

**FINANCIAL REFORM CONFERENCE:
SENATE AMENDMENT TO TITLE IX**

[Amendment instruction refers to Conference Base Text]

1 Section 913 is amended to read as follows:

2 **SEC. 913. STUDY AND RULEMAKING REGARDING OBLIGA-**
3 **TIONS OF BROKERS, DEALERS, AND INVEST-**
4 **MENT ADVISERS.**

5 (a) DEFINITION.—For purposes of this section, the
6 term “retail customer” means a natural person, or the
7 legal representative of such natural person, who—

8 (1) receives personalized investment advice
9 about securities from a broker or dealer; and

10 (2) uses such advice primarily for personal,
11 family, or household purposes.

12 (b) STUDY.—The Commission shall conduct a study
13 to evaluate—

14 (1) the effectiveness of existing legal or regu-
15 latory standards of care for brokers, dealers, invest-
16 ment advisers, persons associated with brokers or
17 dealers, and persons associated with investment ad-
18 visers for providing personalized investment advice
19 and recommendations about securities to retail cus-
20 tomers imposed by the Commission and a national

1 securities association, and other Federal and State
2 legal or regulatory standards; and

3 (2) whether there are legal or regulatory gaps
4 or overlap in legal or regulatory standards in the
5 protection of retail customers relating to the stand-
6 ards of care for brokers, dealers, investment advis-
7 ers, persons associated with brokers or dealers, and
8 persons associated with investment advisers for pro-
9 viding personalized investment advice about securi-
10 ties to retail customers that should be addressed by
11 rule or statute.

12 (c) CONSIDERATIONS.—In conducting the study re-
13 quired under subsection (b), the Commission shall con-
14 sider—

15 (1) the regulatory, examination, and enforce-
16 ment resources devoted to, and activities of, the
17 Commission, the States, and a national securities as-
18 sociation to enforce the standards of care for bro-
19 kers, dealers, investment advisers, persons associated
20 with brokers or dealers, and persons associated with
21 investment advisers when providing personalized in-
22 vestment advice and recommendations about securi-
23 ties to retail customers, including—

1 (A) the effectiveness of the examinations of
2 brokers, dealers, and investment advisers in de-
3 termining compliance with regulations;

4 (B) the frequency of the examinations; and

5 (C) the length of time of the examinations;

6 (2) the substantive differences, compared and
7 contrasted in detail, in the regulation of brokers,
8 dealers, and investment advisers, when providing
9 personalized investment advice and recommendations
10 about securities to retail customers, including the
11 differences in the amount of resources devoted to the
12 regulation and examination of brokers, dealers, and
13 investment advisers, by the Commission, the States,
14 and a national securities association;

15 (3) the specific instances in which—

16 (A) the regulation and oversight of invest-
17 ment advisers provide greater protection to re-
18 tail customers than the regulation and oversight
19 of brokers and dealers; and

20 (B) the regulation and oversight of brokers
21 and dealers provide greater protection to retail
22 customers than the regulation and oversight of
23 investment advisers;

1 (4) the existing legal or regulatory standards of
2 State securities regulators and other regulators in-
3 tended to protect retail customers;

4 (5) the potential impact on retail customers, in-
5 cluding the potential impact on access of retail cus-
6 tomers to the range of products and services offered
7 by brokers and dealers, of imposing upon brokers,
8 dealers, and persons associated with brokers or deal-
9 ers—

10 (A) the standard of care applied under the
11 Investment Advisers Act of 1940 (15 U.S.C.
12 80b–1 et seq.) for providing personalized invest-
13 ment advice about securities to retail customers
14 of investment advisers, as interpreted by the
15 Commission and the courts; and

16 (B) other requirements of the Investment
17 Advisers Act of 1940 (15 U.S.C. 80b–1 et
18 seq.);

19 (6) the potential impact of—

20 (A) imposing on investment advisers the
21 standard of care applied by the Commission
22 and a national securities association under the
23 Securities Exchange Act of 1934 (15 U.S.C.
24 78a et seq.) for providing recommendations
25 about securities to retail customers of brokers

1 and dealers and other Commission and national
2 securities association requirements applicable to
3 brokers and dealers; and

