June 4, 2013

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Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

SUBJECT: FILE 4-606

The Securities and Exchange Commission (SEC) requested data and information regarding the potential implementation of a uniform fiduciary standard for broker-dealers and investment advisors pursuant to Section 913 of the Dodd-Frank Act. The uniform standard would apply when an investment professional provides personalized investment advice about securities to retail investors. This initiative has certainly garnered a great deal of interest and its results intend to improve certain aspects of the current regulatory structure. We applaud the efforts of the SEC to improve investors' trust of investment professionals.

INTRODUCTION

The SEC appears to be driven to investigate alternative standards of care and conduct based on a perception of confusion among retail investors. I recently read two separate whitepapers regarding what it means to be a fiduciary from two prominent law firms that specialize in financial services and each differed in their application of the same standard. We cannot reasonably expect that all investors will grasp the nuances of the various standards of care or a single standard when an analysis of any standard of conduct depends largely on the facts and circumstances. However, we can try to forge regulation that increases investor knowledge and trust of their investment professionals. We can try to implement regulation that increases the probability the investor will choose an appropriate investment professional to assist them with their investment needs. Whether the investment professional is subject to a fiduciary standard or a suitability standard may be of little consequence to most investors but the ability to make informed decisions from a robust financial industry is critical. Investors simply want to trust their investment professional to do the right thing and to help them navigate the road to retirement or other financial goals.

While the effort to enhance investor protection by shifting the regulatory structure may have good intentions, there are significant market issues that must be considered. Well intentioned regulation can sometimes result in unintended consequences. The chief concern regarding any potential rulemaking is that if it is implemented poorly, it could result in increased cost to many investors, reduced investment choice and decreased

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access to investment professionals. The greatest impact of poorly designed and implemented regulation would likely be on middle class and small balance investors. In addition, it is believed by many that a poorly implemented proposal would result in significant job loss in the financial services industry.

Enhancing protections for all investors while keeping access to investment professionals affordable for middle class and small balance investors should be the goal of any rulemaking. The SEC has stated that it is attempting to address, among other things, retail investor confusion about the obligations broker-dealers and investment advisors owe to their investors and to preserve customer choice without decreasing retail investors' access to existing products, services, service providers or compensation structures. Key elements of rulemaking should ensure commission-based business models are maintained and that any new or amended rules are clear to ensure that broker-dealers and investment advisors will be able to practically manage their business model without it being cost prohibitive. This consistency will ensure that investors have the freedom to choose how they elect to compensate their financial professionals.

This comment letter provides four major points that we would encourage the Staff to consider in drafting potential regulation.

1. **Any uniform standard must clearly outline how both commission-based and fee-based models will co-exist.**

   The result(s) of the SEC's request and any potential rulemaking must ensure all investors have the freedom to choose how they elect to compensate their investment professional. A commission-based business model along with a fee-based model allows all investors to continue to choose the means by which they compensate investment professionals. Maintaining both compensation models also ensures that middle class and small balance investors can affordably access the services of investment professionals. This in turn would mean that broker-dealers and other financial firms would continue to devote resources to serving this market and would not be forced to reduce costs via employee layoffs or attrition because supporting the middle class and small balance investors would remain financially viable.

2. **Uniform disclosure can assist investors to develop a stronger understanding of the overall relationship with their investment professional**

   It would be helpful to provide all investors with simple, easy to read and uniform disclosure clearly disclosing information concerning all investment professionals. Whether an investor is receiving service from a registered representative or an investment advisor, certain information about the provider, such as disclosing any conflicts of interest (duty of loyalty), fair and reasonable compensation (duty of care), et al., may be uniformly beneficial. Improved disclosures would have the positive impact of improving transparency so that investors may make more informed decisions concerning both the services and the service providers.

3. **Harmonization of current regulations covering broker-dealers and registered investment advisors seems appropriate when both are providing similar services.**

   Harmonization of regulation - where such harmonization adds meaningful investor protection - could offer several advantages, including providing retail investors the same or substantially similar protections when obtaining the same or substantially similar services from investment advisors and broker-dealers.

