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February 19, 2014

Via e-mail: *rule-comments@sec.gov*

Ms. Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-1090

RE: Recommendations of the Investor Advisory Committee for Broker-Dealer Fiduciary Duty (File No. 265-28)

Dear Ms. Murphy:

Wells Fargo Advisors, LLC ("WFA") appreciates the opportunity to respond to the recommendations submitted to the Securities and Exchange Commission by the Commission's Investor Advisory Committee (the "Committee") on November 22, 2013, regarding implementation of a uniform standard of care for brokers, dealers and investment advisers when providing personalized investment advice to retail clients.[1] WFA commends the Committee's continued efforts to define a uniform standard of care ("uniform fiduciary duty") for brokers, dealers and investment advisers, and offers the following comments in support of the Committee's Recommendation 1.B, regarding the adoption of a uniform fiduciary duty under Section 913(g) of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank).

WFA is a dually registered broker-dealer and investment advisor that administers approximately $1.4 trillion in client assets. It employs approximately 15,414 full-service financial advisors in branch offices in all 50 states and 3,328 licensed financial specialists in

[1] *See* http://www.sec.gov/spotlight/investor-advisory-committee-2012/fiduciary-duty-recommendation-2013.pdf. Approved by Investor Advisory Committee on November 22, 2013.

6,610 retail bank branches in 39 states.[2] WFA is a non-bank affiliate of Wells Fargo & Company ("Wells Fargo"), whose broker-dealer and asset management affiliates comprise one of the largest retail wealth management, brokerage and retirement providers in the United States. Wells Fargo and its affiliates help millions of customers of varying means and investment needs obtain the advice and guidance they need to achieve financial goals. Furthermore, Wells Fargo offers access to a full range of investment products and services retail investors need to pursue these goals.

Wells Fargo has commented twice previously[3] in support of a uniform fiduciary duty, and takes this opportunity to emphasize its position that the most appropriate means to implement a uniform fiduciary duty is via Section 913(g) of Dodd-Frank.[4] WFA believes the recommendations set forth by the Committee are helpful in developing a uniform fiduciary standard and are generally consistent with our view that such a standard should enhance protection for retail investors while preserving access to the full range of investment products and services they enjoy today.

WFA is submitting this letter because we believe the recommendation to narrow the broker-dealer exclusion from the Investment Advisers Act of 1940 ("Advisers Act"), in particular, is problematic.[5] Congress articulated a path to a uniform duty under Dodd-Frank that preserves access to a full range of investment options, advice models and pricing alternatives. Consequently, WFA supports the Committee's Recommendation 1.B to implement a uniform fiduciary duty under Section 913(g) of Dodd-Frank, in a manner consistent with Congress' stated intent.

I. The Uniform Fiduciary Duty Should Be Consistent with Congress' Intent as Set Forth in Section 913 of Dodd-Frank.

In its report, the Committee expressed that it favors developing a uniform fiduciary standard by extension of the Advisers Act, whereby it would narrow the broker-dealer exclusion. The application of the Advisers Act's guidance and precedent to broker-dealers would create

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[2] WFA is a non-bank affiliate of Wells Fargo & Company ("Wells Fargo"), a diversified financial services company providing banking, insurance, investments, mortgage, and consumer and commercial finance across the United States of America and internationally. Wells Fargo has 275,000 team members across more than 80 businesses. Wells Fargo's brokerage affiliates also include Wells Fargo Advisors Financial Network, LLC ("WFAFN") and First Clearing, LLC, which provides clearing services to 88 correspondent clients, WFA and WFAFN. For the ease of discussion, this letter will use WFA to refer to all of those brokerage operations.

[3] *See* Correspondence from Robert J. McCarthy to Elizabeth M. Murphy, dated July 5, 2013, regarding File No. 4-606; Release No. 34-69013; IA-3558; Duties of Brokers, Dealers and Investment Advisers; http://www.sec.gov/comments/4-606/4606-3127.pdf. *See* Correspondence from David M. Carroll to Elizabeth M. Murphy, dated August 30, 2010, regarding File No. 4-606 Study Regarding Obligations of Brokers, Dealers, and Investment Advisers; http://www.sec.gov/comments/4-606/4606-2592.pdf.

[4] WFA does not address every point raised by the Committee in this correspondence, as the intent of this comment is to emphasize its position that a uniform fiduciary duty should remain consistent with Section 913 of Dodd-Frank. WFA recognizes SIFMA raised additional points in its letter dated October 11, 2013, and agrees with the positions set forth therein.

