Before the
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

In the Matter of	)	
	)	
Study Regarding Obligations of	)	File No. 4-606
Brokers, Dealers, and Investment	)	
Advisers	)	

ASIAN AMERICAN COMMENTS ON STANDARD OF CARE OF BROKERS, DEALERS AND INVESTMENT ADVISERS

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ASIAN AMERICAN COMMENTS ON STANDARD OF CARE OF BROKERS, DEALERS AND INVESTMENT ADVISERS

Mabuhay Alliance, on behalf of our nation's 18.5 million Asian Americans, hereby offers the following preliminary public comments regarding the SEC's interest in the Study Regarding Obligations of Brokers, Dealers, and Investment Advisers.

We commend the SEC for quickly responding to a requirement of the Dodd/Frank Act. Our comments are in the context of the spirit of the legislation and the statements made by many of the creators of this legislation regarding the problems created by the lack of financial literacy on the one hand and the problems of the past lack of fiduciary duties on the other hand.

Our observations on fiduciary duties are also consistent with the SEC's initial, now settled case, relating to Abacaus and Goldman Sachs. Our position is that the present federal fiduciary standard is too narrow and our future comments will discuss why there is a need for a higher fiduciary standard. Unlike past fiduciary duties, our position is that this duty must always put the interests of clients before those of brokers, dealers and investment advisers. We are cognizant that investment advisers are allegedly already held to this standard, but we do not believe that the interpretations and enforcements over the last 50 years have been sufficiently protective of the client. We fear, for example, that the comments of the Executive Director of the Investment Advisor Association in the Wall Street Journal article of August 18th, "Brokers, Critics Spar Over 'Fiduciary' Rule," reflects the view of most investment advisors. Mr. David Tittsworth is quoted, "We have a federal fiduciary standard. It's been in existence for 50 years and it's been consistently approved by the courts." This may be true, but we need to impose a higher standard.

Although our comments are offered on behalf of our nation's 18.5 million Asian Americans, we believe they are applicable to all of our nation's 110 million minorities and to the 70 percent of Americans who live from paycheck-to-paycheck.

The Asian American community is particularly vulnerable to the activities of broker, dealers and investment advisers. This is due to the combination of the following:

- Disproportionately high new immigrant population;
- Major language barriers, particularly among first and sometimes second generation Asian Americans;
- The relatively high level of income of Asian Americans, which is 20 percent greater than for the national population;
- A far greater propensity of Asian Americans to save and be investors; and
- A possibly far greater trust in the implicit fiduciary duties of brokers, dealers and investment advisers, particularly if they are Asian Americans and speak an Asian language.

It is our position that all brokers, dealers and investment advisers must fairly and effectively be regulated in order to promote confidence in the market, particularly among minorities. This can be best achieved by requiring a high fiduciary standard of care. Given the financial revelations of the past few years, the SEC is in the best position to promote, create, define and regulate a high standard of care/fiduciary duty for these market participants.

Other Languages

We also urge that when the service is provided in a language other than English, a special duty or care must be taken. Many studies have demonstrated that, for example, a new immigrant speaking Mandarin will dispense with their judgment and allow the Mandarin speaking broker to fully take care of the matter. We have been informed that this also applies to other ethnic groups. Our organization is now working with Filipino American brokers, dealers and investment advisers who believe that a high fiduciary duty and standard of care will enhance their business opportunities and has advised us that they may be prepared to also offer comments.

A One Hundred Million Dollar Financial Literacy Fund

To complement the fiduciary standard, particularly as to new immigrants and those with language barriers, we urge that a Broker, Dealer and Investment Advisor Financial Literacy/Education Fund be established to provide to community groups serving vulnerable communities the type of market place knowledge necessary to ensure that the fiduciary duty need not be so high as to prevent effective transactions. That is, as many of our Founding Fathers recognize, a well-equipped and educated citizenry is the bulwark of both democracy and effective market transactions without undue government interference. This perspective is also consistent with Adam Smith's theory in The Wealth of Nations and a wide range of economists.

To ensure that we produce a new generation of educated consumers, we urge in particular, a special focus on preteen, high school and young adults that will enable them to effectively participate in the marketplace, thereby minimizing the need in the long-run to impose a new and even higher fiduciary standard.[1]

We propose that an initial Broker, Dealer and Investment Advisor Financial Literacy/Education Fund of 100 million dollars be financed by assessments of all brokers, dealers and investment advisers earning 150,000 dollars or more per year. We suggest that the definition of those subject to this assessment be as broad as possible and should include, for example, hedge funds, including those subject to Section 1601 of the Dodd/Frank Bill as to tax assessments.

Penalties that are More than a Slap on the Wrist

To ensure reporting and effective enforcements of a higher standard of care and/or fiduciary duty, we urge that appropriate penalties be established. This should include a minimum payment of 5,000 dollars to any individual and/or small business (defined as 20 or fewer employees or one million dollars or less in revenue) for reporting any violation that leads to any findings, violations or negligence as to duty of care.

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[1] One example of the type of educational fund is known as Project Renew, which we are helping design and implement. We are also developing special financial literacy programs geared to vulnerable youth populations starting with efforts in DC.

The biggest weakness confronting both the SEC and other regulatory bodies is that fines and other penalties are inadequate to deter future violations. Many contend, for example, that Goldman Sachs paid little, if any penalty, given the nature of the SEC's allegations. (Less than one month's pretax income.) We therefore urge and will discuss in detail and future comments large calibrated penalties that are more appropriately designed to deter and thereby eliminate the need for frequent enforcement actions by an understaffed SEC.

Respectfully submitted,

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