



**NATIONAL ASSOCIATION OF
INSURANCE AND FINANCIAL ADVISORS**

Issue Brief – Standard of Care for Investment Advisers and Broker-Dealers

On Thursday, October 1, 2009 Chairman Paul Kanjorski of the House Financial Services Subcommittee and Capital Markets, Insurance, and Government Sponsored Enterprises released a discussion draft of revised legislative proposal, known as the Investor Protection Act. The original draft version of the Investor Protection Act was proposed by the Obama Administration as part of their comprehensive regulatory reform overhaul effort. The House Financial Services Committee is scheduled to consider Chairman Kanjorski's proposal on Tuesday, October 27, 2009.

Chairman Kanjorski's draft legislation, like the Administration's proposal, would impose a fiduciary standard of care on broker-dealers and harmonize the standards applicable to investment advisers and broker-dealers. The call for a harmonized fiduciary standard stems from a January 2008 SEC-commissioned Rand report which found that consumers do not clearly understand the differences between investment advisers and broker-dealers. The Rand report also found that investors are generally happy with their advisers and the services they provide. The latter point is critical to keep in mind as proposals for a uniform standard of care are considered in order that the goal of harmonization does not damage the current, generally successful, nature of existing client-adviser relationships.

This issue is important to NAIFA because nearly three-quarters of NAIFA's members are registered representatives of broker-dealer firms, and many NAIFA members are registered investment adviser representatives (IAR's) under a corporate RIA, or have become their own Registered Investment Advisor (RIA); thus the outcome will have a significant impact on the millions of clients we serve.

NAIFA supports the efforts by the Administration and Congress to address consumer confusion about the roles of investment advisers and broker-dealers, and to better protect consumers from bad actors. However, we question whether imposing a new uniform fiduciary standard of care on all financial professionals will stop unscrupulous individuals. In our view, bad actors will continue to violate any standards of care that Congress and/or the SEC puts forth. Instead, NAIFA believes that the best way to help investors is to provide them with a clear and easy to understand disclosure about the respective roles of advisers, the nature of their contractual relationships, and the different products, advice, and services they provide. In our members' experience, disclosure engages clients in a constructive dialogue about their financial goals and objectives and what they can expect from their financial professional. To that extent, we are encouraged by the provisions of Chairman Kanjorski's discussion draft that call for such disclosure.

NAIFA has multiple concerns about legislative and regulatory efforts to address the problem by establishing a harmonized fiduciary standard of care for investment advisers and broker-dealers. We believe this "one size fits all" approach overreaches in addressing the problem of consumer confusion, and fails to recognize the inherent differences in the process of

selling advice for a fee as opposed to selling financial products. However, if Congress is going to move to establish a harmonized fiduciary standard of care, we encourage Members of Congress to consider the following important factors to ensure the standard both protects consumers and is practically workable for the financial professionals that serve them:

- The standard must preserve the ability of middle and lower income consumers to have access to and receive competent professional services and financial products. The key is preserving competitive cost-effective compensation arrangements that will enable consumers to pursue their financial objectives and financial independence.
- The standard must call for clear and easy-to-understand disclosure about the respective roles of financial professionals, the nature of their contractual relationships, and the different financial products and services available, so the investor is in a position to make an informed decision about the products and services offered by the financial professional.
- The standard must preserve the ability of financial professionals to sell only products made available by the company or companies with which they are affiliated and/or with which they have a contractual relationship/agreement.
- The standard must recognize the ability of financial professionals to be fairly compensated without restriction as to the manner or type of compensation arrangements, including, but not limited to commissions or fees. Compliance with a standard of care should not be determined by the manner or type of compensation received by the financial professional, but by the type of product or service provided to the consumer.

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