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August 14th 2017

Mr. R. Alexander Acosta
Secretary
Department of Labor
200 Constitution Avenue NW
Washington, DC 20210

Dear Mr. Secretary,
I hope this note finds you and your family in good health and in great spirits!

Sometimes things are never what they appear to be; such is the case with the Dodd-Frank/Fiduciary Rule and the social experiment the previous administration was trying to create. The Dodd-Frank law specifically references the "SEC" in regards to the writing of the Fiduciary Rule. Your agency has created nothing but chaos and confusion and destroys the trust that I have built over my 31 years and I must ask you to stand down and let the SEC do their job as the primary regulator.

The Fiduciary Rule which was written and contained in the 1940 Investment Advisors Act under Section 36 is already on the books and just needs to be tweaked.... **so what is merely needed here is an amendment to the 1940 Act; NOT a complete up ending of existing securities laws.**

Another share class such as "T" is not needed when it would still contain a .25bps trail commission on top of a 2.5% up front commission. What would be more transparent (because we did this already in the 80's) is to **take the existing A share and reduce it to 2.5% (it was originally 8.75% and reduced to the current 5.75%) so again just an amendment.** You would institute a "clean share" which then financial advisors could add their management fee to or value proposition to be disclosed to clients and the A share. This change would result in just 2 classes for everyone to understand and adhere to.

Less than 7% of all complaints and malfeasance occur from bad actors in the financial service industry, but this effort to create a "fiduciary" world is up ending the entire securities industry for no purpose other than saddling the industry with what I call Obama care for the Finance industry and is creating many unintended consequences for my clients.

I've enclosed all 3 of my responses to the DOL/SEC requests for public input. I would ask you to read them carefully as the co-author of these responses...is also the co-author of the existing SEC REGULATION D which is a law we must all adhere to.

Just like in every other business model...there is not just "1" way to do business; we are in America and people deserve choices and options. As long as it is legal, compliant and transparent you should be able to choose what is best for the client; more importantly the client should be able to choose the advisor that lines up with their choice.

Thank you;
Frank Congemi

July 21, 2015/DOL Part 1

Office of Regulation and Interpretations
Employee benefits Security Administration
Attn: Conflicts of Interest Rule, Room N-5655 and e-ORI@dol.gov
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

Subject: RIN 1210-AB32, Conflicts of Interest Rule Proposal

Dear Ladies and Gentleman,

I. Small Investors Take Warning

My Name is Frank Congemi and I have been registered as a financial advisor since 1986. I have been educating and delivering financial services as an independent advisor to individuals, families and businesses during this time. The initial investment amount to open an account with me is $250, which is accessible to anyone and still by far lower than any of the no load/low cost companies that DOL seems to favor.

Since all of the investments that I offer have beaten all the indexes at the cheapest cost quartile, I am alarmed that the US Department of Labor is recommending substandard and frankly negligent policies in relation to "small investors." When the Department of Labor ("DOL") begins framing what the retirement choices must be and recommending "low cost" and "index funds" and "a fiduciary standard" as the single model of delivering these services, the message loudly resonates as "government knows best."

II. The DOL Proposal Is Unsuitable for the Public.

The proposition that investor underperformance necessitates a single class of financial advisory services under a fiduciary standard is an exercise of gross regulatory overreach that exceeds the scope of authority granted to the DOL.[1] The Congress, in an exercise of fitting modesty in passing the Dodd-Frank Act did not legislate a unitary fiduciary standard. Instead, it asked the SEC, not the DOL, to study the matter carefully while at the same time specifying certain features of current commission business models that would not themselves be a violation of such a standard. Moreover, the approach is paternalistic and elitist to seek to impose a new legal regime on settled client relation-ships totaling many trillions of dollars.

