

# Sarbanes-Oxley Likely To Stand With Democrats

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U.S. Rep. Barney Frank, D-Mass., could barely get proposals considered, let alone passed into law, when he pushed Congress to look into executive pay levels and scrutinize hedge funds earlier this year.

That will probably change when Democrats take charge of Congress in January.

Frank is assumed to become chairman of the House Financial Services Committee, giving him considerable power over a range of financial regulations and corporate governance issues important to investors.

Regulatory changes, however, are unlikely to be sweeping or surprising, observers said, as legislators have already tipped their hand by introducing policies to regulate hedge funds and expose excessive executive compensation.

"My assessment is that it's not going to create a major shift," said Lucian Bebchuk, director of the Harvard University Program on Corporate Governance. However, Democrats will be able to slow the momentum for rolling back previous reforms, he said.

Calls to revamp the Sarbanes-Oxley Act, for example, will probably stall in a Democrat-led Congress. The legislation was enacted in the wake of the Enron scandal to reform financial reporting. Much of corporate America has assailed the act as costly and time consuming, especially for smaller companies. But studies show most financial fraud is committed by smaller public firms. If anything, Congress may clarify Section 404 pertaining to internal accounting controls, said Randall Dodd, director of the Financial Policy Forum.

What's more, legislators seem content to let the Public Company Accounting Oversight Board, created by the act, determine how the law should be applied.

"I don't think that there's a general sense that it's worthwhile or necessary to change Sarbanes-Oxley, said Nell Minow, chief executive of the Corporate Library, a governance think tank. "My sense is that any effort to water it down is dead for the moment."

Interest in regulating hedge funds could resurface, especially if Frank decides to hold hearings on the issue. Some policymakers are concerned with the amount of pension money flowing into these largely unregulated investment pools. That concern has heightened since Amaranth Advisors lost about \$6 billion on energy trades this year.

Many expect the new Congress to strengthen the SEC's ability to oversee the hedge fund industry, which manages \$1.5 trillion, according to most estimates.

Earlier this year, a federal court struck down SEC rules that forced hedge funds to register, saying the commission had overstepped its congressional mandate.

This ruling effectively put the ball in Congress' court to strengthen the SEC's regulatory purview, said Marie DeFalco, attorney with Lowenstein Sandler.

"I think it's more likely than before that we will see reformulation of the hedge fund rules," she said.

Congress could take what DeFalco termed a "minimalist" approach by requiring hedge funds to register. This would let the SEC audit hedge funds and require them to keep records of their investments.

Stricter regulations would require them to file public financial reports, disclose large bond or stock holdings, and put up collateral for large trades.

Frank has also been a vocal critic of "sky-high executive pay." The SEC has already enacted policies to enforce clearer disclosure of compensation so that perquisites cannot be obscured in footnotes or left out altogether. Most observers say Frank can add teeth to this by reintroducing legislation that would let shareholders approve executive compensation packages.

"Disclosure is nice, but it doesn't do much good unless investors have the authority to act on the information," said Minow.

Frank may be a sponsor of other investor-friendly resolutions, said Minow. For example, he may support legislation to give shareholders a greater say over approving board directors.

The congressman issued a statement Wednesday acknowledging "the great amount of interest in the agenda of the committee."

His statement added, "Right now it is too premature to discuss any agenda items that the committee will or will not consider next year."

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