



Consumer Federation of America

1620 I Street, N.W., Suite 200 \* Washington, DC 20006

Americans for Financial Reform  
Accountability, Fairness, Security

December 8, 2009

Dear Member of the House of Representatives:

As organizations that support requiring all those who offer investment advice to act in the best interests of their clients, we are writing to urge you to vote yes on the Cohen-Frank amendment, which is expected to be offered during consideration of H.R. 4173, "The Wall Street Reform and Consumer Protection Act of 2009." This amendment would strip a provision from the bill that would permit the Securities and Exchange Commission (SEC) to delegate to the broker-dealer industry self-regulatory organization, FINRA, sweeping authority to implement the fiduciary standard for any adviser associated with one of its member firms.

Investors stand to benefit greatly from the bill's requirement that brokers who offer investment advice act in the best interests of their clients, but only if the legislation is implemented appropriately. Key decisions about when the fiduciary duty applies and how it applies in different contexts will determine whether investors truly reap the benefits or are offered merely the semblance of new protections. The legislation would allow the SEC to delegate that authority to FINRA for its member firms and persons associated with its member firms, extending its reach to a large majority of all investment advisers.

We do not believe FINRA is the organization to entrust with that responsibility. Infused with the broker-dealer mindset, Finra and its predecessor organization, NASD Regulation, for years actively opposed holding brokers to a fiduciary duty when they provide investment advice. As brokerage firms transformed their business model, labeling their salespeople financial advisers and marketing their services based on the advice offered, the self-regulatory organization did nothing to prevent member firms from holding themselves out to the public as advisers while simultaneously claiming for regulatory purposes to offer only the "incidental" advice that allowed them to escape regulation under the Advisers Act. Although FINRA has recently spoken in favor of the fiduciary duty requirement, its commitment to promoting the highest standards must inevitably remain in doubt in light of its past opposition and inaction. Moreover, FINRA's failure to uncover the Madoff Ponzi scheme, and its patently false claims that its lack of investment adviser jurisdiction was a major cause of that failure, raise further questions about its suitability to this task.

Added during committee mark-up on a voice vote, the provision allowing delegation of authority to FINRA would radically alter our approach to regulating investment advisers without adequate consideration or justification. At the same time, the legislation includes other provisions to increase SEC resources to handle these responsibilities that make any such delegation of authority unnecessary. To ensure that investors reap the full benefits of the bill's fiduciary duty requirements, we urge you to vote yes on the Cohen-Frank amendment.

Respectfully Submitted,

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