CFA

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House Passes Anti-Consumer Telecom Bill

Following in the Senate's footsteps, the House gave overwhelming approval in August to telecommunications legislation that would lead to inflated rates for local telephone and cable service while failing to promote effective competition.

The 305-117 vote came just days after the administration threatened to veto the bill unless major pro-consumer, pro-competition, and anti-concentration amendments were adopted.

In passing the bill, however, the House largely ignored the president's concerns, and, in fact, made even more concessions to the local telephone companies than had been included in the committee-passed version of the bill.

"Congress has sold out to the special interests, and consumers are going to have to foot the bill — to the tune of $3 billion or more on their cable bills and tens of billions of dollars on their telephone bills," said CFA Director of Telecommunications Policy Bradley Stillman.

"Despite all the lip-service being given to promoting competition," he added, "any chance for real competition anytime soon across the telecommunications industry would likely be wiped out by this legislation."

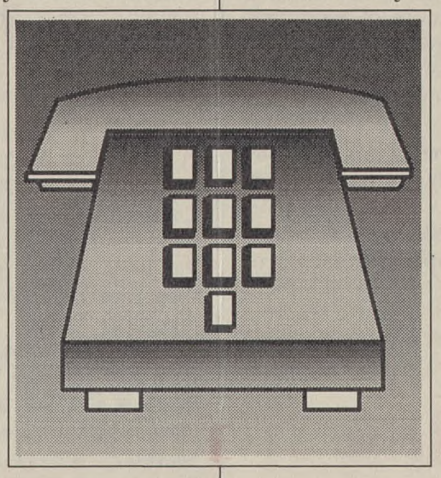
Premature Deregulation Criticized

The fundamental problem with H.R. 1555, as with S. 652, he said, is that it would deregulate prices before competition develops, then fail to adequately promote competition.

Specifically, H.R. 1555 would:

- mandate price cap regulation for local telephone service, eliminating the ability of state regulators to ensure that consumers benefit from declining costs and efficiency gains;
- allow local telephone companies to enter competitive markets before they face effective competition for local service, thus enabling them to use their monopoly power to compete unfairly;
- deregulate rates for the most popular cable programming and make it virtually impossible for consumers to challenge excessive rates, ensuring that cable rates will resume the astronomical rise that preceded passage of the 1992 cable bill;
- promote collaboration rather than competition between cable and local telephone companies by allowing the local phone companies to buy out cable companies in communities covering approximately 50 percent of the nation's population and allowing them to own up to 49 percent of each of the remaining cable operators in their region; and
- increase concentration in the broadcast industry by expanding the number of outlets any one broadcast entity could own.

In threatening to veto the bill, President Clinton said: "Consumers should receive the benefits of lower prices, better quality and greater choices in their telephone and cable service, and they should continue to benefit from a diversity of voices and viewpoints in radio, television and the print media," he said. "Unfortunately, H.R. 1555 . . . does not reach any of these goals."



"Instead of promoting investment and competition, it promotes mergers and concentration of power. Instead of promoting open access and diversity of content and viewpoints, it would allow fewer people to control greater numbers of television, radio, and newspaper outlets in every community," he said.

Consumers Oppose Mergers and Concentration

While Congress appeared largely unswayed by the President's veto threat, a recent survey released by CFA in September shows that a majority of consumers share his concerns.

A national, random sample telephone poll of more than 1,000 adults conducted while Congress was out on it summer recess found that Americans take a dim view of mergers and concentration in the telephone, cable, and entertainment industries.

For example:

- 54 percent of respondents said it should be harder for mergers to take place between local telephone and cable companies, while only 34 percent said it should be easier;
- 50 percent of respondents said mergers will result in higher prices in all segments of the communication industry, compared to 7 to 12 percent who said mergers would result in lower prices; and
- 55 percent of respondents said it would be bad for the country, and only 12 percent said it would be good for the country, to allow companies to own more than one television station in each local market or to own radio stations and newspapers in the same markets where they own television stations.

