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Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090

Re: File No. 4-606

Dear Ms. Murphy:

The Insured Retirement Institute appreciates the opportunity to provide comments in response to the Securities and Exchange Commission's ("Commission's") request for public comment on the Study Regarding Obligations of Broker Dealers and Investment Advisers ("Study") required by section 913 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the "Dodd-Frank Act").

The Insured Retirement Institute (IRI) is dedicated to the growth and better understanding of guaranteed lifetime income products. IRI represents all segments of the annuity, insured retirement products and retirement planning industries with over 300 member organizations, including insurance companies representing over 85% of the market, distribution firms, including broker-dealers and banks, investment management firms, and industry service providers. IRI's mission is to promote consumer confidence in the value and viability of insured retirement strategies by: supporting and encouraging industry adherence to high ethical principles; promoting better understanding of the insured retirement value proposition; developing and promoting best-practice standards to improve value delivery; and advocating before public policy makers on critical issues affecting insured retirement strategies.

Study Focus and Methodology

IRI members support the Commission's consideration of the establishment of a harmonized standard of care for investment advisers and broker-dealers when providing personalized investment advice about securities to retail customers. We believe the Study provides an excellent

opportunity for a comprehensive review of the effectiveness of existing legal and regulatory standards of care for broker-dealers and investment advisers.

A number of experts have criticized the current regulatory framework because the standard that is applied depends on the regulatory status of the financial professional providing the investment advice without regard to the specific relationship or type of advice that is being offered. We believe that retail customers with comparable needs are entitled to the same general protections when receiving comparable investment services. However, we believe it is important that the Commission does not place unnecessary restrictions on financial professionals' ability to conduct business and address the needs of their customers. We urge the Commission to conduct the Study with a recognition of and focus on the distinction between harmonization and a "one-size-fits-all" approach. We also urge the Commission to take into account the diversity of business models, distribution channels, and consumer segments, which are served by different financial services companies and financial advisers that help American investors, at different asset levels and life stages, throughout the country, from small town, Main Street America to large metropolitan areas.

At the onset of the Study, we encourage the Commission to conduct a rigorous analysis of each of the issues specifically included in Section 913 of the Dodd-Frank Act. As a part of that analysis, it is critical that the Commission evaluate the consequences of potential changes to the current system. The Study should consider whether the possible changes would:

- enhance investor protection;
- preserve consumer choice in products and services; and
- preserve consumer access to products and services.

As the Commission is aware, life insurers, broker-dealers, and financial advisers offering or advising on variable insurance products are currently subject to an extensive regulation by the state insurance departments, the Financial Industry Regulatory Authority (FINRA) and the Commission. As the Commission performs its work on the Study, it is very important to take into account the comprehensive and rigorous regulatory requirements governing the work of financial professionals who offer variable insurance products to their clients. State insurance regulators have instituted a number of requirements that financial professionals must follow in making recommendations to clients, including disclosure and suitability requirements. During the sale of variable insurance products, financial advisers are also subject to all of the Commission's and FINRA's existing applicable regulations. We urge you to perform a thorough and thoughtful analysis of the current regulatory regime in order to identify areas where the rules applicable to broker-dealers and investment advisers are insufficiently effective, duplicative, unclear and/or inconsistent, and seek ways to address these disparities. In doing so, it is imperative that the Commission consider any potential adverse impact that rule changes might have on the ability of our customers to obtain, and the industry to provide, a wide variety of products and services that are tailored to our customers' needs.

