\(10\)](#) of the Securities Exchange Act of 1934, as amended (Exchange Act), define what constitutes a security for purposes of U.S. federal securities law. The statutory definitions are interpreted broadly, making the determination of whether a particular instrument is or is not a security a fact specific inquiry. The definition of a security includes, *inter alia*, instruments such as notes, stocks, bonds and similar items, as well as documents traded for speculation or investment and any interest or "instrument commonly known as a security." The definition of a security also includes so-called "investment contracts."

Generally, carbon assets themselves do not fall within one of the enumerated categories of instruments that are deemed securities. They do not constitute a debt or equity interest in any entity, nor do they fit neatly within the definition of the other terms appearing in Section 2(a)(1) of the Securities Act or Section 3(a)(10) of the Exchange Act. Although carbon assets themselves do not generally appear to be "securities" as that term is defined, it is still necessary to determine whether the offer, purchase and sale of a carbon asset under a proposed arrangement may be deemed an "investment contract" for purposes of the federal securities laws.

#### *What is an "Investment Contract"?*

"Investment contract" has been broadly defined to capture various novel investment-related instruments, contracts, transactions, and schemes. "Investment contracts" may include instruments that are always securities, as well as

interests and transactions that may constitute securities only under certain circumstances. For regulatory purposes, there is no difference between an investment contract arising from the circumstances of a transaction and an instrument commonly known as a security, such as a share of stock or a bond. Both are regulated as securities, and their issuance and trading implicate a number of securities laws.

Generally, an "investment contract" is defined as "a contract, transaction or scheme" whereby a person invests "money in a common enterprise and is led to expect profits solely from the efforts of the promoter or a third party."<sup>2</sup> The "touchstone" of an investment contract is "the presence of an investment in a common venture premised on a reasonable expectation of profits to be derived from the entrepreneurial or managerial efforts of others."<sup>3</sup> In *SEC v. Howey and United Housing Foundation, Inc. v. Forman*, the U.S. Supreme Court fashioned a test to determine when an investment contract exists (referred to as the *Howey-Forman* test).<sup>4</sup> Under the *Howey-Forman* test, an arrangement is not an investment contract unless *each* of four distinct elements is present: (1) the investment of money; (2) in a common scheme or enterprise; (3) with the expectation of profits; (4) to come solely from the managerial or entrepreneurial efforts of others.<sup>5</sup>

The first prong of the *Howey-Forman* test requires an "investment of money." For purposes of this prong, "investment" means the committing of money or other value to a venture in order that the investment will grow or appreciate as a result of the activities of the venture. The investment may be in the form of goods and services or cash.<sup>6</sup>

The second prong of the *Howey-Forman* test requires the investment of money to be in a "common enterprise or venture." This prong is the most disputed among the courts. Courts have developed three different approaches for determining whether a common enterprise or venture exists. Under the first approach, "horizontal" commonality, a common enterprise or venture exists where there is a "pooling of investors" who are joint participants, represented by a common agent, in the same investment enterprise, who share pro rata in any distributions.<sup>7</sup> The second approach, "broad vertical" commonality, requires merely that the fortunes of all investors be dependent upon the promoter's expertise (*i.e.*, no pro rata sharing among the investors is required).<sup>8</sup> Under the third approach, "narrow vertical" commonality, there must be a common enterprise where there is some interdependence or mutuality of interest in the success of the purchaser and the promoter (*i.e.*, no pooling is required).<sup>9</sup>

The third prong of the *Howey-Forman* test requires the investment of money in a common scheme or enterprise to be made "with the expectation of profits." For purposes of this prong, "profits" refers to the revenues that investors seek on their investment in the form of income or returns. Profits do not include the overall revenues generated by the enterprise in which investors invest, but the amount of return received by investors based on the amount committed to the venture.<sup>10</sup>

To satisfy this element, investors must receive profits in the form of “either capital appreciation resulting from the development of an initial investment” or “a participation in earnings resulting from the use of investors’ funds.”<sup>11</sup> Additionally, the investors must be “attracted solely by the prospects of a return” on their investment and the anticipated profit must not be too speculative and insubstantial.<sup>12</sup> According to the U.S. Supreme Court, an expectation of investment profits does not exist where “a purchaser is motivated by a desire to use or consume the item purchased.”<sup>13</sup>

Under the fourth prong of the *Howey-Forman* test, for an investment contract to exist, the profits expected from the investment in a common enterprise must come “solely from the efforts of others.”<sup>14</sup> Note that the “solely” standard has been diluted by subsequent case law to require only that “the efforts made by those other than the investor are the undeniably significant ones, those essential managerial efforts which affect the failure or success of the enterprise.”<sup>15</sup>

Six decades of caselaw provide guidance on how to interpret and apply each prong of the *Howey-Forman* test. As a result, it is difficult to make generalizations regarding what constitutes an investment contract under this test, as the analysis is extremely fact specific. However, as a general proposition, if, in consideration for their investment, investors are to receive physical delivery of carbon credits themselves as opposed to an interest therein, it is likely that the arrangement would not be deemed an investment contract, as the third and fourth prongs of the *Howey-Forman* test (expectation of investment profits derived from the efforts of others) would not be satisfied. In such an instance, it is likely that the investor would not be dependent on the efforts of others to generate profits from those carbon credits. If the investor will negotiate on an individual basis the price at which it will sell any such units it receives, the managerial efforts of others will not determine whether the investor will generate profits or losses from its receipt and subsequent sale of the carbon credits; only the investor’s own decisions can drive that result. Similarly, if the carbon credits are not sold by the investor, but rather are used by the investor for compliance purposes, it is unlikely that the arrangement would be deemed an investment contract. In contrast, if investors are to receive instead interests in the carbon credits—for example, as limited partners in a fund that purchases and sells carbon credits—and the investors have little or no authority to take an active role in the management of the venture and no control over the ultimate success or failure of their investments, the arrangement could be found to satisfy the *Howey-Forman* test.

#### *Consequences of Being Deemed a Security*

Assuming a scenario whereby the purchase and sale of the carbon assets were deemed to be an investment contract—and, thus, a security—the issuer would be required to comply with the U.S. federal securities laws and registration requirements.

To avoid the costly SEC registration process required for publicly traded securities under the Securities Act, the issuer may offer the securities through a private placement exemption, the most common exemption from registration for issuers. Regulation D under the Securities Act exempts certain offerings of securities to “accredited investors” from the federal securities registration requirements. In general terms, a private placement requires that there be no advertisement, announcement, or other “general solicitation” to the public. For an offering with an unlimited dollar amount under [Rule 506](#) of Regulation D, the securities may be acquired by an unlimited number of accredited investors and up to 35 non-accredited investors, who have the knowledge and experience necessary to understand the risks of investment. If the issuer intends to sell the securities to non-accredited offerees in a Regulation D offering, the offerees must have access to information about the issuer similar to that available in a public offering. Consequently, depending upon the identity, number, and nature of the offerees, an issuer may be required or well advised to present the offerees with a private placement memorandum. In addition, if the issuer intends to make a private placement offering, it must file a Form D with the SEC within 15 days after the first sale of securities.

In addition to securities registration requirements for the issuer, this scenario may also raise broker-dealer and investment adviser concerns from a U.S. securities law perspective. The term “broker” is defined to mean “any person engaged in the business of effecting transactions in securities for the account of others.”<sup>16</sup> The term “dealer” is defined to mean “any person engaged in the business of buying and selling securities for his own account through a broker or otherwise.”<sup>17</sup> It is common for a person to be referred to as a “broker-dealer” regardless of whether both definitions apply. Generally, persons and entities that effect securities transactions or engage in written or oral communications with persons in the United States that are intended or likely to induce the purchase or sale of a security, coupled with other badges of broker-dealer activity (such as effecting a transaction as agent or principal, or regular involvement in the sales of an issuer’s securities), are likely to be a “broker-dealer” as defined under the Exchange Act and must either register in the United States as broker-dealers or operate pursuant to an exemption or exclusion from registration.

Regulation of brokers-dealers in the United States is effected at several levels. At the federal level, the Exchange Act requires that certain brokers-dealers register with the SEC. Registered broker-dealers are also required to become members of a self-regulatory organization, such as the Financial Industry Regulatory Authority, Inc., or a registered national securities exchange. Registered broker-dealers must also obtain insurance from and become members of the Securities Investor Protection Corporation, which is the self-insurance company of the broker-dealer industry. They are also required to meet minimum net capital requirements to maintain adequate capital to operate safely. Further, they are required to maintain personnel competency levels

by satisfying self-regulatory organizations' qualification requirements. In addition, registered broker-dealers are subject to extensive recordkeeping and reporting obligations, fiduciary duties and special antifraud rules. Finally, broker-dealers are subject to state securities laws in the states in which they do business.

The Investment Advisers Act of 1940, as amended (Advisers Act), defines an investment adviser as "any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as part of a regular business, issues or promulgates analyses or reports concerning securities."<sup>18</sup> A person may be deemed to be engaged in the business of providing advice about securities unless the advice is given solely incidental to a non-advisory business, does not specify particular securities and no special compensation is received.<sup>19</sup> The SEC construes the definition of investment adviser very broadly to encompass a wide range of persons, organizations, and activities. Such an entity is subject to investment adviser registration, unless an exemption from registration applies.

Until given its proper attention by the SEC or caselaw, under current law, carbon assets need to be scrutinized under the *Howey-Forman* test to determine whether U.S. federal securities laws are triggered. As the SEC has recently addressed global climate change issues from a disclosure perspective, it appears to the authors that a logical step for the agency would be to address the registration requirements, if any, of carbon assets.

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<sup>1</sup> [SEC Release Nos. 33-9016 and 34-61469 \(Feb. 2, 2010\)](#).

<sup>2</sup> *SEC v. W.J. Howey Co.*, [328 U.S. 293](#) (1946).

<sup>3</sup> *United Hous. Found., Inc. v. Forman*, [421 U.S. 837, 852](#) (1975).

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Milnarik v. M-S Commodities, Inc.*, [457 F.2d 274, 276-77](#) (7th Cir. 1972).

<sup>8</sup> *SEC v. Koscot Interplanetary, Inc.*, [497 F.2d 473, 478-79](#) (5th Cir. 1974).

<sup>9</sup> *SEC v. Glenn W. Turner Enters., Inc.*, [474 F.2d 476](#) (9th Cir. 1973), cert. denied, [414 U.S. 821](#) (1973).

<sup>10</sup> *SEC v. Edwards*, [540 U.S. 389](#) (2004); *SEC v. Mut. Benefits Corp.*, [408 F.3d 737](#) (11th Cir. 2005).

<sup>11</sup> *Supra* note 3.

<sup>12</sup> *Supra* note 2 at 300.

<sup>13</sup> In *Forman*, *supra* note 3, the U.S. Supreme Court held that a share of stock in a housing cooperative entitling the purchaser to lease an apartment in a building owned by the cooperative does not constitute an "investment contract" as defined by federal securities laws since, *inter alia*, the shares were not purchased for making profit but for acquiring housing.

<sup>14</sup> *Supra* note 3.

<sup>15</sup> *Supra* note 9 at 482.

<sup>16</sup> [Section 3\(a\)\(4\)](#) of the Exchange Act.

<sup>17</sup> [Section 3\(a\)\(5\)](#) of the Exchange Act.

<sup>18</sup> [Section 202\(a\)\(11\)](#) of the Advisers Act.

<sup>19</sup> [SEC Release No. IA-1092 \(Oct. 8, 1987\)](#).

## Securities & Exchange Commission SEC Adds New Units to Enhance Its Disclosure and Policy Operations

[SEC Press Release No. PR-2010-124 \(July 16, 2010\)](#)

The Securities and Exchange Commission (SEC) announced the addition of three specialized units within the Division of Corporation Finance (Division) to focus on large financial institutions, asset-backed securities, and new securities offerings and related capital market trends. According to the SEC, the new units enhance its disclosure review and policy operations. In this regard, Meredith Cross, Division Director, stated that the changes will help focus resources "more sharply on critically important institutions and financial products" so that the SEC "can stay ahead of the curve and better protect investors."

### *Financial Services Review Office*

The SEC explained that it will add a new financial services review office. According to the SEC, the office will expand its ability to review periodic reporting disclosures made by large bank holding companies and financial institutions by increasing the number of firms subject to review. In connection with its oversight, the SEC indicated that the office will share information that it obtains during its reviews with other units within the agency. Furthermore, the SEC noted that the office will allow for the centralization of staff expertise and the development of new disclosure review methods.

### *Asset-backed Securities Review Office*

Another new office will review disclosures concerning asset-backed securities and other structured products. According to the SEC, the office will take the lead on rulemaking and interpretative actions involving these products.

### *Securities Offerings and Capital Market Trends Review Office*

Finally, the SEC stated that it will add an office to review new securities products and related trends in the capital markets. Specifically, the SEC explained that the office will evaluate the effectiveness of rules and regulations and make recommendations with respect to these new securities products designed to enhance investor protection. As part of this effort, the SEC noted that the office will conduct market research, review securities offering documents, and manage the Division's consideration of new products.

## Bloomberg News

### Municipal Debt Board May Take Years to Craft Rules for Advisers

*By William Selway, Bloomberg News*

July 21 (Bloomberg) — The regulator of the \$2.8 trillion municipal-bond market may take as long as three years to set rules to curb influence peddling and restrain the conduct of financial advisers to U.S. local governments, its director said.

Legislation signed today by President Barack Obama gives the Municipal Securities Rulemaking Board, which regulates the state- and local-government bond industry, expanded power to oversee firms that advise local officials on debt, investment and derivative deals. Such advisers have operated without regulatory oversight until now.

“We have a process, a thoughtful process, which may take two or three years,” Lynnette Hotchkiss, the executive director of the Alexandria, Virginia-based board, said in an interview. The rules for advisers will include “conflict-of-interest,

pay-to-play, professional qualifications, fiduciary standards and other rules that apply just to this group,” she said.

The overhaul of the U.S. financial regulatory system follows the credit crisis that began with sub-prime mortgages three years ago, up-ending securities markets and saddling local governments with billions of dollars of dollars in unexpected costs when derivative-laden bond deals backfired. The new rules are the most sweeping to be enacted since the Great Depression.

The added oversight also comes as the Justice Department is conducting a criminal investigation into whether banks and financial advisers conspired to pay local governments below-market rates on investment deals.

### *Financial Advisers*

Financial advisory firms helped steer cities, towns and other public borrowers toward the now-costly derivative deals, which could provide banks with undisclosed fees 10 times as large as those received for underwriting bonds.

Such advisers also ran auctions for the investment contracts that localities buy with the proceeds of bond sales, investing the money until it's needed for construction or other projects. Those contracts are at the center of the Justice Department's bid-rigging investigation. Three former advisers from CDR Financial Products Inc., based in Los Angeles, and a former employee of Zurich-based UBS AG pleaded guilty this year and agreed to cooperate with the investigation.

The legislation puts financial advisers under the scrutiny of the municipal-rulemaking board for the first time. The industry's self-regulatory organization has in the past imposed limits on political contributions by bankers and has moved to increase the amount of information available to municipal-bond investors.

### *Registration Required*

The advisory firms will be required to register with regulators and abide by guidelines drawn up by the rulemaking board. At the same time, the 15-member board will be reorganized so that a majority of its members don't work for firms it oversees. Currently, 10 members work in the industry.

The rules also will force advisers to accept a fiduciary duty to their customers, requiring them to act in the best interests of the local governments that pay for their services.

Provisions of the financial-overhaul law, which aren't delegated to the rulemaking board, also call for rules governing interest-rate swap trades with Wall Street banks to ensure that local governments are aware of the risks involved. It also requires a two-year study into whether to require more disclosure of information by state and local governments that raise money from investors, including whether to repeal a law limiting the

Securities and Exchange Commission's power over municipal-debt issuers.

Peter Clarke, a managing director of JPMorgan Chase & Co. who is also the chairman of the rulemaking board, said the board will deliberate how to adapt rules, such as those barring underwriters from using political contributions to land work, to apply them to financial advisers.

"Things like that will be under discussion and how to adapt those to the new regulated parties," Clarke said in an interview.

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## Obama Signs Finance Law With Regulatory Battle Ahead

By *Phil Mattingly and Patrick O'Connor, Bloomberg News*

July 21 (Bloomberg) — President Barack Obama signed the most sweeping set of financial rules since the Great Depression today, kicking off an election-year fight to define how the law will be put into effect.

"This reform will help foster innovation, not hamper it," Obama said today during a bill-signing ceremony at the Ronald Reagan Building in downtown Washington. "It is designed to make sure that everyone follows the same set of rules, so that firms compete on price and quality, not tricks and traps."

With his signature, Obama capped a year-long legislative struggle to draft and pass the measure spurred by the 2008 financial crisis that triggered the collapse of Lehman Brothers Holdings Inc. and dragged down Wall Street and the U.S. economy.

The law, named after its principal authors, Connecticut Senator Christopher Dodd and Massachusetts Representative Barney Frank, gives the government new authority to unwind failing financial firms that may threaten the entire system, imposes new rules on derivatives markets and creates a consumer-protection agency at the Federal Reserve to monitor everything from home loans to credit cards.

Obama said the new rules will provide "the strongest consumer financial protections in history." He vowed it will bring an end to taxpayer bailouts of financial firms and said adjustments to the regulation may have to be made along the way.

### *Writing Rules*

Treasury Department and other officials now begin writing the regulations that will give the framework for enforcing the law, a process that may take a year.

Democrats say they expect the bill — and the Republicans' almost unanimous opposition to it — will give them an issue to trumpet during their campaigns for the midterm elections, in which analysts from both parties say Obama's party is all-but-assured of losing seats in Congress.

"It falls right into our frame of 'Whose side are you on?'" said New Jersey Senator Robert Menendez, chairman of the Democratic Senatorial Campaign Committee.

Republican Senate candidates in Arkansas, Illinois, Iowa, Louisiana, Missouri and North Carolina all voted against the bill in either the House or the Senate, so Democrats expect to maintain the drumbeat until November.

"The American people overwhelmingly want to see Wall Street reform," Menendez said. "Not only did they vote against it, now there are elements of their leadership that want to repeal it. We're happy to go at that."

### *Public Skeptical*

Almost four out of five Americans surveyed in a Bloomberg National Poll this month say they have just a little or no confidence that the measure will prevent or significantly soften a future crisis. More than three-quarters say they don't have much or any confidence the proposal will make their savings and financial assets more secure.

Forty seven percent of those polled said the bill will do more to protect the financial industry than consumers.

Texas Senator John Cornyn, who heads the National Republican Senatorial Committee, said that opposition to the measure probably won't be the party's rallying cry as the election approaches.

"It would be too early to tell," he said.

Over time, though, their opposition to what he deemed "a huge power grab" could play to Republicans' advantage.

"That will look to be a pretty good vote a year or two from now, when the economy continues to stumble along, credit's contracted and the only new jobs being added are those of federal government regulators," he said.

### *Shaping the Law*

For many of those with a stake in the final shape of the bill on Capitol Hill, the final policy implications will be determined in the coming months and years, according to Lawrence

Kaplan, an attorney at Paul Hastings Janofsky & Walker LLP in Washington.

Among those attending the ceremony were lawmakers, including Dodd and Frank, and business leaders, including Vikram Pandit, chief executive officer of Citigroup Inc. Robert Diamond, president of Barclays Plc and Gerald Hassell, president of the Bank of New York also were among those also invited.

Even with the signing, criticism of the law from business groups continued.

“This is nothing more than a financial regulatory boondoggle,” Tom Donohue, chief executive of the U.S. Chamber of Commerce, said in a statement. “It won’t strengthen our capital markets, it won’t jumpstart the economy, and it won’t help create any new jobs except in government.”

#### *Agency Action*

For the banking industry, the battle now shifts to the regulators, where an alphabet soup of federal agencies have been tasked with crafting the new rules mandated by Congress. At the Commodity Futures Trading Commission, Chairman Gary Gensler has convened 30 teams to construct a new regulatory system for the \$615 trillion over-the-counter derivatives market.

