UBS Wealth Management

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

Re: Study Regarding Obligations of Brokers, Dealers and Investment Advisers

Dear Ms. Murphy:

I appreciate the opportunity to comment on the Commission's study on the obligations of brokers, dealers, and investment advisers.

By way of background, I am the CEO of UBS Wealth Management Americas, which is dually registered as a broker-dealer and an investment adviser. We are one of the largest securities firms in the United States and part of one of the largest wealth managers in the world. UBS globally has been a wealth manager for more than 140 years, and its more than 60,000 employees serve investors in over 50 countries. I have been in the financial services business for nearly 30 years.

The economic turmoil and scandals of the last few years have shaken confidence in financial services firms, and the efforts of Congress, the Commission, and the industry are critical to restoring that confidence by improving the regulatory structure and enhancing investor protection. At the same time, I firmly believe that our capital markets are a national treasure, that they have made a significant contribution to this country's economic development, and that they are essential to our future economic prosperity. As we move forward to improve the existing system, it is important that we also preserve what is good about our existing system.

The majority of financial advisers – whether they work at solo practice, single-service investment advisers or multi-service firms with many thousands of FAs and a wide array of products and services -- are highly professional, knowledgeable, and fully dedicated to helping their clients meet their investment objectives. They make important, positive differences in their clients' lives. The best advisers have played and will continue to play an important role in helping clients navigate through both difficult and prosperous economic times. I urge the Commission to enhance investor protection in a way that preserves investors' current ability to choose among a wide range of products, services and competing methods of conducting business.

While the Commission's study will cover a wide range of issues, I am going to focus on the seven points that I think are the most critical for investors today. To summarize, we are strongly supportive of the Commission's efforts to enhance investor protection. We think that whatever standard the Commission ultimately adopts, it should provide as much clarity as possible about what it means in practice and not create uncertainty that could lead to litigation. We believe that harmonization of the regulatory scheme should focus not

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merely on whether a new standard should attach to broker-dealers that give personalized investment advice, but also on filling the gaps in the current regulation of investment advisers relative to the far more comprehensive regulation that already applies to broker-dealers. While we believe that some investors are well served by single-service investment advisers, many investors appropriately choose multi-service securities firms that provide a much broader array of products and services under one roof than most investment advisers can provide. Nothing should be done to discourage investors from continuing to choose that more comprehensive model so long as investors are informed of the conflicts that arise in multi-service securities firms, are aware of multiple streams of income for different services, and are informed about how conflicts are managed. Finally, we respectfully urge that the Commission make clear that any new standards are intended to apply only under the securities laws, and are not intended to change standards under ERISA and elsewhere where the application of new standards could significantly limit investor choice.

I briefly expand on these points below.

First, UBS -- and every responsible leader in our industry -- supports a high degree of professionalism and dedication for all people in the financial services industry and believes it is critical to take steps to restore investor confidence. We welcome an opportunity to play a constructive role with the Commission in this important effort.

Second, too much of the current debate has focused on labels, code words and sound bites. Words like "fiduciary" can mean different things to different people in different contexts, especially when applied to practices to which they have not previously been applied. At the time it issues its proposed new rules, I urge the Commission to provide a high degree of clarity about what the new standards are intended to mean in practice. Otherwise it will be left to the courts to sort through the uncertainty created by the application of new rules to existing business practices. In an already litigious society, that uncertainty will disserve investors rather than restore confidence.

Third, the standard chosen should not be used to restrict financial services available to investors. Many investment advisers, who are often single-service individual practitioners with limited ability to provide a wide range of services, would like to eliminate "conflicts" at multi-service firms because these advisers only provide a narrow range of services. Some investors may choose, and be well-served by, a single-service advisory model. That does not mean, however, that other investors are wrong in choosing a multi-service securities firm that provides a wide range of services and products under one roof and involves multiple forms of compensation.

Fourth, the current debate largely ignores the disparity in regulation of broker-dealers and investment advisers, and focuses instead on the one difference that investment advisers have chosen to highlight – the existence of a fiduciary duty. It is important that the Commission's rulemaking be driven by what is in the best interest of investors, and not by what is in the best interest of small, single-service investment advisers. The Commission's efforts at harmonization should also focus on current gaps in the regulation of investment advisers.

