MEMORANDUM

TO: File on Title IX of Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act")

FROM: Jennifer B. McHugh, Acting Director, Division of Investment Management
Christian L. Broadbent, Counsel to Commissioner Elisse B. Walter

DATE: December 20, 2010

RE: Meeting with Representatives of the National Association of Insurance and Financial Advisors ("NAIFA")

On December 16, 2010, Chairman Mary Schapiro, Commissioner Elisse Walter, Jennifer McHugh, along with Christian Broadbent and Cyndi Rodriguez of Commissioner Walter's office, met with representatives of NAIFA to discuss the study required by Section 913 of the Dodd-Frank Act.

The list of attendees was as follows:

- Terry Headley, President, NAIFA; Headley Financial Group
- Robert Miller, President-elect, NAIFA; Miller Pomerantz
- Gary Sanders, NAIFA Vice President
- Jill Edwards, NAIFA Assistant Vice President
- John Fielding, Steptoe & Johnson
- John Collins, Steptoe & Johnson

The agenda and other materials submitted pursuant to the meeting are attached to this Memorandum.

Agenda
Meeting with Chairman Schapiro, Commissioner Walter
and
National Association of Insurance and Financial Advisors (NAIFA)

December 16, 2010

Introductions of participants

Description by NAIFA leaders of NAIFA

NAIFA is a national individual member association with approximately 200,000 members and associates who offer insurance and securities products and financial services primarily to middle market clients. Approximately 66% of NAIFA members are registered representatives and about 27% of NAIFA members are RIAs/IARs, in addition to being state licensed insurance professionals. NAIFA represents the interests of its members before federal and state regulatory agencies, such as the SEC and state insurance departments, as well as before Congress and state legislatures.

Description of business models of NAIFA leaders

Terry Headley, NAIFA President, and Robert Miller, NAIFA President-elect, will describe their businesses, licenses and registrations and those of their fellow NAIFA members, in addition to the interactions by NAIFA members with middle market consumers across product lines.

Standard of Care for Registered Representatives of Broker-Dealers

Discussion of current standard of care under 1934 Securities Exchange Act (Suitability Standard) and Congressionally mandated study of a different standard of care taken from the 1940 Investment Advisors Act (Fiduciary Standard) and differentiation of these Standards of Care in practical application with clients.

Current multiple licensing, registration and compliance requirements required of NAIFA members, in addition to oversight and examination by the SEC, FINRA, state insurance departments and state securities divisions.

Potential impact and consequences of changing the current standard of care on middle market consumers and their registered representatives. Description of LIMRA survey of NAIFA members and consumers.

Wrap-up

Terry K. Headley, LUTCF, LIC, FSS

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Mr. Headley is the Managing Partner of the Special Market Development Office and President of Headley Financial Group in La Vista, Nebraska. A senior agent and registered representative with the Principal Financial Group for the past 37 years, Mr. Headley formed Headley Financial Group, an affiliate of the Principal, in May 1982. The firm offers:

- Investment products, including variable annuity contracts, mutual funds, general securities, and real estate, oil, gas limited partnerships;
- Retirement products, including qualified retirement plans, individual retirement accounts, tax-deferred annuities, and non-qualified retirement plans;
- Personal and business financial and estate planning, and investment advisory services;
- Individual insurance products and group and employee benefits plans.

Mr. Headley is a registered representative holding NASD Series 6, 7, 22, 24 63 and 65 licenses, and is also a Registered Investment Advisor. Additionally, he is a resident Nebraska-Licensed Insurance Consultant.

Prior to founding Headley Financial Group, Mr. Headley was a full-time Career Agent and Registered Representative with The Principal Financial Group (f/k/a The Bankers Life of Iowa) and their wholly-owned Subsidiary Broker/ Dealer, Princor Financial Services Corporation. Prior to joining the Bankers Life of Iowa Insurance Company in May 1973, he was a Student at Doane College, Crete, Nebraska, where he studied Economics and Political Science.

Mr. Headley became NAIFA President at the Association's Career Conference and Annual Meeting in Seattle in September 2010. As NAIFA President, Mr. Headley regularly speaks on financial and insurance topics. He has addressed numerous industry, association, and company gatherings, including the Society of Financial Service Professionals Forum, the National Health Care Reform Conference, and the 2010 Employer Healthcare Congress. He has been interviewed on financial legislative and regulatory topics by leading national media outlets, including the *Investment News*, National Public Radio, the Washington Post, Wall Street Journal, and the Associated Press.

Mr. Headley earned the Financial Services Specialist (FSS) designation from The American College in 2006 and has moderated an FSS course on the foundations of financial planning. He became a Life Underwriter Training Council Fellow (LUTCF) in 1986 and subsequently served on the Council's national committee, contributed content for the LUTC text book and moderators' guides, and served as a moderator for LUTC financial planning skills courses.

Mr. Headley and Wynetta, his wife of 40 years, reside in Springfield, Nebraska just outside of Omaha, NE. They have three adult daughters and two grandchildren.

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Robert A. Miller, M.A., M.S.

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Mr. Miller is a partner at Miller-Pomerantz in New York City along with his father, Sidney, his brother, Jonathan and Lloyd Pomerantz. Mr. Miller is a licensed registered rep. with NY Life Securities the broker dealer of the New York Life Insurance Company. Mr. Miller and his partners service over six thousand clients.