Derivatives are financial instruments based on the value of another security or benchmark. Some instruments, including contracts that insured mortgage-backed bonds, have been blamed for fueling a financial crisis that led to the worst recession since the Great Depression.

Securities and Exchange Commission Chairman Mary Schapiro has requested 800 new employees for the agency’s new responsibilities and Sheila Bair, chairman of the Federal Deposit Insurance Corp. said her agency will need up to \$50 million more budget as well as new hires with experience in investment banking and insurance as the agency prepares for its role as chief resolver of the largest failing financial institutions.

#### *Banking Rules*

For U.S. banks, the stakes could not be higher. International rules on capital and leverage are expected by year’s end and the Fed, Office of the Comptroller of the Currency, FDIC, SEC and CFTC will all dictate future earnings with their rulemakings.

“The 2,300 or so pages of Dodd-Frank only provides rough framework for the future regulatory structure,” said Kaplan, a former senior attorney at the Office of Thrift Supervision. “The full impact of the of the act won’t be known until the regulatory agencies complete the wiring, plumbing, drywalls and polish the new floors through the issuance of hundreds of regulations and possibly thousands of interpretations.”

—With assistance from Roger Runningen, Patricia Laya, Catherine Dodge and Rich Miller in Washington. Editors: Joe Sobczyk, Robin Meszoly

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## Hedge Funds

### Investment Advisers

## Congress Passes Financial Reform Legislation; Will Impose New Registration Requirements on Hedge Fund Managers

[H.R. 4173, 111 Cong. \(2010\)](#)

The Senate passed the Dodd-Frank Wall Street Reform and Consumer Protection Act on July 15, 2010, following passage in the House of Representatives on June 30, 2010. President Obama is expected to sign the bill into law during the week of July 19. The bill is widely viewed as the most sweeping financial reform legislation since the 1930s. It will impose new requirements on hedge funds and their managers, including registration, reporting, recordkeeping, and inspection requirements. The bill will also restrict proprietary trading by banking entities and restrict their ability to invest in or sponsor hedge funds or private equity funds.

Among other things, the bill will also (1) create an interagency Financial Stability Oversight Council (FSOC) to identify, monitor, and address systemic risks, including those involving nonbank financial companies; (2) implement a process for liquidating failing financial companies that pose a systemic risk; (3) regulate the over-the-counter derivatives markets by imposing central clearing, trade execution, capital, and margin requirements; (4) address executive compensation, corporate governance, and investor protection issues; and (5) create a Bureau of Consumer Financial Protection within the Federal Reserve System to regulate financial products and services offered to consumers. For summaries of the bill, see (1) [Weil, Gotshal & Manges LLP, \*Financial Regulatory Reform: An Overview of the Dodd-Frank Wall Street Reform and Consumer Protection Act\* \(July 16, 2010\)](#); (2) [Davis Polk & Wardwell, \*Summary of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Passed by the House of Representatives on June 30, 2010\* \(July 9, 2010\)](#); or (3) search Law Firm Research on Bloomberg for more.

### *Registration*

The bill will require many large investment advisers to private funds to register under the Investment Advisers Act of 1940 (Advisers Act) and be subject to Securities and Exchange Commission (SEC) regulation. Private funds will be defined as any issuer that relies on [Section 3\(c\)\(1\)](#) or [3\(c\)\(7\)](#) of the Investment Company Act of 1940 (Investment Company Act). Most mid-sized and small advisers will no longer be eligible to register with the SEC and will be subject to state regulation.

#### *Foreign Private Advisers*

Title IV of the bill will replace an Advisers Act registration exemption that many hedge fund managers and other fund advisers currently rely on, with a narrowly drawn exemption for foreign private advisers. Advisers Act [Section 203\(b\)\(3\)](#) currently provides a registration exemption for investment advisers with fewer than 15 clients, subject to certain conditions. The foreign private adviser exemption will generally apply to advisers that have no U.S. place of business, have fewer than 15 clients and investors in the United States, and less than \$25 million in assets under management attributable to those U.S. clients and investors. The SEC will be authorized to increase the \$25 million threshold and define technical, trade, and other terms used in the Advisers Act. However, the bill will not permit the SEC to define “client” for purposes of Advisers Act [Section 206\(1\)](#) or [206\(2\)](#) (antifraud) to include a private fund investor.

#### *Intrastate Advisers and Commodity Trading Advisers*

Title IV will also limit the current registration exemption for intrastate advisers by prohibiting private fund advisers from relying on Advisers Act [Section 203\(b\)\(1\)](#). However, private fund advisers will still be able to rely on Advisers Act [Section 203\(b\)\(6\)](#), an Advisers Act registration exemption for commodity trading advisers registered with the Commodity Futures Trading Commission, provided certain conditions are met.

#### *Private Fund Advisers with Less than \$150 Million in Assets*

Title IV will require the SEC to adopt a registration exemption for investment advisers that act solely as advisers to private funds and have less than \$150 million in assets under management in the United States. The SEC may, nevertheless, impose reporting and recordkeeping requirements on such exempt advisers.

#### *Venture Capital Funds, Small Business Investment Companies, and Family Offices*

Title IV will provide registration exemptions for advisers to venture capital funds and small business investment companies, and will provide an exclusion from the definition of investment adviser for advisers to family offices. The SEC will be required to issue rules on the family office exclusion,

the definition of “venture capital fund,” and any reporting and recordkeeping requirements the SEC deems appropriate for unregistered venture capital fund advisers.

#### *Mid-Sized Advisers*

Title IV will effectively increase the minimum amount of assets under management necessary for most advisers to register with the SEC from \$25 million to \$100 million. The higher asset threshold will apply to those that are required to be registered as an investment adviser at the state-level and subject to state examination. However, advisers that would be required to register with 15 or more states will be allowed to register with the SEC instead. Advisers to registered investment companies and regulated business development companies will still need to be SEC-registered.

The bill's registration provisions will generally become effective one year after enactment.

#### *Reporting, Recordkeeping, and Inspections*

Section 404 of the bill will authorize the SEC to require any investment adviser registered under the Advisers Act to maintain records of, and file reports regarding, its private funds. The SEC will be required to conduct periodic inspections of all private fund records maintained by a registered investment adviser and be authorized to conduct special examinations. Any records and reports required to be maintained will need to include a description of:

- leverage use;
- counterparty credit risk exposure;
- asset types and the amount of assets under management;
- trading practices and investment positions;
- valuation policies and practices;
- side letters; and
- such other information called for by the SEC.

Section 404 will also specifically require the SEC to issue rules mandating that each private fund adviser file reports containing information that the SEC deems “necessary and appropriate in the public interest and for the protection of investors or for the assessment of systemic risk.” Further, Section 408 of the bill will permit new SEC reporting and recordkeeping requirements specific to private fund advisers relying on the new registration exemption for advisers with less than \$150 million in assets under management. The bill also provides certain protections regarding the confidentiality of proprietary information provided to the SEC or other governmental entities.

Additionally, Section 405 of the bill will amend Advisers Act [Section 210\(c\)](#), to permit SEC rules requiring investment advisers (registered or unregistered) to disclose the “identity, investments, or affairs” of clients for purposes of assessing systemic risk.

### *Volcker Rule Provisions*

Section 619 of the bill will subject banks and their affiliates to new restrictions dubbed the “Volcker Rule,” after former Federal Reserve Chairman Paul A. Volcker. The Volcker Rule provisions will restrict proprietary trading at insured depository institutions, bank holding companies, companies that otherwise control insured depository institutions, and any of their affiliates or subsidiaries (collectively, Banking Entities). The Volcker Rule provisions also will restrict Banking Entities from investing in, sponsoring, or engaging in certain other transactions with, hedge funds and private equity funds. Nonbank financial companies that pose a systemic risk may be subject to capital requirements and quantitative limits.

Restrictions on proprietary trading, and relationships and transactions with hedge funds and private equity funds will be implemented following a study and recommendations by the FSOC, and rulemaking by federal regulators. The Volcker Rule provisions will become effective after the rulemaking subject to a two-year transition period with extensions available.

### *Proprietary Trading*

Under the Volcker Rule provisions, Banking Entities will be subject to restrictions on acquiring or disposing of stocks, bonds, options, commodities, derivatives, or other financial instruments for their own trading account. However, Banking Entities will be permitted to engage in certain related activities if the transaction or activity does not involve or result in a material conflict of interest between the Banking Entity and its clients, customers, or counterparties, and certain other conditions are met. For example, Banking Entities will be permitted to acquire or dispose of financial instruments on behalf of customers, or as part of underwriting, market making, or hedging activities. Banking Entities will also be able to invest in U.S. Treasury securities, U.S. agency securities, securities issued by the Government National Mortgage Association (i.e., Ginnie Mae), the Federal National Mortgage Association (i.e., Fannie Mae), or the Federal Home Loan Mortgage Corporation (i.e., Freddie Mac), among others, and obligations issued by states or their political subdivisions.

### *Sponsoring*

The term “sponsor” will mean: (1) serving as a general partner, managing member, or trustee of the fund; (2) selecting or controlling (or having employees, officers, directors, or agents who constitute) a majority of the directors, trustees, or management of the fund; or (3) sharing the same name with the fund or a variation thereof. The terms “hedge fund” and

“private equity fund” will mean any entity that is exempt from registration as an investment company pursuant to Investment Company Act Section 3(c)(1) or 3(c)(7), or a similar fund as determined by federal regulators.

Banking Entities will, nonetheless, be permitted to sponsor hedge funds or private equity funds, provided there are no material conflicts of interest, the Banking Entity provides bona fide trust, fiduciary, or investment advisory services, the Banking Entity’s ownership interest in the fund is reduced to a de minimis size within one year of the fund’s establishment, and certain other conditions are met.

### *Other Relationships with Hedge Funds and Private Equity Funds*

Any Banking Entity that serves, directly or indirectly, as the investment manager, investment adviser, or sponsor to a hedge fund or private equity fund would be prohibited from entering into a “covered transaction” with the hedge fund or private equity fund. The prohibition would turn on the definition of “covered transaction” in [Section 23A](#) of the Federal Reserve Act, which includes loans or extensions of credit, among other things. These Banking Entities would also be subject to [Section 23B](#) of the Federal Reserve Act as if the Banking Entity were a “member bank” and the hedge fund or private equity fund were an “affiliate.” Nevertheless, certain prime brokerage arrangements with hedge funds or private equity funds may be permitted.

### *Activities of Foreign Banking Entities*

Prohibitions against investing in or sponsoring hedge funds or private equity funds would not apply to a foreign Banking Entity if the investments and activities are conducted pursuant to [Section 4\(c\)](#) of the Bank Holding Company Act of 1956 solely outside the United States, and the Banking Entity is not directly or indirectly controlled by a U.S. company.

## Bloomberg News

### Hedge Funds’ Potential Threat Is Unclear, SEC’s Schapiro Says

*By Jesse Westbrook, Bloomberg News*

July 20 (Bloomberg) — Federal regulators may find it difficult to determine whether hedge funds pose risks that could threaten the U.S. economy and what the government should do to rein in industry trading practices, Securities and Exchange Commission Chairman Mary Schapiro told lawmakers today.

“It’s really not clear” whether the hedge-fund industry presents “systemic risks,” Schapiro said at a House Financial Services subcommittee hearing. “It will be very important” for regulators “to decide where the lines are drawn.”

Legislation approved by Congress last week establishes the Financial Stability Oversight Council, a super-regulator including officials from the SEC, Federal Reserve and Treasury Department that will monitor market participants with potential to roil the economy. The council, which would have authority over hedge funds it deems systemically risky, could direct the Fed to halt lines of business.

The bill overhauling financial-industry regulation also requires hedge-fund managers to register with the SEC, making them subject to disclosure requirements and agency inspections. The SEC will need to hire more employees to examine all the hedge funds that will come under its purview, Schapiro said.

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## Madoff Trustee Sues Fairfield Co-Founder Noel

By Bob Van Voris, Bloomberg News

July 21 (Bloomberg) — Fairfield Greenwich Group's co-founder Walter Noel was sued by the trustee overseeing the liquidation of Bernard Madoff's firm as part of an amended lawsuit that names 43 new defendants.

Noel and the other defendants worked with Madoff and his firm "to commit, and exponentially expand, the single largest financial fraud in history," trustee Irving Picard said today in the [complaint](#) in U.S. Bankruptcy Court in New York. "Every dollar the defendants purportedly 'earned,' and every dollar they kept to unjustly enrich themselves, was stolen money."

Madoff, 72, is serving a 150-year term in federal prison in Butner, North Carolina, after pleading guilty to orchestrating history's biggest Ponzi scheme. Fairfield Greenwich was a marketing and investor-relations arm for Bernard L. Madoff Investment Securities LLC, helping to enable the scheme, Picard said.

Picard's suit seeks more than \$3.6 billion in damages from the Fairfield Greenwich defendants.

A Fairfield Greenwich spokesman, Thomas Mulligan, reading from a company statement, said the decision to expand the lawsuit was "incomprehensible" because the company is involved in good-faith negotiations with Picard.

"The Madoff trustee's amended complaint is replete with false, misleading and rehashed accusations," Fairfield Greenwich said in the statement.

Top Fairfield Greenwich executives invested in Madoff along with their clients, according to the statement. They lost more than \$70 million the fraud, Fairfield Greenwich said.

*Suit in 2009*

Picard in May 2009 sued three Fairfield Greenwich "feeder funds" that channeled \$4.7 billion to Madoff Investment Securities and withdrew billions from the firm.

Picard today added 24 Fairfield Greenwich units and 19 people who held management positions at the firm or marketed the feeder funds. He claims the feeder funds no longer have most of the money they got from Madoff.

Picard claimed Noel, a founding partner and director of Fairfield Greenwich, and the other individual defendants made millions of dollars by ignoring red flags and helping Madoff accomplish his fraud.

"Noel and his immediate and extended family became exceptionally wealthy due to FGG's de facto partnership with Madoff," Picard said.

*Life of Grandeur*

Noel took hundreds of millions of dollars in fees and profit, allowing him and his family "to live what has been publicly described as a life of grandeur, including a mansion in Greenwich, Connecticut, a tropical retreat in Mustique, and extravagant vacation homes in Palm Beach and Southampton," Picard said.

Among the other individuals added to the case by Picard today were Fairfield Greenwich co-founding partners Jeffrey Tucker and Andres Piedrahita.

"The defendants were not victims," Picard said in today's complaint. "They were enablers. They were facilitators. They deepened the pain of Madoff's customers and their own investors. The effect of their actions was a catastrophic continuation of the Ponzi scheme, the worsening of the BLMIS insolvency, and billions of dollars in additional damages."

When Madoff was arrested in December 2008, account statements showed \$65 billion in nonexistent client investments in 4,900 accounts, according to Picard. Investors lost about \$20 billion in principal.

The case is *Picard v. Fairfield Sentry Ltd.*, [No. 09-AP-1239](#), U.S. Bankruptcy Court, Southern District of New York (Manhattan).

—With assistance from Steven Church in Wilmington, Delaware. Editors: Stephen Farr, Fred Strasser.

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## New York City Pensions Consider First Hedge-Fund Investments

By Martin Z. Braun, Bloomberg News

July 21 (Bloomberg) — New York City's pension funds for police officers, firefighters and civil employees are seeking proposals from hedge fund consultants as they weigh whether to invest in the loosely regulated investment pools.

The three funds, with combined assets of \$64.5 billion as of March 31, want advice from firms on formulating strategy, identifying new investments and monitoring portfolios, according to a request for proposals from the comptroller's office.

The pension plans are considering investing in hedge funds even as money flowing into the pools, which hold \$1.65 trillion in assets, slowed by 30 percent in the second quarter, according to Hedge Fund Research Inc. One of five tax dollars collected by New York City, about \$7.6 billion, will go into the pension funds this year. The city fired six money managers earlier this year after "poor performance" of the funds.

"The pension funds have not historically invested in hedge funds," said Mike Loughran, spokesman for Comptroller John Liu, in an e-mail. He declined to comment further.

The three-year contract would also include investment research. New York City has five public pension funds with assets of \$103.8 billion as of May 31. None of the pensions have invested with hedge funds.

Investors added a net \$9.5 billion to hedge funds in the three months through June, down from \$13.7 billion in the prior period, the Chicago-based research firm HFR said yesterday, as concerns about Europe's debt crisis and the possible slowing of economic growth pushed stock markets down.

### *Average Decline*

Hedge funds posted an average decline of 2.5 percent in the three months ended June 30 as the Standard & Poor's

500 Index of the largest U.S.-listed companies slumped 12 percent, the first quarterly drop in a year.

The city funds are asking firms to describe how they analyze hedge funds, including evaluating risk and conflicts of interest. It also asks firms to provide a track record of all investment recommendations they've offered.

Proposals to the city comptroller are due Aug. 9. A contract may be awarded as early as October.

—With assistance from Saijel Kishan in New York. Editors: Walid el-Gabry, Ted Bunker

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## Investment Advisers

### Advisory Fraud

#### Sixth Circuit Affirms Fraud Convictions against Hedge Fund Adviser, Upholds Fiduciary Duty Instructions

[United States v. Lay, No. 08-03892, 2010 BL 159320 \(6th Cir. July 14, 2010\)](#)

The U.S. Court of Appeals for the Sixth Circuit affirmed a district court's conviction of Mark D. Lay in connection with fraud charges related to an investment by the Ohio Bureau of Workers' Compensation (Bureau) in the Active Duration Fund, a hedge fund founded by Lay. A federal grand jury indicted Lay on one count under the antifraud provisions of [Section 206](#) of the Investment Advisers Act of 1940 (Advisers Act), claiming that Lay exercised excessive leverage in violation of the underlying hedge fund agreement, and concealed these actions. The indictment also alleged that Lay's conduct constituted mail fraud and wire fraud because Lay sent interstate e-mails, faxes, and trade confirmations to carry out the trades. After the jury found Lay guilty on all counts, Lay moved for judgment of acquittal and for a new trial, which the district court [denied](#). On appeal, Lay argued that the jury instructions were improper and that insufficient evidence supported the jury's verdict because, as a hedge fund adviser, Lay had a fiduciary relationship only with the hedge fund, not with its investors. The Court held that because a hedge fund adviser can, in some circumstances, have a fiduciary relationship with an investor, the jury instructions were correct and sufficient evidence supported Lay's conviction. The Court also rejected Lay's challenges to the district court's restitution and forfeiture determinations.

*Lay's Investment Advice to the Ohio Bureau  
of Workers' Compensation*

Summarizing the facts as presented by the Government, the Court stated that Lay began serving as investment adviser to the Bureau in 1992 when Lay's company, Capital Management, Inc., began managing the Bureau's investment in the Long Fund, a long-term bond fund. In September 2003, the Bureau allegedly shifted \$100 million from the Long Fund to the Active Duration Fund. The Government alleged that although the Bureau's hedge fund agreement with the Active Duration Fund set a 150 percent leveraging guideline, Lay consistently leveraged fund assets well over that threshold. In May 2004, after Bureau officials discussed recent Active Duration Fund losses with Lay, the Bureau invested an additional \$25 million in the fund to avoid losing its entire investment, and then terminated its interest in the fund. The Bureau recovered only about \$9 million from its \$225 million investment in the Active Duration Fund.

*District Court Jury Instructions*

The district court instructed the jury that, in order to find Lay guilty of investment adviser fraud, the Government had to prove each element of either Advisers Act Section [206\(1\)](#), [206\(2\)](#) or [206\(4\)](#). With respect to Sections 206(1) and (2), the district court instructed the jury that the Government needed to prove beyond a reasonable doubt that the Bureau was Lay's client with respect to its investment in the Active Duration Fund. With respect to Section 206(4), the district court also instructed the jury that if it found that the Bureau was not Lay's client with respect to the Active Duration Fund, it was to determine as a matter of fact whether Lay nonetheless had a fiduciary duty with regard to the fund.