III. DOL Has a Flawed Understanding of the Marketplace and Draws the Wrong Conclusions.

Dalbar's comment letter (June 5, 2015) on the pending proposal is significant for the insight that it affords on investor underperformance. It finds that 88% of the 20-year under-performance experienced by equity investors is attributable, not to bad investment advice or conflicts of interest, but to investor behaviors, specifically, panic selling, exuberant buying and market timing (43%)

and withdrawal needs and lack of funds to invest (35%). These sobering statistics undermine the premise that investors will achieve better retirement investing if they were all limited to consulting fiduciaries. The client of the commissioned broker, Dalbar found, far from suffering retirement goal impairment, is more likely to start investing sooner, maintain a consistent investing practice and mitigate untimely withdrawals.

Let me just say that I completely support removing from the industry those advisers or salespersons who abuse clients and industry rules. Yet the vast majority (at least 90%) of independent financial advisors and their firms are legitimate and serve their clients remarkably well (17 trillion dollars in retirement assets alone). The enormous effort expended on twice proposing this conflicts of interest would have been better spent in bringing two or three cases directly focused on firms that were systematically abusing the trust and confidence of investors. And if those cases were not there in the marketplace, then why are we even considering a government mandated "solution" to a non-existent problem?

If unsuitable products, sales contests and excessive fees are ongoing problems at certain firms, have at them! I and my fellow brokers will cheer your efforts, as our reputations are sullied by a marketplace that fails to call out egregious behaviors. DOL's work on the "Best Interest Contract" Exemption shows attention to several areas of misbehavior that are amenable to specific conduct rules. This is a far superior approach than seeking to re-engineer an entire marketplace into an imagined fiduciary promised land.

Rather than overturn the broker-dealer service model, the DOL should, to the extent that there have been abuses in miss-sold retirement products, propound prophylactic anti-fraud rules, including barring unsuitable products or those imposing excessive fees. With a re-focused, harms-based approach, which is familiar to virtually every other sector of government market intervention, DOL will focus on fixing real issues instead of seeking a far-reaching proposal suppressing the commission-based service channel and likely further, unforeseen market impacts.

IV. The Primary Regulator Should Have Primacy in Framing on Rulemaking

The Congress in Section 913 of the authorized the Securities and Exchange Commission to study and impose, if warranted, a uniform standard of conduct for broker-dealers and investment advisers when providing personalized investment advice about securities to retail customers. SEC Chairman Mary Jo White informed the Congress in testimony on March 24, 2015 that she believed that the SEC should undertake the careful study of the challenges required to frame a uniform fiduciary standard for advisers and brokers, asking the SEC staff to develop rulemaking recommendations for Commission. As the Chairman in her confirmation speech committed to "rigorous economic analysis" before putting rules in place to avoid "unnecessary burdens or competitive harm," the Commission's activity should displace the current, flawed proposal.

V. FINRA's Experience Must be Utilized.

Similarly, on May 1, 2015, Richard Ketchum, Chairman and CEO of the Financial Industry Regulatory Authority ("FINRA"), which regulates the broker-dealer channel serving retirement-planning clients, expressed his support for a uniform standard of conduct for broker-dealers and investment advisers.[2] Importantly, he stated that the SEC, in consultation with FINRA, should develop and lead the proposal. Further, he observed that the DOL draft *Best Interest Standard* was inadequate and "doesn't really describe a broker-dealer model that I'm aware of."

VI. Conclusion.

In summary, the imposition of the DOL's unitary conduct standard across different client service models will harm investor choice and access to retirement counselors. I endorse the Dalbar conclusion that the DOL proposal is: "certain to cause massive confusion and needless changes while providing little or no discernible benefit. Forcing the inclusion of persons into a regulated class based on a complex definition of services provided is inef-fective."

The opening of an IRA with an initial $1000 and a commitment to deposit $150 per month does not require a fiduciary. It is unwarranted regulatory overreach to require a homeowner to consult an architect or engineer when a contractor suffices. The DOL approach to re-make the range of retirement planning services in its conception is justified by neither market conditions nor the inadequacy of personal retirement assets. The DOL must abandon its unitary approach and adopt a consultive approach with the SEC, FINRA and other industry participants.

