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JOINT REPORT ADVOCATING PROFESSIONAL REGULATION
OF PERSONAL FINANCIAL ADVISORS

dated December __, 2008,

from the following securities industry and consumer organizations:

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SUMMARY AND PURPOSE

Enclosed is a draft bill to provide for federal and state regulation of personal financial advisors. The purpose of the bill is to fill a substantial gap in federal and state securities regulation by applying professional standards of conduct and educational requirements upon those individuals who advise consumers, so as to permit consumers to receive higher-quality, objective personal financial advice.

The bill supplements, and does not supersede, existing federal and securities regulation. By providing an implementation date of July 1, 2012, the bill permits current financial advisors time to meet the higher educational and examination requirements to be required, and permits the States time to adopt similar legislation, which will reduce the need for federal intervention.

This report elaborates on the substantial problems faced by consumers in obtaining high-quality, objective personal financial advice, and the need for the solution of fiduciary personal financial advisors. This report also summarizes the proposed legislation's main provisions.

BACKGROUND AND THE NEED FOR PERSONAL FINANCIAL ADVICE

While federal and state securities regulation enforce securities laws against registered representatives of broker-dealer firms and against representatives of investment advisers, no federal law regulates the gap which has emerged in the provision of comprehensive or discrete personal financial advice, including advice relating to such important consumer decisions as the amount to save for future personal needs, retirement planning, education funding, and other important aspects of financial planning. While federal laws (including the Securities Exchange Act of 1934 and the Investment Advisers Act of 1940) and state "blue sky" laws regulate some specific functions, such as the sale of securities and the provision of investment advisory services of a continuous nature, no federal law and no substantial state laws regulate the broader, and just as important, practice of personal financial advisory services.

Personal financial advice has emerged in recent decades as increasingly important for consumers. Gone are the days when most consumers entered a short-lived retirement and relied upon a combination of social security retirement benefits, the monthly pension check, and savings accounts. Instead, the world is far more complex for individual consumers today than it was just a generation ago, and the challenges they face in planning for their future needs require a degree of expertise rarely possessed by non-experts.

For example, today there exist a broad variety of investment products, including many types of pooled and/or hybrid products, hedge funds, collateralized debt obligations, and many others. These products employ a broad range of strategies and possess numerous different types of risk. This explosion of products has hampered the ability of individual consumers to sort through the many thousands of products to find those very few which best fit within their personal investment portfolios. Furthermore, as such investment vehicles have proliferated, individual investors are challenged to discern the investment product's true total fees and costs, investment characteristics, tax consequences, and risks.

Additionally, U.S. tax laws have increasingly become more complex. Difficult decisions must be made regarding such tax-sensitive issues as optimal contributions to, and proper distributions from, qualified retirement plans, Roth IRAs and Roth 401ks, and nonqualified retirement funding vehicles, as well as to taxable accounts, cash value life insurance products, and other accounts and products with varying tax characteristics. While many incentives and opportunities to enhance an individual's own future financial security are presented, the complexity of the interplay between taxation, investments, and financial planning needs dictates a need for proper planning. Many traps are present for the unwary.

As the sophistication of our capital markets, as well as portfolio construction and management methodologies, have increased, so has the knowledge gap between individual consumers and knowledgeable personal financial advisors. Investment theory continues to evolve, with new insights gained from academic research each year. In constructing an investment portfolio today, a personal financial advisor must take into account not only the individual investor's risk tolerance and investment time horizon, but also the investor's tax situation (present and future) and risks to which the investor is exposed in other aspects of his or her life.

Proper personal financial planning is essential to encourage both an increase in household savings and in order to invest those funds more effectively. If people do not make careful, rational decisions about how to provide for their financial security over the course of their lifetimes, then federal, state, and local governments will have to step in to save people from the consequences of their poor planning.

