



## Senate Shake-Ups Unlikely To Impact Fiduciary Standard

*January 22, 2010*

(Dow Jones) Recent shake-ups in the U.S. Senate could influence lawmakers' efforts to reform the nation's hobbled financial regulatory system—but probably not the development of a stringent fiduciary standard for certain broker dealers.

Advisors say they expect the next three weeks to be crunch time for regulatory reform on Capitol Hill.

Congress reconvened from its winter recess on January 5 to face a political landscape vastly different from the one it left weeks before. The U.S. House passed landmark financial-services-reform legislation on December 11. The 2010 session, however, began with a bombshell. Sen. Christopher Dodd (D. Conn.) chairman of the Senate Banking Committee, announced plans to retire. On Tuesday, Scott Brown won an upset victory in the state's U.S. Senate race to become the first Republican senator from Massachusetts in more than 30 years.

Uncertainty about Dodd's potential influence in his remaining days and Brown's positions on regulatory specifics has led to some concerns that the Senate's financial services regulatory reform efforts may be delayed or possibly gutted.

The discussion, which has kicked off with proposed legislation drafted by Sen. Dodd, will undoubtedly include a type of fiduciary standard for brokers who give advice.

A spokesman for Brown said the Senator elect hasn't yet commented on the subject. Brown has said, however, that the financial industry doesn't need more regulation—just better enforcement of existing laws, according to the spokesman.

Barbara Roper, director of investor protection for the Consumer Federation of America, questions whether Sen. Elect Brown's victory will significantly affect fiduciary reform efforts. "I don't know if one vote changes anything," she said. The proposed reform wasn't a partisan issue in the U.S. House and may not be as senators begin to debate the issue.

Based on comments from key figures in the industry and the Securities and Exchange Commission, creating a uniform fiduciary standard remains an important issue—and one that is becoming more

explicit.

"When investors receive similar services from similar financial-service providers, it is critical that the service providers be subject to a uniform fiduciary standard of conduct that is at least as strong as exists under the Investment Advisers Act ... regardless of the label attached to the service providers," SEC Chairman Mary Schapiro recently told the Financial Crisis Inquiry Commission, in prepared testimony.

David Tittsworth, executive director of the Investment Adviser Association, a Washington, D.C.-based trade group, said that Schapiro, who has spoken generally about a fiduciary duty in earlier speeches, was getting "more specific."

Goldman Sachs Group Inc.'s chairman and chief executive, Lloyd Blankfein, also told the commission investigating the financial crisis that he supports a fiduciary standard for brokers who provide advice to retail investors.

"The fiduciary standard puts the interests of the client first. The advice-giving functions of brokers who work with investors have become similar to that of investment advisers. But, investors may not understand that the person they are getting advice from may be regulated under different rules and regulations," he said, in prepared testimony.

Knut Rostad, chairman of the Committee for the Fiduciary Standard, an advocacy group, called Blankfein's comments "huge."

"[He's] a symbol for an industry that until eight months ago has staunchly opposed the fiduciary duty," Rostad said.

Insurance groups, however, such as the National Association of Insurance and Financial Advisors and the National Association of Independent Life Brokerage Agencies, or NAILBA, may exert their influence on some senators. They say Dodd's draft legislation doesn't take into account how a fiduciary duty would affect the insurance marketplace.

"Since insurance folks are dealing with specific products, suitability is a more important standard of care," said Alex DePizzo, an insurance industry consultant with Washington lobbying firm Winning Strategies. "The insurance industry's distribution model would be altered, we'd have less people selling products and consumers would be adversely affected," he said.