



Pamela Lewis-Marlborough
Director & Associate General
Counsel

1670 Broadway
Denver, CO 80202

T 303-626-4535
plewis@tiaa-cref.org

July 5, 2013

VIA ELECTRONIC DELIVERY

Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F. Street, N.E.
Washington, D.C. 20549-1090

Re: File No. 4-606; Release No. 34-69013; IA-3558
Duties of Brokers, Dealers and Investment Advisers
Request for Data and Other Information

Dear Ms. Murphy:

TIAA-CREF Individual & Institutional Services, LLC ("TC Services") is pleased to provide its comments in response to the above-mentioned release through which the Securities and Exchange Commission ("Commission") requests data and other information relating to the benefits and costs of various alternative approaches to the standards of conduct and other obligations of broker-dealers and investment advisers ("Data Request"). The Commission indicates that it intends to use the comments and data it receives to inform its consideration of: (1) alternative standards of conduct for broker-dealers and investment advisers when providing personalized investment advice about securities to retail customers; and (2) potential harmonization of certain aspects of broker-dealer and investment adviser regulation.

TC Services previously provided comments ("Prior Comment")¹ in connection with the Commission's Study Regarding the Obligations of Brokers, Dealers and Investment Advisers which preceded the Data Request ("Study").² This letter reiterates points raised in our Prior Comment on the Study and provides additional supporting information for the Commission's consideration.

TC Services continues to support a uniform standard of conduct for broker-dealers and investment advisers when providing personalized advice about securities to retail customers. As noted in our Prior Comment, we believe a uniform standard will benefit investors. We agree the distinctions between the suitability standard to which broker-dealers are subject and the fiduciary standard to which investment advisers are subject are not consistently appreciated and understood by investors. At the same time, we believe it is of paramount importance that the Commission establish a common understanding of the framework for such a uniform standard. We support a uniform standard which imposes a duty to act

¹ See TIAA-CREF Individual & Institutional Services, LLC comment to the Commission (August 27, 2010) <http://www.sec.gov/comments/4-606/4606-2275.pdf>.

² 75 Fed. Reg. 44996; Study by the Staff of the U.S. Securities Exchange Commission on Investment Advisers and Broker-Dealers as Required by Section 913 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (January 2011).

in the best interests of the customer through a duty of loyalty and a duty of care when providing advice about securities, but which also recognizes the value of episodic advice and the nature of such relationships.

We offer data and other information through this letter in support of the Commission's efforts. We agree that gathering data and information on the benefits and costs of a uniform standard of conduct and rule harmonization is the next step the Commission should take prior to a formal rule proposal. We note, however, that providing considered and thorough responses on the various alternatives set forth in the Data Request is challenging without insight into the Commission's intended direction. Our responses, therefore, focus on the following potential aspects of a uniform standard of conduct:

- Any approach to a uniform standard of conduct pursued by the Commission should preserve both broker-dealers and investment advisers' ability to provide episodic advice. An episodic advice relationship, understood as such between the broker-dealer or investment adviser and the retail customer, should not subject the broker-dealer or investment adviser to fiduciary duties that extend beyond the limited scope and length of the episodic advice relationship.
- The Data Request assumes that broker-dealers and investment advisers would be required to deliver a relationship guide,³ similar to the Form ADV, Part 2A, to retail customers at the time of entry into each customer relationship. Any associated disclosure obligations to retail customers through a relationship guide contemplated in the Data Request or otherwise should be streamlined, flexible and cost-effective.
 - *Timing.* The timing of delivery of disclosures should accommodate varying business models. Not all brokerage relationships with retail customers involve the provision of personalized advice. Conversely, not all personalized advice provided by broker-dealers occurs in connection with the establishment of a brokerage account.
 - *Content.* Any disclosure requirement should use a layered approach that allows for simple and concise up front disclosure with the ability of the retail customer to obtain more detailed disclosure via information posted on the firm's website or in paper form upon request. This would be cost-effective and help ensure that retail customers receive important information in an easily digestible form with access to additional detail if and when desired.
 - *Scope of Covered Relationships.* Any disclosure requirement should acknowledge and appropriately distinguish different advice delivery scenarios. Independent third party advice delivered unaltered by a broker-dealer or investment adviser to participants of employer sponsored retirement plans on plan investment options selected by an independent plan fiduciary and pursuant to the Department of Labor's Advisory Opinion 2001-09A (known as the "SunAmerica Opinion")⁴ should not be deemed advice to retail

³78 Fed. Reg. at 14856.

