



Information Superhighway Must Be Affordable

Sixty years after enactment of the Communications Act of 1934, Congress and the administration appear poised to rewrite that law to bring about a new "information superhighway" capable of carrying high speed data and high quality video transmissions.

As they advance their proposals, it is essential that policy makers consider the needs of all consumers, warned CFA, the American Association of Retired Persons (AARP), and the National Association of State Utility Consumer Advocates (NASUCA) at a January news conference.

"If the goal of this superhighway is to create a system that expands communications services, then it must be accessible to all Americans," said CFA Legislative Counsel Bradley Stillman. "For the information age to be truly universal, the commitment to affordable pricing established in 1934 must be reaffirmed in 1994."

At the news conference, CFA and NASUCA released a White Paper, *Providing Universal Service and Protecting Consumer Rights in the Information Age*, which lays out a policy framework for bringing the information age to all Americans at affordable rates.

In addition, CFA and AARP released a statement presenting a series of specific regulatory principles which reflect the goals of the CFA/NASUCA White Paper.

Universality Principles for the Information Age Outlined

Both documents call for:

- affordable rates through a commitment to just and reasonable pricing of services;
- declining prices as network costs decline;
- a guarantee that every American will be able to connect to information age technologies;
- reductions in the price for basic telephone service as use of the network increases;
- relaxation of regulatory and judicial restrictions only after a significant number of consumers choose an alternative local telephone company; and
- continued regulatory authority to protect consumers from excessive profits, increased basic service prices, risks from competitive ventures, marketing abuses, and invasion of privacy.

Affordability Key To Universality

"Affordability based on just and reasonable rates must be the first goal of national communications policy," the CFA/NASUCA white paper states. Affordability can only be assured, it adds, "by

creating a direct link between the expansion of utilization of the network — the growth of information, data, and video services — and declining costs for basic service."

Furthermore, what is considered basic service will evolve over time in response to changes in consumer demand and to decisions by policy makers, but that evolution must be linked to affordability and network efficiency, the document warns.



"As long as technological capabilities add true value to basic service, by improving network efficiency and increasing the services that consumers demand, then an ever expanding concept of basic service will be compatible with the goal of increasingly affordable service," the document notes. "At a minimum, expanding the concept of basic service must not raise the price of basic service; in fact, it must be reasonably likely that it will lower the price of basic service by lowering costs or increasing revenue."

Competition Must Precede Deregulation

"Moving from the current situation, where nearly all telecommunications go through the local monopoly exchange system, to one where all telecommunications services are competitive, will be extremely difficult to achieve," Stillman said.

Until effective competition exists, he said, policy makers and regulators will need to promote competition by: ensuring an open network in which all networks are connected and competitors to local phone companies are able to pick and choose from essential network features at fair prices; eliminating other advantages local phone companies have as a result of their monopoly position; and continuing to regulate profits and investments of monopoly telecommunications companies.

"Such regulation must not be lifted until there are many competitors capable of reaching most customers, and a substantial percentage of customers have switched to competitive providers of service," he said.

"The successful transition to this new

environment will require that both state and federal regulators have sufficient authority and resources to accomplish the task," Stillman added.

At a minimum, he said, those regulators will need: clear authority to examine books and records of all relevant parties to financial transactions; clear authority to impose penalties for anti-consumer and anti-competitive activities; increased funding;

and expert analyses and comments from adequately funded consumer advocates at all levels of regulation.

Regulators must make certain that "rates charged for monopoly services yield only reasonable profits, and investments made by companies profiting from the superhighway provide direct economic benefits to network subscribers," Stillman concluded.

Strong Telecom Bill Introduced In Senate

A powerful, bipartisan group of senators introduced legislation in February to overhaul the nation's communications laws which, while imperfect, is a substantial step in the right direction.