I would welcome and hereby request the opportunity to share my views, informed as they are by my long engagement with the investors I serve, regarding this ill-advised policy at the next public hearing. I would like to offer some semblance of balance to the top-down view that seems to drive the re-proposed Rule, as, up till now, it has been one-sided and filled with many factual inaccuracies by those who neither hold securities licenses nor have any idea how the securities business functions.

Thank you for your consideration.
Frank Congemi

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[1] See Stroock & Stroock & Lavan, *DOL's Fiduciary Re-Proposal: Caveat Venditor or "Death of a Salesman"?*, May 18, 2015, Chart III on "Best Interest Contract" Class Exemption.
[2] http://www.corporatedefensedisputes.com/2015/05/finra-chairman-sec-should-lead-on-uniform-fiduciary-standard/

DOL/Part 2
Office of Regulation and Interpretations
Employee Benefits Security Administration
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Dear Ladies and Gentleman,
The Department of Labor is expected within days to announce its final version of it's *Conflict of Interest Rule—Investment Advice* rule, having cleared mandatory Office of Management and Budget closed-door review. While DOL has not disclosed its revised approach, which is at least its third attempt, the message is already clear—with AIG and MetLife exiting the broker-sold, product channel after assessing the costs and impacts of the looming DOL rules.

Why is the Obama Administration's ramming through a "fiduciary" rule that will apply across the entire marketplace for retirement saving products, legislating the investment adviser as the new paradigm?

Why is this occurring when the SEC is not aboard and is readying its own approach on the topic? Why is this occurring when FINRA has stated it favors an approach that involves the SEC and takes fuller cognizance of existing broker service channels? Why can't the SEC, Labor, FINRA and SIFMA come to a single view on a matter that lies at the heart of a crisis of inadequate retirement assets?

Make no mistake about the White House rulemaking exercise represented here. A recent Senate report uncovered over a thousand White House visits by three senior DOL staffers, with the lead architect for the rule logging 336 visits over the gestation period. Apparently killing my business seems to be more important than wiping out ISIS.

The reason that a Senate report has found evidence that DOL only pretended to engage with the concerns of the SEC, the Treasury and other commenters is that this is an act of presidential will to upend the sale of variable annuities in the 5+ trillion 401K-rollover transaction market. There's an unstated finding that the 60-62% retirement account portion of VA sales over the past three years is wrong, given the complexity and cost of certain of these products—a message clear to AIG and MetLife.

But today's marketplace is far different from that of 2010 when DOL began this campaign. Attention by FINRA and securities regulators has already begun to drive up the sale of B-shares (over higher cost L-shares) to 75% of VA sales in the first nine months of 2015—from 63% in 2012. But as DOL swings its baseball bat at VA practices, my commission-based, broker-sold mutual fund business is being unfairly targeted for extinction. The suitability standard under which I've operated for decades fairly distinguishes between a newly redundant 50-year old facing a 401K-rollover decision and a millennial in the gig economy who is unable to meet the minimum IRA opening deposit level set by the big fund families.

Before examining the DOL rule further, a few salient facts:

- As the number of persons covered by a defined benefit pensions steadily shrinks, as wages have remained stagnant for several decades and living costs, especially health costs, have grown, Americans face a retirement savings crisis.
- Reputable guidance suggests that persons must have saved 5x their income by age 55, 6x by 60 and 8x by age 67. Few of us come close.
- The National Institute on Retirement Security estimates that the retirement saving deficit is between $6.8 and $14 trillion.
- Those at greatest risk of inadequate retirement savings are those earning the least. Studies further show that minority workers have the least access to retirement plans on the job, leaving the vast majority of them with no retirement savings.

- A large body of research, posted on Labor's website, acknowledges that individuals who engage financial advisers tend to be more financially healthy and sophisticated than individuals who forgo advice.
- http://www.dol.gov/ebsa/pdf/conflictofinterestresearchpaper4.pdf The Securities Industry and Financial Markets Association estimates that the rule exposed for public comment last summer will cost between $2.4 and $5.7 billion to implement—and throw in another billion for annual operating expenses.

