



Consumer Federation of America

For Immediate Release
November 4, 2009

Contact: Barbara Roper
Director of Investor Protection
(719) 543-9468

Statement of CFA Director of Investor Protection Barbara Roper in Response to House Financial Services Committee Passage of Investor Protection Act

The House Financial Services Committee passed the Investor Protection Act on a 41-28 vote Wednesday, but not before weakening a central provision on fiduciary requirements for brokers and adopting an anti-investor amendment to remove protections against accounting fraud at small public companies. In response, CFA Director of Protection Barbara Roper issued the following statement:

“The Investor Protection Act includes a number of long-sought and much needed reforms, including measures to improve the disclosures provided to investors about investment products and services, to restrict mandatory arbitration clauses in brokerage contracts, to increase resources for regulatory oversight, and to require brokers who give investment advice to act in the best interests of their customers. Unfortunately, several changes were made to the bill prior to the committee vote that make it at best a mixed bag for investors,” Roper said.

Additions to Bill Undermine Fiduciary Duty for Brokers

For example, CFA had strongly supported the Act’s provision holding all brokers who give investment advice to a fiduciary duty to act in the best interests of their clients. “By the time the legislation was voted on, the fiduciary duty language had been so larded with conditions and specific, potentially limiting provisos that it is no longer clear whether it will achieve its intended goal of requiring brokers to comply with the same standards investment advisers and financial planners are held to under the Investment Advisers Act,” Roper said.

Worse, as the result of an amendment from Ranking Member Spencer Bachus (R-AL) which was adopted on a voice vote, the legislation also permits the SEC to designate the broker-dealer self-regulatory organization, FINRA, to oversee the investment advisory activities of its member firms and persons associated with those firms. As a result of this amendment, FINRA could be given both oversight and rulemaking authority over not just brokers who give investment advice, but also the vast majority of investment adviser representatives, including in particular those financial planners who combine investment advice with the sale of securities products through a FINRA-registered broker-dealer.

“This could hand primary authority for determining how the fiduciary duty will be interpreted and enforced to an industry-dominated organization that for years worked hand in hand with the industry trade association to oppose imposing a fiduciary duty on brokers who give investment advice,” Roper said.

Bill Weakens Protections against Accounting Fraud

Perhaps the most shocking development that occurred during the mark-up was the Committee vote to use the Investor Protection Act as a vehicle for weakening post-Enron protections against accounting fraud, apparently with the full backing of the White House. Nine committee Democrats joined with all the Republicans present to permanently exempt companies with under \$75 million in market capitalization from Section 404(b) of the Sarbanes-Oxley Act. That provision requires that companies have an independent auditor evaluate the effectiveness of their controls to prevent accounting fraud and errors as part of the annual financial statement audit. That protection is particularly important at small companies, which are more prone to both fraud and costly financial reporting errors than larger companies.

In addition to the amendment sponsor Rep. John Adler (NJ), the Democrats who voted in support of the amendment were: Melissa Bean (IL), Bill Foster (IL), Travis Childers (MS), Walt Minnick (ID), Steve Driehaus (OH), Suzanne Kosmas (FL), Gary Peters (MI), and Dan Maffei (NY). “Democrats like to blame the Bush Administration for the current financial crisis. But it was exactly this sort of thinking – that financial regulation is too costly and too burdensome – that landed us in this mess. In the end, these Democrats helped to weaken post-Enron fraud protections beyond anything much maligned SEC Chairman Chris Cox was willing to do support.”

“Despite these major disappointments, we are pleased that progress is being made toward final passage of the Investor Protection Act. However, the bill will not live up to its name unless and until these serious short-comings are addressed,” Roper said.

* * *

The Consumer Federation of American is a nonprofit association of approximately 280 national, state and local pro-consumer organizations. It was founded in 1968 to represent the consumer interest through research, education and advocacy.