⁴Advisory Opinion 2001-09A (Dec. 14, 2001). In this advisory opinion, the Department of Labor ("DOL") opined favorably on a structure where a retirement platform provider outsourced to an independent financial expert the design, control and operation of a computerized investment advice program considering both proprietary and nonproprietary investment options. The advisory opinion allows retirement plan service providers to provide advice consistent with the Employee Retirement Income Security Act's ("ERISA") prohibited transaction provisions by retaining an independent third party to serve as the source of the advice if, among other things, the third party's compensation does not vary based on which securities are recommended. This so-called "SunAmerica" approach has been adopted by many providers.

customers *provided* by the broker-dealer or investment adviser. The delivery of such advice should not necessitate the delivery of a relationship guide.

The above points are discussed in more detail below. TC Services also participated in industry group data gathering efforts as we believe such groups are best equipped to provide the Commission with granular data on broker-dealer and investment adviser business models on an aggregate basis and without raising competitive concerns.

I. About TC Services

TC Services is dually registered with the Commission as a broker-dealer under the Securities Exchange Act of 1934, as amended (“Exchange Act”) and an investment adviser under the Investment Advisers Act of 1940, as amended (“Advisers Act”). TC Services is wholly owned by Teachers Insurance and Annuity Association of America (“TIAA”). TC Services and TIAA are members of the TIAA-CREF group of companies which comprise one of the world’s largest retirement plan systems. For over 90 years, TIAA-CREF has helped people in the academic, research, medical and cultural fields plan for and live through retirement.

TIAA-CREF presently serves approximately 3.9 million individuals enrolled in retirement plans sponsored by over 15,000 institutions. The overwhelming majority of TC Services’ clients are participants within employer sponsored retirement plans that TIAA administers—*e.g.*, 401(k) or 403(b) plans. These participants’ retirement plan balances often represent their largest source of assets. These assets are generally held in an omnibus account established by the plan sponsor with an independent custodian such as a bank with respect to mutual funds and with an insurer with respect to annuities – they are not typically held in a brokerage account.

TIAA-CREF offers a number of resources to help plan participants to and through retirement – from education and online planning tools to advice regarding plan assets. These resources are available to plan participants via the internet, by phone or in person, generally at no additional cost to the participant or the plan. This includes an incidental advice service delivered through TC Services as a broker-dealer which provides participants with point-in-time, non-discretionary advice regarding their plan account balances (“Retirement Plan Advice”). The Retirement Plan Advice service includes asset allocation guidance and, where approved by the plan sponsor, specific fund recommendations.

In addition to its retirement plan education and advice offers, TC Services separately provides other brokerage and investment advisory services designed to address participant investment needs outside of their employer sponsored retirement plans, including brokerage accounts, individual retirement accounts (“IRAs”) and variable and life insurance products.⁵ These customers also have access to episodic guidance as to specific investment options in their brokerage accounts and IRAs (*e.g.*, mutual fund recommendations) as well as investment advice in the form of financial planning assistance and managed accounts.⁶

⁵ TC Services introduces brokerage accounts, including taxable and individual retirement accounts, to Pershing LLC, which acts as its clearing firm. Additionally, TC Services provides brokerage services to individual retirement accounts provided through its affiliate, the TIAA-CREF Trust Company, FSB. TC Services also acts as principal underwriter and selling agent with respect to variable insurance products issued by the TIAA-CREF Life Insurance Company. TC Services distributes securities products through these channels and to the retirement plans administered by TIAA.

⁶ TC Services provides an episodic financial planning service through its Wealth advisors at no additional charge. Additionally, TC Services offers ongoing investment management services through discretionary managed account programs (the Portfolio Manager program which invests in mutual funds only is closed to new investors and the Portfolio Advisor program which currently invests in mutual funds and exchange traded funds is open to new investors).

