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

I am writing in response to the Commission's request for public comment to inform its study of the obligations and standard of care of brokers, dealers, and investment advisors when providing personalized investment advice about securities to retail customers.

I was first licensed as a life insurance agent in 1965. I earned the Juris Doctor degree in 1969 for the purpose of engaging in a life insurance and estate planning practice, NOT with the intent of practicing law. I passed the NASD exam for Series 6 in 1975 and primarily used it for sale of mutual funds and variable annuities. I passed Series 63 in 1990. I passed Series 65 in 2000. I am co-owner of a MS registered investment advisor.

As a life insurance agent, I am contracted with various life insurance companies to sell products which they design and issue, both general account products and separate account products. All insurance activities are subject to supervisory oversight of the insurance company with which I am contracted and doing business. They are also subject to the regulatory supervision of the state insurance commissioner of the purchaser's resident state. In addition to being licensed in Mississippi, I hold non-resident licenses in six other states. In addition to regulatory purview of state insurance commissioners, sale of separate account products, variable life insurance and variable annuities, are subject to the purview of FINRA. Depending on the particular state of residence of the purchaser, they may also be subject to the purview of the state securities regulator. In short, there is significant regulatory overlap with respect to the sale of variable life insurance and annuities.

The contract between me, as agent, and the insurance company creates an agent-principal relationship which is governed by centuries of common law as well as statutory law. One fundamental in the agent-principal relationship is that it is a fiduciary relationship.

As they exist today, I do not feel these multiple layers of oversight, by companies, insurance regulators and securities regulators are onerous or unwieldy, when applied in a reasonable, common sense fashion. I find that is usually the manner in which they are applied. Under the suitability standard for sale of insurance and other products which are securities, standards are relatively clear and provide sound guidance. If I have any doubt about suitability issues, I am able to talk with a Registered Principal of my broker-dealer for additional guidance. He/she may talk among other broker-dealer personnel, compliance officers, etc. to provide a reliable conclusion as to compliant suitability.

As a registered representative, I am under regulatory authority of FINRA. My actions with clients are subject to the suitability standard which has been the guiding standard for the entire period of 35 years since I became licensed by FINRA. I do not know how long the suitability standard had been in effect prior to 1975, but suffice to say, this standard has been the rule of practice for decades. In my opinion, it has served the public well, leading to effective distribution of products and services to a wide segment of the investing public and to effective capital market formation in this country.

That is not to suggest that experience is "perfect." In any field of endeavor, whether for profit business, not for profit entity, government or regulatory entity, there are examples of misconduct, mismanagement, etc. I believe that if the suitability standard applicable to brokers and dealers is maintained or if it is changed, the same will inevitably be true. The experience either way will be imperfect. However, I believe the record reflects that where misconduct and mismanagement have occurred by brokers and dealers operating under a suitability standard, ***redress of grievances of investors*** has been accomplished at an extremely high rate. Enforcement of the standard has been is predictable and there is no reason to anticipate that this trend will not continue.

In responding to the Commission's request for insights as to gaps and overlaps existing in the request for comments, it seems to me that the effectiveness of regulation of RIAs who operate under a fiduciary standard, particularly attention to and redress of grievances, has been far less than the effectiveness of enforcement and redress delivered by FINRA under suitability standards. One big reason for this disparity is the multiple layers of supervisory oversight which exists as to securities transactions, contrasted with virtually no level of supervisory oversight applicable to RIAs who operate under the fiduciary standard

In view of the record of success experienced with distribution of securities by registered representatives under the suitability standard, I believe that the "burden of proof" for any change to that standard is extremely high.

In undertaking the Study in point, as well as in responses by the Commission to the findings of the study, I believe several guiding principles should be observed, as follows:

1. FIRST DO NO HARM.
2. The Commission should follow the scientific method of investigating which requires "gathering observable, empirical and measurable evidence subject to specific principles of reasoning" (Rules for the study of natural philosophy", Newton, 1999.) Unsubstantiated opinions and biases have no legitimate place in the process of promulgating the overturning of decades-old rules of the road which have served the public well. (If Congress were studying the concept that all vehicular traffic in this country would change from driving on the right to driving on the left, such a cataclysmic change would demand overwhelming evidence of a substantial positive cost-benefit ratio or it should be rejected.)
3. Results of any new actions should be calculated to expand access to financial products and services among members of the general public of all financial statuses.

I am mindful of extremely harmful regulatory actions by financial services regulators in other countries which I would submit are effects which the Commission should be scrupulous to avoid. One example in which principles 1 and 3 were ignored is reported in the attached PDF item, a Wall St. Journal account, dated February 25, 2010, of effects of ill-advised regulatory actions in India. The article reports that sales of mutual funds had nearly quintupled over the past five years. But last August, the Securities and Exchange Board of India ruled that funds could no longer charge "entry loads." As a result, in order to obtain such funds, purchasers had to pay a fee to the person selling the fund. As reported by the executive director of SEBI, the objective was "investor protection." However, the effect of the action was that "in the last six months, investments in funds have effectively stopped." The intended "protection" resulted in reduction of investments and disruption of capital markets. It was harmful, and it contracted access to products and services.

Another extremely harmful series of regulatory actions in the United Kingdom resulted in a decrease of financial service providers in that country by over 60% in the past two decades. Well-intentioned regulatory actions resulted in an explosion of unmerited complaints against providers, resulting in a cascade of negative effects such as financial costs to pay administrative process fees, and financial costs to defend their actions, and costs of time and ability to concentrate on serving persons who wanted and needed their services. Of the thousands who exited the business, the majority served the middle and lower markets. Those who serve upper income and net worth persons were more equipped to endure the costs of time and money. As one observer put it, "persons among the lower half of the population were so well protected from any possibility of unsuitable service, they can't get any service at all."

In my experience, the suitability standard is well settled and provides clear guidelines of conduct. The fiduciary standard is amorphous. Complicating the problem even further, the fiduciary standard is largely developed at the state level; therefore the requirements of a fiduciary standard in Virginia are likely different from those standards in Maryland.

If an unclear standard is substituted for a clear one, an inevitable effect will be reduced efficiency among financial service providers. This will result from several overlapping factors. One is increased litigation. The result of that will result in increased financial costs of doing business and excessive costs of time expended in self-defense (just as was experienced in the U.K). These increased costs will cause providers to exit the field, especially providers who serve the middle markets. . .persons with between $1,000 and $250,000 to invest. In addition to the adverse effect on existing financial service providers, development of an unclear standard will present a barrier to entry; prospective new providers will simply avoid entering a field that is guided by expensive, amorphous standards. This cascade of predictable negative effects will end up reducing the supply of financial service providers and reducing choice to the investing public. Those predictable results are diametrically opposed to a mission of the Commission to adopt actions which will promote efficiency.

Finally, it is my understanding that the Rand study was for the purpose of measuring "confusion" among the public. And the study did that. It also determined that the vast majority of persons are pleased with the financial services they receive from their provider(s). To me, that is not surprising. Financial service providers need to maintain happy clients in order to obtain repeat business and referrals to new clients.

If the Commission wished to address the issue of confusion, I believe use of a brochure rule for disclosure, along the lines now required of RIAs, would be far more productive in addressing lack of clarity of processes.

I appreciate the opportunity to comment.

Cordially,

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