



ACTIVE OVERSIGHT / PROACTIVE ADVICE

September 18, 2013

FILED ELECTRONICALLY

Elizabeth M. Murphy
 Secretary
 U.S. Securities and Exchange Commission
 100 F St., N.E.
 Washington, DC 20549-1090

Re: File No. 4-606

Dear Ms. Murphy,

The Zero Alpha Group ("ZAG")¹ greatly appreciates the opportunity to comment on the Commission's request for information on the potential costs and benefits of alternative standards of conduct for broker-dealers and investment advisers ("RFI"). ZAG is a national network of wealth management firms that share a common philosophy about investment advice that is anchored in our commitment to maintaining the highest fiduciary standards. An investment adviser and their client necessarily stand in a special relationship of trust and confidence that requires an adviser to act in their clients' best interests. We believe that truly objective investment solutions will only be found with independent, fiduciary advisers.

ZAG strongly supports rulemaking that would require all financial professionals who provide personalized investment advice to act as fiduciaries. When brokers provide personalized investment advice, their clients are likely to place their trust in them and expect recommendations that reflect the clients' best interests. Clients therefore are more vulnerable to recommendations that, because brokers are subject only to a suitability standard, may reflect the best interests of the broker rather than the client. The broker's role as a salesperson, with the conflicted incentives that this role creates, heightens the risk of abuse of the client relationship. ZAG believes that the benefits to our clients of our adhering to the highest fiduciary standards far outweigh any attendant costs.

We respectfully urge the Commission, in requiring that brokers act as fiduciaries, not to weaken the fiduciary standard. The current standard creates significant benefits for advisory clients, and the dilution of the standard would impose costs on investors when they receive advice that does not reflect their best interests. We are concerned that the Commission's RFI reflects the view

¹ ZAG is a national network of seven wealth management firms committed to applying the best financial thinking to serve clients in a fiduciary capacity. The firms share a common bond in their investment philosophy, wealth management approach, client focus and commitment to fiduciary practices. All members are committed to providing objective, long-term private wealth management solutions, which include customized investment strategies guided by Modern Portfolio Theory and informed by the latest academic research. ZAG members independently manage over \$9 billion in total client assets.

Beaird Harris
Wealth Management
 Dallas, TX

Carlson Capital
Management
 Northfield, MN

Foster Group, Inc
 West Des Moines, IA

Petersen Hastings
Investment Management
 Kennewick, WA

Plancorp, LLC.
 St Louis, MO

Resource
Consulting Group
 Orlando, FL

Savant Capital
Management
 Rockford, IL

that the fiduciary duty can be implemented through a set of discrete rulemakings rather than a flexible, scalable best interest standard that can be adjusted to fit the particular facts and circumstances of the client relationship. The essence of the fiduciary duty arises from the relationship of trust and confidence between the financial professional and the client, not from a precisely definable, finite set of interactions reflected in a limited set of conduct-specific rules.² The set of interactions to which the fiduciary duty should apply cannot be comprehensively codified and inevitably would be underinclusive if implemented solely through conduct rules.

The Commission should apply the same fiduciary duty that already applies to investment advisers (and many dually registered broker-dealers) to all financial professionals who provide personalized investment advice. Section 913 of the Dodd-Frank Act authorized the Commission to adopt a standard for brokers that was “no less stringent” than the standard applied under Sections 206(1) and (2) of the Advisers Act, precisely because Congress intended that the standard that currently applies to advisers not be weakened. Congress also intended that the standard not vary based on arbitrary regulatory labels, but rather reflect the services actually provided to investors and their justifiable expectations when receiving personalized recommendations.

Finally, we are very concerned regarding the Commission’s apparent intention to subject investment advisers to certain broker-dealer rules regardless of whether investment advisers’ activities warrant such new and costly burdens. Harmonization solely for the sake of harmonization will raise the cost of providing investment advice for investors without providing them with any countervailing benefits. We are unaware of any evidence that advisers’ conduct would be improved by being subject to broker-dealer rules. In contrast, violations of the fiduciary duty is the most common claim brought in arbitration against broker-dealers, which suggests that they often have the kind of client relationship that engenders an expectation of fiduciary conduct.

Broker-dealer regulation applies to a broad range of activities in which advisers do not engage (unless they are dually registered, in which case they are already subject to broker-dealer rules), and the purpose of many broker-dealer rules is already accomplished by application of the fiduciary duty. Our firms’ compliance programs, as required under the Advisers Act, already implement the kind of regulation of advertisements and supervision that is reflected in broker-dealer rules. It is unclear why the Commission is suggesting this step, without any evidence that applying broker-dealer rules to advisers is needed, while not doing the same for investment adviser rules that do not apply to broker-dealers, such as rules regarding testimonials and past specific recommendations in advertisements.

* * * * *

² Michael Koffler, *Six Degrees of Separation: Principles to Guide the Regulation of Broker-Dealers and Investment Advisers*, 41 Sec. Reg. & Law Rep. 776 (Apr. 27, 2009) (“Given the equitable nature of fiduciary law, it is not tenable to set forth a fiduciary’s responsibilities in a detailed manner or to specify a convention to govern their activity. Nor would it be in the public interest to do so. And it certainly would not be consistent with the way fiduciary law has evolved and been interpreted for hundreds of years.”).

Although we have certain concerns regarding the RFI, we applaud the Commission's progress toward ensuring that advisory clients of broker-dealers are afforded the protection of the fiduciary duty. The fiduciary duty is a cornerstone of ZAG members' wealth management practices and has been a key element in our success. We look forward to working with the Commission on this important initiative. Please contact Brent Brodeski at (815) 227-0300 if you have any questions regarding this matter.

Sincerely,



Brent Brodeski MBA, CPA, CFP®, CFA, AIFA®
President, Zero Alpha Group
CEO, Savant Capital Management



Pat C. Beaird, CPA, PFS
President
Beaird Harris Wealth Management, Inc.



Scott Sarber, CFP®
President
Petersen Hastings Investment Management



Jeffrey Carlson, CFP®
Founder and Principal
Carlson Capital Management, Inc.



Jeffrey Buckner, CFP®, AIF®
Chairman and Chief Investment Officer
Plancorp, LLC



Jerry Foster, CFP®
Chairman
Foster Group, Inc.



Kimberly Sterling, CPA, CFP®
President
Resource Consulting Group

cc: Honorable Mary Jo White, Chairman
Honorable Luis A. Aguilar, Commissioner
Honorable Daniel M. Gallagher, Commissioner
Honorable Kara M. Stein, Commissioner
Honorable Michael Piwowar, Commissioner

Mr. John Ramsay, Acting Director, Division of Trading and Markets
Mr. Norm Champ, Director, Division of Investment Management
Mr. Craig Lewis, Director and Chief Economist, Division of Economic and Risk Analysis