

AMENDMENT NO. _____ Calendar No. _____

Purpose: To provide for a study by the Securities and Exchange Commission to determine appropriate obligations of brokers, dealers, investment advisers, and their associated persons relating to the provision of personalized investment advice about securities to retail customers, to provide for a report by the Commission to Congress in 18 months, and to require a rulemaking by the Commission to address regulatory gaps and overlap in regulation identified by the study in the protection of retail customers.

IN THE SENATE OF THE UNITED STATES—111th Cong., 2d Sess.

S. _____

To identify and address risks to the stability of the United States financial system through the establishment of the Agency for Financial Stability, to ensure the orderly resolution of failing complex financial institutions in order to minimize economic turmoil and protect the interest of taxpayers, to provide for effective bank supervision through the establishment of the Financial Institutions Regulatory Administration, to enhance the regulation of consumer financial products and services through the establishment of the Consumer Financial Protection Agency, to allow the Federal government to better coordinate and monitor insurance matters through the establishment of the Office of National Insurance in the Department of Treasury, to improve the regulation of derivatives, securities, securities products, credit rating agencies, and hedge funds, to increase investor protections, and for other purposes.

Referred to the Committee on _____ and
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by _____

Viz:

1 On page 636, strike line 4 and all that follows
2 through page 638, line 9, and insert the following:

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

6 (a) DEFINITIONS.—In this section—

1 (1) the term “FINRA” means the Financial In-
2 dustry Regulatory Authority; and

3 (2) the term “retail customer” means an indi-
4 vidual retail customer of a broker, dealer, investment
5 adviser, person associated with a broker or dealer, or
6 a person associated with an investment adviser.

7 (b) IN GENERAL.—The Commission shall conduct a
8 study to evaluate—

9 (1) the effectiveness of existing legal or regu-
10 latory standards of care for brokers, dealers, invest-
11 ment advisers, persons associated with brokers or
12 dealers, and persons associated with investment ad-
13 visers for providing personalized investment advice
14 and recommendations about securities to retail cus-
15 tomers imposed by the Commission and FINRA,
16 and other Federal and State legal or regulatory
17 standards; and

18 (2) whether there are legal or regulatory gaps
19 or overlap in legal or regulatory standards in the
20 protection of retail customers relating to the stand-
21 ards of care for brokers, dealers, investment advis-
22 ers, persons associated with brokers or dealers, and
23 persons associated with investment advisers for pro-
24 viding personalized investment advice about securi-

1 ties to retail customers that should be addressed by
2 rule or statute.

3 (c) CONSIDERATIONS.—In conducting the study re-
4 quired under subsection (b), the Commission shall con-
5 sider—

6 (1) the regulatory, examination, and enforce-
7 ment resources devoted by the Commission and
8 FINRA to enforce the standards of care for brokers,
9 dealers, investment advisers, persons associated with
10 brokers or dealers, and persons associated with in-
11 vestment advisers when providing personalized in-
12 vestment advice and recommendations about securi-
13 ties to retail customers, including—

14 (A) the frequency of examinations of bro-
15 kers, dealers, and investment advisers; and

16 (B) the length of time of the examinations;

17 (2) the substantive differences, compared and
18 contrasted in detail, in the regulation of brokers,
19 dealers, and investment advisers, including the dif-
20 ferences in the amount of resources devoted to the
21 regulation and examination of brokers, dealers, and
22 investment advisers, by the Commission and
23 FINRA;

24 (3) the specific instances, where in the deter-
25 mination of the Commission—

1 (A) the regulation and oversight of brokers
2 and dealers provide greater protection to retail
3 customers than the regulation and oversight of
4 investment advisers; and

5 (B) the regulation and oversight of invest-
6 ment advisers provides greater protection to re-
7 tail customers than the regulation and oversight
8 of brokers and dealers;

9 (4) the role and effectiveness of State securities
10 regulators and other regulators in protecting retail
11 customers;

12 (5) the potential impact of imposing upon bro-
13 kers, dealers, and persons associated with brokers or
14 dealers—

15 (A) the standard of care applied under the
16 Investment Advisers Act of 1940 (15 U.S.C.
17 80b–1 et seq.) for providing personalized invest-
18 ment advice about securities to retail customers
19 of investment advisers; and

20 (B) other requirements of the Investment
21 Advisers Act of 1940 (15 U.S.C. 80b–1 et
22 seq.), including the potential impact on access
23 of retail customers to the range of products and
24 services offered by brokers and dealers;

1 (6) the potential impact of imposing on invest-
2 ment advisers the standard of care applied by the
3 Commission and FINRA under the Securities Ex-
4 change Act of 1934 (15 U.S.C. 78a et seq.) for pro-
5 viding recommendations about securities to retail
6 customers of brokers and dealers and other Commis-
7 sion and FINRA requirements applicable to brokers
8 and dealers;

9 (7) the potential impact of eliminating the
10 broker and dealer exclusion from the definition of
11 “investment adviser” under section 202(a)(11)(C) of
12 the Investment Advisers Act of 1940 (15 U.S.C.
13 80b-2(a)(11)(C)), in terms of—