Congress, with fitting modesty, has never legislated a unitary fiduciary standard for the retirement market, committing the issue to the SEC in the Dodd-Frank Act.

The SEC, in its OMB rulemaking preview, declared at the year's outset that its *Personalized Investment Advice Standard of Conduct* will be delivered by October 2016. But in March Congressional testimony, SEC Chairwoman Mary Jo White, having been excluded from the White House planning of the DOL rule, weakly described the SEC continuing work on its own rule to make it as "compatible as possible" with the DOL rule.

Yes, DOL plans a Rubik's cube solution in the form of a "prohibited transaction exemption" and a "best interests contract exception" (BICE) for my service model of commissioned mutual funds, 12b-1 service fees and portfolio balancing. But tell me, how do I do business with anyone when I must start by telling him or her that my business model is a prohibited model that they must agree to in order for me to talk to them about retirement savings? As matters already stand, my clients ask: What are all these forms about? Whose side are you working for?

But apparently the Labor Department will be happy if my clients and the entire underserved middle and working class sign up for robo advisers—automated investment advice.
Significantly, the SEC and FINRA have begun to ask some important questions about this "solution," with a penetrating salvo from FINRA last month. Yet, clients of commissioned brokers, Dalbar has found, are more likely to start investing sooner, maintain a consistent investing practice and mitigate untimely withdrawals. By now you see my point: The Labor Dept. approach is paternalistic, elitist and misdirected as the VA market itself evolves.

Moreover, it is treachery for DOL to proceed unilaterally, in a market where it frankly lacks the chops, to label my decades-long service to clients as inferior, even prohibited. And it's not just me, it is many client relationships in a $17 trillion market.

Rather than overturn the broker-dealer service model, the DOL should, to the extent that there have been abuses in miss-sold retirement products in the 401K-rollover market, propound prophylactic anti-fraud rules, including barring unsuitable products or those imposing excessive fees. With a re-focused, harms-based approach, which is familiar to virtually every other sector of government market intervention, DOL, in collaboration with the SEC and FINRA should focus on fixing real issues instead of seeking a far-reaching proposal suppressing the commission-based service channel, tilting retirement services away from those most in need of counsel and causing further, unforeseen market impacts. Plainly, a DOL fiduciary standard is inappropriate to the context of getting persons of modest means started in saving for their future.

Frank Congemi, Financial Advisor

Source Notes:
[pp. 32-33] Moreover, Assistant Secretary of Labor Phyllis Borzi, who has been described as the "main architect" of the fiduciary rule,[195] ranks as the twelfth most frequent visitor to the White House during the Obama Administration.[196] Since 2009, Ms. Borzi has visited the White House 338 times.[197] Two other senior Labor Department officials rank as the ninth and sixth most frequent White House visitors, with 369 and 376 visits, respectively.[198] [1083 visits]
Senate Homeland Security & Government Affairs, Ron Johnson (R-WI), Chairman, 2-24-16 Press Release
https://www.hsgac.senate.gov/media/majority-media/chairman-johnson-releases-report-on-flawed-department-of-labor-process-that-could-hurt-retirement-savers
http://www.nirsonline.org/index.php?option=content&task=view&id=768 [NIRS savings dificit]
WaPost 12/9/2013 article for minority impact cites to 2013 NIRS Report
The average spending for 65- to 74-year-olds totals $44,897 per year
http://www.cheatsheet.com/personal-finance/retirement-reality-5-charts-you-need-to-see.html/?a=viewall
http://www.dol.gov/ebsa/regs/conflictsofinterest.html [main site but lacks the latest rule]
http://www.401khelpcenter.com/401k/meigs_dol_fiduciay_rule_042015.html#.Vq65wE_3Xkc
[new PTE will supposedly permit continuity of current broker comp practices inside the rule structure]
http://wealthmanagement.com/industry/sifma-dol-fiduciary-rule-cost-firms-over-5-billion
http://www.sifma.org/newsroom/2015/sifma_submits_comments_on_department_of_labor_s_proposed_retirement_regulation/

