
HR 3817

Investor Protection Act of 2009

Congress: 111 (2009–2011, Ended)

Chamber: House

Policy Area: Finance and Financial Sector

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Sponsor

Name: Rep. Kanjorski, Paul E. [D-PA-11]

Party: Democratic • **State:** PA • **Chamber:** House

Cosponsors

No cosponsors are listed for this bill.

Committee Activity

Committee	Chamber	Activity	Date
Financial Services Committee	House	Reported By	Dec 17, 2010
Judiciary Committee	House	Discharged From	Dec 17, 2010

Subjects & Policy Tags

Policy Area:

Finance and Financial Sector

Related Bills

No related bills are listed.

Investor Protection Act of 2009 - **Title I: Disclosure** - (Sec. 101) Amends the Securities Exchange Act of 1934 to establish the Investor Advisory Committee to advise and consult with the Securities and Exchange Commission (SEC) on: (1) regulatory priorities and issues regarding new products, trading strategies, fee structures, and the effectiveness of disclosures; (2) initiatives to protect investor interest; and (3) initiatives to promote investor confidence in the integrity of the marketplace.

(Sec. 102) Amends the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Advisers Act of 1940, and Investment Company Act of 1940 to authorize the SEC to gather information, communicate with investors or other members of the public, and engage in temporary or experimental programs in the public interest or for protection of investors.

(Sec. 103) Amends the Securities Exchange Act of 1934 and the Investment Advisers Act of 1940 to direct the SEC to: (1) establish a standard of conduct for brokers, dealers, and investment advisers when providing personalized securities investment advice to a retail customer; (2) require a broker or dealer who sells only proprietary or other limited range of products to notify and obtain the consent or acknowledgment of each retail customer; and (3) facilitate the provision of simple and clear disclosures to investors regarding the terms of their relationships with brokers, dealers, and investment advisers, including any material conflicts of interest. Requires the SEC also to examine and, where appropriate, prohibit or restrict certain sales practices, conflicts of interest, and compensation schemes for brokers, dealers, and investment advisers deemed contrary to the public interest and the protection of investors.

Sets forth harmonized SEC enforcement authority with respect to violations of the standard of conduct applicable to a broker or dealer providing personalized investment advice about securities to a retail customer.

(Sec. 104) Instructs the SEC, before proposing rules or regulations regarding the provision of investment products or services to a retail customer, to publish a study that examines specified considerations, including the nature of a retail customer, the range of products and services, and how they are sold or otherwise provided.

Authorizes the promulgation of rules to require that the appropriate persons or entities provide designated documents or information to retail customers before the purchase of identified investment products or services.

(Sec. 105) Authorizes the SEC to impose a shorter disclosure reporting period upon certain beneficial owners of securities and with respect to short-swing profits.

(Sec. 106) Amends the Investment Company Act of 1940 and the Investment Advisers Act of 1940 to prescribe recordkeeping requirements, and related duties for compliance with examination requests, for persons with custody or use of a client's securities, deposits, or credits.

(Sec. 107) Directs the SEC to study review and analyze the need for enhanced examination and enforcement resources for investment advisers.

(Sec. 108) Directs the Comptroller General to study the regulation and oversight of financial planning.

Title II: Enforcement and Remedies - (Sec. 201) Amends the Securities Exchange Act of 1934 and the Investment Advisers Act of 1940 to authorize the SEC to restrict mandatory pre-dispute arbitration affecting customers or clients of an investment adviser.

(Sec. 202) Directs the Comptroller General to study the costs to parties of an arbitration proceeding using the arbitration system operated by the Financial Industry Regulatory Authority (FINRA) and overseen by the SEC as compared to litigation.

(Sec. 203) Amends the Securities Exchange Act of 1934 to authorize the SEC to prescribe monetary incentives for whistleblowers of up to 30% of monetary sanctions exceeding \$1 million.

Establishes the Securities and Exchange Commission Investor Protection Fund to pay awards to whistleblowers and to fund investor education initiatives.