THE INEFFECTIVENESS OF PRESENT DISCLOSURE REGIMES

Federal securities laws and regulations protect investors largely through requiring the disclosure of information – whether it be of material facts regarding an issuer of a security, or of compensation paid to a financial services intermediaries, or of conflicts of interest which exist as to financial services intermediaries. However, disclosure does not address investors’ difficulties in dealing with the psychological issues of risk aversion, overconfidence, and cognitive dissonance. Moreover, many investors do not enjoy the intended protections of securities laws because disclosures are either inadequate (as to the quality or quantity of information provided), incomprehensible to the individual consumer (in terms of the language or terminology utilized), or deficient in timing (i.e., coming only after the consumer makes a decision).

While efforts have been made to formulate disclosures in “plain English,” this may have exacerbated a related problem – one in which individual investors receive a large volume of disclosure documents to the point of being overwhelmed. Furthermore, to accept the premise that investors are responsible for understanding what they read and acting prudently thereafter, it is necessary to conclude that investors are not only armed with timely and adequate disclosure, but also that they possess an ability to understand the disclosures which have been provided to them, both intellectually and unhampered by behavioral biases. In other words, consumer ability to understand is made difficult due to the enormous knowledge base required to undertake decisions in dealing with a highly complex financial world, as well as by the bounds upon human behavior that limit the extent to which people actually and effectively pursue utility maximization.

Individuals possess substantial barriers, resulting from behavioral biases, to the provision of informed consent, even after full disclosure. *See* Prentice, “Whither Securities Regulation? Some Behavioral Observations Regarding Proposals For Its Future,” 51 Duke L. J. 1397 (2002). Moreover, “not only can marketers who are familiar with behavioral research manipulate consumers by taking advantage of weaknesses in human cognition, but.... competitive pressures almost guarantee that they will do so.” Prentice, “Contract-Based Defenses In Securities Fraud Litigation: A Behavioral Analysis, 2003 U.Ill.L.Rev. 337, 343-4 (2003). As evidence of the foregoing, many registered representatives (i.e., stockbrokers) and investment advisers have been trained by various industry consultants to establish a relationship with a prospective client based upon trust and confidence, long before any discussion of fees or products; such training is commonplace in the securities industry. Once such a relationship is accomplished, the “sale” of a product – even one which is not appropriate for the individual consumer – is easily accomplished.

While efforts to foster financial literacy and greater education concerning investment and personal financial planning matters are always welcome, their effect is quite limited. Given the complexity of personal financial planning, the fact is that we should no more expect the vast majority of individual consumers to be able to successfully navigate today's complex financial world than we would expect them to act as their own attorney or physician.

THE EXCESSIVELY HIGH PRESENT COSTS OF INTERMEDIATION

While various studies have been undertaken to discern the total costs of intermediation (i.e., all of the costs surrendered by consumers to financial services intermediaries), the data in such studies is usually incomplete. Nevertheless, it would be reasonable to conclude that 25% to 40% of the total returns offered by the capital markets to individual investors are consumed by financial services intermediaries. No one disputes that financial advisors, possessing great skill, deserve reasonable compensation; however, the fact is that a huge amount of the returns of the capital markets do not reach individual consumers, and they are usually unaware of much of this interception and diversion.

The way to cure this problem is not only through better disclosures, but also through embracing the notion of purchaser's representatives (fiduciaries), who possess the duty to keep total fees and costs reasonable for their clients. Personal financial advisors, armed with knowledge of the many hidden costs found in investment products, and bound by a duty to act in the best interests of the client (and not as the representative of the product manufacturer), can and will apply economic pressure on product providers to lower fees and costs, for the benefit of the consumer.

THE DISTINCTIONS BETWEEN "ARMS-LENGTH" AND "FIDUCIARY" RELATIONSHIPS

There exist three business models for the delivery of financial services and products to consumers:

1. Issuer or product manufacturer → Customer

Under the first model, the issuer of a security or financial product (whether it be a certificate of deposit, stock, bond, mutual fund, insurance product, or otherwise) engages in marketing of the product directly to the consumer. In this situation, an arms-length ("caveat emptor") relationship exists between the parties.

