COMMONWEALTH *financial network*®

VIA ELECTRONIC MAIL

August 30, 2010

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

RE: Release No. 34-62577; IA-3058; File No. 4-606
Study Regarding Obligations of Brokers, Dealers, and Investment Advisers

Dear Ms. Murphy:

In its Release No. 34-62577, the Securities and Exchange Commission (SEC) has requested public comment to inform its study to evaluate, among other things, the effectiveness of existing legal or regulatory standards of care for brokers, dealers, investment advisers, and persons associated with them when providing personalized investment advice and recommendations about securities to retail investors; and whether there are gaps, shortcomings, or overlaps in legal or regulatory standards in the protection of retail customers relating to the standards of care for these intermediaries.

Commonwealth Financial Network (Commonwealth) is a broker/dealer and an SEC registered investment adviser with home office locations in Waltham, Massachusetts, and San Diego, California. The firm has more than 1,600 registered representatives, at least 1,500 of whom are also investment adviser representatives, conducting business in all 50 states.

While Commonwealth strongly supports the need to protect investors and provide more transparency about conflicts of interest in the financial services industry, we believe the existing legal and regulatory standards of care are effective at defining the various duties of care owed to clients by persons providing personalized investment advice and recommendations.

A "one-size-fits-all" standard of care for broker/dealers and investment advisers will do nothing to prevent the types of fraud that motivated the drafters of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010. In fact, Bernard Madoff and R. Allen Stanford were investment advisers subject to a fiduciary standard of care, yet they perpetrated the most infamous schemes in recent history. Financial professionals such as Bernard Madoff and R. Allen Stanford have used the label "fiduciary" to gain investor's trust, only to turn around and take advantage of that trust.

Rather than adopt a uniform standard of care that is inappropriate in many circumstances, the SEC should promote transparency by mandating clear and concise point-of-sale disclosures about compensation and conflicts of interest. Clear and uniform disclosures will serve to more effectively educate and inform investors than a uniform standard of care that, to investors, is nebulous and confusing legalese.

29 Sawyer Road
Waltham, MA 02453-3483
800.237.0081
781.736.0793 fax

110 West A Street, Suite 1800
San Diego, CA 92101-3706
877.347.1982
619.471.9701 fax

commonwealth.com

Member FINRA/SIPC, Boston Stock Exchange

The SEC has requested comment on 14 different items to help inform its study. Commonwealth welcomes the opportunity to comment and has done so on the following areas.

The Effectiveness of Existing Legal or Regulatory Standards of Care
(Item 1)

The existing legal and regulatory standards of care effectively articulate the duties of care owed to investors by brokers, dealers, investment advisers, and their associated persons. There are many levels of service and a myriad of financial products that financial professionals offer or provide to their clients, and it would be illogical to apply the same standard of care equally to every financial product or service.

The traditional "know your customer" and suitability standards of existing rules, if correctly applied and enforced, are entirely appropriate for transactions between brokers and investors. So long as brokers disclose conflicts of interest, the nature of all direct and indirect compensation they may receive, and the costs associated with each product, investors will be able to make informed investment decisions.

The fiduciary standard applied to investment advisers is proper because advisers commonly take on a role of trust, confidence, and trading authorization greater than that of a broker, who generally acts in a sales capacity. This heightened position of trust and confidence is particularly true of advisers who exercise investment discretion or maintain custody over client assets.

Legal or Regulatory Gaps, Shortcomings, or Overlaps in Legal or Regulatory Standards
(Item 2)

There are no material legal or regulatory gaps or shortcomings in the standards of care afforded retail customers. Rather, any shortcomings appear to relate solely to the effective application and enforcement of existing standards. As seen in the Madoff and Stanford scandals, the higher standard of care did nothing to prevent the billions of dollars in losses to thousands of investors. Additional regulation regarding the standard of care will likely produce no better investor protections, but will almost certainly have the effect of opening the floodgates of litigation over alleged breaches of a standard of care that, in hindsight, will be impossible to meet for traditional broker/dealers and registered representatives.

