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August 30, 2010

Via Email: rule-comments@sec.gov

Ms. Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549

**Re: File No. 4-606 Study Regarding Obligations of Brokers,
Dealers, and Investment Advisers**

Dear Ms. Murphy:

Wells Fargo & Company ("Wells Fargo") appreciates this opportunity to respond to the Securities and Exchange Commission's ("SEC" or "the Commission") request for public comment on the obligations of brokers, dealers, and investment advisers, as requested in Securities Exchange Act Release No. 62577 and Investment Advisers Act Release No. 3058 as required by Section 913 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the "Dodd-Frank Act"). Wells Fargo supports the adoption of a uniform federal fiduciary standard for broker-dealers when providing personalized investment advice concerning securities to retail clients. To preserve client choice, Wells Fargo also supports the adoption of clear rules recognizing that there are differences in services provided to retail clients by investment advisers and broker-dealers and that different standards of care should govern different relationships.

Wells Fargo Supports the Adoption of a Uniform Fiduciary Standard

Wells Fargo fully supports the adoption of a uniform federal fiduciary duty standard for broker-dealers when providing personalized investment advice regarding securities to retail clients. Properly implemented, such a standard will enhance protections for clients, preserve the opportunities for clients to select the level of service and type of relationship they desire, allow clients of all levels of sophistication and resources to be fully served and foster competition in the industry.

Wells Fargo's broker-dealer and asset management affiliates comprise one of the largest retail wealth management, brokerage and retirement providers in the United States, helping millions of customers with differing resources and needs establish financial goals and obtain the advice and services appropriate to work towards those goals. The advice and services include developing financial plans to fund major life events and aspirations, as well as transactions such as the purchase of stocks, bonds and mutual funds.

Wells Fargo believes the study commissioned by the Dodd-Frank Act (the "SEC Study") provides a unique opportunity to explicitly define the roles and responsibilities of broker-dealers and investment advisers so clients may choose the type of relationship that best suits their needs while being assured that the highest appropriate standard of duty will govern the relationship they select.

GUIDING PRINCIPLES

Wells Fargo believes certain guiding principles should govern the adoption of a uniform federal fiduciary standard for broker-dealers when providing personalized investment advice regarding securities to retail clients.

1. The Fiduciary Duty Standard Should be Based On the Standard Developed Under the Investment Advisers Act

The fiduciary duty adopted for broker-dealers when providing personalized investment advice regarding securities to retail clients resulting in transactions for compensation should be based primarily on the existing standard developed under the Investment Advisers Act of 1940 (the "Advisers Act"), which generally provides that investment management professionals be loyal to clients and act in clients' best interests. The standard for broker-dealers providing personalized investment advice should include, among other things:

1. Having a reasonable, independent basis for investment advice and ensuring that the advice meets the client's objectives, needs, and circumstances;
2. Obtaining a client's consent before engaging in principal trades through prior but not trade-by-trade consent;
3. Obtaining best execution when the adviser has discretion; and
4. Disclosing any real or apparent material conflicts of interest.

2. Broker-Dealers and Investment Advisers Should Each Continue As Viable Client Service Models

The adoption of a uniform standard of conduct does not, and should not, require that all broker-dealers become investment advisers or that an investment advisory relationship be identical to a client's relationship to a broker-dealer providing investment advice. Clients have chosen to use broker-dealers because broker-dealers provide services, products and compensation models that clients want. Requiring broker-dealers to register as investment advisers, thereby subjecting the entire broker-dealer business model to the Advisers Act, would greatly reduce the available account types, products and service options while increasing costs for certain clients. The consequence potentially would disenfranchise a large number of customers from the financial system. The ability of clients to choose can and should be maintained with the adoption of the uniform fiduciary standard.

Broker-dealers generally are selected by clients to execute transactions in securities with transaction-based compensation. The transactions may include incidental advice. Investment advisers, by contrast, provide advice for a fee. If a client wants the financial professional to monitor the client's transactions and accounts, the client can enter into an investment adviser relationship and pay the continuing costs. If, however, the continuous service is not sought, the client has an option of selecting a brokerage account that does not provide or charge for continuous services. The Dodd-Frank Act is clear that a uniform fiduciary duty does not contain or require a continuing duty to monitor and by implication the continuing fees for such monitoring. The Act explicitly provides the duty will apply “when providing personalized investment advice.” (Emphasis added) Therefore, if a client chooses not to receive ongoing personalized investment advice, there should be no ongoing duty to monitor the account for conformity to the client’s investment objectives.

3. Clients Should be Able To Pay For, and Only For, Services They Choose

Clients should be free to choose the services they want and how they pay for the services. Their choices could include an investment advisory relationship with a one-time fee or payment for ongoing services; a brokerage relationship involving trade execution and, if they choose, incidental advice with transaction-based compensation; or a relationship offering services that do not provide or charge for advice. A strength of our current financial system is that clients may select and pay only for the services they want. Another strength is that the system is sufficiently flexible to serve clients with vastly different amounts of resources. To maintain client choice and access to the financial system, the SEC Study should recognize that clients should be able to access and only pay for the level of advice they want and that certain services provide on-going advice, that certain services provide advice only at stated times and that certain services do not contain or charge for advice.

