

AMENDMENT NO. _____ Calendar No. _____

Purpose: To establish a fiduciary duty for brokers, dealers,
and investment advisers.

IN THE SENATE OF THE UNITED STATES—111th Cong., 2d Sess.

S. 3217

To promote the financial stability of the United States by improving accountability and transparency in the financial system, to end “too big to fail”, to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes.

Referred to the Committee on _____ and
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENTS intended to be proposed by Mr. AKAKA (for
himself, Mr. MENENDEZ, _____)

Viz:

1 On page 785, strike line 19 and all that follows
2 through page 794, line 13, and insert the following:

3 **SEC. 913. ESTABLISHMENT OF A FIDUCIARY DUTY FOR**
4 **BROKERS, DEALERS, AND INVESTMENT AD-**
5 **VISERS, AND HARMONIZATION OF REGULA-**
6 **TION.**

7 (a) IN GENERAL.—

1 (1) SECURITIES EXCHANGE ACT OF 1934.—Sec-
2 tion 15 of the Securities Exchange Act of 1934 (15
3 U.S.C. 78o) is amended—

4 (A) by redesignating subsection (i) (relat-
5 ing to security-based swap agreements), as
6 added by section 303(f) of the Commodity Fu-
7 tures Modernization Act of 2000 (Public Law
8 106-554; 114 Stat. 2763A-455), as subsection
9 (j); and

10 (B) by adding at the end the following:

11 “(k) STANDARD OF CONDUCT.—

12 “(1) IN GENERAL.—Notwithstanding any other
13 provision of this Act or the Investment Advisers Act
14 of 1940, the Commission shall promulgate rules to
15 provide that, with respect to a broker or dealer,
16 when providing personalized investment advice about
17 securities to a retail customer (and such other cus-
18 tomers as the Commission may by rule provide), the
19 standard of conduct for such broker or dealer with
20 respect to such customer shall be the same as the
21 standard of conduct applicable to an investment ad-
22 viser under section 211 of the Investment Advisers
23 Act of 1940. The receipt of compensation based on
24 commission or other standard compensation for the
25 sale of securities shall not, in and of itself, be con-

1 sidered a violation of such standard applied to a
2 broker or dealer. Nothing in this section shall re-
3 quire a broker or dealer or registered representative
4 to have a continuing duty of care or loyalty to the
5 customer after providing personalized investment ad-
6 vice about securities.

7 “(2) DISCLOSURE OF RANGE OF PRODUCTS OF-
8 FERED.—Where a broker or dealer sells only propri-
9 etary or other limited range of products, as deter-
10 mined by the Commission, the Commission shall by
11 rule require that such broker or dealer provide no-
12 tice to each retail customer and obtain the consent
13 or acknowledgment of the customer. The sale of only
14 proprietary or other limited range of products by a
15 broker or dealer shall not, in and of itself, be consid-
16 ered a violation of the standard set forth in para-
17 graph (1).

18 “(3) RETAIL CUSTOMER DEFINED.—For pur-
19 poses of this subsection, the term ‘retail customer’
20 means a natural person, or the legal representative
21 of such natural person, who—

22 “(A) receives personalized investment ad-
23 vice about securities from a broker or dealer;
24 and

1 “(B) uses such advice primarily for per-
2 sonal, family, or household purposes.

3 “(1) OTHER MATTERS.—The Commission shall—

4 “(1) facilitate the provision of simple and clear
5 disclosures to investors regarding the terms of their
6 relationships with brokers, dealers, and investment
7 advisers, including any material conflicts of interest;
8 and

9 “(2) examine and, where appropriate, promul-
10 gate rules prohibiting or restricting certain sales
11 practices, conflicts of interest, and compensation
12 schemes for brokers, dealers, and investment advis-
13 ers that the Commission deems contrary to the pub-
14 lic interest and the protection of investors.”.