4 (B) authorizing the Commission to des-
5 ignate 1 or more self-regulatory organizations
6 or the States to augment the efforts of the
7 Commission to oversee investment advisers;

8 (7) the potential impact of eliminating the
9 broker and dealer exclusion from the definition of
10 “investment adviser” under section 202(a)(11)(C) of
11 the Investment Advisers Act of 1940 (15 U.S.C.
12 80b–2(a)(11)(C)), in terms of—

13 (A) the impact and potential benefits and
14 harm to retail customers that could result from
15 such a change, including any potential impact
16 on access to personalized investment advice and
17 recommendations about securities to retail cus-
18 tomers or the availability of such advice and
19 recommendations;

20 (B) the number of additional entities and
21 individuals that would be required to register
22 under, or become subject to, the Investment
23 Advisers Act of 1940 (15 U.S.C. 80b–1 et
24 seq.), and the additional requirements to which
25 brokers, dealers, and persons associated with

1 brokers and dealers would become subject, in-
2 cluding—

3 (i) any potential additional associated
4 person licensing, registration, and exam-
5 ination requirements; and

6 (ii) the additional costs, if any, to the
7 additional entities and individuals; and

8 (C) the impact on Commission and State
9 resources to—

10 (i) conduct examinations of registered
11 investment advisers and the representatives
12 of registered investment advisers, including
13 the impact on the examination cycle; and

14 (ii) enforce the standard of care and
15 other applicable requirements imposed
16 under the Investment Advisers Act of 1940
17 (15 U.S.C. 80b–1 et seq.);

18 (8) the ability of investors to understand the
19 differences in terms of regulatory oversight and ex-
20 aminations between brokers, dealers, and investment
21 advisers;

22 (9) whether retail customers understand that
23 there are different standards of care applicable to
24 brokers, dealers, investment advisers, persons associ-
25 ated with brokers or dealers, and persons associated

1 with investment advisers in the provision of person-
2 alized investment advice about securities to retail
3 customers and whether this is a source of confusion
4 for retail customers regarding the quality of person-
5 alized investment advice that retail customers re-
6 ceive;

7 (10) whether retail customers understand
8 whether transactions recommended by brokers, deal-
9 ers, investment advisers, persons associated with
10 brokers or dealers, and persons associated with in-
11 vestment advisers will be—

12 (A) fair;

13 (B) suitable;

14 (C) in the best interests of the retail cus-
15 tomers; or

16 (D) meet a different standard of care;

17 (11) the varying level of services provided by
18 brokers, dealers, investment advisers, persons associ-
19 ated with brokers or dealers, and persons associated
20 with investment advisers to retail customers and the
21 varying scope and terms of retail customer relation-
22 ships of brokers, dealers, investment advisers, per-
23 sons associated with brokers or dealers, and persons
24 associated with investment advisers with such retail
25 customers;

1 (12) any potential benefits or harm to retail
2 customers that could result from any potential
3 changes in the regulatory requirements or legal
4 standards of care affecting brokers, dealers, invest-
5 ment advisers, persons associated with brokers or
6 dealers, and persons associated with investment ad-
7 visers relating to their obligations to retail customers
8 regarding the provision of investment advice, includ-
9 ing any potential impact on—

10 (A) protection from fraud;

11 (B) access to personalized investment ad-
12 vice, and recommendations about securities to
13 retail customers; or

14 (C) the availability of such advice and rec-
15 ommendations;

16 (13) the potential additional costs and expenses
17 to—

18 (A) retail customers regarding, and the po-
19 tential impact on, the economic benefit of in-
20 vestment decisions of the retail customers; and

21 (B) brokers, dealers, and investment advis-
22 ers resulting from potential changes in the reg-
23 ulatory requirements or legal standards affect-
24 ing brokers, dealers, investment advisers, per-
25 sons associated with brokers or dealers, and

1 persons associated with investment advisers re-
2 lating to their obligations, including standard of
3 care, to retail customers; and

4 (14) any other consideration that the Commis-
5 sion deems necessary and appropriate to effectively
6 execute the study required under subsection (b).

