Lincoln
Financial Group®

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Via e-mail: rule-comments@sec.gov
Ms. Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street N.W.
Washington, D.C. 20549-1090

RE: File No. 4-606
Response to Request for Data and Other Information

Dear Ms. Murphy:

Lincoln Financial Group ("Lincoln" or "Lincoln Financial")[1] submits this letter in response to the Securities and Exchange Commission's ("SEC" or the "Commission") request for data and other information (the "RFI") published March 1, 2013 in connection with the duties and standards of care for brokers, dealers (referred herein as "broker-dealers" or "BDs") and registered investment advisers ("investment advisers" or "RIAs"), and their agents who provide personalized investment advice about securities to retail customers. The affiliated companies of Lincoln Financial act as issuers of insurance, securities, and retirement plan and individual retirement account ("IRA") products and services;[2] wholesalers of these products and services; and retail distributors of these products and services. In addition, our retail arm of the enterprise, the Lincoln Financial Network ("LFN"), *see also footnote 1*, maintains an open architecture business model, allowing its agents and associated persons the freedom to offer a variety of securities (*e.g.* stocks, bonds, mutual funds, variable annuities) and non-securities products (*e.g.* fixed annuities and life insurance). This includes the freedom to offer Lincoln "manufactured" products and other products manufactured by other insurance companies.

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[1] Lincoln Financial Group is the marketing name for Lincoln National Corporation and its affiliates. For purposes of this letter, the affiliates include The Lincoln National Life Insurance Company ("LNL"); Lincoln Life and Annuity Company of New York ("LLACNY"); Lincoln Financial Distributors, Inc. ("LFD"), a broker-dealer registered with the SEC and a member of the Financial Industry Regulatory Authority ("FINRA") and Lincoln Financial's wholesaling BD; and the Lincoln Financial Network ("LFN"), the marketing name for Lincoln Financial's two retail broker-dealers, Lincoln Financial Advisors Corp. ("LFA") and Lincoln Financial Securities Corp. ("LFS"), both registered with the SEC and members of FINRA, as well as the insurance distribution operations of the affiliated insurance companies. LFA and LFS also are registered investment advisers.

[2] *E.g.* variable annuities, variable life products, mutual funds, and retirement plan and IRA trustee, custodial and/or recordkeeping services.

Lincoln Financial recognizes that the primary and central goal of the RFI is to gather information for the Commission to conduct cost-benefit analyses of the possible results of (1) alternative approaches to standards of care and other obligations of broker-dealers and investment advisers, and (2) the potential harmonization of regulations applicable to BDs and RIAs. We appreciate the opportunity to share our views and participate in the dialogue of enhancing investor protection. To that end, Lincoln has provided data and information in response to parts of the RFI, as more fully outlined below. It should be noted that it was not possible for us to gather data and information in response to all requests. Moreover, many of the requests require responses more from an industry perspective rather than from an individual firm.

As a threshold matter, we identify two important industry developments impacting the evaluation of BD and RIA standards of care that have occurred since the Commission was directed to conduct a study (the "Study") on the effectiveness of legal and regulatory standards of care for broker-dealers and investment advisers pursuant to the Dodd-Frank Wall Street and Consumer Protection Act ("Dodd-Frank") in 2010.

First, the Department of Labor ("DOL") issued a proposed regulation in October 2010 that would have revised the definition of who is a fiduciary under the Employee Retirement Income Security Act of 1974 ("ERISA") and the Internal Revenue Code of 1986, as amended (the "Code") by reason of giving investment advice. The DOL withdrew the proposed regulation in 2011. This proposed regulation would have substantially expanded the range of activities that are considered to be ERISA and Code investment advice. It would have been very difficult to avoid fiduciary status under these laws when giving any kind of investment assistance to a plan, participant or IRA owner.

