



June 7, 2010

Chairwoman Blanche Lincoln
328A Russell Building
Washington, DC 20510

Ranking Member Saxby Chambliss
328A Russell Building
Washington, DC 20510

Chairman Collin Peterson
1301 Longworth House Office Building
Washington, DC 20510

Ranking Member Frank Lucas
1305 Longworth House Office Building
Washington, DC 20510

Dear Members:

On behalf of Americans for Financial Reform and Consumer Federation of America, we write in strong support of your revised language imposing a heightened standard of care on swaps dealers in their dealings with government entities, pension funds, retirement plans and endowments. As the Conference Committee begins its deliberations to reconcile differences between the House and Senate versions of financial regulatory reform legislation, we urge that this revised language be included in the final bill.

Emails uncovered by the Senate's Permanent Subcommittee on Investigations raised awareness of the distinction Goldman Sachs employees made between their truly sophisticated clients and those who could be duped into purchasing synthetic CDOs that the company had created expressly so it could bet on their failure. The sale of interest rate swaps to municipalities, school districts, and endowments across the country provides even more compelling evidence that not all "sophisticated" investors are capable of looking out for their own interests. Too often, these swaps exposed the entities purchasing them to risks far greater than the risks they were intended to hedge and cost them tens or even hundreds of millions of dollars in penalty fees to terminate the contracts.

In response to this evidence of widespread abuse, the Senate included a provision in its regulatory reform bill that imposes a fiduciary duty on swaps dealers in their dealings with government entities, pension funds, retirement plans and endowments. Since the provision was introduced, concerns have been raised that the way in which it is worded could have the unintended consequence of locking these entities out of the swaps market entirely. While some of those objections were based on a misconception that the bill imposed an ERISA fiduciary duty on swaps dealers, others were based on a more legitimate concern that the fiduciary duty was being applied in circumstances in which the dealer simply takes the other side of the transaction.

The revised language worked out by members of the Agriculture and HELP Committees address these concerns in two ways. It clarifies that the heightened standard of conduct constitutes a duty, comparable to that under the Investment Advisers Act, to have a reasonable basis for believing that the transaction is in the best interest of the customer. And it applies that duty only where there is some advice offered or recommendation made by the swaps dealer. It does not apply, for example, to transactions initiated by the special entity in which no advice is offered. Such transactions would be subject only to basic business conduct rules.

The result is a provision that preserves the ability of pension funds, government entities, endowments and retirement plans to engage in swaps transactions while helping to ensure that swaps dealers cannot exploit their lack of sophistication in order to lure them into transactions that are harmful to their interests. We greatly appreciate the hard work and careful deliberations that went into crafting this provision and urge that it be included in the final bill that emerges from conference committee.

Sincerely,

Heather Booth
Executive Director
Americans for Financial Reform

Barbara Roper
Director of Investor Protection
Consumer Federation of America

AFR's 250 member groups: <http://ourfinancialsecurity.org/about/our-coalition/>