Mr. Miller became NAIFA's President-Elect in September 2010 at the organization's Career Conference and Annual Meeting in Seattle. A past president of NAIFA's New York City and New York State associations, Mr. Miller's outstanding service to those organizations has been recognized with the Ben Brewster Government Relations, Julian Myrick, and Spencer L. McCarty Awards. He is a graduate of NAIFA's Leadership in Life Institute and a member of the Million Dollar Round Table. Mr. Miller was elected to the NAIFA Board of Trustees and has served as trustee liaison to the CEO Outreach Program and the Young Advisors Team.

He resides with his wife Kathy in New Canaan, Connecticut, and has five children and stepchildren.

GARY A. SANDERS

Vice President
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Mr. Sanders joined NAIFA's Government Relations Department as Counsel in September, 1989. Prior to joining NAIFA, he spent several years in private practice with a Washington, D.C., law firm where he worked primarily in corporate law and commercial real estate.

As a member of the Government Relations Department, Mr. Sanders coordinates and directs NAIFA's state legislative and regulatory efforts on stranger-originated life insurance (STOLI), viatical and life settlements, COLI, annuities, the regulation of the use of designations, securities and health insurance issues in all 50 states, and represents NAIFA's interests at the federal level on all securities matters. He also provides legal counsel to NAIFA on a variety of corporate and association issues, including the negotiation and drafting of hotel and meeting contracts. Mr. Sanders previously co-authored AHIA's Health Legislative Report and has written articles concerning life insurance, securities and other issues for various NAIFA publications, including GovTalk, GovWatch and *Advisor Today*, NAIFA's official trade publication. He has also made numerous presentations before insurance groups on matters pertaining to insurance and securities legislation and policy, and is a frequent speaker and panelist at NAIFA's National Leadership Conference and annual Career Conference and Annual Meeting.

A native of New York City, Mr. Sanders graduated *magna cum laude* from Brandeis University in 1976 with a bachelor's degree in political science. He received his Juris Doctor degree from the Georgetown University Law Center in 1979.

Mr. Sanders is a member of the District of Columbia Bar and the Virginia State Bar and is also admitted to practice before both the United States District Court and the United States Court of Appeals for the District of Columbia. He is a member of the Northern Virginia Association of Insurance and Financial Advisors.

Mr. Sanders and his wife Angela reside in Alexandria, Virginia, with their son Andrew.

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12/10

Jill Edwards Hoffman

Jill Hoffman joined NAIFA's Government Relations team as Director of NAIFA Federal Relations in January 2006 and was promoted to Assistant Vice President of Federal Government Relations in September 2008. Jill came to NAIFA from the American Council of Life Insurers (ACLI), where she served for three years as a federal lobbyist. While at ACLI, she specialized on issues such as insurance regulation, group life inclusion in the Terrorism Risk Insurance Act, life insurance sales practices on military bases and consumer privacy issues. Since coming to NAIFA Jill has served as NAIFA's chief federal lobbyist before the Senate Banking and House Financial Services Committees. She represents NAIFA on important issues such as insurance regulatory reform, investor protection laws, and tax reform. Jill has also played the lead role in bringing about the enactment of the 2006, 2007, and 2009 House and Senate resolutions in support of Life Insurance Awareness Month.

Jill is a frequent contributor to many NAIFA publications and internet forums such as GovTalk, GovWatch, and Advisor Today. Jill serves as NAIFA's representative on various industry coalitions and panels in addition to being a regular speaker at NAIFA's National Leadership Conference and the NAIFA Annual Convention and Career Conference.

Born and raised in Shreveport, Louisiana, Jill graduated with a bachelor's degree in political science from Louisiana State University. Shortly after graduating she moved to Washington, D.C. to serve on the staff of U.S. Senator John Breaux of Louisiana. She left her Senate staff position in 2001 to begin her insurance lobbying career, joining the AFLAC Federal Relations staff.

Jill and her husband reside in Alexandria, VA.

JOHN T. COLLINS

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John T. Collins is a partner with the Washington-based law firm of Steptoe & Johnson LLP, where he is a member of the Corporate, Securities and Finance practice group and Regulatory and Industry Affairs group.

Prior to joining Steptoe in 1985, he served several years in government as General Counsel of the U.S. Senate Banking Committee, Senior Attorney in the Legal Davison of the Federal Reserve Board and Staff Attorney in the Division of Market Regulation of the Securities and Exchange Commission.

Mr. Collins counsels trade associations, banks, securities firms, insurance companies and other types of U.S. and foreign financial organizations on regulatory, acquisition, enforcement, interpretive and legislative matters. Specific representations have involved compliance with regulatory capital and other prudential standards, registration and compliance with securities laws by mutual funds and other organizations, implementation of corporate governance policies, Congressional investigations, charters for banks, acquisitions of US financial institutions by US and non-US banking organizations, and compliance programs under financial privacy and other consumer protection standards. His financial services practice includes representations of clients before the Federal Reserve, Federal Deposit Insurance Corporation, Securities and Exchange Commission. Office of the Comptroller of the Currency, Office of Thrift Supervision, Treasury Department and the U.S. Congress.

A native of Springfield, Massachusetts, Mr. Collins received his undergraduate degree from the College of the Holy Cross, Worcester, Massachusetts, and received his Juris Doctor and LLM (Taxation) degrees from the Georgetown University Law Center in Washington, DC ..

Mr. Collins is a member of the District of Columbia Bar and Massachusetts State Bar.

