MEMORANDUM

To: File No. 4-606

From: Jennifer B. McHugh

Re: Section 913 of the Dodd-Frank Wall Street Reform Act of 2010 (the "Act")

On May 17, 2011, Chairman Mary L. Schapiro and Senior Advisor to the Chairman Jennifer McHugh met with the following representatives from the Financial Planning Coalition ("FPC"):

- Kevin Keller, CEO, CFP Board
- Marv Tuttle, CEO, FPA
- Marilyn Mohrman-Gillis, Managing Director of Public Policy and Communications, CFP Board
- David Cohen, Assistant Director of Government Relations, FPA

During the meeting, the FPC representatives discussed the staff study on broker-dealers and investment advisers required by section 913 of the Act and reiterated their support for a uniform fiduciary standard of conduct. In addition, the FPC representatives discussed the recent GAO report on regulatory coverage for financial planners, and the workability of a fiduciary standard for the financial planning profession. The FPC representatives provided the attached materials.

FINANCIAL PLANNING COALITION

ABOUT THE FINANCIAL PLANNING COALITION

The Financial Planning Coalition, which is comprised of Certified Financial Planner Board of Standards, Inc. (CFP Board), the Financial Planning Association® (FPA®), and the National Association of Personal Financial Advisors (NAPFA), represents over 75,000 financial planning professionals in the United States. The Coalition provides the financial planning profession with a strong, unified voice in advancing the recognition and regulation of the financial planning profession, and advocating for enhanced consumer financial protection.

About CFP Board

CFP Board is a non-profit organization that acts in the public interest by fostering professional standards in personal financial planning through setting and enforcing education, examination, experience, and ethics standards for financial planner professionals who hold the CFP® certification. CFP Board's mission is to benefit the public by granting the CFP® certification and upholding it as the recognized standard of excellence for personal financial planning. CFP Board currently oversees more than 62,000 CFP® professionals who agree on a voluntary basis to comply with CFP Board's competency and ethical standards and subject themselves to the disciplinary oversight of CFP Board.

About FPA

FPA is the leadership and advocacy organization connecting those who provide, support, and benefit from professional financial planning. FPA demonstrates and supports a professional commitment to education and a client-centered financial planning process. Based in Denver, Colo., FPA's association of financial planners, financial services experts, educators, and students has 95 chapters throughout the country representing tens of thousands of members involved in all facets of providing financial planning services. Working in alliance with academic leaders, legislative and regulatory bodies, financial services firms, and consumer interest organizations, FPA is the community that fosters the value of financial planning and advances the financial planning profession.

About NAPFA

NAPFA is the nation's leading organization of Fee-Only comprehensive financial planning professionals. NAPFA members are trusted, objective financial advisors for consumers and institutions alike. Professionals who become a NAPFA-Registered Financial Advisor are committed to the organization's core values of competency, comprehensive financial planning, fee-only compensation, client-centered standard of care, and complete disclosure of potential conflicts of interest and explanation of fees.

FINANCIAL PLANNING COALITION

Study on Financial Planning and the Use of Financial Designations
U.S. Government Accountability Office

Background: Since December 2008, the Financial Planning Coalition (the Coalition) has worked to establish financial planning as a recognized and regulated profession. The Coalition has advocated that the SEC be authorized to recognize a financial planner oversight board that would register and establish professional standards for financial planners. The Coalition's efforts led to the inclusion of Section 919C in the Dodd-Frank Wall Street Reform and Consumer Protection Act, which required the Government Accountability Office (GAO) to study whether there are any gaps in the regulation of financial planners and make recommendations for filling identified gaps.

GAO's Findings: The GAO made a number of findings regarding regulatory gaps in the oversight of financial planners, including:

- "There is no specific, direct regulation of 'financial planners' *per se* at the federal or state level, but various laws and regulations apply to most of the services they provide."
- "Financial planners are primarily regulated as investment advisers . . . and are subject to laws and regulation governing broker-dealers and insurance agents when they act in those capacities."
- "The regulatory structure applicable to financial planners covers the great majority of their services, but the attention paid to enforcing regulation can vary and certain consumer protection issues remain."

The GAO also identified a number of consumer protection issues present in the current regulatory regime, including:

- Consumers may not understand the standards of care that apply to financial planners, especially when they provide different services subject to different standards of care.
- Consumers may not understand or be able to distinguish among the numerous titles and designations used by financial planners.
- The extent of problems relating to unethical and/or unqualified financial planners is not fully known because the Securities and Exchange Commission (SEC) and state securities regulators do not track data on complaints, examination results, and enforcement activities associated with financial planners.
- The SEC does not track data on financial planners because there are no laws that directly require registration and recordkeeping of financial planners *per se*.

The GAO concluded that "[g]iven the significant growth in the financial planning industry, ongoing concerns about potential conflicts of interest, and consumer confusion about standards of care, regulators may benefit from identifying ways to get better information on the extent of problems specifically involving financial planners and financial planning services."

However, in the GAO's judgment, "given available information, it does not appear that an additional layer of regulation specific to financial planners is warranted at this time."

GAO's Recommendations: The GAO made the following specific recommendations to address some of the underlying problems associated with those who hold themselves out to consumers as "financial planners" without appropriate competency or ethical standards:

1. The National Association of Insurance Commissioners, in concert with state insurance regulators, should "take steps to assess consumers' understanding of the standards of care with regard to the sale of insurance products, such as annuities, and take actions as appropriate to address problems revealed in this assessment."

2. The SEC should "incorporate into [its] ongoing review of financial literacy among investors an assessment of the extent to which investors understand the titles and designations used by financial planners and any implications a lack of understanding may have for consumers' investment decisions."

3. The SEC should "collaborate with state securities regulators in identifying methods to better understand the extent of problems specifically involving financial planners and financial planning services, and take actions to address any problems that are identified."