2. Issuer or Product Manufacturer → Registered Representative of Broker-Dealer Firm or Insurance Agent → Customer

Under this second model, a registered representative (i.e., stockbroker) or insurance agent functions as the representative of multiple issuers of products. Generally the financial intermediary is compensated by the product issuer. This situation also involves an arms-length relationship between the parties.

3. Client → Investment Adviser → Issuers or Product Manufacturers

In this third business model, the client engages a trusted advisor for financial and investment advice. The investment adviser or personal financial advisor acts as the client's representative in choosing the best investment products to meet the client's needs.

Despite the distinctions between the three business models, many recent studies indicate that consumers rarely understand which type of relationship exists between them and their "financial consultant" or "wealth manager." Moreover, current proposed regulations would permit a financial consultant to switch from that of a trusted advisor to an arms-length, product sales relationship, with little or no disclosure of the dramatic change in the role of the financial advisor or the need of the consumer to now protect himself or herself from abusive recommendations.

There are two types of relationships between product and service providers and their customers or clients, under the law. "Arms-length" relationships apply to the vast majority of service provider – customer engagements. In these relationships, the doctrine of "caveat emptor" generally applies, although this doctrine is always subject to the requirement of commercial good faith. Additionally, this doctrine may be modified by imposition of specific rules or doctrines by law, such as the "full disclosure" regime contemplated by securities laws and "suitability" requirements imposed upon registered representatives of broker-dealer firms.

The second type of relationship is a "fiduciary relationship." This involves a relationship of trust, which necessarily involves vulnerability for the party who is reposing trust in another. In such situations, one's guard is down, and one is trusting another to take actions on one's behalf. Under such circumstances, to violate a trust is to violate grossly the expectations of the person reposing the trust.

Because of this trusting, the law creates a special status for fiduciaries, imposing duties of loyalty, care, and full disclosure upon them. One can call this the "fiduciary principle." Hence, the "fiduciary relationship" is that which the law requires the fiduciary to carry on their dealings with the client (or "entrustor") at a level far above ordinary, or even "high," commercial standards of conduct.

The fiduciary relationship is also characterized by the fact that the specific conduct of the fiduciary cannot be circumscribed by the client in advance, due to the vast disparity in knowledge between the fiduciary and the client regarding the matters upon which advice is to be given. Accordingly, to avoid self-dealing in a manner which would harm the client, the fiduciary duty of loyalty is imposed by law. This compels the fiduciary to act in the best interests of the client, and not out of the fiduciary's self-interest. In the securities law context, fiduciaries are prohibited (within the bounds of their own reasonable compensation, and with certain exceptions) from misappropriating the economic value which can be obtained for the client from their management or advisory services for their own benefit.

The imposition of fiduciary obligation facilitates the efficient allocation of resources by protecting the beneficiary of the fiduciary relationship from overreaching by the provider of services. Typically, that provider is a professional who specializes in the provision of that service. The specialization of function forces individuals to rely on others to produce goods and services on fair terms. That reliance has necessarily afforded the opportunity for specialists to act in a self-interested fashion at the expense of the client by using their superior knowledge or skills. Accordingly, the fiduciary standard is applied to minimize the transaction costs of regulating specialized exchanges. To promote the efficiency gains of specialization, society imposes special regulations on occupational groups having the greatest latitude to drive hard bargains, such as those in confidential relationships with clients. The activities of the fiduciary are, therefore, policed by imposing certain duties upon the specialist-fiduciary; these duties are imposed to avoid the inefficiencies resulting from specialist overreaching. Accordingly, the fiduciary's duty of loyalty requires the fiduciary to follow the course of conduct the beneficiary would have chosen if the beneficiary had either the same expertise as the fiduciary or had consulted another fiduciary.

In essence, fiduciary duties are imposed by law when public policy encourages specialization in particular services, such as investment advisor services or legal services, in recognition of the value such services provide to our society. Personal financial advisory services have long evolved to be a highly specialized service, requiring a great deal of knowledge and expertise in order to properly render advice to the individual consumer.