7 (d) REPORT.—

8 (1) IN GENERAL.—Not later than 1 year after
9 the date of enactment of this Act, the Commission
10 shall submit a report on the study required under
11 subsection (b) to—

12 (A) the Committee on Banking, Housing,
13 and Urban Affairs of the Senate; and

14 (B) the Committee on Financial Services
15 of the House of Representatives.

16 (2) CONTENT REQUIREMENTS.—The report re-
17 quired under paragraph (1) shall describe the find-
18 ings, conclusions, and recommendations of the Com-
19 mission from the study required under subsection
20 (b), including—

21 (A) a description of the considerations,
22 analysis, and public and industry input that the
23 Commission considered, as required under sub-
24 section (e), to make such findings, conclusions,
25 and policy recommendations; and

1 (B) an analysis of—

2 (i) whether any identified legal or reg-
3 ulatory gaps, shortcomings, or overlap in
4 legal or regulatory standards in the protec-
5 tion of retail customers relating to the
6 standards of care for brokers, dealers, in-
7 vestment advisers, persons associated with
8 brokers or dealers, and persons associated
9 with investment advisers for providing per-
10 sonalized investment advice about securi-
11 ties to retail customers can be addressed
12 by rule; and

13 (ii) whether, and the extent to which,
14 the Commission would require additional
15 statutory authority to address such gaps or
16 overlap.

17 (e) PUBLIC COMMENT.—The Commission shall seek
18 and consider public input, comments, and data in order
19 to prepare the report required under subsection (d).

20 (f) RULEMAKING.—

21 (1) IN GENERAL.—If the study required under
22 subsection (b) identifies any gaps, shortcomings, or
23 overlap in the legal or regulatory standards in the
24 protection of retail customers relating to the stand-
25 ards of care for brokers, dealers, investment advis-

1 ers, persons associated with brokers or dealers, and
2 persons associated with investment advisers for pro-
3 viding personalized investment advice about securi-
4 ties to such retail customers, the Commission, not
5 later than 2 years after the date of enactment of
6 this Act, shall—

7 (A) commence a rulemaking, as necessary
8 or appropriate in the public interest and for the
9 protection of retail customers, to address such
10 regulatory gaps, shortcomings, and overlap that
11 can be addressed by rule, using its authority
12 under the Securities Exchange Act of 1934 (15
13 U.S.C. 78a et seq.) and the Investment Advis-
14 ers Act of 1940 (15 U.S.C. 80b–1 et seq.); and

15 (B) consider and take into account the
16 findings, conclusions, and recommendations of
17 the study required under this section.

18 (2) **RULE OF CONSTRUCTION.**—Nothing in this
19 section shall be construed to limit the rulemaking
20 authority of the Commission under any other provi-
21 sion of Federal law.

22 (g) **AUTHORITY TO ESTABLISH A FIDUCIARY DUTY**
23 **FOR BROKERS AND DEALERS.**—

24 (1) **IN GENERAL.**—

1 (A) SECURITIES EXCHANGE ACT OF
2 1934.—Section 15 of the Securities Exchange
3 Act of 1934 (15 U.S.C. 78o), as amended by
4 this Act, is amended by adding at the end the
5 following:

6 “(m) STANDARD OF CONDUCT.—

7 “(1) IN GENERAL.—

8 “(A) RULEMAKING.—Notwithstanding any
9 other provision of this Act or the Investment
10 Advisers Act of 1940, the Commission may,
11 after the submission of the report required
12 under section 913(d) of the Investor Protection
13 and Securities Reform Act of 2010, and in ac-
14 cordance with the findings, conclusions, and
15 recommendation of the study required under
16 section 913(b) of such Act, promulgate rules to
17 provide that, with respect to a broker or dealer,
18 when providing personalized investment advice
19 about securities to a retail customer (and such
20 other customers as the Commission may by rule
21 provide), the standard of conduct for such
22 broker or dealer with respect to such customer
23 shall be to act in the best interests of its retail
24 customer, if—

