Fiduciary Standard Stripped From ‘Dodd Bill’

By Editor Test *Thu, Mar 25, 2010*

Broker-dealers and life insurance agents want the SEC to continue to regulate them using a standard of care based on suitability, not fiduciary duty.

The Senate Bank, Housing and Urban Affairs Committee approved two changes to the “Dodd bill” on financial regulatory reform that had been sought by the insurance industry, *National Underwriter* reported.

One of the two changes in the Restoring American Financial Stability Act would eliminate the need for all but one insurer to help pre-fund a “Resolution Authority,” or bailout fund, for troubled financial services companies that threaten the financial system.

An earlier version of the bill would have required any financial services company with more than $50 billion in assets to contribute to the Resolution Authority fund. The fund is supposed to accumulate about $50 billion in cash in 5 years.

Dodd change the provision to read, “and any nonbank financial company supervised by the Board of Governors” of the Federal Reserve System. The change means that MetLife Inc. is the only insurer that would have to help pre-fund the Resolution Authority, according to a lawyer who represents an insurer.

If the failure of a large company depleted the fund, all non-health insurers with more than $50 billion in assets might have to contribute, the lawyer says.

The Resolution Authority would be overseen by a new Financial Stability Oversight Council consisting of 11 federal regulators and one insurance representative appointed by the president. The Treasury secretary would lead the council.

The second of the two changes sought by insurers would weaken an effort by Sen. Herbert Kohl, D-Wis., chairman of the Senate Special Committee on Aging, to impose a fiduciary “standard of care” on all sellers of retail investment products.

The latest version of the RAFSA bill would not impose a universal fiduciary standard. Instead, the bill would require the U.S. Government Accountability Office to study the effectiveness of state and federal regulations that govern intermediaries.

Consumer groups and financial planner groups have been pushing for Congress to make the U.S. Securities and Exchange Commission apply a “fiduciary standard of care” to all providers of personalized investment advice.

A fiduciary standard would require broker-dealers and life insurance agents affiliated with broker-dealers to put the interests of customers above all other interests.

Broker-dealers and life insurance agents want the SEC to continue to regulate them using a standard of care based on suitability, which requires broker-dealers and agents to verify only that the products that a customer buys are suitable for those customers.

Life agents say they would have a difficult time meeting a fiduciary standard, because they often have contracts permitting them to sell products only from one company, or from a small group of companies.