

United States Senate

WASHINGTON, DC 20510

August 30, 2010

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

Re: File Number 4-606 (Study Regarding Obligations of Brokers, Dealers, and Investment Advisers)

Dear Secretary Murphy:

We are writing in response to the Commission's request for comments for a study regarding the obligations of brokers and dealers when they give personalized investment advice and recommend securities to retail investors. We urge the Commission to require that brokers and dealers be held to the same standard of fiduciary duty as investment advisers. This will improve investor protection by eliminating a harmful and unnecessary gap in the standards that protect retail investors.

Section 913 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (P.L. 111-203) requires that the Commission conduct a study to evaluate the effectiveness of existing standards of care for brokers, dealers, and investment advisers, and provides the Commission with the authority to establish a fiduciary duty for brokers and dealers consistent with standards of conduct for investment advisers set forth by the Investment Advisers Act of 1940. It is vital that the Commission recognize the need for greater protection of retail investors and use its authority to impose the fiduciary standard uniformly on investment professionals providing services to retail investors regardless of their status as brokers, dealers, or investment advisers.

The fiduciary standard that applies to investment advisers ensures that they are legally and ethically bound to put a client's interest ahead of their own. In contrast, brokers are not required to act in the best interest of their clients. Instead, they are merely required to have "reasonable grounds" to believe that a product they are recommending is "suitable" for the customer, even if it is not the best product for the customer. Brokers typically do not have to make disclosures about information that could affect a consumer's investment choices, such as conflicts of interest, differential compensation, and past infractions. These different obligations to customers have created a gap in the regulation of services that investors receive from investment professionals, leaving them vulnerable to receiving, and following, bad investment advice.

Several studies, including a 2008 SEC-commissioned study by the RAND Corporation, concluded that retail investors do not distinguish between, and are often confused by, the different obligations of brokers, dealers, and investment advisers. The difference in the standards that brokers, dealers, and investment advisers must adhere to is substantial, and it creates a regulatory disparity that compromises investor financial security. All investment professionals that provide personalized advice can significantly influence investor decisions. Therefore, all investment professionals—brokers, dealers, and investment advisers—

Secretary Murphy
August 30, 2010
Page 2

should be subject to the same fiduciary standard of conduct when conducting business with retail investors.

Imposing a fiduciary duty on brokers and dealers would eliminate a significant source of consumer confusion and improve the reliability and quality of the personalized investment advice upon which consumers base their financial decisions. This would have a positive impact on investor decision making. Working families often depend on mutual fund investments, stocks, and other financial products to work toward their long-term financial goals. If brokers, dealers, and investment advisers are bound by the same fiduciary standard, consumers would be better able to make sound choices that will determine their financial futures.

We ask that the Commission recognize the current shortcomings in the regulation of brokers and dealers, and that it proceed with the initiation of a rulemaking process to establish a fiduciary duty for brokers and dealers to hold them to the same standard of conduct as investment advisers. We thank you for your consideration and look forward to continuing to work with you to implement the new law in a manner that protects and empowers investors and consumers.

Sincerely,



DANIEL K. AKAKA
U.S. Senator



ROBERT MENENDEZ
U.S. Senator