

Administration's Regulatory Reform Agenda Moves Forward: Legislation for Strengthening Investor Protection Delivered To Capitol Hill

Continuing its push to establish new rules of the road and make the financial system more fair for consumers and investors, the Administration today delivered proposed legislation to strengthen the SEC's authority to protect investors. The legislation outlines steps to establish consistent standards for all those who provide investment advice about securities, to improve the timing and the quality of disclosures, and to require accountability from securities professionals. The legislation would also establish a permanent Investor Advisory Committee to keep the voice of investors present at the SEC.

Fairness

Establish Consistent Standards for Broker-Dealers and Investment Advisers: Under current law, different standards apply for broker-dealers and investment advisers – even though many investors rely on the investment advice of broker-dealers in the same manner as an investment adviser. The Administration's legislation would give the SEC authority to require a fiduciary duty for any broker, dealer, or investment adviser who gives investment advice about securities, aligning the standards based on activity, instead of based on legal distinctions that are no longer meaningful. In addition, the SEC would be empowered to examine and ban forms of compensation that encourage financial intermediaries to steer investors into products that are profitable to the intermediary, but are not in the investors' best interest.

Authority to Restrict or Limit Mandatory Arbitration: Although arbitration may be a reasonable option for many consumers to accept after a dispute arises, mandating a particular venue and up-front method of adjudicating disputes – and eliminating access to courts – may unjustifiably undermine investor interests. The Administration's legislation would give the SEC authority to prohibit mandatory arbitration clauses in broker-dealer, municipal securities dealer, and investment advisory agreements.

Disclosure

Authority to Require Disclosure Prior to Purchase of a Fund: Currently most fund disclosures and prospectuses are not required to be delivered to investors until after a transaction is complete. Our legislation would give the SEC authority to regulate the quality and timing of disclosures. For example, the SEC could require a concise summary prospectus and a simple disclosure showing the costs of a fund in a comparative context prior to the completion of a sale.

Consumer Testing of Disclosures and Rules: The Administration's legislation would clarify the SEC's authority to conduct consumer testing and encourage it to do so, in order to create more effective and clearer disclosures and to better assess its rules and programs.

Accountability

Expand Protections for Whistleblowers: The SEC should gain the authority to establish a fund to pay whistleblowers for information that leads to enforcement actions resulting in significant financial awards. Currently, the SEC has the authority to compensate sources that provide evidence leading to a successful insider trading cases; that authority should be extended to other types of securities law violations. This authority will encourage insiders and others with strong evidence of securities law violations to bring that evidence to the SEC and improve its ability to enforce the securities laws. The Administration supports the creation of this fund using monies that the SEC collects from enforcement actions that are not otherwise distributed to investors.

Harmonize Liability Standards so that the SEC Can Pursue those who Aid and Abet Securities Fraud: The SEC currently has the ability to pursue actions against those who aid and abet securities fraud in cases brought under the Securities Exchange Act of 1934 and the Investment Advisers Act of 1940, but not under the Securities Act of 1933 nor the Investment Company Act of 1940. The Administration's legislation closes this gap to create consistent remedies that the SEC can seek and eliminates significant limitations on the SEC's ability to pursue serious misconduct. The Administration's legislation also clarifies the legal standard for aiding and abetting and makes clear that the SEC can obtain penalties under any of its aiding and abetting provisions.

Require Accountability of Securities Professionals throughout the Financial Services Industry: Under current law, an individual barred from being an investment adviser because of serious misconduct could still apply to become a broker-dealer. The Administration's legislation would give the SEC authority to remove regulated persons from all aspects of the securities industry rather than just a specific segment.

Investor Engagement

Establish a Permanent Investor Advisory Committee: The SEC has recently established an Investor Advisory Committee, made up of a diverse group of well-respected investors, to advise on the SEC's regulatory priorities, including issues concerning new products, trading strategies, fee structures, and the effectiveness of disclosure. The Investor Advisory Committee would be made permanent by this legislation.

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