S. 1822, the "Communications Act of 1994," was introduced by Senate Commerce Committee Chairman Ernest F. Hollings (D-SC), ranking Republican member of the committee Sen. John C. Danforth (R-MO), Sen. Daniel K. Inouye (D-HI), and nine other senators.

Like H.R. 3636, introduced by Reps. Edward J. Markey (D-MA) and Jack Fields (R-TX), the Senate bill would open the way to competition between key sectors of the communications industry, primarily cable operators and local telephone companies. Like H.R. 3626, introduced by Reps. John D. Dingell (D-MI) and Jack Brooks (D-TX), it would set conditions for allowing the Bell companies into previously restricted areas of long distance service, equipment manufacturing, and information services.

Senate Bill Would Protect Universal Service

Unlike those bills, however, S. 1822 "takes a major step toward guaranteeing universal service in the information age and protecting basic telephone consumers from increased telephone bills as this nation builds its information superhighways," wrote CFA Legislative Counsel Bradley Stillman in a letter to senate cosponsors.

A key difference is that the Senate bill requires the Federal Communications Commission and state regulators to ensure that all citizens have access to "high quality telephone service."

Under the bill, all communications carriers would have to contribute to a fund to preserve and enhance universal service, and competitive services would bear a reasonable share of joint and common costs of the network.

The legal and regulatory barriers to competition would be lowered only after mechanisms to protect universal service are established.

In his letter to Senate cosponsors, Stillman praised the senators for making it clear "that you believe monopoly ratepayer dollars should not be used to finance Bell company entry into the information age and ratepayers should benefit from expanding traffic on the superhighway."

Senate Bill Balances Federal, State Roles

Stillman also praised the Senate bill for creating "an appropriate balance between the roles of state and federal authorities. This legislation allows the states, who understand their local markets best, to play the primary role in defining universal service, creating a mechanism to pay for it, and determining when competition has, indeed, arrived," he wrote.

State actions in these areas, however, would have to conform to federal guidelines.

The Senate bill also contains protections to ensure that allowing cable and telephone companies into each other's businesses results in competition rather than massive buyouts.

Telephone companies would be allowed to offer cable services in their own market areas, but they would not be allowed to buy out existing cable companies. Cable operators, in turn, would be required to open their networks to competitors as a precondition of offering telephone service.

Despite these strengths, S. 1822 will need substantial amendments before it can "provide maximum consumer protections and promote the most vibrant competition," Stillman wrote.

For example, the bill gives inadequate authority to the Justice Department, he said. "The Justice Department should play an equal role to the FCC in determining when local exchange carriers may enter new markets where there is a potential threat to consumers or competition," he said.

Secondly, although the bill contains a good entry test for telephone company

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Gillis To Be Today Show Regular

Public Affairs Director Jack Gillis, who has been a frequent guest on NBC's *Today Show* for the past thirteen years, has officially been made a regular on the show.

As CFA's consumer correspondent to this morning program, Gillis will provide the public with safety and money-saving information.

"Products and services have become so technologically sophisticated that never before has there been a greater need for consumer information," he said. "As evidenced by many CFA member groups, consumers are crying out for help."

"This new relationship with the *Today Show* will offer CFA member groups a chance for greater visibility, as well as broader access to millions of Americans," he said. "Even more important, it will enable CFA to get the results of its members' work into the hands of those who really need it."

The first of Gillis's regular appearances — which discussed the merits and draw



CFA's Director of Public Affairs Jack Gillis has begun shooting regular segments for NBC's *Today Show*.

backs of shopping at membership warehouses — aired February 8.

In future segments, scheduled to air every three weeks, Gillis plans to discuss

recall information, "because it is clear that many consumers never find out about potentially dangerous products and subsequently suffer serious injury," he said.

He will also take a look at how the government crash tests cars.

Before beginning the new segments, Gillis helped the show to kick off its "Today's Consumer Week" during the week of December 13.

In the first show in the week-long series, Gillis announced five dangerous products that had just been recalled by the Consumer Product Safety Commission. Other segments covered seasonal safety tips, buying cellular phones and pagers, shopping for safe and educational toys, and picking popular gifts for teenagers.

