



June 23, 2010

Dear Conferee:

Yesterday's decision by Senate conferees to approve a counteroffer on a provision to create a fiduciary duty for broker-dealers is yet another demonstration that Title IX—meant to protect investors—is being weakened at the expense of investors. The most recent Senate counteroffer on section 913 (ALB 10619) fails to meet the stated goal of requiring that brokers who provide investment advice about securities have the same fiduciary obligations as investment advisers. In fact, the counteroffer falls short in providing investors with full fiduciary safeguards, and perpetuates a failed regulatory model in which investors receive the same services under two different standards. Chairman Dodd indicated that the language was open for further negotiation. We urge the House and Senate conferees to make critical refinements in the language essential to protect investors.

Further, Senate conferees approved a provision that removes the authority of the Securities and Exchange Commission (SEC) to regulate equity indexed annuities, which have already been the product of widespread abusive sales practices. We write to urge the House conferees to reject this attempt to remove SEC authority to regulate equity indexed annuities.

Fiduciary Duty

The Senate counteroffer on section 913 is a failed compromise. The House bill provides true authority for the SEC to enhance investor protection by addressing gaps and shortcomings. The Senate counteroffer erects barriers making it much more difficult for the SEC to apply the same standards across the board and creates a framework where some investors will end up having less protection than others. While we recognize that the counteroffer attempts to combine the Senate bill's study language with the House bill's grant of rulemaking authority to the SEC, the result is a provision that would undermine the investor protections in the House bill in several ways.

1. The counteroffer fails to harmonize the standard for brokers and investment advisers. Unlike the House bill, it would not require that brokers adhere to the same fiduciary standard currently applicable to investment advisers under the Investment Advisers Act of 1940. In fact, the significantly different statutory language not only permits, but appears to direct the SEC to establish a different, and likely lower, standard for brokers.
2. The weakened SEC authority is paired with onerous conditions precedent to any rulemaking. Prior to adopting rules establishing a standard of care for brokers, the SEC would be required to determine that no other approach could achieve the same result. This would invite legal challenges to any SEC rulemaking, which would take years of litigation to resolve.
3. Language requiring the SEC to harmonize enforcement of the standard, so that it is applied equally to brokers and advisers, has also been removed.

Significant changes to section 913 would be necessary to achieve the original goal of protecting investors and harmonizing the standard of care that applies to the delivery of personalized investment advice. First, SEC authority to adopt rules imposing the Advisers Act fiduciary duty on broker-dealers when providing personalized investment advice must be restored. Second, the conditions precedent to SEC rulemaking in subsection (m)(1)(A)(ii) must be removed. If it is necessary to place restrictions on the SEC's ability to promulgate rules in this area, we recommend applying the standard generally applicable to other SEC rulemaking: that the SEC find such rules are "necessary and appropriate in the public interest and for the protection of investors." We urge you to make at least these suggested changes. Without them, we are concerned that the measure may do more harm than good.

Equity Indexed Annuities

A provision offered by Sen. Tom Harkin and accepted by the Senate conferees would strip the SEC of its authority to oversee sales practices in connection with equity indexed annuities. These products are securities and are often marketed as investment vehicles. The SEC adopted Rule 151A in response to numerous complaints about deceptive sales practices involving equity indexed annuities. These sales practices have been the focus of numerous lawsuits, regulatory enforcement actions, and news articles, as well as a Dateline NBC report titled "Tricks of the Trade." Accordingly, they should be subject to the strong investor protections afforded by our nation's securities laws.

The recent financial crisis demonstrated how inadequate regulation of complex financial products can cause problems throughout our financial system. As more exotic instruments are developed, we should not restrict the SEC's ability to regulate them appropriately. The Harkin amendment is contrary to the goals of strengthening investor confidence in American financial markets and enhancing investor protection that are the foundation of the Restoring American Financial Stability Act of 2010. There is no question the best way to ensure adequate investor protections in the sale of equity indexed annuities is to allow the SEC to exercise its appropriate authority over these products. Registration of these products with the SEC will increase disclosure to investors regarding their terms, risks, and costs; deter abusive sales practices; and provide victims with more effective remedies. We urge you to reject this amendment as it has no place in a bill intended to strengthen investor protections.

If you have any questions, please contact Marilyn Mohrman-Gillis, Managing Director, Public Policy and Communications, CFP Board, at (202) 379-2235 or mmohrman-gillis@cfpboard.org; Dan Barry, Director of Government Relations, FPA[®], at (202) 449-6343 or dan.barry@fpanet.org; or Nancy Hradsky, Special Projects Manager, NAPFA, at (847) 483-5400 ext. 103 or hradskyn@napfa.org.

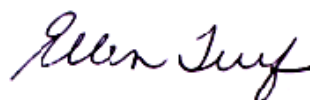
Respectfully submitted,



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