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Via: <http://www.sec.gov/cgi-bin/ruling-comments>

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

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

Dear Ms. Murphy:

Wells Fargo & Company (“Wells Fargo”) commends the Securities and Exchange Commission (“SEC” or “the Commission”) for its continued exploration of the need for a harmonized standard of care for brokers, dealers and investment advisers providing personalized investment advice to retail clients, and welcomes the Commission’s Request for Data and Other Information on the Duties of Brokers, Dealers and Investment Advisers (“request for information”).<sup>1</sup>

Wells Fargo’s broker-dealer and asset management affiliates comprise one of the largest retail wealth management, brokerage and retirement providers in the United States. Among these affiliated entities is Wells Fargo Advisors (“WFA”), a dually registered broker-dealer and investment advisor that administers approximately \$1.3 trillion in client assets. WFA employs approximately 15,354 full-service financial advisors in 1,100 branch offices in all 50 states and 3,204 licensed financial specialists in 6,610 retail bank branches in 39 states.<sup>2</sup> Wells Fargo and

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<sup>1</sup> Request for Data and Other Information on the Duties of Brokers, Dealers, and Investment Advisers, March 1, 2013, 6-7, <http://www.sec.gov/rules/other/2013/34-69013.pdf>.

<sup>2</sup> WFA is a non-bank affiliate of Wells Fargo & Company (“Wells Fargo”), a diversified financial services company providing banking, insurance, investments, mortgage, and consumer and commercial finance across the United States of America and internationally. Wells Fargo’s brokerage affiliates also include Wells Fargo Advisors Financial Network LLC (“WFAFN”) and First Clearing LLC, which provides clearing services to 89 correspondent clients, WFA and WFAFN. This letter will use WFA to refer to all of those brokerage operations.

its affiliates help millions of customers of varying means and investment needs obtain the advice and guidance they need to achieve financial goals. Furthermore, Wells Fargo offers access to a full range of investment products and services retail investors need to pursue these goals.

Consistent with its leadership position in the market for personalized retail investment advice, Wells Fargo reiterates its previously expressed support for a uniform standard of care (“uniform fiduciary duty”) that enhances protection for retail investors and preserves access to the full range of investment products and services they enjoy today.<sup>3</sup> Although Wells Fargo is not addressing every inquiry raised in the SEC’s request for information, it believes the comments it offers below will have the greatest weight in helping the Commission shape an effective uniform fiduciary duty. Wells Fargo’s WFA affiliate has also prepared a supplement to these comments that outlines information about the nature of the services the firm offers both as broker-dealer and investment adviser, the firm’s existing disclosure costs and the importance of principal trading activity to its retail brokerage clients. In addition, the supplementary information reflects WFA’s concerns about the SEC’s requests for information relating to retail investors’ ability to pursue claims against broker-dealers and investment advisers and seeking comparative data on the investment returns of retail investors relying upon investment advisers and broker-dealers for personalized advice about securities.

## **I. Wells Fargo Supports a Uniform Fiduciary Duty for Brokers, Dealers and Investment Advisers Providing Investment Advice About Securities to Retail Investors.**

Wells Fargo remains committed to the implementation of a well-designed uniform fiduciary duty and offers these comments to facilitate the SEC’s design of a regulatory framework that clearly delineates the roles and responsibilities of broker-dealers and investment advisers, while leaving retail investors free to select products and services that meet their needs under an agreed-upon standard of care.<sup>4</sup> Wells Fargo’s support for a uniform fiduciary duty is conditioned on the SEC’s conduct of a proper cost-benefit analysis, and upon the adoption of a cost-effective standard that preserves investor choice, is business model neutral and avoids regulatory conflict or duplication.

As the SEC contemplates its approach to a cost-benefit analysis, Wells Fargo also notes that the Commission currently has access to an extensive body of existing research comparing standards of care for brokers, dealers and investment advisers.<sup>5</sup> Furthermore, the Securities

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<sup>3</sup> Wells Fargo Comments Re: File No.4-606 Study Regarding Obligations of Brokers, Dealers, and Investment Advisers, August 30, 2010, <http://www.sec.gov/comments/4-606/4606-2592.pdf>.

<sup>4</sup> Wells Fargo 2010 Comment Letter Re: File No. 4-606, 2.

<sup>5</sup> See, for example, the SEC Commissioned Study: Investor and Industry Perspectives on Investment Advisers and Broker-Dealers, 2008, [http://www.rand.org/pubs/technical\\_reports/TR556.html](http://www.rand.org/pubs/technical_reports/TR556.html).

Industry and Financial Markets Association (“SIFMA”) previously provided detailed data to inform the SEC’s Study on Investment Advisers and Broker-Dealers under Section 913 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“the 2010 Study”) that remains relevant.<sup>6</sup> In addition, there were more than 3,500 comment letters submitted at the time of the 2010 Study. These sources of data and information should help inform the SEC’s evaluation of the costs and benefits of a potential harmonization of the standards of care for brokers, dealers and investment advisers.<sup>7</sup>

## **II. The SEC Should Coordinate with Department of Labor in Analyzing the Costs and Benefits of a Potential Change in Fiduciary Obligations Owed to Retail Investors.**

In order to assure that the advancement of investor protection does not undermine retail investor access to a full range of investment products and services, regulators with potentially overlapping responsibilities for oversight must work cooperatively in support of related rulemaking efforts.<sup>8</sup> Accordingly, Wells Fargo urges the SEC to assure that its efforts to evaluate the possibility of a harmonized standard of care is undertaken in close cooperation with the Department of Labor (“DOL”), which has publicly stated that it plans to issue a revised proposal defining when a person advising a retirement plan participant becomes a fiduciary under the Employee Retirement Income Security Act (“ERISA”).<sup>9</sup>

Wells Fargo believes that by authorizing the Commission to harmonize the standard of conduct under Section 913 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Section 913”), Congress signaled its intent that the Commission take the lead in developing a uniform fiduciary duty that preserves investor choice and minimizes regulatory cost and disruption.<sup>10</sup> Provisions of an earlier DOL proposal to broaden the scope of activity subject to ERISA fiduciary obligations would undermine critical Section 913 requirements for a potential uniform fiduciary duty for broker-dealers providing personalized investment advice about securities.<sup>11</sup> Accordingly, if the SEC and DOL fail to act in concert, the DOL’s fiduciary

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<sup>6</sup> Study Standard of Care Harmonization, Impact Assessment for SEC, SIFMA and Oliver Wyman, 3, 25-29, <http://www.sifma.org/issues/item.aspx?id=21999>

<sup>7</sup> SEC Request for Information, March 1, 2013, 8 at footnote 15.

<sup>8</sup> Executive Order 13563 Improving Regulation and Regulatory Review, January 18, 2011, Section 3-4, <http://www.gpo.gov/fdsys/pkg/FR-2011-01-21/pdf/2011-1385.pdf>. (agencies should promote “coordination, simplification and harmonization” and pursue “regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public.”)

