CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

Consumer Federation of America

INVESTMENT ADVISER ASSOCIATION

BY FACSIMILE

October 26, 2009

The Honorable Barney Frank
Chairman
Financial Services Committee

The Honorable Spencer Bachus
Ranking Member
Financial Services Committee

The Honorable Paul E. Kanjorski
Chairman
Capital Markets, Insurance and
Government Sponsored Enterprises
Subcommittee

The Honorable Scott Garrett
Ranking Member
Capital Markets, Insurance and
Government Sponsored Enterprises
Subcommittee

U.S. House of Representatives
Washington, D.C. 20515

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Re: October 1, 2009 Discussion Draft of the Investor Protection Act (to be reported as H.R. 3817)

Dear Chairmen Frank and Kanjorski, Ranking Members Bachus and Garrett, and Members of the Committee:

As you prepare to consider the Investor Protection Act, the undersigned organizations write to express our support for inclusion of a strong provision to ensure that all those who offer investment advice are held to the highest standard – the Investment Advisers Act fiduciary duty. We greatly appreciate the improvements that have been made to Section 103, including changes that recognize that a fiduciary must act in the *best* interests of his or her client, and as contained in the October 19 manager's amendment, an attempt to clarify that any rules promulgated to carry out this mandate must establish a standard that is at least as high as the fiduciary obligations that currently exist under the Investment Advisers Act. While we would have preferred an approach that did not amend the Advisers Act, but rather simply held brokers to the Advisers Act fiduciary duty, we believe that, properly implemented, these provisions should go a long way toward eliminating investor confusion and abuse that is the inevitable result when financial intermediaries who use similar titles and offer apparently identical services are allowed to do so under different legal standards.

We are concerned, however, that certain provisions of the current draft may leave room for the fiduciary duty to be watered down.

- First, we are concerned that when describing standards of conduct, the phrase "when providing personalized investment advice" might be used to argue that "hat switching" by brokers is allowed. By "hat switching" we are referring to the common practice where the same financial intermediary provides investment advice under a fiduciary duty and then executes the recommended transactions under a lower suitability obligation. Brokers have consistently sought to limit the fiduciary duty so that it would not apply to the sales recommendations intended to implement the advice. We realize the difficulty in drafting legislative language that precludes this possibility entirely, but we would appreciate anything the Committee can do to make clear that such an interpretation is not supported under the legislation.

- Second, the language requiring rulemaking by the Securities and Exchange Commission ("SEC") references personalized advice to retail clients. Currently, an adviser's fiduciary duty under the Advisers Act does not vary depending on the type of client served. We do not believe it is appropriate to have different standards for different types of clients. All investors receiving personalized investment advice should benefit from the protections of the Advisers Act fiduciary duty. At a minimum, we would appreciate anything you can do to clarify that the legislation does not in any way limit the fiduciary duty an investment adviser owes to *all* of its clients.

- Third, we are concerned that the clarifying language which states that the standards adopted under the legislation should be "at least as high" as those currently applied under the Advisers Act is only included in that portion of the legislation that amends the Advisers Act. This could lead some to conclude that the rules for brokers could meet a lower threshold, undermining the intent to ensure that, where the advisory services are comparable, the standards will be the same. Again, we urge you to preclude that outcome by clarifying that this interpretation is not permissible under the legislation.

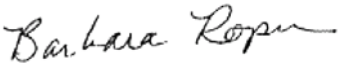
Finally, we urge you to oppose any amendments that would weaken this section of the legislation, in particular by creating a new federal standard to replace the well-established Advisers Act fiduciary duty. The broker-dealer and insurance communities have sought just such an amendment, which would not only weaken this legislation's investor protections but would also undermine the protections currently afforded by the Advisers Act by substituting a lowest common denominator standard for the existing fiduciary duty. Contrary to brokerage and insurance industry claims, the existing fiduciary duty for investment advice is easily adaptable to the many different contexts in which investment advice is offered. Its facts and circumstances-based approach offers exactly the sort of principles-based regulation these industries have claimed to favor. To the degree that there is any need to clarify how fiduciary obligations apply in different circumstances, these can be addressed through rules.

One particularly harmful amendment is being circulated by the American Association of Life Underwriters ("AALU"). That amendment would limit the definition of "investment advice" to situations in which commissions are not part of the fee paid to the service provider. In effect, this amendment would allow brokers to provide investment advice under the lower suitability standard. It would also restrict the options available to investors by eliminating the ability of investors to receive a combination of fee-based investment advice and commission-based implementation all subject to a fiduciary duty. We urge you to strongly oppose this or any similar amendment that may be offered.

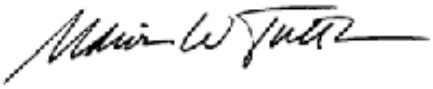
We greatly appreciate your attention to our concerns as well as everything you have already done to advance this important legislation.

Respectfully,

Kevin R. Keller, CAE
Chief Executive Officer
CFP Board



Barbara Roper
Director of Investor Protection
CFA



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