January 7, 2010

The Honorable Christopher Dodd
Chairman, Committee on Banking,
Housing, and Urban Affairs
U.S. Senate
Washington, D.C. 20510

The Honorable Richard Shelby
Ranking Member, Committee on Banking,
Housing, and Urban Affairs
U.S. Senate
Washington, D.C. 20510

Dear Chairman Dodd and Ranking Member Shelby:

We write as organizations that strongly advocate requiring all those who offer investment advice to be held to the Investment Advisers Act fiduciary duty to act in the best interests of their clients. Section 913 of the "Restoring American Financial Stability Act of 2009" (RAFSA) accomplishes that goal in a straightforward and sensible fashion by eliminating the broker-dealer exclusion from the Act. As full service brokers have adopted an increasingly advice-based business model, this provision of the Advisers Act, misapplied by the Securities and Exchange Commission, has allowed them to escape appropriate regulation as fiduciaries.

Unfortunately, some in the industry who have for years actively marketed themselves to investors as trusted advisers are resisting regulation as advisers. SIFMA, for example, has recently embraced the fiduciary duty in concept, but its unfounded criticisms of the current fiduciary standard under the Investment Advisers Act suggest that its goal is to promote a new federal standard that will allow firms to continue conducting business as usual. Meanwhile, several insurance industry groups have launched a particularly virulent attack on the legislation aimed at eliminating entirely the provision requiring a fiduciary duty for financial professionals and replacing it with an unnecessary study at taxpayer expense. In the process, they have put forward arguments that reflect either a complete lack of understanding of the bill's basic provisions or a more deliberate attempt to confuse the issues.

While the brokers and insurance agents who offer investment advice will undoubtedly have to make changes in the way they do business – that is after all the point of imposing a new duty to act in the best interests of clients – the bill does not inappropriately limit their ability to offer beneficial products and services. For example:

- It does not limit their ability to charge commissions or require them to charge fees for advice.
- It does not limit their ability to sell proprietary products or to sell from a limited menu of products.
- It does not impose a fiduciary duty on self-directed accounts or limit the investment choices that clients can make.
- It does not impose an on-going duty to monitor the account when one-time, transaction-based recommendations are offered.

- It does not impose significant or inappropriate regulatory costs or burdens.
- It does not impose one-size-fits-all regulation.

Meanwhile, the potential benefits to investors are substantial. Investors would receive ample warning of conflicts of interest that may bias the adviser's recommendations. Additionally, the adviser would have a legal obligation to act in the best interests of the client – an obligation that cannot be satisfied, as the broker-dealer's suitability standard can, by recommending the least suitable of the generally suitable investment options available.

We have attached a document that identifies, and refutes with facts, the myths being circulated by some in the broker-dealer and insurance industry. While it would not be possible in this context to address every false argument in detail, we have attempted to provide brief answers to the most common myths. We stand ready to respond to any questions you may have regarding these issues.

For too long, brokers have been free to market themselves as trusted advisers and offer extensive advisory services without having to meet the fiduciary standard appropriate to that role. Section 913 of the "Restoring American Financial Stability Act of 2009" eliminates the legislative loophole that has allowed this dual standard to persist. Investors will only benefit, however, if Congress resists efforts to scale back and water down critical protections provided by the legislation, efforts that have been advanced through a campaign of misinformation and mischaracterization. We urge you to stand up for investors by standing up to those who would undermine these important investor protections.

Respectfully submitted,

Barbara Roper
Director of Investor Protection
CFA

Mercer Bullard
Founder and CEO
Fund Democracy

Denise Voigt Crawford
President
NASAA

Kevin R. Keller, CAE
Chief Executive Officer
CFP Board

David G. Tittsworth
Executive Director
IAA

Marvin W. Tuttle Jr., CAE
Executive Director and CEO
FPA

Ellen Turf
Chief Executive Officer
NAPFA

cc: Members, Committee on Banking, Housing, and Urban Affairs