



ATTORNEYS AT LAW

THE WILLARD
1455 PENNSYLVANIA AVENUE, NW, SUITE 1200
WASHINGTON, DC 20004

TEL 202-347-2230
FAX 202-393-3310 WWW.DAVIS-HARMAN.COM

April 11, 2013

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

Regarding: File Number 4-606

Dear Ms. Murphy:

This letter is being submitted on behalf of a wide range of firm clients, including major banks, insurance companies, mutual fund families, and brokerage firms. We are writing with respect to the request by the Securities and Exchange Commission (the "SEC") for information relating to the possible application of "various alternative approaches regarding the standards of conduct and other obligations of broker-dealers and investment advisers." Page 1 of SEC Release No. 34-69013, IA-3558, File No. 4-606 ("SEC Request").

We believe that there is a fundamental omission in the SEC Request that will soon likely make almost all responses to the Request obsolete. The Department of Labor ("DOL") is working on a fiduciary proposal will seek to establish a new definition of a fiduciary for retirement plan purposes, including for IRAs. The DOL project will address, among other things, exactly what the SEC is examining, i.e., the standards of conduct and other obligations of broker-dealers "when providing personalized investment advice about securities to retail customers" who are IRA owners (SEC Request at 1). Because it is not possible to determine the effects of possible SEC reforms without taking into account the interaction with possible DOL reforms significantly affecting the same conduct and the same IRA market, the responses to the SEC Request will virtually all be incorrect as soon as the DOL acts, thus rendering the SEC's administrative record unhelpful.

The President has issued an Executive Order directing agencies to coordinate their regulatory efforts. This project offers a wonderful opportunity for the SEC and the DOL to provide a model on how that can be done. On the other hand, a request for information that does not reference or otherwise take into account the overlapping DOL project is not consistent with the President's Executive Order.

The SEC and the DOL need to work together on their overlapping projects. The use of separate processes to develop separate rules can only result in two sets of rules that are not truly coordinated and that are each based on very incomplete information.

Degree of Overlap Between the SEC and DOL Projects.

The SEC Request relates to the standards of conduct and other obligations of broker-dealers and investment advisers when providing personalized investment advice about securities to retail customers. The DOL's fiduciary project would affect the standards of conduct and other obligations of broker-dealers and investment advisers when providing personalized investment advice about securities to IRA owners. Thus, there is complete overlap between the two projects with respect to investment services provided to IRA owners.

Since IRA assets were approximately **\$4.9 trillion** as of the end of 2011, the degree of overlap between the two projects is enormous.

Retail Customer Confusion.

The SEC's Request noted that the SEC's staff "recommendations were intended to address, among other things, retail customer confusion about the obligations broker-dealers and investment advisers owe to those customers." Page 7 of SEC Request; see also page 46. In addition, the SEC Request (at page 23) specifically asks for:

Data and other information describing the extent to which retail customers are confused about the regulatory status of the person from whom they receive financial services (*i.e.*, whether the party is a broker-dealer or an investment adviser). Provide data and other information describing whether retail customers are confused about the standard of conduct the person providing them those services owes to them. Describe the types of services and/or situations that increase or decrease retail customers' confusion and provide information describing why. Describe the types of obligations about which retail customers are confused and provide information describing why.

In brief, there is no way to discuss retail customer confusion without examining the interaction between the SEC project and the DOL project, as illustrated below. Assume that a retail customer asks a broker-dealer for investment assistance with respect to a \$30,000 non-retirement retail account and a \$40,000 IRA account. The broker-dealer in this example could provide investment assistance with respect to the non-retirement account. However, under the original DOL proposed regulation, as generally interpreted by the IRA community, a broker-dealer would have generally been prohibited from providing investment assistance with respect to an IRA (at least without a major restructuring of the broker-dealer industry).

Thus, the broker-dealer would have to tell the customer that he is prohibited from providing investment assistance regarding the IRA account. Moreover, the customer would be required to agree that in investing the IRA assets on her own, the customer would not even consider anything the broker-dealer said regarding investing the non-retirement retail account.

Any normal retail customer would be bewildered by this arrangement. The SEC Request asks about retail customer confusion, but does not mention this issue. The SEC Request clearly needs to be modified to address this core issue.

Examples of Issues in SEC Request Significantly Affected by DOL Fiduciary Project.