To complement the segments, the *Today Show* offered viewers a newsletter prepared by Gillis and filled with information he had discussed on air. The response was strong, with more than 6,000 viewers writing in for the newsletter.

As a result, the show's executive producer, Steve Friedman, decided to make Gillis a regular on the show and take advantage of CFA's broad range of expertise in the process.

Federal Insurance Fraud Laws Needed

Citing ten of the most damaging insurance fraud cases, a coalition of consumer groups, government organizations, and insurance companies called for federal and state initiatives to combat the costly and growing national problem.

"The federal government must address insurance fraud that leaves insurers insolvent and consumers with unpaid claims," said CFA Executive Director Stephen Brobeck, who co-chairs the Coalition Against Insurance Fraud.

"Congress should approve legislation to criminalize the looting and plundering of an insurance company from within," he said. "Additionally, federal statutes should deal swiftly with those who escape detection by providing false financial information to insurance regulators."

The coalition also called on states to beef up their fraud fighting capabilities. States should pass laws to automatically suspend the licenses of doctors, lawyers, and others convicted of insurance fraud, and insurers should be required to incorporate anti-fraud practices in their business operations.

The coalition made its recommendations in January in association with its release of its annual list of top fraud cases. The following are the coalition's "Top Ten Insurance Fraud Cases in 1993."

1) Alan Teale, a British citizen based in Atlanta, used a variety of insurance and reinsurance operations to take in \$72 million in premiums for health, disability, and business insurance from 5,500 policyholders, then refused to pay out claims.

2) Norman Bramson, of Columbia, Maryland, built a complex web of nearly 50 insurance companies and sold bogus medical malpractice insurance to hundreds of physicians.

3) Michael and David Smushkevick, two brothers who operated hundreds of medical clinics and mobile labs in Southern California, offered free physicals to lure patients, then billed insurers thousands of dollars per patient for serious medical problems. Their scams are thought to have bilked up to \$1 billion from the insurance system.

4) National Medical Enterprises, which is based in Santa Monica, California and is one of the nation's largest hospital chains, has been charged with admitting thousands of patients to its psychiatric hospitals who did not need hospitalization, then treating them at inflated prices.

5) A network of 100 people in the New York City area led by free-lance insurance adjusters conspired to bilk insurance companies out of hundreds of millions of dollars through inflated claims and staged accidents involving commercial insurance.

6) The Kallao family, a roving band of criminals from Las Vegas, staged a variety of "slip and fall" and auto accidents in Illinois, Wisconsin, and Ohio. Eight members of the family have admitted to collecting \$1 million in bogus claims.

7) New Jersey "ghostriders" got caught in a three-year sting by fraud investigators who staged bus accidents and watched people hop on and claim injuries. The 107 defendants in the case include the alleged bus passengers as well as medical providers and attorneys.

8) First Assurance & Casualty Co., Ltd., an unlicensed insurance company that sold insurance to small businesses in inner-city Los Angeles, failed to pay following the L.A. riots.

9) Rubell Helm Insurance Services Inc., a California firm, collected millions of dollars from small businesses to set up "self-funded" health insurance programs, but siphoned the money off into personal accounts, leaving \$10 million in unpaid claims.

10) Gaven M. Cooke boasted on a television talk show program that he had used more than 24 aliases and staged more than 200 fake accidents throughout the country during his 20-year insurance fraud career. He was arrested in Colorado.

The Coalition Against Insurance Fraud, which is composed of 20 national consumer, government, and insurer groups, was launched in July, 1993 to combat all forms of insurance fraud through public advocacy and consumer education.

Mutual Bank Conversions Scrutinized

Since passage of the savings and loan reform act in 1989, mutual thrift executives have found a new way to reap insider profits at the expense of depositors by converting to stock-owned financial institutions.