Prohibits employers from discharging, demoting, suspending, threatening, harassing, or in any other manner discriminating against an employee, contractor, or agent in the terms and conditions of employment because of any lawful act done by the employee, contractor, or agent in providing information to the SEC, or in assisting in any SEC investigation or judicial or administrative action based upon or related to such information. Authorizes an individual alleging such a discharge or discrimination to bring an action for relief in U.S. district court.

Subjects to prosecution willfully false or fraudulent whistleblower statements made to the SEC.

Directs the SEC to establish a separate office to administer and enforce whistleblower incentives and protections under this Act.

(Sec. 207) Amends the Securities Act of 1933 and the Investment Company Act of 1940 to subject to prosecution persons who aid and abet violations of such Acts.

(Sec. 208) Amends the Investment Advisers Act of 1940 with respect to penalties for aiding and abetting violations of such Act to authorize the SEC to permit or require a registered national securities association to enforce compliance by its members and associated persons with the Act and related rules and regulations.

(Sec. 209) Requires the SEC to complete enforcement investigations and determine whether or not to file an action within 180 days after its staff provides a written Wells notice to any person. Allows an exception to this deadline for complex actions to permit additional 180-day extensions in certain circumstances.

Requires the SEC, by a certain deadline (usually within 180 days after its staff completes the onsite portion of its compliance examination or inspection, or receives all requested records), to: (1) request an entity being examined or inspected to undertake corrective action, or (2) conclude the examination or inspection without findings. Allows the SEC to extend a sufficiently complex examination or inspection for one additional 180-day period.

(Sec. 210) Amends the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Company Act of 1940, and the Investment Advisers Act of 1940 to grant the SEC nationwide service of process in any action or proceeding instituted in a U.S. district court for any judicial district.

(Sec. 211) Authorizes the SEC to impose civil money penalties in a cease-and-desist proceeding of: (1) \$7,500 for a natural person or \$75,000 for any other person for a first tier act or omission, (2) \$75,000 for a natural person or \$375,000 for any other person for a second tier act or omission, and (3) \$150,000 for a natural person or \$725,000 for any other person for a third tier act or omission (involving fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement which results in substantial losses, or a significant risk of them, to other persons, or results in substantial pecuniary gain to the person who commits the act or omission).

(Sec. 212) Amends the Securities Exchange Act of 1934 to modify the rules for composition of the Municipal Securities Rulemaking Board.

(Sec. 213) Allows the SEC to share information with domestic and foreign regulators and law enforcement agencies engaged in the investigation and prosecution of violations of applicable securities laws without waiving any SEC privileges with respect to such information.

(Sec. 214) Amends the Sarbanes-Oxley Act of 2002 to authorize a court, upon motion of an attorney for the government, but only upon a finding of a substantial need in the public interest, to direct disclosure to the SEC, for use in relation to any matter within the jurisdiction, of matters occurring before a grand jury during an investigation of conduct that may constitute a violation of any provision of the securities laws.

(Sec. 215) Amends the Securities Exchange Act of 1934 to allow the SEC to bring an action against any person who recklessly (currently, only knowingly) provides substantial assistance to (aids and abets) another person in violation of that Act.

(Sec. 216) Amends the Securities Act of 1933, the Securities Exchange Act of 1934, and the Investment Advisers Act of 1940 to include within the extraterritorial jurisdiction of federal district courts: (1) conduct within the United States that constitutes significant steps in furtherance of a violation of such Act (conduct test), even if the violation is committed by a foreign adviser and involves only foreign investors; or (2) conduct occurring outside the United States that has a foreseeable substantial effect within the United States (effects test).

(Sec. 217) Amends the Investment Company Act of 1940 to authorize the SEC to require that registered management companies provide and maintain a fidelity bond against loss as to any officer or employee with access to company securities or funds either directly or through the authority to draw upon such funds or to direct generally the disposition of such securities.

(Sec. 218) Amends the Securities Act of 1933, the Securities Exchange Act of 1934, and the Investment Advisers Act of 1940 to subject registered individuals and firms at any time, or from time to time, to reasonable periodic, special, or other information and document requests that the SEC deems necessary or appropriate to conduct surveillance or risk assessments of the securities markets.

