



WOODBURY FINANCIAL SERVICES, INC.
Member FINRA, SIPC, and Registered Investment Adviser
P.O. Box 64284
St. Paul, MN 55164-0284
(800) 800-2638
woodburyfinancial.com

Filed Electronically

August 30, 2010

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

Re: Request for Comment on Study Regarding Obligations of Brokers, Dealers, and
Investment Advisers [File Number 4-606]

Dear Ms. Murphy:

Woodbury Financial Services, Inc. (“Woodbury Financial”) appreciates the opportunity to submit this letter in response to the request for comment by the Securities and Exchange Commission (“SEC”) on the study it has undertaken regarding obligations of brokers, dealers, and investment advisers in accordance with the requirements of Section 913 of the recently enacted Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the “Dodd-Frank Act”). In this comment letter, we identify and explain the factors that we believe the SEC should consider as it conducts this very important study.

Woodbury Financial is an independent retail broker-dealer and a member of The Hartford Financial Services Group, Inc. (NYSE: HIG) (“The Hartford”).¹ Woodbury Financial sells a wide variety of financial products including, but not limited to, The Hartford’s financial products, and serves its financial services customers through approximately 1700 registered representatives (the majority of whom are independent contractors)². Woodbury Financial’s registered representatives are often the primary financial advice and product service provider to their customers. Because Woodbury Financial is registered with the SEC as both a broker-dealer and as an investment adviser, and is a member of the Financial Industry Regulatory Authority (“FINRA”), we have practical experience dealing with and reconciling the two regulatory regimes.

Woodbury Financial is a member of the Financial Services Institute (“FSI”). We participated in the preparation of FSI’s comment letter, and generally share FSI’s views regarding the need for harmonization of the standards of care owed by investment

¹ We note that The Hartford is submitting its own letter, with views that are substantively the same as those expressed herein, in response to the SEC’s request for comment.

² Approximately 700 of these registered representatives are also registered as investment adviser representatives and provide advisory services.

advisers and broker-dealers, and the various factors that must be considered in developing a harmonized standard.

We respectfully offer the following comments.

Assessing the Current Framework

The Dodd-Frank Act directs the SEC to consider a number of factors in conducting this study. While all are important, we believe the most critical are those that relate to the effectiveness of existing standards, the existence of any gaps in those standards, and retail customers' understanding of and confusion about those standards. The SEC should only undertake rulemaking if it determines that existing standards are ineffective, deficient and/or confusing.

In our view, both the investment advisers' fiduciary standard and broker-dealers' suitability standard have, to varying degrees, proven effective in protecting retail investors. However, we believe that SEC rulemaking is needed to address certain gaps in the protection provided to retail customers under the current framework, and that any such rulemaking should be designed to alleviate the legitimate confusion that has resulted from the current regulatory framework.

In conducting this study, we believe it is important that the SEC evaluate the effectiveness of each standard by taking a deeper review of their actual substance. This review should be open-minded and objective, and should go beyond an analysis focused on the labels assigned to each standard. Based on recent media reports, there seems to be a perception among regulators that the fiduciary standard provides greater protection for investors than the suitability standard, but as we will explain below, we do not believe that to be an accurate assessment.

NASD Conduct Rule 2310 establishes the basic suitability standard for sales of securities by broker-dealers.³ It requires that any recommendation that a customer purchase, sell or exchange a security must be "suitable for such customer upon the basis of the facts, if any, disclosed by such customer as to his other security holdings and as to his financial situation and need." The Rule further requires that, before making a recommendation, the registered representative must make reasonable efforts to obtain important information from the customer. The suitability framework has been subjected to frequent regulatory modifications, and has been refined by literally thousands of court cases and FINRA arbitrations, throughout the past several decades. An even more comprehensive framework applies to sales of deferred variable annuities under FINRA Rule 2330. Woodbury Financial performs the required suitability analysis based on the specific

³ We note that, as part of its Rulebook Consolidation initiative, FINRA has proposed certain changes to Rule 2310.

needs and situation of each customer, and has specific suitability requirements for particular products. In making the suitability determination, many factors are taken into account, including each customer's age, risk tolerance, investment objectives and other key suitability criteria. This process is conducted by thousands of firms and hundreds of thousands of registered representatives daily.

Unlike the suitability standard, the fiduciary duty owed by investment advisers can not be found in any law, rule or regulation. Rather, it is the result of judicial interpretation of the anti-fraud provisions of the Investment Advisers Act of 1940. The Investment Adviser Association's website offers the following description of this duty:

The parameters of an investment adviser's fiduciary duty depend on the scope of the advisory relationship and generally include the following duties: (1) to place the interests of clients first at all times; (2) to have a reasonable basis for its investment advice; (3) to seek best execution for client securities transactions where the adviser directs such transactions; (4) to make investment decisions consistent with any mutually agreed upon client objectives, strategies, policies, guidelines, and restrictions; (5) to treat clients fairly; (6) to make full and fair disclosure to clients of all material facts about the advisory relationship, particularly regarding conflicts of interest; and (7) to respect the confidentiality of client information.

While the fiduciary standard has been subject to regulatory comment and judicial interpretation, the body of interpretive law and decisions regarding the fiduciary duty pales in comparison to the extensive body of rules and adjudicatory decisions regarding the suitability standard.