4. **Compatibility of any uniform standard with any Department of Labor (DOL) fiduciary proposal is critical**

   If the SEC and DOL standards are not compatible and/or impractical to implement, they could cause widespread investor confusion and would likely fail to achieve enhanced protections for investors.

1. THE IMPORTANCE OF MAINTAINING THE VIABILITY OF MULTIPLE BUSINESS MODELS

It is generally accepted that investors who work with an investment professional save more and are more confident in their ability to have a secure retirement. An August 2012 IRI study – Baby Boomers and Generation Xers - found that nearly 48% of Generation Xers who consulted an investment professional have high levels of confidence that they will live comfortably throughout retirement, compared to less than 29% who have not. An IRI article – Middle Income Boomers Need for Retirement Advice – cited research concluding that 90% of Boomers who use investment professionals believe they are doing a good job in preparing financially for their own retirement, compared to 63% who do not. Deloitte's consumer retirement study – *Meeting the Retirement Challenge* - found that 58% of Americans do not have a formal retirement income and savings plan in place, but those who did were 4 times more likely to feel very secure. The study went on to note that 66% of those who consulted a professional adviser had a plan vs. 28% among those who did not consult an investment professional. A Financial Planning article – "Advisers Really Do Offer Value:Survey" (July 16, 2012) cites LIMRA research concluding that people who work with an investment professional are more likely to contribute to a retirement plan or IRA (61% vs. 38%), save at a higher rate (61% vs. 36%) and are more confident they were saving enough to afford their desired lifestyle in retirement (71% vs. 43%) than those who did not work with an investment professional. Today there are other avenues of financial guidance including online information but these tools have not been proven to increase investor confidence in a secure retirement and generally fail to meet the needs of many consumers. A 2012 study sponsored by TIAA-CREF cited in a MarketWatch article - "Retirement Planning Advice for the Wise" (November 12, 2012) - found that 60% of 18-34 years olds use online financial tools but only 19% of consumers 65 and older said they use such tools. Clearly, investment professionals, currently and in the future, will play a key role in helping investors prepare for a secure retirement.

The demand for high quality investment professionals in an increasingly complex financial system/market is growing rapidly. According a study by Pershing Advisor Services- Advisor of the Future- there is a demand for 237,000 new investment professionals over the next decade. At the same time, according to Cerulli Associates Inc., the number of investment professionals in the US fell by approximately 4,000 in 2011 and is expected to decline by another 18,600 over the next 5 years. There is a growing crisis of a lack of investment professionals to help investors prepare for their retirement and other financial goals.

While updating regulations may provide for a uniform standard for the investment industry, burdensome regulation that yields no meaningful improvements and that is onerous, will drive more investment professionals out of the business, discourage new providers from entering the business or cause some investment professionals to stop offering securities. Any of these developments would have the effect of decreasing the availability of quality financial guidance. Any rulemaking should be designed to strengthen trust between investment professionals and investors while maintaining the ability of investment professionals to affordably provide services to a wide range of investors.

Today, many financial transactions with investment professionals are held to a suitability standard. Suitability is based on the needs, objectives, goals and risk tolerance of the investor. Proposed investments are reviewed and approved or rejected by a Financial Industry Regulatory Authority (FINRA) registered principal. In addition, there are significant disclosure requirements involving recommended securities transactions. Most transactions subject to a suitability standard involve commissions and pertain to a wide array of investment products. The current framework of regulation, including FINRA registration, principal review of transactions, ongoing broker-dealer oversight, principal supervision of registered representatives, disclosure requirements, et al., are substantial and continue to expand but allow for broker-dealers to affordably offer services to a wide range of investors including middle class and small balance investors.