(Sec. 219) Amends the Investment Companies Act of 1940 to subject all (currently, only required) records of each registered investment company, and each underwriter, broker, dealer, or investment adviser that is a majority-owned subsidiary of such a company, to reasonable periodic, special, or other examinations by SEC representatives as deemed necessary or appropriate in the public interest or for the protection of investors.

(Sec. 220) Amends the Securities Exchange Act of 1934 to allow for a control person to be joint and severally liable to the SEC (not only to private parties), unless an affirmative defense can be established.

(Sec. 221) Allows the SEC to: (1) apply anti-fraud prohibitions to transactions not conducted on exchanges and all options on securities, and (2) regulate short sales in the over-the-counter markets as well as those of non-equity securities.

(Sec. 222). Extends the authority of the SEC to prescribe rules and regulations on proxy access in respect to shareholder nomination of directors to serve on a company's board of directors.

Title III: Commission Funding and Organization - (Sec. 301) Authorizes additional appropriations for FY2010-FY2015.

(Sec. 302) Amends the Investment Company Act of 1940 to direct the SEC to issue rules for imposing fees on registered investment advisers to recover its cost of inspecting and examining them.

(Sec. 304) Directs the SEC to hire an independent consultant to examine the internal operations, structure, funding, and the need for comprehensive reform of the SEC, as well as its relationship with the reliance on self-regulatory organizations and other entities relevant to securities regulation and investor protection. Requires the study to cover: (1) possible elimination of unnecessary or redundant units at the SEC; (2) the effect of high-frequency trading and other technological advances on the market and what the SEC requires to monitor the effect of such trading and advances on the market; and (3) whether adjusting the SEC's reliance on self-regulatory organizations is necessary to promote more efficient and effective governance for the securities markets.

(Sec. 305) Establishes the Capital Markets Safety Board to investigate and determine the causes of failed institutions registered with the SEC.

(Sec. 306) Directs the SEC to report on the implementation of reforms which it outlined in the wake of the discovery of fraud by Bernie Madoff.

(Sec. 307) Authorizes the SEC and the Commodities Futures Trading Commission (CFTC) to form a joint advisory committee to: (1) identify emerging regulatory risks and assess and quantify their implications for market participants; and (2) discuss regulatory issues of mutual concern which affect each Commission, the regulated markets, and the industry generally.

Title IV: Additional Commission Reforms - (Sec. 401) Amends the Securities Act of 1934 to declare unlawful a securities lending transaction that is in contravention of SEC rules and regulations. States that this declaration does not limit the authority of an appropriate federal banking agency or department identified under law as having a systemic risk responsibility to impose restrictions on transactions involving the loan or borrowing of securities in order to protect the safety and soundness of a financial institution or to protect the financial system from systemic risk.

(Sec. 402) Requires reporting to the SEC and, if appropriate, the Secretary of the Treasury of canceled securities.

(Sec. 403) Requires registered securities information processors, national securities exchanges, and national securities associations to require that each of their partners, directors, officers, and employees be fingerprinted and submit such fingerprints to the Attorney General for identification and appropriate processing.

(Sec. 404) Declares that any condition, stipulation, or provision binding any person to waive compliance with any rule of a self-regulatory organization shall be void.

(Sec. 405) Applies federal law and regulations only to investment advisers registered or required to be registered with the SEC (thus eliminating any federal regulation of investment advisers that the states now regulate).

(Sec. 407) Requires the SEC, the Financial Accounting Standards Board, and the Public Company Accounting Oversight Board (PCAOB) to provide oral testimony annually to the House Committee on Financial Services regarding efforts to reduce the complexity in financial reporting to provide more accurate and clear financial information to investors.

(Sec. 408) Revises the specifications for determination of unlawful margin lending.

(Sec. 409) Amends the Securities Exchange Act of 1934, the Investment Company Act of 1940, and the Investment Advisers Act of 1940 to prohibit compelling the SEC to disclose any information, documents, records, or reports that

relate to an examination, surveillance, or risk assessment of a person, or the financial or operational condition of such persons, or any similar information supplied to the SEC by any domestic or foreign regulatory agency or self-regulatory organization. Makes exceptions to this disclosure limitation with respect to information requested by Congress, any other federal department or agency, the PCAOB, or any self-regulatory organization in certain circumstances.

