

**Study on Investment Advisers and Broker-Dealers
U.S. Securities and Exchange Commission**

Background: Section 913 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) required the Securities and Exchange Commission (SEC) to conduct a six-month study on the gaps in regulation of broker-dealers and investment advisers. The SEC was required to evaluate the effectiveness of existing standards of care for broker-dealers and investment advisers when providing personalized investment advice about securities to retail customers, as well as whether there are any legal or regulatory gaps, shortcomings, or overlaps in the standards of care. The SEC reported its findings, conclusions, and recommendations to the House Committee on Financial Services and the Senate Committee on Banking, Housing, and Urban Affairs on January 21, 2011. Following the study, the SEC has authority to conduct a rulemaking to require broker-dealers and investment advisers to meet the same fiduciary standard of care when providing personalized investment advice about securities to retail customers.

SEC's Findings: The study found that “retail customers do not understand and are confused by the roles played by investment advisers and broker-dealers, and more importantly, the standards of care applicable . . . when providing personalized investment advice and recommendations about securities.” Investors, who rely on financial professionals to make important financial decisions, reasonably expect that they will receive advice that is in their best interest and should not have to parse through legal distinctions to ensure their expectations are met. The staff stated its belief that it is important to provide uniform protection and that personalized investment advice should be provided in retail customers’ best interests, without regard to the financial or other interest of the investment adviser or broker-dealer providing the advice. A uniform fiduciary standard would increase investor confidence in the integrity of advice received. At the same time, the standard should provide for continued access to the various fee structures, account options, and types of advice available in the current marketplace.

SEC's Recommendations: The study recommends that the SEC conduct a rulemaking to establish a uniform fiduciary standard of conduct that would apply to broker-dealers and investment advisers when they provide personalized investment advice about securities to retail customers. The uniform fiduciary standard would be no less stringent than currently applied to investment advisers under the Investment Advisers Act of 1940 (Advisers Act).

The study recommends that the SEC engage in rulemaking and/or issue interpretive guidance on the components of the uniform fiduciary standard. In doing so, the SEC should identify specific examples of potentially relevant material conflicts of interest in order to facilitate a smooth transition to the new standard by broker-dealers. The study recommended that, in providing this interpretive guidance, the SEC should look to existing guidance and precedent under the Advisers Act regarding the fiduciary duty as developed through SEC interpretations, case law, and enforcement actions.

Duty of Loyalty:

1. *Disclosure:* The study recommends, among other things, that the SEC require broker-dealers and investment advisers to provide uniform, simple, and clear disclosures to retail customers about the terms of their relationships, including any material conflicts of interest.



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2. *Principal Trading*: The study recommends that the SEC address how broker-dealers should fulfill the uniform fiduciary standard when engaging in principal trading, through rulemaking and/or interpretive guidance.

Duty of Care: The study recommends that the SEC consider specifying, through rulemaking and/or interpretive guidance, uniform standards for the duty of care owed to retail customers. For example, this could include a minimum baseline professionalism standard specifying what basis a broker-dealer or investment adviser should have in making a recommendation to a retail customer.

Personalized Investment Advice About Securities: The study recommends that the SEC engage in rulemaking and/or issue interpretive guidance to clarify what it means to provide “personalized investment advice about securities.”

Retail Customers: The study recommends that the SEC engage in rulemaking and/or issue interpretive guidance on the applicability of the definition of “retail customer” in certain specific situations identified by commenters. The SEC could consider whether to extend the uniform fiduciary standard to persons other than retail customers that may also benefit from the additional investor protections of the standard.

Additionally, the study recommends that regulations affecting broker-dealers and investment advisers should be harmonized “to the extent that such harmonization appears likely to add meaningful investor protection.” Harmonization could take into account the best elements of each regime. The study states that broker-dealers and investment advisers should be subject to the same or substantially similar regulation when performing the same or substantially similar functions. The study recommends that the SEC consider harmonizing regulations in the following categories:

- Advertising;
- Use of finders and solicitors;
- Supervision;
- Licensing and registrations of firms;
- Licensing and continuing education requirements for associated persons of registered investment advisers; and
- Books and records.

Finally, Commissioner Paredes and Commissioner Casey issued a separate statement. Among other things, they said that the study fails to justify its recommendation that the SEC change its regulatory regime for broker-dealers and investment advisers; lacks the basis to conclude that a fiduciary standard would enhance investor protection (does not show that investors are harmed or disadvantaged under one scheme compared to the other); and does not appropriately account for the overall cost to broker-dealers, investment advisers, or retail investors. The commissioners argued that additional research is necessary before they could support going forward with any rulemaking on fiduciary.

CFP Board Position: We believe that establishing a strong and uniform fiduciary standard of care for all financial professionals who provide personalized investment advice to retail customers, whether those financial professionals are associated with broker-dealers or investment advisers, is among the most important investor protection initiatives that the Commission could undertake. And as the Dodd-Frank Act makes clear, that standard should be *no less stringent* than the existing fiduciary standard under the Advisers Act. The current broker-dealer standard of care under the Financial Industry Regulatory Authority's suitability rule is ineffective in protecting investors receiving personalized investment advice because it leaves substantial gaps in coverage when compared to the fiduciary standard applicable to investment advisers. Retail customers do not understand the regulatory differences between broker-dealers and investment advisers or the standards of care that apply to each, and even more importantly, customers do not believe there should be any difference in the standards of care applicable to each type of entity. The uniform, federal fiduciary standard that has applied to investment advisers ever since the passage of the Advisers Act is a well-defined and workable standard of care that has served retail customers well for seventy years. Therefore, the SEC should move forward with a rulemaking to adopt a strong and uniform standard of care for broker-dealers and investment advisers that is *no less stringent* than the existing fiduciary standard under the Advisers Act.