



## Consumer Federation of America

June 23, 2010

### Protect Investors: Restore Provisions Weakened in the Senate Counter-Offer

Dear Conferee:

Yesterday, Senate conferees approved a counter-offer on broker-dealer fiduciary duty that offers the illusion of investor protection, but not the reality. Senate conferees also approved a sweeping preemption of securities regulation that not only undermines existing efforts to protect investors from abuses in the sale of equity-indexed annuities but encourages the creation of new products to exploit that loophole in the future. We are writing to urge House conferees to reject these anti-investor provisions. Unless the House conferees act, the Investor Protection title of the Wall Street reform bill will actually do more to weaken investor protections than to strengthen them on the issues identified as priorities by investor advocates.

**Fiduciary Duty:** Although it purports to marry the Senate study language with authority for the SEC to adopt rules based on the House language, the “compromise” offered by Sen. Johnson weakens the House language in several crucial ways.

- House language authorizing the SEC to adopt rules imposing the full Investment Advisers Act fiduciary duty on brokers when they give personalized advice about securities to retail investors is gone. In its place is language authorizing the SEC to adopt rules requiring brokers to act in their customers’ best interests.
- That weakened authority is subject to such onerous conditions that it is unlikely ever to be exercised. Before adopting rules, the SEC would have to show that no other approach could solve the problem, subjecting the agency to the threat of legal challenge on which it would be unlikely to prevail.
- Language requiring the agency to harmonize enforcement of the standard, so that it is applied equally to brokers and advisers, has also been removed.

Fortunately, in approving this provision to “move the process forward,” Chairman Dodd indicated that the language is still open to negotiation. Before it would be remotely acceptable, the authority of the SEC to adopt rules imposing the Advisers Act fiduciary duty on brokers when they give investment advice would have to be restored, and the conditions on the agency’s rule-making authority in subsection (m)(1)(A)(ii) would have to be removed. In place of the latter provision, language could be added authorizing the agency to act if it finds that such action is in the public interest and for the protection of investors. We urge you to make at least these suggested changes. Without them, the measure is not worth passing and may, in fact, do more harm than good.

**Equity-indexed Annuities:** The Senate conferees approved an amendment to preempt securities regulation of equity-indexed annuities, hybrid products that have characteristics of both insurance and securities. Contrary to the statements of the amendment's supporters, the courts have found equity-indexed annuities to be securities appropriately regulated under the nation's securities laws. The amendment would overturn that court decision and beat back efforts of the SEC to better protect investors from products that have been, and continue to be, among the most abusively sold on the market today. Moreover, because the amendment is so broadly written, insurers would be freer to develop new hybrid investment products to exploit the loophole it opens up and escape regulation as securities. We urge you to reject this amendment, which has no place in a bill to strengthen investor protections.

During the conference process, we have seen a steady erosion in the Investor Protection title's most important provisions. Indeed, if the Investor Protection title as amended by the Senate were free-standing legislation, we would have to oppose it. While we could not in good conscience suggest that a member oppose the overall regulatory reform bill based on this one title, we can and do urge you to reverse course and restore vital protections for investors.

Respectfully submitted,

Barbara Roper  
Director of Investor Protection