*Investment Adviser Fraud Conviction Affirmed*

The Court rejected Lay's argument that he owed no fiduciary duty to the Bureau. Lay argued that the duty of a hedge fund adviser is strictly to the hedge fund, and not to the various investors in the fund, and therefore the jury instructions permitting the jury to find such a fiduciary duty were erroneous. However, the Court held that the jury instructions were proper, and the evidence presented permitted a reasonable jury to find that Lay owed the Bureau a fiduciary duty with respect to the Active Duration Fund. The Court noted that Lay never disputed that he had an investment-adviser relationship, and therefore a fiduciary relationship, with the Bureau as to its Long Fund investment, and the evidence indicated that his relationship extended to the Bureau's Active Duration Fund investment. The Court also stated that the Bureau was not a typical hedge fund investor because it was the only investor in the Active Duration Fund at the relevant time and had an active role in the investment.

The Court noted that *Goldstein v. SEC*, [451 F.3d 873](#) (D.C. Cir. 2006) did not stand for the proposition that a

hedge fund investor could never be a client of a hedge fund adviser, or be owed a fiduciary duty by one, for purposes of the criminal fraud provisions of the Advisers Act. Rather, according to the Court, *Goldstein* held that the Securities and Exchange Commission had "not justified treating *all* investors in hedge funds as clients" in light of the typical hedge fund structure whereby the limited partners are passive investors that take no part in management activities. However, the Court noted that *Goldstein* acknowledged that "different classes of investors may have different rights or privileged with respect to their investments" and that in certain circumstances a client relationship may exist. The Court concluded, "It was therefore entirely consistent with *Goldstein* for the district court in Lay's case to permit the jury to find as fact that Lay owed the Bureau a fiduciary duty with respect to the Active Duration Fund. The jury's finding that Lay was guilty of investment adviser fraud is also consistent with *Goldstein* because the relationship between the Bureau and Lay as to the Active Duration Fund was not a typical hedge fund adviser-investor relationship."

The Court concluded that, viewing the evidence in the light most favorable to the Government, a rational juror could have found Lay guilty of advisory fraud based on his misrepresentations of his leveraging activities to the Bureau.

*Mail and Wire Fraud Convictions Affirmed*

The Court held that sufficient evidence also supported the jury's determination that Lay was guilty of mail and wire fraud. The Court found that the evidence suggested that Lay's misrepresentations of his leveraging activity caused the Bureau to invest in the Active Duration Fund, and that the trade confirmations, e-mails, and faxes through which Lay conducted the fraud "were designed to lull the victims into a false sense of security, postpone their ultimate complaint to authorities, and therefore make the apprehension of the defendants less likely than if no mailings had taken place." *United States v. Daniel*, [329 F.3d 480](#) (6th Cir. 2003).

The Court further held that the district court's jury instructions with respect to the mail and wire fraud counts were correct. As with respect to the Advisers Act count, the Court rejected Lay's claims that he owed the Bureau no fiduciary duty.

*Restitution and Forfeiture Determinations*

Finally, the Court held that the district court properly ordered restitution totaling \$212 million, the amount of the Bureau's losses due to Lay's over-leveraging of Active Duration Fund assets. The Court also affirmed the district court's order that \$590,526.23 be forfeited, based on the amount the jury found that Lay obtained from his mail and wire fraud.

## Mandatory Client Disclosure

### SEC Adopts Amendments to Form ADV, Part 2; New “Brochure” Will Expand Adviser Disclosure and Be Filed Publicly

[SEC Press Release No. PR-2010-127 \(July 21, 2010\)](#)

The Securities and Exchange Commission (SEC) unanimously approved changes to Form ADV, Part 2, commonly referred to as an investment adviser’s “brochure.” Part 2 is part of the registration form used by investment advisers to register under the Investment Advisers Act of 1940 (Advisers Act) and serves as a registered adviser’s principal disclosure document to clients and prospective clients. It also can be used to satisfy state-specific requirements. According to the SEC’s press release, the new brochure will be organized in a consistent, uniform manner that will allow investors to better compare expanded disclosure about advisers. Advisers will be required to deliver the brochure to clients and provide them with annual updates. Advisory firms also will be required to disclose information about employees providing advisory services to clients in “brochure supplements.”

Advisers will be required to publicly file an electronic version of the new brochure. The SEC stated that most investment advisers will begin distributing the new brochure and publicly filing it in the first quarter of 2011. The SEC also noted that it authorized its staff to delay publication of the new Form ADV, Part 2 for five business days in order to incorporate technical, state-specific requirements into the form. It appears that advisers will continue to be able to use the new Part 2 to satisfy Advisers Act and applicable state requirements.

#### *Current Form ADV, Part 2*

Currently, [Form ADV, Part 2](#) is organized in a “check-the-box” format, requiring advisers to respond to a series of multiple-choice and fill-in-the-blank questions. Although [Form ADV, Part 1](#) currently is required to be filed electronically and made publicly available, Part 2 is not. The SEC [re-proposed](#) amendments to Part 2 on March 3, 2008, after incorporating public comments to the SEC’s original April 5, 2000 [proposal](#).

#### *Expanded Disclosure Items*

The new brochure will require plain English disclosure of an adviser’s business practices, fees, conflicts of interest, and disciplinary information. Specifically, the new brochure will require expanded disclosure regarding an adviser’s (1) advisory business; (2) fees and compensation; (3) performance-based fees and side-by-side management practices; (4) methods of analysis and investment strategies; (5) disciplinary information; (6) code of ethics, participation or interest in client transactions, and proprietary trading; and (7) brokerage practices.

#### *Advisory Business*

An adviser will be required to disclose the types of advisory services offered and whether it holds itself out as a specialist in a particular type of service.

#### *Fees and Compensation*

An adviser will need to describe how it is compensated for advisory services, provide a fee schedule, and disclose whether fees are negotiable. If there are other fees or expenses that clients must pay, such as brokerage fees, custody fees, or fund expenses, the adviser also will be required to describe them.

#### *Performance-based Fees and Side-by-side Management*

If an adviser accepts performance-based fees or supervises an individual who does, the adviser will be required to disclose that fact. The adviser also will be required to explain any conflicts of interest that arise from the side-by-side management of accounts that are charged a performance-based fee and those that are not, as well as how such conflicts are addressed.

#### *Methods of Analysis and Investment Strategies*

An adviser’s methods of analysis and investment strategies will need to be described, and if the adviser uses a specific method or strategy or recommends a particular type of security, material risks will need to be explained and discussed in detail if unusual.

#### *Disciplinary Information*

Material facts regarding an adviser’s disciplinary history will need to be disclosed if the legal or disciplinary event is material to a client’s evaluation of the adviser’s business or the integrity of its management personnel. Prompt delivery of updated information also will be required if there is a material change to an existing disciplinary event or a new event arises.

#### *Code of Ethics, Participation or Interest in Client Transactions, and Proprietary Trading*

An adviser will need to briefly describe its code of ethics and note that a copy is available upon request. If an adviser or its affiliate has a material financial interest in securities which it recommends to clients, or buys or sells for client accounts, the adviser will be required to disclose the practice and the resulting conflicts of interest. To the extent the adviser or its affiliate invests in, or is allowed to invest in, the same or related securities recommended to clients, the conflicts and the manner in which those conflicts are mitigated will need to be disclosed. Similar disclosure addressing conflicts of interest also will be required if the adviser trades in recommended securities at or around the same time as a client.

## Brokerage Practices

Factors that an adviser considers in selecting or recommending broker-dealers for client transactions and in determining the reasonableness of broker compensation will need to be described. Conflicts of interest associated with soft dollar arrangements, client referrals, directed brokerage, and trade aggregation practices also will need to be addressed.

### Brochure Supplements

Under the new standards, an advisory firm will be required to deliver brochure supplements to new and prospective clients. The supplements will briefly summarize the educational background, business experience and activities, and disciplinary history of the specific individuals providing investment advice to a particular client. Contact information regarding an individual's supervisor also will need to be disclosed.

### Delivery Requirements

Advisers will be required to deliver the new brochure to a client before or at the time the adviser enters into an advisory contract with the client. An annual summary of material changes to the brochure also will need to be provided to clients, and advisers will either have to deliver a completely updated brochure or offer to provide one to clients.

## Investment Companies

### Custody

#### SEC Staff Issues No-Action Letter to Chicago Mercantile Exchange regarding Applicability of Investment Company Act Rule 17f-6 to Credit Default Swaps

[SEC No-Action Letter to CME Group, Inc. \(July 16, 2010\)](#)

The staff of the Division of Investment Management (Staff) of the Securities and Exchange Commission (SEC) issued a no-action letter to the CME Group, Inc. (CME Group), the holding company of the Chicago Mercantile Exchange (CME), in connection with the clearance of credit default swaps (CDS) by CME. The Staff advised the CME Group that it would not recommend enforcement to the SEC under [Section 17\(f\)](#) of the Investment Company Act of 1940 (Investment Company Act) against any registered investment company (Fund) if the Fund or its custodian places and maintains cash or certain securities (Assets) in the custody of CME or a CME clearing member (CME Clearing Member) that is a futures commission merchant (FCM) registered with the Commodity Futures Trading Commission (CFTC), for purposes of meeting CME's or a CME Clearing Member's margin requirements for certain CDS cleared by CME.

## Clearance of CDS through CME

The CME Group described itself as a designated contract market regulated by the CFTC, for the trading of futures contracts and options on futures contracts. In addition, the CME Group stated that it operates its own clearing house (Clearing House), a division of CME, which is a derivatives clearing organization also regulated by the CFTC. According to the CME Group, the Clearing House clears, settles, and guarantees the performance of all transactions for which the CME Group provides clearing services, including CDS. The CME Group noted that customers, including Funds, seeking to clear CDS through the Clearing House are required to maintain a clearing relationship with a CME Clearing Member, which serves as their agent and guarantor. The CME Group explained that CME Clearing Members require customers to deposit initial margin as security for performance of their obligations, and that the CME Clearing Member then clears the transaction and posts margin either directly with CME, or with another CME Clearing Member who then clears the transaction and posts margin with CME.

### Need for No-Action Relief

Subject to certain conditions, [Rule 17f-6](#) under the Investment Company Act permits a Fund to place and maintain Assets with an FCM that is registered under the Commodity Exchange Act (CEA) and that is not affiliated with the Fund, in amounts necessary to effect the Fund's transactions in "exchange-traded futures contracts" (Exchange-Traded Futures Contracts) and "commodity options" (Commodity Options), as defined in the rule. Among other conditions, the FCM must either comply with the segregation requirements of [Section 4d](#) of the CEA and the rules thereunder or, if applicable, the secured amount requirements of [CFTC Rule 30.7](#). The CME Group acknowledged that cleared CDS do not fall under the definition of Exchange-Traded Futures Contracts or Commodity Options, and therefore Rule 17f-6 does not on its face apply to CDS.

### Compliance with Rule 17f-6 Requirements

The CME Group argued that "cleared CDS contracts are functionally equivalent to [Exchange-Traded Futures Contracts and Commodity Options] and that each of the conditions set forth in Rule 17f-6 will be satisfied in all respects." The CME Group noted that the CFTC recently adopted amendments to its bankruptcy rules that provide customer protection comparable to CEA Section 4d by creating a separate account class that would apply to over-the-counter derivatives in the event of a bankruptcy of an FCM. The CME Group added that CME rules to be implemented in September will largely mirror the provisions of CEA Section 4d and CFTC regulations prior to an FCM bankruptcy. In addition, the CME Group represented that, prior to the implementation of the new CME rules, CME Clearing Members will comply with the secured amount requirements of CFTC Rule 30.7.

*Public Interest in Central Counterparties*

The CME Group further argued that extending Investment Company Act Rule 17f-6 to CDS was consistent with the SEC's "underlying policy to facilitate the central clearing of CDS transactions to reduce systemic risk in the global financial markets." According to the CME Group, the Clearing House would reduce counterparty risk in the CDS market by allowing customers to benefit from the Clearing House's financial safeguards. The CME Group stated that the SEC and Staff "have sought to provide Funds with flexibility in their custodial arrangements where necessary to facilitate their investment and trading activities in an efficient manner, as long as Fund assets are adequately protected by procedures similar to the applicable rules under Section 17(f), including situations in which there was not literal compliance with the provisions of the relevant rule." The CME Group also noted the SEC [exemptive order](#) (SEC Order) issued to CME and CME Clearing Members in March 2010, which temporarily exempts CME and CME Clearing Members from certain requirements under the Securities Exchange Act of 1934 with respect to certain CDS transactions.

*Limits of No-Action Relief*

Based on the facts and representations set forth by the CME Group and without expressing any legal conclusions, the Staff granted the requested no-action relief. The Staff noted that its position was temporary, and would expire after the SEC Order is no longer effective.

## Liability & Defense

### Appointment of Lead Plaintiff in Securities Class Actions

#### Lead Plaintiff Appointed under LIFO Methodology; S.D.N.Y. Reserves Ruling on Multiple Firms Serving as Lead Counsel

[City of Monroe Employees' Retirement System v. The Hartford Financial Services Group, No. 10-CV-02835, 2010 BL 161582 \(S.D.N.Y. July 15, 2010\)](#)

The U.S. District Court for the Southern District of New York appointed the Arkansas Teacher Retirement System (Arkansas Teacher) as lead plaintiff in a securities fraud class action against The Hartford Financial Services Group, Inc. and four of its former and current officers and directors. The Court held that the presumption that Arkansas Teacher was the most adequate lead plaintiff was not rebutted by any other movant. The Court, however, deferred approving Arkansas Teacher's selection of two law firms to serve as lead counsel.

*Lead Plaintiff Movants*

As the Court explained, five sets of investors moved to be appointed lead plaintiff. Three movants subsequently removed themselves from contention leaving the Court with a choice of Arkansas Teachers or Stichting Philips Pensioenfond and the State Universities Retirement System of Illinois (Stichting-SURSI). To determine which movant was the [most adequate plaintiff](#), the Court first examined which had the largest financial interest in the litigation.

*Largest Financial Interest*

Noting that neither the Private Securities Litigation Reform Act of 1995 (PSLRA) nor the U.S. Court of Appeals for the Second Circuit explicitly explains the proper methodology for determining the largest financial interest, the Court applied a four-factor test evaluating the (1) total number of shares purchased during the proposed class period, (2) net shares purchased, (3) net funds expended, and (4) approximate losses. The Court placed the most emphasis on the final factor—approximate losses.

*Aggregation*

According to the Court, Stichting-SURSI aggregated their losses to compete with Arkansas Teacher for lead plaintiff status. The Court found no reason why the two entities could not aggregate their losses. As the Court explained, the PSLRA [specifically](#) "contemplate[s] the selection of a 'group of persons' as the 'most adequate plaintiff.'" A group of two institutional investors like Stichting-SURSI, the Court continued, "would [not] be counter to the PSLRA." The Court, however, also noted that there was "no reason that joint lead plaintiffs would serve that interest any greater than the appointment of a single, experienced, institutional investor such as Arkansas Teacher."

*FIFO v. LIFO*

Although the Court permitted Stichting-SURSI to aggregate their losses, the parties disagreed as to the proper methodology for calculating losses. Stichting-SURSI promoted "first in, first out" (FIFO), while Arkansas Teacher supported "last in, first out" (LIFO). Generally, the Court stated, courts prefer LIFO over FIFO because LIFO "takes into account gains that might have accrued to plaintiffs during the class period due [to] the inflation of the stock price" while "FIFO . . . may exaggerate losses." The Court followed the trend of applying a LIFO methodology. It specifically rejected Stichting-SURSI's argument that FIFO should be used because it is commonly applied in securities fraud settlements. The Court noted that the loss standard at the settlement phase is "less searching" and it would be preferable to apply the same standard that would be used at trial. The Court thus concluded that LIFO is the better methodology to assess "the most accurate measure of actual losses" at trial and at the lead plaintiff stage.

While the Court noted that certain of the factors for determining the largest financial interest favored Stichting-SURSI, Arkansas Teachers nevertheless had the greatest individual loss and, thus, was the presumptive lead plaintiff.

#### *Additional Requirements*

Turning to the requirements of [Federal Rule of Civil Procedure 23](#), the Court held that Arkansas Teacher satisfied the typicality and adequacy requirements. In an attempt to rebut the most adequate plaintiff presumption, Stichting-SURSI argued that a “joint lead plaintiff is preferable to a sole lead plaintiff.” The Court noted that Stichting-SURSI’s argument failed to proffer evidence that Arkansas Teacher (1) could not “fairly and adequately protect the interests of the class,” or (2) was subject to unique defenses. Accordingly, Stichting-SURSI failed to rebut the most adequate plaintiff presumption.

#### *Lead Counsel*

The Court concluded its analysis by refraining from approving Arkansas Teacher’s selection of lead counsel. Observing that the two law firms selected to serve as lead counsel “appear qualified to serve adequately,” the Court questioned why a single firm would not be as effective. The Court noted that “Arkansas Teacher provides no justification as to why more than one firm is required in order to serve the best interest of the class.” The Court directed Arkansas Teacher to “either justify the necessity of appointing two firms as lead counsel in this litigation or select one firm to serve as the sole lead counsel.”

## Scienter

### Plaintiff Fails to Properly Plead Scienter in Securities Fraud Action against American Express

[Local No. 38 Int’l Brotherhood of Electrical Workers Pension Fund v. American Express Co., No. 09-CV-03016 \(S.D.N.Y. July 19, 2010\)](#)

The U.S. District Court for the Southern District of New York dismissed a securities fraud class action complaint against American Express Co. (AMEX), CEO Kenneth Chenault, and CFO Daniel Henry (collectively, Defendants) for violations of [Sections 10\(b\)](#) and [20\(a\)](#) of the Securities Exchange Act of 1934. The Court held that plaintiff failed to adequately allege scienter.

#### *Credit Card Expansion*

As the Court explained, “AMEX is a global provider of general purpose cards and travel-related services.” According to plaintiff, AMEX began to expand its general purpose card business in 2004 to offer more credit cards—cards that allow holders to repay a portion of the charges each

month—in addition to charge cards that require repayment in full each month. Plaintiff alleged that in the second half of 2007, Defendants made false and misleading statements concerning underwriting guidelines for issuing credit cards, the credit quality of AMEX’s portfolio, and the company’s level of loss reserves. Defendants’ positive statements purportedly concealed escalating credit problems among cardholders allegedly caused by AMEX’s lowering of its underwriting guidelines. In 2008, AMEX experienced a significant decline in its stock price in connection with negative announcements related to loss reserves, weakened business conditions, and disappointing earnings.

#### *Scienter*

Using statements from 12 confidential witnesses (CWs), plaintiff alleged that Defendants knew or recklessly disregarded that “AMEX had lowered its lending guidelines, was exposed to increasing delinquencies, and had established improper loss reserves.” The Court disagreed, holding that plaintiff’s allegations failed to raise a strong inference of scienter.

The Court first determined that plaintiff failed to allege that either Chenault or Henry “benefited in a concrete and personal way from the purported fraud.” Their only alleged motive, the Court stated, was a “desire to maintain AMEX’s strong credit rating so that the Company did not lose capital markets funding.” The Court held that the purported motive was common to all corporate executives and insufficient to support an inference of scienter.

Plaintiff further failed to allege facts demonstrating that Defendants had access to information contradicting their public statements. As the Court explained, to allege reckless intent, plaintiff needed to identify precisely contradictory reports or statements. Plaintiff’s allegations, however, were “a gossamer patchwork of general statements from the CWs and inferences from reports published after the allegedly false and misleading statements were made.” The CWs, the Court continued, offered “anecdotes and conclusory statements of belief” rather than detailed descriptions of contradictory information known to Defendants. Moreover, the Court observed that most of the CWs were “rank-and-file” employees who did not have contact with Chenault and Henry. Even those CWs with access to the individual defendants or to allegedly adverse internal information still failed to tie Chenault and Henry to that information.

