**SnapShot**

**Barbara Roper,** 50, Pueblo, Colo.-based director of investor protection with the Consumer Federation of America of Washington since 1995

**Career:** 1986-95, held CFA posts of legislative representative, consumer health and safety coordinator, and editor of CFA News; 1986, volunteer and board member of the Denver Food Bank Coalition; 1980-83, public-information officer at Colorado College at Colorado Springs; 1978-80, reporter for the now-defunct Colorado Springs Sun

**Education:** bachelor of arts degree in art history from Princeton (N.J.) University, 1977

# With Barbara Roper of the Consumer Federation of America

**By Dan Jamieson**
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For years, investors have had no lobbying group to speak out for them, but Barbara Roper and the Consumer Federation of America, where she serves as director of investment protection, have helped change that.

She and the CFA, based in Washington, have filed comment letters, written policy statements and produced studies on a number of investor-related issues. Ms. Roper, 50, has testified before Congress about proposals leading to the Sarbanes-Oxley Act and mutual fund reform bills.

At industry events and policy panels, she is a familiar face. And for reporters, Ms. Roper is the acknowledged spokeswoman for investor interests.

"Barb and the CFA have been one of most effective, if not the most effective, investor advocates," said Mercer Bullard, founder of Fund Democracy Inc. in Oxford, Miss., who is an assistant professor at the University of Mississippi School of Law there. By working with Congress to exert pressure, Ms. Roper "played a significant role in prompting the [Securities and Exchange Commission] to propose a number of rules in the wake of the mutual fund scandals," he said.

Added SEC member Cynthia Glassman: "I find [Ms. Roper's] perspective and that of the CFA very helpful in informing my decisions on policy initiatives."

**Q.** *What is on the CFA's agenda?*

**A.**The two issues we're primarily focused on are the broker-dealer exemption from the [Investment] Advisers Act [of 1940] - the so-called Merrill Lynch rule - and the implementation of Sarbanes-Oxley, and its Section 404 in particular, which deals with internal controls.

**Q.** *Why is the Merrill Lynch rule still a major issue with you?*

**A.**The Investment Advisers Act grants exemptions to brokers who limit their advice to being solely incidental to their primary business [of transacting securities] as long as they don't charge for that advice. But the SEC has never interpreted or enforced the "solely incidental" provisions of the act, even though, clearly, the primary basis [of the exemption] was the "solely incidental" provision.

We needed the SEC to define what "solely incidental" was, but they continued to rely on the method of compensation to draw this line between giving advice and brokerage. [In the first rule proposal in 1999], they didn't do it. [In a revamped rule ultimately approved by the SEC in April 2005], the SEC rightly concluded that the nature of the service should be the primary criterion distinguishing brokers from advisers.

Unfortunately, the SEC didn't follow through. What it did [in a December 2005 interpretation] was weaken the rule so that the "solely incidental" part of the law is meaningless. They said, "All you have to do is leave out some component of a financial plan, like taxes or estate planning, and brokers can then provide all the investment advice they want."

It was [a] major disappointment. At every step, the SEC has shown more concern for protecting the broker-dealer business model than protecting the investor.

**Q.** *Do you want the entire full-service-brokerage industry to be covered under the act?*

A. If the "solely incidental" provision is interpreted strictly, you would sweep in a major portion of what full-service brokers do, and that's clearly in investors' interests. The fundamental industry concern here is that brokerage firms do not want to adopt fiduciary status and do not want to disclose all their conflicts to their customers.

The appropriate standard is fiduciary duty. But even if we lose on that issue, [the CFA is] open to doing it a number of ways - for example, importing fiduciary duty into rules of broker-dealers and importing adviser disclosure obligations into brokerage rules.

**Q.** *What about Sarbanes-Oxley concerns you?*

**A.** [Former SEC Chairman William H.] Donaldson set up this advisory committee on small public companies with the specific charge to look at Section 404, which covers internal controls, and how it impacts small public companies.

There's a legitimate issue there, where a one-size-fits-all approach can have a disproportionate cost for small companies. What's happened is, the process has been hijacked by those who opposed that part of the legislation and would now like to get rid of it. The committee report should be out any day now, [but in an exposure draft], it didn't really give serious attention to

how to make that section work.

Instead, the committee proposed to eliminate it [for small companies], including that chief executives and chief financial officers certify the adequacy [of internal controls] and eliminate the testing. That would eliminate about 80% of public companies.

Two things are troubling about this. First, that you would even entertain this proposal to create two standards for public companies - these small companies are most likely to have troubles. The second thing is that we have this advisory committee to the SEC from which investors were essentially excluded.

When the SEC set this up, they said it would have broad participation, but it had no institutional investors and no individual investors. The CFA Centre [for Financial Market Integrity in New York] was included, fortunately, but its representative [executive director], Kurt Schacht, dissented. It is hardly surprising its recommendations don't give any consideration for investors. I'd like to say that's the exception, but it's not.

**Q.** *Are investors still being overlooked?*

**A.** Yes. On the mutual fund committees, including the omnibus account task force, the mutual fund task force: mutual fund distribution, and the joint NASD/industry task force on break points, there was no meaningful investor representation, let alone balanced representation. The only [committee] I can think of where an effort was made to include investors was the standing advisory group at the [Public Company Accounting Oversight Board in Washington].

**Q.** *Investors don't have much of a lobby?*

**A.** We're it, and there's Mercer [Bullard], and [Washington-based] AARP appears to be getting more involved on these issues. Consumer's Union [in Yonkers, N.Y.] has scaled up. They took over the Restore the Trust [corporate-governance group].

**Q.** *Why aren't investor groups more prominent?*

**A.** The consumer movement has its roots in community organizers who have focused on issues of low-income people. Even today, the philosophic bent of people who founded the consumer movement is on low-income and moderate-income people. There is still not the focus on investor protection issues as there is on auto safety or telecommunications policy. I think that's unfortunate.

**Q.** *Do you have access to policymakers?*

**A.** It depends. [SEC Chairman Christopher] Cox called me not too long ago. I'd say we have

good access to the SEC commissioners. Glassman is extremely accessible and active in soliciting our views. I thought very highly of Donaldson, but he always dealt with us through staff.

The real question is, are you able to influence policy? That is a very different issue than access. Certainly, we have more influence now than when we started this, but I wouldn't want to overstate our influence. [With the Merrill Lynch rule], apparently, now we can't get [the SEC] staff to implement it. That's one of the areas where industry has a huge advantage. They have close day-to-day relations with staff. Many in the SEC come from industry and return to industry.

**Q.** *Is soft dollars another issue you think has been mishandled?*

**A.** With soft dollars, the recommendations of the [agencywide task force on soft dollars, released for comment in October,] were really appalling. The outcome was basically that maybe there should be better disclosure.

One reason we got this [soft-dollar] safe harbor was, when we deregulated commission [transactions in 1975], it was to give the industry a chance to adjust. Well, it's 30 years later. We've adjusted. There's been some pullback on some of the more egregious [soft-dollar] practices, but the release doesn't even get us back to where we were when soft dollars began.