He is an adjunct professor at Georgetown Law Center, serves in leadership roles on Committees of the American and Federal Bar Associations and is a former Chairman, Vice Chairman and board member of TCU Mutual Funds, New York.

JOHN P. FIELDING

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John Fielding is Of Counsel with Steptoe & Johnson, where he is a member of the Regulatory and Industry Affairs practice. Mr. Fielding's primary focus is on insurance and financial services legislative and regulatory matters, and trade association representation. He represents financial services companies, insurers, insurance agents and brokers, and industry trade associations on matters before Congress and federal and state regulators.

Mr. Fielding represents clients on policy, legislative and regulatory matters involving insurance regulation, producer licensing, securities, and issues involving the recent financial regulatory reform legislation, where Mr. Fielding was deeply involved in the fiduciary standard of care issue. Mr. Fielding also provides counsel and advocacy for clients in connection with state regulatory matters before the National Association of Insurance Commissioners (NAIC). Mr. Fielding had previously worked as Senior Counsel for Financial Services at the NAIC, and served on the Board of Directors of the National Insurance Producer Registry (NIPR).

As lead legislative counsel at NAIC, he represented the interests of the state insurance commissioners before Congress and the federal agencies on major insurance legislation and a wide range of regulatory matters. Prior to his tenure with the NAIC, Mr. Fielding practiced securities transactional law in New York and Washington. Mr. Fielding began his career working on Capitol Hill as a legislative assistant to Senator Kent Conrad.

Mr. Fielding also counsels clients with respect to federal ethics laws, including congressional lobbying rules, the Lobbying Disclosure Act, and the Federal Election Campaign Act. He has advised firm clients on the formation of political action committees, the recent changes to the lobbying laws, and related compliance matters.

NAIFA

NAIFA MEMBERS:
SERVING MAIN STREET INVESTORS

A survey of NAIFA Members & Consumers December 2010

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NAIFA Membership Survey

NAIFA NAIFA MEMBERS:
SERVING MAIN STREET INVESTORS

Survey Administration

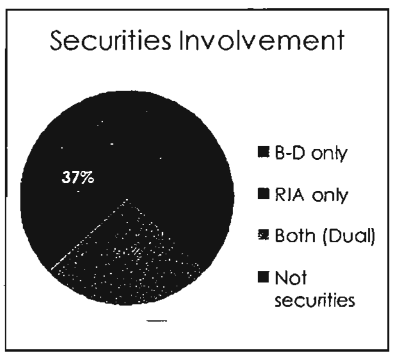
About the NAIFA Membership Survey

- Web-based survey of active NAIFA members
- Questionnaire content was based on input from NAIFA
- Survey conducted from Oct. 7 – 20, 2010
- 3,372 usable responses
- The margin of error for these results is less than ± 2 percentage points

NAIFA NAIFA MEMBERS:
SERVING MAIN STREET INVESTORS

Profile of NAIFA Members

- **Title used:**
  - 71% insurance (agent, broker, or insurance and financial advisor)
  - 22% investment (financial planner, wealth manager, registered representative, or financial advisor)
  - 7% Other

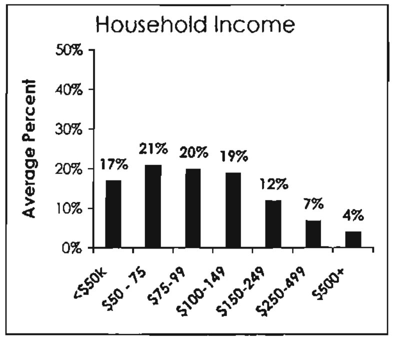


NAIFA MEMBERS:
NAIFA. SERVING MAIN STREET INVESTORS

About NAIFA Members' Clients

NAIFA Members Serve Middle-Market Consumers:

- 58% of clients earn less than $100,000
- Just 11% earn more than $250,000 a year



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Impact of Fiduciary Standard

If a universal fiduciary standard of care were imposed under the Wall Street Reform law, many NAIFA members say they would have to take action that could limit financial advice to middle-market clients.

NAIFA MEMBERS:
NAIFA SERVING MAIN STREET INVESTORS

Impact of Fiduciary Standard

NAIFA members' concerns about fiduciary:

- 51% believe a fiduciary standard would increase their costs, with 28% "not sure"
- If costs went up 15%, then 65% of members would take action, such as:
  - –31% would limit practice to upscale clients
  - –14% would increase fees charged
  - –20% would not sell securities

LIMRA's Take:

- About half of NAIFA's membership believe that a mandated move to a fiduciary standard would increase their costs related to more time on compliance (which for some could mean increased staff expenses, or more fees).
- Given the existing compliance costs, it is not surprising that such a move would significantly impact consumers. If regulatory expenses went up 15%, over half the respondents say they would take actions that would limit consumers access to financial products – get out of securities product sales, or limit their practice to clients with a minimum about of assets.
- While there is some uncertainty, we can conclude that a cost increase would impact a good number of consumers.

N= 2,125 involved in securities

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The Costs of Compliance

One out of five surveyed who were once licensed as a Registered Representative of a Broker Dealer or as an Investment Adviser Representative said they gave up their registrations and no longer sell securities to clients, partly due to compliance responsibilities.

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The Costs of Compliance

From the Focus Groups:

"My big concern (about compliance) is the new guys coming up who will just throw up their hands and say, 'Wow. It's hard enough to make a living in the business.' We won't have successors."