II. Commission Action on a Uniform Standard of Conduct Must Recognize the Value and Nature of Episodic Advice.

We support the Data Request assumption that a “uniform fiduciary standard of conduct would not generally require a broker-dealer or investment adviser to either (i) have a continuing duty of care or loyalty to a retail customer after providing him or her personalized investment advice about securities, or (ii) provide services to a retail customer beyond those agreed to between the retail customer and the broker-dealer or investment adviser.”⁷ This is consistent with the congressional intent expressed in Section 913(k)(1) of the Dodd-Frank Act which states in part, “Nothing in this section shall require a broker-dealer or registered representative to have a continuing duty of care or loyalty to the customer after providing personalized advice about securities.”⁸

As noted above and by way of example, TC Services delivers an episodic Retirement Plan Advice service to participants of the employer sponsored retirement plans administered by TIAA. We believe this advice is an integral part to helping participants save for retirement. Approximately two-thirds (68%) of those who took advantage of Retirement Advice Services in 2012 via an in person interaction chose to either save more for retirement, revisit their portfolio allocation or rebalance their portfolio.⁹ Among premium paying participants, approximately thirty eight percent (38%) increased their saving rate. We believe plan participants that received the Retirement Plan Advice are more than five times more confident about their retirement than the average American worker.¹⁰

The ability to provide this advice as of a point in time and without a continuing obligation to monitor or continually advise the participant on the allocation of his or her retirement plan balances allows us to offer the service at no additional charge to the participant or the plan. While the participant can choose to revisit the advice provided from time to time with us on his or her initiative, this service does not involve continuous or regular supervisory or management services and TC Services does not exercise investment discretion over the participant’s retirement plan assets. It is made plain to the participant that the advice is point-in-time.

If the Commission pursues a uniform fiduciary standard of conduct, we urge the Commission to incorporate the above-referenced assumption into its rulemaking proposal. The Commission also should consider engaging in separate rulemaking initiatives under Section 15 of the Exchange Act and Section 211 of the Advisers Act to further clarify the scope of the accompanying fiduciary duty to episodic advice. This approach can best address the distinct differences in the business models of broker-dealers and investment advisers.¹¹ We also note that the nature of the episodic advice relationship may be spelled out in disclosures rather than via a contractual relationship. A contract should not be required to establish the scope and limit of duties in an episodic advice interaction.

III. Continued Access to Episodic Advice Requires a Streamlined, Cost Effective and Flexible Disclosure Approach.

⁷ 78 Fed. Reg. at 14855.

⁸ Pub. L. No. 111-203, §913, 124 Stat. 1828 (15. U.S.C. 78o(k)(1)).

⁹ For plan participants who took advantage of the Retirement Plan Advice online in 2012, more than half (56%, chose to either save more, revisit their portfolio allocation or rebalance their portfolio.

¹⁰ Based on survey of 8,498 individuals that received TIAA-CREF advice via phone or in person from January through August 2012 compared to 2012 Retirement Confidence Survey Results reported by Employee Benefit Research Institute in March 2012.

¹¹ By way of example, enunciating a uniform standard of conduct through incorporation of relevant provisions in the Exchange Act for broker-dealers and the Advisers Act for investment advisers allows the Commission to address material differences in broker-dealer and investment adviser business models (e.g., broker-dealers generally are primarily engaged in the business of effecting transactions) and Dodd-Frank Act considerations specific to the nature of a broker-dealer business such as principal trading relief.

The Commission's cost benefit analysis, and any subsequent rulemaking, should address the fact that episodic advice does not involve a recurring asset-based fee which can readily offset a lengthy paper-centric disclosure regime. A streamlined, cost-effective and flexible approach is needed to help ensure the continued provision of such advice by broker-dealers and investment advisers and continued investor access to such advice.