<sup>9</sup> “Borzi: DOL to Offer New Version of Fiduciary Rule in “Several Months,” December 7, 2012, <http://www.advisorone.com/2012/12/07/borzi-dol-to-offer-new-version-of-fiduciary-rule-i>.

<sup>10</sup> SIFMA Letter to Department of Labor Employee Benefits Security Administration Re: Proposed Definition of Fiduciary Regulation, February 3, 2011, <http://www.dol.gov/ebsa/pdf/1210-AB32-184.pdf>.

<sup>11</sup> *Id.* at 2 (expressing concern that provisions of DOL’s 2010 proposed revisions to the ERISA fiduciary definition run counter to Section 913 which would permit traditional broker-dealer activities such as principal trading, commission-based compensation and would not impose a continuing duty based upon episodic advice.) The SEC should also work closely with self-regulatory

definition may render any action the Commission takes pursuant to Section 913 largely irrelevant to the rendering of personalized investment advice in the large and growing retirement savings market.

Individual Retirement Account (“IRA”) assets are approximately \$5 trillion and estimated to reach over \$8 trillion by 2017.<sup>12</sup> The customer base of WFA, illustrates the significant potential for overlap in the impact of DOL and SEC fiduciary rules. Nearly 48% of retail customer accounts and 30% of customer assets held at WFA are in IRAs.<sup>13</sup> Approximately 80% of IRA assets at WFA are held in brokerage accounts, providing IRA investors with access to a full range of securities products, including access to product categories in which WFA may act as principal. In addition, seven percent of all WFA IRAs are in self-directed online accounts.

The data highlights the variety of account choices available to retail investors in the management of their retirement funds. The potential emergence of conflicting regulatory requirements from the SEC and DOL with respect to services provided to IRAs could impose substantial and unnecessary costs on broker-dealers and retail clients and ultimately reduce the range of investment alternatives available to retail clients.<sup>14</sup> Consequently, Wells Fargo urges the Commission to work with the DOL and other regulators to assure that their respective fiduciary standards are tailored to complement one another, thus minimizing regulatory costs and protecting retail investor access to the full range of brokerage and investment advisory services and products.

### **III. A Uniform Fiduciary Duty Should Preserve Investor Choice.**

In its 2010 letter to the SEC endorsing a uniform fiduciary duty, Wells Fargo outlined a series of “guiding principles” that would enhance retail investor protections while preserving access to a full range of investment products, advice models and pricing alternatives.<sup>15</sup> These guiding principles align closely with the assumptions the SEC identified in its request for information.

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organizations (“SROs”), especially in view of FINRA CEO Ketchum’s recent statement announcing possible FINRA rules requiring additional conflicts disclosures from broker-dealers. <http://www.advisorone.com/2013/05/21/finras-ketchum-to-sec-act-now-on-fiduciary-or-well?ref=hp>.

<sup>12</sup> IRA Assets Hit \$5 Trillion in 1Q, PlanSponsor. November 30, 2012, [http://www.plansponsor.com/IRA\\_Assets\\_Hit\\_5\\_Trillion\\_in\\_1Q.aspx](http://www.plansponsor.com/IRA_Assets_Hit_5_Trillion_in_1Q.aspx).

<sup>13</sup> Where WFA customer holdings data is referenced, figures reflect holdings as of 12/31/2012.

<sup>14</sup> See Davis & Harman and Oliver Wyman Study on Proposed DOL Fiduciary Definition, April 12, 2011, <http://www.dol.gov/ebsa/pdf/1210-AB32-PH060.pdf> (illustrating the potential impact of proposed DOL fiduciary definition on brokerage product offerings and resulting investor costs).

<sup>15</sup> Wells Fargo 2010 Comment Letter Re: File No. 4-606 at 2-7, (outlining Wells Fargo’s guiding principles for a uniform fiduciary duty that: i. incorporates a duty of loyalty to act in client’s best interests, ii. protects broker-dealer and investment adviser business models, iii. preserves client choice in extent of service and pricing model, iv. applies only to personalized investment advice, v. covers only transactions resulting in compensation, vi. preserves access to full range of securities products and services and vii. facilitates flexible and practical disclosure and consent.).

### **A. Clients Should be Able to Elect the Desired Mix of Brokerage and Advisory Services.**

Wells Fargo believes investors should retain the freedom to contractually choose the level of services and product offerings that are appropriate for their individual situation. The SEC should make clear that a firm may offer a range of services to its retail clients, some of which would be subject to a uniform fiduciary duty and some of which would not, so long as the firm's disclosures make the terms and conditions of the relationship clear.

The analysis conducted by SIFMA and Oliver Wyman ("the Oliver Wyman study") at the time of the SEC Section 913 Study remains relevant as an illustration of the potential impact of a complete harmonization on product choice and pricing alternatives.<sup>16</sup> Moreover, regardless of the ultimate nature of a potential uniform fiduciary duty, the Oliver Wyman study's observations relating to investor preference for access to a mix of products and services are particularly important for SEC to consider in its cost benefit analysis.<sup>17</sup>

A critical observation from the Oliver Wyman study is that as wealth increases, a greater percentage of investors elect a "hybrid model" of investing in which some of their assets are held in commission-based brokerage accounts and an increasing percentage of assets shifts toward fee-based advisory accounts.<sup>18</sup> Wells Fargo has observed a similar pattern among households served by its WFA affiliate. Among WFA households maintaining at least one advisory account, nearly two thirds also have a brokerage account. Moreover, WFA households with both brokerage and advisory accounts hold nearly four times the assets of households with only a brokerage account. Even among households that maintain a self-directed online brokerage account with WFA, nearly three percent also have at least one advisory account with the firm.

In light of these observations about retail customer use of both brokerage and advisory services, Wells Fargo reiterates its previously stated position that the SEC should pursue a uniform fiduciary duty that preserves retail investors' ability to choose from a full range of brokerage and advisory services, products and pricing alternatives.<sup>19</sup>

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<sup>16</sup> Study Standard of Care Harmonization, Impact Assessment for SEC, SIFMA and Oliver Wyman, 23-31. (although the SEC questioned the relevance of the Oliver Wyman study because it assumes a "broad application of the Advisers Act," the SEC has yet to adopt a policy view about the scope of a potential harmonization.); see also Davis & Harman and Oliver Wyman Study on Proposed DOL Fiduciary Definition (proposed definition could reduce product choice and level of investment guidance, particularly for IRA investors working with broker-dealers).

<sup>17</sup> Study Standard of Care Harmonization, Impact Assessment for SEC, SIFMA and Oliver Wyman at 13-14.

<sup>18</sup> *Id.* at 13.

<sup>19</sup> Wells Fargo 2010 Comment Letter Re: File No. 4-606 at 2-5.