14 (A) the number of additional entities and
15 individuals that would be required to register
16 under, or become subject to, the Investment
17 Advisers Act of 1940 (15 U.S.C. 80b-1 et
18 seq.), and the additional requirements to which
19 brokers, dealers, and persons associated with
20 brokers and dealers would become subject, in-
21 cluding—

22 (i) any potential additional associated
23 person licensing, registration, and exam-
24 ination requirements; and

1 (ii) the additional costs to the addi-
2 tional entities and individuals;

3 (B) the impact on Commission resources
4 to—

5 (i) conduct examinations of registered
6 investment advisers and the representatives
7 of registered investment advisers, including
8 the impact on the examination cycle; and

9 (ii) enforce the standard of care and
10 other applicable requirements imposed
11 under the Investment Advisers Act of 1940
12 (15 U.S.C. 80b–1 et seq.);

13 (C) the specific benefits or harm to retail
14 customers that could result from such a change,
15 including any potential impact on access to per-
16 sonalized investment advice and recommenda-
17 tions about securities to retail customers or the
18 availability of such advice and recommenda-
19 tions; and

20 (D) the types of exclusions or exceptions
21 that would be necessary or appropriate to ad-
22 dress any potential adverse impacts on retail
23 customers that are not warranted by any quali-
24 tative changes in retail customer protections;

1 (8) whether retail customers understand the
2 differences in terms of regulatory oversight and ex-
3 aminations between brokers, dealers, and investment
4 advisers;

5 (9) the varying level of services provided by bro-
6 kers, dealers, investment advisers, persons associated
7 with brokers or dealers, and persons associated with
8 investment advisers to retail customers and the vary-
9 ing scope and terms of retail customer relationships
10 of brokers, dealers, investment advisers, persons as-
11 sociated with brokers or dealers, and persons associ-
12 ated with investment advisers with such retail cus-
13 tomers;

14 (10) any specific benefits or harm to retail cus-
15 tomers that could result from any potential changes
16 in the regulatory requirements or legal standards af-
17 fecting brokers, dealers, investment advisers, persons
18 associated with brokers or dealers, and persons asso-
19 ciated with investment advisers relating to their obli-
20 gations to retail customers, including any potential
21 impact on—

22 (A) access to personalized investment ad-
23 vice, and recommendations about securities to
24 retail customers; or

1 (B) the availability of such advice and rec-
2 ommendations;

3 (11) the additional costs and expenses resulting
4 from potential changes in the regulatory require-
5 ments or legal standards affecting brokers, dealers,
6 investment advisers, persons associated with brokers
7 or dealers, and persons associated with investment
8 advisers relating to their obligations to retail cus-
9 tomers; and

10 (12) any other consideration that the Commis-
11 sion deems necessary and appropriate to effectively
12 execute the study required under subsection (b).

13 (d) REPORT.—

14 (1) IN GENERAL.—Not later than 18 months
15 after the date of enactment of this Act, the Commis-
16 sion shall submit a report on the study required
17 under subsection (b) to—

18 (A) the Committee on Banking, Housing,
19 and Urban Affairs of the Senate; and

20 (B) the Committee on Financial Services
21 of the House of Representatives.

22 (2) CONTENT REQUIREMENTS.—The report re-
23 quired under paragraph (1) shall describe the find-
24 ings, conclusions, and recommendations of the Com-

1 mission from the study required under subsection
2 (b), including—

3 (A) a description of the considerations,
4 analysis, and public and industry input that the
5 Commission considered, as required under sub-
6 section (e), to make such findings, conclusions,
7 and recommendations; and

8 (B) an analysis of—

9 (i) whether any identified legal or reg-
10 ulatory gaps or overlap in legal or regu-
11 latory standards in the protection of retail
12 customers relating to the standards of care
13 for brokers, dealers, investment advisers,
14 persons associated with brokers or dealers,
15 and persons associated with investment ad-
16 visers for providing personalized invest-
17 ment advice about securities to retail cus-
18 tomers can be addressed by rule; and

19 (ii) whether, and the extent to which,
20 the Commission would require additional
21 statutory authority to address such gaps or
22 overlap.

23 (e) PUBLIC COMMENT.—The Commission shall seek
24 and consider public and industry input, comments, and

1 data in order to prepare the report required under sub-
2 section (d).

3 (f) RULEMAKING.—If the study required under sub-
4 section (b) identifies any gaps or overlap in the legal or
5 regulatory standards in the protection of retail customers
6 relating to the standards of care for brokers, dealers, in-
7 vestment advisers, persons associated with brokers or deal-
8 ers, and persons associated with investment advisers for
9 providing personalized investment advice about securities
10 to such retail customers, the Commission, not later than
11 2 years after the date of enactment of this Act, shall com-
12 mence a rulemaking, as necessary or appropriate in the
13 public interest and for the protection of retail customers,
14 to address such legal and regulatory gaps and overlap that
15 can be addressed by rule, using its authority under the
16 Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.)
17 and the Investment Advisers Act of 1940 (15 U.S.C. 80b-
18 1 et seq.).