1 “(i) the study required under section
2 913(b) of such Act identifies any gaps,
3 shortcomings, or overlap in the legal or
4 regulatory standards in the protection of
5 retail customers relating to the standards
6 of care for brokers, dealers, investment ad-
7 visers, persons associated with brokers or
8 dealers, and persons associated with invest-
9 ment advisers for providing personalized
10 investment advice about securities to such
11 retail customers; and

12 “(ii) the Commission finds in such
13 study that such gaps, shortcomings, or
14 overlap cannot be addressed through dis-
15 closure, antifraud, conflicts of interest, or
16 other standards of conduct for brokers,
17 dealers, investment advisers, persons asso-
18 ciated with brokers or dealers, and persons
19 associated with investment advisers that
20 may be promulgated by the Commission or
21 adopted by national securities associations.

22 “(B) REQUIREMENTS.—

23 “(i) CONFLICTS OF INTEREST.—In
24 accordance with any rules promulgated

1 under subparagraph (A), any material con-
2 flicts of interest shall be disclosed.

3 “(ii) COMPENSATION.—The receipt of
4 compensation based on commission or
5 other standard compensation for the sale
6 of securities shall not, in and of itself, be
7 considered a violation of any standard ap-
8 plied to a broker or dealer under subpara-
9 graph (A).

10 “(iii) CONTINUING DUTY OF CARE OR
11 LOYALTY NOT REQUIRED.—Nothing in this
12 subsection shall require a broker or dealer
13 or registered representative to have a con-
14 tinuing standard of care or loyalty to the
15 customer after providing personalized in-
16 vestment advice about securities.

17 “(2) DISCLOSURE OF RANGE OF PRODUCTS OF-
18 FERED.—Where a broker or dealer sells only propri-
19 etary or other limited range of products, as deter-
20 mined by the Commission, the Commission may by
21 rule require that such broker or dealer provide no-
22 tice to each retail customer and obtain the consent
23 or acknowledgment of the customer. The sale of only
24 proprietary or other limited range of products by a
25 broker or dealer shall not, in and of itself, be consid-

1 ered a violation of the standard set forth in para-
2 graph (1).

3 “(3) RETAIL CUSTOMER DEFINED.—For pur-
4 poses of this subsection, the term ‘retail customer’
5 means a natural person, or the legal representative
6 of such natural person, who—

7 “(A) receives personalized investment ad-
8 vice about securities from a broker or dealer;
9 and

10 “(B) uses such advice primarily for per-
11 sonal, family, or household purposes.

12 “(n) OTHER MATTERS.—The Commission shall, in
13 accordance with the study required under section 913(b)
14 of the Investor Protection and Securities Reform Act of
15 2010, as necessary or appropriate in the public interest
16 and for the protection of investors—

17 “(1) facilitate the provision of simple and clear
18 disclosures to investors regarding the terms of their
19 relationships with brokers and dealers, including any
20 material conflicts of interest;

21 “(2) examine and, where appropriate, promul-
22 gate rules prohibiting or restricting certain sales
23 practices, conflicts of interest, and compensation
24 schemes for brokers and dealers that the Commis-

1 sion deems contrary to the public interest and the
2 protection of investors;

3 “(3) promulgate rules that, where appropriate,
4 take into account the varying level of services pro-
5 vided by, and the varying scope and terms of the cli-
6 ent relationship with the broker or dealer; and

7 “(4) issue guidance relating to the application
8 of the standard of care under subsection (m) of this
9 section to activities of any person that provides per-
10 sonalized investment advice about securities to a re-
11 tail customer (and such other customers as the Com-
12 mission may by rule provide), which shall include
13 guidance on the nature and extent of any disclosure
14 (including any disclosure of conflicts of interest) re-
15 quired under the standard of care under subsection
16 (m) of this section.”.

