

MEMORANDUM

September 14, 2010

TO: File No. 4-606

FROM: Holly Hunter-Ceci
Division of Investment Management

RE: Section 913 of the Dodd-Frank Wall Street Reform Act of 2010 (the “Act”)

On September 14, 2010, Jennifer McHugh of the Chairman’s Office, Jim Eastman, James Brigagliano, Lourdes Gonzalez, Dan Fisher, Emily Russell, and Leila Bham of the Division of Trading and Markets, Sara ten Siethoff, Doug Scheidt, David Grim, Sara Crovitz and Holly Hunter-Ceci of the Division of Investment Management; Mavis Kelly, Harvey Persaud, and Sarah Young of the Office of Compliance Inspections and Examinations; Rich Ferlauto of the Office of Investor Education and Advocacy; and Jennifer Marietta-Westberg of the Division of Risk, Strategy and Financial Innovation met with Doria Bachenheimer, Langston Emerson, Jonathan Feigelson, Eric Jones, and Adym Rygmyr of TIAA-CREF to discuss the SEC study of the obligations and standards of care of broker-dealers and investment advisers providing personalized investment advice about securities to retail investors required by the Act. At the meeting, the TIAA-CREF representatives discussed the issues listed on the attached agenda that they provided in advance of the meeting.

Proposed Agenda:

1. There remains a significant investor need for episodic advice—e.g., advice that is point-in-time, not ongoing and transactional based.
2. Harmonizing the standards of care for broker-dealers and investment advisers should not result in the application of the Investment Advisers Act of 1940, as amended (“Advisers Act”) to broker-dealers.
3. Should the Commission consider new point-of-sale disclosure obligations for broker-dealers in connection with the Study, the Commission should permit streamlined and cost effective delivery methods that allow an “access equals delivery” approach. Disclosure and delivery requirements should be flexible so they recognize advice is not a “one size fits all” product—e.g. disclosures should be principle based.
4. The Commission should ask Congress to amend the Advisers Act to permit broker-dealers to again receive asset-based compensation when providing investment advice incidental to brokerage services. This type of compensation reduces the potential for conflicts of interest between broker-dealers and customers.