Next, the Court rejected an inference of scienter based on AMEX’s “corporate hierarchy.” Plaintiff alleged that AMEX’s risk management division “compiled credit and performance data and reported its conclusions” to management. Problems with the allegation were twofold, stated the Court. First, plaintiff failed to specify what conclusions were made and reported. Second, plaintiff only assumed that the information was reported to Chenault and Henry. Indeed, even when plaintiff pointed to specific reports—showing, for example, increased write-offs for recently issued credit cards or increased subprime

lending—plaintiff did not allege Defendants' knowledge of such information at the time they made the allegedly false and misleading statements.

The Court determined that plaintiff's allegations only showed "a company attempting to increase its share of the credit card market during significant financial turmoil." The more compelling inference from the allegations, it continued, was that AMEX's "aggressive growth strategy was sideswiped by the collapse of the credit markets." Accordingly, the Court concluded that a failed business plan can-not "transmogrify" into securities fraud.

#### *Leave to Amend*

Noting that leave to amend should be granted freely, unless amendment would be futile, the Court declined to rule on plaintiff's request, which it made in a footnote to its opposition brief. Instead, the Court set a deadline for plaintiff to file a request for leave to amend that conforms to its Individual Practices.

## Securities Fraud

### Securities Fraud Class Action against GE Dismissed

[Coyne v. General Electric Co., No. 08-CV-01135, 2010 BL 160176 \(D. Conn. July 15, 2010\)](#)

The U.S. District Court for the District of Connecticut dismissed a securities fraud class action complaint against General Electric Co. (GE), CEO Jeffrey Immelt, and CFO Keith Sherin (collectively, Defendants). The Court held that plaintiffs' action for violations of [Sections 10\(b\)](#) and [20\(a\)](#) of the Securities Exchange Act of 1934 (Exchange Act) and [Rule 10b-5](#) thereunder failed to properly allege either an actionable statement or omission or scienter.

#### *Earnings Outlook*

As the Court explained, GE—"an energy, technology, media, industrial, consumer and financial services company"—had a "substantial earnings miss for the first quarter of 2008." Plaintiffs alleged that, between March 12, 2008 and April 10, 2008 (Class Period), Defendants made numerous false and misleading statements concerning (1) a projected 10 percent earnings increase, and (2) shipment of medical imaging products. At the end of the Class Period, Defendants announced that GE "suffered double-digit decreases in results" for the first quarter of 2008. In response, GE's stock price allegedly fell 13 percent with a corresponding \$47 billion decline in GE's market value.

#### *Misrepresentations and Omissions*

The Court held that plaintiffs failed to allege an actionable misrepresentation or omission. The Court first rejected

alleged misstatements concerning GE's projected 10 percent earnings growth. As the Court explained, many of these alleged misstatements concerned fiscal year 2008, rather than the first quarter. "Defendants' statements regarding goals for the year," the Court continued, "are not a plausible basis for liability." According to the Court, achieving 10 percent earnings growth for the year was not dependent on achieving 10 percent earnings growth in the first quarter. This was particularly so, the Court concluded, as "Defendants made no promise to hit every weekly, monthly, or quarterly goal."

Defendants' alleged omissions also were inactionable. The Court noted that Defendants' only alleged statement concerning first quarter earnings projections was made in January 2008. According to the Court, setting forth earnings goals at the beginning of the quarter "could not plausibly mislead." Thus, Defendants had no duty to correct the statement with allegedly omitted information. Otherwise, the Court held, the duty to correct would impose a "duty to inform investors constantly about the company's earnings throughout the quarter."

Next, the Court determined that plaintiffs' allegations concerning shipment of medical imaging products "mischaracterizes GE's statements." Plaintiffs alleged that Defendants stated that product shipped during the first quarter of 2008 when, in fact, no shipments occurred. The Court, however, observed that none of the alleged false statements specified when and how product shipped. Instead, the Court read Defendants' statements to indicate that GE "merely anticipat[ed] that it would ship products in the first quarter." Although the complaint alleged that Immelt and Sherin knew there were no shipments during the first quarter, the Court concluded that there was no basis for liability because none of the alleged false statements claimed that "products had shipped or that they were currently shipping."

Plaintiffs' remaining allegations concerned statements (1) made outside the Class Period, or (2) subject to safe harbor protection under the Private Securities Litigation Reform Act of 1995 (PSLRA). As to statements made outside the Class Period, the Court explained that "pre-class period statements do not form an independent basis for liability," but only "confirm what the defendants should have known during the class period." Plaintiffs, however, failed to allege how pre-Class Period statements demonstrated Defendants' knowledge of false Class Period statements. Post-Class Period statements also were inactionable. As to the PSLRA safe harbor, the Court noted the inclusion of cautionary language with Defendants' forward-looking statements. The Court, however, determined that it "need not test the muster of these warnings because . . . plaintiffs have failed to allege the statements were made with 'actual knowledge' that they were 'false and misleading.'"

#### *Scienter*

The Court further held that plaintiffs did not adequately allege scienter. The Court rejected an inference of scienter based

on Immelt's alleged desire to (1) surpass the management performance of former GE CEO Jack Welch, and (2) receive increased compensation based on GE's performance. Such motives, the Court concluded, are common to all corporate insiders. As to Sherin, plaintiffs made no allegation that he benefited in any concrete way from the alleged fraud.

Plaintiffs also pointed to positive statements made at the end of the first quarter—when Defendants should have had actual results for the quarter—to demonstrate Defendants' access to contradictory facts. The Court called plaintiffs' allegations fraud by hindsight. It concluded that plaintiffs' general allegations that Defendants should have known GE would not reach its first quarter earnings goals did "not raise a plausible claim that the defendants deliberately lied or committed fraud by using or failing to use information to mislead investors."

#### *Group Pleading and Control Person Liability*

Noting that plaintiffs did not attribute a single false statement to Sherin, the Court held that the complaint against him failed. Plaintiffs argued that the group pleading doctrine should apply to Sherin. The Court acknowledged that the U.S. Court of Appeals for the Second Circuit has not ruled on the continued validity of the group pleading doctrine. However, the Court did not address the merits of the doctrine, observing that without any actionable misstatements, there were no documents to attribute to the collective work of a group.

Finally, the Court dismissed plaintiffs' claims under Exchange Act Section 20(a) for failure to state a primary violation.

## Trident Microsystems and Two Officers Settle SEC Stock Option Backdating Charges

[SEC Litigation Release No. LR-21593 \(July 16, 2010\)](#); [Accounting and Auditing Enforcement Release No. AAER-3154 \(July 16, 2010\)](#); [SEC v. Trident Microsystems, Inc., No. 10-CV-01202 \(D.D.C. filed July 16, 2010\)](#)

The Securities and Exchange Commission (SEC) filed a civil enforcement action against Trident Microsystems, Inc. (Trident), its founder and former CEO Frank C. Lin, and its Chief Accounting Officer Peter Jen (collectively, Defendants), alleging that Defendants engaged in stock option backdating in violation of the federal securities laws. The SEC also announced that Defendants agreed to settle the SEC's charges.

In its [complaint](#), the SEC claims that Defendants' stock option backdating scheme lasted from at least 1993 until May 2006. Lin allegedly selected, and directed others to select, stock option grant dates that coincided with the dates of low closing prices for Trident's stock. Lin also allegedly backdated stock option documentation to disguise "in-the-money" option grants that were made to Trident employees, officers, and

directors. In connection with the scheme, Defendants allegedly omitted compensation expenses from Trident's annual and quarterly financial statements and falsely reported to the SEC that Trident granted options at the stock's fair market value for the date they were granted. The allegedly misleading financial statements were then incorporated by reference into registration statements filed with the SEC. Proxy statements provided to shareholders and beneficial ownership forms filed by Lin and Jen also contained similar misstatements, claims the SEC. Lin and Jen were allegedly responsible for signing, filing, reviewing, or preparing the misleading filings. According to the SEC, Trident filed a restatement in August 2007 to record approximately \$37 million of compensation expenses that it had failed to report between 2002 and the third quarter of 2006.

Without admitting or denying the allegations against them, Defendants agreed to settle the SEC action. Lin agreed to pay a \$350,000 penalty, as well as disgorgement and pre-judgment interest in the amount of \$817,509. Similarly, Jen to agreed to pay a \$500,000 penalty and has already paid Trident \$359,819 in disgorgement plus pre-judgment interest. Both Lin and Jen also agreed to be barred from serving as an officer or director of any public company for five years. Defendants further consented to be permanently enjoined from violating various provisions of the Securities Act of 1933 and the Securities Exchange Act of 1934. Finally, the SEC noted that the settlements are subject to approval by the U.S. District Court for the District of Columbia, where the action was filed.

## Arthur Andersen Wins Dismissal of Securities Action concerning Peregrine Audit, but Court allows Plaintiff to Replead Securities Fraud Claim

[Hildes v. Arthur Andersen, No. 08-CV-00008, 2010 BL 163330 \(S.D. Cal. July 19, 2010\)](#)

The U.S. District Court for the Southern District of California dismissed securities law claims that an individual investor filed against Arthur Andersen (Andersen), stemming from its audit of Peregrine Systems, Inc. (Peregrine). The Court granted leave to amend the securities fraud claims, but dismissed all other claims with prejudice.

#### *Opt-out*

As the Court explained, plaintiff held stock in Harbinger Corporation (Harbinger) and then acquired Peregrine stock when Harbinger merged with Peregrine. Plaintiff opted out of a settlement in a securities [class action](#) against Peregrine and subsequently filed a complaint alleging violations of [Section 11](#) of the Securities Act of 1933, [Sections 10\(b\)](#) and [14\(a\)](#) of the Securities Exchange Act of 1934, and [Rules 10b-5](#) and [14a-9](#) thereunder.

### *Negative Causation*

Andersen argued that the Section 11 and Section 14(a) claims should be dismissed because plaintiff made a binding commitment to acquire his Peregrine stock before the date of the alleged misstatements and omissions and, thus, could not show that he relied upon them. The Court agreed with Andersen, noting that plaintiff entered a contract on April 5, 2000 to exchange his Harbinger stock for Peregrine stock and to grant Peregrine an irrevocable proxy to vote in favor of the merger. The stock sale was thus effective as of April 5, 2000, the Court found, when “both parties clearly manifested their intent to exchange stock.” And, because this date preceded the date of the alleged misstatements and omissions—April 25, 2000—the Court held that the negative causation defense bars plaintiff’s Section 11 and Section 14(a) claims. Accordingly, the Court dismissed both claims with prejudice.

### *Scienter Amendments*

Plaintiff did not contest Andersen’s argument that the complaint failed to sufficiently plead scienter in connection with his Section 10(b) claim. Instead, he moved for leave to amend his complaint to add allegations demonstrating that Andersen knew for several years of Peregrine’s alleged revenue recognition fraud and violations of U.S. generally accepted accounting principles (GAAP). The Court concluded that granting leave would not be futile because the proposed amendments support an inference of scienter.

However, the Court also concluded that it would be futile to amend the complaint to add the former outside directors of Peregrine as defendants. Plaintiff proposed to add allegations that the outside directors knew a change in Peregrine’s method of revenue recognition would have a material effect on its financial condition. The Court concluded that the proposed allegations would be insufficient to establish scienter. It explained, for instance, that plaintiff failed to demonstrate that the outside directors understood that Peregrine’s new method of revenue recognition was improper in that it overstated revenue and violated GAAP. Plaintiff also failed to include allegations identifying specific conversations, board meetings, or reports where the outside directors learned of the alleged fraud.

## **Bloomberg News**

### **AIG Settles Investor Lawsuit for \$725 Million, May Sell Shares**

*By Dakin Campbell, Bloomberg News*

July 17 (Bloomberg) — American International Group Inc., the bailed-out insurer, agreed to pay \$725 million to settle a lawsuit by investors as it seeks to resolve a backlog of litigation and repay the U.S. government.

AIG said it may sell common stock to raise \$550 million of the total, according to a regulatory filing yesterday. If the New York-based company is unable to raise that sum, the agreement may be terminated.

“If you had to do it, now would be the time to do it,” Optique Capital Management analyst William Fitzpatrick said, referring to a share sale. Milwaukee-based Optique oversees \$800 million and doesn’t own AIG shares. “There are plenty of funds available that want the issue; the question will be under what kind of terms.”

Chief Executive Officer Robert Benmosche is settling with investors who lost money when the insurer’s stock plunged amid a 2004 investigation by then-New York Attorney General Eliot Spitzer into bid rigging and faulty accounting. The insurer agreed in November to settle legal disputes with former CEO Maurice “Hank” Greenberg, who was ousted in 2005. AIG said in a Nov. 6 filing it faced more than a dozen lawsuits and probes.

The suit covered by yesterday’s agreement was filed by plaintiffs including public pension funds in Ohio, New Mexico, Mississippi and California. They claimed AIG fraudulently inflated results, causing the share price to plummet when the deception was uncovered. Under the settlement agreement, AIG will pay \$175 million within 10 days of preliminary court approval.

### *Go Forward*

“The key here is for the company to go forward and make money and do business and have issues dealing with supervisors and shareholders all in the past,” said Ernest “Ernie” Patrikis, a partner at White & Case and a former general counsel at AIG. “It’s another major impediment behind them.”

AIG settled with Spitzer and federal regulators in 2006, agreeing to pay \$1.64 billion.

The insurer was forced in September 2008 to take a government bailout that swelled to \$182.3 billion, giving the U.S. a stake of almost 80 percent. If AIG raises at least \$550 million through a share sale to repay the U.S. government, that will trigger a full payment of yesterday’s settlement, according to the filing. Andrew Williams, a spokesman for the Treasury Department, had no immediate comment.

“We are pleased to have resolved this matter,” AIG spokesman Mark Herr said in a statement. “This settlement ends a long-standing lawsuit, allowing AIG to continue to focus its efforts on paying back taxpayers and restoring the value of our franchise for the benefit of all our stakeholders.”

### *Selling Shares*

A share sale would be the first for AIG since May 2008, when it needed funds to cushion losses tied to bad bets on

subprime mortgages. The stock has risen 19 percent this year, outpacing the 4.5 percent decline in the Standard & Poor's 500 Index.

AIG declined \$1.74 to \$35.64 yesterday in New York Stock Exchange composite trading. That compares with \$767.40 on May 12, 2008, when the last offer priced, according to data compiled by Bloomberg.

Ohio Attorney General Richard Cordray said in a separate statement that total damages from AIG will reach \$1 billion, including earlier lawsuits. In April, Cordray said AIG would settle allegations it violated Ohio antitrust laws by colluding to restrict the commercial insurance market.

"This historic settlement is an excellent result for all shareholders harmed by AIG's misconduct, including Ohio's teachers, firefighters, police officers and public employees," Cordray said.

In February, the insurer hired Thomas Russo to be general counsel. Russo was the Lehman Brothers Holdings Inc. chief legal officer when the securities firm went bankrupt in 2008. Last month, AIG named former Lehman managing director David A. DeMuro as head of compliance and regulatory affairs.

The case is *In re American International Group Inc. Securities Litigation*, [No. 04-CV-08141](#), U.S. District Court, Southern District of New York (Manhattan).

—With assistance from Andrew Frye and Sarah Frier in New York.

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## Goldman Sachs "Mistake" Admission Could Spur Lawsuits

By Jesse Westbrook and Joshua Gallu, Bloomberg News

July 21 (Bloomberg) — By forcing Goldman Sachs Group Inc. to admit a "mistake," U.S. regulators may be signaling a more confrontational approach to future settlements that could expose Wall Street to more investor lawsuits.

In its \$550 million accord with Goldman Sachs, the Securities and Exchange Commission deviated from its usual practice of imposing a fine while letting a firm remain silent on whether it engaged in misconduct. Firms required to admit oversights

may find it difficult to argue in private litigation that they conceded no wrongdoing and settled purely to end regulatory scrutiny, said Salvatore Graziano, a lawyer who specializes in class-action securities fraud suits.

"This makes it even harder to assert that they settled out of convenience," said Graziano, whose New York-based firm Bernstein Litowitz Berger & Grossmann LLP is suing Goldman Sachs for using false and misleading offering documents in the sale of mortgage certificates. "Once it's out there, it's out there."

Last week's accord between New York-based Goldman Sachs and the SEC removed a cloud over Wall Street's most profitable firm. The regulator accused company three months ago of selling a mortgage security without disclosing that hedge fund Paulson & Co. helped design the asset and was betting it would fail.

While Goldman Sachs used the boilerplate language of not acknowledging or refuting improper conduct, the firm said it was a "mistake" that its marketing materials for the security called Abacus 2007-AC1 included "incomplete information." The documents didn't include Paulson's role, according to the SEC accord. The mistake admission was limited to the Abacus deal.

### "Major Departure"

The demand that Goldman Sachs admit an error is a "major departure" for the SEC, said Harvey Pitt, a former chairman of the agency.

"I don't believe this will reflect a broadside decision to require concessions, because if that occurred, the SEC might not be able to settle a large percentage of the cases it brings," Pitt said. "Given the limits of the SEC's budget, it is clearly not able to litigate every case."

The SEC has about 1,400 employees in its enforcement unit, which investigates and prosecutes wrongdoing. The entire agency operates on a budget of about \$1 billion a year. Goldman Sachs has more than 34,000 employees and earned \$4 billion in the first six months of 2010.

Companies and individuals that forge settlements with the SEC benefit from not having to admit wrongdoing, because it can limit their legal exposure, said Michael Piazza, a former SEC lawyer. The lack of any concession gives criminal prosecutors and private litigants nothing to build cases on, Piazza said. It also reduces the likelihood that insurance companies will deny paying lawyer fees on the basis that an SEC target is admitting guilt, he said.

### "World Will Change"

"An acknowledgment of some wrongdoing or specific acts of facts alleged could have a very different effect," said Piazza, who

now represents targets of SEC investigations at Greenberg Traurig LLP in Irvine, California. If the Goldman Sachs case “portends a trend for more fulsome acknowledgements, the world of SEC settlements will change,” he said.

Goldman Sachs on April 16 said the SEC’s lawsuit was “completely unfounded in law and fact” and that the agency didn’t warn the company before announcing the case. The Financial Times reported in April that Chief Executive Officer Lloyd Blankfein told investors the suit may have been politically motivated to help President Barack Obama’s administration persuade Congress to approve legislation overhauling financial regulation.

Those actions may have prompted the SEC to demand in the settlement that Goldman Sachs admit the mistake, Pitt said.

### *“Vindicated”*

“If you want to dispute the government’s allegations, that’s fine,” he said. “But if you want to malign or impugn the government’s motivations, that’s not fine. By extracting that agreement, the SEC has vindicated the fact that its lawsuit was filed for appropriate reasons.”

Goldman Sachs spokesman Michael DuVally declined to comment on why the firm admitted to a mistake. On a call with Wall Street analysts yesterday, David Viniar, the company’s chief financial officer, was asked what impact the SEC settlement will have on any lawsuits against Goldman Sachs.

“We don’t think it’s going to have any material impact,” Viniar said. “We think there’s nothing new in the settlement.”

The SEC is examining other firms and a range of structured products that fueled losses during the financial crisis, Enforcement Director Robert Khuzami said when he announced the settlement. SEC spokesman John Heine declined to comment on whether any future settlements would include demands that companies admit mistakes.

### *Two Investors*

Goldman Sachs’s risk of being sued in private litigation may be limited, because the SEC complaint only listed two investors who lost money on the Abacus transaction.

Royal Bank of Scotland Group Plc, which purchased a company that lost about \$841 million on the mortgage security, hasn’t ruled out filing a lawsuit, a person with knowledge of the matter said on July 16. The bank will receive \$100 million as part of the SEC settlement.

IKB Deutsche Industriebank AG, which lost about \$150 million on the Abacus deal, will recoup that amount from Goldman Sachs. KfW Group, Germany’s development bank that bailed out IKB, has said it is reviewing the SEC accord.

