



Consumer Federation of America



CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.



*Fund Democracy*



June 4, 2013

The Honorable Mary Jo White  
Chairman  
U.S. Securities and Exchange Commission  
100 F Street NE  
Washington, DC 20549-1090

**Re:** File Number 4-606 Duties of Brokers, Dealers, and Investment Advisers

Dear Chairman White:

Our organizations would like to congratulate you upon your confirmation as chair of the SEC. As you begin to develop your agenda, we want to take this opportunity to raise a critical issue that should be among your priorities: improving protections for average investors by raising the standard of care for broker-dealers providing personalized investment advice to retail investors. We strongly believe that SEC action on behalf of investors is long overdue.

As organizations that share a strong interest in investor protection, we have long advocated for extension of the fiduciary duty under the Investment Advisers Act of 1940 (Advisers Act) to all broker-dealers when they offer personalized investment advice to retail customers. Many of us favored eliminating the broker-dealer exemption from the Advisers Act as a way to achieve this goal. Since enactment of the Dodd-Frank Wall Street Reform and Investor Protection Act of 2010 (Dodd-Frank Act), however, we have supported SEC rulemaking under Section 913 of the Dodd-Frank Act as the most appropriate approach.

We support the SEC staff recommendation in its Section 913 Study to adopt parallel rules under the Advisers Act and the Securities Exchange Act of 1934 establishing an over-arching fiduciary duty that is identical for brokers and advisers, but only if, as the Dodd-Frank Act mandates, it is no less stringent than the existing standard under the Advisers Act. We maintain that the fiduciary duty standard should be supported by guidance to clarify how the standard would apply to the broker-dealer business model and rules where needed. We believe that such an approach, if properly implemented, could both enhance investor protections and preserve key beneficial elements of the transaction-based broker-dealer business model.

We are pleased that the Commission in March released a Request for Information (RFI) regarding the possible extension of a fiduciary duty to broker-dealers. After a thorough analysis, however, there are several aspects of the RFI about which we are very concerned, despite the RFI's caution to readers that the various assumptions contained in it should not be construed as the staff position. We certainly hope that this is the case, because the assumptions contained in the RFI fail to include key elements of the fiduciary standard, such as the obligation to act in the best interest of the customer. If the fiduciary duty is based on the RFI assumptions it would be weaker than that originally set forth in the Section 913 Study and far less stringent than that currently imposed under the Advisers Act. Indeed, the RFI seems to contemplate little more than the existing suitability standard supplemented by some conflict of interest disclosures.

The Honorable Mary Jo White

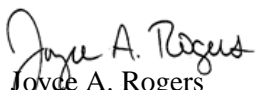
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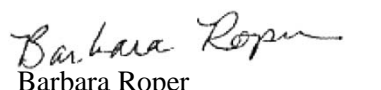
If the SEC were to adopt this approach, we fear that it would significantly weaken the fiduciary standard for SEC-registered investment advisers while adding few new protections for investors who rely on broker-dealers for investment advice. This approach would have negative consequences for investors and is one we would vigorously oppose. We remain hopeful that the public comment period will assist the Commission in crafting a fiduciary rulemaking consistent with the principle clearly stated in Section 913 of the Dodd-Frank Act that any new standard for broker-dealers must require them to act in the best interests of the customer and that it must be no weaker than the existing standard under the Advisers Act. It is important that the SEC get this critical investor protection issue right.


We look forward to working with you and your colleagues to ensure that any fiduciary rulemaking delivers meaningful new investor protections for the customers of broker-dealers.


Sincerely,


  
Joyce A. Rogers  
Senior Vice President  
Government Affairs  
AARP

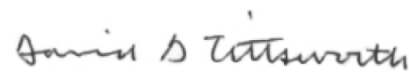
  
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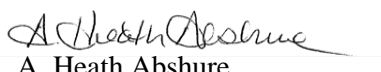
  
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