Enhanced Disclosure

One of the most essential questions that must be considered by the Study is whether, under the current regime, disclosures to consumers are informative or confusing. The Commission should determine whether customers are adequately informed as to the duties and obligations that are owed to them by their financial professional. We believe that consumers should be entitled to clear, plain, simple and short disclosures that describe their relationship with the financial professional, any potential conflicts of interest, and the products and services that are being offered. The Study is an opportunity to identify how the current disclosure regime can be improved as well as what is working and should be retained. The Study should seek to identify ways to streamline and clarify disclosure requirements, as well as opportunities to use technological advancements to provide options for financial professionals to best reach their customers with materials that are easily accessed and understood by the average investor. We believe that much of the reported confusion that investors face can be addressed by providing them with a clear and concise explanation of the terms of the financial professional's relationship with the retail customer. This might well be accomplished in a layered format that allows consumers to access information through both old and new media, including websites. We believe that a layered format can be particularly helpful in assuring that investors actually receive and review disclosures of potential conflicts of interest.¹

The Commission should also take into account how financial professionals currently disclose compensation received for the sale of securities and for services associated with those sales. Currently, compensation practices vary widely. Each of these practices should be studied and considered. The Dodd-Frank Act makes clear that Congress understood the need for commission-based compensation practices, stating that: "the receipt of compensation based on commission or other standard compensation for the sale of securities shall not, in and of itself, be considered a violation of such standard applied to a broker or dealer." The Commission should follow this clear direction from Congress to preserve the freedom to establish reasonable and appropriate compensation practices. Rather than seeking to limit how financial professionals are compensated, the Commission should focus on ensuring that customers are provided with adequate disclosure to enable them to make informed decisions when choosing a financial professional. Compensation is only one factor, the importance of which will vary from one customer to another. For example, in many cases, the asset-based fees that investment advisers commonly charge to their clients might not be the best fit for certain brokerage customers. Restricting compensation practices could result in a large number of retail customers being denied access to the full range of important financial services that are currently available through alternative fee arrangements. It is important to

¹ An example of a circumstance where layered disclosure has already worked is the Mutual Fund Summary Prospectus. Mutual fund prospectuses had, over the years, become lengthy and cumbersome disclosures designed to protect funds from liability and crowded out disclosures that are of real use to investors. Under the layered approach, the Summary Prospectus may be provided to investors before the sale, under the 33 Act. Investors who desire additional information can get a full prospectus and SAI on the fund's website. The IRI has submitted to the SEC a proposal for a variable annuity summary prospectus rule and Chairman Schapiro has publically voiced support for developing such a rule. This approach has proven particularly helpful in ensuring that investors actually receive and review disclosures of potential conflicts of interest in the products context and we believe a similar approach to point of contact disclosure by broker-dealers and investment advisors would be appropriate.

preserve a retail customer's choice in how they want to pay for the financial services they receive as well as the type of product they wish to purchase.

We believe the best way to accomplish these goals is to require disclosure of the ways in which the financial professional is compensated and the effects and conflicts that such compensation structures may create. We recommend a similar approach that was chosen by the Commission for new Form ADV, Part 2. Such a system would be most useful to customers and would also provide much needed clarity for financial professionals.

Enhanced Choice

It is imperative that the Study take into account the varying business models, product distribution channels and customer segments both in reviewing the current system and considering any potential changes. We believe that customers value continued access to a wide range of options, from firms that offer only proprietary products (where the customer may value the certainty and ease of selecting from a limited but understood range of options and the enhanced expertise of financial professionals who are able to concentrate on a narrower universe) to firms that make available a panoply of products (where the customer may value the ability to "one-stop shop" or compare different companies' products before making a choice).

The preservation of current and beneficial business models is particularly valuable to those of our members that focus on more of a narrow product range, including some who only sell proprietary products. Early in the legislative process our members expressed concerns about the effects that a potential standard could have on their customers. Importantly, Congress recognized the value of preserving business models balanced against the need for disclosure, as the Dodd-Frank Act provides that the Commission may require such a broker-dealer to "provide notice to each retail customer and obtain the consent or acknowledgement of the customer" but states that the sale of only proprietary products or a selected suite of products will not constitute a "per se" violation of the standard. Accordingly, the Commission should focus attention on the types of disclosure that should be required when selling limited product lines while providing certainty that doing so will not violate the applicable standard as long as the customer consents after being provided adequate disclosure. Doing so will avoid the problems that would be created if a potential rule were to limit access to proprietary products. If the possibility of consumer consent is removed from the regulatory regime, broker-dealers are likely to limit the products and services that they are willing to present to their customers for fear of liability under a new standard. We believe that any standard should provide consumers the ability to consent to those practices of the firm and the financial professional with which the consumer becomes comfortable after being fully informed of any limitations on the range of products they offer.