**B. Customer Access to Principal Trading Services of Broker-Dealers Should be preserved.**

In its request for information, the SEC assumes that under a uniform fiduciary duty of care, broker-dealers could continue to receive compensation for trades with clients undertaken by a broker-dealer as principal so long as material conflicts relating to such an arrangement were disclosed.<sup>20</sup>

Data from the Oliver Wyman study highlight the importance of access to principal trading through traditional brokerage accounts to investors across the wealth spectrum, particularly in the municipal and corporate bond markets.<sup>21</sup> In addition, Wells Fargo encourages the SEC to carefully consider data in SIFMA's response to the Commission's Request for Information which reinforces the importance of principal trading activity of broker-dealers as means of providing access to these markets for retail investors.<sup>22</sup> In its capacity as a broker-dealer, Wells Fargo's WFA affiliate offers its retail clients access to an extensive fixed income inventory and is an important source of liquidity for its retail customers, typically effecting between four and six percent of the reported daily volume in "odd lot" fixed income transactions.<sup>23</sup>

Wells Fargo believes that the SEC should protect investor ability to access the full range of products and services, including continued access to the principal trading functions of broker-dealers.<sup>24</sup> A uniform fiduciary duty should, therefore, make clear that a broker-dealer's receipt of compensation for transactions undertaken as principal would be permitted subject to proper disclosures.<sup>25</sup> In addition, Wells Fargo believes the SEC should assure that a uniform fiduciary duty makes permanent Adviser Act temporary rule 206(3)-3T which permits dual-registered firms to more efficiently satisfy Adviser Act requirements for disclosure and consent to principal transactions for non-discretionary advisory clients.<sup>26</sup>

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<sup>20</sup> SEC Request for Information, March 1, 2013 at 26-37.

<sup>21</sup> Study Standard of Care Harmonization, Impact Assessment for SEC, SIFMA and Oliver Wyman at 17-21.

<sup>22</sup> SIFMA Comment Letter Re: SEC Release No. 34-69013, File No. 4-606.

<sup>23</sup> WFA reports eligible fixed income securities transactions through FINRA's Trade Reporting and Compliance Engine ("TRACE") and eligible municipal securities transactions through MSRB's Real Time Transaction Reporting System ("RTRS").

<sup>24</sup> Wells Fargo 2010 Comment Letter Re: File No. 4-606 at 2-5.

<sup>25</sup> SEC Request for Information, March 1, 2013 at 26-37.

<sup>26</sup> WFA Comment Letter Re: SEC File No. S7-23-07 Temporary Rule Regarding Principal Trades with Certain Advisory Clients, 3, <http://www.sec.gov/comments/s7-23-07/s72307-41.pdf>.

### **C. A Uniform Fiduciary Duty Should Protect Retail Client's Best Interests When Receiving Personalized Advice about Securities.**

Among the assumptions in the request for information is that the definition of personalized investment services would cover a "recommendation" under existing broker-dealer regulations and investment advice about securities under the Advisers Act.

"Impersonal investment advice" and "general investor educational tools" would be excluded from the definition of personalized investment advice. The SEC also assumes that broker-dealers and investment advisers would not have continuing fiduciary duties after providing a retail investor with "personalized investment advice about securities."<sup>27</sup> Furthermore, the SEC assumes that a broker-dealer or investment adviser could satisfy its fiduciary obligations by properly disclosing material conflicts of interest relating to its method of compensation.<sup>28</sup>

Wells Fargo believes that the SEC should make clear that certain services and client-directed brokerage activities, transactions in products other than securities and referrals for non-securities related affiliate referrals are excluded from the scope of a broker-dealer's fiduciary duties.

#### **1. A retail customer's securities transactions undertaken independent of "personalized investment advice" should not be subject to a uniform fiduciary duty.**

Wells Fargo encourages the SEC to provide guidance prior to a rule adoption that any harmonization of the standard of care owed by brokers, dealers and investment advisers would not cover retail investor transactions that arise independently of any personalized investment advice delivered by a broker, dealer or investment adviser. Such guidance is consistent with SEC's assumptions that a uniform standard of conduct should "accommodate different business models and fee structures" and that a fiduciary duty should attach only when a broker-dealer or investment adviser provides "personalized advice about securities."<sup>29</sup>

Among the services that should be exempted from a uniform fiduciary duty are: client-directed discount brokerage accounts and on-line services, limited purpose accounts for which an investor does not receive personalized advice, general planning tools such as financial calculators or asset allocation models, and services provided by clearing broker-dealers to

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<sup>27</sup> *Id.* at 25.

<sup>28</sup> *Id.* at 26-27.

<sup>29</sup> *Id.* at 25, 27.

correspondent firms and the clients of correspondent firms. Furthermore, a uniform fiduciary duty should not apply to the execution of unsolicited transactions even when these transactions occur in an account for which the client may receive personalized investment advice about other securities.<sup>30</sup>

## **2. Fiduciary duties should not attach to properly disclosed affiliate referrals.**

The SEC acknowledges that it received a number of comments in relation to the 2010 study concerning “activities of broker-dealers and investment advisers that are most likely to be impacted by a uniform fiduciary standard.” Among these activities were recommendations by a broker-dealer or investment adviser of “proprietary products and products of affiliates,” securities and initial public offerings (“IPOs”) underwritten by affiliates.<sup>31</sup> Broker-dealers play a vital role in the market for capital formation by making these products available to retail customers.

In order to preserve retail investor access to securities offered or underwritten by affiliated entities, a uniform fiduciary duty should permit distribution of these securities so long as the relationship is properly disclosed.<sup>32</sup> This is consistent with SEC’s assumption that any attempt to harmonize standards of care would require broker-dealers and investment advisers to disclose material conflicts both through “a general relationship guide” and through “oral or written disclosure” when the provision of personalized investment advice gives rise to either a new material conflict or changes the nature of any existing conflict.<sup>33</sup>

In light of the importance of preserving retail investors’ ability to choose investment products that satisfy their individual needs and the SEC’s preliminary assumption that a uniform fiduciary duty for broker-dealers may properly permit disclosure of certain material conflicts, Wells Fargo encourages the SEC to assure that a properly disclosed affiliate referral would not subject a broker-dealer to a fiduciary duty.

## **3. Fiduciary duties should not apply to non-securities products.**

Although the SEC’s request for information identified a number of activities that prior commenters believe are “most likely to be impacted by a uniform fiduciary standard,” the

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<sup>30</sup> Wells Fargo 2010 Comment Letter Re: File No. 4-606 at 3.

<sup>31</sup> SEC Request for Information, March 1, 2013, 43-44.

<sup>32</sup> WFA also believes that a uniform fiduciary duty should permit properly disclosed broker-dealer inter-affiliate routing procedures which facilitate the broker-dealer’s compliance with best execution responsibilities.

<sup>33</sup> SEC Request for Information, March 1, 2013, 32-33.

Commission presumes that the specified products and services involve “advice about securities.”<sup>34</sup>

As Wells Fargo observed in its 2010 comment letter, the SEC should regard the “about securities” provision of its Section 913 authority as a “bright line,” identifying the limits of a broker-dealer’s responsibilities under a uniform fiduciary duty.<sup>35</sup> Accordingly, Wells Fargo believes that the SEC should clearly exempt a broker-dealer’s referral of a client for non-securities products or services from a uniform fiduciary duty.