DOL/Part 3
August 14, 2017

Office of Regulation and Interpretations
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200 Constitution Avenue, NW
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Subject: RIN 1210-AB32, Conflicts of Interest Rule Proposal

The policies and requirements that have been communicated to me about the firm's implementation of the Department of Labor Fiduciary Rule ("Fiduciary Rule") are in violation of law and objectionable to my clients and myself. **Please cease and desist from your wrongful conduct in directing me to violate their rights and my rights by following your ill conceived and illegal instructions.** The firm is acting in violation of law in its instructions and requirements as described below:

1. **Extreme Caution Required**

Neither the SEC nor FINRA enacted or blessed the Fiduciary Rule. The SEC is currently seeking to enact a uniform fiduciary rule. FINRA made strong criticism of the Labor Department's Rule and its flawed understanding of the differing client service models that have long existed in the broker-dealer arena. This shallow footing for the Fiduciary Rule, which remains on a tenuous full implementation path, should signal extreme caution before any steps that are taken to implement it ways that overturn investor rights,

2. **Shareholder's Rights and Privileges under American Funds Prospectuses**

Yet instead of a cautious approach, the firm is directing me—while long-serving in my client's best interest—to require them to roll them into broker-dealer accounts and forfeit their rights as long-tenured American Funds shareholders. This is plainly not in my client's best interest as they now enjoy privileges under the fund prospectuses under which they opened and grew their accounts: namely, free exchanges, rights of accumulation, rights of aggregation and free services such as check payments, ACH payments and others. Even if you granted me a 200% legal indemnity against client claims for subjecting them to the directed involuntary conversion of their accounts from American Funds books to yours, it remains a breach of my clients' trust and confidence in me that I am unwilling to make.

3. **Clients Distrust Broker Products & Intermediation**

My clients have chosen investment relationship directly with American Funds, which has consistently been among one of the most esteemed investment organizations in the country. Doubtless, it has been an approved offering of this firm for countless decades. My clients have no interest in broker-dealer products and would, in fact, be alarmed if I

were to advise them that they should open brokerage accounts. Many are wary of the online sphere and the breaches that have become a near daily occurrence. In short, online account access is not a feature for them—it's a perceived peril. They recall their many years of satisfaction with American Funds and will be wary of what will happen by making such a change after many years. Their fears are justified, as they would become subject to the firms terms and conditions, which unlike the prospectuses under which they bought their shares, the firm can change at any time.

It is not in their interest to "voluntarily" convert to a brokerage account relationship and become subject to the firms policies (in lieu of their prospectus rights) as that will subject them to the payment of commissions, account maintenance fees, check issuance fees, and other additional unknown costs that the firm may impose on small accounts (e.g., UGMA or 529 accounts) that are nonetheless accorded privileges by American Funds under rights of aggregation. My clients say: "No thanks!" My conviction is these forced conversions are NOT in the best interest of my clients.

4. Firm's Breach of Contract

The firm's insistence that I involuntarily convert my clients' direct relationships with the American Funds family to brokerage accounts and altered fund share classes is a breach of my business model when I joined—and which you approved when you welcomed me to join this firm.

Thank you, Frank Congemi Financial Advisor

Broker/dealer policies which are an attempt to comply with the fiduciary rule are violating the terms of the '33 and '34 act in the following ways:

Shareholder's Rights and privileges obtained through their prospectus are over ridden:

Such as free exchanges, free services such as check payments, ach payments, rights of accumulation rights of aggregation which allow the free services. The right to "choose" what is best in the client's best interest.

BICE or the best interest of my clients:

Since I don't believe in buying/selling my clients individual stocks/bonds and other riskier products (neither do my clients) I never obtained a series 7 license...yet my b/d is forcing me/my clients into brokerage accounts so they can "monitor" my activity. My activity can already be monitored and this is a collusive device to take my direct business and make proprietary to their own b/d platforms.

