

Congressman Daniel B. Maffei (NY-25)
Statement on Ellison Amendment to the Investor Protection Act
House Committee on Financial Services
October 28, 2009

Mr. Chairman, I want to express concerns I have heard from the life insurance agent community about the imposition of a fiduciary standard on commission-based salespeople whose product offerings are limited to certain insurance carriers for whom they work and whose products they sell. I am pleased that you have taken important steps adjusting the language on fiduciary duty to help alleviate some of these concerns. Mr. Ellison's amendment to delete the "without regard to" language goes further and while I know he plans to withdraw the amendment I'd like to encourage that we continue to examine this issue moving forward.

I have a number of agents in my congressional district in the Syracuse and Rochester areas who will fall under the new rules we set for them within this bill. Agents have an agreement with an insurance carrier to sell certain products, for which they receive commission. It creates a conflict to require that, at the same time, they have a fiduciary duty to act on behalf of the customer without regard to their own interests. Fee-based investment advisors, who are hired and retained on an exclusive basis to represent a customer, have no such conflict, and thus a fiduciary standard in that relationship makes sense. But for commission-based agents, such a standard is problematic.

It seems to me that with this legislation, while we want to make sure that investors are protected, we don't want to cause undue or unintended harm to industries and businesses that provide a valuable service or product, like life insurance.

Having said this, I do appreciate the direction the draft has moved – including simplified disclosure provisions, clarifying that commission-based pay is not a violation, including proprietary product consent and the acceptance of a clarifying second degree amendment I offered earlier.

As I mentioned earlier, I hope that as this legislation moves forward, we can have further conversations about how this set of concerns might be best addressed, and would appreciate the opportunity to work with you to explore where we might improve the product we have in front of us in this regard.

Thank you and I yield back the balance of my time.