The SEC should make clear that a broker-dealer’s uniform fiduciary obligations do not extend to referrals for non-securities products such as fixed annuities, bank deposits and certificates of deposit, futures or commodities. Likewise, referrals for lending and banking services such as mortgages or home equity loans, asset liability assessments, bill payment or cash sweep services should be excluded from a broker-dealer’s fiduciary duties.<sup>36</sup> Furthermore, notwithstanding existing suitability and disclosure obligations of broker-dealers when recommending the purchase of securities on margin, a uniform fiduciary duty should not attach to the extension of credit or the exercise of creditor rights or obligations under the terms of a margin loan or other credit products.<sup>37</sup>

#### **IV. The SEC Should Carefully Weigh Costs of Compliance and Facilitate Efficient Compliance with a Uniform Fiduciary Duty.**

The SEC anticipates that a uniform fiduciary duty would encompass a duty of loyalty encouraging “advice that is in the best interest of a retail customer” which could be achieved by the provision of “full and fair disclosure” of any material conflicts of interest that cannot be eliminated.<sup>38</sup> The request for information assumes that the new uniform fiduciary duty would require BDs to provide 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.<sup>39</sup>

Wells Fargo supports the need for effective disclosures as part of a well-designed uniform fiduciary duty, and encourages the SEC to craft a disclosure regime that advances investor protection while avoiding duplication that may frustrate and confuse retail investors.

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<sup>34</sup> *Id.* at 43-44.

<sup>35</sup> Wells Fargo 2010 Comment Letter Re: File No. 4-606 at 6.

<sup>36</sup> *Id.*

<sup>37</sup> FINRA Regulatory Notice 12-25 Additional Guidance on FINRA’s New Suitability Rule, 6, [http://finra.complinet.com/net\\_file\\_store/new\\_rulebooks/f/i/FINRANotice12\\_25.pdf](http://finra.complinet.com/net_file_store/new_rulebooks/f/i/FINRANotice12_25.pdf); FINRA Rule 2264 Margin Disclosure, [http://finra.complinet.com/en/display/display\\_main.html?rbid=2403&element\\_id=8689](http://finra.complinet.com/en/display/display_main.html?rbid=2403&element_id=8689).

<sup>38</sup> SEC Request for Information, March 1, 2013 at 31-32.

<sup>39</sup> *Id.* at 33.

Numerous agencies already impose investor disclosure obligations on broker-dealers. Wells Fargo believes that the SEC should carefully coordinate its efforts with other regulators that impose disclosure requirements on broker-dealers and investment advisers particularly in light of the Commission's statutory designation as the agency authorized to make rules regarding the standard of conduct for broker-dealers and investment advisers.<sup>40</sup>

In its analysis of the existing disclosure duties and practices of investment advisers and broker-dealers, the RAND Corporation found that many firms provide disclosures addressing differences between the services of broker-dealers and investment advisers. Among broker-dealers, disclosures already commonly included information about a firm's potential conflicts of interest and compensation structure.<sup>41</sup> Nevertheless, study participants expressed concern that investors "rarely read" disclosures even those written in plain English.<sup>42</sup>

Investor apathy about disclosures may be exacerbated by the volume of disclosures they receive. Indeed, the Rand study noted that a single large firm submitted 150 samples of disclosure documents.<sup>43</sup> Depending on the nature of their relationship with a firm, an investor may already receive hundreds of pages of account documents and disclosures at the time they initiate their relationship with a firm. Accordingly, the SEC should focus on improving the quality of information available to retail investors under a uniform fiduciary standard rather than simply adding to the volume of disclosures.<sup>44</sup>

Wells Fargo also believes it is critical that the SEC carefully consider the cumulative impact of costs associated with recent and pending regulatory requirements.<sup>45</sup> In a survey that pre-dates the wave of post-financial crisis regulatory developments, SIFMA estimated annual industry compliance costs of \$25.5 billion.<sup>46</sup>

Finally, Wells Fargo reiterates its earlier stated point that the SEC should assure that firms have adequate time to achieve an efficient transition to a uniform fiduciary duty.<sup>47</sup>

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<sup>40</sup> Dodd Frank 913(g).

<sup>41</sup> Investor and Industry Perspectives on Investment Advisers and Broker-Dealers, 76.

<sup>42</sup> *Id.* at 77.

<sup>43</sup> *Id.* at 65.

<sup>44</sup> Addressing the Crisis of Confidence in the Markets, Remarks by Richard G. Ketchum, FINRA Chairman and Chief Executive Officer, (May 21, 2013), (describing FINRA's focus on evaluating the quality of disclosures in its conflicts review), <http://www.finra.org/Newsroom/Speeches/Ketchum/P264525>.

<sup>45</sup> See, for example, costs associated with recent and ongoing implementation of revisions to the FINRA Suitability and Know Your Client rules as described in SIFMA Comment Letter Re: SEC Release No. 34-69013, File No. 4-606, In addition, consider anticipated costs relating to the implementation of SEC Rule 613 requiring the development, implementation and maintenance of a Consolidated Audit Trail (CAT), <http://www.sifma.org/issues/item.aspx?id=8589942773>.

<sup>46</sup> The Costs of Compliance in the U.S. Securities Industry Survey Report, February 2006, 2, [http://www.sifma.org/uploadedfiles/research/surveys/costofcompliancesurveyreport\(1\).pdf](http://www.sifma.org/uploadedfiles/research/surveys/costofcompliancesurveyreport(1).pdf)

<sup>47</sup> Wells Fargo 2010 Comment Letter Re: File No. 4-606 at 6-7.

## **V. A Uniform Fiduciary Duty Should Not Extend Adviser Act Guidance and Precedent to Broker-Dealers.**

In its 2010 study, SEC staff recommended the extension of prior precedent and guidance under Advisers Act Section 206(1) and 206(2) to broker-dealers.<sup>48</sup> In its request for information, the SEC explained that any such application “turns on specific facts and circumstance” and “may not directly apply to broker-dealers” but advised commentators to assume that a uniform fiduciary duty would extend existing Advisers Act precedents covering a firm’s order allocation and aggregation practices. In addition, the Commission requested “specific citations” of Adviser Act 206(1) and 206(2) precedent that should not apply to broker-dealers.<sup>49</sup>

Application of Advisers Act guidance and precedent to broker-dealers would create regulatory and legal confusion that would render a uniform fiduciary standard unworkable, particularly in view of important distinctions between the activities performed by broker-dealers and investment advisers.<sup>50</sup> Congress recognized these distinctions and accounted for them when it authorized the SEC to promulgate a uniform fiduciary standard. As then-Ranking Member Barney Frank observed in a letter to then-Commission Chairman Mary Schapiro, Congress did not intend for “the SEC to simply copy the [Advisers] Act and apply it to broker dealers.” If it had intended to do so, Congress would have “repealed the broker-dealer exemption—an approach Congress considered but rejected.”<sup>51</sup>

Although broker-dealers and investment advisers may both offer investment advice about securities to retail investors, the Advisers Act and the Securities Exchange Act of 1934 as amended (the “34 Act”) govern substantially different activities.

