

## THE COMMITTEE FOR THE FIDUCIARY STANDARD

October 19, 2009

Honorable Christopher Dodd  
Chairman  
Honorable Richard Shelby  
Ranking Member  
Senate Committee on Banking  
Washington DC 20510

Honorable Barney Frank  
Chairman  
Honorable Spencer Bachus  
Ranking Member  
House Financial Services Committee  
Washington DC 20515

RE: Investor Protection Act, Section 103

Dear Chairman Dodd, Ranking Member Shelby, Chairman Frank and Ranking Member Bachus:

I write as Chairman of the Steering Group, the Committee for the Fiduciary Standard, an independent group of over 600 investment professionals dedicated solely to ensuring that any legislation and rulemaking preserves the authentic fiduciary standard as presently established in law.

The Committee is concerned that misunderstandings of the authentic fiduciary standard could, inadvertently, be reflected in legislation and weaken the standard, at the exact time that investors are looking to Congress and regulators to strengthen oversight of the financial system and Wall Street.

Specifically: we are concerned with the positions expressed by the Securities Industry and Financial Markets Association (SIFMA), Wall Street's main lobbying arm, on the administration proposal to enact a fiduciary standard for brokers who give personalized investment advice. Their positions demonstrate an apparent lack of understanding of, and / or commitment to, such fundamental fiduciary duties as full disclosure, the obligation to manage conflicts in the investor's interest, and consideration of expenses in investment decisions.

The differences are stark. The authentic fiduciary standard (AFS) requires the legal obligation of "prudence"; SIFMA's does not. The AFS requires disclosures of all material facts; SIFMA's does not. The AFS requires advisors to control investment expenses, to disclose conflicts and also always attain fully informed client consent, and to manage conflicts in the client's interest. SIFMA's standard, unfortunately, simply does not do so.

If these positions are enacted into law, the result will be clear. Absent these explicit fiduciary duties investors interests will be demoted to second place.

The Committee for the Fiduciary Standard has released an analysis of SIFMA's October 6 Congressional testimony <http://www.sifma.org/legislative/testimony/pdf/JohnTaft-Testimony-beforeHFSC.pdf> and comments on SIFMA's views by Kevin Carroll, SIFMA's Associate General Counsel, in an October 7 webinar. <https://www1.gotomeeting.com/register/215828096>. The analysis compares requirements of the authentic fiduciary standard, as established in law, with the requirements that SIFMA proposes brokers should meet when giving investment advice.

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The Committee urges Congress, the Securities and Exchange Commission and the Financial Industry Regulatory Authority to require the authentic fiduciary standard for brokers and all professional who give investment advice.

SEC Chairman Schapiro has noted that the key to restoring investor confidence in our capital markets is investors believing that the “markets work well”, and this means, investors knowing that the “information upon which they base their investment decisions is the truth, the whole truth, and nothing but the truth.” Both the spirit and letter of what, I think, Chairman Schapiro means in these words are firmly embedded in the authentic fiduciary standard. The Committee for the Fiduciary Standard urges Congress to preserve them.

Sincerely,

*Knut A. Rostad*

Knut A. Rostad  
Chairman

Regulatory and Compliance Officer  
Rembert Pendleton Jackson  
(703) 821-6616 x 429  
[kar@rpjadvisors.com](mailto:kar@rpjadvisors.com)