Status as a fiduciary under ERISA and/or the Code is problematic for BDs, because their commission-based compensation models are generally prohibited under these statutes (i.e., commission-based compensation received by a fiduciary is generally considered to be a prohibited transaction).[3] Consequently, it is important for broker-dealers to avoid fiduciary status under ERISA and the Code, because current regulations provide a workable framework through a narrow definition of what constitutes investment advice that allows a meaningful level of investment assistance to be provided without triggering fiduciary status. DOL's

[3] As noted elsewhere in this letter, Dodd-Frank directs that any changes to the standard of care applicable to broker-dealers should enhance investor protections while preserving existing business models. In including this directive, Congress considered and recognized that commission-based compensation structures should remain viable in the retail marketplace. This is particularly true for small investors, including IRA holders, for whom fee-based compensation structures may not be affordable. In addition, many broker dealers, in response to the prospect of becoming ERISA fiduciaries, may simply exit the retirement plan and IRA marketplace, rather than incur the substantial cost associated with a wholesale change to their compensation models. We believe this will result in reduced investor access to necessary financial services. A well-known report by Oliver Wyman, Inc. that was submitted to the DOL in 2012 in response to its proposed regulation demonstrates this. Another critical factor is the potential for investor confusion in situations where the investor has both retirement and non-retirement accounts and can only receive help with the non-retirement accounts. This outcome would be contrary to the goal of any harmonized standard of care, which is to reduce investor confusion about the obligations of broker-dealers and investment advisers.

proposed regulation would have substantially altered this framework in a way that would leave BDs largely unable to work with plans and IRAs under their commission-based business models.

Although it withdrew the proposed fiduciary regulation, the DOL expects to re-propose a new regulation later this year. If the fiduciary definition under ERISA and the Code is expanded so that most investment assistance to IRA owners would be ERISA/Code investment advice, the broker-dealer and investment adviser communities will be greatly disrupted. The RFI does not appear to take into account the DOL's regulatory initiative. We are concerned that, unless the SEC's efforts take into account what the DOL is doing and the effect it could have in the IRA market, the costs will outweigh the benefits of any uniform standard of care under the securities laws. At the very least, we think that any cost-benefit analysis that does not account for the DOL's initiative would be significantly incomplete. Please note that while we are concerned about the effect that the DOL's regulatory initiative would have on BDs' ability to serve retirement plans, we are much more concerned about its effect on IRAs, as BDs largely serve that market.

Second, the Financial Industry Regulatory Authority ("FINRA") recently expanded its suitability rule, which became effective July 9, 2012. *See FINRA Rule 2111*. This expanded suitability requirement, along with the broker-dealer standard of fair dealing, function similarly to the fiduciary standard to which RIAs are subject at the present. Therefore, the SEC should consider that current standards of care already provide more than adequate investor protection. Moreover, as directed by Dodd-Frank, regulatory changes should enhance investor protection while preserving existing business models. Lincoln believes that the better way to improve protection of investors is to preserve the existing, similar standards of care applicable to BDs and RIAs, and to enhance the regulatory regimes with a harmonized, rules-based disclosure approach that does not affect broker-dealer compensation systems, provided that the benefits of any changes to disclosure regulations outweigh the costs.

Lincoln appreciates the opportunity provided by the Commission to share information and its views in response to the RFI, as this process allows the industry and the SEC to take a comprehensive look at the current regulatory system and address any need for improvement. Through a comprehensive cost-benefit evaluation, the Commission can advance measures to enhance investor protection without increasing costs or limiting customer choice.

1. Any Harmonization Must Consider DOL Regulations

The RFI asks for extensive information about investor characteristics, BD and RIA regimes, conflicts of interest and disclosure practices, economics of the investment advice industry and compensation practices. These issues are all important to investors and financial service providers. Yet, the RFI does not mention harmonizing with other regulatory regimes.[4] In

[4] Insurance companies and their affiliated broker-dealers are subject to a multitude of federal and state regulation, including:

- Federal securities laws,

particular, there is no mention of the standard of care and accompanying prohibited transaction rules imposed on fiduciaries under ERISA and the Code or the impending DOL regulation that would re-define who is an investment advice fiduciary for plans and IRAs.

