Scott C. Goebel
Senior Vice President
General Counsel
FMR Co.
82 Devonshire Street V10E, Boston, MA 02109-3614
617.563.0371 FAX 617.385.1331 SCOTT.GOEBEL@FMR.COM

July 5, 2013

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

Re: **Duties of Brokers, Dealers and Investment Advisers**
Release No. 34-69013; IA-3558; File No. 4-606

Dear Ms. Murphy:

Fidelity Investments[1] ("Fidelity") appreciates the opportunity to respond to the Securities and Exchange Commission's (the "SEC" or "Commission") request for data and other information (the "Request") relating to the Commission's consideration of the standards of conduct for, and the harmonization of regulation of, broker-dealers and investment advisers.[2] We support the Commission's efforts to seek additional information on this important topic in advance of any potential rulemaking.

Fidelity generally agrees with the comments submitted by the Securities Industry and Financial Markets Association, the Financial Services Roundtable, the Investment Company Institute, and the Association of Institutional Investors on the Request and offers the following comments to supplement those letters on specific issues.

I. Background

Section 913 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act") required the SEC to complete a study to evaluate the effectiveness of existing legal or regulatory standards of care that apply when broker-dealers and investment advisers provide personalized investment advice about securities to retail customers.[3] The Dodd-Frank Act further authorized, but did not require, the SEC to commence rulemaking

[1]Fidelity Investments is one of the world's largest providers of financial services, with assets under administration of $4.2 trillion, including managed assets of $1.8 trillion, as of April 30, 2013. The firm is a leading provider of investment management, retirement planning, portfolio guidance, brokerage, benefits outsourcing and many other financial products and services to more than 20 million individuals and institutions, as well as through 5,000 financial intermediary firms.

[2]*See* Duties of Brokers, Dealers, and Investment Advisers, Exchange Act Release No. 69013 (Mar. 1, 2013), 78 FR 14848 (Mar. 7, 2013).

[3]Public Law 111-203, 124 Stat. 1376 (2010).

concerning a potential uniform fiduciary duty for broker-dealers and investment advisers if the Commission deemed such rulemaking "necessary or appropriate in the public interest and for the protection of retail customers".[4]

Staff of the SEC ("Staff") completed a study ("the Staff Study"), as prescribed by the Dodd-Frank Act, in which the Staff recommended that the Commission implement a uniform fiduciary standard of conduct for broker-dealers and investment advisers when providing personalized investment advice about securities to retail customers, with a standard "no less stringent than currently applied to investment advisers under sections 206(1) and (2) of the Investment Advisers Act of 1940."[5] The Staff Study also recommended that the Commission consider harmonizing certain other regulatory requirements of broker-dealers and investment advisers where such harmonization appeared likely to enhance meaningful investor protection, taking into account the best elements of each regime.[6]

As a company that has both broker-dealer and investment advisory businesses and clients, we understand the Staff's interest in reconciling the regulatory differences between broker-dealers and investment advisers. If the Commission believes that rulemaking in this area is necessary, Fidelity supports a uniform fiduciary duty that would require broker-dealers and investment advisers to act in the best interest of retail customers when offering personalized investment advice about securities to such retail customers.

In crafting a uniform fiduciary duty for broker-dealers and investment advisers, however, Fidelity does not believe that the Commission should make any changes with respect to the existing regulatory scheme under the Advisers Act. We believe that the existing principles-based fiduciary duty under the Advisers Act has worked well for investment advisers and their clients and we see no reason to modify this well functioning model.

We also do not believe that the Commission should simply extend prior Advisers Act guidance and precedent to broker-dealers. We believe that the existing guidance and precedent under the Advisers Act regarding a fiduciary duty should continue to apply only to investment advisers and that the Commission should promulgate new rules and clear guidance to implement the fiduciary duty when applied to broker-dealers. We believe that this approach is how Congress intended the SEC to implement Section 913 of the Dodd-Frank Act and that it is the only effective way to harmonize a uniform fiduciary standard given different business models of broker-dealers and investment advisers.