HIGH EDUCATIONAL AND EXAMINATION STANDARDS FOR PERSONAL FINANCIAL ADVISORS ARE CURRENTLY LACKING

A significant number of personal financial advisors have voluntarily subscribed to higher educational requirements and have submitted themselves to examinations. For example, the Certified Financial Planner Board of Standards, Inc., which currently authorizes 58,000

individuals in the United States to utilize its marks, adopted updated *Standards of Professional Conduct* for its Certificants, which include the requirement of its Certificants to “place the interest of the client ahead of his or her own” at all times. The Financial Planning Association, which has 100 chapters throughout the country representing more than 28,500 members involved in all facets of providing financial planning services, requires “all individual members who hold themselves out to the public as financial planners, or who perform financial planning services or material elements of the financial planning process,” to likewise adhere to the CFP Board’s *Standards of Professional Conduct*. The National Association of Personal Financial Advisors, which has over 2,000 members, requires each NAPFA-Registered Financial Advisor to adhere to a strict *Code of Ethics* and *Fiduciary Oath*. However, each of these organizations is voluntary in nature, and the remedy for non-compliance is generally limited to expulsion from the organization and/or revocation of the right to utilize certain marks. Moreover, there are estimated to be several hundred thousand personal financial advisors (perhaps in excess of 1,000,000) in the United States; many personal financial advisors do not belong to the voluntary industry associations and do not subscribe to the fiduciary standards of conduct adopted by these organizations.

While examination requirements currently exist for registered representatives of broker-dealer firms (through the Series 6 or 7 examinations), representatives of investment adviser firms (through the Series 65 or 66 examinations), and life insurance agents (through various state-required examinations), these examinations typically test knowledge of basic investment concepts and the laws and regulations governing the licensee. None of these exams addresses the multiple areas of practice which are present in the provision of personal financial advisory services.

Additionally, there is no currently no requirement for a college degree in order to provide personal financial advisory services, nor any requirement for a specific course of study relating to financial planning. While over 50 colleges and universities offer personal financial planning degrees at either the undergraduate or graduate level, obtaining the vast amount of knowledge obtainable through such a course of study is not currently a prerequisite to holding out as a personal financial advisor, nor is the completion of such a course of study required to actually engage in providing personal financial advisory services.

The rendering of advice with regard to *other people’s money*, and providing counsel as to the enormously complex and often integrated financial decisions required of consumers in today’s modern financial world, should only be undertaken by those who have received a foundational education in personal financial advice subject areas. Examinations testing the

acquisition of this knowledge should be a prerequisite to admission to the profession of personal financial advisors.

THE FAILURE OF WALL STREET: UNFETTERED CAPITALISM
PROVES HARMFUL TO THE UNITED STATES

Gordon Gekko, the character in the 1987 movie *Wall Street*, opined famously that “Greed is good.” The recent financial crisis and its continuing ill effects upon the American economy and the lives of millions and millions of individual Americans have finally laid to rest the view that unbounded capitalism is always good.

It is commonly argued by firms seeking to reduce consumer protections in the areas of securities legislation or regulation that the financial world has changed. Yes, it has. With the continuing evolution of Modern Portfolio Theory and its offshoots, the explosion in the number and type of mutual funds and other products, the presence of exotic products designed to either assume or alleviate risks, and the “hidden fees and costs” of many investment products, it is a far more complex world for consumers than that which existed in 1940. The “knowledge gap” between consumers and financial advisors has never been greater. Hence, fiduciary principles – which are imposed when there is a placement of trust and a substantial disparity in knowledge – are even more relevant in 2009.

Participation in the capital markets fails when consumers deal with financial intermediaries who cannot be trusted. As stated by Professor Tamar Frankel, long a leading scholar in the areas of fiduciary and securities law and regulation:

I doubt whether investors will commit their valuable attention and time to judge the difference between honest and dishonest ... financial intermediaries. I doubt whether investors will rely on advisors to make the distinction, once investors lose their trust in the market intermediaries. From the investor’s point of view, it is more efficient to withdraw their savings from the market.

