



May 20, 2013

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

Re: File Number 4-606 (Duties of Brokers, Dealers, and Investment Advisors)

Dear Ms. Murphy:

The National Association of Independent Life Brokerage Agencies (NAILBA) is the premiere life insurance industry organization promoting financial security and consumer choice through the use of independent brokerage distribution.

A typical NAILBA member is a brokerage general agency (BGA) that is independently contracted by at least three insurance companies to offer those companies' products through financial professionals such as insurance producers, who in turn sell those products to retail customers. Thousands of insurance and financial professionals do business through NAILBA's 370 member agencies, therefore NAILBA has a strong interest in the outcome of any potential action taken by the Commission as it relates to the standards of care used by brokers, dealers, and investment advisors.

NAILBA appreciates the opportunity to submit further comments. The due diligence on the part of the Commission to ensure the appropriate course of action on this matter has not gone unnoticed.

We submitted comments in August 2010 when the Commission was collecting public comment to include in its study mandated by Section 913 of the Dodd-Frank Act, and our position on a uniform fiduciary standard of care and harmonization of rules governing the activities of brokers and advisors remains unchanged. We are not against the concept of a fiduciary standard and believe it is appropriate when applied to investment advisors and other financial professionals who have discretion over their clients' account portfolios and how their clients' funds are invested. We do *not* agree—nor have we seen evidence—that extending that standard to brokers will reduce fraudulent activity, that not being a fiduciary implies not putting our customers' interests first, or that it will increase consumer understanding of the differences between brokers and advisors.

Brokers and advisors perform inherently different functions, and we are certain that any attempt by the SEC to impose a uniform fiduciary standard or harmonize the rules by which financial professionals such as brokers and advisors are governed will create more confusion in the marketplace instead of alleviating it.

The best deterrent to malpractice committed by brokers, advisors, and other financial professionals is the robust enforcement of the current regulatory framework, in addition to implementing financial

literacy initiatives to help educate the public. Any efforts to educate the public may be incumbent upon a partnership between the financial services industry and policymakers. NAILBA would certainly welcome any efforts by the Commission to shift their focus accordingly.

Unfortunately, we do not have the resources to collect and disseminate much of the quantitative data that the Commission seeks in its request for comment from March 1, 2013 due to cost and logistical constraints. However, we would like to offer feedback from the BGA perspective on several issues on which the Commission has requested input.

Our Customers

The average customer of a BGA is an insurance producer who goes to the BGA for an insurance product on behalf of that producer's client. The BGA and producer act as representatives of the company *by contract* when providing that company's product to the end-user. The producer ensures the product being sought through the BGA is suitable for the client: suitability standards are enforced by state insurance departments when the transaction involves a fixed product; and by state securities law, FINRA rules, and/or SEC guidelines when the transaction involves a variable or registered product. The insurance company underwriting the product being sold also has a responsibility to ensure the product is suitable and that the producer is acting honestly and competently, though in many cases that responsibility is passed on to the BGA depending on the contract agreement between the BGA and the company underwriting the product being sold.

The producer working through the BGA to deliver a product to the end-user is licensed and trained in selling the financial products involved in the transaction, and is familiar with the financial and insurance needs of the end-user. If the BGA, in addition to the producer were held to a fiduciary standard, differences in opinion over what is in the end-user's best interests between the BGA and producer could cause more confusion rather than less. Suitability standards currently in place ensure that the product being sold is the right product for the end-user, and thus ensure that the best interests of the customer are being served. Violations of those standards can result in severe punishments up to and including forfeiture of licensure, termination of employment, and disbarment from further participation in the marketplace as a selling agent.

How do customers bring claims for bad activity?

Retail customers have many avenues for seeking restitution in the case where a producer has acted fraudulently or incompetently. In cases of fixed insurance products, the retail customer can seek enforcement measures from the department of insurance in the state where the product was sold, and state or Federal law enforcement authorities in cases of more severe fraud. In cases where the transaction involves variable products or securities, restitution can be sought from a FINRA arbitration panel, state securities administration, the SEC, and state and Federal law enforcement depending on the product sold and the severity of the alleged violation(s).

Considering models set by other countries, what would happen if commissions were abolished?

BGAs collect their commissions from the companies of the products they sell. If commissions were abolished, a more fixed pay structure would have to be set up. This would lead many BGAs to cease sales of variable products and securities, and move to an insurance-only business model where the products sold are only regulated by state insurance departments. Customers would need to seek fee-only services for anything more than an insurance product or fixed annuity: we imagine many brokers may move to a fee-only model to accommodate those customers, though we also imagine consumer access would be more limited as many customers may not be able to afford fee-based services. Thus,

customers who could be well-served by investing outside of fixed insurance products have an additional barrier to overcome.

How would a fiduciary standard or any of the proposed alternatives affect investor protection or confusion?

At best, consumers would not be any less confused nor would they enjoy a higher level of protection with any kind of uniform fiduciary standard or harmonized rules. The core of the problem, as was identified by the RAND report and has largely driven this debate, is that consumers don't know the difference between brokers and advisors. Customers also need to understand the economic and market risks that are at play when investing in any kind of investment or insurance product, and a fiduciary standard cannot protect customers from those risks.

Furthermore, being a fiduciary does not prevent a financial professional from engaging in excessively risky behavior, acting incompetently, or committing fraud. Fiduciaries do not act in the best interests of their clients any more than other financial professionals acting in good faith. Putting the customer first is something that any good business practitioner would do, regardless of fiduciary title.

Alternative Suggestions

One approach the Commission may want to strongly consider should revolve around consumer education, taking pains to ensure the customer understands the contract into which he or she is entering, and trust the consumer to exercise their best judgment. The other approach, as was mentioned earlier, should involve the weeding out of bad actors in the marketplace through aggressive enforcement of current laws and ensuring that the most egregious offenders are prohibited from engaging in further financial transactions of any kind.

NAILBA Is Available as a Resource

NAILBA offers itself as a resource to the Commission as it moves forward in the rulemaking process. Should Commission staff assigned to this project have any specific questions or concerns, please contact Mark Valentini, Director of Government Affairs at (703) 383-3073 or mvalentini@nailba.org. We hope the information we have provided you thus far has been useful and informative.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read 'Raymond Phillips', with a stylized flourish at the end.

Raymond Phillips, CLU, LTCP
2013 NAILBA Chairman