[4]Section 913(f) of the Dodd-Frank Act.
[5]Staff of the U.S. Securities and Exchange Commission, *Study on Investment Advisers and Broker-Dealers as Required by Section 913 of the Dodd-Frank Wall Street Reform and Consumer Protection Act* (Jan. 2011).
[6]Staff Study at 129.

With this background, we provide comments on the Request, which are summarized as follows:

- Given potentially different and/or overlapping fiduciary standards and other rules governing advice services, the SEC should coordinate any proposed fiduciary duty rulemaking with the Department of Labor ("DOL");

- The SEC should promulgate new rules and clear guidance enacting a fiduciary duty for broker-dealers that reflect the function and existing regulation of broker-dealers. The Commission should consider certain assumptions and parameters in connection with a proposed fiduciary duty, including a duty of loyalty and a duty of care; and

- Commission harmonization efforts in areas outside of a proposed fiduciary duty should (i) occur only after the Commission finalizes any potential rulemaking related to a uniform standard of care and (ii) simplify and streamline rules in areas of similar activity, taking into consideration the broader regulatory framework of each entity.

Each of these comments is discussed in more detail below.

II. The SEC should coordinate effectively any proposed fiduciary duty rulemaking with the DOL

As a threshold matter, we are deeply concerned that the SEC does not mention, at any point in the Request, the DOL's proposed rule relating to the definition of investment advice under the Employee Retirement Income Security Act of 1974 ("ERISA") (the "DOL Proposal").[7] The DOL Proposal, which is expected to be re-proposed later this year, would redefine the circumstances under which a person is considered to be a "fiduciary" by reason of giving investment advice to an employee benefit plan, a plan's participants, or an individual retirement account ("IRA") owner. We urge the SEC to coordinate effectively with the DOL on the development of a fiduciary standard and related rules governing investment advice, because without such coordination, individuals and their advisers will be faced with potentially different and/or overlapping fiduciary standards and other rules governing advice services.

Individuals seeking personalized investment advice typically want investment solutions that are appropriate for the range of assets they own, without regard to whether such assets are held in brokerage or investment advisory non-retirement retail accounts, IRAs or employer retirement plan accounts such as 401(k) accounts. There does not appear to be any substantive basis for defining fiduciary status and its potential consequences differently based solely upon the type of account in which the individual receiving the advice happens to hold his or her

[7] Definition of the Term "Fiduciary" 75 FR 65263, (October 22, 2010).

investments. Yet, there is a high likelihood that this would be precisely the result if the SEC's and the DOL's current regulatory efforts are not coordinated.

As currently structured, the definition of investment advice in the DOL Proposal is the same whether the advice is provided to a plan fiduciary, plan participants or IRA owners. If the SEC proceeds with rulemaking implementing a uniform fiduciary duty for broker-dealers and investment advisers, this standard would likely apply to personalized investment advice about securities held in non-retirement retail accounts and IRAs offered by broker-dealers. Absent coordination and standardization by the agencies, broker-dealers and investment advisers would be subject to the SEC's rules with respect to nonretirement retail accounts, and both the SEC's and DOL's rules with respect to IRA and 401(k) accounts.

Not surprisingly, potential SEC rules and the DOL Proposal likely would not align in significant ways. For example, as noted in the Staff Study, ERISA imposes absolute prohibitions on certain dealings absent a statutory or administrative exemption. This is in contrast to Section 913 of the Dodd-Frank Act which expressly provides, for example, (i) that the receipt of compensation based on commission or other standard compensation for the sale of securities would not, in and of itself, violate the uniform fiduciary standard as applied to a broker-dealer and (ii) that the offering of only proprietary products by a broker-dealer shall not, in and of itself, violate the uniform fiduciary standard, but may be subject to disclosure and consent requirements.

Lack of effective regulatory coordination has significant implications for investors. Today broker-dealers offer free education and guidance designed to assist retail investors in their investment decisions. Faced with potentially conflicting SEC and DOL rules concerning a fiduciary standard and high compliance costs, some brokers may simply choose not to offer this education and guidance to the IRA market. Such an outcome would reduce retail investor access to affordable investment education and guidance at a time when the need for investors to save for retirement is more important than ever.