[Tamar Frankel, “Regulation and Investors’ Trust In The Securities Markets,” 68 *Brook. L. Rev.* 439, 448 (2002).]

In undertaking regulatory reform, informed legislators should understand the various business models for the delivery of financial products and services, to make these business models distinct and separate in the eyes of the consumer, and to apply to the business models the standards of conduct appropriate to each. Where trust and confidence is placed by the consumer, the fiduciary standard of conduct should be applied. There is no doubt that consumers place their trust and confidence in personal financial advisors, and possess the need to do so in today’s modern, complex financial world.

PRINCIPLES TO GUIDE FUTURE REGULATION OF
WALL STREET: CAPITALISM BOUNDED BY FIDUCIARY DUTIES

As witnessed with recent events, unfettered capitalism can lead to greed, which in turn can cause great harm. Hence, there exists the need for regulation. Regulation imposes a constraint upon the actions of persons and institutions. Good regulation permits opportunities to be pursued, in recognition that economic activity by one person often benefits many others. Hence, good regulation encourages self-interest leading to positive effects, and may even foster benevolent behaviors toward others. Sound regulation also, when necessary, prohibits actions which materially jeopardize the welfare of our fellow citizens.

It is now readily apparent that “gaps” in our regulatory system have emerged. These gaps failed to establish an environment which fostered benevolence, and failed to restrain conduct which led to great harm. These gaps must be closed.

It is undisputed that a well-functioning financial system is essential for a well-functioning economy. And it is altogether right to re-examine the entire regulatory structure of our financial system. As Alice Rivlin recently noted, “Like a machine gun or chainsaw or a nuclear reactor, [market capitalism] has to be inspected frequently to see that it is working properly and used with caution according to carefully thought out rules.” [Testimony, Committee on Financial Services, U.S. House of Representatives, October 21, 2008.]

But how best should regulation ensure a well-functioning financial system? How can trust between institutions be restored and maintained? How can distorted incentive structures, which led to opportunistic behaviors (arising to the level of greed) and excessive risk taking, be dismantled? And how can individuals again be given the confidence to participate in our capital markets?

It must first be recognized that a well-functioning financial system is not the ends, but rather the means. Our financial institutions and their products and services can and must perform several vital functions in our society, including:

- The financial system should enable savings, an essential step toward the accomplishment of individual financial goals as well as fostering the formation of capital.
- Through trust in financial institutions, individuals should utilize a portion of their savings to participate in the capital markets. And through government incentives in situations where necessary, but by self-interest alone when government incentives are unnecessary, capital should be allocated to worthwhile endeavors.

- Through specialization of function, our financial system should promote efficiencies in modern society, enabling the entire economy to grow larger and stronger.
- Various structures seek to manage risk, and when working correctly these systems should adequately transfer risk from those less able to bear it to those more able.

To enable these functions to occur, prudent regulation is required. The overriding goal of prudent regulation is to serve to better align private rewards with the collective interest. To achieve this goal, legislative and government regulatory efforts should follow a set of core principles:

1. The Principle of “Smart Regulation.” Prudent regulation is neither about “more” or “less” regulation, but rather the most efficient means to align private self-interest with societal needs. While all legislators should seek to make regulation simpler and more efficient, at times more regulation is needed, not less.
2. The Principle of “Continuous Fine-Tuning.” Innovations in financial systems and products abound. Market structures evolve rapidly. With every set of rules prohibiting certain conduct, there will exist self-interested market participants, motivated by profit, who employ new ways to get around the rules. Recognizing that legislation often fails to quickly respond to these advances, government agencies must be provided with the authority, and encouragement, to discern new risks and rapidly address them. Given the need for delegation of authority by legislatures to government agencies, oversight of regulatory agencies by legislative bodies then becomes essential as a means of ensuring the public good.

Regulation should serve to foster, and not stifle, innovation. Moreover, the process of transformation that accompanies radical innovation – creative destruction – should not be deterred through legislative or government agency intervention (which is often requested by those practicing in dying business models).

