Lincoln Financial Group®

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Ms. Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street N.W.
Washington, D.C. 20549-1090

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

Dear Ms. Murphy:

Lincoln Financial Group ("Lincoln Financial" or "Lincoln")[1] submits this letter in response to the Securities and Exchange Commission's ("SEC" or the "Commission") request for comments in connection with its study ("Study") on the effectiveness of legal and regulatory standards of care for brokers, dealers (referred herein as "broker-dealer" or "BD") and registered investment advisers ("investment adviser" or "RIA"), and their agents who provide personalized investment advice about securities to retail customers. The affiliated companies of Lincoln Financial act as issuers of securities products (*e.g.* variable annuities and variable life products), wholesalers of these products and retail distributors of these products. In addition, our retail sales and fee-based advisory arm, the Lincoln Financial Network ("LFN"), *see also footnote 1*, maintains an open architecture business model, allowing its agents and associated persons the freedom to

[1] Lincoln Financial Group is the marketing name for Lincoln National Corporation and its affiliates. For purposes of this letter, the affiliates include The Lincoln National Life Insurance Company ("LNL"); Lincoln Life and Annuity Company of New York ("LLACNY"); Lincoln Financial Distributors, Inc. ("LFD"), a broker-dealer registered with the SEC and a member of the Financial Industry Regulatory Authority ("FINRA") and Lincoln Financial's wholesaling BD; and the Lincoln Financial Network ("LFN"), the marketing name for Lincoln Financial's two retail broker-dealers, Lincoln Financial Advisors Corp. ("LFA") and Lincoln Financial Securities Corp. ("LFS"), both registered with the SEC and members of FINRA. LFD, LFA and LFS also are registered investment advisers registered with the SEC.

offer a variety of securities (*e.g.* stocks, bonds, mutual funds, variable annuities) and non-securities products (*e.g.* fixed annuities and life insurance). This includes the freedom to offer Lincoln "manufactured" products and other products manufactured by other insurance companies.

Before providing our comments, we are aware that some LFN agents, upon their own volition and without direction by Lincoln Financial, have submitted comments to the Commission. We applaud our agents for their interest and being part of this unique opportunity to inform the SEC of the complex and important issues facing the insurance and investing community. Lincoln Financial's corporate efforts have been working with insurance and securities trade organizations, such as the American Council of Life Insurers ("ACLI"), the Committee of Annuity Insurers ("CAA"), the Association of Advanced Life Underwriters ("AALU") and the Financial Services Institute ("FSI"). We also support their efforts in providing comments. As a result of the importance of this issue, Lincoln Financial has determined to provide its own comments.

Lincoln Financial recognizes that the primary and central importance of the Study is to enhance investor protection. Any new regulations that comes out of the Study should be fair, flexible, and increase investor confidence while preserving broker-dealers' ability to provide services fitting their business model. Of the Commission's fourteen requests for comment, Lincoln Financial's comments primarily focus on any harmonized standard of care that the SEC may universally apply to BDs and RIAs. Lincoln Financial appreciates the opportunity provided by the Commission to share our views concerning the Study.

1. <u>The Current Regulatory Regime Should Not Be Overlooked</u>

Much of the impetus of the Dodd-Frank Wall Street and Consumer Protection Act was in response to the major scandals of the 2000's involving failures of the systemic structures of certain institutional broker-dealers and banks and fraudulent registered investment advisers of the like of Madoff and Stanford. While the SEC analyzes the existence of any gaps, shortcomings or overlaps in regulatory standards relating to broker-dealers and investment advisers, Lincoln Financial asks the SEC to keep in mind that recent scandals primarily derived from unscrupulous individuals and business practices rather than differences between the standard of care a BD provides compared to a RIA.

Lincoln Financial also asks the SEC to take into account that insurance companies and their affiliated broker-dealers are subject to a multitude of federal and state regulations, including:

- Federal securities laws,
- State securities laws,

- State insurance laws,
- The Employee Retirement Income Security Act of 1974,
- FINRA rules and regulations, and
- National Association of Insurance Commissioners model acts.[2]

This regulatory regime generally takes a rules-based approach compared to the more vague fiduciary standard under the Investment Advisers Act. Moreover, this regime generally has worked well in regulating the BD-retail customer relationship.