Personalized Investment Advice

Following the Study, the Dodd-Frank Act states that the Commission may commence a rulemaking "for providing personalized investment advice about securities to retail customers." If the Study leads the Commission to conclude that a harmonized standard of care is warranted, it will be essential to set out a clear definition of "personalized investment advice". For that reason, the

Study should consider the different types of advice and information provided by financial services professionals to their customers and in some circumstances to the general public and whether different types of advice warrant the same standard of care.

Not all contacts with customers constitute “personalized investment advice”. Our members believe that a clear line must be established such that “personalized investment advice” only includes advice relating to investments that is given in the context of the specific customer’s financial portfolio and circumstances. The standard should not apply to financial needs analysis tools that do not recommend specific securities, nor should they apply to marketing materials, research, or general web-based tools. Broker-dealers should also be able to continue the practice of taking unsolicited orders for retail customers and to provide information that is not “investment advice” without becoming subject to any new standard of care. If the scope of the standard is not clearly defined, information flow could be impeded and financial professionals will be hesitant to interact with retail customers or to provide even general information that consumers can use to make their own investment decisions.

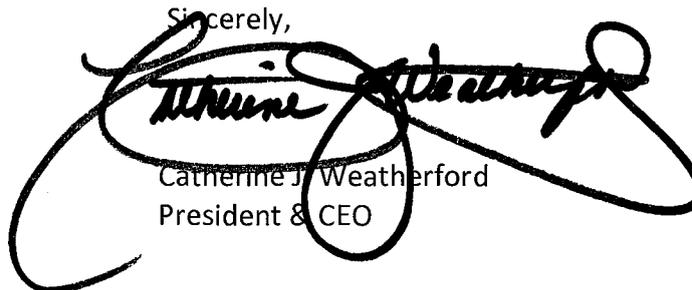
Rules-Based Approach (Clarity and Certainty)

If the Study ultimately identifies gaps in the current regulatory regime, we urge the Commission to develop a clear and well-defined harmonized standard. The Commission should use a rules-based approach rather than a principles-based standard in order to provide certainty and clarity for financial professionals and firms. A general, undefined standard of care that simply focuses on nomenclature is unworkable and would not be in the best interest of investors. Without clear rules, and a sense of how these rules align with and apply in relation to the existing regulatory regime, it would be difficult, if not impossible to build a structure to ensure compliance with any standard and consumers will be faced with uneven or inconsistent protections.

Conclusion

We appreciate the chance to present our members’ views on the Study. We believe this process presents a valuable opportunity for the SEC to take a comprehensive look at our current regulatory system and address the areas that may need to be improved. We believe through a comprehensive evaluation the Commission can move forward with measures that will improve investor protection without increasing costs or limiting investor access or choice. Please feel free to contact me, Lee Covington, General Counsel (202) 469-3002 or John Little, Vice President of Federal Affairs (202) 469-3003, if we can provide additional information or to further discuss these issues.

Sincerely,

A large, stylized handwritten signature in black ink, which appears to read "Catherine Weatherford". The signature is written over the typed name and title below it.

Catherine J. Weatherford
President & CEO

Cc: Mary L. Schapiro, Chairman
Luis A. Aguilar, Commissioner
Kathleen L. Casey, Commissioner
Troy A. Paredes, Commissioner
Elisse B. Walter, Commissioner
Robert W. Cook, Director, Division of Trading and Markets
Andrew J. Donohue, Director, Division of Investment Management