The SEC should consider the effects of imposing fiduciary-like obligations on broker-dealers in light of current and potential future DOL investment advice fiduciary regulations. Lincoln is concerned that a securities-based fiduciary advice standard could trigger ERISA fiduciary status upon a broker-dealer simply because it is considered a fiduciary by the SEC. In today's environment, broker-dealers particularly walk a fine line between avoiding or becoming ERISA fiduciaries when serving retirement plan clients. If the SEC were to require BDs to become fiduciaries under the securities laws, they would run the substantial risk of being characterized as ERISA fiduciaries without changing the services they provide when meeting with plan participants. This is one reason Lincoln asks the SEC to clarify the meaning of "retail customer." *See Section 2 below*. The risk becomes greater when the scope of what constitutes a "customer" expands from retirement plans to their participants. The DOL's fiduciary advice initiative further increases this risk when IRA owners are included.

The DOL initially proposed its new fiduciary advice regulation in October 2010. The DOL later withdrew the proposed regulation, but it has stated recently that it may propose a revised regulation later this year. Like the initial proposal, it is highly likely that the new proposal will apply to IRAs in addition to retirement plans. Therefore, the fiduciary advice proposal will directly address what the SEC is examining now: the standards of conduct and other obligations of broker-dealers and investment advisers when providing personalized investment advice about securities to IRA owners. However, the RFI does not address the DOL's fiduciary advice proposal at all, despite the DOL's publicly stated intention to issue a new proposal. We believe that it is critical for the SEC and DOL to act together, not independently, since they are regulating the same conduct.[5]

As noted, under the original DOL proposed regulation, broker-dealers would generally have been prohibited from providing meaningful investment assistance to IRA owners, without a significant restructuring of their business models, including in particular their commission-

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- State securities laws,
- State insurance laws,
- ERISA and the Code,
- FINRA rules and regulations, and
- National Association of Insurance Commissioners model acts (although the NAIC is not a regulatory body, it certainly has significant influence shaping state law and regulation).

[5] Lincoln acknowledges public comments by SEC Chairman Mary Jo White and DOL Assistant Secretary of Employee Benefit Security Administration Phyllis Borzi that they are communicating with each other. *See* May 16, 2013 testimony of Chairman White in front of the House Financial Services Committee (the SEC "has been in very close and frequent contact with the staff at the Department of Labor. . . Obviously, they're an independent, different agency than the SEC. They have to make their decisions ultimately.") Lincoln applauds these efforts and reiterates its strong position that true collaboration is essential for any harmonized fiduciary standard under the securities laws to be workable.

based compensation systems. Broker-dealers who did not want to—or could not—undertake this restructuring would have been faced with advising clients on non-IRA accounts and remaining silent when conversations turned to the IRA. Lincoln's broker-dealers maintain approximately 800,000 IRA accounts out of a total of 1.6 million accounts. Many of Lincoln's customers hold multiple accounts, where at least one account is an IRA. How will registered representatives advise their clients if they are prevented from addressing a significant portion of customers' assets? Such a result is contrary to the spirit and directives of Dodd-Frank and what the SEC set out to achieve, and would:

- increase customer confusion,
- limit investor choice,
- render most broker-dealers unavailable to a large segment of retail investors, and/or
- cause broker-dealers to change their business models extensively.

In addition, failing to coordinate efforts would add an enormous cost to insurance companies and their affiliated broker-dealers and investment advisers. As it is, any changes to standards of care (securities-based or DOL-based) or harmonization efforts will require firms to assess the impact of new standards on their organizations and how it affects their strategy, breadth of products on platforms, choice of sponsors, sales force, and supervisory platforms. Implementation of any new standards will likely require significant changes in, among other things, training, personnel, operations, technology, platforms, contracts, and disclosures. Implementation will likely be costly, complex and time consuming. **However, to do this twice if the SEC and DOL do not coordinate efforts will harm investors and negatively impact firms greatly.** So much so, that failure to coordinate itself may impose too great a cost to overcome any benefits that new standards or harmonization could bring.

As of December 31, 2012, $19.5 trillion was invested in retirement assets.[6] The largest components of retirement assets were IRAs and employer-sponsored defined contribution plans, holding $5.4 trillion and $5.1 trillion, respectively.[7] These numbers are massive and speak for themselves. It is absolutely crucial that the SEC and the DOL work together when proposing regulations on the standard of care and other obligations of BDs and RIAs when providing personalized investment advice about securities to IRA owners.

