Consumer Federation of America

May 14, 2010

Fiduciary Duty Double-Standard:
Why the Current Senate Language Doesn't Solve the Problem

Dear Senator:

The single most important step Congress can and should take to protect average investors from brokerage industry abuses is to require all brokers to act in the best interests of their customers when they provide personalized investment advice. Right now, investment advisers who offer advice have to meet that standard, but "financial advisers" who work for brokers do not. Unfortunately, the Senate bill currently does not fix that problem.

Although Section 913 of the bill requires the SEC to undertake a rule-making after conducting a study of this and other regulatory gaps and overlaps, it denies the agency the authority it would need to raise the standard for brokers. As a result, it delays indefinitely any response to a known regulatory gap that leaves unsophisticated investors vulnerable to abusive industry practices.

To the degree that the authors of the current language felt further study was needed because of the potential for unintended consequences from the approach originally proposed in the Senate bill, that concern is fully resolved by the Akaka-Menendez-Durbin amendment (#3889). This amendment adopts the least intrusive approach possible to raising the standard for brokers when they give investment advice, by requiring the SEC to adopt rules under the Exchange Act to impose that duty. It includes provisions designed to make clear that it does not change the basic broker-dealer business model, preserving brokers' ability to charge commission and to sell a limited menu of products. This is a reasonable approach that respects differences between brokers and investment advisers while ensuring that investors are protected.

We urge you to support inclusion of the Akaka-Menendez-Durbin amendment (#3889) in any final regulatory reform bill.

Sincerely,

Barbara Roper

Barbara Roper
Director of Investor Protection