Consumer Federation of America

For Immediate Release
June 17, 2009

Contact: Barbara Roper
Director of Investor Protection
(719) 543-9468

Statement of CFA Director of Investor Protection Barbara Roper
On the President's Plan for Financial Regulatory Reform

There is a lot in the Administration's plan for consumers and investors to cheer, as well as a few areas that are cause for concern. The good news is that the overall framework is the right one. The plan correctly identifies the necessary component parts for a comprehensive reform package, gets many of the details right, and doesn't waste time on meaningless and politically costly battles over regulatory structure.

Among its most important strengths, the plan takes steps to eliminate current gaps in the financial regulatory system, most notably by regulating over-the-counter derivatives, providing oversight of the off-balance sheet activities of banks, and by requiring that all financial institutions be subject to some degree of regulatory oversight. It recognizes the important role that consumer and investor protection play in ensuring not only the fairness but also the stability of the financial markets, proposing the creation of a new Consumer Financial Protection Agency and giving the Securities and Exchange Commission important new authority and direction to protect investors. (See below.) And it both improves the ability of financial institutions to survive periods of economic stress, and creates a mechanism to allow for the orderly failure of non-bank financial institutions, providing regulators with a much needed alternative to bailouts for troubled firms.

Despite its many positives, there are also aspects of the plan that will require substantial work as the legislation takes shape in Congress. The plan's provisions on credit rating agencies, in particular, are weak considering the central role these agencies played in causing the current crisis. Moreover, the Administration's plan on derivatives, while it offers real progress, must be strengthened to force more derivatives to trade on regulated exchanges and to prevent dealers from evading the requirements for central clearing and exchange trading. In addition, in designating the Federal Reserve Board as the leading systemic risk regulator, the Administration and Congress will need to address concerns that have been raised about conflicts inherent in the governance role bank holding companies play in the regional Federal Reserve Banks, the agency's closed culture, and its lack of public accountability.

The plan also includes several significant investor protection reforms which, while not central to the current crisis, have long been in need of attention. These include timelier and better tested securities disclosures, possible restrictions on use of pre-dispute binding arbitration clauses, and, potentially most important, strengthened protections for customers of brokers. The President's proposal on the latter issue is particularly significant. In contrast to a great deal of misleading commentary by members of the industry and their allies, the President's plan correctly diagnoses the problem – that brokers and advisers offer services that look identical to average investors without having to meet the same legal obligations to those investors – and prescribes the right solution, a fiduciary duty for all who offer investment advice. Critically, the President's plan recognizes that a meaningful fiduciary duty must restrict, not merely disclose, conflicts of interest. This is precisely the right approach on an issue that is critical to the well-being of average investors.

As the plan heads to the Hill, a major challenge will be to protect essential provisions, especially with regard to regulation of over-the-counter derivatives and creation of a Consumer Financial Protection Agency, that are already coming under a coordinated and well-funded attack led by the same Wall Street firms that brought the global economy to the brink of collapse and have been on the receiving end of multi-billion-dollar taxpayer bailouts.

* * *