"While Congress rushes headlong to allow more mergers on the information superhighway, the results of this poll show that most Americans believe that they will not benefit from these policies and that Congress should be moving in the opposite direction," said CFA Research Director Mark Cooper, who wrote the report analyzing the survey results.

Court Overturns CLIA Regulations

A district court judge ruled in September that key regulations issued by the Bush Administration to implement the Clinical Laboratory Improvements Act of 1988 are contrary to the law and must be rewritten.

"The Bush Administration caved to industry pressure and gutted the safety standards incorporated in CLIA '88," said CFA Research Director Mark Cooper. "Now, the Clinton Administration has an opportunity to correct that error and issue new rules to better protect the public health."

CFA and Public Citizen filed suit in 1993 challenging a number of regulations implementing CLIA '88 as arbitrary and capricious and contrary to the law.

In its ruling on the case, the district court ordered the Department of Health and Human Services to issue new regulations implementing two key sections of the bill:

- the criteria for categorizing laboratory tests and the categories and schedules of tests based on those criteria; and
- the regulation governing proficiency testing of cytologists.

Criteria Must Reflect Risks

In setting criteria for categorizing tests, the agency must consider the risks and consequences of erroneous results associated with such tests, the court ruled. Also, the court ruled that cytologists must be tested "to the extent practicable, under normal working conditions."

The judge gave the Department of Health and Human Services 90 days to publish new proposed regulations.

Congress passed CLIA '88 in response to a mounting public outcry over shoddy laboratory procedures that were producing inaccurate results which were literally killing people. The legislation empowered the Health Care Finance Administration to regulate all labs and lab personnel directly to ensure accurate, high quality laboratory testing.

In its final rule, the Bush Administration ignored the risk to patients in categorizing tests, downgrading the vast majority of tests from highly to moderately complex and thus reducing the personnel standards applied to most tests. In addition, the rule allowed cytologists to be tested for proficiency at a rate that is equivalent to about half the actual work rate allowed under the rule.

Administration Urged To Issue New Rules

The administration must decide by the end of the month whether to appeal the decision or issue new rules. CFA and Public Citizen wrote to Secretary of Health and Human Services Donna Shalala following the decision urging the administration not to appeal the decision.

In their letter, the groups noted that, in one highly publicized example, two Wisconsin women had died last year from cervical cancer after their PAP smears were misread, and they questioned whether these deaths would have occurred if the regulations had complied with the legislation.

"We will never know," they wrote. "You, however, can ensure that we do not face this question in the future, by strengthening the regulations governing categorization of lab tests and testing of cytologists, as intended by CLIA '88."

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The Consumer in the Financial Services Revolution:

Challenges and Opportunities

November 30-December 1, 1995

Washington, D.C.

Billions Wasted On Cash-Value Life Insurance

Consumers waste more than $6 billion each year on cash-value life insurance premiums because of early terminations, according to a CFA report released in July.

"Nearly all consumers who terminate cash-value policies within the first 15 years overpay for these policies," said James H. Hunt, Life Insurance Actuary for CFA's Insurance Group and co-author of the study with CFA Executive Director Stephen Brobeck.

Cash-value life insurance polices — including whole life, universal life, and variable life — provide both death protection and a savings/investment component.

There are more than 100 million cash-value life insurance polices in force, with death benefits of about $4 trillion. In 1993, consumers paid $65 billion in premiums on these policies.

"Those who terminate cash-value policies in the first three years often lose several thousand dollars," Hunt said.

Reforms Advocated

To reduce this waste, CFA has proposed the following reforms:

- requiring companies and their agents to make up-front written and oral disclosures that a cash-value policy must be held for at least 15 to 20 years to provide good value;
- holding companies legally responsible for ensuring that any replacement of an existing cash-value policy is suitable for the policyholder;
- prohibiting payment of heavily front-loaded commissions to agents; and
- requiring companies to spread out this agent compensation more evenly throughout the term of the policy.

"Restructuring agent compensation is especially important, because high first-year commissions serve as a powerful incentive for agents to churn," said Brobeck.

Churning is the practice of encouraging policyholders to replace existing cash-value policies with new policies in order to generate high commissions for the agent.