The regulatory settlement also requires Goldman Sachs to reform its business practices. Those changes, along with new regulations being considered by the SEC, may make it harder for all Wall Street firms to sell opaque financial products to banks, pension funds and governments.

### *Bolstered Compliance*

When Goldman Sachs puts together a security tied to mortgages, the product must be reviewed and approved by a bigger group of corporate managers. The executives will be responsible for ensuring that marketing materials don’t include omissions or misstatements. Goldman Sachs also has to bolster compliance training for employees who sell the securities.

Khuzami said he hopes other firms adopt the “best practices.” If they do, it will create obstacles to getting some securitizations done quickly, said Cliff Rossi, a managing director at the University of Maryland’s Center for Financial Policy in College Park.

“The more pairs of eyes you have that have to review and sign off ahead of a deal, the more it slows things down,” said Rossi, a former senior risk officer at Countrywide Financial Corp., Washington Mutual Inc. and Citigroup Inc.

It’s a moot point for now, because there hasn’t been much demand for mortgage securities since the U.S. housing market collapsed in 2007.

### *Repackaging*

Firms sold about \$24 billion of these assets in the first half of 2010, and almost all were repackagings of existing bonds, according to newsletter Asset-Backed Alert. That’s down from a record of about \$1.2 trillion in both 2005 and 2006.

The instrument involved in the Abacus deal was a collateralized debt obligation. CDOs are pools of assets such as mortgage bonds packed into new securities. Wall Street firms sell most CDOs through so-called private placements, offerings that aren’t subject to SEC disclosure requirements because only clients with more than \$100 million of invested assets can buy the securities.

The SEC in April said it’s considering requiring issuers of private offerings to provide disclosures equal to those available in public sales, if investors request the information.

SEC Chairman Mary Schapiro said the proposal reflects a reconsideration of the regulator’s long-standing assumption that sophisticated investors like pension funds and endowments don’t need the same protections as individuals.

The private market would be “virtually shut down” if the SEC approves the proposal, because of increased compliance

costs said Edward Gainor, a law partner at Bingham McCutchen LLP in Washington.

—*With assistance from Jody Shenn and Christine Harper in New York.*

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## Structured Finance

### Bloomberg News

#### Credit-Rating Rules Unlikely to “Freeze” Securitization Markets

*By Jody Shenn, Bloomberg News*

July 21 (Bloomberg) — Credit raters’ reactions to the U.S. financial-regulation law that boosts their legal risks are unlikely to “freeze” the securitization market even while forcing changes in practices and potentially slowing sales, RBS Securities Inc. and Bank of America Corp. analysts said.

Issuers will probably do more so-called private placement or 144a transactions, which can be bought only by large, sophisticated buyers and aren’t affected by the regulatory changes, Paul Jablansky, a senior debt strategist at Stamford, Connecticut-based RBS Securities, said in a telephone interview.

If they do, sales of new debt into the almost \$4 trillion market for bonds backed by U.S. loans and leases can probably continue for a while at the same or only “slightly higher” yields over benchmarks, partly because “supply has not been particularly robust,” he said. Jablansky and Bank of America analysts, in a report, said a shift away from public deals registered with the Securities and Exchange Commission isn’t a “long-term” solution.

“Eventually if you drove enough issuance into the 144a market, the investors who can buy would require wider spreads,” said Jablansky, whose Royal Bank of Scotland Plc unit was the second-ranked underwriter of worldwide structured-finance deals last year, according to the newsletter *Asset-Backed Alert*. “That’s because they would have the leverage to get them.”

The financial legislation, signed today by President Barack Obama, eliminates credit-rating companies’ shield from lawsuits when underwriters include their assessments in documents used to sell debt. The law subjects ratings companies to so-called expert liability, which means the firms will face the same legal risks as accountants and other parties that participate in bond sales.

#### *Firms Scrutinized*

Investors including public pension funds have accused Moody’s Investors Service, Fitch Ratings and Standard & Poor’s of helping to fuel the financial crisis by giving top rankings to mortgage bonds that plunged in value when the U.S. housing market collapsed in 2007. Congress scrutinized the firms at hearings.

Moody’s and Fitch have already told Wall Street that because of an increased risk of being sued, they will no longer let underwriters use ratings in bond-registration statements. S&P has signaled a similar stance on the issue.

The lack of consent, when combined with an existing SEC rule that restricts non-144a sales of asset-backed debt without ratings in offering documents, will put a “flash freeze” on the market, Tom Deutsch, executive director of the American Securitization Forum, said yesterday.

#### *Higher Funding Costs*

“Many investors cannot participate in the 144a market, so we do not think that market provides a long-term solution,” Chris Flanagan and Theresa O’Neill, the New York-based Bank of America analysts, said yesterday in a report. “A shift to the 144a market has the potential of increasing funding costs to issuers and consequently consumers. Instead of seeing their funding costs rise, some issuers may reduce origination volumes.”

Deutsch said in an interview yesterday that “a number of transactions that had been planned for the upcoming weeks have been shelved indefinitely given this proposal.”

The market is indeed being roiled by “confusion among the issuers and the investment banks,” with even some planned 144a sales being delayed, Jeffery Elswick, the director of fixed income at San Antonio-based Frost Investment Advisors LLC, said in a telephone interview.

#### *Less Disclosure*

“Still, even over the long term, the market can handle it” if all transactions are private deals “because even today the biggest investors are investors such as ourselves” who are allowed to buy such debt, said Elswick, whose firm oversees almost \$7 billion, mainly in individual client accounts and mutual funds.

Sales of debt through private placements, which are subject to fewer disclosure rules, were first permitted under the Securities Act of 1933. In 1990, the SEC adopted Rule 144a to make offerings more appealing to qualified institutional buyers, known as QIBs, who had more than \$100 million in assets, by eliminating a two-year holding period.

Issuance of U.S. asset-backed securities, excluding mortgage debt, has totaled about \$77 billion so far this year, the same as during the year-ago period, according to industry newsletter Asset-Backed Alert. About two-thirds of transactions have been private placements, the opposite of last year, when two-thirds were public.

### Similar Pricing

In the first week of this month, Bank of America and a lender majority owned by Citigroup Inc. both issued bonds backed by government-guaranteed student loans, with little discernible impact on pricing created by their different decisions on the type of transaction to use, according to data compiled by Bloomberg.

The top-ranked \$1.2 billion, AAA rated class of Charlotte, North Carolina-based Bank of America's private deal sold at yields that float 80 basis points, or 0.8 percentage point, above the three-month London interbank offered rate. Student Loan Corp. sold \$855 million of similar bonds in a public transaction at a higher spread of 87.5 basis points.

Still, deals already in progress may pose problems for the industry, said Jason Kravitt, a partner in New York at law firm Mayer Brown LLP, who works with underwriters and issuers.

"If someone has been marketing and they've not yet finished their marketing, they can't just switch to 144a," he said in an interview. They must first go through a "cooling-off period," which can take one to six months, he said.

### Petitioning SEC

The SEC could revise the rule that forces sellers of asset-backed debt, if sales are "conditioned on the assignment of a rating," to include credit grades in registration statements and prospectuses for public transactions. Corporate bonds don't have similar rules.

The industry has begun "petitioning the SEC," the Bank of America analysts wrote.

The agency has been "reviewing what, if any, transitional steps may be appropriate," said Meredith Cross, director of the SEC's Division of Corporation Finance. "While the number of registered transactions in this area has not been significant recently, we recognize the importance fostering a registered market in these securities."

—With assistance from Jesse Westbrook in Washington in New York and Sarah Mulholland in New York.  
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## SEC Calendar

<b>Rules Approved July 16 – July 22, 2010</b>	
July 16	Technical Amendment to Rules of Organization; Conduct and Ethics; and Information and Requests, <a href="#">SEC Release No. 34-62520</a> <b>Applies to:</b> <a href="#">SEC Rule 30-4</a>
<b>Rules Proposed July 16 – July 22, 2010</b>	
July 21	Mutual Fund Distribution Fees; Confirmations, <a href="#">SEC Release Nos. 33, 9128, 34-62544 and IC-29367</a> ; <a href="#">File No. S7-15-10</a> <b>Applies to:</b> Investment Company Act <a href="#">Rules 6c-10, 11a-3, 12b-1, 17a-8, 17d-3, and 18f-3</a> ; <a href="#">Forms N-1A, N-3, N-4, N-6 and N-SAR</a> ; Exchange Act <a href="#">Rule 10b-10</a> and <a href="#">Schedule 14A</a> ; and <a href="#">Rule 6-07</a> of Regulation S-X. Would add Investment Company Act Rule 12b-2.
<b>Rules Effective July 16 – July 22, 2010</b>	
	None
<b>Rules to Become Effective July 23 – July 30, 2010</b>	
	None

## Exchange &amp; SRO Rulemaking

<b>Rules Approved July 16 – 22, 2010</b>	
<b>BATS</b>	
July 16	Order Approving Proposed Rule Change, as Modified by Amendment No. 1 thereto, to Amend BATS Rules 2.5 and 17.2 to Establish a Registration Requirement for Principals, <a href="#">SEC Release No. 34-62524</a> , <a href="#">File No. SR-BATS-2010-08</a>
<b>EDGA</b>	
July 16	Order Approving a Proposed Rule Change Relating to Direct Edge, Inc., <a href="#">SEC Release No. 34-62514</a> , <a href="#">File No. SR-EDGA-2010-02</a>
<b>EDGX</b>	
July 16	Order Approving a Proposed Rule Change Relating to Direct Edge, Inc., <a href="#">SEC Release No. 34-62515</a> , <a href="#">File No. SR-EDGX-2010-02</a>
<b>FINRA</b>	
July 16	Notice of Filing of Amendment No. 1 to a Proposed Rule Change and Order Granting Accelerated Approval to a Proposed Rule Change, as Modified by Amendment No. 1, to Amend the Codes of Arbitration Procedure to Provide for Attorney Representation of Non-party Witnesses in Arbitration, <a href="#">SEC Release No. 34-62521</a> , <a href="#">File No. SR-FINRA-2010-06</a>
July 20	Order Approving a Proposed Rule Change, as Modified by Amendment No. 1, to Adopt NASD Rule 3210 (Short Sale Delivery Requirements) as FINRA Rule 4320 in the Consolidated FINRA Rulebook, <a href="#">SEC Release No. 34-62533</a> , <a href="#">File No. SR-FINRA-2010-28</a>
July 21	Order Approving the Proposed Rule Change to Adopt FINRA Rule 5141 (Sale of Securities in a Fixed Price Offering) in the Consolidated FINRA Rulebook, <a href="#">SEC Release No. 34-62539</a> , <a href="#">File No. SR-FINRA-2010-29</a>
<b>NYSE Arca</b>	
July 15*	Order Granting Accelerated Approval of a Proposed Rule Change Regarding Listing and Trading Shares of AdvisorShares WCM/BNY Mellon Focused Growth ADR ETF, <a href="#">SEC Release No. 34-62502</a> , <a href="#">File No. SR-NYSEArca-2010-57</a>
July 19	Order Granting Approval of a Proposed Rule Change Relating to the United States Commodity Index Fund, <a href="#">SEC Release No. 34-62527</a> , <a href="#">File No. SR-NYSEArca-2010-44</a>
<b>Rules Proposed July 16 – 22, 2010</b>	
<b>BX</b>	
July 16	Proposed Rule Change to Amend the Fee Schedule of the Boston Options Exchange Facility, <a href="#">File No. SR-BX-2010-49</a>
July 19	Proposed Rule Change to Expand the \$1 Strike Price Program on the Boston Options Exchange Facility, <a href="#">File No. SR-BX-2010-50</a>
<b>CBOE</b>	
July 16	Proposed Rule Change to Amend Fees Schedule, <a href="#">File No. SR-CBOE-2010-68</a>
July 20	Proposed Rule Change to Amend Exchange Rule 17.5, <a href="#">File No. SR-CBOE-2010-69</a>
<b>ISE</b>	
July 14*	Proposed Rule Change by the International Securities Exchange Relating to Modified Rules for Qualified Contingent Cross Orders, <a href="#">File No. SR-ISE-2010-73</a>
July 19	Proposed Rule Change Relating to Fee Changes, <a href="#">File No. SR-ISE-2010-76</a>
<b>NASDAQ</b>	
July 16	Proposed Rule Change by the NASDAQ Stock Market LLC Relating to Fees for Routing to Away Markets, <a href="#">File No. SR-NASDAQ-2010-88</a>
July 20	Proposed Rule Change Regarding Fees Assessed for Supplemental MPIDs, <a href="#">File No. SR-NASDAQ-2010-89</a>

<b>Rules Proposed July 16 – 22, 2010</b> (cont'd)	
<b>NASDAQ</b> (cont'd)	
July 20	Proposed Rule Change by the NASDAQ Stock Market LLC Relating to Fees for Routing to Away Markets, <a href="#">File No. SR-NASDAQ-2010-90</a>
<b>NYSE</b>	
July 16	Proposed Rule Change by New York Stock Exchange LLC Deleting NYSE Rule 123G and Adopting New Rule 5290 to Correspond with Rule Changes Filed by the Financial Industry Regulatory Authority, Inc. and Approved by the Securities and Exchange Commission, <a href="#">File No. SR-NYSE-2010-54</a>
<b>NYSE Amex</b>	
July 16	Proposed Rule Change by NYSE Amex LLC Deleting NYSE Amex Equities Rule 123G and Adopting New NYSE Amex Equities Rule 5290 to Correspond with Rule Changes Filed by the Financial Industry Regulatory Authority, Inc. and Approved by the Securities and Exchange Commission, <a href="#">File No. SR-NYSEAmex-2010-72</a>
July 20	Proposed Rule Change by NYSE Amex LLC Adding 75 Options Classes to the Penny Pilot Program, <a href="#">File No. SR-NYSEAmex-2010-73</a>
<b>NYSE Arca</b>	
July 20	Proposed Rule Change by NYSE Arca, Inc. Amending Rule 6.47, <a href="#">File No. SR-NYSEArca-2010-69</a>
July 20	Proposed Rule Change by NYSE Arca, Inc. Adding 75 Options Classes to the Penny Pilot Program, <a href="#">File No. SR-NYSEArca-2010-70</a>
<b>PHLX</b>	
July 15*	Proposed Rule Change by NASDAQ OMX PHLX, Inc. Relating to the Rebates and Fees for Adding and Removing Liquidity in Select Symbols, <a href="#">File No. SR-Phlx-2010-98</a>
July 19	Proposed Rule Change by NASDAQ OMX PHLX, Inc. Relating to the Options Regulatory Fee, <a href="#">File No. SR-Phlx-2010-100</a>
July 20	Proposed Rule Change by NASDAQ OMX PHLX, Inc. Relating to Routing Fees, <a href="#">File No. SR-Phlx-2010-101</a>
<b>Rules Effective July 16 – 22, 2010</b>	
<b>BX</b>	
July 15*	Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Establish a Short Term Option Program, <a href="#">SEC Release No. 34-62505</a> , <a href="#">File No. SR-BX-2010-47</a>
July 16	Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Extend a Pilot Program that Allows for No Minimum Size Order Requirement for the Price Improvement Period Process until July 18, 2011, <a href="#">SEC Release No. 34-62512</a> , <a href="#">File No. SR-BX-2010-46</a>
July 19	Notice of Filing and Immediate Effectiveness of Proposed Rule Change Extending the Pilot Period to Receive Inbound Routes of Orders from NASDAQ Execution Services, <a href="#">SEC Release No. 34-62528</a> , <a href="#">File No. SR-BX-2010-48</a>
<b>CBOE</b>	
July 16	Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Extend Two Pilot Programs Related to the Exchange's Automated Improvement Mechanism until July 18, 2011, <a href="#">SEC Release No. 34-62522</a> , <a href="#">File No. SR-CBOE-2010-67</a>
<b>EDGA</b>	
July 16	Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend EDGA Rule 11.14, <a href="#">SEC Release No. 34-62516</a> , <a href="#">File No. SR-EDGA-2010-07</a>
<b>EDGX</b>	
July 16	Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend EDGX Rule 11.14, <a href="#">SEC Release No. 34-62517</a> , <a href="#">File No. SR-EDGX-2010-07</a>

<b>Rules Effective July 16 – 22, 2010</b> (cont'd)	
<b>ISE</b>	
July 15*	Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Fees and Rebates for Adding and Removing Liquidity, <a href="#">SEC Release No. 34-62508</a> , <a href="#">File No. SR-ISE-2010-65</a>
July 15*	Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Fee Changes with Respect to Foreign Currency Options Orders, <a href="#">SEC Release No. 34-62506</a> , <a href="#">File No. SR-ISE-2010-67</a>
July 15*	Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend the Qualification Standards for Market Makers to Receive a Rebate for Adding Liquidity, <a href="#">SEC Release No. 34-62507</a> , <a href="#">File No. SR-ISE-2010-68</a>
July 15*	Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to a Market Maker Incentive Plan for Foreign Currency Options, <a href="#">SEC Release No. 34-62503</a> , <a href="#">File No. SR-ISE-2010-71</a>
July 16	Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the Extension of the Price Improvement Mechanism Pilot Program, <a href="#">SEC Release No. 34-62513</a> , <a href="#">File No. SR-ISE-2010-75</a>
<b>NASDAQ</b>	
July 14*	Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Regarding a Clerical Change to NASDAQ Rules, <a href="#">SEC Release No. 34-62496</a> , <a href="#">File No. SR-NASDAQ-2010-80</a>
July 19	Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by the NASDAQ Stock Market LLC Relating to Trading Halts in Options during a Trading Pause in the Underlying Securities, <a href="#">SEC Release No. 34-62531</a> , <a href="#">File No. SR-NASDAQ-2010-87</a>
<b>NYSE Amex</b>	
July 19	Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by NYSE Amex LLC Amending Its Fee Schedule, <a href="#">SEC Release No. 34-62526</a> , <a href="#">File No. SR-NYSEAmex-2010-68</a>
<b>PHLX</b>	
July 15*	Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Delta Hedge Exemptions, <a href="#">SEC Release No. 34-62504</a> , <a href="#">File No. SR-Phlx-2010-93</a>
July 16	Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Complex Orders, <a href="#">SEC Release No. 34-62518</a> , <a href="#">File No. SR-Phlx-2010-90</a>
July 19	Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by NASDAQ OMX PHLX, Inc. Relating to Trading Halts in Options during a Trading Pause in the Underlying Securities, <a href="#">SEC Release No. 34-62530</a> , <a href="#">File No. SR-Phlx-2010-96</a>
July 20	Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by NASDAQ OMX PHLX, Inc. Relating to Order Re-entry, <a href="#">SEC Release No. 34-62534</a> , <a href="#">File No. SR-Phlx-2010-95</a>

\* Publicly available after last week's issue of Bloomberg Law Reports® — Securities Law

## Legislative Activity Table

Track Legislation	Short Title	Purpose
<b>Broker-Dealers</b>		
<a href="#">S. 1964</a> Sen. Akaka (D-HI)	Mutual Fund Transparency Act of 2009	To require disclosure of financial relationships between brokers and dealers and mutual fund companies, and of certain commissions paid by mutual fund companies.
<a href="#">H.R. 2798</a> Rep. Arcuri (D-NY)	Support Investment Protection for Customers Reform Act of 2009	To increase securities protection coverage in the event of stolen or missing assets, and for other purposes.