— NAIFA member

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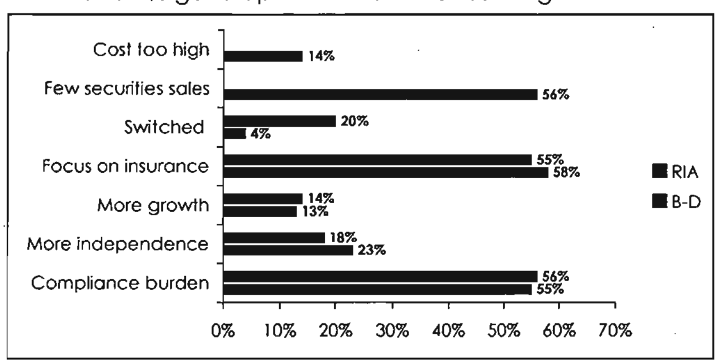
The Costs of Compliance

18% gave up Broker-Dealer Registration
and 9% gave up Investment Adviser Registration



N = 613 that gave up B-D
N = 294 that gave up RIA

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The Costs of Compliance

LIMRA's Take:

- A number of NAIFA members reported that they used to be either a Broker-Dealer representative or a RIA representative, but gave up their registration.
- The major reasons for giving up their registration were because of compliance burdens, limited securities sales, and a desire to focus on insurance products, which could be because of compliance issues.
- **These findings suggest that further regulatory burden will drive more NAIFA members to give up their registrations, which will limit the number of consumers who can benefit from their services.**

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The Costs of Compliance

For those involved in securities, compliance costs equate to:

- 526 hours per year = 10 weeks +
  - 514 hours per year on compliance
  - 12 hours per year on examinations
- $8,878 in direct costs
  - $264 in exam expenses
  - $569 in B-D and/or RIA annual fees
  - $8044 in staff expenses for compliance

LIMRA's Take:

- The typical NAIFA member incurs considerable costs in compliance and securities examinations.
- Any additional regulatory obligations will obviously increase these expenses, and impose an additional burden.

N= 2265 subject to exams

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SERVING MAIN STREET INVESTORS

Fiduciary: Impact on Clients

From the Focus Groups:

"The legality of the fiduciary, as I understand it, is about process, not outcome. Our clients are interested in outcomes, so from a practical standpoint there's not much difference between an honest, ethical broker operating under a suitability standard as opposed to operating under a fiduciary standard. But what is required is a whole lot more paperwork."

— NAIFA member

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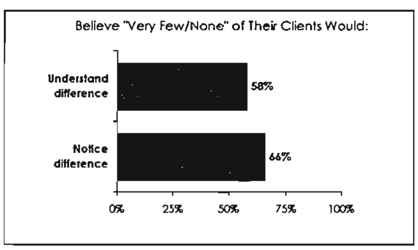
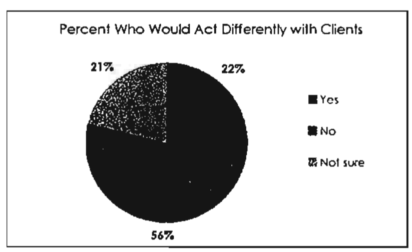
Fiduciary: Impact on Clients





LIMRA's Take:

- Over half of NAIFA's membership believe that "very few" or "none" of their clients understand the legal difference between a fiduciary and suitability standard.
- More (66%) feel "very few" or "none" of their clients would notice a difference in how they (the representative) deal with them (the client) if there was a move to a fiduciary standard.
- The reason the members feel that clients would not notice a difference is because only 1 in 5 of the members say there would be a practical difference in how they interact with clients if they had to adhere to a legal fiduciary standard as opposed to a suitability standard

N= 2,125 involved in securities

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Standard of Care

"The need and desire for NAIFA members to serve clients ethically and in their best interests ensures a vigorous level of investor protection that rivals any new standard that may be put in place."

— NAIFA President Terry Headley

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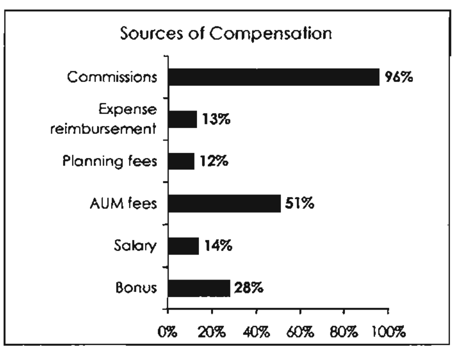
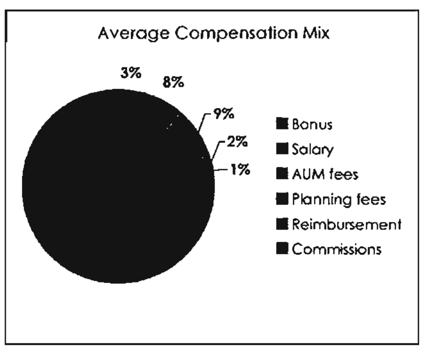
Compensation Breakdown

NAIFA members are paid through sales commissions





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Consumer Survey

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Survey Administration

About the Consumer Survey

- Internet survey by Opinion Research Corporation (ORC)
- Survey conducted from Oct. 11 – 13, 2010
- 1,008 U.S. adults age 18 or older
  - Representative by gender, age, region, and race
- The margin of error for these results is ± 3 percentage points