With the DOL reconsidering its long-standing regulation of investment advice at the same time as the SEC is required by Congress to review and potentially issue rules for the same conduct, the SEC and DOL have an unprecedented opportunity to work together to create a coordinated regulatory framework on a fiduciary standard. A coordinated framework would result in consistent rules across account types and provide investors wide choice in investment options and compensation arrangements. We believe that the SEC and DOL should seize this opportunity, as the failure to do so will carry potentially significant costs for investors, broker-dealers, and investment advisers.

III. The SEC should establish new rules concerning a fiduciary duty for broker-dealers and should consider certain assumptions and parameters in connection with a proposed fiduciary duty

A. Uniform Fiduciary Standard Generally

Fidelity supports a uniform fiduciary duty for broker-dealers and investment advisers that would require broker-dealers and investment advisers to act in the best interest of retail customers when offering personalized investment advice about securities to such retail customers. In crafting this standard, we believe that the Commission should not make any changes with respect to the Advisers Act. We believe that the existing principles-based fiduciary duty under the Advisers Act has worked well for investment advisers and their clients and we see no reason to modify this model. Similarly, we do not believe that the Commission should simply extend prior Advisers Act guidance and precedent to broker-dealers. Instead, we recommend that the Commission promulgate new rules and clear guidance enacting a fiduciary duty for broker-dealers that reflects the function and existing regulation of broker-dealers. We believe that this approach is the only effective way to harmonize a uniform fiduciary standard given different business models of broker-dealers and investment advisers.

The Advisers Act imposes a broad fiduciary duty on investment advisers to act in the best interests of their clients. It requires, among other items, that an investment adviser either eliminate or disclose all potential conflicts of interest. Although the Advisers Act is relatively short, the Commission's regulation of investment advisers has accreted over decades. The Advisers Act is accompanied by enforcement actions, no-action letters, other forms of Staff guidance and case law that help interpret this principles-based regulation.

Broker-dealers serve a different function in the marketplace and operate on a different set of principles. Broker-dealers are regulated primarily through the Securities Exchange Act of 1934 (the "Exchange Act") and rules of self-regulatory organizations ("SRO") of which the broker-dealer is a member. For decades, broker-dealers have been subject to a myriad of very specific rules that govern their conduct and take into consideration the myriad of conflicts that are inherent in their function. In crafting a fiduciary duty for broker-dealers, simply imposing Advisers Act guidance and precedent to broker-dealers is not a workable model because it does not consider the different functions and regulatory regimes developed for investment advisers and broker-dealers. Moreover, we believe that such an approach would be inconsistent with Congressional intent in drafting Section 913 of the Dodd-Frank Act.[8]

It is also important that the Commission clearly define the scope, nature and duration of the duty owed when creating new rules and guidance to enact a fiduciary duty for broker-dealers. Clear rules concerning a uniform fiduciary duty will help establish expectations and understanding between a broker-dealer and its customer as to the standard of conduct that applies and will provide broker-dealer certainty about the scope of its relationship in order to satisfy regulatory obligations. For example, a broker-dealer that takes on fiduciary status in

[8]As stated by then-Ranking Member Barney Frank in his May 31, 2011 letter to then-Commission Chairman Mary L. Schapiro: "…If Congress intended the SEC to simply copy the [Advisers] Act and apply it to broker-dealers, it would have simply repealed the broker-dealer exemption – an approach Congress considered but rejected." Letter from Congressman Barney Frank to Chairman Mary Schapiro (May 31, 2011).

connection with offering personalized investment advice about securities to retail customers should not be subject to that status for an unlimited duration of time. Instead, unless otherwise agreed to in writing by the parties, fiduciary rules for broker-dealers should provide that the duty exists only at a specific point in time (i.e., when the broker-dealer provides personalized investment advice about securities to a retail customer). The SEC should also clearly state that a fiduciary duty for broker-dealers when providing personalized investment advice about securities to retail customers, does not mean that a broker-dealer will be automatically held to a fiduciary duty for the purposes of any other federal or state laws, or rules or regulations issued by any administrative or regulatory agency.