"It is a tribute to the professionalism of agents that relatively few do," Brobeck added.

Most life insurance agents receive commissions on cash-value policies that represent 55 to 100 percent of the first-year premium. In years two to nine, most agents receive five to eight percent of premiums. Subsequently, they receive two percent or less.

States Urged To Act

Brobeck said states should limit commissions and other acquisition costs on first-year premiums to 50 percent, and he encouraged the industry to move to a schedule of commissions that is closer to 30 percent in the first year, 12 percent in the next nine years, and 3 percent thereafter.

"This schedule would compensate agents adequately while providing them a disincentive to churn and an incentive to encourage policy holders to maintain cash-value policies for many years," Brobeck said.

CFA plans to contact state officials in coming months urging them to adopt these reforms. CFA also plans to work with state consumer groups to advocate needed changes, he said.

FTC Issues Final Telemarketing Rules

The Federal Trade Commission issued final telemarketing rules in August which included a number of improvements over the revised rule proposal but which still fell far short of the original proposed rules in a number of key areas.

"We are hopeful that these rules will be helpful in battling telemarketing fraud and abuse, but we are disappointed that the rules are not nearly as strong as they could and should have been," said CFA Senior Project Director Mary Ponder.

The rules are required to implement the Telemarketing Fraud and Abuse Prevention Act passed by Congress last year.

The original proposed rules released by the agency in February were generally applauded by consumer advocates and the attorneys general, but were opposed by the telemarketing industry.

After taking comments on the proposal, the agency issued revised proposed rules in May that offered substantially weakened consumer protections. Consumer groups, including CFA, and the state attorneys general submitted comments to the FTC seeking a restoration of a number of key consumer protections in the final rule.

Improvements Adopted

In finalizing the rule, the FTC did make the following improvements:

- it clarified that stronger state laws are not preempted;
- it required disclosure if there is a policy of not making refunds, cancellations, exchanges, or repurchases;
- it restored some disclosure requirements related to prize promotions, including the no purchase/no payment method of entry, the odds of winning a specific prize, and all material costs or conditions to receive or redeem a prize;
- it required express verifiable authorization for use of demand drafts as payment;
- it required that, when a courier is being used to pick up payment, key prepayment disclosures be made before the courier is sent; and
- it clarified that required oral disclosures about the purpose of the call must be made before any substantive information about a prize, product, or service is conveyed to the consumer.

Other Consumer Concerns Not Addressed

On the other hand, the agency rejected consumer advocates' requests that they restore key protections from the original proposal, including its requirements:

- that disclosure about the identity of the caller and the purpose of the call be made at the outset of the call;
- that certain written and oral disclosures be made regarding investment opportunities and that written disclosures be made regarding prize promotions;
- that telemarketers fully inform consumers about refund terms;
- that disclosures about the terms and conditions of the sale of goods or service be made before payment is requested, and not simply before payment is made; and
- that courier pickups of payment be banned.

"While the FTC made some important improvements to the final rule, the agency's unwarranted weakening of the original proposal in response to industry pressure will inevitably make it easier for fraudulent telemarketers to scam consumers and harder for law enforcement officers to go after fraudulent operators," Ponder said.

Brobeck, Hunter Named To Advisory Committees

CFA Executive Director Stephen Brobeck has been named to the Treasury Department's Advisory Commission on Financial Services, and CFA's Insurance Director J. Robert Hunter has been named to a Florida technical resources committee on hurricane-related insurance issues.

As the sole consumer advocate on the financial services advisory committee, Brobeck will join a dozen financial services industry leaders in advising Treasury Secretary Robert E. Rubin during the department's study of the American financial system.

"Participation on the commission provides CFA with the opportunity to communicate directly with Secretary Rubin and other top treasury officials, who all attended the first meeting," Brobeck said.

Commission to Define Policy Challenges

The Treasury Department study — which will examine the strengths and weaknesses of the nation's financial services system and how it can best meet the needs of financial services users in the future — is mandated by the Interstate Banking and Branching Efficiency Act of 1994. A final report and recommendations are due to Congress by the end of the year.