The 34 Act and Financial Industry Regulatory Authority (“FINRA”) regulations are focused on oversight of individual securities transactions.<sup>52</sup> Consequently, a broker-dealer’s suitability obligations are limited to the time of a recommendation about securities. A broker-dealer is not held to an ongoing duty to monitor. Indeed, Section 913(g)(1) preserves this traditional limitation, making clear that “[n]othing in this section shall require a broker or dealer or

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<sup>48</sup> SEC Study on Investment Advisers and Broker-Dealers As Required by Section 913 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, January 2011, 110-111, <http://www.sec.gov/news/studies/2011/913studyfinal.pdf>.

<sup>49</sup> SEC Request for Information, March 1, 2013, 37-38.

<sup>50</sup> See, for example, SIFMA Comment Letter Re: SEC Release No. 34-69013, File No. 4-606, which provides case citations illustrating the potential for confusion including the distinction between an Investment Adviser’s continuing duty to supervise an investor’s account versus a broker-dealer’s episodic duty relating to an investment recommendation, differences in permissible principal trading activities for Investment Advisers and broker-dealers and conflicting standards relating to the management or avoidance of conflicts under broker-dealer and investment adviser precedents.

<sup>51</sup> Letter from then-Ranking Member of the United States House of Representatives Financial Services Committee to then-SEC Chairman Mary L. Schapiro, May 31, 2011, <http://media.advisorone.com/advisorone/files/ckeditor/Barney%20Frank%20Letter.pdf>.

<sup>52</sup> Section 3(a)(4)(A) of the 34 Act defines “broker” as “any person engaged in the business of effecting transactions in securities for the account of others.”

registered representative to have a continuing duty of care or loyalty to the customer after providing personalized investment advice about securities.”

The Advisers Act, however, is designed to regulate investment management activities (usually discretionary in nature) by advisers with a duty to monitor and adjust a client’s portfolio on an ongoing basis in accordance with a client’s guidelines, investment objectives and market conditions.<sup>53</sup> Consequently, Advisers Act precedents and guidance are aimed at ongoing discretionary management, which differs substantially in nature from episodic broker-dealer recommendations which investors remain free to disregard.<sup>54</sup>

Similarly, SEC staff Advisers Act guidance has leaned toward elimination of conflicts of interest, as opposed to the ability to disclose and manage such conflicts as envisioned in the SEC’s request for information. For example, the request for information asked commentators to assume the principal trading restrictions pursuant to Section 206(3) of the Advisers Act would not be applicable under a uniform fiduciary duty. A broker-dealer could satisfy its obligations under the new uniform fiduciary duty by disclosing any material conflicts of interest associated with its principal trading activities.

Wells Fargo further notes that a broker-dealer’s suitability obligations arise only in the context of making a securities recommendation, whereas an investment adviser’s fiduciary obligations are ongoing and govern all activities. In fact on the narrow question of the standard when recommending securities, the SEC has historically held that investment advisers also have an obligation to provide “suitable” investment advice.<sup>55</sup>

Advisers Act guidance designed to govern relationships as opposed to transactional activity is not a practicable or workable framework for a uniform fiduciary duty. In summary, the extension of Advisers Act precedent and guidance would be antithetical to a uniform fiduciary duty as envisioned in the request for information. Wells Fargo therefore strongly urges the Commission staff to refrain from extending Advisers Act guidance, rules and legal precedent to broker-dealer activities under a uniform standard of care. In addition and consistent with its view that the activities of broker-dealers and investment advisers are distinct, Wells Fargo does

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<sup>53</sup> *SEC v. Capital Gains Research Bureau*, 375 U.S. 180, 187 (1963) (advisers’ function is to “furnish[] to clients on a personal basis competent, unbiased, and continuous advice regarding the sound management of their investments....”).

<sup>54</sup> Thomas P. Lemke & Gerald T. Lins, *Regulation of Financial Planners* § 3:12 at 3-38 (West 2012).

<sup>55</sup> SEC Rel. No. 62718, (August 13, 2010) (comparing the existing suitability requirements of broker-dealers and investment advisers). FINRA has also noted that “case law makes clear that, under FINRA’s suitability rule ‘a broker’s recommendation must be consistent with his customer’s best interests.’” *Scott Epstein*, Exchange Act Rel. No. 59328, 2009 SEC LEXIS 217, at \*40 n.24 (Jan.30, 2009) (“In interpreting the suitability rule, we have stated that a [broker’s] ‘recommendations must be consistent with his customer’s best interests.’”)

not believe the Commission should extend broker-dealer rules to investment advisers as part of any harmonization of the standard of care.<sup>56</sup>

## **Conclusion**

Wells Fargo appreciates the opportunity to comment as SEC considers the possibility of a harmonized standard of care for brokers, dealers and investment advisers. As outlined above, Wells Fargo remains committed to a uniform fiduciary duty that protects retail investors, preserves client access to the full range of brokerage and advisory services and is carefully designed to permit efficient compliance. Please feel free to contact me with any questions you may have.

Sincerely,



Robert J. McCarthy  
Director of Regulatory Policy  
Wells Fargo Advisors

**Attachment: Supplement Responding to Request for Information and Data**

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<sup>56</sup> SEC Request for Information, March 1, 2013, 40.

## **Supplement Responding to Request for Information and Data**

WFA<sup>57</sup> commends the Commission for requesting data that could assist in determining whether to engage in rule making, or the nature of such rulemaking, with regards to establishing a uniform or alternative standard of care for broker, dealers and investment advisers when providing personalized investment advice to retail investors. WFA notes however the nature of the costs and benefits of a uniform standard of care depend to a great extent on the specific regulatory requirements associated with any standard, which the SEC may elect to implement through rules and guidance. Consequently, WFA's ability to reasonably estimate costs for a uniform standard of care is limited without a specific proposal from the SEC. Nevertheless, WFA seeks to be a constructive participant in the SEC's developmental process and believes the information and data provided below can help the Commission shape an effective uniform fiduciary duty.

WFA's response is organized as follows:

- I. Summary of WFA Investment Advisory and Brokerage Services
- II. Disclosure Costs
- III. Principal Trading
- IV. Claims Against Broker Dealers and Investment Advisers
- V. Investment Returns

### **I. Summary of WFA Investment Advisory and Brokerage Services**

As a dually registered broker-dealer and investment advisor WFA offers a full range of products and services to help primarily retail clients achieve their financial goals. Below is a brief description of the investment advisory and brokerage services offered by WFA.

