



## U.S. Securities and Exchange Commission

### **Statement by SEC Commissioners: Statement Regarding Study On Investment Advisers And Broker-Dealers**

*by*

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*U.S. Securities and Exchange Commission*

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Today the Commission has delivered to Congress a Study on Investment Advisers and Broker-Dealers prepared by the Commission Staff pursuant to Section 913 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010. We write separately in order to state for the record our views on the Study and its recommendations.

At the outset, it is important to underscore that the views expressed in the Study are those of the Staff of the Commission and not necessarily those of the Commission as a whole or of individual Commissioners. This is stated clearly in the Study and is consistent with other studies performed by the Staff and then delivered by the Commission to Congress.

In our view, the Study's pervasive shortcoming is that it fails to adequately justify its recommendation that the Commission embark on fundamentally changing the regulatory regime for broker-dealers and investment advisers providing personalized investment advice to retail investors. The Study recommends the adoption of a new uniform fiduciary duty standard and harmonization of two disparate regulatory regimes. But it does so without adequate articulation or substantiation of the problems that would purportedly be addressed via that regulation. The Study also does not adequately recognize the risk that its recommendations could adversely impact investors.

Indeed, the Study does not identify whether retail investors are systematically being harmed or disadvantaged under one regulatory regime as compared to the other and, therefore, the Study lacks a basis to reasonably conclude that a uniform standard or harmonization would enhance investor protection. A stronger analytical and empirical foundation than provided by the Study is required before regulatory steps are taken that would revamp how broker-dealers and investment advisers are regulated.

Because of our concerns, we oppose the Study's release to Congress as drafted. We do not believe the Study fulfills the statutory mandate of Section 913 of the Dodd-Frank Act to evaluate the "effectiveness of existing

legal or regulatory standards of care" applicable to broker-dealers and investment advisers.

Two examples from the Study illustrate its shortcomings.

First, a basic premise of the Study's recommendation to impose a uniform fiduciary duty on broker-dealers and investment advisers is concern that investors are confused about the differences between a broker-dealer and an investment adviser and the duties owed by each. Such confusion is a serious matter. However, the practical consequences resulting from that confusion for those very investors have not been sufficiently studied or documented. Moreover, the Study does not address the possibility that the Study's own recommendations will not resolve or eliminate investor confusion and may in fact create new sources of confusion.

Second, the Study, in our view, does not appropriately account for the potential overall cost of the recommended regulatory actions for broker-dealers, investment advisers, and retail investors. The Study unduly discounts the risk that, as a result of the regulatory burdens imposed by the recommendations on financial professionals, investors may have fewer broker-dealers and investment advisers to choose from, may have access to fewer products and services, and may have to pay more for the services and advice they do receive. Any such results are not in the best interests of investors; nor do they serve to protect them.

The Study should be viewed as a starting point for further research and consideration, rather than as forming the primary basis for rulemaking. Before the Commission proposes rules in this area, more rigorous analysis - rooted in economics and data - is needed to avoid unintended consequences.

We suggest that additional research and analysis could include:

- Analysis of the investor returns (controlling for risk and investor characteristics such as age, income, and education) generated under the two existing regulatory regimes.
- Comparison of the security selections of financial professionals subject to the two existing regulatory regimes in an effort to gauge differences in the quality of advice or types of product recommendations as a function of the regulatory regimes.
- Surveys of investors to obtain a general overview of the characteristics of investors who invest through a broker-dealer as compared to those who invest on the basis of advice from an investment adviser and to develop an understanding of investor perceptions of the cost/benefit tradeoffs of each regulatory regime.
- Consideration of evidence related to the ability of investors to bring claims against their financial professional under each regulatory regime, with a particular focus on dollar costs to the investor and the results when claims are brought.

Analysis of this type is needed to support a conclusion that the Study's recommendations should be implemented or will be effective. For example, without good data on investor demographics and preferences, the Commission cannot adequately weigh the potential costs to investors due to the creation of a new standard and the ensuing changes in the business

models of both broker-dealers and investment advisers. And without investor surveys, it is difficult - if not impossible - to assess what retail investors are willing and able to pay for personalized investment advice.

Given the very tight timetable for completing the Study, it is understandable that some of the analysis outlined above has not yet been performed. But the Study too readily diminishes the necessity of such analysis to understanding the potential consequences for retail investors, as well as for broker-dealers and investment advisers.

We cannot dismiss the importance of this economic analysis so easily. In our view, the collection and analysis of empirical data - particularly data relevant to evaluating the impact of regulation - is essential for the Commission not only to determine whether rulemaking is appropriate but also to develop appropriate rules should the Commission choose to go forward.

In writing separately, we do not intend to suggest that we could not ultimately, after further research and analysis, support the recommendations contained in the Study. We have not reached a judgment regarding the appropriateness of the Commission undertaking rulemaking in this area. Indeed, the Study represents an important step in the consideration of these vital and complex issues.

Much is at stake. Americans invest trillions of dollars through broker-dealers and investment advisers. Regulation based on poorly-supported recommendations runs the risk of restricting retail investors' access to affordable personalized investment advice and the range of products and services they currently enjoy.

There is no statutory deadline for any follow-on rulemaking to this Study. Given the lack of concrete data provided in the Study and the need for additional research and analysis, we believe that any rulemaking without such consideration would be ill-conceived at best and harmful at worst.

*<http://www.sec.gov/news/speech/2011/spch012211klctap.htm>*

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