Key Considerations

In considering possible rulemaking in this area, we urge the SEC to be guided by the following considerations:

Focused Rulemaking

Any proposed rules should be business-model and product neutral, and narrowly tailored to those areas in which action is needed. As indicated in the Dodd-Frank Act, this means that the scope of any rulemaking should focus on personalized investment advice about securities to retail customers. Moreover, if the SEC does decide to propose new rules, they should only apply to those financial professionals who provide direct advice to individual investors, and should not extend to others within the distribution chain (e.g., intermediaries, advisors or facilitators).

Harmonization of Standards

One of the most common criticisms of the existing framework is that the applicable standard in any given situation is determined by the registration status of the individual providing the investment advice without regard to other relevant factors. This creates inequities in the levels of protection afforded to different retail customers, and causes significant confusion. We support the concept of creating a harmonized standard of care that would apply to any financial professional who provides personalized investment advice about securities. Under such a harmonized standard, similarly situated retail customers should be entitled to the benefit of a similar degree of protection from fraud and misrepresentation, and similarly situated financial professionals should be subject to a similar level of regulatory oversight. However, it is important that harmonization not result in a one-size-fits-all approach. Rather than simply imposing a rigid fiduciary standard across the board, the SEC should develop a dynamic, modern and harmonized standard that considers the different facts and circumstances of each particular interaction between a financial professional and his or her clients. In developing this new, harmonized standard, the SEC should be careful not to place undue restrictions, either directly or indirectly, on any firm's ability to conduct business in contravention of our free market system.

On a similar note, we encourage the SEC to adopt a clear and narrowly tailored definition of the term "personalized investment advice about securities." Broker-dealers provide a wide variety of services that should not fall into this category. We do not believe that any changes are warranted with respect to the standard of care owed by broker-dealers when, for example, they merely execute trades for clients, or provide clients and potential clients with educational materials about investing.

Harmonization of Other Rules

We believe that there is more to investor protection than the standard of care. As described below, there are a number of other areas in which investor protection would be enhanced by harmonizing the disparate rules that apply to investment advisers and broker-dealers. We urge the SEC to consider these areas as part of the SEC's study.

- **Disclosure.** The current disclosure requirements applicable to investment advisers and broker-dealers are not always clear, and may not provide customers with the information they need to make informed decisions. In seeking to address this concern, however, we urge the SEC to exercise caution. It is not hard to imagine how new disclosure requirements could result in overly verbose or abstract disclosure materials that very few retail customers would read and/or fully understand.

- **Regulatory examinations.** We believe that an essential component of a regulatory system designed to protect investors is regular, routine examinations of financial services firms and professionals by regulators. While broker-dealers are subjected to routine examinations by federal, state and self-regulatory organization examiners at a minimum of every three years (and often times much more frequently), not all firms that serve the investing public are subject to such routine examinations. Independent investment advisory firms may go five years or more without undergoing a regulatory exam. To the extent appropriate, we believe this gap in the regulatory regime needs to be addressed by developing a consistent approach to the methodology, cycle and focus of examinations.
- **Basic Licensing and Ongoing Educational Requirements.** For the protection of investors, we believe it important that all persons who provide personalized investment advice be subject to a minimum licensing standard to ensure a basic level of knowledge. In addition, we believe that ongoing training and education requirements are important to ensure that investment professionals maintain an up-to-date understanding of the financial markets and products. Currently, however, only one group of investment professionals, registered representatives of broker-dealers, are subject to either minimum licensing or required ongoing training and education. While we note that many independent investment adviser representatives maintain private financial designations that are comparable to and often in excess of registered representative licensing and ongoing training requirements, such designations are not required. We believe this gap is as important to address as the particular standard to which such professionals are subject.
- **An Efficient Adjudicatory System Staffed by Knowledgeable Personnel.** As a practical matter, customers will occasionally have disputes with their investment professionals. Given the frequency with which such disputes occur and the importance to the capital markets that such disputes be resolved efficiently, we believe it is important that the investing public be able to access an adjudicatory system that provides for efficient and effective resolution of such disputes and that such a system be staffed with personnel that have knowledge of the industry, its products and best practices. Again, however, only customers of registered representatives of broker-dealers have access to such a comprehensive system. Customers of independent investment advisers have no such dedicated system to protect their interests. We believe that this gap also should be addressed for the protection of the investing public.

Cost/Benefit Analysis

Any transition to address all of the items outlined in the proposal for revised standards will result in significant costs and change in the form of disclosures, new account paperwork/applications, training and policies and procedures. It is conceivable that many of the changes contemplated will have significant implications for back-office systems (e.g., modification of supervision and surveillance reports, commission systems, etc.). The SEC must adequately consider these costs in relation to the benefits of any proposed rules.

Implementation Challenges

The SEC should also be cognizant of the fact that any significant changes to the current framework will create many challenges for investment advisers, broker-dealers and financial professionals. We would encourage the SEC to formulate any rule proposal in a manner that would provide adequate time to transition to the new regime.

* * * *

We appreciate the opportunity to provide these comments. If you have any questions, please do not hesitate to contact Jennifer Relien, Chief Legal Officer, at 651-702-1888.

Sincerely,

A handwritten signature in cursive script, reading "Patrick H. McEvoy". The signature is written in black ink and is positioned above the printed name and title.

Patrick H. McEvoy
President and Chief Executive Officer