Section 913 of the Dodd-Frank Wall Street Reform Act and Consumer Protection Act ("Dodd-Frank Act") specifically envisions this. It states that any disclosure regime implemented by the Commissions in furtherance of a uniform standard of conduct will "facilitate the provision of simple and clear disclosures to investors regarding the terms of their relationships with brokers, dealers and investment advisers, including any material conflicts of interest."¹² The Data Request assumptions, however, suggest a more complex approach. Specifically, the delivery of a general relationship guide could be required "at the time of entry into a retail customer relationship," followed by oral or written disclosure at the time personalized investment advice is provided of any new material conflicts of interest or a material change of an existing conflict. The Data Request indicates:

The relationship guide would contain a description of, among other things, the firm's services, fees, and the scope of its services with the retail customer, including: (i) whether advice and related duties are limited in time or are ongoing, or are otherwise limited in scope (*e.g.*, limited to certain accounts or transactions); (ii) whether [the firm] only offers or recommends proprietary or other limited ranges of products; (iii) whether, and if so the circumstances in which, [the firm] will seek to engage in principal trades with a retail customer. It also could include disclosure of other material conflicts of interest, such as conflicts of interest presented by compensation structures.¹³

We are concerned that this approach may prove cost-prohibitive and further would be unworkable, as discussed below.

A. Timing of Delivery of the Relationship Guide and Updates Must Accommodate Varying Business Models.

We believe the appropriate trigger point for advice-related disclosures is *at or before the establishment of the advice relationship* (rather than at the time of entry into a customer relationship). This avoids the application of the delivery requirements to retail customer relationships over which a broker-dealer does not intend to provide advice (and thus where the disclosures have limited or no relevance). This approach also addresses instances where a broker-dealer provides advice to a retail customer outside of a traditional brokerage account relationship. In such instances, another entity may establish and maintain the account, while the broker-dealer may perform certain ancillary securities distribution services and administrative services such as handling account inquiries. In such cases, the advice relationship between the broker-dealer and the customer may be established after account opening.

We also believe firms should be permitted to make updates to their disclosures annually via an annual summary of material changes pursuant to the Form ADV requirements in place today.¹⁴ Additionally, via the relationship guide, firms should be permitted to direct retail customers to check the firm's website or call an 800 number for the most up-to-date version of the relationship guide prior to obtaining advice. The Data Request assumes that firms would be required to provide retail customers

¹² Pub. L. No. 111-203, §913, 124 Stat. 1828 (15 U.S.C. 78o(l)(1)).

¹³ 78 Fed. Reg. at 14856.

¹⁴ With interim changes required only so far as the change in information has a material impact on the advice to be rendered.

with oral or written updates at the time personalized advice is provided. This trigger point, however, presents operational and supervisory challenges .

If the Data Request's assumption regarding the timing of delivery of the relationship guide is applied, firms providing episodic advice will be required to implement systems enhancements that enable the firm and their personnel providing advice (as well as their supervisors) to ascertain whether the disclosures provided at the time of the "establishment of the customer relationship" have been materially revised between the date of provision and the date of the requested advice interaction. This exercise becomes increasingly complex where retail customers obtain different episodic advice services at various points in time from the firm and/or from multiple representatives.

B. A Layered Approach to the Relationship Guide Will Make for Succinct, Clear and Cost-Effective Disclosure.

The Commission should permit a layered format to the relationship guide that initially provides a concise written disclosure document – e.g., two pages or less– then, a reference to the firm's website for more specific detail disclosure. We believe retail customers would prefer the simplicity offered by this approach, especially in light of the number of agreements and disclosures they receive in connection with the opening of a brokerage or other account.¹⁵ The initial written disclosure would discuss general services and conflicts of interest and the more detailed web version would address disclosures with respect to particular products. Additionally, any registered representative-specific disclosure regime (e.g., a Form ADV Part 2B equivalent) should be built upon the existing Internet-based FINRA BrokerCheck disclosure system. Firms, including registered investment advisers, should be permitted to provide links to this data base to the extent it contains information about the individuals who provide investment advice to retail customers (rather than delivering individual biographies for each representative that may provide advice to the customer).