B. Assumptions

The Commission rightly notes in the Request that, "[a] uniform fiduciary standard of conduct can be understood quite differently by various parties."[9] To address this point, in the Request the Commission identified a set of assumptions and other parameters for commenters to use and critique concerning a potential uniform standard of conduct. We offer the following comments in connection with the assumptions the Commission has outlined in the Request.

1. Assumption regarding the term "personalized investment advice about securities"

The Release asks commenters to:

> *Assume that the term "personalized investment advice about securities" would include a "recommendation," as interpreted under existing broker-dealer regulation, and would include any other actions or communications that would be considered investment advice about securities under the Advisers Act (such as comparisons of securities or asset allocation strategies). It would not include "impersonal investment advice" as that term is used for purposes of the Advisers Act. The term "personalized investment advice" would also not include general investor educational tools, provided those tools do not constitute a recommendation under current law.*[10]

The Commission states that comparisons of securities or asset allocation strategies, which are considered investment advice about securities under the Advisers Act, would be considered personalized investment advice about securities for purposes of a uniform fiduciary standard. We believe that comparisons of securities and asset allocation strategies should not be considered personalized investment advice about securities based on how these communications are currently treated under broker-dealer rules. We recommend that the Commission carefully consider the potential impact to retail investors if it chooses to define broadly "personalized investment advice" when establishing a fiduciary duty for broker-dealers.

[9]Release at 14851.
[10]Release at 14854.

Today, many broker-dealers offer retail investors screening tools that enable investors, at their discretion, to engage in a fact-based comparison of different securities. These tools allow investors to compare and analyze securities based on objective criteria. For example, Fund Picks from Fidelity® is an online tool that allows investors to compare mutual funds by asset category, fund family, manager tenure, rating, return, and expense ratio, among other items. Because these tools merely provide retail customers the ability, at their discretion, to compare securities based on objective criteria, the Commission should not view the offering of these tools as providing personalized investment advice about securities to retail customers which imposes a fiduciary duty on broker-dealers.

Similarly, although FINRA currently treats asset allocation strategies as a recommendation under FINRA rules, asset allocation strategies are not subject to FINRA's suitability rule.[11] FINRA Rule 2111.03 provides a safe harbor for firms' use of "[a]sset allocation models that are (i) based on generally accepted investment theory, (ii) accompanied by disclosures of all material facts and assumptions that may affect a reasonable investor's assessment of the asset allocation model or any report generated by such model, and (iii) in compliance with NASD IM-2210-6 (Requirements for the Use of Investment Analysis Tools)" (if the model is an investment analysis tool). If a broker-dealer offers retail customers an asset allocation strategy, the Commission should not treat the asset allocation strategy as personalized investment advice subject to a fiduciary duty, just as FINRA has concluded that the same conduct should not be subject to its suitability rule.

The Commission should consider the potential impact to retail investors if it chooses to broadly define "personalized investment advice" when establishing a fiduciary duty for broker-dealers. As mentioned above, broker-dealers typically offer free guidance and educational tools designed to assist retail investors in their investment decisions. If the Commission believes that these tools offer "personalized investment advice about securities" and a broker-dealer takes on fiduciary status when offering these tools, broker-dealers may choose to no longer offer these tools or offer them only in connection with a fee-based service, limiting access to these tools for the very retail investors that they are designed to help, a time when an investor's ability to save for retirement is more important than ever.

More generally, the Commission should consider the fact that broker-dealers and investment advisers currently offer a significant amount of free education and guidance concerning investments, in a variety of ways, as part of their service offering to retail customers. While we appreciate the need for a fiduciary duty when offering personalized investment advice about securities to retail customers, the Commission should draft a uniform fiduciary duty in such a way that does not inhibit broker-dealers and investment advisers from offering free education and guidance concerning investments to retail customers. For this reason, as well as the specific examples noted above, we urge the Commission to carefully consider the scope of the term "personalized investment advice about securities" in connection with a uniform fiduciary duty.

[11]FINRA Rule 2111.