This is a total loss of autonomy for independent advisor and a client who wants to separate from that activity. (762)

Brokerage Fee's vs. Free:

Operating under the prospectus that clients have received and adhered to over the years; existing shareholders who have *earned rights of* accumulation will not only lose their discount levels but be **forced to pay additional new and continued commission's.** The specter of account maintenance fees, check issuance fee's, buy/sell commissions, loss of exchange privileges, loss of transparency and other **additional costs are not in the clients best interests.**

Brokerage accounts are for the most part for brokerage products which none of my clients own.

Less Secure Third Party Systems:

Using third party systems to determine "suitability" and to determine "suitable products" increases the likely hood that client data which is exposed to more systems with more opportunities for cybercrimes. It's the advisor who has the license, who has the liability because of the relationship with the client who is charged with determining suitability and suitable products.

Less Sophisticated clients who are mandated to use sophisticated systems are at a technological disadvantage:

A large percentage of my clients are still in this day and age not sophisticated enough to navigate the technology to manage investments on line. The onslaught of media that is driving this change to "free" and "you don't need an advisor" and " there should be one fiduciary standard for all" is misguided, monopolistic and a restraint of trade.

Financial Advisors are not represented by the broker dealer's attorneys, they represent the broker dealer, so there is an inherent conflict of interest...not between the client and advisor...but rather with its advisors. This is represented by the b/d renegotiating share classes; fees with the fund/annuity companies and their failure to disclose these facts to their advisors. The broker dealer by using these tactics is essentially created a new form of "pay to play" for shelf space at the broker dealers who are involved in this practice and not because of concern for the shareholders of the advisor or compliance with DOL.

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InvestmentNews

The Weekly Newspaper for Financial Advisers

March 20, 2006

OTHER VIEWS

SEC must do more to protect and educate investors

By Frank Congemi

The Securities and Exchange Commission's recently announced semiannual agenda again focuses on bureaucratic trivia instead of the big picture — protecting and educating American investors.

Here are some simple steps the SEC should take:

Fill out the leadership team. The SEC now is operating without permanent heads of key divisions: market regulation, investment management and the office of chief accountant. Without committed leadership, the commission can't protect investors adequately.

Forbid Wall Street from voting proxies. Shares held at brokerage firms are voted by the firms in favor of management unless the shareholder returns a proxy 10 days before the meeting date. Such "discretionary voting" is authorized by NYSE Rule 452, which limits such voting to non-controversial matters (a vote on a merger proxy isn't permitted).

The major Wall Street firms are always seeking underwriting and advisory assignments from corporations, and should never be permitted to vote customer shares. Conflicts of interest taint their asset management affiliates, as well. For example, Deutsche Asset Management in New York paid the SEC a $750,000 fine for switching 17 million votes on March 19, 2002, in favor of Hewlett-Packard Co.'s merger with Compaq Computer Corp., while neglecting to inform clients that it was a financial adviser to HP on the deal. Lesson learned? Well, the NYSE imposed a $1 million fine on Deutsche Bank last month for overvoting proxies.

Hit wrongdoers harder. The same firms often pay big fines and then go back to business as usual until they are caught again. Fines may benefit the SEC, but they don't seem to break the pattern. The worst offenders should be threatened with closure.

Get the investor education entity going. The SEC has done zip with the $52.5 million, five-year settlement it won from the industry in 2003 to fund a new non-profit organization for investor education. The SEC should work with professional associations to roll out the educational initiative. There is a critical need for top-tier financial advisers to teach the public how to construct and rebalance a portfolio, manage risk, and invest for college and retirement.

Mandate quality fund reporting. Why do people have to depend on Morningstar Inc. of Chicago and similar services to gauge the performance of mutual funds? It is because the SEC only requires funds to prepare semiannual financials and a portfolio list. True, many fund companies do much more, but there is no standardization, no comparability of reports and no mandated transparency on how a fund achieves its results. Fund prospectuses must contain risk/ return content, but this language is purposefully drafted to cover multiple investment strategies. This vague menu of possibilities is no substitute for a clear analysis of current fund performance.

