

Investor Protection Act of 2009
NAIFA Talking Points
Updated November 4, 2009

Provision 1:

- Section 103 of H.R. 3817 would allow the SEC to issue rules to prohibit or restrict any “compensation schemes that are deemed contrary to the public interest.”
- We oppose this language because it would allow for future regulatory action by the SEC to ban commission-based sales.
- This issue is important to investors because Congress and the SEC 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 -- such as commissions -- that will enable consumers to pursue their financial objectives and financial independence.
- In the longstanding experience of NAIFA members, the vast majority of people seeking financial services will opt for the financial adviser who is paid commissions on the sale of products rather than an upfront fee. Why? Because most people cannot afford to pay an upfront fee for financial services – or they resist paying such a fee. This perhaps can explain why only 17% of Americans currently have a written financial plan – a fee-only service provided by investment advisers (Certified Financial Planners Board research, September 2009).
- Our concern that the SEC could take action to ban commission-based sales is amplified because the United Kingdom already has moved to ban commissions for the sales of securities products. The ban takes effect in December 2012. U.S. officials have repeatedly stated the importance of coordinating with the UK on our respective regulatory reform efforts.

Provision 2:

- We oppose language in Section 103 of HR. 3817 that directs the SEC to issue a rule that would require broker-dealers and their registered representatives, and investment advisers to act in the best interest of a client “without regard to financial or other interest of the broker, dealer, or investment adviser providing the advice.”
- The “without regard to the financial interest” language is extremely subjective and allows for retroactive interpretation of whether a registered representative or investment adviser recommended a financial solution or product that will achieve the consumer’s objectives based on just one factor—how they were paid.

- Registered representatives and investment advisers are highly educated and trained experts in their field. Because of their training, they understand that there are various factors that must be accounted for before recommending a product. For example, some products may pay a lower commission but will include features that perhaps are not favorable to the client. That is why these professionals make several considerations before recommending a product. Those considerations include but are not limited to:
 - Determining that the product(s) do what the customer wants done. Answering this question involves a multi-page questionnaire to assess the client's income, risk tolerance, age, tax status, liquidity needs, financial time horizon, investment objectives, etc.
 - Underwriting risk classification of the client
 - Near and long term surrender charges built into the product
 - Investment experience and risk tolerance of client
 - Price of product relative to benefit
 - Internal expense structure of the issuing company
 - Financial strength of a company offering a product
 - Policy coverage features
 - Historic service standards of a company
 - Underwriting standards
 - Product performance over time

- Any determination by a regulator as to whether a financial professional has not acted in a client's best interest should take into consideration all of the factors and not just one factor – compensation. Isolating compensation implies that the representative will always be thought guilty, until proven innocent, that they violated the standard because of just one factor of the sale.

- Just as in defensive medicine, this standard establishes a chilling effect in the marketplace and can increase liabilities for financial professionals. The danger is that:
 - (1) broker-dealers and their registered representatives, in an effort to avoid constant scrutiny, may feel compelled to offer the lowest paying products that will be deemed appropriate but perhaps will not further the client's needs and wants as much as another product; and/or
 - (2) broker-dealers and their registered representatives will need to raise their professional liability coverages. This net result would mean significantly increased costs to consumers. The unintended consequence is that these financial professionals will be forced to serve only investors with significant assets to invest so that they can meet their business expenses and provide for their families.