2. Assumption regarding the term "Retail Customer"

The Release asks commenters to:

> *Assume that the term "retail customer" would have the same meaning as in Section 913 of the Dodd-Frank Act, which is "a natural person, or the legal representative of such natural person, who (1) receives personalized investment advice about securities from a broker or dealer or investment adviser; and (2) uses such advice primarily for personal, family, or household purposes."*[12]

As defined, we believe that this term could include participants in an employee benefit plan. Based on the regulatory overlap between a potential SEC fiduciary duty and the DOL Proposal, for the reasons noted earlier in this letter, the SEC should coordinate with the DOL on the development of a fiduciary standard and related rules governing investment advice.

As currently drafted, we also believe that the proposed definition of "retail customer" could include institutional customers as those customers are defined under FINRA rules. The term "institutional account" is defined under FINRA rule 4512(c) to include, among other items, the account of "any other person (whether a natural person, corporation, partnership, trust or otherwise) with total assets of at least $50 million."[13] Currently, broker-dealers are not subject to a customer-specific suitability obligation with respect to institutional accounts under FINRA Rule 2111, if certain conditions are met. Because FINRA's definition of an institutional investor includes natural persons if they have at least $50 million in assets, if the SEC bases the definition of a retail customer on "a natural person", a broker-dealer would not have a customer-specific suitability obligation for these accounts under FINRA rules but would have a fiduciary duty for these accounts under SEC rules. Based on this conflict, if the Commission proceeds with rulemaking under Section 913 of the Dodd-Frank Act, the Commission should clarify the duty that broker-dealers owe in this context.

3. Assumption regarding broker-dealers and investment advisers to which the proposed fiduciary standard would apply

The Release asks commenters to:

> *Assume that any action would apply to all SEC-registered broker-dealers and SEC-registered investment advisers. To the extent commenters are of the view that the duty*

[12] Release at 14854.
[13] Under FINRA Rule 4512, the term "institutional account" means the account of:
(1) a bank, savings and loan association, insurance company or registered investment company;
(2) an investment adviser registered either with the SEC under Section 203 of the Investment Advisers Act or with a state securities commission (or any agency or office performing like functions); or
(3) any other person (whether a natural person, corporation, partnership, trust or otherwise) with total assets of at least $50 million.

> *should be limited to a particular subset of SEC-registered broker-dealers or SEC-registered investment advisers or expanded to include all broker-dealers or investment advisers, commenters should explain how and why it should be limited or expanded, and include any relevant data and other information to support such an application.*[14]

We support a federal fiduciary standard that will impose a single, rather than multi-state, standard of conduct on broker-dealers and investment advisers when they offer personalized investment advice about securities to retail customers.

If the SEC decides to implement a uniform fiduciary duty, we do not believe that the SEC should make any changes to the Advisers Act. However, if the Commission chooses to implement changes to the Advisers Act to accommodate a harmonized fiduciary duty to retail clients, we believe that the Commission should draw a distinction between securities advice provided to traditional institutional clients, such as corporations, pooled investment vehicles and other investment fiduciaries ("institutional advice") and securities advice that is provided by an adviser to a retail customer ("retail advice"). We believe that the Commission should distinguish between institutional advice and retail advice to clarify that the harmonized standard would apply only to retail advice, and the well developed Advisers Act standard and associated rules would continue to apply to institutional advice.

In addition, advisers often supply investment research or model strategies to other investment fiduciaries, which may use such research or strategies in whole or in part at their discretion with their end retail clients. When defining the parameters of retail advice, the Commission should not consider the provision of institutional advice to another investment fiduciary to create a fiduciary duty to an end retail client, because the adviser providing the institutional advice does not have investment discretion, direct contact or contractual privity with the end retail client. Instead, the Commission should clarify that only advisers that provide retail advice directly to a retail client owe a fiduciary duty to that retail client.

4. Assumption regarding applicable law

The Release asks commenters to:

> *Assume that existing applicable law and guidance governing broker-dealers, including SRO rules and guidance, would continue to apply to broker-dealers.*[15]

Today, broker-dealers are subject to comprehensive regulation primarily under the Exchange Act and the rules of each SRO to which the broker-dealer belongs. Based on this existing regulatory framework, we agree with the assumption that existing applicable law and guidance governing broker-dealers, including SRO rules and guidance, should likely continue to apply to broker-dealers if the Commission imposed a fiduciary duty on broker-dealers. We

[14]Release at 14854.
[15]Release at 14855.

also believe that any existing laws and guidance applicable to broker-dealers that is *inconsistent* with a proposed fiduciary duty should be reviewed and adjusted.