3. The Principle of Federalism, and the Necessity to Guard Against Regulatory Capture. The concept of competition between the federal government and the states was central to the framers' vision of our constitutional structure. The benefits of split, and even duplicative, oversight of the financial services industry, are readily apparent. For example, the states, rather than the SEC, have led recent enforcement efforts in the Wall Street analyst conflicts, the mutual fund trading investigations, auction rate securities, and abuses involving fee-based brokerage accounts. While there may be multiple reasons for the lack of federal agency leadership in these areas, the existence of multiple layers of government makes

regulatory capture a more arduous task for interest groups – and it is well known that various players in the financial services industry devote millions and millions of dollars seeking to influence both legislative and regulatory outcomes.

Moreover, the federal-state regulatory competition has ensured, with or without regulatory capture, an alternative regime to citizens dissatisfied with either regulator's performance. When dealing with the lifetime savings of our fellow citizens, fraud (both actual and constructive) is rampant.

While certain areas dealing with systemic risk to the financial system may best be administered at the federal level, federal preemption of state authority to combat fraud should rarely exist. This is particularly true when dealing with the conduct of financial intermediaries in direct contact with individual consumers. In such circumstance, the states have long possessed a keen interest in protecting their citizens against harm which can be caused by actors in the financial services industry. Securities fraud is rampant, and any federal legislation which proposes to preempt the states' ability to combat fraudulent activities should be viewed with a great deal of suspicion. Given the pervasiveness of actual and constructive fraud when other's people money is targeted by financial intermediaries, there should be as many "cops on the street" – both state and federal – as possible. All financial intermediaries who provide products or services in direct contact with the American consumer should be subject to regulation, inspection, and oversight by both federal and state regulators.

4. The Principle of Transparency. Enhanced disclosure obligations should be applied to a broad range of financial products and services. Disclosures should be offered in both summary form (containing key material information) and in detailed format (for consumers who desire greater information to compare). Where possible, information should be presented in formats which enable easy comparisons. All consumer disclosures should be written in plain English.
5. The Need to Foster Competition. Consumers should possess choices as to the means by which they access the capital markets and receive information and advice. However, calls for "competition" should not be utilized to cloud the need for consumers to also possess a clear understanding of the duties owed (or not owed) by the financial product provider or financial services intermediary. Moreover, functional regulation requires that those performing the same functions be subject to the same standards of conduct.
6. The Recognition that Information Asymmetry is Vast and Will Never Disappear. Disparities in the availability of information, or its quality, or its understanding,

lead to advantages by those endowed with the ability to decipher, discern, and apply the information correctly. It must be recognized that efforts to enhance financial literacy, while always worthwhile and important, will never transform the ordinary American into a knowledgeable consumer of financial products and services. Moreover, given the sophisticated nature of modern financial markets, it is not just the uneducated that are placed at a substantial disadvantage. Other means are necessary to negate advantages brought on by information asymmetry, especially for those financial intermediaries who deal with other people's money.

7. The Need to Embrace Fiduciary Principles for Certain Actors. Because of the vast information asymmetry, and the many behavioral biases consumers possess which deter them from effectively spending the time and effort to read and understand mandated disclosures, there exists a great need for financial and investment advice. In such situations, our fellow citizens place trust and confidence in their personal financial advisor. It is right and just in such circumstances that broad fiduciary duties be applied to these financial intermediaries, as well as competency standards establishing an appropriate baseline for the vast knowledge a personal financial advisor must possess to deliver quality advice to individual consumers. The absence of appropriate high educational and ethical standards for all providers of personal financial advice is a glaring current gap in the financial services regulatory structure.
8. The Need to Ensure Clear Distinctions Between Types of Financial Intermediaries. Individual consumers should be empowered to more easily identify the difference between the financial advice role (to which fiduciary status should attach) and the product marketing role (an arms-length relationship, to which only certain lesser obligations, such as ensuring suitability, apply). Currently these roles are closely intertwined, and it is exceedingly difficult for consumers to distinguish between them (in part because the product marketer type of intermediary possesses no incentive to make that distinction clear).
9. The Need to Ensure Adequate Consumer Redress. Effective dispute resolution and disciplinary processes should occur under a statutory based regime, including penalties for non-compliance by actors in the financial services industry. In addition to government sanctions, effective remedies for consumers, through independent dispute resolution mechanisms, are crucial to the promotion of consumer confidence in the financial services industry and, by extension, the participation by consumers in the capital markets.