2. **<u>The Definition of "Retail Customer" Should Not Include Participants of Defined Contribution Plans</u>**

One of the SEC's assumptions in the RFI was that the term "retail customer" would have the same meaning as in Section 913 of Dodd-Frank. Lincoln asks the Commission to make clear that participants in defined contribution plans are not "retail customers" as defined in Section 913(a) of the Dodd-Frank Act. The basis for this request is that employers sponsoring defined

[6] *See* Investment Company Institute, 2013 Investment Company Fact Book at 119; Investment Company Institute, Quarterly Retirement Market Data, Fourth Quarter 2012, http://ici.org/research/stats/retirement/ci.ret_12_q4.

[7] *Id.*

contribution retirement plans (e.g. 401(k), 401(a), 403(b), and 457(b) plans) generally pick the products and the underlying investments available to participants in the plans. Particularly, in the 403(b) market, employers historically have chosen multiple vendors from which participants can choose. Employers allow representatives of these vendors onto their worksites to assist participants in choosing their products or platforms and provide assistance to those employees who are enrolling them into the plans. This assistance provides valuable service of educating participants about their plan, basic investing concepts (such as risk, diversification, investment objectives, etc.) and the importance of saving for retirement. As further support for this request, Lincoln references FINRA Rule 2330, which does not construe such vendor conduct as "personalized advice." The SEC and FINRA recognized the unique nature of retirement plans when FINRA Rule 2330 (previously NASD Rule 2821) was initially created. The regulators also understood that certain conduct needed to be excluded from the Rule's requirements.

A similar approach should be taken here if the Commission promulgates any new rules for any retirement plan type (i.e., 403(b), 401(k), 457(b), etc.) and product provider structure (i.e., annuities contracts, mutual fund platforms, etc.) Insurance companies and affiliated broker-dealers will incur enormous costs if participants are now considered to be retail customers. For example, Lincoln services approximately 46,000 retirement plans in which there are approximately 1.4 million participants. If participants were considered retail customers, Lincoln would need to provide disclosures it has not provided before. The estimated participant costs would escalate, causing an approximately $5.0 million increase overall, which would be passed along to plan sponsors.[8]

Plan sponsor clients and Lincoln already are subject to robust regulatory regimes under ERISA and the Code. These laws and regulations afford plans and their participants significant investor protection already, and imposing an additional securities-based fiduciary standard at the participant level would be duplicative and unnecessary.

3. **<u>Lincoln Generally Supports the SEC's Framework of a Uniform Standard of Care, with Some Exceptions</u>**

The debate regarding the standard of care started with the idea that there is a wide gap between the duties of BDs and RIAs. However, a closer analysis shows the standards function similarly, if not the same, and generally result in the same outcome in favor of the client. The BD standard of fair dealing and the new suitability rule are rooted in fiduciary principles. They generally are reasonably defined, specifying process, disclosure and conduct. Moreover, the evolution of FINRA Rule 2111 demonstrates how close broker-dealer standards have come to the standards governing investment advisers. Prior to the change in the rule, there were three factors to consider for suitability. Today, there are ten such factors. Further, the new rule includes a quasi-ongoing duty of suitability through the requirement of suitable

[8] This estimated cost of disclosure is based on LFN's cost of production and mailing its Form ADV to customers for 2011 and the concept of a "General Relationship Guide" set forth in the RFI.

recommendations of an investment strategy (e.g. recommendations to hold securities) like investment advisers. The SEC should leave open the idea that current standard of care structures provide more than adequate investor protection of retail customers.

With that stated, and subject to the caveat outlined in Section 1 above and the exceptions listed below, Lincoln supports the eight assumptions outlined in the RFI on what a uniform standard of care might look like for broker-dealers and investment advisers. Lincoln understands that the assumptions derive from Congressional intent set forth in Dodd-Frank and the Staff's positions as a result of the Study.

a. **Any Uniform Standard of Care and Harmonization Efforts Should Preserve Current Business Models and Compensation Systems**

Any uniform standard of care should be limited to broker-dealers and investment advisers offering personalized investment advice about securities to retail investors.[9] The standard should not apply to broker-dealers that are limited to wholesaling, underwriting, serving institutional clients or other functions not serving a retail purpose. Likewise, investment advisers who solely advise institutional clients should not be subject to the standard. However, Lincoln believes that all RIAs servicing retail customers, whether federally or state registered, should be subject to a uniform standard for consistency among the retail investment adviser business model.

