I am a Certified Financial Planner™ professional, and investment adviser representative of my firm, Carrier & Maurice Investment Advisors, a Tennessee and Virginia Registered Investment Adviser. I have been in the financial industry since 1990, was initially licensed to sell securities and insurance, became an investment adviser representative dually registered with an independent broker-dealer/RIA,. I became a CFP® professional in 1997. I registered our firm in 2002 and in 2005 severed affiliation with the brokerage industry and became fully independent exercising my firm's Tennessee RIA using a qualified custodian to hold client accounts.

I write in response to RFI regarding Duties of Brokers, Dealers, and Investment Advisers: I strongly support the Securities and Exchange Commission's (SEC) efforts to enhance retail investor protections and decrease retail investors' confusion about the standard of conduct owed to them by financial service professionals in providing personalized investment advice about securities.

I urge the Commission to maintain as of uppermost importance the following:

In the mind of retail investors the term 'financial advisor' is indistinguishable from 'investment adviser'. This has led to widespread confusion for retail investors as a group which has been clearly documented. The distinction has far reaching technical and legal impact on this significant demographic. The roots of confusion arise directly and historically from the Investment Adviser Act of 1940 and has manifested in the marketing scheme which substituted the term 'financial' for 'investment' in order for brokers-dealers to avoid having their representatives come under the Act while presenting them to retail investor consumers as 'advisors'. There are numerous battles and debates across the industry that have been playing out in a variety ways. But I believe they all come down to a battle over fairness to retail investors who are also consumers of 'advice' against a business model that is not compatible with that objective in the context of this very real and pervasive confusion.

Since the introduction of this term of art, it has become popular to describe brokers as 'financial advisors'. A case can be made that this

practice is itself fraudulent since there is no way to construe the term ‘advisor’ separately from the definition of a ‘fiduciary’ and the standard to which Investment Advisers are held under the Act. While this standard can be discussed and debated in detail by industry insiders, politicians and lobbyists, not one aspect of the fiduciary standard can be disconnected from the need for a clear understanding *in the mind of the consumer*, retail investor. There simply is no fairness where the most critical element of the relationship between ‘advisor’ and consumer is deeply flawed. In this environment retail investors seeking advice about securities will assume what the term ‘advisor’ inherently implies and that recommendations are primarily intended to benefit the investor’s best interest without significant conflict of interest.

In my 23 years I have yet to encounter a client or prospective client who was not *stunned* to learn what the differences mean to ***them*** as consumers regarding the nature of the relationship between a retail investor and that of brokers vs. an independent RIA – (one not affiliated with a broker-dealer). It would not be exaggerating to say that at least 75% of our time educating retail investors is in regard to this distinction alone. For the most part treating clients ‘as if’ one were a fiduciary is a *personal choice* and might even be a cultural value in some businesses but not a *duty owed by law* in the financial industry.

In my experience, the overwhelming financial incentive across the financial services industry does not align with the best interests of retail investor consumers. As a professional it was an ever present challenge for me to serve clients’ best interests in competition *against the opportunities* presented by the overwhelming majority of product purveyors. The conflict of interest is to increase one’s own financial benefit *and* that to the additional expense of retail investors. I believe that I did a good job of meeting that challenge in good conscience. But the fact that *it was a challenge* is the issue for retail investor consumers who are clearly unaware of the scope and depth of the conflict. And I believe that the current business model of the broker-dealer makes this challenge inescapable.

By itself this confusion may not appear to be profound. But this phenomenon has combined with the fact that a significant portion of

financial losses incurred by individual investors over the years that we have observed has occurred *primarily* as a result of serious financial decisions being made by investors in this confused state. This makes it the critical issue. It is at the heart of the issue being debated in my view. The cost is incalculable yet nonetheless utterly identifiable to consumers themselves – after the fact. Most people seek to make informed decisions about their investments while relying on the 'advice' of a professional they assume to be - with good (although unreliable) reason, a disinterested and loyal party.

This is not to say that the broker-dealer model cannot benefit from a standard that is 'no less stringent' than that found in the Act. It is to suggest that *if this distinction* were ever to become clear *in the mind of retail investor consumers* as a group that model itself would undergo significant reformation. It seems to me that is where the burden should be and not on reformation of the regulatory framework. When consumers understand the duties and protections afforded under the fiduciary standard of the Act it is likely there will still remain a marketplace for brokers. But that marketplace would drive a radical reformation of the broker-dealer model under the pressure of competing with independent RIA's currently operating under the fiduciary standard of the Act.

It is my studied and passionate opinion, that this standard or 'one no less stringent' cannot be made to fit the current broker-dealer model without significantly diluting the standard found in the Act. There is simply no way in language or in fact to maintain an ultimate duty to two different masters with competing objectives. This is a fairly ancient principle which is unlikely to be overturned by modern linguistic gymnastics.

I urge the commission to consider seriously the ***financial cost*** to retail investor consumers that is incurred as a result of investment decisions made by retail investors whose understanding of the duty owed by the broker providing that advice is pervasively and severely flawed. Anything the commission does to change the application of the current fiduciary standard incased in the Adviser Act of 1940 should serve to *eliminate <u>that</u> source of confusion* and *raise* the level of protections to consumers receiving personalized advice about securities. It should not do anything to benefit a business model that

otherwise could never sustain the elimination of that confusion without undergoing significant reformation. That is where the ultimate cost will be borne and it will either be borne to the benefit or the detriment of retail investors.

I have yet to see or hear any proposal that shows how the current standard or one 'no less stringent' can be made to apply *uniformly* to the current form of the broker-dealer business model while serving simultaneously *to eliminate the confusion* that exists *in the mind of retail investor consumers*. Certainly disclosures do not educate, but instead obfuscate this kind of clarity. Neither can this confusion be mitigated by limiting the scope of the standard or waiving it in precise circumstances. When the primary issue being confronted straight on is consumer confusion, it seems self evident that there is no in between.

Thank you for consideration of my comments.

David L. Maurice, M.Div., CFP®
Carrier & Maurice Investment Advisors
A WealthWise Enterprise - Registered Investment Advisor

508 Princeton Rd. Suite 301
Johnson City, TN 37601-2064
Phone: (423) 610-0099

Lynchburg, VA 24502
Phone: (434) 473-6606

Fax: (423) 610-0366
E-mail: [redacted]
Website: www.carrier-maurice.com