

PUBLICATION

Dodd-Frank Wall Street Reform And Consumer Protection Act, Part 7

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Brokers, Dealers and Investment Advisers

On July 21, 2010, President Obama signed into law the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Act). The Act contains several provisions governing brokers, dealers and investment advisers. A key provision of the Act relating to brokers, dealers and investment advisers is summarized below.

- **Fiduciary Duty for Brokers, Dealers and Investment Advisers.** The Act amends Section 211 of the Investment Advisers Act of 1940 to allow the SEC to make rules establishing a standard of conduct for all brokers, dealers and investment advisers. The standard set forth in the Act states that brokers, dealers and investment advisers are to "act in the best interest of the customer without regard to the financial or other interest of the broker, dealer, or investment adviser providing the advice." Further, Section 15 of the Securities Exchange Act of 1934 is amended by adding subsection (k), which authorizes the SEC to make rules under the Exchange Act to provide that a broker or dealer must abide by the same standard of conduct as that contained in Section 211 of the Investment Advisers Act.
The Act also authorizes a comprehensive study of brokers, dealers and investment advisers on various topics, including the existence of any legal or regulatory gaps and the effectiveness of the current regulatory scheme.
- **Mandatory Arbitration.** The Act amends Section 15 of the Exchange Act to give the SEC the authority to impose limits on or ban entirely the use of mandatory arbitration provisions in agreements with brokers, dealers and municipal securities dealers. The Investment Advisers Act is amended as well, to provide for the same ban in agreements with investment advisers.
- **Providing Documents and Information.** The SEC is authorized by the Act to issue rules requiring brokers or dealers to provide certain documents or information to retail investors before such investors purchase an investment product or service.
- **Registration for Advisers to Private Funds.** The Act requires advisers to private funds (funds exempt from registration under the Investment Company Act of 1940) to register with the SEC if they have assets under management of at least \$150 million. Compliance with the act requires significant recordkeeping and disclosure requirements. Prior to the Act, advisers to hedge funds and other private funds were not required to register with the SEC or most states.

If you have questions about this or any other securities-related issues, please contact one of the attorneys listed below or your Baker Donelson attorney.

Baker Donelson is pleased to present a series of Alerts related to the Dodd-Frank Wall Street Reform and Consumer Protection Act. To read the complete series, [click here](#).