

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

29 August 2010

Dear Ms. Murphy:

I thank the Securities and Exchange Commission (the “SEC” or “Commission”) and you for allowing the general public to provide comments to the SEC, regarding its current study of the standard of care and obligations of brokers-dealers and investment advisers, when providing personalized advice about securities, securities products and other monetary instruments to customers and/or clients.

While I include myself as part of the public, I am currently employed by a national, independent broker-dealer and investment advisory firm. However, I haven’t always been in the securities business. I have worked for a world-wide certified public accounting firm as a CPA. I have served as an attorney and officer of a large national bank. I also have a significant amount of experience in dealing with personal and business clients as an independent attorney, corporate business consultant and legal counsel. In fact, the company I am with today, ValMark Securities, Inc., (“ValMark” or the “Company”) was one of my twenty-year clients when I joined them as a full-time employee. The Company has continued to grow since then, and has had a very good relationship with the Commission and the Financial Industry Regulatory Authority (“FINRA”). What I am trying to express is that, while I am now in that “baby-boomer” crowd, I believe I have (1) a wide breadth of experience in the financial/markets and (2) significant experience in dealing with clients: some inside financial institutions, some within the ranks of entrepreneurs and some being individual investors. Today I serve as ValMark’s Chief Legal Officer, although I have served in many other roles for the Company.

In addition to the many investment instruments and products that most people think of when they consider securities, our company and its representatives are also involved in analyzing, comparing and advising clients on the many insurance products that our company is able to offer, such as variable insurance, variable annuities and other risk protection investment assets. ValMark and its registered representatives (who are also insurance agents) are subject to many other regulatory bodies in addition to the Commission and FINRA. For instance, we and our representatives are also subject to the rules and regulations of each state’s State Securities and Insurance Departments where we do business.

In providing recommendations to clients, our registered representatives/agents consider many factors such as the client’s age, general health, current financial status, monetary needs, type of business and/or profession, personal and family financial goals, estate planning goals, and the extent of their understanding of the financial markets. We and our representative/agents must also be aware of the many product alternatives available to the client, as well as the opportunities, the risks, and other factors of any financial product that can be presented to the client. Our staff at the broker-dealer performs a review of whether these factors were considered and evaluated by the representative/agent before determining whether the financial investment and/or risk protection instrument being purchased is appropriate for the client. We also regularly evaluate the (1) current financial stability, (2) the medical and financial underwriting standards of the companies we contract with, (2) their claims-paying records, amongst a variety of other considerations. Especially when and if a recommendation of variable policy is made, the process of review may extend over several months, while underwriting is being completed, trusts, if necessary are being established through the clients professional, and other recommendations are being finalized. **These many filters are what provides both value and protection to consumers.** As for having another Regulator (or more regulators or more regulation) in addition to FINRA, the Commission and each and every state Securities and insurance Commissions, I cannot see that as being anything, but more confusing.

As indicated above, the supervisory managers at each broker-dealer and their staff/personnel must review all sales recommendations for compliance with a multitude of FINRA, Commission and state (securities and insurance) regulatory requirements. These regulatory requirements are extensive, well-known, often product-specific, capable of being monitored and audited by supervisory personnel, as well as by Regulators at the time of their audit, or at any time at their request. FINRA, for instance, regularly audits broker-dealers. The examiners typically review an array of transaction data, client correspondence, firm financial statements, various procedures, and general supervisory structures. FINRA's examiners will test the broker dealer's performance against its compliance procedures by comparing the actions taken in certain transactions and comparing those actions to the written compliance procedures, testing whether they were adequately and appropriately followed. After the audit, the broker-dealer must provide comments or answers to any regulators' findings and make any necessary corrections. While the SEC's audits may be less frequent than FINRA's, and are typically more directed, the SEC already has the opportunity to perform a broad or in-depth audit of their own and require the same type of response from the broker dealer.

I understand that the Commission's study is designed to identify where there are gaps, shortcomings, or overlaps in existing regulation and whether the Commission should adopt new regulations to address these. Because our firm serves thousands of clients through both its broker-dealer and its investment adviser, we also understand why the Commission may feel more regulation is necessary. However, after considering the vast number of financial instruments and vehicles in existence, I would also explore enhancing the required education, training, experience and supervision one needs to perform the very different roles of agent, broker and investment adviser. These specialists in a sense should have broader knowledge to perform the right service for the client. Furthermore, if the intention is to perform the right service, the broker-dealer and investment adviser must also think more broadly and be able to perform any service.

In comparing the investment adviser and broker-dealer standards of care, I contend that broker-dealers can, and already do, provide better guidance to their registered representatives and supervisors, than do Investment adviser firms. First, broker-dealers are being regulated in a manner that requires more staff and more qualified supervisory managers. In addition, FINRA rules are clear and specific (although there may be ways to present more and better examples of compliance with a rule as guidance in some cases); and, therefore, the conduct of registered representatives is capable of being monitored and more closely audited. Second, broker-dealers, their representatives and insurance producers (especially those who sell variable insurance products), must respond to examinations and audits at the **federal, state and broker-dealer** level. Investment Advisor Firms, on the other hand, have a difficult and somewhat more broad-based, vague principals track with which to monitor their representatives.

It will be very difficult for the Commission to develop one standard of care that applies to broker-dealer products—especially variable insurance and annuity products. The complexity of variable products makes them difficult to put into a format that our advisors use when managing other assets through a registered investment adviser. An argument can and will always be made regarding “What Is Best” when it comes to a ‘variable type of products. In almost every case the answer may only be known for certain after certain fact or event occurs. For example: what factor is more important?.. If the market goes up, and the client does not need future income protection, the variable contract with the lowest charges would be better/best contract. If the market went down for several years, a variable contract with the best guarantees of principle or income (which has higher charges) would have been better for that client.



It is difficult to ascertain the practical impact of a “general best interest” standard. It most certainly will result in increased compliance costs, with questionable or no measurable benefit to investors. Over time, I believe it will reduce product choice and access for investors, as many of those currently offering variable products may leave the marketplace. It is very foreseeable that if this standard is enacted, that many insurance licensed advisors will default to only offering general account products to clients to avoid the uncertainty and regulatory complexity that a Fiduciary standard would impose. For instance, ValMark’s Chief Executive Officer, who has been a has been a Life Insurance Industry Leader through several key Insurance Industry organizations, is hearing that insurance companies are scaling back the issuance of new variable annuity products offerings and taking advantage of the Harkin amendment to offer general account index products having less regulatory complexity, but also having more product complexity. Thus, a proposal to impose a fiduciary standard will likely some unintended consequence of less choice being offered to the consumer and a shift to recommendation of bond-based general account products—still having (possibly more) risk, more complexity, but less regulation.

I ask again that the Commission consider the unintended consequences of this regulation, some of which I mention above. I also strongly encourage the Commission to open the “debate” (my understanding) and obtain input of registered representatives and broker-dealers having (1) significant life insurance product experience, and (2) investment advisory services experience.

Thank you for the opportunity to comment on the future of “standards of care” of and for brokers, dealers, and investment advisers,

Very truly yours, 
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