



The Wall Street Reform and Consumer
Protection Act of 2009
HR 4173
an Overview of Selected Securities Aspects

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Legislative Outlook

- Congressional policy focus re: securities
- House approved legislation in December - barely
- Senate committee seeking consensus
- Impact of Dodd retirement
- Likely actions and timing

Corporate Governance

- shareholders of public companies will need to be provided with an annual non-binding vote on executive compensation arrangements
- shareholders of public companies will need to be provided with a non-binding vote on "golden parachute payments" in connection with their vote on an M&A transaction

- listed companies will need to have compensation committees satisfying certain requirements
- covered financial institutions with assets of \$1 billion or more will be subject to special provisions on incentive compensation

Selected Other Securities Law Provisions

- Eliminates the requirement that a non-accelerated filer have an auditor attest its internal controls
- Clarifies the authority of the SEC to adopt proxy access rules
- Makes clear that the SEC can impose joint and several liability on control persons under the Exchange Act
- Expands the SEC's aiding and abetting authority under the 33 Act and the Investment Company Act and clarifies the SEC's aiding and abetting authority under the Advisers Act.

- Expands the power of the SEC to prohibit an individual from being associated with an SEC regulated entity
- Makes nationwide service of process available in federal SEC civil actions.
- Expands the Exchange Act manipulation and short sale provisions by covering (i) all securities other than governmental securities instead of just exchange registered securities, (ii) non-exchange option transactions, and (iii) all broker-dealers instead of just exchange members.

- Gives the SEC uniform authority to seek civil penalties in cease and desist proceedings
- Calls for grants to states if the state limits the use of misleading designations for persons selling securities and insurance products.
- Creates a deadline for completing examinations and enforcement actions

Elimination of the private investment adviser registration exemption

- requires federal registration of investment advisers to private funds (hedge funds) with exemptions for venture capital fund advisers, certain foreign private fund advisers, advisers solely to SIBCs and reduced requirements for advisers to private funds with assets under management of less than \$150 million
- registered investment advisers to private funds will need to file reports with the SEC concerning the funds they advise.

OTC Derivatives

- the CFTC and the SEC will have greater power over the OTC derivatives markets. The CFTC would regulate swaps, swap dealers and major swap participants. The SEC would regulate security based swaps, security based swap dealers and major security based swap participants. The new provisions include clearing and execution requirements and capital, margin and business operation rules.

Asset Securitization

- makes significant changes in the regulation of the asset backed securitization process

Broker Dealer Regulation

- would enhance broker dealer regulation, including harmonizing the fiduciary duty provisions relating to personalized advice to retail customers, requiring reports about short sales and to provide the SEC with clear authority to regulate securities lending

- provides extensive SEC regulation of municipal financial advisers
- provides for major changes in the regulation of credit rating agencies and certain securities holding companies

THE END

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