



BY ELECTRONIC DELIVERY

August 6, 2009

Mr. Richard Hisey, Committee Co-Chair  
Ms. Hye-Won Choi, Committee Co-Chair  
Investor Advisory Committee  
U.S. Securities and Exchange Commission  
100 F Street, N.E.  
Washington, D.C. 20549-1090

Re: Investor Advisory Committee Press Release Dated July 29, 2009

Dear Mr. Hisey and Ms. Choi:

We are writing to express our support of the Investor Advisory Committee's inclusion of the fiduciary duty of financial intermediaries as a topic for future meetings.<sup>1</sup> We strongly agree that this is an important investor protection issue and stand ready to provide any assistance that the Committee may need in this respect.

We are concerned, however, about the characterization of the fiduciary duty issue in the SEC's July 29 press release, as it could be read to suggest that the fiduciary duty must be susceptible to "definition" in order to provide a workable standard. We disagree. The fiduciary duty as applied to professionals such as investment advisers has flourished in the common law for hundreds of years without precise definition. More than 45 years ago, the U.S. Supreme Court ruled in its *Capital Gains* decision that a fiduciary duty applies to investment advisers under the Investment Advisers Act. We believe that it would be no more appropriate to insist on a precise definition of fiduciary duty than it would be to insist on a precise definition of the duty not to commit fraud. What constitutes a violation of a fiduciary duty or a fraudulent practice is and always has been a matter of the application of common law principles to particular facts and circumstances. Attempting to provide specific definition of all aspects of fiduciary duty, or to enumerate precisely how it applies and what it entails, would have the perverse consequence of diluting protections for investors. With more than four decades of interpretation by the courts and the SEC, combined with the specific rules governing investment advisers, the fiduciary duty standard under the Investment Advisers Act clearly represents the appropriate benchmark for protecting investors.

Instead of trying to define fiduciary duty, we urge the Committee instead to consider a recommendation to clearly and unambiguously extend the fiduciary duty that investment advisers owe their clients under the Investment Advisers Act to brokers who provide investment advice. Such a

recommendation would serve the interests of investors by providing a consistent, high standard of conduct for all investment professionals.

We would welcome the opportunity to provide additional information to the Committee as it develops its recommendations to ensure that investors who receive investment advice are entitled to the full legal protections afforded under the fiduciary standard of care that currently exists under the Advisers Act. Thank you for your consideration of our concerns.

Respectfully,



Kevin R. Keller, CAE  
Chief Executive Officer  
CFP Board



Marvin W. Tuttle Jr., CAE  
Executive Director and CEO  
FPA



David G. Tittsworth  
Executive Director  
IAA



Ellen Turf  
Chief Executive Officer  
NAPFA

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<sup>1</sup> Certified Financial Planner Board of Standards, Inc. (CFP Board) is a non-profit organization that acts in the public interest by fostering professional standards in personal financial planning through setting and enforcing education, examination, experience, and ethics standards for financial planner professionals who hold the CFP<sup>®</sup> certification. CFP Board's mission is to benefit the public by granting the CFP<sup>®</sup> certification and upholding it as the recognized standard of excellence for personal financial planning. CFP Board currently regulates over 60,000 CFP<sup>®</sup> professionals who agree, on a voluntary basis, to comply with our competency and ethical standards and subject themselves to the disciplinary oversight of CFP Board under a fiduciary standard of care.

The Financial Planning Association<sup>®</sup> (FPA<sup>®</sup>) is the leadership and advocacy organization connecting those who provide, support, and benefit from professional financial planning. FPA demonstrates and supports a professional commitment to education and a client-centered financial planning process. Based in Denver, Colo., FPA has close to 100 chapters throughout the country representing more than 29,500 members involved in all facets of providing financial planning services. Working in alliance with academic leaders, legislative and regulatory bodies, financial services firms, and consumer interest organizations, FPA is the community that fosters the value of financial planning and advances the financial planning profession.

The Investment Adviser Association is a not-for-profit organization that represents the interests of SEC-registered investment advisory firms. Founded in 1937, its membership today consists of more than 450 firms that collectively manage in excess of \$7 trillion in assets for a wide variety of individual and institutional investors. For more information, please visit [www.investmentadviser.org](http://www.investmentadviser.org).

Since 1983, the National Association of Personal Financial Advisors (NAPFA) has provided Fee-Only financial planners across the country with some of the strictest guidelines possible for professional competency, comprehensive financial planning, and Fee-Only compensation. With more than 2,000 members across the country, NAPFA has become the leading

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professional association in the United States dedicated to the advancement of Fee-Only financial planning. For more information on NAPFA, visit [www.napfa.org](http://www.napfa.org).