

BDA Bond Dealers of America

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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 Ms. Murphy:

Thank you for the opportunity to comment on the study the Securities and Exchange Commission (“the SEC”) is conducting on the effectiveness of the existing legal or regulatory standards of care for brokers, dealers and investment advisers (and those associated with them) when providing personalized investment advice and recommendations to retail investors and whether there are gaps, shortcomings or overlaps in the protection of retail customers.

The Bond Dealers of America (“the BDA”) is the only trade association exclusively focused on U.S. fixed income markets and represents bond dealers who are headquartered in cities all over the country and who do business in dozens of states coast to coast. We believe that investor protections are one of the crucial underpinnings of efficient, well-functioning capital markets. Investors must be treated fairly and professionally, and investors must have confidence that is the case. The SEC has over the years established rules both for broker and dealers, as well as for investment advisers, in the various aspects of their businesses including providing investment advice and recommendations of securities to investors.

While it is hard to argue that any regulatory regime cannot be improved, the BDA believes that the current SEC rules provide an appropriate standard of care and protection for the retail investor. The current rules provide a structure that both prohibits certain specific conflicts of interest, and, more fundamentally, relies on disclosure of potential conflicts of interest on the part of a broker-dealer or investment adviser so that investors may judge the quality of the advice being provided to them and have the facts necessary to make an

informed decision. It is a practical impossibility to eliminate all potential conflicts of interests – not only for broker-dealers but also for investment advisers. The current rules recognize that and, in fact, allow for it *as long as it is clearly disclosed*. As the Supreme Court stated:

The high standards of business morality exacted by our laws regulating the securities industry do not permit an investment adviser to trade on the market effect of his own recommendations *without fully and fairly revealing his personal interests in these recommendations to his clients*. *SEC v. Capital Gains Research Bureau, Inc*, 375 U.S. 180, 201 (1963). (emphasis added)

Broker-dealers are, like investment advisers, in a position to influence how individuals invest their money. It is important, however, to recognize the fundamentally different roles that investment advisers and broker-dealers play in the financial system. The primary function of an investment adviser is to advise and recommend securities for investment. The primary function of a broker-dealer is to buy and sell securities for itself and others, including the underwriting of securities being offered for sale by an issuer. Rules which govern brokers and dealers when providing personalized investment advice and recommendations of securities for investment, though necessarily similar to the rules governing investment advisers, should appropriately recognize these different functions. For instance, information that a broker-dealer obtains in its underwriting function about the plans of an underwriting client might be valuable to a retail client, but it would be absolutely inappropriate for the broker-dealer to disclose such information, even if a “fiduciary” duty in favor of the retail client were to be imposed on the broker-dealer.

Further Congress explicitly recognized other aspects of a broker-dealer’s business that should not be considered violations of a standard of care. Congress specifically excepted from those standards commissions or other standard compensation for the sale of securities, and the sale of only proprietary or other limited range of products by a broker-dealer. Congress further provided that a broker-dealer shall not have a continuing duty of care or loyalty to the customer after providing personalized investment advice about securities.

Broker dealers are already subject to rules that ensure they provide professional, impartial, fair services and do not engage in fraudulent, manipulative or deceptive practices. Such restrictions cover areas such as market manipulation, high pressure sales tactics, deceptive recommendations, generation of excessive commissions, excessive markups or markdowns, unauthorized trading, improper order executions, improper extensions of credit, misuse of customer funds or securities and failure to provide the best execution of orders. There are also numerous requirements to disclose information to clients.

The question of reconciling the standards of care of investment advisers and broker-dealers is not a new one for the SEC. Some firms are registered as both and the SEC has put forward rules in those situations. The BDA encourages the SEC to look to those existing rules for guidance as it moves forward with this study.

If any changes are needed, they fall primarily in the areas of increased disclosure to investors about the functions an investment adviser or broker-dealer is performing and about any potential conflicts of interest. While there may be specific, narrow areas not covered under existing rules where additional protections for investors may be desirable, the fundamental protection for investors is through disclosure.

The BDA appreciates this opportunity to comment and hopes that as the SEC moves forward with its study, that there will be further opportunities to engage in a discussion of the issues.

Sincerely,

A handwritten signature in blue ink that reads "Michael Nicholas". The signature is written in a cursive, flowing style.

Michael Nicholas
Chief Executive Officer