Do Retail Customers Understand the Different Standards of Care, or Are the Different Standards a Source of Confusion?
(Items 3 and 4)

The RAND Report on Investor and Industry Perspectives on Investment Advisers and Broker-Dealers (RAND Report) made it clear that investors do not understand the different standards of care. This confusion among investors is no surprise given the wide array of products and services financial professionals provide, the variation of compensation they receive, and the different titles they hold out to the public. An equally important finding of the RAND Report, however, was that investors do not care about the various legal and regulatory standards of care—they just want to be treated fairly and honestly. Investors simply want to know what they are buying, what they are paying for it, what conflicts of interest may exist, how the investment will help them reach their financial goals, and whether the person selling the product or service to them is treating them fairly. Making one a fiduciary will do nothing to accomplish these goals. Passing and enforcing rules that mandate certain uniform disclosures relative to conflicts of interest and methods of compensation, however, could be very effective in meeting these goals.

The Regulatory, Examination, and Enforcement Resources to Enforce the Standards of Care
(Item 5)

Changing the standards of care applied to broker/dealers will not prevent future Madoffs. As mentioned above, the greatest perpetrators of recent investment fraud and manipulation involved investment advisers who are already held to the fiduciary standard of care. Such a label did nothing to prevent the fraud. Paradoxically, it is widely understood that investment advisers who are purportedly held to the greater fiduciary standards are in reality subject to *less* regulatory oversight. Many of us have witnessed first-hand numerous examples of brokers who have dropped their securities licenses and gone "RIA-only" to avoid regulation and be subject to less oversight and fewer compliance burdens.

If the real goal is to protect investors, as is argued by the proponents of a fiduciary standard, then rather than change the standards of care applied to financial professionals, regulators should subject investment advisers to the same rigorous examination cycles and oversight that is applied to broker/dealers today. Broker/dealers are commonly examined every two to three years, whereas many investment advisers go ten years or more without ever seeing a regulator in their office. It appears from press reports and public statements that most advisers and investment adviser organizations that support a fiduciary standard are also highly critical of increased regulation or oversight of investment advisers by regulatory or self-regulatory organizations. Few can debate, however, that had existing rules and regulations been rigorously enforced, and had regular cycle examinations and verification of assets held by advisers themselves or purported to be at custodians been conducted, many of the schemes that have recently come to light could have been avoided. Applying a label of "fiduciary" to those schemers, however, seems to have served no purpose whatsoever.

There is also great disparity between the supervision of state versus federally registered investment advisers. With the increased requirement of $100 million in assets under management to be federally registered, there will be an estimated 4,000 more investment advisers that will be subject to state registration and oversight, and many states do not have the resources necessary to devote to the rigorous exams and enforcement necessary to prevent investor harm.

Rather than apply a fiduciary duty to traditional brokerage services, Commonwealth strongly urges the SEC to devote greater resources to its examination and enforcement efforts relating to investment advisers, including appointing a self-regulatory organization with authority to examine *all* investment advisers and enforce existing advisory rules and regulations.

Protections Afforded by the Regulation and Oversight of Brokers and Dealers and Investment Advisers
(Item 7, A and B)

The fiduciary standard of care applicable to investment advisers provides greater protections to investors in relationships in which investors grant trading authority or custody over their assets to investment advisers. In such relationships, the fiduciary standard of care is entirely appropriate because investors are trusting investment advisers to secure their assets and to make all of the investment decisions. Investment advisers must exercise due care to ensure that they do not cause any conflicts, and if conflicts do arise, they must disclose those conflicts. In addition, the fiduciary standard arguably provides greater protections to investors in that it lowers the bar to show a breach of duty to investors.