Track Legislation	Short Title	Purpose
<b>Broker-Dealers</b> (cont'd)		
<a href="#">H.R. 1212</a> Rep. Kanjorski (D-PA)	(No short title)	To amend the Sarbanes-Oxley Act of 2002 to provide oversight of auditors of brokers and dealers by the Public Company Accounting Oversight Board, and for other purposes.
<a href="#">H.R. 1160</a> Rep. Meeks (D-NY)	Money Market Fund Parity Act of 2009	To direct the Securities and Exchange Commission to revise rules to provide for the comparable treatment and expanded use of qualified money market funds for broker-dealer financing.
<b>Commodities &amp; Derivatives</b>		
<a href="#">S. 2763</a> Sen. Cantwell (D-WA)	(No short title)	To terminate the preemption of State and local laws that prohibit or regulate gaming or the operation of bucket shops, and for other purposes.
<a href="#">H.R. 3795</a> Rep. Frank (D-MA)	Over-the-Counter Derivatives Markets Act of 2009	To enact the Over-the-Counter Derivatives Markets Act of 2009.
<a href="#">S. 1691</a> Sen. Reed (D-RI)	Comprehensive Derivatives Regulation Act of 2009	To comprehensively regulate derivatives markets to increase transparency and reduce risks in the financial system.
<a href="#">S. 1682</a> Sen. Cantwell (D-WA)	Derivatives Market Manipulation Prevention Act of 2009	To provide the Commodity Futures Trading Commission with clear antimarket manipulation authority, and for other purposes.
<a href="#">H.R. 3300</a> Rep. McMahon (D-NY)	Derivative Trading Accountability and Disclosure Act	To provide increased transparency and regulatory requirements for the trading of certain derivative financial instruments.
<a href="#">H.R. 3153</a> Rep. Larson (D-CT)	Transparent Markets Act of 2009	To amend the Internal Revenue Code of 1986 to impose a tax on over-the-counter derivatives transactions, and for other purposes.
<a href="#">S. 1412</a> Sen. Collins (R-ME)	Commodity Speculation Reform Act of 2009	To amend the Commodity Exchange Act to clarify the treatment of purchases of certain commodity futures contracts and financial instruments with respect to limits established by the Commodity Futures Trading Commission relating to excessive speculation, and for other purposes.
<a href="#">S. 1399</a> Sen. Feinstein (D-CA)	Carbon Market Oversight Act of 2009	To amend the Commodity Exchange Act to establish a market for the trading of greenhouse gases, and for other purposes.
<a href="#">H.R. 2998</a> Rep. Waxman (D-CA)	American Clean Energy and Security Act of 2009	To create clean energy jobs, achieve energy independence, reduce global warming pollution and transition to a clean energy economy.
<a href="#">H.R. 2869</a> Rep. DeFazio (D-OR)	Energy Market Manipulation Prevention Act	To require the Commodity Futures Trading Commission to take certain actions to prevent the manipulation of energy markets, and for other purposes.
<a href="#">S. 1225</a> Sen. Sanders (I-VT)	Energy Market Manipulation Prevention Act	To require the Commodity Futures Trading Commission to take certain actions to prevent the manipulation of energy markets, and for other purposes.
<a href="#">H.R. 2454</a> Rep. Waxman (D-CA)	American Clean Energy and Security Act of 2009	To create clean energy jobs, achieve energy independence, reduce global warming pollution and transition to a clean energy economy.
<a href="#">H.R. 2448</a> Rep. Stupak (D-MI)	Prevent Unfair Manipulation of Prices Act of 2009	To provide for regulation of futures transactions involving energy commodities, to regulate credit default swaps, to strengthen the enforcement authorities of the Federal Energy Regulatory Commission under the Natural Gas Act, Natural Gas Policy Act of 1978, and the Federal Power Act, and for other purposes.
<a href="#">S. 961</a> Sen. Levin (D-MI)	Authorizing the Regulation of Swaps Act	To authorize the regulation of credit default swaps and other swap agreements, and for other purposes.
<a href="#">S. 447</a> Sen. Levin (D-MI)	Prevent Excessive Speculation Act	To amend the Commodity Exchange Act to prevent excessive price speculation with respect to energy and agricultural commodities, and for other purposes.

Track Legislation	Short Title	Purpose
<b>Commodities &amp; Derivatives</b> (cont'd)		
<a href="#">H.R. 977</a> Rep. Peterson (D-MN)	Derivatives Markets Transparency and Accountability Act of 2009	To amend the Commodity Exchange Act to bring greater transparency and accountability to commodity markets, and for other purposes.
<a href="#">S. 272</a> Sen. Harkin (D-IA)	Derivatives Trading Integrity Act of 2009	To amend the Commodity Exchange Act to ensure that all agreements, contracts, and transactions with respect to commodities are carried out on a regulated exchange, and for other purposes.
<a href="#">S. 221</a> Sen. Nelson (D-FL)	(No short title)	To amend the Commodity Exchange Act to require energy commodities to be traded only on regulated markets, and for other purposes.
<b>Corporate Governance</b>		
<a href="#">S. 3149</a> Sen. Nelson (D-FL)	Wall Street Compensation Reform Act of 2010	To amend the Internal Revenue Code of 1986 to limit certain executive compensation paid by systemically significant financial institutions.
<a href="#">H.R. 4934</a> Rep. Posey (R-FL)	Maintaining Agency Direction on Financial Fraud Act	To prohibit the enforcement of a climate change interpretive guidance issued by the Securities and Exchange Commission, and for other purposes.
<a href="#">H.R. 4802</a> Rep. Moore (D-KS)	Risk Retention Modernization Act of 2010	To modernize the Liability Risk Retention Act of 1986 and expand coverage to include commercial property insurance, and for other purposes.
<a href="#">H.R. 4790</a> Rep. Capuano (D-MA)	Shareholder Protection Act of 2010	To amend the Securities Exchange Act of 1934 to require shareholder authorization before a public company may make certain political expenditures, and for other purposes.
<a href="#">S. 3049</a> Sen. Menendez (D-NJ)	Corporate Executive Accountability Act of 2010	To give shareholders a vote on executive pay, to hold executives accountable for failure or fraud, to structure executive pay to encourage the long-term viability of companies, and for other purposes.
<a href="#">S. 3032</a> Sen. Barrasso (R-WY)	Maintaining Agency Direction on Financial Fraud Act	To prohibit the enforcement of a climate change interpretive guidance issued by the Securities and Exchange Commission, and for other purposes.
<a href="#">H.R. 4630</a> Rep. Ackerman (D-NY)	Corporate Politics Transparency Act	To amend the securities laws to require that registration statements, quarterly and annual reports, and proxy solicitations of public companies include a disclosure to shareholders of any expenditure made by that company in support of or in opposition to any candidate for Federal, State, or local public office.
<a href="#">S. 3007</a> Sen. Brown (D-OH)	Wall Street Bonus Tax Act	To amend the Internal Revenue Code of 1986 to impose a 50 percent tax on bonuses paid by TARP recipients, and for other purposes.
<a href="#">S. 3004</a> Sen. Brown (D-OH)	Citizens Right to Know Act of 2010	To require notification to and prior approval by shareholders of certain political expenditures by publicly traded companies, and for other purposes.
<a href="#">S. 2994</a> Sen. Boxer (D-CA)	Taxpayer Fairness Act	To amend the Internal Revenue Code of 1986 to impose an excise tax on excessive 2009 bonuses received from certain major recipients of Federal emergency economic assistance, to limit the deduction allowable for such bonuses, and for other purposes.
<a href="#">H.R. 4537</a> Rep. Capuano (D-MA)	Shareholder Protection Act of 2010	To amend the Securities Exchange Act of 1934 to require the express authorization of a majority of shareholders of a public company for certain political expenditures by that company, and for other purposes.
<a href="#">H.R. 4487</a> Rep. Grayson (D-FL)	End the Hijacking of Shareholder Funds Act	To require the approval of a majority of a public company's shareholders for any expenditure by that company to influence public opinion on matters not related to the company's products or services.
<a href="#">H.R. 4426</a> Rep. Welch (D-VT)	Wall Street Bonus Tax Act	To amend the Internal Revenue Code of 1986 to impose a 50 percent tax on bonuses paid by TARP recipients.
<a href="#">H.R. 4414</a> Rep. Kucinich (D-OH)	Responsible Banking Act of 2010	To amend the Internal Revenue Code of 1986 to impose a 75 percent tax on bonuses paid by certain financial and other businesses.
<a href="#">H.R. 4412</a> Rep. Welch (D-VT)	Wall Street Bonus Tax Act	To amend the Internal Revenue Code of 1986 to impose a 50 percent tax on bonuses paid by TARP recipients.

Track Legislation	Short Title	Purpose
<b>Corporate Governance</b> (cont'd)		
<a href="#">H.R. 3775</a> Rep. Garrett (R-NJ)	Small Business SOX Compliance Relief Act	To exempt certain small businesses from the attestation requirement of section 404 of the Sarbanes-Oxley Act of 2002.
<a href="#">S. 1710</a> Sen. Vitter (R-LA)	(No short title)	To prohibit recipients of TARP assistance from funding ACORN, and for other purposes.
<a href="#">H.R. 3452</a> Rep. Kaptur (D-OH)	Recoupment of Wall Street Bonus Act	To impose a tax on Wall Street bonuses received from TARP recipients and direct revenue to mortgage workouts.
<a href="#">H.R. 3436</a> Rep. Cummings (D-MD)	TARP Executive Disclosure Act	To require chief executive officers of certain financial institutions that receive assistance under title I of the Emergency Economic Stabilization Act of 2008, under the 3rd undesignated paragraph of section 13 of the Federal Reserve Act, or from the Secretary of the Treasury or the Federal Deposit Insurance Corporation under any other provision of law to submit financial disclosures under the Ethics in Government Act of 1978 to the Secretary of the Treasury, and for other purposes.
<a href="#">H.R. 3351</a> Rep. Kilroy (D-OH)	Proxy Voting Transparency Act of 2009	To amend the Securities Exchange Act of 1934 to provide shareholders with a non-binding vote on executive compensation.
<a href="#">H.R. 3346</a> Rep. Frank (D-MA)	(No short title)	To amend the Sarbanes-Oxley Act of 2002 to permit the sharing of confidential supervisory information with foreign auditor oversight bodies.
<a href="#">H.R. 3291</a> Rep. Maloney (D-NY)	Mutual Holding Company Beneficial Owners' Protection Act of 2009	To protect the rights of public shareholders of mutual holding companies by promoting fair corporate governance procedures when considering management or employee stock benefit plans, and for other purposes.
<a href="#">H.R. 3272</a> Rep. Ellison (D-MN)	Corporate Governance Reform Act of 2009	To amend the Securities Exchange Act of 1934 to add requirements for board of directors committees regarding risk management and compensation policies, to require non-binding shareholder votes on executive compensation, and for other purposes.
<a href="#">H.R. 3269</a> Rep. Frank (D-MA)	Corporate and Financial Institution Compensation Fairness Act of 2009	To amend the Securities Exchange Act of 1934 to provide shareholders with an advisory vote on executive compensation and to prevent perverse incentives in the compensation practices of financial institutions.
<a href="#">H.R. 2861</a> Rep. Peters (D-MI)	Shareholder Empowerment Act of 2009	To amend the Securities Exchange Act of 1934 to provide for rules and standards relating to the election of boards of directors and certain requirements relating to compensation of executives.
<a href="#">S. 1074</a> Sen. Schumer (D-NY)	Shareholder Bill of Rights Act of 2009	To provide shareholders with enhanced authority over the nomination, election, and compensation of public company executives.
<a href="#">S. 1006</a> Sen. Durbin (D-IL)	Excessive Pay Shareholder Approval Act	To require a supermajority shareholder vote to approve excessive compensation of any employee of a publicly traded company.
<a href="#">H.R. 1797</a> Rep. Meeks (D-NY)	Compete Act of 2009	To reform certain provisions of section 404 of the Sarbanes-Oxley Act of 2002 to make compliance with that section more efficient, with the goal of maintaining United States capital market global competitiveness.
<a href="#">S. 463</a> Sen. Kerry (D-MA)	TARP Taxpayer Protection and Corporate Responsibility Act of 2009	To impose limitations on certain expenditures by participants in the Troubled Asset Relief Program.
<a href="#">S. 431</a> Sen. Whitehouse (D-RI)	Economic Recovery Adjustment Act of 2009	To establish the Temporary Economic Recovery Adjustment Panel to curb excessive executive compensation at firms receiving emergency economic assistance.
<a href="#">S. 400</a> Sen. Sanders (I-VT)	Financial Crisis Investigation Act of 2009	To expand the authority and responsibilities of the Oversight Panel of the Troubled Asset Relief Program, and for other purposes.
<a href="#">H.R. 1095</a> Rep. Maloney (D-NY)	Troubled Asset Relief Program Transparency Reporting Act	To prohibit any recipient of emergency Federal economic assistance from using such funds for lobbying expenditures or political contributions, to improve transparency, enhance accountability, encourage responsible corporate governance, and for other purposes.

Track Legislation	Short Title	Purpose
<b>Corporate Governance</b> (cont'd)		
<a href="#">H.R. 857</a> Rep. Moore (D-KS)	Limit Executive Compensation Abuse Act	To limit compensation to officers and directors of entities receiving emergency economic assistance from the Government, and for other purposes.
<a href="#">H.R. 851</a> Rep. Giffords (D-AZ)	Executive Compensation and Corporate Governance Act of 2009	To establish executive compensation and corporate governance requirements for institutions receiving assistance under the Troubled Assets Relief Program.
<a href="#">H.R. 846</a> Rep. Cummings (D-MD)	Accountability from Corporations for Outlays Under TARP Act	To require institutions receiving assistance under the Emergency Economic Stabilization Act of 2008 to report certain corporate data, and for other purposes.
<a href="#">S. 360</a> Sen. McCaskill (D-MO)	Cap Executive Officer Pay Act of 2009	To limit compensation to officers and directors of entities receiving emergency economic assistance from the Government.
<a href="#">H.R. 807</a> Rep. Bilirakis (R-FL)	(No short title)	To amend the Emergency Economic Stabilization Act of 2008 to require a public database of the executive compensation of the institutions receiving assistance under the Troubled Assets Relief Program.
<a href="#">H.R. 384</a> Rep. Frank (D-MA)	TARP Reform and Accountability Act of 2009	To reform the Troubled Assets Relief Program of the Secretary of the Treasury and ensure accountability under such Program.
<a href="#">S. 195</a> Sen. Dorgan (D-ND)	Taxpayer Protection Act	To extend oversight, accountability, and transparency provisions of the Emergency Economic Assistance Act of 2008 to all Federal emergency economic assistance to private entities, to impose tough conditions for all recipients of such emergency economic assistance, to set up a Federal task force to investigate and prosecute criminal activities that contributed to our economic crisis, and to establish a bipartisan financial market investigation and reform commission, and for other purposes.
<a href="#">S. 133</a> Sen. Feinstein (D-CA)	Troubled Asset Relief Program Transparency Reporting Act	To prohibit any recipient of emergency Federal economic assistance from using such funds for lobbying expenditures or political contributions, to improve transparency, enhance accountability, encourage responsible corporate governance, and for other purposes.
<b>Federal Securities Law</b>		
<a href="#">S. 3579</a> Sen. Carper (D-DE)	Data Security Act of 2010	A bill to protect information relating to consumers, to require notice of security breaches, and for other purposes.
<a href="#">H.R. 5725</a> Rep. Posey (R-FL)	Senior Citizens Income Security Act of 2010	To amend the Internal Revenue Code of 1986 to repeal taxes on the income of senior citizens and to improve income security of senior citizens.
<a href="#">H.R. 5564</a> Rep. McMahan (D-NY)	Judgment Evading Foreign States Accountability Act of 2010	To prevent wealthy and middle-income foreign states that do business, issue securities, or borrow money in the United States, and then fail to satisfy United States court judgments totaling \$100,000,000 or more based on such activities, from inflicting further economic injuries in the United States, from undermining the integrity of United States courts, and from discouraging responsible lending to poor and developing nations by undermining the secondary and primary markets for sovereign debt.
<a href="#">H.R. 5539</a> Rep. Chaffetz (R-UT)	Fannie Mae and Freddie Mac Transparency Act of 2010	To apply the Freedom of Information Act to the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation during any period that such entities are in conservatorship or receivership.
<a href="#">H.R. 5319</a> Rep. Johnson (R-TX)	Foreign-Held Debt Transparency and Threat Assessment Act	To increase transparency regarding debt instruments of the United States held by foreign governments, to assess the risks to the United States of such holdings, and for other purposes.
<a href="#">S. 3380</a> Sen. Rockefeller (D-WV)	(No short title)	A bill to amend the Internal Revenue Code of 1986 to provide for the treatment of securities of a controlled corporation exchanged for assets in certain reorganizations.

Track Legislation	Short Title	Purpose
<b>Federal Securities Law</b> (cont'd)		
<a href="#">H.R. 5207</a> Rep. Boustany (R-LA)	Employee Stock Ownership Plan Promotion and Improvement Act of 2010	To amend the Internal Revenue Code of 1986 to improve the operation of employee stock ownership plans, and for other purposes.
<a href="#">H.R. 5189</a> Rep. Hinchey (D-NY)	Municipal Finance Improvements Act of 2010	To amend the Internal Revenue Code of 1986 to require that the issuer of a tax-exempt State or local obligation obtain a certification that the interest rate with respect to such obligation is reasonable without materially increasing the risks associated with the obligation.
<a href="#">H.R. 5159</a> Rep. Miller (D-NC)	Safe, Accountable, Fair, and Efficient Banking Act of 2010	To provide for a safe, accountable, fair, and efficient banking system, and for other purposes.
<a href="#">H.R. 5140</a> Rep. Holt (D-NJ)	National Economic Competitiveness and Innovation Strategy Act of 2010	To require the Director of the White House Office of Science and Technology Policy to conduct a study and to prepare a comprehensive national economic competitiveness and innovation strategy.
<a href="#">H.R. 5125</a> Rep. Eshoo (D-CA)	Restitution for Local Government Act of 2010	To amend the Emergency Economic Stabilization Act of 2008 to establish a fund to be used to make local governments whole for losses incurred from the Lehman Brothers Holding, Inc., bankruptcy.
<a href="#">H.R. 5109</a> Rep. Kirk (R-IL)	Small Business Bill of Rights	To establish a tax, regulatory, and legal structure in the United States that encourages small businesses to expand and innovate, and for other purposes.
<a href="#">S. 3258</a> Sen. Reed (D-RI)	Modernizing and Strengthening Investor Protection Act of 2010	To amend the securities laws to modernize and strengthen investor protection, and for other purposes.
<a href="#">S. 3241</a> Sen. Brown (D-OH)	Safe, Accountable, Fair, and Efficient Banking Act of 2010	A bill to provide for a safe, accountable, fair, and efficient banking system, and for other purposes.
<a href="#">S. 3240</a> Sen. Cornyn (R-TX)	Foreign-Held Debt Transparency and Threat Assessment Act	A bill to increase transparency regarding debt instruments of the United States held by foreign governments, to assess the risks to the United States of such holdings, and for other purposes.
<a href="#">S. 3217</a> Sen. Dodd (D-CT)	Restoring American Financial Stability Act of 2010	To promote the financial stability of the United States by improving accountability and transparency in the financial system, to end 'too big to fail', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes.
<a href="#">H.R. 5032</a> Rep. Ackerman (D-NY)	Ponzi Scheme Investor Protection Act of 2010	To amend the Securities Investor Protection Act of 1970 to provide insurance coverage for certain indirect investors caught in Ponzi schemes, and for other purposes.
<a href="#">S. 3166</a> Sen. Schumer (D-NY)	Ponzi Scheme Victim's Bill of Rights Act of 2010	To amend the Internal Revenue Code of 1986 to provide tax relief for persons with investment losses due to fraud or embezzlement.
<a href="#">H.R. 4962</a> Rep. Clark (D-NY)	International Cybercrime Reporting and Cooperation Act	To require reporting on certain information and communications technologies of foreign countries, to develop action plans to improve the capacity of certain countries to combat cybercrime, and for other purposes.
<a href="#">H.R. 4946</a> Rep. Cole (R-OK)	10th Amendment Regulatory Reform Act	To protect 10th Amendment rights by providing special standing for State government officials to challenge proposed regulations, and for other purposes.
<a href="#">H.R. 4941</a> Rep. Kirkpatrick (D-AZ)	Anti-Cash Smuggling Act of 2010	To amend title 31, United States Code, to include means of access to funds or the value of funds in certain records and reports on monetary instrument transactions, and for other purposes.
<a href="#">S. 3134</a> Sen. Schumer (D-NY)	Currency Exchange Rate Oversight Reform Act of 2010	To provide for identification of misaligned currency, require action to correct the misalignment, and for other purposes.