The role of the advisory commission, according to Secretary Rubin, is to help define the major policy challenges in the financial marketplace over the next ten years.

"Given the size and dynamism of this marketplace, the challenges will indeed be great," Brobeck said. "It is essential that government expands its role in providing consumers with both information and protection."

The technical resources committee was established to advise the Florida legislature on what to do about the insurance market in the wake of Hurricane Andrew.

The goal, Hunter said, is to devise a plan to guarantee that insurance remains available and affordable and that insurance companies do not pull out of the market, as some threatened to do after suffering heavy losses as a result of Hurricane Andrew.

In particular, the committee has attempted to define appropriate roles for the government and for private industry to deal with future crises, he said.

Among the strategies being recommended by the committee are: an extension of a relaxed version of the existing moratorium on policy cancellations by insurance carriers; a build up of tax-exempt reserve funds controlled by the state; and steps toward a more structurally competitive marketplace, in which market share is spread more evenly among the companies and not concentrated in two insurers as is the case today.

Workable Plan Developed

"We've made significant progress," Hunter said. "Of course the report contains compromises, but I think we've come up with a workable plan to deal with any similar future disasters and ensure the continued availability of affordable insurance."

The committee's final report is due in October, but it is expected that the committee will be asked to continue to advise the legislature and assist with implementation, he said.

CFAnews

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States Need Conflict of Interest Laws

As Congress considers delegating increasing responsibilities to the states, a study released in August by CFA and Common Cause indicates that most states have not adopted fundamental protections from conflicts of interest in their legislative bodies.

"Legislators who are employed by an industry should not be writing the laws to regulate that industry, that's plain common sense," said CFA Director of Insurance and report co-author J. Robert Hunter.

The study examines state legislators who serve on committees that write laws regulating the insurance industry.

Covering ten states that comprise more than half the nation's population, the study found that 52 of the 278 legislators surveyed (19 percent) have professional affiliations with the insurance industry, including 38 insurance agents, 12 attorneys, and two with other fiduciary relationships to insurance companies.

Furthermore, the report likely understates the number of legislators with insurance affiliations, since that information was not available for many of the 278 surveyed.

Degree of Conflicts Varies Among States

The percentage of legislators on key committees who have conflicts of interest ranged from zero in California and Massachusetts, the two states with the strongest conflict of interest laws, to 36.8 percent in Missouri.

Percentages in the other seven states ranged as follows: New York, 8.6 percent; Pennsylvania, 14.7 percent; Illinois, 15.2 percent; Ohio, 21.2 percent; Texas, 25 percent; Florida, 30.6 percent; and North Carolina, 36 percent.

"The massive conflict-of-interest finding of this study casts doubt on the entire insurance regulatory process and must be redressed," Hunter said.

Hunter, who previously served as Federal Insurance Administrator and Texas Insurance Commissioner, said he has personally observed the effects of these conflicts.

"I have seen conflicted legislators introduce and push bills supplied to them by companies they represent. I have also seen them lobby other legislative bodies without disclosing their conflicts," he said.

NCOIL Criticized

The report also criticized a group of legislators known as the National Conference of Insurance Legislators (NCOIL) as being tightly connected to and dependent on the insurance industry for financial support.

For example, the report found that, although NCOIL purports to be an independent national voice for state legislators working on insurance regulatory issues:

- four out of the last five presidents of NCOIL had insurance industry ties;
- one quarter of the total NCOIL executive committee is connected financially to the industry; and
- an Industry Advisory Committee exists, consisting of insurance companies and other industry affiliates, that participates in seminars and raises funds for NCOIL.

"NCOIL is so intertwined with the industry and so apt to support every industry position that it is a classic wolf in sheep's clothing whose statements should be viewed with caution," Hunter said.

Study Has Implications Beyond Insurance

"Our report raises important questions about the ability of some state legislators to make disinterested public policy," added CFA Executive Director Stephen Brobeck.

"Not just insurance agents, but also real estate agents, trial lawyers, and attorneys representing private interests should recuse themselves from legislative matters affecting their interests," he said.

