NAILBA
www.nailba.org

August 12, 2010

Elizabeth M. Murphy, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-0609

Subject: File No. 4-606 Study Regarding Obligations of Brokers, Dealers, and Investment Advisers

To Whom It May Concern:

The National Association of Independent Life Brokerage Agencies (NAILBA) is the premiere life insurance industry organization promoting financial security and consumer choice through the use of independent brokerage distribution.

A typical NAILBA member agency is a brokerage general agency (BGA) that is independently contracted by at least three insurance companies to offer those companies' products through financial professionals such as broker-dealers and their registered representatives, who in turn sell those products to the general public. There is a network of approximately 250,000 such financial professionals and other insurance producers who do business with NAILBA's 350 member agencies, therefore NAILBA has a strong interest in the outcome of the SEC study of standards of care used by brokers, dealers and investment advisors, as mandated in Section 913 of the Wall Street Reform and Consumer Protection Act of 2010.

We respectfully request that the SEC consider the following factors in its study and subsequent ruling regarding the standards of care used by financial professionals:

- **The SEC must continue to defer to states to regulate advice and sales as it relates to insurance products.**

  Many BGAs, broker-dealers, registered representatives, and other insurance agents and producers deal primarily in the distribution of life insurance products. The SEC must take care not to involve itself in the provision of advice, sale or any other transaction as it relates to insurance products (except in the case of variable products and other such instruments already subject to SEC regulation); it would be a violation of the established and *effective* authority of states to regulate insurance and further create unnecessary conflict between states and the Federal government.

- **A fiduciary standard on registered representatives of broker-dealers would be regulatory overload.**

  Broker-dealers and their registered representatives are under the authority of the Financial Industry Regulatory Authority (FINRA), state securities regulators and (where applicable) state insurance regulators. Broker-dealers and their registered representatives are held to a standard requiring an agent to act in the client's best interests by only offering the most suitable products for sale based on the client's financial goals, needs and means (known as the "suitability standard"). Violations of this standard generally result in steep fines or indefinite forfeiture of license to market and sell financial products.

  The imposition of a fiduciary standard on broker-dealers and their registered representatives is unnecessary because an effective standard is already in place to protect retail customers. Furthermore, a fiduciary standard would also be ineffective because such a standard offers no guarantee that the best financial advice and products will be offered to the client or that the agent will act in good faith.

- **A uniform fiduciary standard needs to recognize the legitimacy of commission-based sales.**

  Broker-dealers and their registered representatives operate on a commission-based sales model. The only time a broker or registered representative receives compensation is upon completion of a sale.

  While the potential to earn a commission provides an incentive for a broker or registered representative to actively pursue the sale of a product, legal penalties create a compelling disincentive to offer unsuitable products or otherwise engage in questionable sales and marketing behavior (as outlined in the previous bullet point). No broker-dealers or their registered representatives should risk violating a uniform standard simply because they receive commissions.

- **The SEC must take care to preserve market access for consumers of all financial means.**

  The commission-based sales model allows retail customers, regardless of financial status, to shop around for products and receive advice on those products with no fees: as mentioned in the second bullet point, suitability standards ensure any advice provided on a product is sound and within the customer's needs and means.

  Should a retail customer not be satisfied with any of the offerings made by brokers and their registered representatives or convinced of product suitability, or if a broker is not able to meet the financial needs and goals of the retail customer, there is no obligation to purchase: the market for financial products offers a wide variety of vendors and investment professionals with whom the retail customer can consult for his or her financial needs. It is in consumers' best interests that this kind of diversity in the marketplace continues to thrive.

NAILBA offers itself as a resource to the Securities and Exchange Commission in conducting its study and rulemaking regarding the standards of care used by financial professionals as it relates to the concerns outlined above. Thank you for your consideration.

Sincerely,

Mark Rosen

Mark D. Rosen, CLU
NAILBA Chairman