Typically, management begins by swapping its federal savings and loan charter for a state charter. Then, under liberal state rules, "the Board of Directors expropriates the built-up equity of the mutual association in a stock offering or advertises their availability to be bought out, i.e., paid off, by an acquiring institution," said CFA Banking Director Chris Lewis in January testimony before the House Financial Institutions Subcommittee.

In January, the Office of Thrift Supervision imposed a moratorium on merger conversions, but the Federal Deposit Insurance Corporation and states have failed to join in that action.

Lewis called on Congress to enact "across the board safeguards that will protect the depositors . . . and prevent unfair, unearned windfalls from lining the pockets of the insiders."

H.R. 3615, the "Mutual Bank Conversion Act," "takes an important first step" in that direction and should be passed, he said, "but, in its current form, it is not enough."

The bill would provide for parity between federal and state rules governing the conversion of mutual associations. "This would end the perverse incentives currently at play in the marketplace for management to compromise their fiduciary obligations to mutual depositors," he said.

Legislation is also needed to "correct the weakness in current federal conversion rules," he said. For a start, the bill should be amended "to prohibit any preference for insiders in a mutual conversion."

In addition, the bill should include a prohibition on the exercise of general proxies for any conversion, he said. "A conversion is a death sentence for a mutual, and every precaution should be taken to make certain that members willingly agree to shoot their own horse."

Finally, the bill should require a thorough General Accounting Office audit of the conversion process, he said.

"While the conversion issue may not be the biggest regulatory problem to come before this committee, it is clearly a prime exhibit for those pushing for a rational consolidation and coordination of regulatory policy and enforcement," he said. "Congress needs to clean up this mess now."



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CFAnews is published eight times a year. Annual subscription rate is \$25 per year.

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Design & Typeset by: Dahlman/Middour Design

Proposed Changes Could Weaken CRA

Regulations proposed by the federal banking agencies to reform enforcement of the Community Reinvestment Act do not effectively address a number of important concerns and, in a number of key areas, actually could weaken enforcement, CFA Banking Director Chris Lewis warned in January testimony before a House Banking subcommittee.

Lewis credited the regulators with making a "good faith effort" but added that, "unless the proposed regulations are significantly strengthened, they could result in less — not more — reinvestment in under-served banking markets across the country," he said.

On the positive side, the proposed regulations would:

- require larger institutions to provide geo-coded information on small business and consumer lending, giving the public important new information to use in evaluating lender performance;
- give weight to bank branches maintained in low- and moderate-income and minority neighborhoods and the offering of low-cost checking accounts and government check cashing within these facilities;
- recognize the agencies' authority to impose cease and desist orders and administrative fines for non-compliance, rather than limiting sanctions to denial of corporate applications; and
- require advance public notice of CRA examinations, giving community organiza-

tions and other members of the public an opportunity to assemble their concerns about lending practices and make this material available to the examiners.

Clarifications Needed

Despite these strengths, several areas of the rule need clarification, Lewis noted.

For example, central to the new evaluations will be the so-called "market-share test," which requires that a bank's market share in low- and moderate-income communities be roughly comparable to its market share in more affluent communities.

"While this approach has potential merit in assessing whether or not lenders are treating all areas within their local markets fairly, . . . its workability needs to be examined very closely and the regulators and the Congress need to determine whether this test should be the central item in a CRA evaluation," he said.

There have been suggestions, he added, that bank regulators do not plan to verify new reported data on commercial and consumer lending. "If this is the case, we will have much of the CRA evaluation and rating based on 'self-certifications' by the banks," despite the fact that in-house numbers have often proved faulty in the past, he said.

Also, in drafting the new regulations, the agencies wiped out the current twelve CRA assessment factors that have guided

CRA examiners since the act was adopted. Among the items dropped were requirements for examiners to evaluate: 1) the bank's efforts to ascertain the credit needs of its community, including its efforts to communicate with members of its community, and 2) the extent of the institution's marketing and special credit-related programs to make members of the community aware of the credit services offered by the institution.