In the future, CFA plans to examine state legislator conflicts of interest involving industries other than insurance, he added.

To address the problems raised in this report, CFA and Common Cause announced that they will be pursuing opportunities in state legislatures to pass conflict-of-interest laws.

"Conflicts of interest by legislators compromise the legislative process and erode public confidence in government," said Common Cause President Ann McBride.

The study confirms, however, that strong conflict-of-interest laws, such as those in California and Massachusetts, can make a difference and provide models for the rest of the nation, she said.

The following are among the key elements of model legislation that CFA and Common Cause plan to pursue:

- clear disclosure by government officials of their economic interests and sources of income;
- requirements that legislators abstain from participating in any official action on specific matters affecting their personal financial standing;
- prohibitions on legislators' receiving compensation for representing certain groups before state agencies they oversee; and
- independent enforcement requirements with stiff penalties.

Hunter co-authored the study with Miranda Sissons, who was employed as a researcher at CFA.

CPSC Urged To Regulate Bunk Beds

The Consumer Federation of America wrote to the Consumer Product Safety Commission in August urging the agency to regulate bunk beds in order to reduce children's deaths and injuries associated with the product.

"Children should be able to go to sleep at night without the risk of dying due to an unsafe bunk bed," said CFA General Counsel Mary Ellen Fise. "Because bunk bed manufacturers have not adequately addressed strangulation and fall hazards associated with their beds, CPSC rulemaking is clearly warranted at this time."

CFA petitioned CPSC in 1986 to establish a mandatory standard for bunk beds. Despite the fact that more than 200,000 injuries and at least 72 deaths had occurred in association with bunk beds by 1988, the Commission voted to deny CFA's petition, choosing instead to let the industry develop a voluntary standard.

Even after the voluntary standard was in place, however, children continued to die in bunk beds at an alarming rate, Fise noted.

For example, between 1990 and 1994, 45 bunk bed related deaths were reported involving children age 14 and under, and CPSC estimates that there are 18 deaths associated with bunk beds each year.

Of the 45 deaths reported for 1990 through 1994, 65 percent resulted from entrapment, 22 percent resulted from hanging, and 13 percent resulted from falls.

Furthermore, nearly 111,000 children under age 15 required hospital emergency room treatment because of bunk bed injuries between 1990 and 1994, and the numbers of injuries show an upward trend over the five-year period.

Falls from bunk beds were responsible for more than 90 percent of the injuries, with children most often injured when falling from or rolling out of the upper bunk.

In calling on the agency to act, CFA noted the following inadequacies in the voluntary standard:

- The current voluntary standard does not address entrapment in the bed end structure of the lower bunk. Two deaths and four non-fatal entrapments have occurred when children became caught in the bed end of a lower bunk.
- The voluntary standard includes only minimal measures to address falls. For example, the standard allows 15-inch gaps between the guardrail and the end structure, and it requires that the height of the guardrail be just five inches above the mattress. This height can be further reduced if an extra thick mattress is used.
- The standard allows too much space between the rungs on bunk bed ladders. The standard allows rungs on bunk bed ladders to be as much as 16 inches apart, despite the fact that the standard for adult ladders and CPSC's playground equipment guidelines both provide that rungs be no more than 12 inches apart. "It is illogical and inconsistent for CPSC to require 12 inches for playground equipment and 16 inches for bunk beds, particularly when children may be going up and down bunk bed ladders during the night when it is dark," Fise said.
- The warning label on bunk beds lacks essential information. The label fails to adequately warn parents of the risks associated with these beds. Also, if the product were to be recalled, the label lacks the information the consumer would need to determine whether his or her product is involved in the recall and how to obtain proper redress.

Mandatory action is needed at this time, not only to address these inadequacies in the voluntary standard, but also because of industry's widespread lack of compliance with even this inadequate voluntary standard, Fise said.

She cited a recent CPSC staff review of pictures and information provided by manufacturers which found that 20 percent of the industry was in non-compliance with the entrapment standard. "We believe that the non-compliance rate would have been much higher had the staff been able to purchase bunk beds unannounced and randomly at retail and examine the bunk beds for compliance with all provisions of the voluntary standard," she said.