#### **Investment Advisory Services**

When WFA acts as a registered investment advisor, its primary service is investment advice and/or management of a client's money. At the client's choosing, WFA can provide these services on either a "discretionary" basis (WFA and/or a third party manager/subadvisor makes the investment decisions for the client based on the client's investment objectives and risk tolerance) or on a "nondiscretionary" basis (WFA provides investment advice and recommendations to the client, but the client retains discretion about the implementation of transactions based on WFA advice). If the client selects one of these services, a written agreement will describe the scope and nature of the investment advisory relationship and the extent of WFA's duties to the client. The client will also receive a disclosure document describing WFA, the specific investment advisory service(s) selected and other types of services

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<sup>57</sup> WFA is a non-bank affiliate of Wells Fargo & Company ("Wells Fargo"), a diversified financial services company providing banking, insurance, investments, mortgage, and consumer and commercial finance across the United States of America and internationally. Wells Fargo's brokerage affiliates also include Wells Fargo Advisors Financial Network LLC ("WFAFN") and First Clearing LLC, which provides clearing services to 89 correspondent clients, WFA and WFAFN. This letter will use WFA to refer to all of those brokerage operations.

WFA provides. The disclosure document also describes fees, research, affiliations and any conflicts between WFA's interests and the client's. In addition, the client will receive a disclosure document specific to the financial advisor(s) ("FAs") that provides advice to that client.

WFA offers twelve separate investment advisory programs ranging from client-directed advisory, mutual fund advisory, ETF advisory, separately managed accounts, unified managed accounts ("UMA") and FA-directed programs. The programs have account minimums of \$25,000 per account to \$2,000,000. Please see Attachment A for a brief description of the investment advisory programs offered by WFA. Please see publicly filed form ADV Part 2A for a more complete description of the material disclosures, including material conflicts of interest, for each of the investment advisory programs.

### **Client incurred costs for investment advisory services**

**Asset-based fee.** The most common investment advisory fee arrangement is an agreed-upon percentage of the assets in the client's account. This fee compensates WFA for investment advice to the client (and, in some cases, fees paid to third-party money managers), asset allocation services, ongoing portfolio monitoring, portfolio adjustment recommendations and transaction costs associated with the client's account (note that other costs are not included). This fee is expressed as an annual percentage (for example, 1%), that is charged to an account on a quarterly basis in advance and is typically subject to a minimum dollar amount. Each of WFA's investment advisory services has an agreement and disclosure document that explains its fees.

**Fee plus commission.** In a few WFA investment advisory programs, a client can pay an asset-based fee equal to an agreed-upon percentage of the assets in the client's account plus commissions on each trade. In these programs, the asset-based fees are typically paid to a third-party money manager that the client has selected to manage the account. The commissions cover any investment advisory services WFA provides, such as asset allocation services, ongoing portfolio monitoring and portfolio adjustment recommendations, in addition to transaction costs associated with the client's account.

**Other fee arrangements.** For financial planning services offered only to retail investors, WFA charges a one-time advisory fee. This fee covers the financial plan only; it does not cover any fees or costs if WFA or another financial institution implements the plan.

### **Brokerage**

When WFA acts as a broker, the primary service WFA provides is trading capabilities for the client's account. The client directs all trading in the brokerage account, except in very limited cases. Within this type of account, WFA also may provide other incidental services such as custody of a client's assets, research reports and recommendations to buy, sell or hold assets in the account. It is the client's obligation to accept or reject any of these recommendations. WFA does not charge separately for these other services; they are included with the costs charged to the client for the brokerage account. When WFA makes a recommendation to a client in a brokerage account, it has an obligation to determine that the recommendation would be suitable

for the client based on the client's stated investment objective, risk tolerance, tax status and the other financial information that WFA collects to facilitate its ability to provide service to the account and comply with applicable laws, regulations and rules. A WFA registered representative also may help a client first identify the client's overall investment needs and goals and then recommend investment strategies to pursue them. In a brokerage relationship, WFA can trade with the client for its own account, for an affiliate or for another client, and WFA can earn a profit on those trades.

### **Costs for brokerage accounts**

Costs incurred in a brokerage account are based on a transaction charge, which may be either a commission or markup/markdown depending on the nature of the transaction. In transaction-based pricing, a client may pay a commission or sales charge on each transaction. Other costs and charges will also apply to the client's account, and the client pays separately for other services they may request.

### **Product Differences Brokerage vs. Investment Adviser**

Brokerage accounts generally offer clients access to a greater variety of product selections than those available in investment advisory programs. In addition to securities products common to both advisory and brokerage customers, brokerage customers are provided access to capital market offerings (underwritten primary and secondary offerings), structured product offerings, principally traded fixed income securities, commodities, insurance products<sup>58</sup>, annuities (excluding certain limited advisory variable annuity offerings), banking services<sup>59</sup>, and discount self directed online trading.

Certain mutual funds available in investment advisory accounts make multiple no-load, institutional, advisory, or load-waived share classes available for purchase through investment advisory programs and agree to waive minimums and redemption fees in certain instances. These share classes may be available only through WFA investment advisory programs and have different and lower shareholder servicing, sub-accounting, investment management and 12b-1 fees and charges from other share classes offered by those Funds. In addition, advisory class variable annuities are available to clients in WFA's client directed Asset Adviser advisory program.

The primary service differences offered to clients in advisory clients are investment advice and ongoing portfolio management, discretionary portfolio management, and performance reporting.

Similar to Oliver Wyman data previously provided to the SEC, approximately 71% of WFA client assets are held in brokerage accounts with the remaining 29% invested in investment

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<sup>58</sup> Insurance products include disability, long term care, survivor life, term life, universal life, and variable life and whole life insurance products.

<sup>59</sup> Banking services include home equity loans, secured prime line, mortgage, custom line of credit.

advisory accounts.<sup>60</sup> The average balance (\$263,000) of a WFA investment advisory account however, is a little over twice the average balance (\$124,000) of a WFA brokerage account.

The preference for brokerage accounts is evident across all wealth segments but strongest for smaller investors with less than \$100,000 in account balances. The average investor with an account balance under \$100,000 trades relatively infrequently, so a commission-based fee structure is generally more cost effective than an investment advisory account. Nevertheless, as noted in the main body of WFA's comment letter, a critical observation from the Oliver Wyman study is that as wealth increases, a greater percentage of investors elect a "hybrid model" of investing in which some of their assets are held in commission-based brokerage accounts and an increasing percentage of assets shifts toward fee-based advisory accounts.<sup>61</sup>

Among WFA households maintaining at least one advisory account, nearly two thirds also have a brokerage account. Moreover, WFA households with both brokerage and advisory accounts hold nearly four times the assets of households with only a brokerage account. Even among households that maintain a self-directed online brokerage account with WFA, nearly three percent also have at least one advisory account with the firm.

Total retail client assets including assets held in both advisory and brokerage accounts are invested primarily in mutual funds (approximately 42% of total retail client assets), common stock (approximately 27%) and fixed income securities (approximately 19%).