Lincoln Financial certainly supports efforts to enhance investor protection, but also supports careful and well-thought-out regulation to achieve this goal. The SEC should leave open that current standard of care structures provide more than adequate investor protection of insurance companies' and broker-dealers' dealings with retail customers.

2. **<u>Any Harmonization Efforts Should Preserve the Affiliated Insurance Company – Broker-Dealer Business Model and Preserve Customer Choice</u>**

Broker-dealers affiliated with insurance companies have differing business models that should be preserved. Some insurance-affiliated BDs sell only that insurance company's products. Other such BDs maintain an open architecture business model, allowing associated persons the flexibility of selling proprietary and non-proprietary products through selling agreements. Lincoln Financial maintains both business models.

LFN generally offers an open architecture model for associated persons to conduct their business. These associated persons have the freedom to offer a variety of securities products, insurance, and investment advisory services, including financial planning, to their customers. Consumers of LFN have benefited greatly from our open architecture platforms and the ability to have choice. In addition, there is a segment of LFN tied to Lincoln Financial's defined contribution business that offers only proprietary products. This segment primarily assists participants with needs outside of their retirement plans or provides consulting to participants with regard to rollovers once a participant terminates employment. Both of these business models work, fitting in a marketplace benefiting customers.

Any harmonization efforts should not be so onerous that they force broker-dealers that offer proprietary products to open their offerings to a wider range of products, while at

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[2] Although the NAIC is not a regulatory body, it certainly has significant influence shaping state law and regulation.

the same time forcing broker-dealers that have open architecture models to curtail their offerings and reduce customer choice. The Dodd-Frank Act provides that offering a limited range of products, including offering only proprietary products, would be permissible under any standard of care. Accordingly, the SEC must be careful to avoid promulgating rules that would directly or indirectly favor one business model over another. Lincoln Financial believes the marketplace will benefit from having BDs which offer only proprietary products and others choosing to offer a myriad of products, services and platforms.

In addition, any harmonization of a standard of care should preserve and enhance customer choice for securities products, services and investment advice. Consumers should not have to contemplate changing advisors, products, or firms as a result of regulatory reform or consequential changes made by firms to limit or restrict products, services and platforms. Advisors should not be put into a position of limiting services, firing clients or changing firms because of product restrictions or significant disruptions in compensation or benefits. Rather, any regulation should be geared towards providing greater transparency in helping consumers make informed decisions and identifying specific compliance standards and processes for BDs (See Section 5). To this end, enhanced disclosure about the person providing personalized investment advice about securities to retail clients, the nature and quality of the advice clients receive and the level of accountability advisors and firms have in connection with the advice could be included in any rulemaking by the Commission. At the same time, the Commission must ensure that there are no direct or indirect chilling effects as a result of new disclosure requirements. Disclosures requirements that paint proprietary products in poor light will unfairly favor certain business models over others.

3. <u>Any Rulemaking Should Provide Broker-Dealers Adequate Time to Make Significant Changes to Its Operations and Supervision</u>

Insurance companies and broker-dealers will need to assess the impact of a new standard on their organizations and how it affects their strategy, breadth of products on platforms, choice of sponsors, sales force, and supervisory platforms. Companies will be required to take a deep dive into what the complexion of their businesses, relationships, and product suites will need to be. Implementation of any new standard will likely require significant changes, among other things, in training, personnel, operations, technology, platforms, contracts, and disclosures. Implementation will likely be costly, complex and time consuming. As these changes unfold it could cause substantial disruption in the quality of advice that consumers currently receive from intermediaries and direct firms alike. A new standard of care that is poorly implemented by the industry does not effectively accomplish the goals of legislative reform. A phased in approach along with a reasonable transition period would be important to any rulemaking the Commission may proffer.