Reserving detailed product specific disclosures and biographic information about firm personnel that may provide advice to customers for the Internet allows customers to quickly jump via hyperlink to the disclosure relevant to their particular relationship. An Internet based approach also allows the firm to keep the disclosure "evergreen." Moreover, investors are comfortable using the Internet to obtain investment information. The Investment Company Institute ("ICI") indicates in a recent study that 95% of investors surveyed used the Internet.¹⁶ The ICI survey also found that almost 90% of investors overall and more than 80% of mutual fund investors who access the Internet use it to gather financial information. We also note that the Commission has adopted a layered approach in other contexts with respect to proxies¹⁷ and in connection with securities offering reform and summary mutual fund prospectuses.¹⁸

¹⁵ For example, brokerage customers today receive a number of disclosures upon the opening of a brokerage account, including an account application and associated agreements, privacy policy, business continuity policy, prospectuses and other disclosures specific to various features of the account where applicable (e.g., options).

¹⁶ "Investor Views on U.S. Securities and Exchange Commission's Proposed Summary Prospectus" (March 14, 2008) at 19, available at http://www.ici.org/stats/res/ppr_08_summary_prospectus.pdf.

¹⁷ Rule 14a-16(d) under the Securities Act of 1933 ("Securities Act") governs the contents of the notice that an issuer must send to its security holders in connection with the availability on the Internet of proxy material for that issuer. The rule requires the notice to state that if the security holder wants a paper copy of the proxy material, the security holder must request one. It also requires that the notice provide the security holder with a toll-free phone number, email address and Internet website where current and future proxy material in paper form can be requested.

¹⁸ Pursuant to Rule 498 of the Securities Act, mutual funds are permitted to use a summary section of the prospectus as an optional "summary prospectus" to satisfy the fund's prospectus delivery requirements under Section 5(b) of the Securities Act.

For those retail customers not yet comfortable accessing information via the Internet, the initial written disclosure statement could provide a toll free phone number through which the retail customer could obtain a written version of the Internet based disclosure free-of-charge. The Commission also might consider further enhancing visibility of the Internet disclosure by requiring firms to disclose the website address prominently near the client signature line on new account forms and/or requiring firms to add disclosure on periodic account statements reminding the retail customer of the evergreen Internet disclosure. Additionally, firms could be required to add a concise disclosure to their advertisements and sales materials referring investors to their Internet and a toll-free number for detailed information about their services and potential conflicts of interest.

The burdens associated with a paper-centric disclosure regime are sizable and should be considered appropriately by the Commission. They include potentially large and burdensome costs to firms that may negate their ability to provide episodic advice in a cost-effective manner as well as environmental impacts. As noted above, approximately 3.9 million participants are enrolled in retirement plans record kept by TIAA. Participant enrollment in the plan is facilitated by TIAA as record keeper and the plan assets generally are held with an independent bank and with TIAA as insurer. All participants are eligible for the episodic Retirement Plan Advice service. Where authorized by the plan sponsor, the Retirement Plan Advice services also includes specific recommendations on the allocation of plan balances among the mutual fund and annuity investment options for the plan (“fund specific recommendations”) in addition to more general asset allocation guidance by asset class. Over 2 million participants are currently eligible to receive such specific fund recommendations through the service. Last year alone, we delivered approximately 233,000 Retirement Plan Advice interactions to participants.

TC Services’ estimates potential up front delivery costs of the relationship guide to the 3.9 million individuals enrolled in retirement plans for which it provides brokerage services could potentially exceed \$ 9 million¹⁹ just for printing and postage alone. If the third party advice provided pursuant to the SunAmerica opinion is excepted from the assumed relationship guide delivery requirements as suggested below, those costs could drop by as much as \$8 million. As a further point of comparison, we estimate that TC Services delivered its Form ADV to approximately 50,000 individuals in 2012 pursuant to the initial delivery requirements of Rule 203-4 of the Advisers Act, with estimated printing and postage costs of approximately \$115,000.²⁰

Environmental impacts of a paper-centric disclosure regime also are severe. We estimate it would take 9,600 trees to provide a 20 page relationship guide to 4 million customers (*i.e.*, 1 tree= 16.67 reams of paper= 8,333.3 sheets of paper).²¹ Additionally, there are significant pollution impacts. Paper

Funds are permitted to use short-form summary prospectuses only on the condition that they make their full statutory prospectus and other specified fund documents available on the Internet, with paper copies available upon request. The Commission stated that this approach is “intended to provide investors with better ability to choose the amount and type of information to review, as well as the format in which to review it (online or paper).”