Certain investment products, such as fixed income securities, annuities and unit investment trusts, commodities are predominantly held in brokerage accounts. To illustrate this point, approximately 71% of total retail client assets held at WFA are in brokerage accounts, however, brokerage accounts hold 82% of all retail fixed income assets, 88% of unit investment trust assets, and 90 % of annuities and nearly 100% of commodities. By contrast, common stock holdings nearly mirror the overall brokerage and advisory asset distribution with 72.5% of common stock assets held in retail brokerage accounts. In relative terms, advisory accounts are slightly more likely to own mutual funds, holding 41% of the firm's retail mutual fund assets despite representing only 29% of total firm retail assets.

### **Risk Tolerance and Investment Objectives**

Client account risk tolerances and investment objectives are concentrated in three categories: long term growth, moderate growth and moderate growth and income. This combination comprises approximately 60% of retail client assets with moderate growth and income alone making up 30% of retail client assets. Please see [Attachment B](#) for a complete listing and description of risk tolerance and investment objective categories at WFA.

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<sup>60</sup> When compared based on the number of accounts as opposed to amount of assets, approximately 83% of retail customer accounts are brokerage accounts while 17% are investment advisory accounts.

<sup>61</sup> Study Standard of Care Harmonization, Impact Assessment for SEC, SIFMA and Oliver Wyman at 13.

## WFA Clientele

WFA provides investment advice and brokerage services to clients of all ages and levels of investible assets. Not surprisingly average WFA client account balances closely align with published U.S. census data showing family net worth increases as the head of a household ages and peak when the family head is roughly between the ages of 50 and 70.<sup>62</sup> Similarly, WFA client account assets held at the Firm are highest for clients between the ages of 60 and 70. The average age of a WFA client is slightly younger at 57 years of age.

## II. Disclosures

The request for information assumes that the new uniform fiduciary duty would require BDs to provide 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. 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 BD only offers or recommends proprietary or an otherwise limited range of products; (iii) whether, and if so the circumstances in which, the BD 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.<sup>63</sup>

WFA spent approximately \$200,000 just to mail Form ADV Part 2A annual updates to clients in 2012. Initial costs associated with the development and distribution of ADV 2A were approximately \$3.2 million. Given the fact that more than 80% of WFA accounts are brokerage accounts, WFA believes the initial rollout of an ADV 2A like brochure for brokerage customers could exceed \$3.8 million. Furthermore, incremental annual mailing costs would likely exceed \$1 million.

These costs would be on top of millions of dollars WFA already spends each year providing disclosures to clients. Clients currently receive a small book's worth of disclosures. Consequently, WFA urges the Commission to focus on effective disclosure as opposed to adding additional pages of disclosures of questionable effectiveness. While WFA has not independently surveyed its client base about their perceptions relating to the nature and volume of disclosures, there is already significant information concerning the effectiveness of disclosures available to the Commission.<sup>64</sup>

Furthermore, based on its experience, WFA anticipates that the costs to develop and maintain enhanced supervisory systems and to document the nature of Financial Advisor interactions with clients would be substantially greater than the incremental costs of disclosure under a uniform fiduciary duty. For example, SIFMA member firms spent an average of \$4.6 million to upgrade

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<sup>62</sup> <http://www.census.gov/compendia/statab/2011/tables/11s0720.xls>.

<sup>63</sup> SEC Request for Information, March 1, 2013 at 33.

<sup>64</sup> See, for example, the SEC Commissioned Study: Investor and Industry Perspectives on Investment Advisers and Broker-Dealers, 2008, [http://www.rand.org/pubs/technical\\_reports/TR556.html](http://www.rand.org/pubs/technical_reports/TR556.html).

technology platforms to comply with the requirements of the revised FINRA suitability rule.<sup>65</sup> WFA notes that its incremental staff costs associated with the implementation of the revised suitability rule were nearly \$47 million, significantly higher than its technology costs.<sup>66</sup> WFA believes that industry costs to comply with FINRA's revised suitability rule demonstrate that the SEC's cost benefit analysis should consider that the staff-related costs of achieving compliance with a uniform fiduciary duty are likely to dramatically exceed the hard dollar costs of disclosure and systems enhancements.

### **Principal Trading Activity**

Virtually all trading on a principal basis with clients occurs in brokerage accounts (99%). WFA executes common equity transactions on an agency basis, while maintaining an inventory of, and/or a market in fixed income securities for the purpose of facilitating liquidity and markets for its retail clients. Consequently, clients receive improved access to market sectors that may be less liquid or more volatile, particularly in the fixed income markets. Furthermore, because WFA maintains markets and inventory positions in such securities, its retail customers regularly receive better execution prices than if the trades were executed on an agency basis, particularly in more volatile market conditions. Although most of the volume in principal trading occurs in brokerage accounts, WFA's non-discretionary advisory clients also receive some of the above-described access and pricing benefits because of temporary relief from certain Adviser Act principal consent provisions pursuant to 206(3)-3T. Principal trading activity also includes certain capital markets activities (participation in underwritten initial and secondary offerings) as well as secondary markets in fixed income securities (including structured products).

The primary costs of principal transactions are associated with (1) the funding of secondary positions, and (2) managing the market risks associated with principal trading inventories, and (3) the surveillance and supervisory staffing and systems necessary to achieve compliance with all relevant regulations.

### **III. CLAIMS AGAINST BDS AND RIAs.**

The SEC's request for information seeks information regarding the ability of retail customers to bring claims against their financial advisers under both broker dealer and investment adviser act regimes. WFA notes the following from the broad range of publicly available sources of information about the ability of retail customers to bring claims against broker-dealers and investment advisers.

FINRA rules require broker-dealers to arbitrate most claims brought by retail clients, if the dispute arises in connection with the BD's business activities.<sup>67</sup> WFA, like most broker-dealers, includes pre-dispute arbitration agreements in their customer contracts. Consequently, most

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<sup>65</sup> SIFMA Comment Letter Re: SEC Release No. 34-69013, File No. 4-606.

<sup>66</sup> Figure assumes an average hourly rate of \$100 with 15,000 financial advisors spending an average of 30 hours each to collect the information necessary for compliance and an additional 19,800 hours of operational staff time needed to achieve compliance. In addition, WFA incurred more than \$8 million in costs adapting its account, supervisory and reporting systems.

<sup>67</sup> FINRA Rule 12200, [http://finra.complinet.com/en/display/display\\_main.html?rbid=2403&element\\_id=4106](http://finra.complinet.com/en/display/display_main.html?rbid=2403&element_id=4106).

brokerage retail investor claims are heard in FINRA arbitration. Notable exceptions are securities class action claims and shareholder derivative claims.<sup>68</sup>

Although less formal than civil litigation through the courts, FINRA arbitration is typically faster and more cost-effective. FINRA publishes monthly updates to arbitration case statistics on its website, which includes data on the number of cases brought, the types of claims, how often claimants recover, among other data.<sup>69</sup> Notwithstanding the differences between the standards of care for broker-dealers and investment advisers, breach of fiduciary duty is usually the most common claim brought against broker-dealers in arbitration proceedings.