"We believe the injury and death data currently before you, as well as the industry's past performance in failing to assure compliance with the voluntary standard argue persuasively in favor of commission action at this juncture," Fise wrote in her letter to the commission.

CPSC Votes To Improve Child-Proof Packaging

The Consumer Product Safety Commission voted unanimously in June to take steps to make child-resistant packaging easier for adults to open without reducing its child-resistance.

To accomplish this goal, the commission voted to change the make-up of panels used to test child-resistant packaging under the Poison Prevention Packaging Act of 1970, replacing the current 18 to 45 year olds with adults between the ages of 50 and 70.

"The CPSC estimates that there are approximately one million calls to poison prevention centers each year, 130,000 emergency room treatments, and 50 deaths to young children from unintentional ingestions," Fise said.

"When packages are difficult to open, adults are more likely to leave the tops off, transfer the contents to non-child-resistant packages, or purchase products in non-child-resistant packages," she added. "By increasing the likelihood that adults will properly use child-resistant packaging for drugs and dangerous products, this recent action by the commission should go a long way to reduce these tragic statistics."

The rule change will cover packaging for the majority of products regulated by the Poison Prevention Packaging Act, including pharmaceuticals and most household chemicals and cleaners.

Although products that must be packaged in metal or aerosol containers are exempt, the commissioners said they would revisit that exemption in the future and in the meantime encourage manufacturers of these containers to voluntarily develop senior-friendly, child-resistant packaging.

The commission initially voted to revise the test procedure in January. In response to heavy industry pressure, however, the commission agreed to postpone publication of the final rule until after an additional public comment period.

In the wake of that comment period, during which CFA filed comments urging the agency to act quickly to implement the original rule, the commission agreed to reduce slightly the age of test panelists.

"Although we did not believe any change in the final rule was warranted, the commission is to be congratulated for maintaining the integrity of the rule," Fise said.

INVESTOR PROTECTION UPDATE:

Fields Introduces Anti-Investor Legislation

Arguing that securities laws impose excessive costs on the capital formation process, House Telecommunications and Finance Subcommittee Chairman Jack Fields (R-TX) introduced legislation in July that would seriously undermine the safety and fairness of the nation's securities markets.

"By every conceivable measure, the financial markets in this country are booming," said CFA Director of Investor Protection Barbara Roper. "There is simply no justification for a radical rewriting of the securities laws like that proposed in H.R. 2131."

Among the most harmful provisions of the bill for average investors is its proposed preemption of state securities laws, including elimination of all state authority over mutual funds and investment advisers.

"Currently, the Securities and Exchange Commission inspects investment advisers approximately once every 30 years. Now, Rep. Fields proposes to take states out of the business of policing investment advisers entirely," Roper said. "If he has his way, the industry would be left almost entirely unregulated."

Theoretically, state regulators would be permitted under H.R. 2131 to require brokers and issuers of securities to file notices with the agency and pay fees, but they would not be able to challenge the registration and they would be limited to enforcing generally weaker federal laws and standards.

"Rep. Fields has grossly exaggerated the burdens of state regulation and has entirely ignored the benefits," Roper said. "On all major securities fraud issues affecting average investors — including deceptive bank sale of mutual funds, penny stock scams, abusive limited partnership roll-ups, hidden derivatives in mutual funds touted as safe, and financial planning fraud — the states have led the way in identifying problems, bringing them to the public attention, and crafting reasonable solutions."

"At best, this bill would tie the hands of state regulators, limiting their ability to detect and deter securities fraud," she added. "At worst, it would eliminate state securities regulation altogether. After all, any state legislator looking for a way to cut the budget is going to put at the top of the hit list an agency whose only function is to enforce federal laws."

Protections for Institutional Investors Eliminated

Consumers would also be harmed by the bill's provisions to eliminate the requirement that brokers make only suitable recommendations to their institutional clients, which include pension funds, city and county funds, and insurance companies.