Track Legislation	Short Title	Purpose
<b>Federal Securities Law</b> (cont'd)		
<a href="#">H.R. 4936</a> Rep. Tsongas (D-MA)	Faster Access and Shorter Transaction Time for Checks Act of 2010 or the FASTT Checks Act	To amend the Expedited Funds Availability Act, to adjust dollar limits on check hold policies, and for other purposes.
<a href="#">H.R. 4928</a> Rep. Gutierrez (D-IL)	(No short title)	To amend the Federal Deposit Insurance Act to permanently extend the Transaction Amount Guarantee Program.
<a href="#">H.R. 4889</a> Rep. Hensarling (R-TX)	GSE Bailout Elimination and Taxpayer Protection Act	To establish a term certain for the conservatorships of Fannie Mae and Freddie Mac, to provide conditions for continued operation of such enterprises, and to provide for the wind down of such operations and the dissolution of such enterprises.
<a href="#">H.R. 4884</a> Rep. Garrett (R-NJ)	United States Covered Bond Act of 2010	To establish a covered bond regulatory oversight program, and for other purposes.
<a href="#">H.R. 4877</a> Rep. Polis (D-CO)	Community Bank and Automotive Industry Recapitalization Act of 2010	To amend the Internal Revenue Code of 1986 to encourage investment in certain industries by providing an exclusion from tax on certain gains.
<a href="#">H.R. 4868</a> Rep. Frank (D-MA)	Housing Preservation and Tenant Protection Act of 2010	To prevent the loss of affordable housing dwelling units in the United States.
<a href="#">H.R. 4854</a> Rep. Clay (D-MO)	Home Inspection Act of 2010	To require that any home inspection conducted in connection with a purchase of residential real property that involves a federally related mortgage loan be conducted by a State-licensed or State-certified home inspector to determine the existence of structural, mechanical, and electrical safety defects, and to require inclusion in the standard HUD-1 settlement statement of information regarding any home inspection conducted in connection with settlement.
<a href="#">S. 3103</a> Sen. Snowe (R-ME)	Small Business Export Enhancement and International Trade Act of 2010	To help small businesses create new jobs and drive our Nation's economic recovery.
<a href="#">H.R. 4811</a> Rep. Capito (R-WV)	FHA Safety and Soundness and Taxpayer Protection Act of 2010	To protect the American taxpayers by improving the safety and soundness of the FHA mortgage insurance programs of the Department of Housing and Urban Development.
<a href="#">H.R. 4769</a> Rep. Holt (D-NJ)	Creating Jobs From Innovative Small Businesses Act of 2010	To amend the Internal Revenue Code of 1986 to allow a credit against income tax for equity investments in high technology small business concerns.
<a href="#">H.R. 4768</a> Rep. Grayson (D-FL)	Bailouts Are Not For Sale Act	To prevent funding provided through the Federal Reserve System from being made available to corporations that finance political campaigns or political propaganda, and for other purposes.
<a href="#">S. 3069</a> Sen. Schumer (D-NY)	American Renewable Energy Jobs Act	To amend the American Recovery and Reinvestment Act of 2009 to provide for the preservation and creation of jobs in the United States for projects receiving grants for specified energy property.
<a href="#">S. 3052</a> Sen. Menendez (D-NJ)	Ending Taxpayer Bailouts by Making Wall Street Pay Act of 2010	To address the establishment and maintenance of the Systemic Resolution Fund of the Federal Deposit Insurance Corporation, and for other purposes.
<a href="#">H.R. 4744</a> Rep. Marchant (R-TX)	E-Verify Loan Origination Act of 2010	To require, as a condition for purchase of a home mortgage loan by Fannie Mae or Freddie Mac, and insurance of a home mortgage loan under the National Housing Act, that the mortgagor be verified under the E-Verify program.
<a href="#">H.R. 4742</a> Rep. Kind (D-WI)	Small Businesses Add Value for Employees Act of 2009 or SAVE Act of 2009	To amend the Internal Revenue Code of 1986 to encourage retirement savings by modifying requirements with respect to employer-established IRAs, and for other purposes.

Track Legislation	Short Title	Purpose
<b>Federal Securities Law</b> (cont'd)		
<a href="#">H.R. 4729</a> Rep. Sanchez (D-CA)	(No short title)	To clarify the situations in which a corporation may be treated as a person under Federal law.
<a href="#">H.R. 4694</a> Rep. Speier (D-CA)	Safe Affordable Small Dollar Loan Act of 2010	To amend the Community Development Banking and Financial Institutions Act of 1994 to provide financial assistance to community development financial institutions to help defray the costs of operating small dollar loan programs, and for other purposes.
<a href="#">S. 3033</a> Sen. Durbin (D-IL)	Protecting Employees and Retirees in Business Bankruptcies Act of 2010	To amend title 11, United States Code, to improve protections for employees and retirees in business bankruptcies.
<a href="#">S. 3029</a> Sen. Kerry (D-MA)	StartUp Visa Act of 2010	To establish an employment-based immigrant visa for alien entrepreneurs who have received significant capital from investors to establish a business in the United States.
<a href="#">H.R. 4682</a> Rep. Kennedy (D-RI)	America Saving for Personal Investment, Retirement, and Education Act of 2010 or ASPIRE Act of 2010	To encourage savings, promote financial literacy, and expand opportunities for young adults by establishing Lifetime Savings Accounts.
<a href="#">H.R. 4679</a> Rep. Christensen (D-VI)	Virgin Islands Improvement Act of 2010	To amend the Internal Revenue Code of 1986 to assist in the recovery and development of the Virgin Islands by providing for a reduction in the tax imposed on distributions from certain retirement plans' assets which are invested for at least 30 years, subject to defined withdrawals, under a Virgin Islands investment program.
<a href="#">H.R. 4677</a> Rep. Conyers (D-MI)	Protecting Employees and Retirees in Business Bankruptcies Act of 2010	To amend title 11, United States Code, to improve protections for employees and retirees in business bankruptcies.
<a href="#">H.R. 4663</a> Rep. Kosmas (D-FL)	Enhancing Investment in Small Businesses Act of 2010	To amend the Internal Revenue Code of 1986 to provide for a permanent exclusion of all gain on certain small business stock.
<a href="#">H.R. 4653</a> Rep. Garrett (R-NJ)	Accurate Accounting of Fannie Mae and Freddie Mac Act	To provide on-budget status to the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation.
<a href="#">H.R. 4646</a> Rep. Fattah (D-PA)	Debt Free America Act	To establish a fee on transactions which would eliminate the national debt and replace the income tax on individuals.
<a href="#">H.R. 4635</a> Rep. Fudge (D-OH)	Foreclosure Mandatory Mediation Act of 2010	To require lenders of loans with Federal guarantees or Federal insurance to consent to mandatory mediation.
<a href="#">H.R. 4629</a> Rep. Levin (D-MI)	Manufacturing Modernization and Diversification Act of 2010	To create a loan program to provide funds to State special purpose vehicles for use in collateral support programs and loan participation programs to benefit qualified manufacturers.
<a href="#">S. 3006</a> Sen. Schumer (D-NY)	(No short title)	To amend the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1986 to allow multiemployer plans to amortize losses from certain fraudulent investment schemes over a 40-year period.
<a href="#">S. 3005</a> Sen. Reed (D-RI)	National Institute of Finance Act of 2010	To create an independent research institute, to be known as the "National Institute of Finance," that will oversee the collection and standardization of data on financial entities and activities, and conduct monitoring and other research and analytical activities to support the work of the Federal financial regulatory agencies and the Congress.
<a href="#">S. 3000</a> Sen. Rockefeller (D-WV)	(No short title)	To extend the increase in the FMAP provided in the American Recovery and Reinvestment Act of 2009 for an additional 6 months.

Track Legislation	Short Title	Purpose
<b>Federal Securities Law</b> (cont'd)		
<a href="#">H.R. 4617</a> Rep. Walz (D-MN)	Separate Taxpayer Dollars from the Election Process Act of 2010	To amend the Emergency Economic Stabilization Act of 2008 to require institutions to segregate funds received under the Troubled Asset Relief Program and to amend the Federal Election Campaign Act of 1971 to prohibit the use of any such funds for expenditures or electioneering communications under such Act.
<a href="#">H.R. 4608</a> Rep. Maffei (D-NY)	(No short title)	To amend the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1986 to allow multiemployer plans to amortize losses from certain fraudulent investment schemes over a 40-year period.
<a href="#">H.R. 4606</a> Rep. Johnson (D-TX)	(No short title)	To amend the Internal Revenue Code of 1986 to expand the purposes for which Build America Bonds may be issued.
<a href="#">H.R. 4586</a> Rep. Marchant (R-TX)	Mortgage E-Verify Act of 2010	To require, as a condition for modification of a home mortgage loan held by Fannie Mae or Freddie Mac or insured under the National Housing Act, that the mortgagor be verified under the E-Verify program.
<a href="#">H.R. 4581</a> Rep. Biggert (R-IL)	Fannie Mae and Freddie Mac Accountability and Transparency for Taxpayers Act of 2010	To require the Inspector General of the Federal Housing Finance Agency to submit quarterly reports to the Congress during the conservatorship of the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation.
<a href="#">H.R. 4566</a> Rep. Paulson (R-MN)	Erasing our National Debt Through Accountability and Responsibility Plan Act of 2010	To terminate authority under the Troubled Asset Relief Program, and for other purposes.
<a href="#">H.R. 4550</a> Rep. Tsongas (D-MA)	No Taxpayer Money for Corporate Campaigns Act of 2010	To prohibit entities from using Federal funds to contribute to political campaigns or participate in lobbying activities.
<a href="#">H.R. 4539</a> Rep. Crowley (D-NY)	Real Estate Revitalization Act of 2010	To amend the Internal Revenue Code of 1986 to modify the treatment of foreign investments in United States real property, and for other purposes.
<a href="#">S. 2981</a> Sen. Snowe (R-ME)	Reevaluate and Redirect the Stimulus Act of 2010	To reevaluate and redirect the stimulus.
<a href="#">S. 2938</a> Sen. Thune (R-SD)	Erasing our National Debt Through Accountability and Responsibility Plan Act of 2010	To terminate authority under the Troubled Asset Relief Program, and for other purposes.
<a href="#">H.R. 4519</a> Rep. Israel (D-NY)	Financial Crisis Public Disclosure Act of 2010	To direct the Secretary of the Treasury to make publicly available on the Internet the electronic communications of certain TARP recipients.
<a href="#">H.R. 4516</a> Rep. Dingell (D-MI)	Financial Services Industry Stability Act of 2010	To provide stability in the financial services industry by promoting transparency, simplicity, fairness, accountability, and equal access in the market for consumer financial products or services and ensuring that no financial company becomes too big to fail, and for other purposes.
<a href="#">H.R. 4486</a> Rep. Hodes (D-NH)	(No short title)	To amend the Internal Revenue Code of 1986 to treat distributions of debt securities in a tax free spin-off transaction in the same manner as distributions of cash or other property.
<a href="#">H.R. 4483</a> Rep. Hodes (D-NH)	Protecting Taxpayers from Excessive Compensation Act of 2010	To prohibit compensation for any officer or employee of the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, during any conservatorship or receivership of such enterprise, in an amount exceeding the compensation provided to the Chairman of the Joint Chiefs of Staff of the Armed Forces.
<a href="#">H.R. 4476</a> Rep. Roskam (R-IL)	Equity in Government Compensation Act of 2010	To suspend the current compensation packages for the senior executives of Fannie Mae and Freddie Mac and establish compensation for such positions in accordance with rates of pay for senior employees in the Executive Branch of the Federal Government, and for other purposes.

Track Legislation	Short Title	Purpose
<b>Federal Securities Law</b> (cont'd)		
<a href="#">H.R. 4482</a> Rep. Leonard (R-NJ)	Pay It Back Act	To apply recaptured taxpayer investments toward reducing the national debt.
<a href="#">H.R. 4461</a> Rep. Dingell (D-MI)	Banking Integrity Act of 2010	To prohibit certain affiliations (between commercial banking and investment banking companies), and for other purposes.
<a href="#">H.R. 472</a> Rep. Rangel (D-NY)	Family Foreclosure Rescue Corporation Act of 2009	To reform the Troubled Assets Relief Program of the Secretary of the Treasury by establishing the Family Foreclosure Rescue Corporation modeled on the successful Home Owner's Loan Corporation, and to purchase and insure home mortgage loans for the purposes of providing relief to homeowners, restoring stability to the financial system, preventing further harm to the economy, and protecting taxpayers.
<a href="#">H.R. 598</a> Rep. Rangel (D-NY)	American Recovery and Reinvestment Tax Act of 2009	To provide for a portion of the economic recovery package relating to revenue measures, unemployment, and health.
<a href="#">H.R. 4454</a> Rep. Stearns (R-FL)	(No short title)	To amend the Fraud Enforcement and Recovery Act of 2009 to require the Financial Crisis Inquiry Commission to make a preliminary report no later than June 15, 2010.
<a href="#">H.R. 4435</a> Rep. Grayson (D-FL)	(No short title)	To amend the Securities Exchange Act of 1934 to prohibit any national securities exchange from effecting any transaction in a security issued by a corporation unless the corporation's registration with the exchange includes a certification that the corporation currently is in compliance with the provisions of the Federal Election Campaign Act of 1971 governing contributions and expenditures by corporations which were in effect with respect to elections held during 2008.
<a href="#">H.R. 4432</a> Rep. Grayson (D-FL)	Corporate Propaganda Sunshine Act	To direct the Securities and Exchange Commission to revise its reporting requirements to require public companies to report certain expenditures made to influence public opinion on any matter other than the promotion of the company's products or services.
<a href="#">S. 2827</a> Sen. Harkin (D-IA)	Wall Street Fair Share Act	To amend the Internal Revenue Code of 1986 to impose a tax on certain securities transactions to fund job creation and deficit reduction, and for other purposes.
<a href="#">H.R. 4283</a> Rep. Cohen (D-TN)	Transparency and Integrity in Corporate Monitoring Act of 2009	To prohibit United States attorneys and assistant United States attorneys from acting as or working for corporate monitors for specified periods after their service with the Government terminates.
<a href="#">H.R. 4377</a> Rep. Kaptur (D-OH)	Return to Prudent Banking Act of 2009	To repeal certain provisions of the Gramm-Leach-Bliley Act and revive the separation between commercial banking and the securities business, in the manner provided in the Banking Act of 1933, the so-called "Glass-Steagall Act", and for other purposes.
<a href="#">H.R. 4375</a> Rep. Hinchey (D-NY)	Glass-Steagall Restoration Act	To restore certain provisions of the Banking Act of 1933, commonly referred to as the "Glass-Steagall Act", and for other purposes.
<a href="#">S. 2886</a> Sen. Cantwell (D-WA)	Banking Integrity Act of 2009	To prohibit certain affiliations (between commercial banking and investment banking companies), and for other purposes.
<a href="#">H.R. 4173</a> Rep. Frank (D-MA)	The Wall Street Reform and Consumer Protection Act of 2009	To provide for financial regulatory reform, to protect consumers and investors, to enhance Federal understanding of insurance issues, to regulate the over-the-counter derivatives markets, and for other purposes.
<a href="#">S. 2813</a> Sen. Menendez (D-NJ)	Investors Rights and Corporate Accountability Act of 2009	To increase corporate responsibility, and for other purposes.
<a href="#">H.R. 3996</a> Rep. Frank (D-MA)	Financial Stability Improvement Act of 2009	To improve financial stability, and for other purposes.
<a href="#">H.R. 3995</a> Rep. Kaptur (D-OH)	Financial Crisis of 2008 Criminal Investigation and Prosecution Act of 2009	To provide additional resources for Federal investigations and prosecutions of crimes related to the 2008 Financial Crisis, and for other purposes.

Track Legislation	Short Title	Purpose
<b>Federal Securities Law</b> (cont'd)		
<a href="#">H.R. 3890</a> Rep. Kanjorski (D-PA)	Accountability and Transparency in Rating Agencies Act	To amend the Securities Exchange Act of 1934 to enhance oversight of nationally recognized statistical rating organizations, and for other purposes.
<a href="#">H.R. 3817</a> Rep. Kanjorski (D-PA)	Investor Protection Act of 2009	To provide the Securities and Exchange Commission with additional authorities to protect investors from violations of the securities laws, and for other purposes.
<a href="#">H.R. 3783</a> Rep. Posey (R-FL)	SEC Delinquent Judgment Collection Act	To amend the Securities Exchange Act of 1934 to provide the Securities and Exchange Commission with the authority to contract for the collection of delinquent claims resulting from judgments or orders obtained by the Commission.
<a href="#">S. 1700</a> Sen. Lugar (R-IN)	Energy Security Through Transparency Act of 2009	To require certain issuers to disclose payments to foreign governments for the commercial development of oil, natural gas, and minerals, to express the sense of Congress that the President should disclose any payment relating to the commercial development of oil, natural gas, and minerals on Federal land, and for other purposes.
<a href="#">S. 1661</a> Sen. Kohl (D-WI)	Senior Investment Protection Act of 2009	To protect older Americans from misleading and fraudulent marketing practices, with the goal of increasing retirement security.
<a href="#">S. 1659</a> Sen. Casey (D-PA)	Senior Investor Protections Enhancement Act of 2009	To enhance penalties for violations of securities protections that involve targeting seniors.
<a href="#">H.R. 3551</a> Rep. Hodes (D-NH)	Senior Investment Protection Act of 2009	To protect older Americans from misleading and fraudulent marketing practices, with the goal of increasing retirement security.
<a href="#">H.R. 3550</a> Rep. Hodes (D-NH)	Senior Investor Protections Enhancement Act of 2009	To enhance penalties for violations of securities protections that involve targeting seniors.
<a href="#">S. 1592</a> Sen. Snowe (R-ME)	Federal Board of Certification Act of 2009	To establish a Federal Board of Certification to enhance the transparency, credibility, and stability of financial markets, and for other purposes.
<a href="#">H.R. 3428</a> Rep. Reichert (R-WA)	Reclaiming Bailout Funds for Taxpayers Act	To amend the Emergency Economic Stabilization Act of 2008 to require a corresponding reduction in the authorization to purchase each time a repayment is made for assistance received under the Troubled Asset Relief Program.
<a href="#">H.R. 3318</a> Rep. Kilroy (D-OH)	Investor Advisory Committee Act of 2009	To establish by law a permanent Investor Advisory Committee within the Securities and Exchange Commission to give investors a greater voice in the Securities and Exchange Commission's work.
<a href="#">H.R. 3310</a> Rep. Bachus (R-AL)	Consumer Protection and Regulatory Enhancement Act	To reform the financial regulatory system of the United States, and for other purposes.
<a href="#">H.R. 3232</a> Rep. Kilroy (D-OH)	Provide a Return on Financial Investment for the Taxpayer Act of 2009 (PROFIT Act of 2009)	To amend the Emergency Economic Stabilization Act of 2008 to require certain warrants held by the Secretary of the Treasury to be sold at public auction upon the repayment of the associated assistance provided under the Troubled Asset Relief Program.
<a href="#">S. 1457</a> Sen. Collins (R-ME)	Federal Reserve Credit Facility Review Act of 2009	To amend title 31, United States Code, to authorize reviews by the Comptroller General of the United States of any credit facility established by the Board of Governors of the Federal Reserve System or any Federal Reserve bank, and for other purposes.
<a href="#">H.R. 3214</a> Rep. Rooney (R-FL)	Rating Accountability and Transparency Enhancement Act of 2009 (RATE Act)	To provide for credit rating reforms, and for other purposes.
<a href="#">H.R. 3179</a> Rep. Paulsen (R-MN)	SIG TARP Small Business Awareness Act of 2009	To amend the Emergency Economic Stabilization Act of 2008 to require the Special Inspector General for the Troubled Asset Relief Program to include the effect of the Troubled Asset Relief Program on small businesses in the oversight, audits, and reports provided by the Special Inspector General, and for other purposes.