Advisory clients have only a limited private right of action under the Advisers Act, which allows them to void an advisory contract and seek restitution of fees paid. Advisory clients that wish to hold their investment advisers accountable for breach of their federal fiduciary duties must do so under principles of state common law fiduciary duty. Consequently, an analysis of the claims, litigation outcomes or awards for advisory clients pursuing breach of fiduciary claims against investment advisers would be very labor intensive and of limited applicability.

#### **A. INVESTMENT RETURNS.**

The request for information seeks comparative investment returns and securities selections data for brokerage accounts versus investment adviser accounts. A wide variety of factors contribute to returns and securities selections, including the investor's risk tolerance and stated investment objectives, and the extent to which the investor follows the investment advice provided by their registered representative. In view of these factors, WFA does not believe an analysis of security selection or investment returns can isolate the significance of differing standards of care on the quality of investment advice retail investors receive. Consequently, WFA does not believe that this type of analysis would meaningfully advance the debate over the proper standard of care for investment advisers and broker dealers providing investment advice about securities to retail investors.

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<sup>68</sup> FINRA Rules 12204 and 12205, [http://finra.complinet.com/en/display/display\\_main.html?rbid=2403&element\\_id=4110](http://finra.complinet.com/en/display/display_main.html?rbid=2403&element_id=4110), [http://finra.complinet.com/en/display/display\\_main.html?rbid=2403&element\\_id=4111](http://finra.complinet.com/en/display/display_main.html?rbid=2403&element_id=4111)

<sup>69</sup> See <http://www.finra.org/ArbitrationAndMediation/FINRADisputeResolution/AdditionalResources/Statistics/> (monthly report of FINRA arbitration and dispute resolution statistics).

## **Appendix A**

### **WFA Investment Advisory Programs**

#### **FundSource**

A discretionary, professionally managed series of Optimal Blend and Customized portfolios consisting of no-load, load-waived and institutional share class mutual funds.

#### **CustomChoice**

A non-discretionary mutual fund advisory program that allows the client and the client's Financial Advisor to construct a customized asset allocation from a broad universe of institutional share class, no-load and load waived mutual funds.

#### **Allocation Advisors**

A discretionary wrap program comprised primarily of ETFs, with a number of portfolios constructed by Wells Fargo Advisors research and third-party model providers.

#### **Masters**

A discretionary separate account program that offers clients access to more than 70 of the nation's top institutional money managers and nearly 187 investment styles.

#### **Private Advisor Network**

A professionally managed separate account program where clients pay an asset-based fee or commission that covers a package of services: trading, professional management, performance reports, consulting services, and the advice of a Financial Advisor.

#### **Wells Fargo Compass**

A fully discretionary separately managed account program designed to pursue specific investment objectives. Managed by Wells Fargo Advisors' Advisory Services Group, this program offers 13 strategies.

#### **Diversified Managed Allocations (DMA)**

A professionally managed series of Optimal Blends and Customized portfolios consisting of separately managed portfolios, mutual funds and ETFs featuring asset allocation, diversification and risk-based portfolio management.

#### **Asset Advisor**

A non-discretionary investment advisory program where a client pays an asset-based fee and receives ongoing advice from a Financial Advisor. With Asset Advisor, the client ultimately makes the decisions regarding what to buy, sell and hold within the account. The Financial

Advisor provides investment advice based on objective research as well as profiling, asset allocation, investment selection, ongoing monitoring and rebalancing.

**Private Investment Management (PIM)**

A discretionary program that provides professional portfolio management and personalized service. The Financial Advisor, with demonstrated experience managing client portfolios, acts as portfolio manager.

**Quantitative Choice**

A discretionary program in which the Financial Advisor, once certified, uses an equity portfolio management strategy based on Value, Growth, or Core disciplined strategies.

**Fundamental Choice**

A discretionary program in which the Financial Advisor, once certified, seeks to leverage Wells Fargo Advisors fundamental and quantitative research strength by implementing an investment discipline unique to individual clients. Fundamental Choice combines the collective insight of Wells Fargo Advisors and its correspondent research firms.

**Customized Portfolios/Fixed Income Strategies Portfolios**

A discretionary separately managed account program managed by Wells Fargo fixed income specialists for clients seeking personalized fixed-income portfolios.

## Appendix B

### Investment Objective - Income

Income investors seek a maximum amount of income given their risk tolerance, and are willing to forgo capital appreciation and growth of income.

- **Risk Tolerance - Conservative:** Conservative Income investors seek the maximum amount of income consistent with a modest degree of risk. They are willing to accept a lower level of income in exchange for lower risk. Higher risk investments, such as high yield bonds and some equities, are typically not a large percentage of the account.
- **Risk Tolerance - Moderate:** Moderate Income investors seek to balance the potential risk of capital loss with increased income potential. Higher risk investments, such as high yield bonds and some equities, may be some percentage of the account.
- **Risk Tolerance - Long Term:** Long Term Income investors seek a significant level of income, are financially able and willing to risk losing a substantial portion of investment capital, and, due to their long term horizon or other factors, they employ higher risk, more aggressive strategies that may offer higher potential income. Higher risk investments, such as high yield bonds and some equities, may be a significant percentage of the account.

### Investment Objective - Growth & Income

Growth and Income investors seek current income, but also seek income and capital growth over time. These investors are willing to forgo a portion of current income in order to seek potential future growth.

- **Risk Tolerance - Conservative:** Conservative Growth and Income investors seek the maximum growth and income consistent with a relatively modest degree of risk. They are willing to accept lower potential returns in exchange for lower risk. Equities, generally dividend paying equities, may be some percentage of the account.
- **Risk Tolerance - Moderate:** Moderate Growth and Income investors seek to balance the risk of capital loss with higher potential growth and income. High yield bonds and equities, generally dividend paying equities, may be a significant percentage of the account.
- **Risk Tolerance - Long Term:** Long Term Growth and Income investors seek a significant level of growth and income, are financially able and willing to risk losing a substantial portion of investment capital, and due to their long term horizon or other

factors they pursue high risk, more aggressive strategies that may offer higher potential returns. High yield bonds and equities, generally dividend paying equities, may be the primary assets in the account.

### Investment Objective - Growth

Growth Investors do not seek account income and their primary objective is capital appreciation.

- **Risk Tolerance - Conservative:** Conservative Growth investors seek maximum growth consistent with a relatively modest degree of risk. They are willing to accept lower potential returns in exchange for lower risk. Equities may be a significant percentage of the account.
- **Risk Tolerance - Moderate:** Moderate Growth investors seek to balance the potential risk of capital loss with their goal of higher potential growth. Equities may be the primary asset in the account.
- **Risk Tolerance - Long Term:** Long Term Growth investors seek a significant level of growth, are financially able and willing to risk losing a substantial portion of investment capital, and due to their long term time horizon or other factors, they employ higher risk, more aggressive strategies that may offer higher potential returns. Higher risk investments such as equities may be as much as 100% of the account.

### Trading & Speculation

Trading and Speculation investors seek out maximum return through a broad range of investment strategies, which generally involve a high level of risk, including potential for significant loss of investment capital.