"We are at a loss to understand why the regulators dropped these requirements," Lewis said. "If properly and vigorously carried out, these outreach functions aid banks in learning about the banking needs of their communities and can help lure consumers away from high-priced check cashing firms, expensive money order outfits, and loan sharks — and turn these financial service consumers into profitable customers for the banks."

A Step Backward

Other aspects of the proposed rule mark "a dramatic step backward from current enforcement efforts," Lewis said. "These weaknesses are so great that, if they cannot be struck from the final rule, CFA would prefer that no change be implemented in the current CRA rule."

"The single greatest fault of the rule is its proposal to take away protections for consumers and communities at 80 percent of the nation's banks," he said. The rule would do this by offering ex-

emptions from full-scale CRA examinations to institutions with \$250 million or less in assets under certain circumstances.

This proposal is particularly inappropriate in light of the fact that almost all of the "substantial non-compliance" ratings handed out under CRA have gone to banks with assets under \$250 million, Lewis said.

"This exemption goes beyond the CRA and is clearly contrary to the intent of the Congress and is destructive to the purposes of the Act," he said. "The regulators should delete this provision, and, if they do not, the Congress should act quickly and forcibly to restore the integrity of the Act."

Another major weakness is that the new rules "place far too much emphasis on one-shot quickie investments that banks might make to a community development corporation or other non-bank entity," Lewis said. Furthermore, the proposed rule "grossly exceeds the authority of the Act in permitting a lender to buy its way out of CRA compliance by getting credit for loans made by third parties in which it has invested."

"The job of the agencies in drafting the final regulations is to make the Act effective and to ensure that banks do help meet the needs of the entire community, including low- and moderate-income neighborhoods," Lewis concluded. "The fact that law enforcement requires some paperwork should not provide an excuse for not enforcing the law."

Rules Needed For Bank Investment Sales

In response to increasing evidence that consumers believe investments sold at banks are federally insured, CFA joined with the American Association of Retired Persons and the North American Securities Administrators Association in calling on Congress to set standards to end the confusion.

"Clearly, consumers are unaware that the protections of the FDIC shield do not extend to investment products peddled in the lobbies of insured financial institutions," said CFA Banking Director Chris Lewis. "The Congress must take responsibility and move on a fast track to pass safeguards that will ensure that there can be no commingling — in practice or perception — of insured and uninsured activities of banks and thrifts."

At a January news conference, the groups outlined four principles to be used in "evaluating any congressional reform legislation designed to address the serious consumer protection problems arising from the ever-widening sale at banks of uninsured investment products.

1) Disclosure about the risks of uninsured bank products should be required to be in a form that is proven to work. This should include a concise and "simple English" document and lobby posters, they said.

"Better disclosure is needed, but better disclosure does not mean more fine print," Lewis said. "It means understandable explanations and more willingness by banks to inform consumers of the meaning and significance of those explanations."

"In view of the apparent ineffectiveness of current disclosures," the three groups said they are prepared to develop and test model disclosure documents and

other materials to determine what works.

2) Naming or advertising uninsured bank products in a way that creates confusion with insured bank products or the institutions itself should be banned.

For example, the use of the same or similar names and logos of banks and their affiliates or subsidiaries should be prohibited, they said, and some mutual funds and other uninsured investment products currently being sold at banks should be renamed in order to bring an end to existing instances of the blurring of the line between uninsured and insured bank products.

3) Gaps in the consumer protection available to bank customers buying investment products should be eliminated. "Where an individual buys an uninsured investment product should not have any impact on the extent of regulatory oversight for such a transaction," they said. "All investors in mutual funds, stocks, and annuities should be accorded the same level of consumer protection."

4) A physical separation should be required between the sale of insured and uninsured products within banks. Based on this principle, no bank should be able to sell insured and uninsured products from the same desk, window, or lobby area.