Retail securities transactions that involve a fiduciary standard (as it is currently accepted) typically involve an investment advisor and managed account. While managed accounts continue to grow in popularity, the nature and structure of managed accounts are typically suited for a high minimum account size ranging from $50,000-$250,000. Managed accounts include a written investment plan, investment guidelines of securities proposed and may include other benefits attractive to investors. Managed accounts generally involve a certain array of investments, such as stocks, bonds, exchange traded funds and mutual funds. Many other types of investments do not fit neatly into a managed account and even if they are in the best interests of the investor, could be excluded from an investor's portfolio because of the platform used for fiduciary sales (managed accounts). Managed accounts include fees for investment advice as well as a platform fee for the account services provided. Typical fees for managed accounts range from .75% - 1.50% for the investment advice and a platform fee of .10%-.50%. In addition, transaction charges (such as $15 per trade in the account) are often assessed for each new investment in a managed account. Due to the complex nature of a managed account, the additional liability assumed by the investment professional, greater administrative responsibilities and the fees involved, these accounts often result in higher minimum investment requirements as noted above.

Both the suitability standard (broker-dealer) and the fiduciary standard (investment advisors) seek to protect investors. A concern of any potential rulemaking is that changes will not allow for multiple business models in a practical way. A commission based model can often provide services in a more efficient manner and at a lower cost than a managed account platform. The commission based model is often more effective in delivering affordable financial guidance to middle class and small balance investors with a wider array of investment options.

Recognizing that the SEC and DOL proposals are quite different, a study by the management consulting firm Oliver Wyman - "Assessment of the impact of the Department of Labor's proposed "fiduciary" definition rule on IRA consumers" - concludes that the rule previously proposed by the DOL would have made a commission based model unworkable for IRA rollovers. While the study was addressing the DOL fiduciary proposal, the financial impact to the commission-based model vs. a fee-based model for investors is relevant in assessing a proposed uniform standard. The study went on to say that if the rule proposed by the DOL was imposed, small investors interested in opening an IRA would have less access to investment professionals for guidance and support, making it less likely that they would open an IRA. Those that do work with an investment professional would likely pay significantly higher fees on their IRA rollover than are available with investments outside of managed accounts. In addition to higher fees, the transaction charges assessed by many managed account programs would be more significant to middle class and small balance investors. Large account size investors and high income individuals who value the features and benefits of a managed account and are better suited to afford the higher fees would continue to receive investment advice and thus would not be impacted to a large degree. But even large account size investors who value working with an investment professional like a choice as to how the provider is compensated. The Oliver Wyman study went on to evaluate current brokerage accounts and determined those investors would pay an average of 73%-196% more in direct costs in a fee-based advisory model. Any new rulemaking should be designed to strengthen trust between investment professionals and investors while maintaining the ability of investment professionals to affordably provide services to a wide range of investors.

The Oliver Wyman study also found that, under the previously proposed DOL rule, many IRA holders would have a reduced choice of investment professionals, because over one-third of client-facing investment professionals in the industry would not be licensed to help retail investors with their IRA account needs. The Oliver Wyman study also stated that small account size investors overwhelmingly favor brokerage relationships over investment advisory relationships. A 2010 LIMRA survey found that 71% of investors say that if their investment professional charged a $2,500 upfront fee for a financial plan, they would seek another investment professional or go without professional services (another 19% were unsure what they would do, meaning up to 90% of consumers would not readily embrace this pricing). That same survey found that just 5% of investors disagree with the statement that "most people want a choice of how they pay for professional financial advice – compensating the advisor by paying a fee, or compensating the advisor through commissions on the purchase of financial products." More recently LIMRA found that only 1 in 5 consumers are willing to pay more than $100 for investment advice. Keeping access to investment professionals affordable for middle class and small balance investors should be an important consideration of any regulatory framework.