¹⁹ This assumes the trigger for delivery of the upfront relationship guide is as currently set forth in the assumptions (*i.e.*, at the establishment of the customer relationship) and that is interpreted as at the time of enrollment in an account or securities products over which TC Services has the ability to provide advice. It assumes delivery of a relationship guide of the same length as our Form ADV, Part 2A today (20 pages) with similar printing and postage costs. On a per piece basis, our printing and postage costs today for our 20 page Form ADV, Part 2A are estimated to be \$2.31 (\$.50 for postage and \$1.81 for printing costs). By way of comparison, the postage and printing costs to deliver an 8 page summary prospectus through a central fulfillment process run at approximately \$1.34. Please note, our estimates do not include labor costs associated with the compilation, review and delivery of the Form ADV or the contemplated relationship guide, nor do they include information technology systems enhancements, supervisory system enhancements and training that would likely be needed.

²⁰ See footnote 19 for a breakdown of estimate postage and printing costs.

²¹ See www.conservatree.com/learn/EnviroIssues/TreeStats. Conservatree, a non-profit organization dedicated to converting paper markets to environmental papers, uses a ballpark methodology for calculating how many trees are needed to make a given

accounts for approximately 30% by weight of municipal solid waste²² Pulp and paper is the third largest industrial polluter to air, water and land in the United States and Canada. It releases over 100 million kg of toxic pollution each year.²³

C. Advice Provided to Employer Sponsored Retirement Plan Participants Under the SunAmerica Opinion Should Not Necessitate the Delivery of a Relationship Guide.

We do not believe that third party advice delivered unaltered by a broker-dealer or investment adviser to participants of an employer sponsored retirement plan pursuant to the requirements of the SunAmerica Opinion should be deemed advice *provided* by the broker-dealer or investment adviser necessitating the delivery of a relationship guide. It is provided by the broker-dealer or investment adviser at the behest of an independent plan fiduciary (generally, the plan sponsor). Moreover, the advice is not formulated or influenced by the broker-dealer or investment adviser.

By complying with its terms, the SunAmerica Opinion allows financial services providers like broker-dealers and investment advisers, to deliver independent investment advice to plan participants without running afoul of the prohibited transaction provisions of ERISA in connection with compensation they receive from a plan for other services provided (e.g., 12b-1 fees and other payments from mutual funds selected by the plan sponsor as investment options in the plan investment line-up). Specifically, the SunAmerica Opinion requires that the advice provided be sourced from an independent third party and cannot be the result of broker-dealer or investment adviser's (or an affiliates') exercise of authority, control, or responsibility for purposes of ERISA Section 406.²⁴ In this regard, the SunAmerica Opinion requires, among other things, that: (a) the plan fiduciary responsible for selecting the advice program for the plan be fully informed about, and have approved, the program and services to be provided as well as the use of the independent third party advice provider; (b) the third party must be independent of the financial services provider and its affiliates; (c) the advice provided must be the result of methodologies developed and maintained by the third party; and (d) the arrangement between the financial services provider and the third party advice provider and the compensation payable to the third party advice provider must preserve the third party's ability to independently formulate the advice. In sum, the financial services provider cannot change or affect the advice and must compensate the financial expert without regard to the type or brand of products recommended. We believe adherence to the conditions set forth in the SunAmerica Opinion effectively neutralize the conflicts of interest presented by the compensation received by the financial services provider and its affiliates in connection with the advice provided.

The Retirement Plan Advice that TC Services delivers to participants of employer sponsored retirement accounts is sourced from a third party unaffiliated with TC Services pursuant to the SunAmerica Opinion.²⁵ TC Services delivers the third party's advice through one brief counseling session in person or over the phone that lasts 30 to 45 minutes or via the internet, at the plan participant's

amount of paper. A rough average of 24 trees are needed to produce a ton of printing and writing papers (based on a mixture of softwoods and hardwoods 40 feet tall and 6 to 8 inches in diameter and assuming the kraft chemical (freesheet) pulping process is used to produce the paper). Another way to look at this ballpark estimate is that one tree makes approximately 16.67 reams of copy paper or 8,333.3 sheets of paper.