Congressional action is needed, Lewis said, because "the bank regulators have failed to take the necessary affirmative steps to end industry commingling of insured and uninsured products and curb the growing consumer confusion about the nature of risk associated with investment opportunities at banks."

"In fact, the bank regulators have yet to even place a formal rule on the books that would police the millions of dollars of consumer funds that are daily steered by banks into uninsured investments," he added.

The groups released their policy statement in conjunction with the release of an AARP-NASAA survey which found that the vast majority of American bank consumers are unaware of the risks and fees involved in the uninsured investment products, such as mutual funds and annuities, that are now increasingly available at U.S. banks and other financial institutions.

The survey found that fewer than one in five bank customers knows that mutual funds (18 percent) and annuities (14 percent) are not insured by the Federal Deposit Insurance Corporation. Only one quarter of customers at banks where stocks are sold know that these products are uninsured.

Furthermore, the survey found that people who had actually purchased mutual funds or annuities at their bank were no better informed about the risks associated with such investments than are other bank customers. In fact, they were actually more likely than other bank customers to think the FDIC program covered their investment.

"Consumers are flat out confused about the risks and fees associated with these investments sold by banks," Lewis said. "The AARP/NASAA survey results confirm that most American consumers are unaware that their life savings are at risk when they purchase uninsured investment products on the lobby floors of insured banks."

Telecom Legislation

(Continued from Page 1)

entry into long distance services and strong safeguards in the area of electronic publishing, those protections "should apply across the board to promote competition in all telecommunications markets," he wrote.

House Bills Need Strengthening

The two house bills — H.R. 3636 and H.R. 3626 — need even more substantial changes in order to provide adequate protections, CFA Research Director Mark Cooper said in February testimony before the House Telecommunications and Finance Subcommittee.

Although H.R. 3636 introduces the concept of an open platform, it "needs to require the tariffing of such services to ensure widespread availability," he said.

Furthermore, the bill's cost allocation rule for the open platform, which calls for "reasonable rates driven by proper cost allocation and efficient network utilization," should be applied to all services, not just the open platform, he said.

As for H.R. 3626, it "outlines effective structural separations for electronic publishing, but fails to give similar protections to many other segments of the information age that need those protections even more," Cooper said.

Although H.R. 3626 "requires review by the anti-trust authority and the expert agencies, it leaves serious loopholes in the standards for review that it sets and fails to give the states a role in the process," he added.

Cooper called on Congress to "establish fundamental principles to govern the information industries and apply them uniformly across all segments of those industries."

Prevention Key To Nation's Health Agenda

Releasing its annual progress and priorities report in February, the Coalition for Consumer Health and Safety called on Congress and the administration to take major health care prevention initiatives to improve the nation's public health.

"Reducing injuries and disease will dramatically reduce a financial drain on our already costly system of health care," said Coalition Coordinator Diana Neidle.

The report, "Consumer Health and Safety: Progress and Priorities for Congress and the Federal Agencies in 1994," summarizes the progress made in 1993 toward reducing the tragic toll taken by disease and injury in seven issue areas: motor vehicle safety, home and product safety, indoor air quality, food safety and nutrition, tobacco use, alcohol consumption, and AIDS.

In addition, the report outlines the coalition's priority agenda for Congress and the administration during 1994 in those same seven issue areas.

"This list of proposed injury and disease prevention initiatives should be at the top of the nation's agenda — right up there with health care reform," said CFA Executive Director Stephen Brobeck, who chairs the coalition of 38 consumer, health, and insurer groups.

"These initiatives will prevent injuries and improve the health of all American and therefore should be a first step in reducing their health care costs," he added.

Priorities for 1994 Action

"In some cases, coalition priorities focus on enacting new protections. In other cases, the priority is to hold on to past gains," Neidle said.

The following are among the coalition's top priorities for action in 1994.

