August 26, 2010

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

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

Dear Ms. Murphy,

Freedman Financial, of which I am President, has provided financial advice for more than four decades, and has been with LPL Financial for nearly twenty years. In my capacity as a financial advisor and as an active member of the Financial Planning Association (FPA) and the Financial Services Institute (FSI), I have strong opinions on the issue surrounding the "fiduciary" and "standard of care" discussion for investment advisors, brokers, financial planners and broker-dealers, and appreciate the opportunity to offer my perspective on the subject.

An understanding of our particular firm might illuminate my perspective: As our industry has evolved through the years, so has Freedman Financial. Where we once provided financial planning for free and offered implementation strategies on a 100% commission-basis, today we charge an up-front fee for financial planning services and, when the client is inclined to implement our recommendations, 91 % of business is placed into advisory or fee-based accounts. Our plans are written with recommendations that allow the investor to implement wherever they choose. They are never obligated to implement with our firm. As such, we can feel confident that when a client seeks to implement investment ideas with our firm, we can be certain that we have placed the interests of the client first; because we already have a comprehensive understanding of their financial situation before recommending a strategy and implementing an idea.

Our clients earn enhanced confidence in our relationship with them because we maintain a complete picture of their financial circumstances (we can produce net worth statements for virtually all of our clients). Thus informed, we consider ourselves serving their best interest in all services we provide (a concept much better understood, in my opinion, than the nebulous term, "fiduciary").

What Types of Clients do we Serve?
It is important to note that our firm provides this service to 350 families who fall in the Mass Affluent category of investors; those who have total net worth (including their home[s]) between $500,000 and $2,500,000.

Addressing Consumer/Investor Confusion: I think we all agree that changes in the industry have created challenges for investors as they seek advice and financial services from professionals. Consumers/investors do not know the particulars of the different regulatory regimes under which investment advisors and broker-dealers operate; nor should they have to. If it is in the best interest of the public to allow them to make informed decisions, and not be bogged down with understanding regulatory/supervisory/and protection rules, I believe that it is the obligation of the industry to craft a uniform harmonized standard of care. The current dual regulatory system (and its terminology) is confusing and ultimately does not serve investors well. For a variety of reasons, I do not favor the term "fiduciary" as the universal standard in ALL instances in client/financial professional relationships. However, I am strongly in favor of instituting a standard that requires an obligation of every financial advisors to "*put a client first; act fairly, honestly and good faith and with full disclosures; and have an ongoing obligation to act in his or her best interest,*" I believe it should apply to all investment advisors who are providing personalized investment advice to clients. This is how my colleagues and I operate, and I believe it should be the standard for all my fellow advisors.

That said, not all investors need (or want) the services that some are suggesting "everyone needs."

For instance, there are sophisticated investors who merely require a broker-dealer to execute trades. Perhaps the client needs to exercise a stock option, seeks to purchase a stock based on a "gut feeling" or simply wants to buy a bond, annuity, or mutual with some money that they simply have "laying around." In these instances, the investor isn't interested in sharing their entire financial situation with the "broker," instead they are simply looking for a few "ideas" or simply wish to execute a transaction that they'd like the broker to handle on a "non-discretionary basis."

In my opinion, the broker-dealer firm should be obligated to craft a clear contract with that investor that clearly outlines the broker-dealer responsibilities. The standard of care should certainly apply to the activity in question (in this case, the execution of the trade) but a broker-dealer in this example, who is not privy to the investor's overall financial goals and circumstances cannot (and should not) be obliged to discern how this trade fits into that picture. The critical element is that of full-disclosure and clear contractual boundaries.

In other words, anyone who is managing a client's assets with discretion should be held to a higher standard, (as I said, I'm not crazy about the "fiduciary" word) while for those clients of broker-dealers who, by contract, agree to a lower suitability standard (or a limited scope of services), should be allowed to operate in a non-discretionary manner without a "fiduciary" standard. Yet, they should all be held to

a similar "standard of care." Ideally, this contract-based standard of care should evolve to include investment advisors whose clients contractually agree do not have to perform all the functions of a "fiduciary."

From a harmonization perspective, both BDs and RIAs should be held to the same basic (and I would argue fundamental) requirements. The following are examples of steps the SEC could take to promote harmonization:

- Requiring new customers to be provided with a uniform plain English disclosure brochure explaining the various services offered to clients, the nature of the firm's relationships with clients, the capacity in which the firm is acting when providing each service offered (adviser vs. broker-dealer); material conflicts of interest, and material relationships;
- Establishing advertising and sales literature standards that are applied according to the types of services provided, beyond existing Advisers Act anti-fraud standards;
- Requiring the same recordkeeping requirements for broker-dealers and investment advisers under the Exchange Act and Advisers Act respectively;
- Requiring licensing for the BD's or adviser's agents;
- Ensuring registered personnel pass qualification examinations and undergo continuing education programs;
- Maintaining minimum net capital-levels;
- Obtaining a fidelity bond from an insurance company;
- Obtaining audited financial statements.

I believe it will be of great service to investors, and as a result, to our industry, if the standard of care for broker-dealers and investment advisors is harmonized and new, more clear terminology for these designations is created. A reasonable application of the standard will apply to a particular activity, rather than the title or license held by the investment professional. This will provide clarity and comfort to investors, while also providing appropriate guidelines to the investment advisors.

Thank you again for the opportunity to provide my thoughts on the subject.

Sincerely,

Marc S. Freedman, CFP®
President & CEO