(Sec. 411) Amends the Securities Exchange Act of 1934 to modify the rules for composition of the Municipal Securities Rulemaking Board.

(Sec. 412) Amends the Investment Company Act of 1940 to redefine "interested person" with respect to an investment company and potential conflicts-of-interest to cover any natural person who is a member of a class of persons unlikely to exercise an appropriate degree of independence as a result of: (1) a material business or professional relationship with such company or any affiliated person of such company, or (2) a close familial relationship with any natural person who is an affiliated person of such company.

(Sec. 413) Amends the Investment Company Act of 1940 to authorize the SEC to limit the extent to which a registered open-end investment (mutual funds) company may execute transactions in illiquid property.

(Sec. 414) Directs the Comptroller General to study specified aspects of the number of SEC staff who leave the SEC to work for financial institutions regulated by the SEC (SEC revolving door).

(Sec. 415) Directs the Government Accountability Office (GAO) and the SEC separately to evaluate the costs and benefits for issuers who are neither accelerated nor large accelerated filers of complying with the requirement of the Sarbanes-Oxley Act of 2002 for attesting to, and reporting on, the management assessment of its internal control structure and procedures for financial reporting.

(Sec. 416) Directs the SEC to study the inclusion of revenue as a criterion used in defining smaller reporting companies to account for such companies with public floats less than \$700 million and revenues less than \$250 million.

(Sec. 417) Establishes the Financial Reporting Forum to discuss and report annually on immediate and long-term issues critical to financial reporting.

(Sec. 418) Amends the Investment Advisers Act of 1940 to subject to state registration and examination requirements certain mid-sized investment advisers with \$100 million or less in assets under management (or such higher figure as the SEC may by rule deem appropriate).

(Sec. 419) Directs the SEC to adopt a rule that prohibits registered investment advisers from maintaining custody of client assets in excess of \$10 million, unless the assets are kept by a qualified custodian, maintained in separate accounts under the client's names, or retained in an account of which the investment adviser is the trustee. Prohibits the qualified custodian from directly or indirectly providing investment advice to the funds it holds in custody.

(Sec. 420) Instructs the SEC Chairman to appoint an Ombudsman to act as liaison between the SEC and any affected person who may have a problem with the SEC resulting from its regulatory activities.

Title V: Securities Investor Protection Act Amendments - (Sec. 501) Amends the Securities Investor Protection Act of 1970 (SIPA) to increase: (1) the minimum assessment paid by Securities Investor Protection Corporation (SIPC) members from a flat \$150 per year to 0.02% percent of the member's gross revenues from the securities business; (2) the borrowing limit on U.S. Treasury loans from \$1 billion to \$2.5 billion; and (3) the standard maximum cash advance for each customer from \$100,000 to \$250,000, adjusted for inflation every five years.

(Sec. 504) Authorizes the SIPC to designate itself (instead of another) as trustee in liquidation proceedings for a failed SIPC member with less than 5,000 customers, regardless of the size of liabilities to unsecured general creditors.

(Sec. 505) Makes insiders ineligible for SIPC advances.

(Sec. 506) Increases from \$250,000 to \$850,000 the total amount of claims of all customers of a small firm whose failure the SIPC may resolve using the direct payment procedure (instead of using a judicial liquidation proceeding).

(Sec. 507) Raises from \$50,000 to \$250,000 the maximum fine for several prohibited acts and for fraudulent conversion.

(Sec. 508) Adds to the list of prohibited acts under SIPA false advertising and misrepresentation of SIPC membership or protection.

(Sec. 509) Extends SIPC insurance to future positions held in a customer's portfolio margining securities account under an SEC-approved program.

(Sec. 510) Directs the Comptroller General to study whether SIPC should be required to impose risk-based assessments upon member brokers and dealers in order to maintain the SIPC Fund adequately.