Work with industry organizations to prevent investor abuse. Financial professionals know where the problems are in the marketplace long before the SEC, whose investigations usually come only after small investors already have lost their money. By staying in closer touch with organizations such as the Atlanta-based Financial Services Institute Inc., the SEC would have an early-warning system to nip abuse in the bud and avert another major scandal. The SEC recently created an office of risk assessment. Is it effective? The public deserves a report card.

Encourage volume discounts on mutual fund sales loads. You would think that the SEC would encourage brokers to negotiate discounts on fund sales loads for their clients, but it is forbidden. Although the SEC has often noted the anti-investor nature of the prohibition against discounting sales loads, the rule continues to bar investment professionals from aggregating client positions to get volume discounts for their clients. Consequently, there is no competition on sales loads.

Put shareholders and fiduciaries in the driver's seat. Chief executives too often are accountable to no one other than a docile board. Last year, the market value of Ford Motor Co. of Dearborn, Mich., and General Motors Corp. of Detroit was each about halved — a loss of $25 billion. The two largest shareholders of Ford and GM before last year's annual meeting were Boston-based State Street Corp. — a repository of shares held by mutual funds — and fund giant Capital Research and Management Co. of Los Angeles. Could the automakers' long slide have been avoided if fiduciaries had imposed real oversight and discipline? The SEC needs to examine the role of the fiduciaries that are charged to exercise oversight over management and boards.

Frank Congemi is an investment adviser and registered representative with offices in Queens, N.Y., and Deerfield Beach, Fla.

SOAPBOX

Who Best to Educate the Public?

INVESTOR EDUCATION IS in sad shape in America today Just turn on your television. You'll find Donald Trump and Robert T. Kiyosaki (*Rich Dad, Poor Dad*) flacking books on how to get rich by speculating in real estate while they get rich by selling books. Turn the dial: You'll find Jim Cramer ranting about the next hot stock. Meanwhile, the basics of investing and planning get short shrift. It's a sad commentary.

So who's going to educate and protect the public? Congress and the Securities and Exchange Commission? Well, think again.

The SEC has done very little with the $52.5 million, five-year settlement it won from the financial industry in 2004 to fund The Investor Education Entity—a new nonprofit organization for investor education. The SEC should work with associations of financial professionals to roll out the educational initiative. There's a critical need for advisors in the trenches to get involved in teaching the public how to construct and rebalance a portfolio, manage risk, and invest for college and retirement.

> The **NASD** apparently doesn't see us a professionals; instead, we're all potential **miscreants**.

Last spring, I wrote to the NASD in regards to their advocacy grants and volunteered to help educate the public. A few weeks later, I got my answer. Registered reps aren't allowed to participate because we had a "conflict of interest."

It's pretty peculiar. We're the ones who are licensed and accountable to our clients and regulators. The NASD apparently doesn't see us as professionals; instead we're all potential miscreants. If the people on the front lines aren't allowed to help educate investors, who will? The regulatory agencies should be working with us to do outreach to the public, just as other oversight agencies work cooperatively with doctors, lawyers, and CPAs.

While planning and investing are complex, the basics can be conveyed in a 15-minute face-to-face meeting with a client. The key tools are Ibbotson charts and the "periodic table" of investments. If you start talking to clients about abstruse topics like the efficient frontier, their eyes will glaze over. But they don't really need to take the advanced course; Investing 101 will put them far ahead of most people.

The periodic table is a color chart that shows how different asset classes have performed year by year. It illustrates that you have to be in asset classes that are working, while reducing exposure in classes that aren't. It shows that one year's hottest performer is often the next year's biggest dud. The lesson: Diversify and rebalance regularly.

But you won't see the periodic table anywhere in consumer magazines or television.

Advisors who show their clients how to use the periodic table and similar tools do themselves and their clients a big favor. With this information, clients can readily judge whether the investments you're recommending have compiled a good track record and produced robust long-term returns. When you show them how the process works, they're more open to trust you.