4. Fiduciary Duty Should Only Apply to Personalized Investment Advice

Wells Fargo believes that certain account types and services should be exempt from the fiduciary duty standard because the relationships do not meet the standard in the Dodd-Frank Act that the uniform standard is dependent on offering “personalized investment advice.” The services exempt from a fiduciary duty should include:

- Discount brokerage accounts and on-line services with no personalized advice and other services for self-directed investors;
- Execution of unsolicited transactions;
- Accounts established by clients for limited purposes that do not include personalized advice;
- Research, strategy materials, publications, seminars or ideas that are not personalized for a particular client;
- Generalized planning, calculators or models; and
- Services provided by clearing firms to correspondent firms and their clients.

5. Fiduciary Duty Should Only Apply to Transactions at the Firm For Compensation

Consistent with the principle that the fiduciary duty should only apply to personalized investment advice, the duty should only apply if the broker-dealer is compensated for its advice, unless the broker-dealer expressly has elected for the duty to apply to uncompensated transactions. For broker-dealers having investment discussions with their clients, a fiduciary duty should not apply unless the discussions result in personalized advice and an actual transaction is executed at that broker-dealer based on that advice. Broker-dealers must pay for the transaction, supervisory, compliance and risk systems that arise from their duties to their clients and must be compensated to support such systems. Broker-dealers also provide research, information, seminars and other information that greatly aid the education of retail investors often without compensation. If the potential exists for the mere provision of such materials to give rise to a fiduciary duty, broker-dealers may be forced to significantly curtail the distribution of educational materials that would otherwise benefit their clients.

In addition, the fiduciary duty should not apply to transactions that a client executes away from a broker-dealer, even if such client had received personalized investment advice from the broker-dealer prior to the client determining to execute the trade away. Similarly, the fiduciary duty should not apply to transactions involving self-directed channels, even if such self-directed channel is an affiliate of a full service firm. Clients may establish relationships with multiple broker-dealers for different reasons, such as to access principal transactions not available elsewhere in the market (e.g., initial public offerings, secondary offerings) or to obtain differing investment research or ideas. Many clients choose to gather information and then make their own investment determinations. If firms potentially are held to a fiduciary standard for transactions away from the firm after providing information or having discussions, firms may well limit such information or discussions. Limiting such information or discussions potentially will negatively affect a client's ability to pursue information gathering.

6. Clients Should Retain Access to a Full Range of Products and Services.

When contemplating how best to create the uniform fiduciary standard, the SEC should remain mindful of the importance of maintaining access to the full range of products and services for clients, including both the securities products that will be subject to the standard and services and products provided by or through broker-dealers that are not securities products.

A. Clients Should Retain Access to the Full Range of Securities Products and Services Including Principal Trades

The Dodd-Frank Act provides that the SEC Study should consider a fiduciary duty relating to personalized investment advice "about securities." The broker-dealer model historically has been able to provide clients with more robust securities product choices than the investment adviser model primarily because of the availability of transactions best performed on a principal basis or through the advantages of internal order flow. We believe that client interests are best served if broker-dealers subject to a fiduciary duty are permitted to engage in principal transactions with the client after clear disclosure and consent.

Principal trades provide access to products such as underwritten offerings or access to liquidity or products when a retail customer wants to purchase or sell a security. Particularly in the fixed-income market, retail customers would be disadvantaged if broker-dealers were not able or willing to provide products or liquidity through principal trades. Often retail fixed-income trades are of a size that, if pursued other than through proprietary trading desks, would not yield the most advantageous price for the retail client.

The existence of a fiduciary duty is not inconsistent with principal trades. The Advisers Act has developed a trade-by-trade disclosure and consent regimen for principal trades but this disclosure and consent is not a linchpin of the fiduciary duty created by court decisions for investment adviser accounts. In creating a fiduciary duty for brokerage accounts, the SEC should craft a standard that provides for the disclosure of and consent to the potential conflicts of principal trades at the beginning of the relationship and provides sufficient and practical continuing disclosure through confirms and statements. In this fashion, clients can continue to have access to a range of securities products as they also receive the benefits from a heightened standard of care in their brokerage account from the uniform fiduciary duty.

The fiduciary duty created also should permit the internalization of trading order flow if there has been sufficient disclosure and customer consent. Internalization of trade flow often can provide access to products and transactions. There are numerous existing protections concerning "best execution" such that internalization of order flow in itself should not violate the fiduciary duty under development.

The adoption of the uniform standard also must recognize that clients with aggressive investment objectives and risk tolerances or who seek advice on sophisticated strategies or unique situations such as concentrated positions should be able to be served under a fiduciary standard. For a client with aggressive investment objectives, the broker-dealer should be able to consider that objective after the client affirmatively determines to engage in the investment strategy. Similarly, broker-dealers should be able to serve clients who seek advice on hedging, options, alternative or structured products. With appropriate disclosure and for the appropriate clients, broker-dealers should be able to service clients with aggressive objectives or who seek particular products or services without worrying about retroactive judgments as to whether such transactions were in the best interests of the client.