[5] *See* Recommendation 1.A of the Committee's November 22, 2013, Recommendation.

regulatory and legal confusion that would render a uniform fiduciary standard unworkable, particularly in view of important distinctions between the activities performed by broker-dealers and investment advisers.[6] In fact, Congress specifically considered application of the Advisers Act but recognized such a framework is unworkable given the distinctions between the activities performed by broker-dealers and investment advisers.[7]

The manner in which the uniform fiduciary standard is implemented is critical, and must be appropriately tailored to the business model and type of activities of broker-dealers. The Securities and Exchange Act of 1934 and Financial Industry Regulatory Authority ("FINRA") regulations are focused on oversight of individual securities transactions.[8] Consequently, a broker-dealer's suitability obligations are limited to the time of a recommendation about securities. A broker-dealer is not held to an ongoing duty to monitor. Indeed, Section 913(g)(1) preserves this traditional limitation, making clear that "[n]othing in this section shall require a broker or dealer or registered representative to have a continuing duty of care or loyalty to the customer after providing personalized investment advice about securities."[9]

In contrast, under the Advisers Act, investment advisers are held to a continuing duty to monitor and adjust a client's portfolio,[10] and such duty extends to all activities in which the adviser engages for the client. This ongoing duty differs substantially in nature from the episodic broker-dealer recommendations which investors remain free to disregard.[11] As noted above, Congress was mindful of the substantial difference between the obligations under each business model and expressed a clear intent not to impose a continuing duty on broker-dealers.

Moreover, to issue rulemaking pursuant to the Advisers Act will inappropriately impose precedent and authoritative guidance that are aimed at a relationship built upon discretionary management onto a transaction-based business model. As such, guidance or interpretative

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[6] *See*, for example, SIFMA Comment Letter Re: SEC Release No. 34-69013, File No. 4-606, which provides case citations illustrating the potential for confusion, including the distinction between an investment adviser's continuing duty to supervise an investor's account versus a broker-dealer's episodic duty relating to an investment recommendation, differences between permissible principal trading activities for investment advisers and broker-dealers and conflicting standards relating to the management or avoidance of conflicts under broker-dealer and investment adviser precedents; http://www.sec.gov/comments/4-606/4606-3128.pdf. *See also*, Correspondence from Robert J. McCarthy of Wells Fargo to Elizabeth M. Murphy, dated July 5, 2013, expanding on the differences in activities in which an investment adviser and broker-dealer engage; http://www.sec.gov/comments/4-606/4606-3127.pdf.

[7] *See* Correspondence from Barney Frank, then-Ranking Member of the United States House of Representatives Financial Services Committee, to Mary Schapiro, then-SEC Chairman, dated May 31, 2011. http://media.advisorone.com/advisorone/files/ckeditor/Barney%20Frank%20Letter.pdf. (stating, "[i]f Congress intended the SEC to simply copy the [Advisers] Act and apply it to broker-dealers, it would have simply repealed the broker-dealer exemption – an approach Congress considered but rejected.")

[8] Section 3(a)(4)(A) of the 34 Act defines "broker" as "any person engaged in the business of effecting transactions in securities for the accounts of others."

[9] Dodd-Frank, § 913(g)(1).

[10] *SEC v. Capital Gains Research Bureau*, 375 U.S. 180, 187 (1963) (advisers' function is to "furnish[] to clients on a personal basis competent, unbiased, and continuous advice regarding the sound management of their investments….")

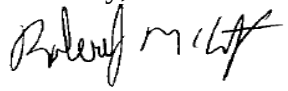
[11] Lemke, Thomas P., & Lins, Gerald T. Regulation of Financial Planners, § 3:12 at 3-38 (West 2012).

materials may be inapplicable to broker-dealers and will cause confusion over implementation of the standard. WFA therefore strongly urges the SEC to refrain from extending Advisers Act guidance, rules and legal precedent to broker-dealer activities under a uniform standard of care.

Conclusion

WFA believes establishing a uniform fiduciary duty pursuant to the Congressional grant under Section 913 of Dodd-Frank is the appropriate course for achieving investor protection through a uniform fiduciary duty. WFA appreciates the opportunity to share its opinions regarding a uniform fiduciary duty. If you would like to further discuss this matter, please do not hesitate to contact me.

Sincerely,



Robert J. McCarthy
Director of Regulatory Policy