Virtually all issues addressed in the SEC Request would be significantly affected by the DOL fiduciary project. For example:

Characteristics of investors using broker-dealers. The SEC Request (at 13, 17) seeks information regarding the “characteristics of investors who invest on the basis of advice from broker-dealers, invest on the basis of advice from an investment adviser, or invest utilizing both channels.” As explained in the attached report by Oliver Wyman, the original DOL proposal would have had an enormous effect on the ability of broker-dealers to provide investment assistance to IRAs. Thus, if the new DOL proposal is similar in any material way to the original proposal, all responses to this part of the SEC Request will by definition be wrong.

Costs and benefit perceptions of investors. The SEC Request (at page 13, 17) seeks information on “investor perceptions of the costs and benefits under each regime.” The DOL project could (1) render the broker-dealer regime unavailable, (2) radically change the cost structure of such regime, and/or (3) change the nature of the brokerage model. Any perceptions based on the set of rules in effect before the application of the DOL project are likely to be completely out of date after the DOL project is effective.

Conflicts of interest and disclosure practices. The SEC asks for information regarding “conflicts of interest and disclosure practices of investment advisers and broker-dealers.” SEC Request at 12, 21, 22. The DOL project would impose ERISA’s conflict of interest rules on broker-dealers and investment advisers, and may materially affect disclosure requirements. So again, any answers to the SEC Request in this regard will likely be out of date after the DOL project is effective.

Economics of the investment advice industry. The SEC Request (at 13) requests information regarding the economics of the investment advice industry and the characteristics of the current marketplace. As thoroughly described in the attached Oliver Wyman report, the IRA market would have been radically affected by the original DOL proposal. Once again, there is a high likelihood that all responses to the SEC on this issue will be rendered obsolete by the DOL project.

Benefits and costs. The SEC Request (at 13, 14, 18, 19) also seeks information regarding “the benefits and costs of the current set of regulatory obligations that apply to broker-dealers and investment advisers, and the benefits and costs of different approaches to harmonizing particular areas of broker-dealer and investment adviser regulations.” The DOL project is likely to very significantly change the “current set of regulatory obligations,” which will, in turn, have a major effect on any harmonization effort. So all we know with a high degree of certainty right now is again that answers to this part of the SEC Request will be rendered obsolete by the DOL project.

Principal trading. The SEC asks for “information describing the extent to which broker-dealers and investment advisers engage in principal trading.” SEC Request at 19. It is entirely unclear regarding the extent to which principal trading will be permitted by the DOL project. Once again, all answers may well be incorrect as soon as the DOL rule is effective.

Prescribed assumptions. The SEC Request (at 25-28) provides assumptions regarding a possible uniform fiduciary standard of conduct, such as with respect to permissible compensation and duties of care and loyalty. It is likely that the DOL project will have a material effect on the validity of these assumptions, rendering all comments based on the assumptions obsolete.

Third-party compensation. The SEC Request (at 44) requests information on the impact of a uniform fiduciary standard on, among other things, “third-party compensation in connection with securities transactions or distributions (e.g. sales loads, ongoing asset-based fees, or revenue sharing)”. The DOL has been very clear that such third-party compensation is a focus of its project. In this context,

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there is almost no doubt that all responses to this part of the SEC Request will soon be incorrect on this issue.

Transition costs.

There is little question that a uniform fiduciary standard prescribed by the SEC would have a major impact on the broker-dealer industry. Similarly, there is little question that a DOL rule that is similar in any material way to the DOL's original proposal would have at least as great an effect on broker-dealers. Accordingly, if the SEC and the DOL proceed independently, there is a great likelihood that the broker-dealer industry may have to be restructured twice in the course of very few years.

The SEC Request asks for extensive information on the costs of various alternatives. Yet the Request does not ask for input on the enormous costs to the industry and to customers of requiring two major restructurings of an industry in just a few years. The Request needs to be modified in this respect.

Conclusion.

A brief review of the SEC Request gives rise to one clear conclusion. Virtually all responses to the Request will be rendered obsolete and incorrect by the DOL fiduciary project.

The SEC and the DOL should not function separately in regulating the exact same behavior. The SEC and DOL need to act on this fiduciary project together. To do otherwise would be inconsistent with the President's Executive Order and would be a disservice to millions of American investors.

Sincerely,



Kent A. Mason

cc: The Honorable Seth D. Harris
Acting Secretary of Labor

The Honorable Jeffrey Zients
Acting Director of the Office of Management and Budget

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Oliver Wyman report: Assessment of the impact of the Department of Labor's proposed "fiduciary" definition rule on IRA consumers. < <http://www.dol.gov/ebsa/pdf/1210-AB32-PH060.pdf> >.