The greater protections provided to investors by the regulation and oversight of brokers is much more apparent in the examination cycles applied to brokers versus investment advisers. As discussed above, FINRA must examine broker/dealers at least every three years, but most are seen every two years. It is not uncommon, however, for many investment advisers to go ten years or more before the SEC or state regulators appear at their door. This lack of regular and rigorous oversight of investment advisers with custody of or control over client assets is the root cause of the recent Ponzi schemes committed by Madoff and Stanford.

On the other hand, FINRA's regular and rigorous oversight of broker/dealers, and the application of a suitability standard to broker/dealers, has historically been very effective in enforcing rules and regulations applicable to broker/dealers. As such, Commonwealth supports similar exam cycles for broker/dealers and investment advisers to close this ever-widening loophole enjoyed by many investment advisers and to remove the incentive for registered representatives to drop their securities licenses and go "RIA-only" in order to avoid the regular and rigorous oversight that being associated with a broker/dealer entails.

The Existing Legal or Regulatory Standards of State Securities Regulators
(Item 8)

The legal and regulatory standards applied by state securities regulators are widely varied because states have vastly different resources to devote to the supervision of investment advisers. This difference among resources is greatly amplified as a result of the SEC's increased requirement of $100 million in assets under management for investment advisers to federally register. While it remains to be seen how effective certain states will be in enforcing their rules and regulations on new advisers that must register in their state, it is clear that some states simply don't have the expertise or resources necessary to get the job done. Unfortunately, it will be the investors in those states who will bear the risk that unscrupulous advisers operating in those states may present to the investing public.

The Potential Impact on Retail Customers
(Item 9)

Adopting a uniform standard of care for financial professionals would have two major negative impacts on retail customers without any appreciable positive effects. First, the greater standard of care, if applied to brokers and dealers, would greatly increase compliance and litigation costs. Firms would need to create new policies and procedures, develop new systems, and add new staff to ensure compliance with the higher standard. The greater standard of care would also open the floodgates of litigation, increasing errors and omissions insurance premiums for brokers and dealers. These costs would necessarily be passed on to investors in the form of higher fees or commissions.

Second, we are particularly concerned that brokers will stop working with "Main Street" clients, as the higher liability and costs associated with working with small clients, while being subject to a higher fiduciary standard, will make traditional registered representative brokerage business cost-prohibitive. As a result, small retail investors—who arguably have the greatest need for sound investment recommendations—will have decreased access to financial professionals who are willing to expend the time or incur the added cost, and they will find themselves abandoned.

The Potential Impact of Eliminating the Broker and Dealer Exclusion from the Definition of "Investment Adviser" under Section 202(a)(11)(c)
(Item 10)

Commonwealth opposes the elimination of the broker and dealer exclusion from the definition of investment adviser because it would not provide greater investor protections, and the increased cost of compliance with another regulatory system would drive brokers and dealers out of the business of servicing small retail customers. Subjecting traditional brokers and dealers to investment adviser regulation would significantly reduce the availability of valuable financial services provided by broker/dealers to smaller retail clients because providing such services would no longer be economically viable.

In addition to small retail customers' decreased access to traditional brokerage services, including "brokers and dealers" in the definition of investment advisers would force thousands of brokers to register as investment advisers or investment adviser representatives of investment advisers. The time and costs associated with the registration process would be overly burdensome and unnecessary. Furthermore, the ongoing costs of maintaining the required licenses and registrations would necessarily be passed on to investors.

Eliminating the broker and dealer exclusion from the definition of investment adviser would further stretch the already insufficient resources the SEC and state regulators have to bring to bear to supervise investment advisers. The erratic examination cycle of investment advisers would only be further impaired by the monumental increase in the number of firms that the SEC and states would need to examine. Furthermore, the increased number of firms subject to the requirements of the Investment Advisers Act would be detrimental to the SEC's and state regulators' ability to enforce the standard of care and other requirements of the Investment

Advisers Act. The regulators' resources are already woefully inadequate, and to further tax those resources would be nonsensical.

