



UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

THE CHAIRMAN

March 9, 2010

The Honorable Christopher J. Dodd
Chairman
U.S. Senate Committee on Banking, Housing, and Urban Affairs
534 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Dodd:

As you consider financial services reform legislation, I urge you to include a provision that would mandate a uniform fiduciary standard of conduct for financial services professionals providing investment advice about securities to investors. This issue goes to the heart of what investors expect from their financial services professionals. It also underscores the importance of ensuring the integrity of securities advice provided to Americans investing to fund their retirements and meet their families' financial goals.

A 2008 study prepared for the Commission by the RAND Corporation found that most retail investors are unaware of differences between the standard of conduct and regulatory framework applicable to investment advisers and broker-dealers. This is not surprising as, in many cases, the services provided to retail investors by investment advisers and broker-dealers are virtually indistinguishable. They involve developing financial plans, advising on asset allocation, making stock selections, and recommending particular mutual funds and other investment products.

The legal obligations of broker-dealers and investment advisers derive from different statutes – broker-dealers under the Securities Exchange Act of 1934 and investment advisers under the Investment Advisers Act of 1940. Since enactment of these statutes, there has been a substantial convergence between many of the activities of broker-dealers and advisers. However, there remains a significant amount of uncertainty as to the nature and extent of their legal obligations because those legal obligations developed from different statutes, at different times. This creates potential gaps in the safeguards the law affords investors.

Investment advisers are subject to a fiduciary standard of conduct that has been recognized by federal courts under the Investment Advisers Act. This fiduciary standard essentially requires investment advisers to put investors' interests before their own and either avoid or fully disclose conflicts of interest. Broker-dealers, on the other hand, must make recommendations that are suitable for investors and they must have a reasonable basis for making their recommendations.

I believe that any legislation in this area, at a minimum, should provide for a strong, uniform fiduciary standard of conduct. When advising investors, investment advisers and broker-dealers must at all times put investors' interests first.

In addition, securities professionals dealing with retail investors should clearly describe the nature of the services and products that they are offering, as well as all of their fees and fee equivalents. They also should disclose any and all conflicts of interest, but this disclosure should not free the intermediary from the duty to act in the best interest of investors or to act with due care, consistent with the scope of services being provided to an investor.

Even beyond the area of investment advice, Congress should enact legislation that ensures that the legal standards applicable to both investment advisers and broker-dealers are what investors expect and deserve. This can be achieved by granting the Commission rulemaking authority to provide that, wherever substantially similar services or products are provided or sold by investment advisers or broker-dealers, the activities of these persons are subject to a single set of regulatory standards. To be clear, to the extent there are differences in the level of investor protection afforded by either regime, the higher standard should apply.

I appreciate your willingness to consider these issues, which affect the millions of Americans who rely on securities professionals when making investment decisions. I would be pleased to discuss these issues in more detail.

Sincerely,

A handwritten signature in black ink, appearing to read "Mary L. Schapiro". The signature is fluid and cursive, with the first name "Mary" and last name "Schapiro" clearly distinguishable.

Mary L. Schapiro
Chairman