The bill would simultaneously eliminate existing margin requirements for institutional investors, thus allowing them to invest unlimited amounts of borrowed money.

"Encouraging institutional clients to engage in speculative investment practices and removing brokers' legal responsibility to recommend sound investments to these clients seems like a strange response to the Orange County bankruptcy," Roper said. "Instead of looking to solve that problem, this legislation would increase the likelihood of its occurring in thousands of communities around the country."

The bill contains a number of other provisions that would harm investors, by, for example, eliminating the requirement that written disclosure about initial public offerings be provided in advance of the sale, diluting the SEC's investor protection mandate, restricting public access to securities filings by requiring the agency to privatize its computerized filing system, and eliminating protections against conflicts of interest in the sale of corporate bonds.

"Rep. Fields doesn't seem to understand that our markets attract capital from throughout the world because of, and not in spite of, our system of regulation," she added. "By undermining that system of regulation, the proposals he has put forward would erode investor confidence in the fairness of our markets and thus threaten the very health of the markets he claims to promote."

SEC Seeks To Improve Mutual Fund Risk Disclosure

CFA and the American Association of Retired Persons Submitted comments to the SEC in August on the agency's concept release seeking ways to improve risk disclosure in mutual funds.

While the two organizations praised the agency for seeking to clarify mutual fund risk disclosure, they advocated a broader solution to the problem that addresses additional factors, including the poor timing and readability of key disclosures, inconsistency between disclosures and actual fund practices, and unsuitable marketing of certain funds.

"Any effort to improve investors' understanding of mutual fund risks must, in our view, address all of these factors as part of an overall reform of industry disclosure and marketing practices," the comments state.

The following are among the specific reforms advocated by CFA and AARP: requiring disclosure of key risk information in plain English in advance of the sale; requiring better descriptions of investment goals that more accurately reflect investment practices; using quantitative risk measures to supplement, but not supplant, improved risk descriptions; and testing various alternatives on average investors to determine which best convey the appropriate information.

"Improving investors' understanding of risks associated with mutual funds will assist them in making more appropriate investment decisions," the comments conclude. "We believe it will also benefit the mutual fund industry, the success of which has derived in no small part from the unusually high level of investor confidence it enjoys."

DOJ Asked To Block Proposed HMO Merger

In August, CFA, Public Citizen, and Citizen Action held a press conference to call on the Department of Justice to block the proposed merger between United HealthCare Corporation and The MetraHealth Companies.

"As consumer advocates, we are concerned that health care conglomerates, such as the one created by the proposed merger of United and MetraHealth, will lead to rationing of care, higher costs for patients, and a decline in health care quality, while yielding greater corporate profits and less competition," explained CFA Chairman Senator Howard Metzenbaum.

The company created by the merger between MetraHealth and United would be the nation's largest provider of health care services, with annual revenues of more than $8 billion and more than 40 million enrollees. At the press conference, the three national consumer groups released a letter to Antitrust Division Assistant Attorney General Anna K. Bingaman asking the DOJ "to examine carefully whether this merger will have an anti-competitive impact on health care delivery."

The groups cited evidence that increasing concentration in the health care industry has already led to profiteering at the expense of consumers' health care. For example, recently published reports have indicated that HMOs have overhead and profits between 18 percent and 25 percent of total revenues, far higher even than the 14 percent average for traditional insurance plans and the 2.1 percent for Medicare. Furthermore, four of the industry's largest companies had each amassed more than $1 billion in "cash in hand" at the end of 1994. Similarly, compensation for managed care executives has escalated dramatically, with some earning as much as $14 million to $20 million annually.

"These figures illustrate the dangers of increasing economic concentration," Metzenbaum said. "Without competition, corporate raiders can plunder the till of health care funds while consumers and health care providers will find they have no leverage. Without standards holding these plans accountable, health care conglomerates can cut costs by denying necessary care, designing marketing plans to enroll only healthy patients, or requiring doctors, nurses, and hospitals to provide bargain basement health care on a cost-only oriented basis."

The groups concluded by urging "the Antitrust Division of the Justice Department to put a halt to this trend before the 'horse is out of the barn.' "

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