FINANCIAL PLANNING COALITION

November 3, 2009

The Honorable Barney Frank
Chairman
Financial Services Committee

The Honorable Spencer Bachus
Ranking Member
Financial Services Committee

The Honorable Paul E. Kanjorski
Chairman
Capital Markets, Insurance and
Government Sponsored Enterprises
Subcommittee

The Honorable Scott Garrett
Ranking Member
Capital Markets, Insurance and
Government Sponsored Enterprises
Subcommittee

U.S. House of Representatives
Washington, D.C. 20515

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Re: Investor Protection Act (to be reported as H.R. 3817), Bachus 001

Dear Chairmen Frank and Kanjorski, Ranking Members Bachus and Garrett, and Committee Members:

We are writing regarding an amendment the Committee approved by voice vote on Wednesday, October 25, during the mark-up of the Investor Protection Act of 2009 (IPA). The amendment (Bachus 001), offered by Ranking Member Bachus, would extend the regulatory authority of the Financial Industry Regulatory Authority (FINRA) to cover investment advisers who are associated with broker-dealers under FINRA's authority.

We have under separate cover sent a letter to you dated November 2, 2009, which raises concerns regarding how Bachus 001 extends FINRA's authority to approximately 88 percent of investment adviser representatives and implicates application of the fiduciary duty to investment advice. We are attaching a copy of this letter herein and therefore do not address those issues here.

The expansion of FINRA's authority under Bachus 001 is without precedent and the impact of this new oversight structure is significant. For the first time, FINRA would be granted authority to regulate people and practices outside the scope of the Securities Exchange Act of 1934. The members and stakeholders of our respective organizations are very concerned about how this new oversight structure will affect their businesses, their clients, and the very nature of the industry. We believe this issue warrants greater deliberation and we strongly urge you to conduct a more thorough examination before allowing the delegation of substantial authority from the Securities and Exchange Commission (SEC) to a self-regulatory organization (SRO)

that has no experience overseeing advisers or enforcing the provisions of the Investment Advisers Act of 1940.

We believe this amendment would be inconsistent with the Committee's intent with respect to the IPA for the following reasons:

- Both Section 304 of the IPA and the McCarthy amendment (McCarthy 002) call for studies of SROs and how they might enhance the SEC's oversight of advisers. Section 304 specifically mandates a study as to whether "the present reliance on self-regulatory organizations promotes efficient and effective governance for the securities markets." Bachus 001 essentially supersedes these studies, which would lend more insight as to whether FINRA oversight of advisers is appropriate or necessary.

- The Committee approved an amendment proposed by Chairman Frank (Frank 003) that would change the assets under management threshold for SEC registration of advisers. It would shift responsibility for the oversight of some 4,200 advisers from the SEC to the states, thereby freeing up substantial SEC resources to enhance oversight of advisers under its jurisdiction.

- Section 302 of the IPA authorizes the SEC to collect user fees from advisers to cover the costs of compliance examinations and investigations. This provision obviates the need to bring FINRA in to bolster SEC oversight because of potential funding shortfall.

- Section 301 of the IPA authorizes a doubling of the SEC's budget over the next five years. Together with shifting some of its oversight burden to the states and allowing it to recover oversight costs directly from advisers, this represents an extraordinary increase in resources that would further afford the SEC the funding necessary to oversee advisers and would render FINRA oversight redundant and unnecessarily expensive and burdensome.

Additionally, we believe the SEC is far more appropriate as a primary regulator for advisers:

- The SEC has been overseeing advisers for seven decades under a principles-based approach specifically designed to regulate those providing advice. FINRA has no experience in regulating investment advice. FINRA's rules-based approach is designed for the oversight of salespeople, sales practices, and products, and is focused on "market integrity." This regulatory approach and focus may be fine for the brokerage community, but is not readily adaptable to advisers. On balance, resources are better utilized by enhancing the SEC's existing, experienced oversight function,

and not by farming out the responsibility to an SRO. The IPA, including amendments approved by the Committee last week, clearly leans in this direction.

- FINRA oversight of advisers who are associated with broker-dealers would create a new, parallel system of regulation for advisers. Investor confusion—already a serious problem—would increase exponentially with different primary regulators, rules, and perhaps standards for advisers based on whether they are independent or associated with a broker-dealer. It would also create a new opportunity for regulatory arbitrage, with advisers and brokers making decisions on their business models based on a preferred regulatory model.

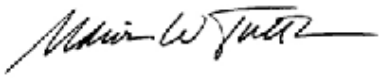
- FINRA is an SRO comprised of broker-dealers. As such, they would be inclined to bring a broker's perspective to adviser regulation. This conscious or subconscious conflict of interest could result in a broker bias in FINRA oversight of advisers, and otherwise deepen the differences in how broker-associated advisers are regulated versus independent advisers. Moreover, advisers are essentially the client of the broker, and FINRA would therefore have a clear conflict as a broker SRO regulating its own clients.

We appreciate your consideration of our concerns and would welcome the opportunity to discuss these matters with you in greater detail.

If you have any questions, please contact FPA's Director of Government Relations, Dan Barry, via telephone at (202) 449-6343 or via e-mail at dan.barry@fpanet.org, or Marilyn Mohrman-Gillis, Managing Director, Public Policy, CFP Board, via telephone at (202) 379-2235 or via e-mail at mmohrman-gillis@cfpboard.org.

Very truly yours,

Kevin R. Keller
Chief Executive Officer
CFP Board



Marvin W. Tuttle, Jr.
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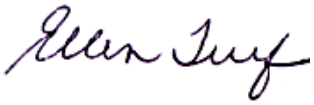

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