Congress should turn aside ongoing efforts to weaken both the federal program



which encourages states to enact safety belt and motorcycle helmet use laws and the Federal Highway Administration rule banning radar detectors in commercial motor vehicles.

Congress should give final approval to, and the president should sign, legislation on toy labeling, bike helmet standards, and five-gallon buckets which passed the House and Senate in 1993.

The U.S. Department of Agriculture should require that all federally funded school meals meet the federal "Dietary Guidelines," are appetizing, and contain sufficient calories. Congress should pass legislation requiring that all health claims and terms, such as "low fat," used in food

advertisements meet the same standards set by the Food and Drug Administration and USDA for food labels.

Congress should limit youth access to all tobacco, including smokeless tobacco. It should also pass legislation to ban smoking in all federal buildings and in all facilities housing federally funded children's programs.

Congress should pass legislation requir-

ing a final rule to prohibit the use of radar detectors in commercial vehicles.

The House and Senate both passed legislation to require the Consumer Product Safety Commission to issue a toy labeling rule and develop a mandatory standard for bicycle helmets. The Senate legislation included requirements to prevent infant drownings in five-gallon buckets.

The Food and Drug Administration issued final labeling regulations for dietary supplements which hold their labels to standards comparable to those required for food products.

Smoking has been banned or substantially restricted in the White House, the House of Representatives, and three federal agencies. Legislation to ban smoking both in federal buildings and in facilities housing federally funded children's programs has advanced in both the House and Senate.

Both houses of Congress introduced legislation to require rotating health and safety messages in alcohol advertising. The Senate Commerce Committee held a hearing on the bill.

Congress significantly increased funding for AIDS prevention, care and research. In addition, the first White House AIDS Policy Coordinator was appointed.

"These 1993 accomplishments provide a substantial base on which to build this year," Neidle said.

Copies of the report are available for \$10, paid in advance, from CFA, 1424 16th St., N.W., Washington, D.C. 20036. The report is free to members of the press.

Rule Would Undermine Investor Arbitration

A rule regarding pre-hearing offers of awards in arbitration, which was proposed by the National Association of Securities Dealers, would further erode the already limited ability of defrauded investors to receive fair redress of their losses, according to comments submitted by CFA and the American Association of Retired Persons to the Securities and Exchange Commission. The groups urged the commission to disapprove the rule change in its entirety.

Under the rule, investors who refused a settlement offer would be liable to pay the defendant's attorney's fees and costs if they later won less in arbitration. The rule would be triggered when claims exceed \$250,000, and it would apply even when the investors proved fraud and prevailed in arbitration. The rule is particularly unfair "in light of the limited discovery available in arbitration and the highly unpredictable nature of arbitration awards," the groups stated in their comments. Furthermore, because the \$250,000 trigger applies to total damages rather than to compensatory damages, the rule would have the effect of discouraging investors from filing for punitive damages that would push their claim above the threshold.

The stated purpose of the proposed rule change is to "encourage all parties to evaluate and resolve cases in a timely and reasonable manner." However, it would achieve its goal by "intimidating defrauded investors into accepting unreasonably low settlement offers because of the threat that they might have to pay the defendant's potentially exorbitant attorney's fees if they refuse," the groups added.

The groups suggested several steps the NASD could take, if it is "sincere in its wish to speed the resolution of arbitration cases in a manner that is fair to investors and that promotes the public interest. These include: requiring that its members permit clients to take their claims to an independent arbitration forum; appointing at least one arbitrator as soon as the case is filed to resolve any discovery or other disputes as they arise; requiring, in any case where fraud is proved, that the broker pay all attorneys fees and other costs; and more actively enforcing its own rules of fair practice "to prevent the abuses that lead to these claims in the first place."

"Since the mid-1980s, the securities industry has all but shut injured investors out of court," said CFA Director of Investor Protection Barbara Roper. "This rule is designed to shut those same investors out of arbitration by further tilting the system against them and intimidating them into accepting unfair settlement offers."

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