(Sec. 511) Declares that any SEC loan to the SIPC shall not be considered to result in a new direct loan obligation or a new loan guarantee commitment requiring inclusion in the President's budget under the Federal Credit Reform Act of 1990.

Title VI: Sarbanes-Oxley Act Amendments - (Sec. 601) Amends the Sarbanes-Oxley Act of 2002 to include brokers and dealers under PCAOB oversight, and require allocation among them of accounting support fees.

Authorizes the PCAOB to refer investigations to a self-regulatory organization and share relevant information with them.

(Sec. 602) Authorizes the PCAOB to share information with a foreign auditor oversight authority.

(Sec. 603) Revises requirements for the production of audit work papers by a foreign public accounting firm or a registered public accounting firm that relies upon the work of the foreign firm.

Requires a foreign public accounting firm to produce its audit work papers and all other documents to the SEC or the PCAOB upon request if the firm issues an audit report, performs audit work, or conducts interim reviews upon which a registered public accounting firm relies in the conduct of an audit or interim review. (Continues to require a registered public accounting firm relying upon the work of a foreign public accounting firm to produce the foreign firm's work papers upon SEC or PCAOB request.)

(Sec. 604) Grants the SEC (in addition to the PCAOB) authority regarding applications for registration.

(Sec. 605) Modifies the procedure under which civil penalties obtained by the SEC shall be added to and become part of a disgorgement fund established for the relief of victims of a violation. Requires the amount of any settlement of a judicial or administrative action to be added to the disgorgement fund.

(Sec. 606) Exempts smaller securities issuers that are neither large accelerated filers nor accelerated filers from the requirement that a registered public accounting firm that prepares or issues the issuer's audit report attest to, and report on, the assessment made by the issuer's management.

Directs the SEC and the Comptroller General to study: (1) how the SEC could maintain investor protections yet reduce the Act's compliance burden upon companies whose market capitalization is between \$75 million and \$250 million; and (2) whether such compliance reduction or a complete exemption would encourage such companies to list on exchanges in the United States in their initial public offerings.

(Sec. 607) Amends federal criminal law to extend whistleblower protection against retaliation by a subsidiary or affiliate of an issuer.

(Sec. 608) Denies the PCAOB authority either to withhold information from Congress, or to prevent compliance with a federal court order when an action is commenced by either the United States or the PCAOB.

(Sec. 609) Directs the PCAOB to appoint an ombudsman to act as liaison between the Board and any registered public accounting firm or issuer regarding issues or disputes in an audit report concerning such issuer.

(Sec. 610) Redesignates the PCAOB as the Auditing Oversight Board.

Title VII: Senior Investment Protection - (Sec. 703) Directs the SEC to establish a grants program for states to: (1) investigate and prosecute misleading and fraudulent marketing practices, or (2) develop educational materials and training to reduce misleading and fraudulent marketing of financial products targeted towards seniors.

(Sec. 706) Authorizes appropriations for FY2011-FY2015.

Title VIII: Registration of Municipal Financial Advisors - (Sec. 801) Amends the Securities Exchange Act of 1934 to require municipal financial advisers not currently regulated under existing securities laws to register with the SEC.

Prescribes professional standards for such advisers and specifies prohibited transactions.

Deems a municipal financial adviser and any associated person to have a fiduciary duty towards any municipal securities issuer for whom it acts as a municipal financial adviser.

Actions Timeline

- **Dec 17, 2010:** Committee on Judiciary discharged.
- **Dec 17, 2010:** Placed on the Union Calendar, Calendar No. 408.
- **Dec 16, 2010:** Referred sequentially to the House Committee on the Judiciary for a period ending not later than Dec. 17, 2010 for consideration of such provisions of the bill and amendment as fall within the jurisdiction of that committee pursuant to clause 1(k) of rule X.
- **Dec 16, 2010:** Reported (Amended) by the Committee on 111-687, Part I.
- **Nov 4, 2009:** Committee Consideration and Mark-up Session Held.
- **Nov 4, 2009:** Ordered to be Reported by the Yeas and Nays: 41 - 28.
- **Oct 15, 2009:** Introduced in House
- **Oct 15, 2009:** Referred to the House Committee on Financial Services.