Track Legislation	Short Title	Purpose
<b>Federal Securities Law</b> (cont'd)		
<a href="#">H.R. 3145</a> Rep. Waters (D-CA)	Credit Default Swap Prohibition Act of 2009	To amend the securities laws to prohibit credit default swaps and to provide the Securities and Exchange Commission with the authority to regulate swap agreements.
<a href="#">H.R. 3128</a> Rep. Ellison (D-MN)	(No short title)	To amend the Federal Reserve Act to authorize Federal Reserve Banks to examine the methodologies of used by nationally recognized statistical rating organizations in analyzing and rating asset backed securities and structured finance products.
<a href="#">S. 1389</a> Sen. Martinez (R-FL)	Fixed Indexed Annuities and Insurance Products Classification Act of 2009	To clarify the exemption for certain annuity contracts and insurance policies from Federal regulation under the Securities Act of 1933.
<a href="#">H.R. 2947</a> Rep. Jenkins (R-KS)	Securities Law Technical Corrections Act of 2009	To amend the Federal securities laws to make technical corrections and to make conforming amendments related to the repeal of the Public Utility Holding Company Act of 1935.
<a href="#">H.R. 2932</a> Rep. Waters (D-CA)	Stop Very Unscrupulous Loan Transfers from Underprivileged countries to Rich, Exploitive Funds Act (Stop VULTURE Funds Act)	To prevent speculation and profiteering in the defaulted debt of certain poor countries, and for other purposes.
<a href="#">S. 1280</a> Sen. Corker (R-TN)	TARP Recipient Ownership Trust Act of 2009	To authorize the Secretary of the Treasury to delegate management authority over troubled assets purchased under the Troubled Asset Relief Program, to require the establishment of a trust to manage assets of certain designated TARP recipients, and for other purposes.
<a href="#">H.R. 2907</a> Rep. Tiahrt (R-KS)	(No short title)	To amend the Emergency Economic Stabilization Act of 2008 to ensure that recipients of assistance under the Troubled Asset Relief Program repay such assistance only if they would remain well capitalized after such repayment.
<a href="#">H.R. 2904</a> Rep. Moran (R-KS)	Government Ownership Exit Plan Act of 2009	To prohibit the Federal Government from holding ownership interests, and for other purposes.
<a href="#">H.R. 2873</a> Rep. Campbell (R-CA)	Enhanced S.E.C. Enforcement Authority Act	To provide enhanced enforcement authority to the Securities and Exchange Commission.
<a href="#">S. 1245</a> Sen. Thune (R-SD)	Government Ownership Exit Plan Act of 2009	To prohibit the Federal Government from holding ownership interests, and for other purposes.
<a href="#">S. 1223</a> Sen. Johanns (R-NE)	Free Enterprise Act of 2009	To require prior Congressional approval of emergency funding resulting in Government ownership of private entities.
<a href="#">H.R. 2832</a> Rep. Edwards (D-TX)	Taxpayer Repayment Act of 2009	To require the Secretary of the Treasury to develop a strategy and timeline for the repayment of assistance received by financial institutions under the Troubled Asset Relief Program, and for other purposes.
<a href="#">H.R. 2745</a> Rep. Hensarling (R-TX)	TARP Repayment and Termination Act of 2009	To amend the Emergency Economic Stabilization Act of 2008 to provide repayment procedures for certain assistance received under the Troubled Asset Relief Program.
<a href="#">H.R. 2727</a> Rep. Jones (R-NC)	Financial Transparency Restoration Act	To provide for the implementation of a system under which each financial institution will report on the financial condition of the institution to the public, and for other purposes.
<a href="#">H.R. 2664</a> Rep. Lee (R-NY)	Promoting Transparency in Financial Reporting Act of 2009	To require annual oral testimony before the Financial Services Committee of the Chairperson or a designee of the Chairperson of the Securities and Exchange Commission, the Financial Accounting Standards Board, and the Public Company Accounting Oversight Board, relating to their efforts to promote transparency in financial reporting.
<a href="#">H.R. 2623</a> Rep. McCarthy (R-CA)	(No short title)	To amend the Federal securities laws to clarify and expand the definition of certain persons under those laws.

Track Legislation	Short Title	Purpose
<b>Federal Securities Law</b> (cont'd)		
<a href="#">H.R. 2622</a> Rep. McCarthy (R-CA)	Compliance, Examinations, and Inspections Restructuring Act of 2009	To amend the Securities Exchange Act of 1934 to establish rules and procedures for the delegation of compliance and inspections authority to the operating divisions of the Securities and Exchange Commission, and for other purposes.
<a href="#">H.R. 2551</a> Rep. Foster (D-IL)	Municipal Market Liquidity Enhancement Act of 2009	To amend the Federal Reserve Act to provide for lending authority for certain securities purchases, and for other purposes.
<a href="#">H.R. 2550</a> Rep. Driehaus (D-OH)	Municipal Advisers Regulation Act	To amend the Securities Exchange Act of 1934 to require the registration of municipal financial advisers.
<a href="#">H. R. 2549</a> Rep. Capuano (D-MA)	Municipal Bond Fairness Act	To ensure uniform and accurate credit rating of municipal bonds and provide for a review of the municipal bond insurance industry.
<a href="#">H.R. 2493</a> Rep. Massa (D-NY)	Judgment Evading Foreign States Accountability Act of 2009	To prevent wealthy and middle-income foreign states that do business, issue securities, or borrow money in the United States, and then fail to satisfy United States court judgments totaling \$100,000,000 or more based on such activities, from inflicting further economic injuries in the United States, from undermining the integrity of United States courts, and from discouraging responsible lending to poor and developing nations by undermining the secondary and primary markets for sovereign debt.
<a href="#">S. 1073</a> Sen. Reed (D-RI)	Rating Accountability and Transparency Enhancement (RATE) Act of 2009	To provide for credit rating reforms, and for other purposes.
<a href="#">H.R. 2253</a> Rep. Delahunt (D-MA)	Financial Markets Commission Act of 2009	To establish a Financial Markets Commission, and for other purposes.
<a href="#">S. 927</a> Sen. Pryor (D-AR)	Credit Rating Agency Responsibility Act of 2009	To amend the Securities Exchange Act of 1934 to enhance oversight of nationally recognized statistical rating organizations, and for other purposes.
<a href="#">S. 910</a> Sen. Warner (D-VA)	(No short title)	To amend the Emergency Economic Stabilization Act of 2008, to provide for additional monitoring and accountability of the Troubled Asset Relief Program.
<a href="#">S. 906</a> Sen. Kohl (D-WI)	Senior Investment Protection Act of 2009	To protect older Americans from misleading and fraudulent marketing practices, with the goal of increasing retirement security.
<a href="#">H.R. 2118</a> Rep. McCarthy (R-CA)	(No short title)	To amend the Emergency Economic Stabilization Act of 2008 to provide for more detailed repayment procedures for assistance received under the Troubled Asset Relief Program.
<a href="#">H.R. 2111</a> Rep. Burgess (R-TX)	Congressional Commission on Financial Accountability and Preparedness Act of 2009	To establish the Congressional Commission on Financial Accountability and Preparedness to examine and report upon the facts and causes relating to the breakdown in the financial and credit markets in 2008, and investigate and report to the Congress on its findings, conclusions, and recommendations for prosecution of criminal behavior.
<a href="#">H.R. 2009</a> Rep. McClintock (R-CA)	(No short title)	To amend the Emergency Economic Stabilization Act of 2008 to permit immediate repayment of direct capital investments received under the Troubled Asset Relief Program.
<a href="#">H.R. 1909</a> Rep. Cohen (D-TN)	(No short title)	To direct the Securities and Exchange Commission to suspend the application of mark-to-market accounting.
<a href="#">H.R. 1893</a> Rep. Bachus (R-AL)	Anti-Gaming and Collusion in Public-Private Investment Program Act	To prohibit any person which sells to or otherwise disposes of any asset through a public-private investment program, including the Public-Private Investment Program for Legacy Assets, from purchasing or otherwise acquiring any other asset from or through such programs, and for other purposes.
<a href="#">H.R. 1779</a> Rep. Scott (D-VA)	Financial Crimes Resources Act of 2009	To provide for resources for the investigation and prosecution of financial crimes, and for other purposes.
<a href="#">H.R. 1761</a> Rep. Kildee (D-MI)	The Responsible Use of Taxpayer Help Act	To amend the Emergency Economic Stabilization Act of 2008 to restrict the use of TARP funds for domestic purposes.

Track Legislation	Short Title	Purpose
<b>Federal Securities Law</b> (cont'd)		
<a href="#">H.R. 1754</a> Rep. Castle (R-DE)	Financial System Stabilization and Reform Act of 2009	To create a systemic risk monitor for the financial system of the United States, to oversee financial regulatory activities of the Federal Government, and for other purposes.
<a href="#">H.R. 1748</a> Rep. Conyers (D-MI)	Fight Fraud Act of 2009	To amend title 18, United States Code, to enhance the investigation and prosecution of mortgage fraud and financial institution fraud, and for other purposes.
<a href="#">S. 891</a> Sen. Brownback (R-KS)	Congo Conflict Minerals Act of 2009	To require annual disclosure to the Securities and Exchange Commission of activities involving columbite-tantalite, cassiterite, and wolframite from the Democratic Republic of Congo, and for other purposes.
<a href="#">S. 664</a> Sen. Collins (R-ME)	Financial System Stabilization and Reform Act of 2009	To create a systemic risk monitor for the financial system of the United States, to oversee financial regulatory activities of the Federal Government, and for other purposes.
<a href="#">S. 605</a> Sen. Kaufman (D-DE)	(No short title)	To require the Securities and Exchange Commission to reinstate the uptick rule and effectively regulate abusive short selling activities.
<a href="#">H.R. 1445</a> Rep. McHenry (R-NC)	Credit Rating Agency Transparency and Disclosure Act	To amend the Securities Exchange Act of 1934 to require nationally registered statistical rating organizations to provide additional disclosures with respect to the rating of certain structured securities, and for other purposes.
<a href="#">H.R. 1418</a> Rep. Meeks (D-NY)	(No short title)	To eliminate the exemption from State regulation for certain securities designated by national securities exchanges.
<a href="#">H.R. 1406</a> Rep. Kirk (R-IL)	Stock Market Recovery Act of 2009	To direct the Securities and Exchange Commission to reinstate the 'uptick rule' on short sales of securities and to suspend the application of mark-to-market accounting principles.
<a href="#">H.R. 1389</a> Rep. Ackerman (D-NY)	Fraudulent Tax Relief Act of 2009	To amend the Internal Revenue Code of 1986 to allow a refundable credit for taxes paid on earnings reinvested and lost in a fraudulent investment scheme.
<a href="#">H.R. 1353</a> Rep. Putnam (R-FL)	Fannie Mae and Freddie Mac Full Disclosure Act	To extend the registration and reporting requirements of the Federal securities laws to certain housing-related Government-sponsored enterprises, and for other purposes.
<a href="#">H.R. 1349</a> Rep. Perlmutter (D-CO)	Federal Accounting Oversight Board Act of 2009	To establish the Federal Accounting Oversight Board to approve and oversee accounting principles and standards for the purposes of the Federal financial regulatory agencies, and for other purposes.
<a href="#">S. 521</a> Sen. Inhofe (R-OK)	TARP Oversight Enhancement Act	To enhance the oversight authority of the Comptroller General of the United States with respect to certain expenditures by financial institutions participating in the Troubled Asset Relief Program.
<a href="#">S. 386</a> Sen. Leahy (D-VT)	Fraud Enforcement and Recovery Act of 2009	To improve enforcement of mortgage fraud, securities fraud, financial institution fraud, and other frauds related to federal assistance and relief programs, for the recovery of funds lost to these frauds, and for other purposes.
<a href="#">H.R. 1181</a> Rep. Ackerman (D-NY)	(No short title)	To direct the Securities and Exchange Commission to establish both a process by which asset-backed instruments can be deemed eligible for NRSRO ratings and an initial list of such eligible asset-backed instruments.
<a href="#">H.R. 1159</a> Rep. Meeks (D-FL)	(No short title)	To amend the Internal Revenue Code of 1986 to provide special rules for investments lost in a fraudulent Ponzi-type scheme.
<a href="#">H.R. 1105</a> Rep. Obey (D-WI)	Omnibus Appropriations Act, 2009	To make omnibus appropriations for the fiscal year ending September 30, 2009, and for other purposes.
<a href="#">H.R. 885</a> Rep. Larson (D-CT)	Improved Financial and Commodity Markets Oversight and Accountability Act	To elevate the Inspector General of certain Federal entities to an Inspector General appointed pursuant to section 3 of the Inspector General Act of 1978.
<a href="#">S. 331</a> Sen. Schumer (D-NY)	Supplemental Anti-Fraud Enforcement for our Market Act	To increase the number of Federal law enforcement officials investigating and prosecuting financial fraud.

Track Legislation	Short Title	Purpose
<b>Federal Securities Law</b> (cont'd)		
<a href="#">H.R. 768</a> Rep. Larson (D-CT)	Commission on Financial Crisis Accountability Act of 2009	To establish a commission on the tax and fiscal implications of the regulation of financial products and arrangements and to study the current financial crisis, its causes and impact on the Federal deficit and tax revenues.
<a href="#">S. 356</a> Sen. Boxer (D-CA)	Community Choice in Real Estate Act	To amend the Bank Holding Company Act of 1956 and the Revised Statutes of the United States to prohibit financial holding companies and national banks from engaging, directly or indirectly, in real estate brokerage or real estate management activities, and for other purposes.
<a href="#">H.R. 682</a> Rep. Baird (D-WA)	Stop Trading on Congressional Knowledge Act	To prohibit securities and commodities trading based on nonpublic information relating to Congress, and to require additional reporting by Members and employees of Congress of securities transaction, and for other purposes.
<a href="#">S. 298</a> Sen. Isakson (R-GA)	Financial Markets Commission Act of 2009	To establish a Financial Markets Commission, and for other purposes.
<a href="#">H.R. 607</a> Rep. Miller (R-CA)	(No short title)	To direct the Securities and Exchange Commission to issue guidance on the interpretation of fair value accounting.
<a href="#">H.R. 302</a> Rep. Ackerman (D-NY)	(No short title)	To require the Securities and Exchange Commission to reinstate the uptick rule on short sales of securities.
<a href="#">H.R. 281</a> Rep. Roskam (R-IL)	Transparency in Corporate Filings Act	To authorize the Securities and Exchange Commission to permit or require persons filing or furnishing information under the securities laws to make such information available on internet websites, in addition to or instead of including such information in filings with or submissions to the Commission, under such conditions as the Commission may specify by rule.
<a href="#">H.R. 111</a> Rep. Kanjorski (D-PA)	Community Choice in Real Estate Act	To amend the Bank Holding Company Act of 1956 and the Revised Statutes of the United States to prohibit financial holding companies and national banks from engaging, directly or indirectly, in real estate brokerage or real estate management activities, and for other purposes.
<a href="#">H.R. 74</a> Rep. Issa (R-CA)	Financial Oversight Commission Act of 2009	To establish the Financial Oversight Commission, and for other purposes.
<b>Hedge Funds</b>		
<a href="#">S. 3098</a> Sen. Merkley (D-OR)	Protect Our Recovery Through Oversight of Proprietary Trading Act of 2010 or the PROP Trading Act	To prohibit proprietary trading and certain relationships with hedge funds and private equity funds, to address conflicts of interest with respect to certain securitizations, and for other purposes.
<a href="#">H.R. 4213</a> Rep. Rangel (D-NY)	Tax Extenders Act of 2009	To amend the Internal Revenue Code of 1986 to extend certain expiring provisions, and for other purposes.
<a href="#">H.R. 1265</a> Rep. Doggett (D-TX)	Stop Tax Haven Abuse Act	To restrict the use of offshore tax havens and abusive tax shelters to inappropriately avoid Federal taxation, and for other purposes.
<a href="#">S. 506</a> Sen. Levin (MI)	Stop Tax Haven Abuse Act	To restrict the use of offshore tax havens and abusive tax shelters to inappropriately avoid Federal taxation, and for other purposes.
<a href="#">S. 344</a> Sen. Grassley (R-IA)	Hedge Fund Transparency Act of 2009	To require hedge funds to register with the Securities and Exchange Commission, and for other purposes.
<a href="#">H.R. 713</a> Rep. Castle (R-DE)	Hedge Fund Study Act	To require the President's Working Group on Financial Markets to conduct a study on the hedge fund industry.
<a href="#">H.R. 712</a> Rep. Castle (R-DE)	Pension Security Act of 2009	To amend title I of the Employee Retirement Income Security Act of 1974 to require in the annual report of each defined benefit pension plan disclosure of plan investments in hedge funds.
<a href="#">H.R. 711</a> Rep. Capuano (D-MA)	Hedge Fund Adviser Registration Act of 2009	To amend the Investment Advisers Act of 1940 to remove the registration exception for certain investment advisors with less than 15 clients.

Track Legislation	Short Title	Purpose
<b>Investment Advisers and Companies</b>		
<a href="#">H.R. 4337</a> Rep. Rangel (D-NY)	Regulated Investment Company Modernization Act of 2009	To amend the Internal Revenue Code of 1986 to modify certain rules applicable to regulated investment companies, and for other purposes.
<a href="#">H.R. 3818</a> Rep. Kanjorski (D-PA)	Private Fund Investment Advisers Registration Act of 2009	To amend the Investment Advisers Act of 1940 to require advisers of certain unregistered investment companies to register with and provide information to the Securities and Exchange Commission, and for other purposes.
<a href="#">H.R. 3126</a> Rep. Frank (D-MA)	Consumer Financial Protection Agency Act of 2009	To establish the Consumer Financial Protection Agency, and for other purposes.
<a href="#">S. 1276</a> Sen. Reed (D-RI)	Private Fund Transparency Act of 2009	To require investment advisers to private funds, including hedge funds, private equity funds, venture capital funds, and others to register with the Securities and Exchange Commission, and for other purposes.
<a href="#">H.R. 2762</a> Rep. Welch (D-VT)	(No short title)	To amend the Internal Revenue Code of 1986 to provide that the exception from the treatment of publicly traded partnerships as corporations for partnerships with passive-type income shall not apply to partnerships directly or indirectly deriving income from providing investment adviser and related asset management services.
<a href="#">S. 1065</a> Sen. Brownback (R-KS)	Iran Sanctions Enabling Act of 2009	To authorize State and local governments to direct divestiture from, and prevent investment in, companies with investments of \$20,000,000 or more in Iran's energy sector, and for other purposes.
<a href="#">H.R. 1327</a> Rep. Frank (D-MA)	Iran Sanctions Enabling Act of 2009	To authorize State and local governments to direct divestiture from, and prevent investment in, companies with investments of \$20,000,000 or more in Iran's energy sector, and for other purposes.
<a href="#">S. 44</a> Sen. Ensign (R-NV)	(No short title)	To amend the Internal Revenue Code of 1986 to treat income earned by mutual funds from exchange-traded funds holding precious metal bullion as qualifying income.
<b>Securities Litigation</b>		
<a href="#">H.R. 5042</a> Rep. Waters (D-CA)	Liability for Aiding and Abetting Securities Violations Act of 2010	To amend section 20 of the Securities Exchange Act of 1934 to allow for a private civil action against a person that provides substantial assistance in violation of such Act.
<a href="#">S. 1551</a> Sen. Specter (D-PA)	Liability for Aiding and Abetting Securities Violations Act of 2009	To amend section 20 of the Securities Exchange Act of 1934 to allow for a private civil action against a person that provides substantial assistance in violation of such Act.

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### **Securities Law**

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