Lincoln agrees with the Commission's position set forth in the RFI that a uniform standard should be designed to accommodate firms' different business models and compensation structures. This position is consistent with Dodd-Frank's directive. Some insurance-affiliated broker-dealers sell only the insurance companies' products. Other such broker-dealers maintain an open architecture business model,[10] allowing associated persons the flexibility to sell proprietary and non-proprietary products through selling agreements. Lincoln maintains both business models, both of which should be preserved.

However, Lincoln is concerned with some statements in the RFI that suggest sales contests create conflicts and may impede a duty of loyalty to the customer. Sales contests, along with other non-cash compensation arrangements, are integral to the business models of insurance

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[9] This position responds to the SEC's 3rd Assumption, which asked firms to comment on the scope of the types of BDs and RIAs to which any uniform standard should be applied.

[10] LFN generally offers an open architecture model for associated persons to conduct their businesses. These associated persons have the freedom to offer a variety of securities products, insurance, and investment advisory services, including financial planning, to their customers. Retail customers of LFN have benefited greatly from our open architecture platforms and the ability to have choice. In addition, there is a segment of LFN tied to Lincoln Financial's retirement plans business that offers only proprietary products. This segment primarily assists participants with needs outside of their retirement plans or provides consulting to participants with regard to rollovers once a participant terminates employment. Both of these business models work, fitting in a marketplace benefiting retail customers.

companies and the affiliated and non-affiliated broker-dealers with whom they work without causing harm to clients. Under today's regulatory regime (see below) non-cash compensation does not create risk of conflicts or pose problems to investors. There are few, if any, regulatory disciplinary actions involving non-cash compensation.[11] For Lincoln, its wholesaling broker-dealer (LFD) paid out permissible non-cash compensation to other broker-dealers (including Lincoln's affiliated broker-dealers) in the amount of approximately $12.2 million in 2012. LFD also paid about $2.4 million in 2012 for its internal sales contests for wholesalers. Regarding Lincoln's retail broker-dealers (LFA and LFS), they spent approximately $13 million on supporting rewards from internal sales contests in 2012.

The regulatory requirements governing non-cash compensation are found in several FINRA rules (the "Non-Cash Compensation Rules").[12] The Non-Cash Compensation Rules prohibit the payment and acceptance of non-cash compensation in connection with the sales of securities, with exceptions. The exceptions generally allow gifts, entertainment, training and education, and internal sales contests.[13] All forms of allowable non-cash compensation have stringent recordkeeping requirements and cannot be preconditioned on the achievement of a sales target. Thus, non-cash compensation cannot be part of an incentive program which requires

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[11] The American Council of Life Insurers (ACLI) reviews FINRA disciplinary actions related to variable insurance products. According to an ACLI survey, it did not find any reported disciplinary actions involving non-cash compensation associated with variable products of broker-dealers affiliated with life insurers.

[12] *See* FINRA Rule 2310 (Direct Participation Programs), FINRA Rule 2320 (Variable Contracts of an Insurance Company), NASD Rule 2830 (Investment Company Securities) and FINRA Rule 5110 (Corporate Financing Rule – Underwriting Terms and Arrangements).

[13] More specifically, the exceptions permit:

1. Gifts that do not exceed an annual amount per person fixed by FINRA (currently $100);
2. An occasional meal, a ticket to a sporting event or the theater, or comparable entertainment which is neither so frequent nor so extensive as to raise any question of propriety;
3. Payment or reimbursement by offerors in connection with meetings held by an offeror or by a member for the purpose of training or educating associated persons of a member, provided that the meeting meets certain criteria;
4. Non-cash compensation arrangements (i.e., sales contests) between a member and its associated persons or a non-member company and its sales personnel who are associated persons of an affiliated member, provided that the arrangement meets certain criteria; and
5. Contributions by a non-member company or other member to a non-cash compensation arrangement between a member and its associated persons, provided that the arrangement meets the requirements for a non-cash compensation arrangement between a member and its associated persons (per Item 4 above).

the recipient to attain a specific sales goal as a condition precedent to receive the non-cash compensation.