Additional findings of the Oliver Wyman study were that 18 million small IRA investors would lose access to their investment professional if a [DOL] fiduciary standard was imposed, that nearly one million fewer new IRAs would be opened each year, that small businesses could stop setting up new 401(k)s and that the overall impact would be the loss of $240 billion in retirement savings over the next 20 years. Clearly this is not a desirable outcome as the current levels of retirement savings is already a major problem facing this country and its citizens. Although the study addressed the DOL fiduciary proposal and the financial impact to commission-based brokerage models vs fee-based models for investors, the opinions are still applicable in this discussion. Allowing broker-dealers a practical and reasonable way to continue to offer a commission-based model will help encourage greater savings and the availability of financial guidance to a broader range of investors.

Any rulemaking must accommodate a commissioned-based platform and provide for explicit guidance for utilization of commissioned investments. Without a clear understanding of any new rule(s), broker-dealer firms may be hesitant to continue their business model for fear of violating ambiguous rule(s). If any rulemaking maintains a commissioned-based model yet causes a complete reworking of the commissioned platform or a significant capital investment to reconfigure broker-dealer infrastructure to accommodate the new rule(s), it is possible that dual model broker-dealers would abandon a commission-based model. In addition, it is possible that dual model broker-dealers would not only abandon the model but also seek to convert their brokerage accounts from commission-based to fee-based accounts. As a result, certain retail investors might face increased costs.

As previously mentioned, there are typically limited investment choices available to investors in fee-based business models. Managed accounts generally offer a certain menu for investors but numerous other investment alternatives may not be available in the account. Also many investments that offer guarantees, such as annuities, are usually not as appealing in a managed account or simply are not structured for inclusion on a managed account platform. In addition, commission based investments may be in the best interest (including lower overall cost) than the limited securities available through managed accounts for many investors, particularly middle class and small balance investors. For instance, a front-end loaded mutual fund (A share) would likely result in lower long term costs relative to a mutual fund in a managed account. If there is substantial cost and complexity to implementing a new rule(s) pertaining to commissioned-based investments, it is highly unlikely that a majority of dual model broker-dealer firms with advisory offerings will alter their current business model to accommodate their existing middle class and small balance investors, choosing instead to try to fit the middle class and small balance investors into a managed account solution or abandon the relationship. Commissioned-based investments could very well be excluded by many broker-dealer firms due to the potential perception that a conflict of interest may be present if a commission is paid.

It is also important that the length of any investment relationship be left to the determination of the investment professional and the investor. If there is a mandated ongoing obligation, it will almost certainly mean that managed accounts will be utilized because they are already set up for an ongoing oversight relationship. As noted many times, this would likely cause the investor to face increased costs or potentially go it on their own without their investment professional. A duty of care standard that applies at the time of the transaction and does not have an ongoing mandated obligation will often involve commission-based products. These investments are available at a cost that is affordable for middle class and small balance investors and provide a wider array of investment choices.

Servicing the middle class and small balance investors has not historically been the focus for a large number of investment advisors. However many broker-dealers have a significant amount of their customer base with this profile. Nearly 40% of IRAs in the Oliver Wyman study sample had less than $10,000 and 98% of investor accounts with less than $25,000 were in brokerage relationships. These types of customers have overwhelmingly favored brokerage relationships over investment advisory relationships. Maintaining access to a wide range of investments and affordable investment guidance for middle class and small balance investors should be a critical element of any proposed changes to the current regulatory framework.

If a commission based fee model becomes cumbersome or impractical and results in firms not maintaining the ability to affordably offer services to middle class and small balance investors, it is likely a significant number of financial firms will reduce their resources focused on this market or leave the market altogether. Financial firms deemphasizing or leaving the small and medium account size market would not only result in reduced investment and investment professional choice, reduced financial literacy and/or increased costs for middle class and small balance investors but it would likely result in job losses for investment professionals. Without the need to devote personnel to the small and medium account size market, firms would either have to redeploy these resources to other markets or eliminate them via employee layoffs or attrition. With the current economic and demographic outlook, it would be especially tragic if well intentioned regulations resulted in additional job losses (while at the same time hurting the investors).

