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First Tennessee Bank National Association
P.O. Box 84
Memphis, TN 38101
August 27, 2010

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

Re: Study regarding obligations of brokers, dealers, and investment advisers
File # 4-606

Dear Ms. Murphy:

I am writing in response to the Securities and Exchange Commission's request for public comment to inform on the study to evaluate the obligations and standards of care of brokers, dealers, and investment advisers. I am Executive Vice President of First Tennessee Bank National Association, and serve as Manager of the Wealth Management Services group. This group provides our customers with brokerage services, investment advisory services, financial planning, and insurance products through the Bank and its affiliated entities. Our organization is familiar with state and federal legal and regulatory standards applicable to these products and services, including the Securities and Exchange Commission (the "SEC"), the Financial Industry Regulatory Authority ("FINRA"), and state securities and insurance laws and regulations. We have been providing these services to our customers for over twenty five (25) years.

<u>Effectiveness of Existing Legal and Regulatory Standards of Care.</u>

We believe that the current legal and regulatory standards applicable to brokers, dealers, investment advisers, and their associated persons are effective for providing investment advice and recommendations concerning securities to retail customers. While we acknowledge that there are differences in these standards, we believe such differences reflect customer needs for a broad range of investment products, and the ability to choose their level of service and method of compensation for such advice.

Regulatory standards applicable to brokers and insurance agents when recommending products are generally referred to as suitability standards. The standard applicable to investment advisers is referred to as the fiduciary standard. The suitability standard is based upon a determination that when making an investment recommendation, the product will serve the needs and objectives of the client. It is our experience that FINRA rules and insurance regulations provide specific guidance to the broker or insurance agent with respect to documenting a customer's financial condition and needs when recommending products to customers. Such regulations include general and product specific requirements with respect to the information to be obtained from the client and disclosures to be made by a broker or insurance agent with respect to securities recommendations. (e.g. FINRA Rule 2114; NASD Rule 2310; Tenn. Comp. Rule and Regs. 0780-.01-61-24.) This regulatory scheme provides well-defined guidelines for an objective analysis and results in documentation of the suitability of the recommendation permitting audit of a broker's or agent's compliance with these standards.

The fiduciary standard for investment advisers is not informed by the same regulatory framework as the standard for brokers. Nevertheless, we believe this difference reflects the broad range of services provided by registered investment advisers and the ongoing responsibility imposed on the adviser as a fiduciary. As a fiduciary, an adviser is required to act at all times in the best interest of its clients. This standard requires that the investments made on behalf of the client meet the financial needs and goals of the client, that the adviser disclose material facts, and that the client's interests come first. We believe the regulatory scheme applicable to investment advisers appropriately addresses this standard. Rule 204-3 of the Investment Adviser's Act of 1940 (the "Act") requires an adviser to document its investment processes for programs it offers. Advisers comply with this rule by delivery of a Client Brochure or a copy of the adviser's Form ADV Part II. This document requires information which outlines the investment processes and programs the adviser has implemented to meet its fiduciary standard to its clients. Conflicts of interest and the duty of loyalty applicable to a fiduciary are also addressed through disclosure in the Client Brochure or Form ADV Part II. In addition, all SEC registered investment advisers are required to adopt a Code of Ethics, to document supervisory procedures, and to identify a Chief Compliance Officer (Rules 204A-1; and 206(4)-7 of the Act). In our experience, these Rules establish a clear framework as to the process an adviser implements to meet its fiduciary obligations. These Rules establish documentation which can be reviewed by examiners to determine compliance by an adviser with its fiduciary obligations.

Maintain Different Standards for Broker Dealers and Investment Advisers/Provide Additional Information to Clients/Discretionary Brokerage/Retail Customers.

As noted above, because we believe that the current legal and regulatory framework for brokers and investment advisers is effective in enforcing their respective standards of care, we do not believe that the differences in the framework warrant a single standard. The current system permits a client to make a choice concerning the client's level of service, including investment advice, method of compensation for such services, and range of products available for investment. To the extent customers are not aware of the difference in standards of care applicable to a brokerage versus an advisory relationship, we believe the appropriate solution is to provide information to the client to better enable them to choose the appropriate level of service for their needs. One difference in the standards often highlighted is that a fiduciary owes a duty of loyalty to his or her client and therefore must disclose any conflict of interest to his or her client. We believe that by providing information to a client concerning the differences in standards and services between a broker and adviser such disclosure would necessarily include discussion of one aspect of broker compensation often characterized as a "conflict of interest" for brokers – the payment of fees to brokers by product providers as opposed to asset-based fees generally charged by advisers.

