

October 5, 2009

Honorable Christopher Dodd
Chairman
Honorable Richard Shelby
Ranking Member
Senate Committee on Banking
Washington, DC 20510

Honorable Barney Frank
Chairman
Honorable Spencer Bachus
Ranking Member
House Financial Services Committee
Washington, DC 20515

Dear Chairmen Dodd and Frank and Ranking Members Shelby and Bachus:

As Congress works to restore the vitality of the U.S. economy, renew investor confidence, and address failures of and weaknesses in the current regulatory framework, the undersigned organizations are writing to express our strong support of the proposal in the Obama Administration's white paper on financial regulatory reform to require that "broker-dealers who provide investment advice about securities to investors have the same fiduciary obligations as registered investment advisers."

It is appropriate that much of the regulatory reform attention has been focused on exploring solutions to what are widely considered to be the root causes of the financial crisis: establishing the proper level of oversight of institutions that pose systemic risk; increasing supervision of the shadow financial system; and restructuring regulatory agencies to reduce redundancies and fill gaps.

At the same time, any efforts by Congress to address these issues must include proposals to restore the confidence of beleaguered investors and consumers who ask only that they be treated fairly in the financial marketplace. The vast majority of those who invest in the securities markets outside a workplace retirement plan do so with the assistance of a financial intermediary (e.g., a broker, financial planner, or investment adviser). Investors typically rely heavily on the recommendations they receive from such financial intermediaries, doing little if any additional research to determine the appropriateness of recommended investments. This leaves investors extremely vulnerable to intermediaries who act in their own interests rather than the customer's best interests.

Although the principles contained in the statute and regulations governing investment advice are sound, the SEC has failed to apply the law consistently to all those offering investment advice. As a result, financial service providers who use titles and offer services that are indistinguishable to the average investor are subject to different regulatory standards. In particular, while investment advisers and financial planners who offer investment advice are required to adhere to a fiduciary duty and to disclose all conflicts of interest, broker-dealer firms that offer advisory services operate under the weaker "suitability" standard. As a result, customers of these brokers, who believe they are receiving objective advice free from significant conflicts of interest, are denied important protections. Moreover, customers do not receive the information necessary to allow them to make an educated choice among different types of investment service providers.

Section 913 of the Administration's proposed Investor Protection Act is intended to recognize that the current inconsistent regulatory treatment and lack of appropriate and effective standards of care can no longer be tolerated. It also directs the SEC to study and address the conflicts of interest that are pervasive in the securities industry.

While we support the intent of Section 913, we urge Congress to revise it to: (1) unambiguously provide for the extension of the overarching fiduciary duty that investment advisers owe their clients under the Investment Advisers Act of 1940 to brokers who provide investment advice; and (2) ensure that the fiduciary duty that already exists under the Advisers Act is not undermined or weakened in any way. Such an approach will enhance investor protection, reduce investor confusion, and promote regulatory fairness and efficiency by establishing the same fiduciary duty for all investment professionals.

We appreciate the Administration's attention to this issue and urge Congress to ensure that the Administration's intent to bolster investor protection is fully realized. Consumers of financial services deserve no less.

Sincerely,

Americans for Financial Reform*
Arizona Consumers Council
Chicago Consumer Coalition
Consumer Assistance Council
Consumer Federation of America
Consumer Federation of the Southeast
Consumers for Auto Reliability and Safety
Consumers Union
Florida Consumer Action Network
Oregon Consumer League
Public Citizen
ShareOwners.org**
U.S. Public Interest Research Group
Virginia Citizens Consumer Council

cc: Members, Senate Banking Committee
Members, House Financial Services Committee

** Americans for Financial Reform ("AFR") is a coalition of more than 200 national, state and local consumer, employee, investor, community and civil rights organizations who seek meaningful reform of our banking and financial system. A full list of coalition members may be found at <http://ourfinancialsecurity.org/about/our-coalition/>. All the organizations support the overall principles of AFR and are working for an accountable, fair and secure financial system. Not all of these organizations work on all of the issues covered by the coalition or have signed on to every statement.*

*** Launched in June 2009, ShareOwners.org (www.shareowners.org) is a nonprofit and nonpartisan organization that will educate and organize U.S. investors to support both short- and long-term financial market reforms. ShareOwners.org's broad four-part agenda focuses on the need for stronger regulation, increased accountability of boards/CEOs, improved financial transparency and protection of the legal rights of investors.*