FINANCIAL PLANNING COALITION

November 8, 2013

Mr. Joseph Dear
Chairman
Investor Advisory Committee
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: Investor as Purchaser Subcommittee Recommendation on Broker-Dealer Fiduciary Duty

Dear Mr. Dear:

The Financial Planning Coalition (Coalition)[1] commends the Investor as Purchaser Subcommittee (Subcommittee) of the Securities and Exchange Commission's (SEC) Investor Advisory Committee (Advisory Committee) on the Subcommittee's important and well-reasoned recommendation to extend a fiduciary duty to broker-dealers when providing personalized investment advice. We urge the Advisory Committee to adopt the recommendation as it relates to Section 913 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act).

Need for a Uniform Fiduciary Standard

The Coalition firmly believes that a financial adviser who provides personalized investment advice to retail customers should do so under a fiduciary standard, regardless of the financial adviser's business model. To this end, the Coalition has long advocated for a principles-based application of a uniform fiduciary standard to all persons who provide personalized investment advice to retail customers. Under the current regulatory framework, however, even though investment advisers and broker-dealers are financial advisers regulated by the SEC, they operate under two different standards when giving advice to retail customers.

An investment adviser must, under the Investment Advisers Act of 1940 (Advisers Act), render services to a customer under a fiduciary standard that requires the investment adviser to place the customer's best interest above the investment adviser's. On the other hand, under the Securities Exchange Act of 1934 (Exchange Act), a broker-dealer may render services to a customer under the less-rigorous suitability standard. Under the suitability standard, a broker-dealer is only required to provide advice and products that are merely suitable for the customer. Unlike an investment adviser, a broker-dealer is not required to provide advice and products that

[1] The Financial Planning Coalition, representing about 75,000 stakeholders, is a collaboration of Certified Financial Planner Board of Standards, Inc. (CFP Board), the Financial Planning Association® (FPA®), and the National Association of Personal Financial Advisers (NAPFA), formed to advise legislators and regulators on how best to protect consumers by ensuring that financial planning services are delivered with fiduciary accountability and transparency. To learn more, please visit www.FinancialPlanningCoalition.com.

are in the best interests of the customer. This distinction persists, despite the fact that today broker-dealers can provide the same or similar financial advisory services to customers as investment advisers do, without the corresponding fiduciary duty.

SEC staff recognized the need to adopt a uniform fiduciary standard in its January 2011 study mandated under Section 913 of the Dodd-Frank Act.[2] We support the SEC staff's recommendation to adopt an over-arching fiduciary duty for investment advisers and broker-dealers if, as mandated by the Dodd-Frank Act, it is no less stringent than the existing standard under the Advisers Act. To achieve this, it is important that a uniform fiduciary duty standard, when promulgated, contain both the rules and practical guidance to clarify how the standard would apply to the broker-dealer business model.

The Path Forward

The Subcommittee first notes that there is broad consensus for adopting a uniform fiduciary rule among a wide spectrum of entities, including investor advocates, state regulators, and many industry groups and coalitions. It recommends that the SEC move forward with a rulemaking to impose a fiduciary duty on broker-dealers and offers two alternative approaches to doing so. The first approach suggests narrowing the broker-dealer exemption in the Advisers Act while "providing a safe harbor for brokers who do not engage in broader investment advisory services or hold themselves out as providing such services." Although the Coalition has long-advocated for this approach, we now support SEC rulemaking under Section 913 as the best path, under the circumstances, to achieve adoption of a uniform fiduciary rule.

After acknowledging that the SEC has begun consideration of a rulemaking under Section 913, the Subcommittee offers an alternative approach to crafting a fiduciary rule. In short, the Subcommittee recommends that such a rule "must incorporate an enforceable principles-based obligation to act in the best interests of the customer" and "be sufficiently flexible to permit the existence of certain sales-related conflicts of interest." Further, the Subcommittee recognizes that some forms of transaction-based compensation would be acceptable under a fiduciary standard and recommends that the SEC should "where appropriate, promulgate rules prohibiting or restricting certain sales practices, conflicts of interest, and compensations schemes for brokers, dealers, and investment advisers that the Commission deems contrary to the public interest and the protection of investors."

The Coalition believes that these are necessary and appropriate elements of a uniform fiduciary standard. The SEC is now reviewing public comments submitted in response to a Request for Information and Data (RFI) released earlier this year and to which the Coalition submitted a letter.[3] While the Coalition generally supports the SEC's effort to craft a uniform

[2] Section 913 required the SEC to review the effectiveness of current legal and regulatory standards of care for broker-dealers, investment advisers and their associated persons when providing personalized investment advice to retail customers. It also authorized the SEC to consider, but did not mandate that it adopt, a uniform fiduciary rule.
[3] To view the Coalition comment letter, please visit: http://www.sec.gov/comments/4-606/4606-3126.pdf.

fiduciary rule, the RFI contained a number of assumptions with which the Coalition took issue.[4] As the Subcommittee correctly points out, Section 913's language states that any fiduciary standard should be no less stringent than the existing standard under the Advisers Act.

Propositions set forth in the RFI, however, could lead to a rule that is inconsistent with the language in Section 913 of the Dodd-Frank Act. For example, the RFI fails to include key elements of a fiduciary standard, such as the obligation to act in the best interest of the customer, which could result in a standard that is less stringent than the standard that currently applies to investment advisers under the Advisers Act. The Coalition's comment letter set forth our concerns regarding the absence of this foundational element and with other assumptions in the RFI. Our comment letter makes clear that we would oppose any fiduciary rule that did not have as its core the requirement that the customer's interest be placed above that of the adviser.

As the Subcommittee also recommended, the fiduciary duty standard should be supported by guidance, where needed, to clarify how the standard and rules would apply to the broker-dealer business model. We believe that such an approach, if properly implemented, could both enhance investor protections and preserve key beneficial elements of the transaction-based broker-dealer business model. This flexibility is crucial to crafting a principles-based fiduciary rule that is compatible with the broker-dealer business model and that can accommodate, with certain mandated disclosures, certain broker-dealer sales practices.

The Subcommittee has made a thoughtful recommendation that will, if adopted, protect American investors. We, therefore, urge the Advisory Committee to accept the Subcommittee's recommendation that the SEC move forward with promulgation of a uniform fiduciary rule under Section 913 of the Dodd-Frank Act.

Respectfully submitted,

Kevin R. Keller, CAE	Lauren Schadle, CAE	Geoffrey Brown, CAE
Chief Executive Officer	Executive Director/CEO	Chief Executive Officer
CFP Board	FPA®	NAPFA

Cc: Hon. Mary Jo White
Hon. Luis Aguilar
Hon. Michael Gallagher
Hon. Kara Stein
Hon. Michael Piwowar
Mr. Norm Champ, Director, Division of Investment Management
Mr. Craig Lewis, Chief Economist and Director, Division of Economic Risk and Analysis
Mr. John Ramsay, Acting Director, Division of Trading and Markets

[4] Despite the RFI's numerous cautions that readers should not interpret the assumptions to suggest that the staff had made any determinations, the Coalition nevertheless felt it necessary to express its concern that a fiduciary rule based on the assumptions articulated in the RFI would be unacceptable.