

CERTIFIED FINANCIAL PLANNER  
BOARD OF STANDARDS, INC.



Consumer Federation of America



INVESTMENT ADVISER  
ASSOCIATION



November 23, 2009

The Honorable Christopher Dodd  
Chairman  
Committee on Banking, Housing,  
and Urban Affairs  
U.S. Senate  
Washington, D.C. 20510

The Honorable Richard Shelby  
Ranking Member  
Committee on Banking, Housing,  
and Urban Affairs  
U.S. Senate  
Washington, D.C. 20510

RE: "Restoring American Financial Stability Act of 2009"

Dear Chairman Dodd and Ranking Member Shelby:

Certified Financial Planner Board of Standards, Inc. (CFP Board), the Consumer Federation of America (CFA), the Investment Adviser Association (IAA), the National Association of Personal Financial Advisors (NAPFA), and the North American Securities Administrators Association (NASAA)<sup>1</sup> are writing in response to the Committee Print released on November 16, 2009, titled the "Restoring American Financial Stability Act of 2009."

The undersigned organizations represent state securities regulators, consumer groups, and industry and professional groups related to investment advisers and financial planners. Despite our diverse interests and constituencies, we all share the view that the highest legal standard—fiduciary duty—should apply to all who give investment advice to clients. Accordingly, we greatly appreciate that Section 913 of the Committee Print takes a simple and straightforward approach to ensuring that brokers who offer investment advice meet the same standards as other investment advisers. It does so by removing the broker-dealer exclusion from the Investment Advisers Act of 1940. This approach eliminates any ambiguity about what standard will apply when brokers give investment advice. Moreover, as a facts-and-circumstances-based standard, the Advisers Act fiduciary duty can easily be applied in the many contexts in which brokers offer investment advice, just as it has been successfully applied to financial planners who combine advice with product sales.

Importantly, the Committee Print addresses the concerns expressed by representatives of the brokerage and insurance industries, and does so without compromising essential investor protections. It clarifies that nothing in the Act precludes compensation through commissions and it confirms that sales from a limited menu of investment options must be disclosed, but are not prohibited. The Committee Print also preserves the ability of brokers to engage in principal trades so long as they have adequate protections in place to ensure that the transactions are in the best interests of the investor.

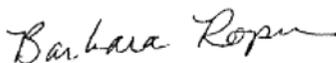
Despite the reasonable accommodations made by the Committee Print to address industry concerns, we expect some members of the brokerage and insurance industries to push for further changes that will erode the fiduciary duty. They will claim fidelity to the fiduciary standard all the while lowering it from the “best” interest, limiting the scope so that only the advice and not the implementation of the advice is covered, and divorcing the fiduciary duty from the decades of legal precedent that has developed under the Advisers Act and state common law.

We are pleased that the Committee Print addresses an issue long overdue for action. We look forward to working with you and the Committee in the coming days and weeks to ensure that Section 913, *Regulation of Brokers, Dealers and Investment Advisers*, remains intact in the final legislation.

Sincerely,



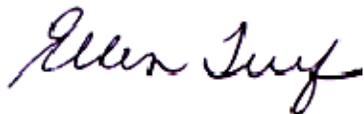
Kevin R. Keller, CAE  
Chief Executive Officer  
CFP Board



Barbara Roper  
Director of Investor Protection  
CFA



David G. Tittsworth  
Executive Director  
IAA



Ellen Turf  
Chief Executive Officer  
NAPFA



Denise Voigt Crawford  
President  
NASAA

cc: Members, Senate Committee on Banking, Housing, and Urban Affairs

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<sup>1</sup> CFP Board is a non-profit organization that acts in the public interest by fostering professional standards in personal financial planning through setting and enforcing education, examination, experience, and ethics standards for financial planner professionals who hold the CFP® certification. CFP Board’s mission is to benefit the public by granting the CFP® certification and upholding it as the recognized standard of excellence for personal financial planning. CFP Board currently regulates over 60,000 CFP® professionals who agree, on a voluntary basis, to comply with our competency and ethical standards and subject themselves to the disciplinary oversight of CFP Board under a fiduciary standard of care.

CFA is a non-profit association of approximately 280 pro-consumer groups, representing more than 50 million Americans. It was established in 1968 to advance the consumer interest through research, education, and advocacy.

IAA is a not-for-profit organization that represents the interests of SEC-registered investment advisory firms. Founded in 1937, its membership today consists of more than 450 firms that collectively manage in excess of \$7 trillion in assets for a wide variety of individual and institutional investors. For more information, please visit [www.investmentadviser.org](http://www.investmentadviser.org).

Since 1983, NAPFA has provided Fee-Only financial planners across the country with some of the strictest guidelines possible for professional competency, comprehensive financial planning, and Fee-Only compensation. With more than 2,000

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members across the country, NAPFA has become the leading professional association in the United States dedicated to the advancement of Fee-Only financial planning. Since inception, NAPFA has been a vocal advocate for the protection and education of financial service consumers. For more information on NAPFA, visit [www.napfa.org](http://www.napfa.org).

NASAA is the oldest international organization devoted to investor protection. NASAA is a voluntary association whose membership consists of 67 state, provincial, and territorial securities administrators in the 50 states, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Canada, and Mexico. For more information, visit: [www.nasaa.org](http://www.nasaa.org).