Under FINRA rules, broker-dealers are already required to observe "high standards of commercial honor and just and equitable principles of trade" in all of our dealings with clients. We must obtain "best execution" for our clients in all transactions, whether we sell or buy as dealer or agent. Our markups on securities must be "fair and reasonable." Whenever we recommend securities, we must have "reasonable grounds for believing that the recommendation is suitable" for the customer based on the customer's financial situation and needs. Our marketing materials must be "fair and balanced." We are subject to regular inspections by the SEC, FINRA, and others. The disciplinary history of our brokers is publicly available on a website. We must also satisfy net capital requirements, requirements related to the custody of client assets, fidelity bond requirements, continuing education requirements, and filing and pre-approval requirements for sales materials. We must also comply with a wide variety of laws imposed by each of the 50 states. And, of course, we are subject to the federal securities laws administered by the SEC. These are important safeguards for investors, and yet only a few of these customer protections apply to investment advisers. In seeking to protect investors and restore confidence in the financial services industry, the Commission should address the current under-regulation of investment advisers relative to the *existing* regulation of broker-dealers.

Fifth, because single-service investment advisers do not act as dealers and all of their compensation is for advice rather than for a stream of other services, the fiduciary duty concept applies neatly to their business model. Their model is a simple one, but many millions of clients instead affirmatively choose to go to multi-service securities firms for a wide range of products and services. Investors should not be prohibited or discouraged from establishing relationships with multi-service securities firms that provide under one roof a combination of immediate execution, liquidity, research-driven guidance, a wide choice of products, securities tailored to individual client needs, and other services that are more attractive to investors than the one-course offering that most investment advisers offer for a single fee. Millions of investors affirmatively choose the multi-service model and are happy with the combination of services they receive. They should not be restricted from continuing to choose this more robust model.

Sixth, even in the context of Trusts – involving the highest fiduciary duty there is – conflicts that a beneficiary consents to or ratifies are almost always permitted. To be sure, trustees are held to a high degree of professionalism – as are broker-dealers and investment advisers – but they are not prohibited from playing multiple roles to which the client consents. There is no reason that informed investors should be discouraged or prohibited from consenting to broker-*dealers* acting as dealers or providing other services that may lead to additional fair compensation. For new clients, that can be done at the account opening stage, at which time clients should receive clear disclosure of conflicts. For existing clients, that can only practically be done through "negative consent," *i.e.*, clear disclosure of conflicts followed by a non-objection. One might ask why not insist on affirmative consent from existing clients. The answer is straightforward: when the standard changes after the account opening process is over, it is impossible to obtain new signatures from hundreds of thousands of existing clients. I respectfully urge that the Commission not impose affirmative consent requirements that, as a practical matter, make it burdensome or impossible for clients to trade with the very broker-dealers with whom the clients have chosen to establish a brokerage relationship.

Seventh, I believe it is important that the Commission make clear that whatever standard it chooses is not intended to change the standards outside the securities laws. Investors today have trillions of dollars in various types of retirement accounts, which are governed by ERISA and the Internal Revenue Code. Because the laws applicable to retirement accounts often restrict the services and products that fiduciaries may provide,

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extending the new standards outside the securities context could inadvertently prevent clients from accessing the services and products that they currently have in these accounts.

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Most people in the securities industry are honorable and capable men and women who start and end work each day with the goal of helping their clients satisfy their clients' investment objectives. I can say without hesitation that the vast majority of people I have met in this business do the very best they can for their clients, and I take great pride in the work that they do.

Despite recent turmoil arising largely from the collapse of the subprime market in 2007, regulatory change should build on the strengths that already exist in our industry. To be sure, there is room for improvement. We should all learn from the recent events and I applaud the Commission's efforts to improve the regulatory structure. I respectfully urge that the Commission also make sure that it preserves the ability of investors to choose among competing business models by not tilting the scales against multi-service securities firms in favor of those who provide a narrower range of products and services.

Very truly yours,

Robert J. McCann

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