



**Protect Investors from Wall Street Abuses:
Make Brokers and Swaps Dealers Act in Their Customers' Best Interests**

The recent hearing in the Permanent Subcommittee on Investigations on Goldman Sachs has awakened many people to the extent to which Wall Street firms have abandoned all sense of responsibility for acting in the best interests of their customers. This is something average investors have experienced for years in their day-to-day dealings with brokers and insurance agents who call themselves advisers but recommend products that line their own pockets instead of serving the needs of their customers. The solution, as many members of Congress have acknowledged in recent weeks, is to impose a legal obligation on financial professionals to act in the best interests of their customers and to disclose all conflicts of interest.

Unfortunately, the Senate bill currently under consideration does virtually nothing to accomplish this goal. Its only provision imposing a fiduciary duty applies narrowly to swaps dealers in their dealings with certain customers. While this is a provision we strongly support, it does not begin to address the full extent of the problem. Fortunately, the Senate has an opportunity to address this short-coming by adopting various amendments that have been offered to strengthen the bill.

- **The top priority is adoption of the Akaka-Menendez-Durbin amendment.**

Taking the approach already approved in the House of Representatives, the Akaka-Menendez-Durbin amendment would require the Securities and Exchange Commission to adopt rules to impose a fiduciary duty on brokers that is identical to the duty that now applies to investment advisers when they give personalized advice about securities to retail investors. Extensive research has shown that retail investors do not understand the differences between brokers and advisers, expect both to act in their best interests, and are often victimized when they do not. Of particular concern are the aggressive sales practices of insurance agents who masquerade as advisers to push high-cost, low-value variable annuities to unsuspecting investors. A fiduciary duty would force them to recommend investments that benefit their customers instead of their own bottom line, which is why this amendment is being so vigorously resisted by the insurance industry. In addition to protecting retail investors, the Akaka-Menendez-Durbin amendment would permit, but not require, the SEC to adopt rules imposing a fiduciary duty on brokers when they give investment advice to institutional investors or some subset of institutional investors.

We also support amendments to build on the essential reforms contained in the Akaka-Menendez-Durbin amendment, including:

- The Boxer amendment, which would impose a fiduciary duty for advice to state and local government entities, pension funds, retirement plans, and endowments and for advice regarding commodities and derivatives as well as securities. This would offer much needed protections to the most vulnerable population of institutional investors and ensure that the standard is consistent regardless of the type of investment being recommended.
- The Specter-Kaufman amendment, which would criminalize willful violations of fiduciary duty. The Specter-Kaufman amendment is broad in scope, covering both retail and institutional investors and applying to all types of investment products. In addition, it puts real teeth into the requirement by holding out the possibility of jail time for the most egregious violations.
- **The swaps dealer fiduciary duty must not be weakened.**

Currently, the bill imposes a fiduciary duty on swaps dealers in their dealings with state and local government entities, pension funds, endowments, and retirement plans. Because swaps are among the most complex and opaque financial products, this is an area where all but the most sophisticated investors are at an extreme disadvantage in their dealings with Wall Street and are most in need of fiduciary protection. Derivatives dealers are seeking to strip or weaken the provision, raising false arguments that it would prevent pension funds from engaging in swaps transactions. While we believe this concern has been greatly exaggerated, we support efforts to address this concern, as long as the fundamental protections of the provision are retained. Under no circumstances, however, should this important provision be either removed or weakened. The key point is that it must impose a duty on swaps dealers, when they recommend transactions, to have a reasonable basis for believing the transaction is in the best interest of the customer and to disclose all material information, including information about costs, risks, and conflicts of interest.

While not a panacea, expanding the fiduciary duty to brokers and swaps dealers could force a significant and beneficial change in the culture on Wall Street. However, those seeking to respond to the recent Goldman Sachs hearings to provide a fiduciary duty for institutional investors must not ignore the needs of Main Street investors. The brokers and insurance agents who victimize these investors may not have harmed the global economy, but the impact on individuals and families can be just as devastating. That is why passage of the Akaka-Menendez-Durbin amendment must be part of any effort to strengthen fiduciary duty and must be included in any comprehensive financial regulatory reform bill.

Sincerely,
Americans for Financial Reform
Consumer Federation of America