Each of these groups also has special requirements as means to protect investors. Gifts are subject to an annual fixed limit. Entertainment must not raise questions of propriety. Training and educational meetings require member prior approval and are subject to requirements on location, guest expenses, entertainment and thorough recordkeeping. Internal sales contests are limited to requirements based on total production and equal weighting (for mutual funds and variable contracts).[14] The total production and equal weighting requirements were designed to address the concern that non-cash incentive programs may motivate associated persons at the point-of-sale to recommend a specific product on the basis of the incentive rather than a desire to meet the investment needs of the customer. The requirements were also designed so that associated persons would not favor one fund or variable contract over another based on any incentive. These regulatory controls provide important and necessary controls over inappropriate sales practices and point-of-sale incentives.

Moreover, non-cash compensation arrangements have undergone significant regulatory enhancement over the years. The SEC, which had to approve all changes to the Non-Cash Compensation Rules, should not now seek to overturn the history and regulatory framework outlined in such rules. Otherwise, the SEC puts itself in the position of picking and choosing compensation systems rather than leaving that role to the marketplace and investor choice. This certainly is not the result intended by Dodd-Frank. The SEC should remain neutral toward all compensation systems. Any concerns the SEC or self-regulatory organizations have regarding conflicts can be addressed through appropriate disclosures, which broker-dealers are required to do currently.

b. Any Harmonized Standard of Care Should Be Based on Disclosure and Transparency at Reasonable Costs

Any regulation should be geared towards providing greater transparency to help consumers make informed decisions. The SEC needs to strike the right balance when implementing

[14] Sales contests must be based upon the total production of associated persons with respect to all investment company or variable product securities distributed by the member, and the credit for each type of security sold (e.g., investment company or variable insurance products) must be equally weighted. Sales contests that award credit for all sales within a particular category of securities (e.g., sales of all mutual funds), are permitted, as long as they are based on the total production of that type of security and they are equally weighted. In addition, with respect to variable contracts, because of the substantial differences in the design, purpose, cost structure, commission payouts, and target audience for variable annuity and variable life products, those products do not need to be combined into the same incentive arrangement. However, sales contests that award credit only for specific securities within a category, such as only awarding credit for sales of proprietary mutual funds, are not permitted. *See also* NTM 05-40. Regarding the condition for equal weighting, the methods for determining compensation credits could vary, including measurements based on gross production to the firm or net commissions to the associated person. Either practice, as well as other arrangements, such as new accounts opened or assets under management, would be acceptable as long as the concept of equal weighting is met and not skewed by disparate commission, payout, or reallowance structures for individual products. *See also* NTM 98-75.

regulatory changes impacting disclosures for broker-dealers and investment advisers. Too little disclosure does not protect consumers, and too much dilutes the value of disclosure.

Broker-dealers and investment advisers already operate under extensive disclosure regimes. However, Lincoln would be supportive of enhanced disclosure as part of a uniform standard of care, provided that the disclosure (1) is reasonable and principles-based, (2) does not create any chilling effects on customer choice, (3) does not present proprietary products in poor light, (4) identifies specific compliance standards and processes for firms, and (5) can be implemented at reasonable costs.

Any change to the standard of care will require firms to update and possibly create new disclosure documents. Lincoln cannot fully quantify this amount until it knows the details of a new standard. However, Lincoln estimates that it will incur approximately $5.4 million to mail new broker-dealer disclosures to the households of LFA and LFS.[15]

In addition, Lincoln will need to refresh approximately 3,500 pieces of marketing materials and public communications. Lincoln's current inventory is 5.73 million marketing pieces. The total production cost, excluding human resources and time, simply to refresh marketing material would exceed $2.0 million. In addition, approximately 615 pieces will require FINRA filing, which would be another substantial expense and delay in receiving FINRA approval.

c. <u>Any New Standard of Care Should Be Rules-Based</u>

Lincoln agrees with the SEC's assumption that Sections 206(3) and 206(4) of the Investment Advisers Act of 1940 would not apply to broker-dealers. FINRA rules provide significant parallel safeguards to protect consumers. Generally, these rules are specific and well-defined. The specificity and clarity around the rules allows for broker-dealers to design and implement supervisory systems that are reasonably designed to achieve compliance with rules and regulations. If a new standard of care is not reasonably specific and rules-based, broker-dealers will be in the untenable position of not being able to develop a reasonable supervisory system.