4. <u>The Definition of "Retail Customer" Should Not Include Participants of Defined Contribution Plans</u>

The Commission should make clear that participants in defined contribution plans are not within the definition of "retail customer" as defined in Section 913(a) of the Dodd-Frank Act. Employers sponsoring defined contribution retirement plans (e.g. 401(k), 401(a), 403(b), and 457(b) plans) generally pick the products and the underlying investments which make up the plan. In the 403(b) market particularly, employers historically have chosen multiple vendors for participants to choose from. Employers allow sales personnel of these vendors onsite to assist participants in choosing their product or platform.

The SEC should follow the same reasoning behind FINRA Rule 2330 by not construing such conduct as "personalized advice." The SEC and FINRA recognized the unique circumstance involving retirement plans when FINRA Rule 2330 was initially created (NASD Rule 2821). It was understood that there was a need to exclude variable annuities from the Rule's requirements, except in limited circumstances. A similar interpretation should be made clear if the Commission promulgates any rules. Otherwise, there may be a chilling effect of certain retirement plan structures and services provided by vendors, particularly multi-vendor 403(b) plans.

5. <u>Any Harmonized Standard of Care Should Be Specific and Well-Defined</u>

It is safe to say that all parties in the standard of care debate are interested in better investor protection, transparency and maintaining or enhancing customer choice. For this to happen, any new standard of care should be specific and well-defined. The current landscape pits well-defined rules governing BDs against a vague fiduciary standard set by case law for RIAs in which few regulatory rules governing conduct exist. There is great concern that the Commission will harmonize the standards of care by transferring care requirements under the Investor Advisers Act to broker-dealers. It would be a mistake to assume varying investment adviser case law can easily translate into clear conduct rules for BDs. To do so would subject firms to tremendous uncertainty as to their compliance obligations. Costs would be difficult to control if BDs do not know what is expected of them. Customer choice and services very well could be reduced to manage to a vague standard. The SEC should take great caution taking such an approach, particularly when existing rules provide a framework for harmonization.

Conventional wisdom suggests there is a wide gap of the duties of BDs and RIAs. This rhetoric at first blush may seem facially plausible; however, a closer and reasoned look shows the standards function similarly, if not the same, and generally end up with the same results in favor of the client. The BD standards of fair dealing and suitability are rooted in fiduciary principles. They generally are reasonably defined, specifying process, disclosure and conduct. FINRA Rule 2330 in particular outlines quite specific rules for the sale of variable annuities and the expectations of BDs. To this end, the SEC should consider Rule 2330 as a starting place for any harmonized standard of care. The Rule already provides a substantial level of protection to retail customers. BDs already have developed operational and supervisory structures to conduct and oversee their business; so, there is no need to "reinvent the wheel." Increased costs for implementation probably can be contained. Rule 2330 is specific and measurable to a significant extent.

Any standard needs to be more than some general "best-interest-of-the-client." The standard must delineate what must be done and not done by advice givers. Defining the process is key. Indeed, fiduciary based standards focus highly on the process in the preparation of advice.[3] Many of the FINRA rules provide guidelines for BDs to develop processes. Any rulemaking by the SEC should start with these defined guidelines rather than undefined investment adviser law.

6. Conclusion

Lincoln Financial appreciates the chance to present its view on the Study. This process presents a valuable opportunity for the SEC to take a comprehensive look at the current regulatory system and address any need for improvement. Through a comprehensive evaluation, the Commission can advance measures to enhance investor protection without increasing costs or limiting customer choice.

Please feel free to contact me if you need additional information or want to further discuss these issues. My phone number is (484) 583-1409 and my email address is nicole.jones@lfg.com.

Respectfully Submitted,

Nicole S. Jones

Nicole S. Jones
Senior Vice President
General Counsel

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[3] Fiduciary services in the retirement plan industry strongly emphasize fiduciaries to engage in a prudent process in discharging their fiduciary responsibilities, including the provision of investment advice. *See* www.fi360.com.