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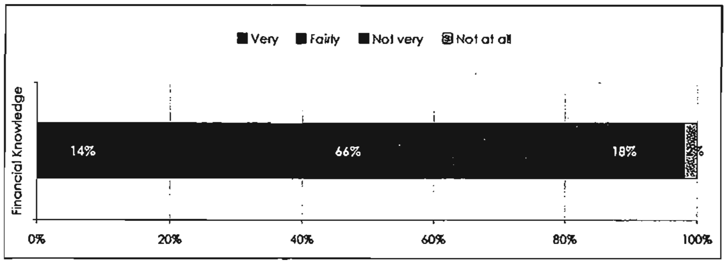
Consumers: Financial Situation

With just 'fair' financial knowledge, consumers need advice



LIMRA's Take:
The public admits to limited financial knowledge, with 86% saying their level of financial knowledge is only "fair" or less. This suggests the public needs professional financial advice.

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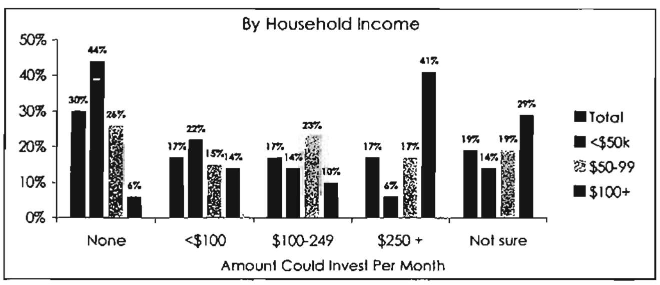
Consumers: Financial Situation

Only 17% can afford to invest more than $250 or more a month



LIMRA's Take:
The middle-market is quite spread in the amount they feel they could invest with a professional advisor, if they were to invest beyond their employer provided retirement account. With this variation in amounts, there is a need for a variety of ways for them to invest.

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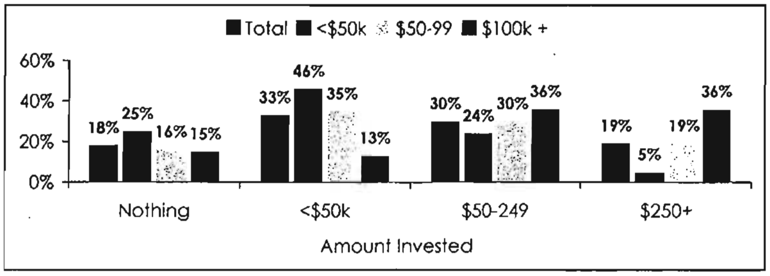
Amount invested by HH income



LIMRA's Take:

- Half (51%) of consumers who have used financial advisors have nothing or less than $50,000 invested with professional advisors.
- Most middle-income consumers have limited amounts invested, although some do have up to $250,000 or more invested. This implies considerable variety in the investment needs of middle-market America – some need low-cost help, while others have enough invested to be able to pay for extensive financial advice.

N = 503

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All consumers need access to advice

"Whether a client has fifty dollars or two-hundred-fifty dollars to put aside each month, NAIFA members are proud to serve middle-market consumers. My concern is that a fiduciary standard – as a one-size-fits-all cookie-cutter approach – will raise the cost of doing business and disenfranchise the middle markets by limiting their freedom of choice and access to affordable advice, products and services."

— NAIFA President Terry Headley

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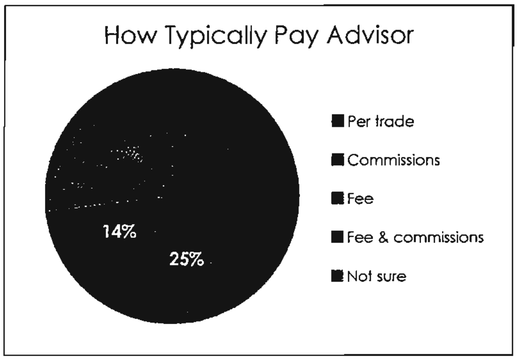
Advisor Compensation

1 in 4 pays their advisor only by fees



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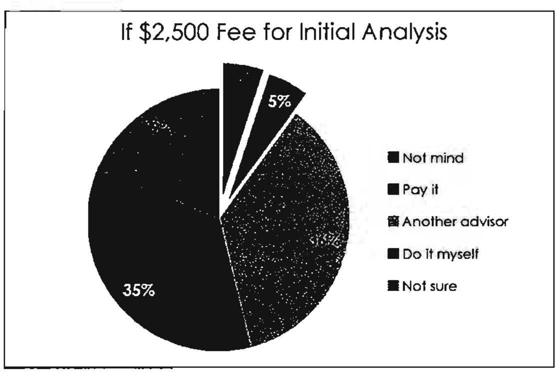
Advisor Compensation

7 out of 10 do not want to pay a fee up front



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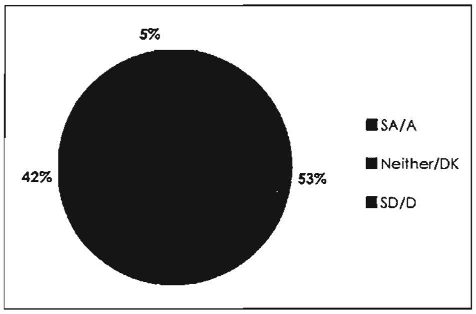
Advisor Compensation

People want a choice between Fee or Commission



Very few disagree that people want a choice between fees or commissions. By a 10 to 1 margin, among those that have a preference, people think people want a choice.