Some advisors think that more informed clients feel they won't need an advisor anymore, but the opposite is true. They're more apt to leave you if they don't understand what you've done for them and why. Understanding is particularly crucial when the market takes a tumble.

Let's hope the government does more to foster investor education. Meanwhile, the ball's in our court.

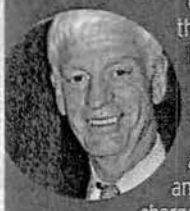
Frank Congemi
Registered Financial Gerontologist
Forest Hills, New York, and Deerfield Beach, Florida

The IA Soapbox is reserved for *Investment Advisor* readers to sound off about an issue of importance to them. Please e-mail Jamie Green at **jgreen@investmentadvisor.com**.

INVESTMENT ADVISOR™ (ISSN 1069-1731) is published monthly by Wicks Business Information, L.L.C., Revmont Park South, 1161 Broad Street, Suite 200, Shrewsbury, NJ 07702. Tel: 732-389-8700. Periodical postage paid at Red Bank, NJ, and additional mailing offices. Subscription Rate: $79 per year. POSTMASTER: Send all subscription orders, changes of address, and correspondence to Investment Advisor, P.O. Box 2162, Skokie, IL 60077.

Rough Month for Mario Gabelli

Mario Gabelli, one of Wall Street's best-known money managers, has been in the spotlight lately, but not for his investment returns. The Justice Department charged him with civil fraud in auctions for wireless telephone licenses. Meantime, two longtime investors claim Gabelli stole more than $100 million from them.



On March 17, the Justice Department took over a five-year-old lawsuit against Gabelli and others that charges they misled the Federal Communications Commission to attain wireless telephone licenses intended for small businesses at FCC auctions in the 1990s. The government has said that it has evidence that shows Gabelli set up sham corporations to bid for wireless contracts that are normally reserved for minority and other small businesses. Gabelli says the case is without merit and intends to fight the charges.

Also in March, a New York State Supreme Court judge ruled in favor of two investors who had been prevented from selling their shares in Gabelli's private company, Gabelli Group Capital Partners (GGCP). The two investors, Frederick Mancheski–a longtime friend of Gabelli and his first investor in 1976–and David Perlmutter allege Gabelli deprived them of millions of dollars by siphoning money to himself and his family. Their wish for a trial to determine if GGCP should be dissolved entirely was also granted by the judge.–*JC*

COLD CALL

Frank Congemi

(A financial advisor with practices in Forest Hills, N.Y., and Deerfield Beach, Fla.)

Registered Rep.: *What's your beef with Wall Street?*
Frank Congemi: That with all of the investors Wall Street has damaged, it is permitted to continually steal from the public.

RR: *How do you view the role of the retail financial advisor?*
FC: To provide entry-level education, assist in establishing a list of investing priorities and continually monitor and mentor clients.

RR: *Why do people get into this business?*
FC: To help people...make money.

RR: *Are retail clients getting a better deal from financial-services companies than they used to?*
FC: It's all about the client experience. Most big companies are just out of date and out of compliance. They're getting worse as competition gets fiercer.

RR: *Who is your inspiration?*
FC: Superman..."in a never-ending battle for truth, justice and the American way"

RR: *You describe yourself as a whistleblower. What did you learn from that experience?*
FC: A person can make a difference, and don't believe for a second that the SEC or any attorney general knows what he is doing.

RR: *What kind of sales pitch would you use on Eliot Spitzer?*
FC: I wouldn't try to sell him anything. I would beat him with a bat. That kid needs a lesson. He has not given $1 to investors who were ripped off. He has allowed these rogue companies to stay in business so he can collect political contributions.

RR: *Alternative career?*
FC: Marine construction with recycled materials: You are on the water all day and it helps the environment.

RR: *Greatest victory as an advisor?*
FC: I could say the work I did with Sept. 11 families, or the input I provided to the SEC on their Mutual Fund Disclosure Rule, but my greatest victories are ahead of me.

RR: *Favorite activity for a Sunday?*
FC: In the following order: drag racing, floating in the pool with my wife and dogs, reading.