

**Consumer Federation of America  
Americans for Financial Reform  
Consumers Union  
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Florida Consumer Action Network  
National Association of Consumer Advocates (NACA)  
National Consumers League  
CtW Investment Group  
New Jersey Citizen Action  
U.S. Public Interest Research Group (U.S. PIRG)  
Public Citizen  
Social Investment Forum  
United Food & Commercial Workers International Union (UFCW)**

November 3<sup>rd</sup>, 2009

## **Investor Protection under Attack in Investor Protection Act Amendments**

Dear House Financial Services Committee Member:

As you continue consideration of the Investor Protection Act this week, decisions you make on pending roll call votes will determine whether this legislation lives up to its name. Unfortunately, several of the bill's central provisions have already been weakened, and all but one of the scheduled roll call votes represents an attack on important investor protections. As representatives of organizations that represent the interests of both large and small investors, we urge you to:

- Vote yes on the Waters-Peters proxy access amendment.
- Vote no on the Garrett-Adler and Maloney-Garrett amendments to reduce protections against accounting fraud.
- Vote no on the Price and Lee amendments to deny investors the choice of where to resolve disputes.
- Vote no on the Lee amendment to deny defrauded investors affordable legal representation.
- Vote no on the Garrett-Neugebauer amendment to under-fund the SEC.
- Vote no on the Garrett amendment to exempt introducing brokers from audit requirements.

The following provides further details on several of the issues of highest priority for our organizations.

### **Don't Enable Accounting Fraud Vote NO on Garrett-Adler and Maloney-Garrett Amendments**

The Garrett-Adler amendment would exempt those companies most prone to accounting fraud, companies with under \$75 million in market cap, from the requirement that they have adequate protections to prevent such frauds. The amendment's backers say it would help promote job growth, but the bursting of the tech stock bubble should have taught us what happens when we encourage companies that should not be public to raise money in our capital markets – trillions in market value and millions of jobs lost when the bubble burst. By allowing companies to avoid taking steps that would improve their financial reporting practices and reduce the risk of fraud, the Garrett-Adler

amendment invites a return of that bubble-bust phenomenon and maintains this corner of the market as a haven for pump-and-dump scams.

What the Adler amendment seeks to do directly – weaken protections against accounting fraud – the Maloney-Garrett amendment would do indirectly. The SEC has carefully evaluated the costs and concluded that, with costs down dramatically since standards were revised in 2007, the time has come to implement the requirements at small companies that for seven years have been exempt. By wasting time and resources on additional unnecessary studies, the Maloney-Garrett amendment would simply set the stage for a new round of attacks on the standards once those studies are completed. Meanwhile, implementation of fraud protections would be delayed for another year at companies with market caps below \$75 million. Ironically, these are the companies most in need of an independent assessment of their fraud controls, since they are more prone to accounting fraud and since fraud, when it occurs at these companies, almost always involves top managers.

For defrauded investors, it doesn't matter if they lose their money in a big company or a small company. The financial loss is the same. **To say “No” to a new round of accounting scandals, vote NO on the Garrett-Adler and Maloney-Garrett SOX 404 amendments.**

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**Don't Force Defrauded Investors into Industry-run Arbitration  
Vote NO on Price and Lee Amendments**

The Price amendment would continue to force investors to arbitrate disputes with their broker in an industry-run forum that many perceive as biased in favor of industry. By grandfathering in existing contracts, the Lee amendment would force most investors (those with existing accounts) into industry-run arbitration, only permitting the SEC to ban or limit pre-dispute binding arbitration clauses for new contracts. If investors were allowed a choice, the industry-run system would have to compete for their business by offering a system that all parties perceive as fair, efficient and affordable. **Force brokers to abide by their own free-market principles and allow investors a choice of how to settle disputes. Vote NO on the Price and Lee arbitration amendments.**

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**Don't Deny Defrauded Investors Affordable Legal Representation  
Vote NO on the Lee Contingency Fee Amendment**

By prohibiting contingency fee arrangements, the Lee amendment would deny investors access to the only form of legal representation many can afford. Presented as an amendment to protect investors from excessive legal fees, it is in fact an attack on defrauded investors' right to redress. **Don't put defrauded investors at a further disadvantage when they take on Wall Street crooks. Vote NO on the Lee contingency fee amendment.**

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**Do Give Shareholders the Right to Choose Directors at the Companies They Own  
Vote YES on the Waters-Peters Proxy Access Amendment**

The financial crisis, at its heart, reflects a failure of oversight – at the regulator level and at the individual corporate level. Restoring market integrity demands that key reforms now under

consideration be approved and implemented. At the same time, robust and effective oversight also requires that investors have the necessary tools to hold management and boards accountable to the owners of the company. To achieve meaningful oversight of management and boards, shareowners must have definitive access to the proxy machinery of these companies; shareowners have a fundamental right to nominate and elect directors and it is necessary that such a right be explicitly recognized.

Shareowners historically have had no real voice in the board nomination process, little choice in voting their shares, and no effective means of holding the members of the board accountable. Proxy access is necessary for shareowners to have a meaningful choice in exercising their right to vote for board members, and in turn to pursue effective board accountability. The SEC recently proposed rules under which a long-term investor or group of long-term investors holding a meaningful interest in the company would have access to management proxy materials to nominate directors and communicate such nominations to fellow shareholders.

It is crucial that the Investor Protection Act of 2009 now under consideration by the House Financial Services Committee reaffirm the SEC's authority to take action on proxy access. **Give shareowners a true voice in the boardroom so they can more effectively provide oversight of directors and management and hold them accountable for their actions. Vote YES on the Waters proxy access amendment.**

Sincerely,

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