C. Uniform Fiduciary Standard of Conduct – Duty of Loyalty

In the Request, the SEC asks commenters to assume that any proposed fiduciary standard under consideration would expressly impose certain disclosure requirements on broker-dealers and investment advisers. Such disclosure would include (a) disclosure of all material conflicts of interest the broker-dealer or investment adviser has with the retail customer; (b) disclosure in the form of a general relationship guide, similar to Form ADV Part 2A, to be delivered at the time of entry into a retail customer relationship that would contain a description of, among other things, the types of accounts and services it provides, as well as conflicts associated with such services and any limitations on the duties the firm otherwise owes to retail customers ("Relationship Guide"); and (c) oral or written disclosure at the time personalized investment advice is provided of any new material conflicts of interest or any material change of an existing conflict.[16]

Fidelity shares the SEC's conviction that retail customers benefit by understanding the nature and cost of accounts and services provided to them by broker-dealers and investment advisers with whom they do business. We firmly believe that simple, clear disclosure empowers investors to make investing decisions that are in their best interests. With this background, we have the following comments concerning the proposed Relationship Guide.[17]

1. The SEC should carefully consider retail customers' need for additional disclosure in light of other disclosure proposals currently under consideration

The proposed Relationship Guide would provide the retail customer disclosure concerning, among other items, the types of accounts and services the broker-dealer or investment adviser provides to retail customers, conflicts associated with such services, and any limitation on the duties the firm otherwise owes to retail customers. Fidelity is concerned that the Request is being released at a time when several significant disclosure proposals are under consideration by the SEC, the DOL, and FINRA.[18] We strongly believe that any

[16]Release at 14856.
[17]Many of our comments were also set forth in Fidelity's comment letter submitted in response to FINRA Regulatory Notice 10-54 (October 2010).
[18]*See, e.g.*, Dodd Frank Act, Pub.L. No. 111-213, § 919, regarding SEC's grant of authority to require point-of-sale disclosure; SEC's 2004 and 2005 point-of-sale disclosure proposals; *See* Pub.L. No. 111-213 at § 913, requiring the SEC to "facilitate the provision of simple and clear disclosures to investors regarding the terms of their relationships with broker-dealers and investment advisers, including any material conflicts of interest."; SEC Release No. 33-9128 (July 21, 2010); FINRA Regulatory Notice 09-34 (June 2009), concerning, among other items, FINRA's proposed changes to broker-dealer disclosure of cash compensation; FINRA Regulatory Notice 10-54 concerning a concept proposal to require broker-dealers to provide a disclosure statement to retail investors at or before commencing a business relationship; 29 C.F.R. § 3550, regarding fee disclosures to plan participants. Moreover, FINRA representatives have recently publically stated that FINRA will release guidance concerning how broker-dealers can best manage conflicts of interest at their firms and with their customers

changes to disclosure that retail customers receive should be viewed in totality across regulatory agencies to help ensure that the sum of such disclosure is helpful to retail customers and appropriate based on the nature of their relationship with the broker-dealer or investment adviser. More disclosure does not always result in a more informed retail customer. We are concerned that adding a proposed Relationship Guide requirement without coordinating with other disclosure proposals may increase the amount of information provided without improving customer understanding.

2. Allow retail customers to receive information that is the most relevant and understandable to them

There are significant logistical challenges concerning content, timing and method of delivery of a proposed Relationship Guide that must be considered and addressed. For example, given that multiple business lines within a firm might use the same broker-dealer or investment adviser to deliver personalized investment advice about securities to retail customers, providing a single, comprehensive document concerning all of the broker-dealer or investment advisers' activities may present retail customers with information that is simply not applicable to them. Also, customers might have different levels of interest in the Relationship Guide and requiring a single, comprehensive document to be delivered at a single point in time may not be the most effective means of providing this information. To help ensure that a proposed Relationship Guide that retail customers' receive is relevant and understandable, we suggest that the SEC consider the following points:

- Limit required disclosure to specific products and services offered to a particular retail customer or allow disclosure in a tiered format. Providing a single Relationship Guide concerning the broker-dealer or investment advisers' products across diverse channels may present retail customers with information that is simply not applicable to them. The Commission should permit broker-dealers and investment advisers to develop multiple Relationship Guides, each addressing only the specific type of products and services provided to the retail customer by that broker-dealer or investment adviser. We note that the Commission has already taken this approach with respect to an adviser's Form ADV Part 2A Brochure. The Commission allows advisers to prepare separate Form ADV Part 2A brochures for different types of advisory services.[19] The benefit of this approach is that it allows each separate brochure to be shorter, clearer, and contain less extraneous information than would be in a combined brochure. Alternatively, we suggest that the SEC permit disclosure in a Relationship Guide to appear in a tiered format. Such a format would include specific disclosures relevant to the broker-dealer or

[19] Amendments to Form ADV, Investment Advisers Act Release No. IA-3060 (July 28, 2010) *See* rule 204-3(e) (allowing advisers that provide substantially different advisory services to different clients to provide clients with different brochures as long as each client receives all information about the services and fees that are applicable to that client).

investment adviser's products or services used by the retail customer and more general disclosures on a firm's other products and services.

- Limit disclosure of conflicts to those inherent in the particular transaction or relationship. To help provide retail customers with the information that is most relevant to them, we urge the SEC to limit the scope of disclosed conflicts in the Relationship Guide to those conflicts inherent in the particular transaction or relationship the retail customer has with a broker-dealer or investment adviser. We believe that this approach would present information that is most relevant and helpful to the retail customer, without overwhelming the retail customer with information.

3. Permit a Notice and Access delivery model for a Relationship Guide

To help ensure that retail customers receive information that is most relevant to them and as a cost-effective means of compliance, Fidelity believes that a proposed Relationship Guide should be permitted to be delivered electronically under a Notice and Access model.[20] Under this model, broker-dealer or investment advisers would be required to post their Relationship Guide on an internet site and provide customers and prospective customers with a notice of the internet availability of the Relationship Guide. At their discretion, a broker-dealer or investment adviser might choose to furnish paper copies of the Relationship Guide along with the notice, or a customer or prospective customer might request delivery of a copy of the Relationship Guide from the broker-dealer or investment adviser at no charge. This approach would help ensure that customers and prospective customers would continuously have access to the most current Relationship Guide available from a broker-dealer or investment adviser. Moreover, electronic disclosure would facilitate the use of hyperlinks for additional detail. Fidelity believes that this web-based presentation would allow users to easily find the information most pertinent to them at any stage in a brokerage or investment advisory relationship, thus allowing for easier comparison of accounts and services across firms.

4. The SEC Should Provide Clear, Specific Rules on Content of the Relationship Guide

To facilitate compliance and consistency among broker-dealers and investment advisers, the SEC should provide clear, specific rules on (i) which conflicts must be disclosed and (ii) how to disclose such conflicts. Such an approach would address uncertainty concerning what information or types of information should be disclosed in a Relationship Guide. Moreover, to the extent that the proposed Relationship Guide is intended to be used as a comparison guide for retail customers, disclosure that is subject to specific parameters would also help promote consistency of disclosure across broker-dealers and investment advisers.

[20]See SEC Release No. 34-56135 (January 1, 2008), (File No. S7-03-07), regarding shareholder choice with respect to proxy materials.

Similarly, the Commission should issue definitive and clear standards for updates to disclosures.

D. Uniform Fiduciary Standard of Conduct – Duty of Care

In the Request, the SEC states that it would specify, through a duty of care, certain minimum professional obligations of broker-dealers and investment advisers, which would be designed to promote advice that is in the best interest of the retail customer. Commenters are asked to assume that among other items, the SEC might implement a duty of care by imposing suitability obligations, product-specific requirements, a duty of best execution and a requirement that broker-dealers and investment advisers receive compensation for services that is fair and reasonable, taking into consideration all relevant circumstances.[21]

Today, broker-dealers are subject to FINRA's suitability rule which, among other items, states that firms and their associated persons "must have a reasonable basis to believe" that a transaction or investment strategy involving securities that they recommend is suitable for the customer. This reasonable belief must be based on information obtained through the reasonable diligence of the firm or associated person to ascertain the customer's investment profile, which requires firms and associated persons to obtain and to document specific information about the customer such as the customer's age, financial situation, tax status, and investment objective, among other items ("suitability standards").

