

## MEMORANDUM

To: File No. 4-606

From: Division of Investment Management

Date: February 28, 2014

Re: Meeting with Representatives of the National Association of Plan Advisors

On February 18, 2014, representatives of the National Association of Plan Advisors (“**NAPA**”) participated in a meeting with Securities and Exchange Commission (“**SEC**”) staff from the Division of Investment Management (“**IM**”), the Division of Trading and Markets (“**TM**”), and the Division of Economic and Risk Analysis (“**DERA**”).

The representatives of NAPA that were present at the meeting were: Brian Graff and Ronald Triche.

The following members of IM staff participated in the meeting: Dave Grim, Douglas Scheidt, Sara Crovitz, Daniel Kahl, Sarah Buescher, and Parisa Haghshenas.

The following members of TM staff participated in the meeting: Emily Russell, Daniel Fisher, and Brian Baltz.

The following member of DERA staff participated in the meeting: Matt Kozora.

The NAPA representatives discussed, among other issues, the SEC’s request for data and other information regarding the duties of brokers, dealers, and investment advisers. The NAPA representatives also discussed the attached and their July 5, 2013 comment letter, which is available at <http://www.sec.gov/comments/4-606/4606-3114.pdf>.

# NAPA

FACT SHEET

**The National Association of Plan Advisors (NAPA)** was established to be a unified voice in the retirement plan advisor community and a leader in the evolution of the national retirement system. NAPA's mission is to improve transparency, effectiveness and governance in an effort to enhance retirement outcomes for participants. It is a sister organization of the American Society of Pension Professionals & Actuaries (ASPPA), a group nearly 50 years old. Together, ASPPA and NAPA have more than 16,000 members working to improve retirement outcomes for all Americans.

**NAPA's core purpose is to enhance retirement security in America** by focusing on providing high quality, professional advice to retirement plans and their participants. NAPA members maintain ethical standards in their representation of plan sponsor and participant clients and strive to service them under a process that puts their clients' interests first.

## **Who is NAPA?**

- 7,000 individual members, 75% of whom are investment advisors
- 125 firm partners, including all major Broker-Dealers, DCIOs and Recordkeepers

## **What is NAPA's Reach?**

- More than 40 million defined contribution (DC) retirement plan participants
- More than \$4 trillion in DC retirement plan assets under management with members and firm partners



**NAPA**

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## An SEC Non-Uniform “Uniform Fiduciary Standard” Would Cause More Confusion for Investors

- The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (“Dodd-Frank Act”) required the SEC staff to perform a study regarding investment advisors and broker-dealers (“investment professionals”). As part of the study, the SEC staff made two recommendations to address “retail customer confusion about the obligations broker-dealers and investment advisers owe to those customers, and to preserve retail customer choice without decreasing retail customers’ access to existing products, services, service providers or compensation structures.”
- The first recommendation was that the SEC “engage in rulemaking to implement a uniform fiduciary standard of conduct for broker-dealers and investment advisers when providing personalized investment advice about securities to retail customers.” The second recommendation was that the SEC should “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.”
- **A Non-Uniform “Uniform Fiduciary Standard” Would Actually Cause More Confusion for Investors.** Establishing a non-uniform “uniform fiduciary standard” for investment professionals will actually cause increased confusion among retail customers when selecting investment professionals. Two of the key differences between broker-dealers and investment advisers are: (a) the methods by which they are paid, and (b) the responsibilities regarding monitoring (or not monitoring) investment performance. Broker-dealers generally are paid a commission on each buy or sell transaction for a security, whereas investment advisers are not. Investment advisers have a duty to monitor the performance of the investments they recommend to retail customers, whereas broker-dealers do not. If the “uniform fiduciary standard” were adopted, we would have two kinds of fiduciaries: “traditional” fiduciaries (investment advisers) who do not receive commissions and have a duty to monitor their client’s investments, and “new” fiduciaries (broker-dealers) who are free to continue to accept commissions and are still not required to monitor investments. This non-uniform standard would cause more confusion for investors.
- **Improved Disclosures Would Better Serve Investors.** Average investors need better information about the role of their investment professionals. But, the kind of non-uniform “uniform fiduciary standard” being considered by the SEC will certainly not accomplish that goal. Instead, a simple, standardized disclosure given to investors before engaging an investment professional (and annually thereafter) which explains what standard the investment professional is subject to (fiduciary or suitability), what services that entails, and how the advisor is compensated, would give investors the right amount of information so they can make the choice that works best for them.
- **“Harmonization” Should Result From Coordination with ERISA’s Fiduciary Rules.** Under ERISA’s fiduciary duty rules, a fiduciary generally cannot be paid on a commission basis unless an exemption applies. This is because commission-based compensation gives the fiduciary the opportunity to impact how much it gets paid and that is considered a conflict of interest (even if the commission-based compensation arrangement is disclosed to the recipient of the investment advice). The amount of retirement assets held in IRAs, much of it overseen by investment professionals who are paid on a commission basis, has increased significantly since the mid-1970s. Without proper coordination (“harmonization”), the regulatory requirements of the SEC and the DOL will result in investors not receiving assistance from their trusted investment professionals based on whether their accounts are after-tax retail accounts or tax-favored IRAs. This is an arbitrary distinction that will only lead to more confusion.