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Advisor Compensation

"Very few of NAIFA members charge up-front planning fees, as opposed to some investment advisers who charge thousands of dollars to their more wealthy clients. Similarly, many middle-market investors to not have large enough portfolios to satisfy the large minimum balances that nearly all investment advisers require."

— NAIFA President Terry K. Headley

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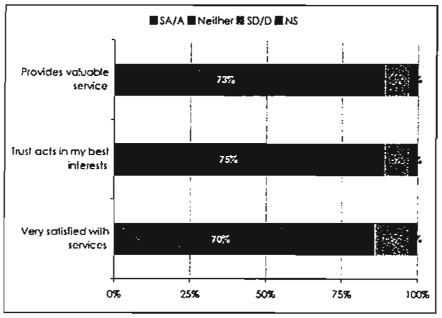
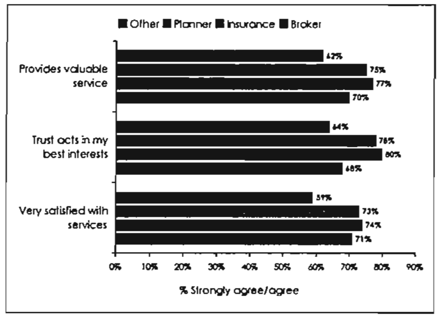
Favorable Marks for Advisors





Almost 3 in 4 U.S. households that use professional advisors have a favorable opinion of the advisor. This finding is similar to the SEC RAND findings.

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NAIFA

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FACTS AT A GLANCE
Results from a LIMRA survey of NAIFA members
DECEMBER 2010

1. NAIFA MEMBERS SERVE MIDDLE MARKET, OR "MAIN STREET," INVESTORS.

- Only 11 percent of NAIFA members' clients have annual household incomes of more than $250,000.
- 58% of NAIFA members' clients' have household incomes of less than $100,000.
- Most NAIFA members are small business owners who work in their clients' communities.

2. MIDDLE-MARKET (MAIN STREET) INVESTORS NEED THE TYPE OF AFFORDABLE SERVICES THAT NAIFA MEMBERS DELIVER.

- Consumers surveyed admit to limited financial knowledge, with 86% saying their financial knowledge is fair or less.
- This data supports earlier findings of the 2008 SEC-Commissioned RAND Study of Investment Advisers and Broker-Dealers which found that only 10% of investors said their financial knowledge was "good" or "advanced."
- 50% of consumers surveyed have used a financial advisor.
- Of those who have worked with a financial professional, half have less than $50,000 invested. This amount is not enough to meet typical Registered Investment Adviser (RIA) account minimums.
- 55% of investors with household incomes between $50-99k said they have some money they could invest, with 19% unsure. However, funds are limited – only 17% of these investors say they could invest $3,000 or more per year. Again, not enough to meet RIA account minimums.

FEES & COMMISSIONS

- 71% of consumers say that if their advisor charged $2,500 upfront for planning they would seek another advisor or go without professional services (19% unsure what they would do).
- Of those consumers with an opinion, 90% say consumers should have the freedom to choose whether they pay fees or commissions.
- RIAs almost always charge upfront fees of several thousand dollars and/or require minimum portfolios of $100,000, $500,000, $1 million or more, according to the RAND Study.
- 82% of all NAIFA members and 94% of NAIFA members who are Registered Representatives of Broker-Dealers charge no upfront or ongoing fees.

3. FIDUCIARY REQUIREMENT COULD HAVE UNINTENDED CONSEQUENCES FOR MAIN STREET INVESTORS.

- Adoption of a fiduciary duty for Broker-Dealers and their Registered Representatives creates the potential for market disruption and reduced choices for investors when it comes to who they work with and how they pay for services.
- 18% of NAIFA members surveyed reported to have dropped their Broker-Dealer registration due primarily to existing compliance burdens; 9% dropped their Investment Adviser Registration due primarily to compliance.
- 51% of NAIFA members think a universal fiduciary standard will increase their costs (28% are unsure).

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- If compliance costs increase 15%, 65% of NAIFA members said they would be forced to take actions potentially harmful to Main Street investors:
  - 31% would shift their business to wealthier clients
  - 20% would stop offering securities
  - 14% would start charging fees or increase their fees.
- If costs increase 15%: 41% of NAIFA members say "few," "very few," or "none" of their clients would pay; an additional 34% say only "some" of their clients would pay.

4. THE CURRENT SYSTEM WORKS.

- Suitability is a rigorous and robust standard.
- Investors have freedom to choose an RIA or a Registered Representative and how they pay for services.
- NAIFA members' business models are built on building credibility and trust with their clients to develop long-term relationships, cross-selling, referrals, and repeat business.
- 73% of consumers who have used a financial advisor say the advisor provides valuable service; 75% say their financial advisor does work in their best interest.

ABOUT THE SURVEYS

LIMRA conducted a Web-based survey of active NAIFA members during the time period of Oct. 7-20, 2010. Results are based on responses from 3,372 NAIFA members with a margin of error of plus or minus two percentage points.

~~LIMRA facilitated~~ an Internet survey by Opinion Research Corporation conducted Oct. 11-13, 2010. Results are based on responses from 1,008 U.S. adults age 18 or older, representative by gender, age, region and race. The margin of error is plus or minus three percentage pointes.