The adoption of a uniform standard should recognize that many clients maintain more than one account with the same broker-dealer to address specific needs or because of client preference on structuring the relationship. The adoption of the uniform standard should maintain this flexibility for clients.

B. The Fiduciary Duty Should Not Apply to Products and Services That Are Not Securities

Wells Fargo supports a fiduciary duty with respect to personal investment advice "about securities." However, Wells Fargo does not believe that the fiduciary duty should apply to other

services or products that broker-dealers might provide themselves or through independent contractors or affiliates. In particular and without limiting other possibilities, Wells Fargo does not believe the standard should apply to any of the following services, products or referrals which a broker-dealer may provide to clients as part of a complete range of services:

1. Fixed annuities, bank deposits including certificates of deposit, futures and commodities;
2. Margin, home equity loans, mortgages and asset lines of credit;
3. Financial asset and liability assessment tools;
4. Tax, legal or generalized planning or modeling advice; and
5. Account services including bill paying and cash sweep services.

By adhering to the very bright line established by the “about securities” requirement, the SEC should create a fiduciary duty that helps investors and securities professionals readily determine when the duty applies. Such a bright line approach would also create a rule that is easy for the industry and regulators to monitor while allowing broker-dealers to offer customers other financial products and services.

C. Affiliated Products and Services

Clients considering the type of organization with which to establish a financial relationship frequently base their decision on whether an affiliated entity can provide services beyond those offered by a broker-dealer, such as banking services, credit cards or mortgages. A successful differentiator for many firms responding to these clients is access to and the ability to provide solutions to client needs by referrals to affiliated entities. Many of these regulated entities are subject to regulatory schemes independent of those applicable to broker-dealers or investment advisers. Wells Fargo believes, consistent with the Dodd-Frank Act, that a fiduciary duty should not apply to the referral to affiliates with respect to non-securities offerings such as mortgages, insurance, credit cards or bank deposits. When appropriate disclosures have been made regarding the sales of securities of affiliates, the fiduciary duty also should not prohibit such transactions. Clients also may want and benefit from, and should retain access to, securities underwritten by affiliates or products such as mutual funds, alternative products or structured products provided by affiliates. Affiliates, of course, should continue to be accountable to their own applicable standards and regulators for such transactions and products.

Wells Fargo recognizes that offering other products and services to clients should involve disclosures appropriate for client understanding of affiliate relationships but does not believe that such referrals or activities not involving securities should be subject to a fiduciary standard.

7. Disclosure and Consent Must Be Flexible and Practical

Effective disclosure and consent will be critical to an investor’s understanding the uniform fiduciary duty owed by broker-dealers. The disclosure must be clear, effective, practical and not

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cost prohibitive. Consent at account opening may be sufficient for some types of transactions. In other instances, consent obtained initially and then updated periodically may be appropriate. For example, for principal transactions, consent given at account opening reinforced by periodic updates and transactional information on trade confirmations and account statements should suffice. Finding a wide range of means of demonstrating consent will also help reach the goal of maintaining investor choice while also retaining a fiduciary duty that applies to an investor's circumstances.

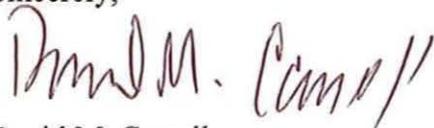
8. Transition Standards and Time is Crucial

Investors have trillions of dollars of assets that were invested under the existing standards for broker-dealers. Transition to a new standard must be carefully structured to avoid any ambiguity that could lead to needless litigation, to broker-dealers refusing to service existing accounts or to clients being disadvantaged because broker-dealers believe they must consider wholesale restructuring of accounts. Rules for the adoption of the new standard should provide a smooth transition from the current standard to the new uniform fiduciary standard that does not invoke a look-back provision or other retroactive application of the new standard to past transactions. Of particular importance is the development and consent to new account documents. Negative consent to these changes by customers is important as the only effective and practical methodology for such massive changes. The SEC should consider standardized disclosures for implementation of the new standard to eliminate ambiguity as to requirements and reduce the cost and risks of implementation. Alternatively, the SEC should provide explicit guidance for satisfying the standard for specific products or services. Absent practical rules for implementation, broker-dealers may reduce or eliminate products or services because of increased operational costs and the cost of potential litigation. Broker-dealers must also be provided with a reasonable amount of time for necessary updates and changes to technology, training, disclosures and documentation. Transition standards and time are especially important given the number of other regulatory changes that have been adopted or proposed.

Conclusion

Wells Fargo appreciates the opportunity to comment on this significant study. We believe that the SEC has a unique opportunity to adopt a fiduciary standard that will benefit investors and strengthen the financial industry. Wells Fargo looks forward to working with the SEC, its other regulators, members of the financial services industry and investors as this study proceeds. If you have any questions regarding this comment letter, please do not hesitate to contact me.

Sincerely,



David M. Carroll