



Consumer Federation of America

VOTE YES ON SENATE AMENDMENT 3889

Why? Brokers Should Have to Act in their Customers' Best Interests, Disclose their Conflicts

The Consumer Federation of America urges Senators to vote YES on amendment #3889 by Senators Akaka, Menendez, and Durbin, which would subject brokers and their registered representatives to the same fiduciary standard as now applies to investment advisers when they perform the same services.

Earlier today, the National Association of Insurance and Financial Advisors sent around an alert to Senate offices urging opposition to the Akaka-Menendez-Durbin amendment. The alert included a great deal of misinformation. The following are a few of the more egregious examples:

- NAIFA emphasizes in its alert that current Section 913 of the Restoring American Financial Stability Act, which the Akaka-Menendez-Durbin amendment is designed to replace, requires an SEC rulemaking. It neglects to mention that the bill denies the SEC the authority it has requested to impose a fiduciary duty on brokers when they give investment advice. Requiring the SEC to act and then denying it the authority to do so is a waste of agency time and resources. That is why SEC Chairman Mary Schapiro has written letters, testified, and given speeches calling for new authority to be added to the legislation empowering the agency to impose a fiduciary duty on brokers when they give investment advice.
- NAIFA twists the fact that the RAND Corporation study did not include policy recommendations to argue that more study is needed. The RAND study, which followed years of SEC consideration of these issues, was commissioned after agency efforts to address the problem of investor confusion through disclosure proved ineffective. It was intended to provide a factual basis for a more comprehensive reform proposal. The study confirmed several important facts on which the current proposal is based: that brokers and investment advisers offer many of the same services, including investment advice, and that investors do not understand the differences between brokers and investment advisers, including differences legal protections that apply. Based on those findings, it doesn't take a genius to recognize that the current regulatory policy must be changed in order to ensure that services investors perceive as being the same are subject to the same investor protection standards.
- NAIFA says we need more study because we do not have an adequate understanding of differences in how the suitability standard governing brokers is applied and enforced relative to the fiduciary duty. But state regulators who serve on the front lines, enforcing both the fiduciary duty for advisers and the suitability standard for brokers, know exactly how the two standards operate. They are strong supporters of the Akaka-Menendez-Durbin amendment. Chairman Schapiro and Commissioner Walters, two individuals

with extensive experience at FINRA regulating brokers under the suitability standard, have also spoken out in support a fiduciary duty for brokers who give investment advice. And current FINRA CEO Rick Ketchum has also spoken out in favor of a fiduciary duty. Indeed, the people who know the most about broker-dealer regulation are among the strongest supporters of a fiduciary duty.

- NAIFA claims a fiduciary duty is difficult to apply. But financial planners who give advice and sell securities and insurance to implement their recommendations have been operating successfully under a fiduciary duty for decades. Moreover, the flexibility of the fiduciary duty that is decried by NAIFA is precisely what allows it to be adapted to the different contexts in which investment advice is offered. In fact, the fiduciary duty is precisely the sort of principles-based regulation that industry claims to prefer. It only poses difficulties for brokers intent on lining their own pockets instead of serving their customers.

The NAIFA alert includes at least one true statement. It states that this issue will have a significant impact on the millions of clients they serve.

If this amendment is adopted, these customers will receive long-overdue protections that ensure that the recommendations they receive from their NAIFA “advisors” are designed with their best interests in mind, and they will receive new disclosures alerting them to conflicts of interest that could bias those recommendations. Requiring insurance agents to act in their customers’ best interests will finally force these agents to act like the “advisors” they claim to be. That is the best thing Congress could do for vulnerable investors who rely on them for unbiased advice.