ABOUT NAIFA:

NAIFA comprises more than 600 state and local associations representing the interests of 200,000 members and their associates nationwide. NAIFA members focus their practices on one or more of the following: life insurance and annuities, health insurance and employee benefits, multiline, and financial advising and investments. The Association's mission is to advocate for a positive legislative and regulatory environment, enhance business and professional skills, and promote the ethical conduct of its members.

NAIFA

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New Survey of NAIFA Members Shows Fiduciary Standard Could Negatively Impact Services to Middle-Market Consumers

Separate survey of 1,000 consumers shows only 17% can afford to invest more than $250 per month, indicating need for affordable investment advice

FALLS CHURCH, Va. – An analysis of two surveys – one involving consumers and the other NAIFA members – shows that consumers with household incomes in the middle-market range represent a core client base of NAIFA members, and if a universal fiduciary standard of care is imposed under the Wall Street Reform law, many members would be forced to discontinue providing some services to middle-market clients.

According to the survey that polled 3,372 NAIFA members, most members involved in securities activities believe that the legal implications of a fiduciary standard will increase their compliance costs. If NAIFA members' compliance costs go up 15 percent, 65 percent of NAIFA members said they would need to take action that could limit access to financial advice, such as:

- 31 percent say they would limit their practice to affluent clients only
- 20 percent would not offer securities to their clients
- 14 percent would increase fees for their clients (41 percent say "few," "very few," or "none" of their clients could absorb an increase).

The survey, which was conducted by LIMRA International on behalf of NAIFA, also found that one out of five members surveyed who were once licensed as a registered representative of a Broker-Dealer or as an Investment Adviser Representative said they gave up their registrations and no longer offer securities to clients, primarily due to existing compliance responsibilities. (The NAIFA members who are involved in securities say they and their staffs devote more than 525 hours and spend an average of almost $9,000 a year on compliance, according to the survey.)

"These findings are particularly relevant to NAIFA because many of our members are community-based small business owners who provide affordable insurance and financial services to the middle-income market," NAIFA President Terry K. Headley said. "As the SEC examines how financial regulations are working to protect the investing public, we need to be aware of the impact a universal fiduciary duty would have on our members' ability to continue to serve this important market. These results show that further regulation will drive more NAIFA members to give up their registrations or discontinue services, both of which would limit the number of consumers who can benefit from our services."

According to the membership survey, most NAIFA members agree with recent surveys that indicate "very few" if any consumers understand or would notice the legal difference between a fiduciary or suitability standard. In fact, more than half of NAIFA members surveyed (56 percent) said they would not act differently with their clients if they had to adhere to a fiduciary standard, with just one out of five saying there would be a "practical difference" in how they interact with their clients if they were under a legal fiduciary standard.

Headley said this finding is not surprising: "Our members are heavily regulated under the suitability standard of care, which I believe is a robust and rigorous regulatory system that rivals the fiduciary standard of care. As business owners in their communities, NAIFA members see their clients every day – at places of worship, schools, grocery stores and as neighbors. Unless there is a relationship of trust and ethical behavior on the part of the financial professional, there is no way their business can survive. The need and desire for NAIFA members to serve clients ethically and in their best interests ensures a vigorous level of investor protection that rivals any new standard that may be put in place," Headley said.

About NAIFA members' clients

According to the member survey, 58 percent of NAIFA members' clients have household incomes of $99,000 or less a year:

- 17 percent earn less than $50,000 per household
- 41 percent of clients earn $50,000-$99,000
- 12 percent of clients' household incomes is between $150,000 to $250,000, with only 11 percent earning more than $250,000 per year.

Clients by and large pay for NAIFA member's services through sales commissions:

- The majority of NAIFA members' compensation (77 percent) comes from commissions
- Nine percent comes from assets under management fees
- Just two percent comes from set fees for providing financial advice or planning.

"NAIFA members are proud to serve this market. My concern is that a fiduciary standard – as a 'one-size-fits all' cookie-cutter approach to the investing public – will raise the cost of doing business and disenfranchise the middle markets by limiting their freedom of choice and access to advice, products, and services," Headley said.

(According to the U.S. Census Bureau, 80% of Americans' earn less than $100,000 a year; 44% earn $35,000-99,999.)

The Consumer Survey

The survey of 1,008 consumers, also conducted by LIMRA, indicates that consumers need financial advice. The majority of respondents (86 percent) described their level of financial knowledge as only "fair" or less than fair.

When asked how much they could afford to invest per month, 30 percent responded "none," and 17 percent of all consumers said they could afford less than $100 a month.

More than half of consumers with household incomes of $50,000-99,000 who said they have used a financial advisor have less than $50,000 (or nothing) invested. According to the survey:

- 16 percent say they have nothing invested
- 35 percent have between $1 and $50,000 invested
- 30 percent have between $50,000 and $249,000 invested.

Some 55 percent of the respondents in this income category said they have money available to invest, though of this group, just 17 percent said they could invest $250 or more per month.

In addition, of those who are using professional advisors, one in four pays their advisor only by fees, suggesting that consumers could be opposed to fees for financial advice. When asked their reaction to an upfront fee of $2,500 for an initial analysis of their situation before they invest any money, just one in 10 said they would pay the fee, and seven in 10 said they would either look for an advisor who charges less or not use an advisor at all. When asked whether consumers should be given a choice on how they pay for services (fee or commission), 91 percent of those with an opinion said investors should have a choice.

