

THE COMMITTEE FOR THE FIDUCIARY STANDARD

October 26, 2009

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

RE: Investor Protection Act, Section 103

Dear Chairman Frank and Ranking Member Bachus:

I write as Chairman of the Steering Group for 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 applauds your commitment to extending the investor protections of the authentic fiduciary standard and offers three recommendations to better align the language of certain provisions of Section 103 of the discussion draft of Investor Protection Act of 2009 (“IPA”) with the statutory goals of protecting investors’ interests.

The Fiduciary Standard. We believe a consistent fiduciary standard of conduct for brokers, dealers, and investment advisers should be explicitly designed to meet or exceed the current fiduciary standard required under the Investment Advisers Act of 1940 (“Advisers Act”). We further believe this explicit approach has been viewed favorably by SEC Commissioners Walter and Aguilar.* As such, on page 10, line 14 at the end of the sentence, we recommend inserting the language, “Such rules shall provide that such standard of conduct will be at least as high as the current standard established and applied to investment advisers under this Act.” We note that this is similar to language proposed by the manager’s amendment to the IPA, but more explicitly refers to the standard established and applied under the Advisers Act.

Disclosure Rules. We believe that it is necessary to ensure brokers, dealers, and investment advisers adhere to consistent disclosure rules in order to promote best practices in the industry that will further protect investors. On page 11, line 2, before “disclosures,” insert “written”; on line 4, similar to what was suggested in the manager’s amendment to the IPA, insert before the semi-colon the following, “including all material conflicts of interest.”

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Scope of the Fiduciary Standard. We believe that limiting the fiduciary standard of conduct to advice provided to “retail customers”, as defined in the discussion draft, creates too narrow of a scope for the standard. In particular, the definition of “retail customer” appears to exclude individuals serving as trustees of personal trusts, charitable trusts and educational foundations, and we believe investment professionals providing advice to trustees and others in similar positions should also be held to the fiduciary standard of conduct. As such, we recommend that the Financial Services Committee consider removing the limiting reference to “retail” customer in the IPA to avoid unintentionally excluding investors that deserve the same protections.

Thank you again for your support of the authentic fiduciary standard. The Committee would be pleased to discuss our views on this important issue in detail. Please feel free to call me at 703-821-6616 x 429.

Sincerely,

Knut A. Rostad

Knut A. Rostad
Chairman

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

* See Commissioner Elisse B. Walters, Regulating Broker-Dealers and Investment Advisers: Demarcation or Harmonization?, Address at the Mutual Fund Directors Forum Ninth Annual Policy Conference (May 5, 2009), available at <http://www.sec.gov/news/speech/2009/spch050509ebw.htm>; Commissioner Luis A. Aguilar, SEC’s Oversight of the Adviser Industry Bolsters Investor Protection, Address at the Investment Advisers Association Annual Conference (May 7, 2009), available at <http://www.sec.gov/news/speech/2009/spch050709laa.htm>.