Lincoln remains concerned, however, that regulators and courts may apply a vague fiduciary standard developed under investment adviser case law to broker-dealers.[16] Vague standards cannot be easily translated into clear conduct rules for broker-dealers, and a lack of clarity would subject firms to tremendous uncertainty as to their compliance obligations. Costs would be difficult to control if broker-dealers do not know what is expected, and customer choice and services very well would be reduced to manage and attempt to comply with such a vague standard. Lincoln asks that the SEC avoid such a result, particularly when existing rules, such as

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[15] This estimated expense of disclosure to broker-dealer clients is based on LFN's cost of production and mailing its Form ADV to customers for 2011 ($3.41 per client) and the concept of a "General Relationship Guide" set forth in the RFI. This cost does not reflect the attendant human resources and hours expended to create such disclosures. LFN has approximately 1.6 Million broker-dealer clients.

[16] *See e.g.*, Letter to Mary L. Schapiro, SEC, from Ira D. Hammerman, SIFMA (July 14, 2011) at pp. 11-15.

FINRA Rules 2111 and 2330, provide a framework to design a specific and well-defined standard of care.

d. Any Rulemaking Should Provide Broker-Dealers Adequate Time to Make Significant Changes to Their Operations and Supervision

Any changes to the standard of care for broker-dealers and investment advisers will require firms to reassess their businesses, operations, relationships, supervision, and product suites. Implementation will likely be costly, complex and time consuming. A phased approach and a reasonable transition period are important to any rulemaking the Commission may proffer.

Lincoln cannot quantify the costs to changes to their operations and supervision without knowing precisely the content and character of a potential new standard of care. However, Lincoln's broker-dealers have incurred significant increased, permanent expense over the last couple of years in response to regulatory change. For example:

- Full-time supervising principals who conduct suitability reviews have increased from two to nine employees. The annual costs have also increased by over four hundred percent (400%).

- Full-time supervising principals who conduct ongoing surveillance have increased from one to seven employees. The costs and expenses associated with these additional layers of surveillance have also increased by seven hundred percent (700%).

- Operational and supervisory systems have been upgraded at an expense of $3.6 million over the last three years, with an increase of annual realized expense of approximately $1 million. These systems continue to be upgraded based on current regulatory structures and the cost of another overhaul would be exponential.

Lincoln expects that any new standard of care will require new hires to perform supervision and surveillance functions, and its systems will need to be enhanced similar to the changes over the last several years.

4. Conclusion

Lincoln Financial strongly supports efforts to enhance investor protection, including careful regulation to achieve this goal. It is critical for the SEC to consider the DOL fiduciary initiative as part of any rulemaking. At the very least, even if the standards are developed to fit different regulatory regimes, they must be compatible and require implementation by the same effective dates. ***Financial service firms simply cannot properly absorb two fundamental changes regarding fiduciary duties at different times.***

The SEC also should consider that the current regulatory regimes satisfactorily protect consumers. Considering FINRA Rule 2111 essentially meets the standards of investment advisers, as some industry and regulatory authorities have observed, any changes to BD and RIA standards of care would be marginal at best. Lincoln questions whether an incremental benefit of a perceived uniform standard of care would come close to outweighing the very objective costs that would be incurred by firms and investors.

Finally, the SEC should not change regulation of non-cash compensation arrangements, including sales contests. Dodd-Frank and the SEC's assumptions dictate that business models and compensation arrangements would remain intact. Lincoln finds it inconsistent for the SEC to assume existing business models would not be affected but then curtail a significant feature of existing business models by prohibiting sales contests. It would appear the SEC lacks the authority to restrict sales contests in light of Dodd-Frank's mandate that business models should be preserved. Accordingly, the SEC should remain neutral toward all compensation systems. Any concerns the SEC or other SROs have regarding conflicts can be addressed through appropriate disclosures, as we have outlined above.

Please feel free to contact me if you need additional information or want to further discuss these issues. My phone number is 484-583-1409 and my email address is Adam.Ciongoli@lfg.com.

Respectfully Submitted,

Adam Ciongoli

Adam Ciongoli
Executive Vice President and
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