2. DISCLOSURE

Enhanced disclosure is vital to improving investors' understanding of their engagement with an investment professional. Simple, straightforward disclosure is more effective than a lengthy booklet. Two disclosure documents would assist retail investors in assessing and understanding their relationship with their financial professional. One could be a summary disclosure document that would promote and/or enhance harmonizing the understanding of all retail investors and would be required to be given by both broker-dealers and investment advisors at the start of a customer relationship, periodically, and/or any time compensation is earned for a new investment. The disclosure document could include professional experience of the service provider and the firm, forms of compensation, real and potential conflicts of interest, and services that will be provided (including whether one time or ongoing, timeline, etc). Limiting the discussion to these main points helps keep the document concise and easy to understand. A second document could be information available in a document similar to the current Form ADV and offered by both broker-dealers and investment advisors to new and existing customers.

A review of SEC enforcement issues involving retail broker-dealers and investment advisors reveals similar deficiencies among broker-dealers and investment advisors, including failing to disclose material conflicts of interest, misrepresentation, failures to have a reasonable basis for recommending securities, et al. Enhancing the disclosure will obviously not stop all deficient behaviors but it may help the investor to more clearly evaluate how they engage a investment professional.

3. HARMONIZATION OF CURRENT REGULATIONS

If new rulemaking does harmonize regulations around a principles based model, then would the rules based model be eliminated? In other words, if a registered representative is providing advice and is held to a fiduciary standard (the same as an investment advisor), would they have different requirements for advertising, supervision, book and records, etc? Would a self regulatory organization, such as FINRA, be viable?

The SEC staff has reiterated several times that it believes that a harmonization of regulation – where such harmonization adds meaningful investor protection- would offer several advantages, including that it would provide retail investors the same or substantially similar protections when obtaining the same or substantially similar services from investment advisors and broker-dealers.

Thus if harmonization around a uniform fiduciary standard is desired, it would be logical that the SEC would seek to harmonize regulations around:

-Advertising and other communications;

-Supervision;

-Dispute Resolution;

-Licensing and registration of firms;

-Licensing and continuing education requirements; and

-Books and records.

Harmonization in these areas will also effectively level the playing field from a competitive standpoint. If under a uniform fiduciary standard one business model has higher costs due to regulatory compliance but both are held to the same standard of care, then obviously the one with less regulatory compliance has a built in advantage from an efficiency and cost standpoint. Clearly, such a resulting dynamic would be an unintended consequence.

4. COMPATIBILITY OF SEC REGULATION WITH ANY POTENTIAL DOL PROPOSALS

It is critical the standards of conduct put out by the SEC and DOL applicable to investment professionals be compatible. Both standards must allow for multiple business models so investors are free to choose from a robust market of investments, investment professionals and how they choose to compensate their investment professional.

Based on some interpretations of the DOL's previous proposal, the DOL's revised definition of "fiduciary" would have effectively barred commission based compensation. This new definition and its consequences would surely cause confusion among retail investors if their investment professional is able to assist them on other non- retirement assets but could not give advice or consideration to their retirement assets (IRA(s) or Retirement Plan). The incompatibility of the standards between the DOL and the SEC would confuse and frustrate retail investors and defeat the purpose of the proposed regulations.

These regulations must be clear so guidance is more readily available. Confusion between the standards will discourage investment professionals from providing services to IRA and Retirement Plan assets, disproportionately impacting middle class and small balance investors. Decreasing access to financial guidance at a time when there is a shortage of investment professionals and an increase in investors in need of financial guidance is certainly not the desired outcome.

CONCLUSION

We applaud the SEC's efforts to improve investor trust of investment professionals. If done prudently, this effort may provide additional protections and clarity while ensuring all investors will not have reduced access to investments or services. If done appropriately, investors will have the freedom of choice in how they elect to compensate their investment professionals and middle class and small balance investors will be able to continue to affordably access investments and most importantly, the services of investment professionals.

Thank you for your efforts and for contemplating the comments above.

Sincerely,

Bill Lowe