"Very few of NAIFA members charge up-front planning fees, as opposed to some investment advisers who charge thousands of dollars to their more wealthy clients," Headley said. "Similarly, many investors do not have large enough portfolios to satisfy the large minimum balances that nearly all investment advisers require."

The survey also confirms previous 2008 SEC Commissioned RAND Study findings that most consumers are happy with their financial professionals. Three-quarters of those surveyed agree or strongly agree that they trust their advisors currently act in their best interests. Nearly as many say their advisors provide them with valuable services (73 percent) and that overall they are very satisfied with the advisor's services (71 percent).

About the Surveys

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NAIFA

NAIFA MEMBERS
SERVING MAIN STREET INVESTORS

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Q&A based on results from a LIMRA survey commissioned by NAIFA

Q. WHY DID NAIFA COMMISSION LIMRA TO CONDUCT A SURVEY OF NAIFA MEMBERS?

A. The Dodd-Frank Wall Street Reform and Consumer Protection Act passed in summer 2010 directs the SEC to conduct a study to analyze the regulatory environment governing broker-dealers and investment advisers and to determine if any regulatory gaps or overlaps exist that are harmful to consumers. The premise behind the effort is based on the perception that the fiduciary duty governing investment advisers provides greater investor protection than the suitability standard governing broker-dealers. In NAIFA's view, the SEC study is important because without this analysis, due in January 2011, Congress was set to move forward with imposing a legal fiduciary duty on all broker-dealers and their registered representatives who provide advice to clients.

NAIFA commissioned the LIMRA study of NAIFA members to provide the SEC with data that would help explain to regulators how the suitability standard is applied and enforced in the real world versus the fiduciary duty governing investment advisers.

Q. HOW MANY MEMBERS WERE SURVEYED?

A. Results are based on responses from 3,372 members, with a margin of error of plus or minus 2 percentage points.

Q. WHAT ARE SOME OF THE KEY FINDINGS OF THE SURVEY OF NAIFA MEMBERS?

A. One key finding suggests that NAIFA members provide affordable financial services to lower- and middle-market consumers, with 58% of NAIFA members saying their clients have household incomes of $99,000 or below, and 77 percent have clients earning $149,000 or less. If a fiduciary standard of care is imposed, many NAIFA members believe their compliance costs would increase, and if costs go up 15 percent, 65 percent of NAIFA members would take action that would limit access to financial advice to this middle market (by increasing fees, limiting service to affluent clients only, or not selling securities). Close to half (41 percent) of members say that "few or "very few" of their clients could take on the added costs.

(According to the U.S. Census Bureau, 80% of Americans' earn less than $100,000 a year; 44% earn $35,000-99,999.)

Q. WHAT DOES IT COST TO COMPLY RIGHT NOW UNDER THE SUITABILITY STANDARD?

A. Currently, the typical NAIFA member incurs considerable costs in compliance and securities examinations. For those subject to compliance, members spend an average of 514 hours a year, plus 12 hours per year on examinations. Direct costs average $8,878 a year: $264 in exam expenses, $569 in broker-dealer and/or registered investment advisor fees, and $8,044 in staff expenses for compliance.

If a fiduciary standard of care is imposed, most members believe compliance costs would increase due to the additional time and staff expenses incurred to adhere to the rules.

Q. WHY NOT HAVE REGISTERED INVESTMENT ADVISERS – WHO CURRENTLY OPERATE UNDER FIDUCIARY – SERVICE MIDDLE-MARKET CONSUMERS?

A. Many middle-market investors do not have large enough portfolios to satisfy the minimum balances nearly all investment advisors require. According to a 2008 RAND report, about half of the investment advisers examined for the report had account minimums of at least $1 million, and nearly all of the others had account minimums of $100,000 to $500,000.

According to the NAIFA consumer survey, middle market consumers who work with a financial advisor say they have less than $50,000 invested. Registered investment advisors are not likely to work with this market because of the large minimum balances required in these accounts.

Q. DO CONSUMERS REALLY KNOW THE DIFFERENCE BETWEEN FIDUCIARY AND SUITABILITY STANDARD OF CARE?

A. NAIFA members believe that very few, if any, consumers understand the difference between fiduciary and suitability. In fact, only one out of five NAIFA members say there would be practical difference in how they interact with their clients if a fiduciary responsibility was imposed. Why? Because they say they already serve their clients with their clients' best interests in mind. NAIFA

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members must establish an ongoing relationship of trust and credibility with their clients, or they would be out of business.

However, NAIFA members share concerns about the impact a fiduciary standard would have on their businesses, such as an increase in compliance costs, an inability to continue service to the middle market, and concerns about liability insurance and lawsuits.

Q. WHAT DOES THE CONSUMER SURVEY TELL US ABOUT CONSUMERS' INVESTMENT ATTITUDES AND BEHAVIORS?

A. According to a survey of consumers, most respondents earning $50,000-$99,000 have limited funds to invest, which suggests a need for affordable financial advice. About one-third (35 percent) in this category who said they have used a financial advisor have less than $50,000 invested; 16 percent of respondents have nothing invested with a professional advisor.

When asked how much they could afford to invest with a financial advisor, half of all consumers surveyed said they could invest less than $1,200 a year (17 percent could afford about $100 a month; 30 percent said they could afford nothing).

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