



Arthur J. Gallagher & Co.

Insurance Brokers of California, Inc

August 27, 2010

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



**Re: Request for Comment on Broker-Dealer/Investment Adviser Study;
Release No. 34-62577; IA-3058; File No. 4-606)**

I am writing today to offer my views on one aspect of the above-referenced SEC study, which is considering, among other things, the need for new rules to address any gaps in the standard of care that applies to retail customers of brokers, dealers and investment advisers. Among other things, the SEC is considering whether to impose a "best interest" or fiduciary standard on broker-dealers.

By way of introduction, I am a commercial insurance broker. For almost 25 years I have represented broker-dealers, registered representatives and investment advisors in the brokering and risk management of professional liability for such firms. During that time, I and my team have seen thousands of claims paid by E&O policies which we have brokered and managed. We regularly consult with clients, insurance claims staff and lawyers regarding E&O claims brought by customers.

It has been my experience that the suitability standard has been extraordinarily effective and, perhaps more importantly, fair. It is a workable standard that provides guidance on what registered reps (and their supervisors) must do in the course of providing recommendations about securities. It protects their customers, through a series of steps in which the broker must conduct due diligence on the customer, must understand the product he is recommending, must make disclosures about the product to the customer, and then must subject the entire process to review by a supervisor (who himself or herself may incur liability for failing to reasonably supervise, with a view toward preventing violations).

It also has served as a fair measure in the dispute resolution process that has developed over time, which is quick, predictable and delivers equity. As broker-dealers, their lawyers and insurers evaluate how to resolve customer claims or arbitration filings, their considerations are uniformly consistent. Broker dealers and their advisors know that if a registered rep engaged in recommending and selling unsuitable investments, the claims needs to be settled. There is real certainty for all the parties. If the investments were unsuitable, an arbitration panel will award damages for the clients 100% of the time.

It is perhaps illustrative that in FINRA arbitrations involving customers, there are really only two kinds of cases arbitrated. 1. Cases in which the defendants are absolutely



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convinced that they will prevail and 2. Cases in which the defendants believe the customers may be due some compensation, but nothing close to the amount they are demanding. All other matters are settled, because the firms and their insurers know how the panels will rule. This predictability works for all the parties, especially customers.

Recently, I have asked several insurance underwriters, who specialize in E&O coverage for this marketplace to offer their observations on how a broad fiduciary duty applied to broker-dealers would affect this process. They said that if the SEC implements a fiduciary standard, they expect to see E&O rates raise because they expect claims to raise. One focused on the potential for ambiguity in the application of the standard. His concern was that it would take time for broker-dealers to understand the way these new rules will be administered. In the meantime, there will be more volatility in the arbitration decisions. A benefit of the current arbitration system is its predictability based upon clear standards of conduct that are either met or are not. Under a new, looser standard, it is difficult to predict how the process will work and, therefore, difficult to price the risk, at least at this point.

It seems to me that changing the current standard that applies to brokers' sales activities is an effort to fix something that is not broken. And in this case, the repair is quite likely going to create confusion and cost, unnecessarily.

I understand that this topic is exceptionally complex. It is my hope that this brief letter has offered a unique perspective on a matter of real significance to investors and to the investment professionals who serve them.

Sincerely,

A handwritten signature in black ink, appearing to read "Perry Even".

Perry Even
Area Senior Vice President
Arthur J. Gallagher & Co.