Section 913(g) of the Dodd-Frank Act permits the Commission to require the same standard of care for a broker as for an investment advisor when providing personalized investment advice. However, that Section provides that receipt of compensation based on commission and other standard compensation for sale of securities would not be considered in and of itself a violation. That Section also provides that the standard of care applied to a broker shall not impose a continuing duty of care or loyalty to the customer. Because of these "statutory carve-outs" from the standard of care, a representation that the same standard of care applies to an adviser and a broker would likely result in more complex disclosure to avoid customer confusion than disclosure that describes the differences in the current standards of care for brokers and advisers. In our opinion, a disclosure comparing standards of care would be more straightforward than a disclosure which indicates that the standard is the same but for such "carve-outs". We believe that the existing standard of care applicable to a broker along with additional disclosure of conflicts of interest related to compensation will, in practice, provide the same level of customer protection as a "fiduciary standard" which does not impose a continuing duty of care or loyalty and which permits commission based compensation.

One area where a change in the standard of care for brokers would be appropriate is where a broker has investment discretion over a client's account. Because this authority is identical to authority provided by clients in an advisory relationship, we believe a broker who has investment discretion should be subject to the same fiduciary standards imposed under the Act. In our view, so long as the terms of the brokerage relationship require the client to direct the investment decision, the broker suitability standard and additional disclosures noted above adequately protect the client.

For purposes of the Study, "retail customer" is defined to include any "legal representative" of a natural person who receives personal investment advice about securities for personal, family or household purposes. We urge the Commission to limit the application of "retail customer" only to situations where the legal representative is a natural person. When dealing with an institution as a legal representative, the broker should be held to the suitability obligation applicable to institutional customers. An institution serving as a legal representative is in the best position to access facts and circumstances related to the individual it serves and has a separate obligation to make decisions concerning the customer's best interest. The standard of care applicable to a broker should be determined by the type of customer the broker has direct contact with when making investment recommendations.

Although Section 913(g) of the Dodd-Frank Act permits the Commission to apply the Advisers Act standard of care to retail customers "and such other customers as the Commission may by rule provide", the Commission should not extend any such standard to institutional customers. Securities laws and regulations as well as other financial laws and regulations have consistently distinguished duties and responsibilities to, and protections afforded to consumers/retail and commercial/institutional investors or customers. (See Rule 2310; IM-2310-3; Rule 2210; Rule 2211.) We urge the Commission to maintain this distinction in any rule making as a result of the study.

Customer Impact of Changing Standards/Disclosures.

We believe that changing the standard of care for brokers would not provide measureable benefits to clients, except with respect to discretionary brokerage accounts as noted above. A change in the standard may result in fewer products offered to brokerage clients due to additional product due diligence required prior to making a product available to clients. Increased due diligence and compliance costs in providing the advice may result in increased costs to clients in obtaining the advice. A change in the standard for brokers may result in brokers no longer offering investment advice through a transaction fee based platform. Brokerage firms may prefer to deal with the change in a standard of care by moving all business which involves provision of personalized investment advice to an investment adviser platform. Moving to an investment adviser platform where policies and procedures have already been developed to meet the fiduciary standard of care may be less costly and minimize legal and regulatory risk than the costs and risk associated with developing and implementing "untested" policies and procedures to address a new broker standard of care.

The resulting move by brokers to an investment adviser platform could have a disparate impact on customers. Currently, many advisers have minimum fee or minimum account balance requirements. Moving to an advisory platform could increase cost to customers, especially those customers with relatively small accounts or a limited number of portfolio holdings. As such, the implementation of a fiduciary standard could lead to the migration of brokers to advisory platforms and could negatively impact the availability of investment services for a segment of the investing public.

We believe that clients should be informed of the standard of care applicable to brokers and advisers and provided a choice as to the services and method of payment for such services. We appreciate the opportunity to comment on these issues as part of your study. We believe, to the extent the Commission determines that regulatory action is appropriate to address any of the areas of the study, that industry professionals should be provided an opportunity to make additional comments with respect to the specific proposals.

Sincerely,

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Rhomes Aur
Executive Vice President
Wealth Management Services
First Tennessee Bank National Association