15 (2) INVESTMENT ADVISERS ACT OF 1940.—Sec-
16 tion 211 of the Investment Advisers Act of 1940 is
17 amended by adding at the end the following new
18 subsections:

19 “(f) STANDARD OF CONDUCT.—

20 “(1) IN GENERAL.—The Commission shall pro-
21 mulgate rules to provide that the standard of con-
22 duct for all brokers, dealers, and investment advis-
23 ers, when providing personalized investment advice
24 about securities to retail customers (and such other
25 customers as the Commission may by rule provide),

1 shall be to act in the best interest of the customer
2 without regard to the financial or other interest of
3 the broker, dealer, or investment adviser providing
4 the advice. In accordance with such rules, any mate-
5 rial conflicts of interest shall be disclosed and may
6 be consented to by the customer. Such rules shall
7 provide that such standard of conduct shall be no
8 less stringent than the standard applicable to invest-
9 ment advisers under paragraph (1) and (2) of sec-
10 tion 206 of this Act when providing personalized in-
11 vestment advice about securities, except the Commis-
12 sion shall not ascribe a meaning to the term ‘cus-
13 tomer’ that would include an investor in a private
14 fund managed by an investment adviser, where such
15 private fund has entered into an advisory contract
16 with such adviser. The receipt of compensation
17 based on commission or fees shall not, in and of
18 itself, be considered a violation of such standard ap-
19 plied to a broker, dealer, or investment adviser.

20 “(2) RETAIL CUSTOMER DEFINED.—For pur-
21 poses of this subsection, the term ‘retail customer’
22 means a natural person, or the legal representative
23 of such natural person, who—

1 “(A) receives personalized investment ad-
2 vice about securities from a broker, dealer, or
3 investment adviser; and

4 “(B) uses such advice primarily for per-
5 sonal, family, or household purposes.

6 “(g) OTHER MATTERS.—The Commission shall—

7 “(1) facilitate the provision of simple and clear
8 disclosures to investors regarding the terms of their
9 relationships with brokers, dealers, and investment
10 advisers, including any material conflicts of interest;
11 and

12 “(2) examine and, where appropriate, promul-
13 gate rules prohibiting or restricting certain sales
14 practices, conflicts of interest, and compensation
15 schemes for brokers, dealers, and investment advis-
16 ers that the Commission deems contrary to the pub-
17 lic interest and the protection of investors.”.

18 (b) HARMONIZATION OF ENFORCEMENT.—

19 (1) SECURITIES EXCHANGE ACT OF 1934.—Sec-
20 tion 15 of the Securities Exchange Act of 1934, as
21 amended by subsection (a)(1), is further amended by
22 adding at the end the following new subsection:

23 “(m) HARMONIZATION OF ENFORCEMENT.—The en-
24 forcement authority of the Commission with respect to vio-
25 lations of the standard of conduct applicable to a broker

1 or dealer providing personalized investment advice about
2 securities to a retail customer shall include—

3 “(1) the enforcement authority of the Commis-
4 sion with respect to such violations provided under
5 this Act; and

6 “(2) the enforcement authority of the Commis-
7 sion with respect to violations of the standard of
8 conduct applicable to an investment advisor under
9 the Investment Advisers Act of 1940, including the
10 authority to impose sanctions for such violations,
11 and

12 the Commission shall seek to prosecute and sanction viola-
13 tors of the standard of conduct applicable to a broker or
14 dealer providing personalized investment advice about se-
15 curities to a retail customer under this Act to same extent
16 as the Commission prosecutes and sanctions violators of
17 the standard of conduct applicable to an investment advi-
18 sor under the Investment Advisers Act of 1940.”.

19 (2) INVESTMENT ADVISERS ACT OF 1940.—Sec-
20 tion 211 of the Investment Advisers Act of 1940, as
21 amended by subsection (a)(2), is further amended by
22 adding at the end the following new subsection:

23 “(h) HARMONIZATION OF ENFORCEMENT.—The en-
24 forcement authority of the Commission with respect to vio-

1 lations of the standard of conduct applicable to an invest-
2 ment adviser shall include—

3 “(1) the enforcement authority of the Commis-
4 sion with respect to such violations provided under
5 this Act; and

6 “(2) the enforcement authority of the Commis-
7 sion with respect to violations of the standard of
8 conduct applicable to a broker or dealer providing
9 personalized investment advice about securities to a
10 retail customer under the Securities Exchange Act
11 of 1934, including the authority to impose sanctions
12 for such violations, and

13 the Commission shall seek to prosecute and sanction viola-
14 tors of the standard of conduct applicable to an invest-
15 ment advisor under this Act to same extent as the Com-
16 mission prosecutes and sanctions violators of the standard
17 of conduct applicable to a broker or dealer providing per-
18 sonalized investment advice about securities to a retail
19 customer under the Securities Exchange Act of 1934.”.

20 On page 811, line 16, by striking “(k)” and inserting
21 “(n)”.

22 On page 819, line 13, by striking “(l)” and inserting
23 “(o)”.