The Varying Level of Services Provided by Brokers, Dealers, and Investment Advisers *(Item 11)*

The fact that there are such varying levels of services is crucial in the analysis of whether a uniform standard should apply to brokers, dealers, and investment advisers. On one end of the spectrum is the broker who simply executes unsolicited orders for retail customers on a commission basis. It would be completely inappropriate to apply a fiduciary standard to this type of transaction. On the other end of the spectrum of services is an investment adviser who has custody of client assets and exercises discretionary control to manage those assets for an ongoing percentage of the client's assets. In the latter relationship, the fiduciary standard is entirely appropriate.

It is logical, therefore, that the various levels of services and methods of compensation financial professionals provide and receive should have different standards of care with different conflicts of interest and different concepts of disclosure. While these different levels of service and methods of compensation may be confusing to investors, with adequate disclosures, investment education, and compensation transparency, retail customers will be able to make informed investment decisions.

The Potential Impact Upon Retail Customers and Additional Costs and Expenses *(Items 12 and 13)*

A uniform standard of care would have *absolutely no impact* on protection from fraud. As previously discussed, investment advisers already subject to the fiduciary standard of care committed the greatest investment frauds in history. The fact that these investment advisers were already fiduciaries who owed a duty of care and loyalty to investors did nothing to prevent them from committing their frauds. The systemic failure by regulators to regularly and rigorously inspect and supervise investment advisers with custody or control of client funds, however, arguably prolonged and exacerbated the fraud. Better oversight and enforcement of existing rules and regulations is required, not a blanket change to existing standards of care that will have no discernable impact on the prevention of fraud and the protection of investors.

Another negative impact of a uniform standard of care for all financial professionals is that it would decrease the access and availability of investment advice and recommendations for small, retail customers. As stated above, the uniform standard of care will only increase the compliance and litigation costs imposed on financial professionals, and firms will either pass on the costs to individual investors, or forego providing services to small retail investors because the compensation earned will not justify the increase in liability.

Other Considerations
(Item 14)

Instead of focusing on the standard of care afforded individual investors, the SEC should center its attention on regulating existing advisers, particularly advisers with custody or control of client assets. In addition, the SEC should require clearer point-of-sale disclosures of costs and fees, similar to those required by FINRA Rule 2821 with regard to variable annuity sales.

The RAND Report made it clear that investors simply want transparency about fees, commissions, and other forms of compensation; to know exactly what they are purchasing; and to understand whether their financial professional has any conflicts or incentives to recommend particular products or services over others.

If the SEC decides to implement a uniform standard of care for all financial professionals, it is important that the standard applied be commensurate with the level of service and the type of client relationship involved. The SEC should not expect financial professionals who merely sell a product to a client as a one-time transaction to have an ongoing duty of care to that investor. In addition, financial professionals should not have a fiduciary duty to clients requesting unsolicited transactions.

The greatest danger of applying a uniform standard is that brokers will always lose any challenge to their investment recommendations because, in hindsight, it will always be possible to find a cheaper, better-performing product. Plaintiffs' attorneys will take advantage of the impossibly high bar imposed by a fiduciary standard for transactions that have traditionally required only a suitability determination.

Commonwealth recognizes the shortcomings of the existing regulatory system in ensuring that investors are protected and adequately informed about the costs and risks associated with investing, as well as any potential conflicts of interests that may arise. We support the aims of the Dodd-Frank Act in filling in any regulatory gaps in the financial services industry, and we appreciate the opportunity to comment on the investor study mandated by the Act. We hope that the SEC takes these comments seriously and does not have a predetermined agenda, except to discover what is best for the investing public. The optimal outcome would be for the SEC to use the results of the study to determine what disclosures are most effective in order to best inform and protect the investing public.

If you have any questions regarding our comments or concerns, please contact me at 781.736.0700.

Sincerely,

Commonwealth Financial Network

Brendan Daly

By: Brendan Daly
Legal and Compliance Counsel