²² EPA 2010, <http://www.epa.gov/epawaste/nonhaz/municipal/index.htm>

²³ See <http://publications.gc.ca/collections/Collection/En40-495-1996-MR1E.pdf>. The National Pollutant Release Inventory, Summary Report of 1996 by the Canadian Environmental Protection Act.

²⁴ 29. U.S.C. 1106.

²⁵ TC Services relies on this opinion given TC Services and its affiliates receive compensation in connection with distribution of the plan investment options and administration of the employer sponsored retirement plans to which the advice is provided.

choosing. It is not ongoing. During these sessions, the customer is asked a series of questions aimed at the customer's goals, investment objectives, financial circumstances and other relevant investment criteria. The customer's responses are compared against several different customized model portfolios designed by the third party specifically for that retirement plan. The model portfolios consist of asset allocation models with corresponding mutual fund and variable and fixed annuity recommendations. The third party draws its recommended securities from the retirement plan's investment menu, as selected by the plan fiduciary. Once matched to a model portfolio, the output is shared with the participant who can then implement the advice. The participant is not obligated to purchase any securities from TC Services or invest in accordance with the recommendations. The participant subsequently receives a written report through the mail or online confirming the findings of the earlier session.

In the event the Commission does not believe the delivery of third party advice pursuant to the SunAmerica Opinion by itself to be sufficient grounds for exclusion from relationship guide delivery requirements, the Commission should nevertheless consider allowing fee disclosures meeting the requirements of Section 408(b)(2) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA")²⁶ that are provided by such broker-dealers or investment advisers (or through their affiliates) to plan fiduciaries to stand in the place of the relationship guide where the broker-dealer or investment adviser provides advice to plan participants in reliance on the SunAmerica Opinion.

Section 408(b)(2) requires certain plan service providers to disclose to the responsible ERISA plan fiduciaries in writing the services to be provided to the plan and associated conflicts of interest (*i.e.*, all direct and indirect compensation to be received by the service provider, its affiliates, or subcontractors). TIAA-CREF also makes these disclosures available to fiduciaries of plans not covered by ERISA upon request. The fiduciaries of ERISA plans are in turn required by Section 404(a) of ERISA²⁷ to provide certain fee disclosures to the plan participants based on the information they receive from the service provider pursuant to Section 408(b)(2). TIAA-CREF provides a tool which helps fiduciaries of ERISA plans create disclosures for their plan participants that conform to 404(a) requirements. We also provide resources for fiduciaries of non-ERISA covered plans to use to create similar disclosures. We estimate that TIAA-CREF spent more than \$7 million enhancing its system to provide these disclosures and related services.

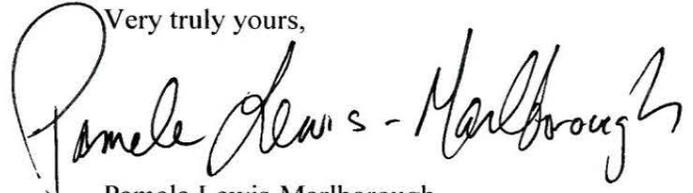
²⁶ 29 U.S.C. 1108.

²⁷ 29 U.S.C. 1104.

IV. Conclusion.

We very much appreciate the opportunity to comment on this proposal and the Commission's continued focus on protecting the interests of investors. Should you wish to discuss our comments, please contact the undersigned at 303-626-4535.

Very truly yours,

A handwritten signature in black ink that reads "Pamela Lewis-Marlborough". The signature is written in a cursive, flowing style with a large initial "P".

Pamela Lewis-Marlborough
Director & Associate General Counsel
TIAA-CREF Individual &
Institutional Services, LLC

cc: Mary Jo White, Chairman
Luis A. Aguilar, Commissioner
Daniel M. Gallagher, Commissioner
Troy A. Paredes, Commissioner
Elisse B. Walter, Commissioner
John Ramsay, Acting Director, Division of Trading and Markets
Norman Champ, Director, Division of Investment Management
Craig M. Lewis, Director, Division of Risk, Strategy,
and Financial Innovation