We believe that a broker-dealer or investment adviser's obligation to ensure that a recommended security is suitable for a retail customer is a component of, and not a prescriptive obligation in addition to, a fiduciary duty. A fiduciary duty to act in the best interest of a retail customer is a broad-based, overarching principle. Broker-dealers and investment advisers should not be required to obtain and document specific suitability standards in addition to a fiduciary duty. Instead, broker-dealers and investment advisers should be permitted to use suitability standards as guidelines, or a means, to fulfill their fiduciary duty, when offering personalized investment advice about securities to retail customers.

IV. Commission harmonization efforts in areas outside of a proposed fiduciary duty should occur only after the Commission finalizes any potential rulemaking related to a uniform standard of care

The Staff Study recommended that the SEC consider harmonizing certain regulatory requirements of broker-dealers and investment advisers where such harmonization appears likely to enhance meaningful investor protection, taking into account the best elements of each regime. The Staff Study further noted that the Commission could consider these issues as part of the implementation of the uniform fiduciary standard or as separate initiatives. Specific regulatory areas highlighted in the Staff Study included (1) advertising and the use of finders and solicitors; (2) remedies; (3) supervision; (4) licensing and registration of firms; (5)

[21] Release at 14857.

licensing and continuing education requirements for persons associated with broker-dealers and investment advisers; (6) and books and records. The Request sought additional comment on which harmonization initiatives, if any, the Commission should consider for harmonization and what such harmonization should entail.

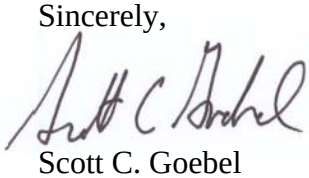
We believe that any SEC investment adviser/broker-dealer harmonization initiatives should occur only after the Commission finalizes any potential rulemaking related to a uniform standard of care. This approach will allow the Commission and commenters to consider harmonization initiatives in the context of any potential changes to the standard of conduct applicable to broker-dealers and investment advisers that the SEC adopts.

We further believe that the overarching goal of any Commissions harmonization initiative, in addition to enhancing meaningful investor protection, should be to simplify and streamline rules in areas of similar activity, taking into consideration the broader regulatory structure of each entity and other rules that may apply to the conduct. For example, with respect to books and records obligations, in addition to requirements under the Exchange Act for broker-dealers and Advisers Act for investment advisers, certain records may also be subject to retention standards under the DOL's rules, as well as the rules of other regulatory agencies. This means that even if the SEC were to harmonize rules for broker-dealers and investment advisers, such entities would still have record retention obligations from regulators other than the SEC to comply with and monitor. As such, we believe that the Commission should take a deliberative approach to harmonization initiatives, consider rules of other regulators in these areas, and review these initiatives only after it has made a determination to, and finalized, a uniform fiduciary duty for broker-dealers and investment advisers when offering personalized investment advice about securities to retail customers.

* * * * *

Fidelity thanks the Commission for considering our comments. We would be pleased to provide any further information or respond to any questions that you may have.

Sincerely,



Scott C. Goebel

cc:

United States Securities and Exchange Commission

The Honorable Mary Jo White, Chairman
The Honorable Elisse B. Walter, Commissioner
The Honorable Luis A. Aguilar, Commissioner

The Honorable Troy A. Paredes, Commissioner
The Honorable Daniel M. Gallagher, Commissioner

Jennifer Marietta-Westberg, Deputy Director
Division of Economic and Risk Analysis
John Ramsay, Acting Director
Division of Trading and Markets
Norman B. Champ III, Director
Division of Investment Management

United States Department of Labor

The Honorable Seth D. Harris, Acting Secretary of Labor
The Honorable Phyllis C. Borzi, Assistant Secretary
Employee Benefits Security Administration