10. The Need to Guard Against Regulatory Ineffectiveness, Often a Byproduct of Reform Efforts. Government agencies, which possess a greater focus on a particular area of regulation, often better regulate that area than broader agencies, which are often hampered by the need or desire to divert resources elsewhere. At the same time, the effectiveness of regulation is also served by reducing the number of responsible agencies so as to eliminate overlap and reduce jurisdictional disputes over the regulation of gaps. The key is to find the correct balance. Each call for regulatory consolidation must be carefully considered. In such regard, legislators should focus their examination not just on regulatory weaknesses or gaps, but also on areas that are working well. The expertise needed to oversee a complex area of regulation must be maintained. Calls for efforts to transform or consolidate existing agencies should not diminish agencies' resources in the continuation of regulatory efforts that are proceeding well at present. The perceived need for a "crisis manager" – an overriding federal agency to coordinate efforts in times of crisis – does not lead to the inevitable conclusion that all government agencies should be melded into one. Nor should the independence of certain agency heads or commissioners (by design, sometimes not subject to termination by the executive) be sacrificed casually.

ONE SOLUTION TO CLOSING THE REGULATORY GAP:
PROFESSIONAL REGULATORY ORGANIZATIONS
FOR PERSONAL FINANCIAL ADVISORS

In the draft bill attached to this Report, it is proposed that a national professional regulatory organization, the "Personal Financial Advisor Standards Board," be created and given the following tasks:

1. The establishment and maintenance of Standards of Professional Conduct for personal financial advisors;
2. The establishment of national educational and continuing education requirements for personal financial advisors;
3. The development and administration of a national exam for personal financial advisors;
4. The development and administration of standards for peer review of personal financial advisors;

5. For those states which have not adopted equivalent regulation of personal financial advisors, the registration of personal financial advisors; and
6. Investigative and disciplinary authority over all personal financial advisors.

Under the proposed bill, each personal financial advisor would possess fiduciary status as to his or her clients, with the requirement to act at all times in the best interests of the client, to fully disclose material conflicts of interest, and to affirmatively disclose all fees and material compensation.

While the Personal Financial Advisor Standards Board would possess authority over all personal financial advisors, under principles of federalism this national professional regulatory organization would not register personal financial advisors who are registered under similar state-based professional regulatory organizations. To facilitate the adoption of state legislation necessary to implement such state-based regulation of personal financial advisors, the national registration of personal financial advisors would not occur until July 1, 2012. Should all fifty states adopt registration requirements for personal financial advisors, no further national registration need occur.

The July 1, 2012 date will also equip the national Personal Financial Advisor Standards Board with the time necessary to develop and promulgate national Standards of Professional Conduct, as well as the various examination, educational, and peer review requirements it will administer.

Other than the initial funding of the national Personal Financial Advisor Standards Board prior to the registration date of July 1, 2012, the cost of regulation would be borne by personal financial advisors themselves.

IN CONCLUSION

The lack of adequate regulation of perhaps 1,000,000 U.S. personal financial advisors is a major gap in our current regulatory structure. Closing the gap will result in tremendous benefits to the American consumer. Moreover, as Americans receive better personal financial advice, they will be more inclined to save and properly manage their retirement “nest eggs.” In turn, this will aid our American economy in the years and decades ahead, and relieve to a degree the strain the aging U.S. population will place upon the Federal and state governments.

Respectfully submitted this ___ day of December, 2008, by the following organizations:

XXXX (Name, address, signing executive officers and/or chairs, and contact information for each organization)

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