17 (B) INVESTMENT ADVISERS ACT OF
18 1940.—Section 211 of the Investment Advisers
19 Act of 1940, as amended by this Act, is amend-
20 ed by adding at the end the following:

21 “(f) STANDARD OF CONDUCT.—

22 “(1) IN GENERAL.—The Commission may pro-
23 mulgate rules to provide that the standard of con-
24 duct for all investment advisers, when providing per-
25 sonalized investment advice about securities to retail

1 customers (and such other customers as the Com-
2 mission may by rule provide), shall be to act in the
3 best interest of the customer. In accordance with
4 such rules, any material conflicts of interest shall be
5 disclosed and may be consented to by the customer.
6 Such rules shall provide that such standard of con-
7 duct shall be no less stringent than the standard ap-
8 plicable to investment advisers under paragraphs (1)
9 and (2) of section 206 of this Act when providing
10 personalized investment advice about securities, ex-
11 cept the Commission shall not ascribe a meaning to
12 the term ‘customer’ that would include an investor
13 in a private fund managed by an investment adviser,
14 where such private fund has entered into an advisory
15 contract with such adviser. The receipt of compensa-
16 tion based on commission or fees shall not, in and
17 of itself, be considered a violation of such standard
18 applied to an investment adviser.

19 “(2) RETAIL CUSTOMER DEFINED.—For pur-
20 poses of this subsection, the term ‘retail customer’
21 means a natural person, or the legal representative
22 of such natural person, who—

23 “(A) receives personalized investment ad-
24 vice about securities from a broker, dealer, or
25 investment adviser; and

1 “(B) uses such advice primarily for per-
2 sonal, family, or household purposes.

3 “(g) OTHER MATTERS.—The Commission shall, in
4 accordance with the study required under section 913(b)
5 of the Investor Protection and Securities Reform Act of
6 2010, as necessary or appropriate in the public interest
7 and for the protection of investors—

8 “(1) facilitate the provision of simple and clear
9 disclosures to investors regarding the terms of their
10 relationships with investment advisers, including any
11 material conflicts of interest;

12 “(2) examine and, where appropriate, promul-
13 gate rules prohibiting or restricting certain sales
14 practices, conflicts of interest, and compensation
15 schemes for investment advisers that the Commis-
16 sion deems contrary to the public interest and the
17 protection of investors;

18 “(3) promulgate rules that, where appropriate,
19 take into account the varying level of services pro-
20 vided by, and the varying scope and terms of the cli-
21 ent relationship with, the broker, dealer, or invest-
22 ment adviser; and

23 “(4) issue guidance relating to the application
24 of the standard of care under subsection (f) of this
25 section to activities of any person that provides per-

1 sonalized investment advice about securities to a re-
2 tail customer (and such other customers as the Com-
3 mission may by rule provide), which shall include
4 guidance on the nature and extent of any disclosure
5 (including any disclosure of conflicts of interest) or
6 client consent regarding conflicts of interest required
7 under the standard of care under subsection (f) of
8 this section.”.

9 (2) ENFORCEMENT.—

10 (A) SECURITIES EXCHANGE ACT OF
11 1934.—Section 15 of the Securities Exchange
12 Act of 1934, as amended by paragraph (1)(A),
13 as amended by this section, is amended by add-
14 ing at the end the following:

15 “(o) ENFORCEMENT.—The enforcement authority of
16 the Commission with respect to violations of the standard
17 of conduct applicable to a broker or dealer providing per-
18 sonalized investment advice about securities to a retail
19 customer shall include—

20 “(1) the enforcement authority of the Commis-
21 sion with respect to such violations provided under
22 this Act; and

23 “(2) the enforcement authority of the Commis-
24 sion with respect to violations of the standard of
25 conduct applicable to a broker or dealer under sub-

1 section (m), including the authority to impose sanc-
2 tions for such violations.”.

3 (B) INVESTMENT ADVISERS ACT OF
4 1940.—Section 211 of the Investment Advisers
5 Act of 1940, as amended by paragraph (1)(B),
6 as amended by this section, is amended by add-
7 ing at the end the following:

8 “(h) ENFORCEMENT.—The enforcement authority of
9 the Commission with respect to violations of the standard
10 of conduct applicable to an investment adviser shall in-
11 clude—

12 “(1) the enforcement authority of the Commis-
13 sion with respect to such violations provided under
14 this Act; and

15 “(2) the enforcement authority of the Commis-
16 sion with respect to violations of the standard of
17 conduct applicable to an investment adviser pro-
18 viding personalized investment advice about securi-
19 ties to a retail customer under this Act, including
20 the authority to impose sanctions for such viola-
21 tions.”.

