July 5, 2013

Via E-Mail to rule-comments@sec.gov

Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: **Duties of Brokers, Dealers and Investment Advisers: Request for Data and Other Information (SEC Release No. 34-69013; IA-3558; File No. 4-606)**

Dear Ms. Murphy:

The Securities Industry and Financial Markets Association ("**SIFMA**")[1] appreciates the opportunity to respond to SEC Release No. 34-69013; IA-3558; File No. 4-606 (the "**Request**"). The Request seeks data and information to help inform two inquiries: (i) whether to establish a uniform fiduciary standard for broker-dealers ("**BDs**") and registered investment advisers ("**RIAs**"); and (ii) whether to pursue broader harmonization of BD and RIA regulations.

SIFMA has long supported a uniform fiduciary standard for BDs and RIAs when providing personalized investment advice about securities to retail clients. We have likewise advocated for broader harmonization of BD and RIA regulations.

We welcome the SEC's continued focus on these important issues for the benefit of retail clients. We believe that your current effort to collect relevant information and data is the appropriate next step. We want to remain constructive participants in the process and hope you find our response informative and helpful.

Our response is organized as follows:

- Part I provides an executive summary of our longstanding positions in support of a new, uniform fiduciary standard and broader regulatory harmonization;

[1] SIFMA brings together the shared interests of hundreds of securities firms, banks and asset managers. SIFMA's mission is to support a strong financial industry, investor opportunity, capital formation, job creation and economic growth, while building trust and confidence in the financial markets. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association. For more information, visit www.sifma.org.

- Part II summarizes our general views on the appropriate cost-benefit approach for analyzing a prospective fiduciary standard, and provides specific feedback on various elements of the Request;

- Part III discusses why it would be problematic to apply existing Advisers Act guidance and precedents under Section 206 to BDs;

- Part IV presents new data gathered through a survey of SIFMA's BD members pertaining to certain specific costs likely to be incurred by BDs in implementing the uniform fiduciary standard;

- Part V expands on SIFMA's views regarding broader regulatory harmonization; and

- Part VI contains our concluding remarks.

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I. SIFMA'S LONG-STANDING POSITIONS

For the past several years, SIFMA has actively supported a uniform fiduciary standard for BDs and RIAs when providing personalized investment advice about securities to retail clients, as well as broader harmonization of BD and RIA regulations.[2] SIFMA's positions on these two key issues are summarized below.

A. UNIFORM FIDUCIARY STANDARD

The fundamental purpose of Section 913 of the Dodd-Frank Act is to provide for the establishment of a uniform fiduciary standard that applies equally to BDs and RIAs for the benefit of retail clients when personalized investment advice is provided. Section 913 requires that the uniform fiduciary standard be no less stringent than the general fiduciary duty implied under Section 206 of the Investment Advisers Act of 1940 ("**Advisers Act**").

The optimal manner to achieve this end, consistent with Congressional intent, would be for the SEC to articulate the fiduciary duty implied under Section 206 through new rulemaking under Section 15(k) of the Securities Exchange Act of 1934 ("**Exchange Act**"). The SEC should issue the necessary rules and guidance to enable BDs to apply the standard to their distinct operational model.[3] It would be imperative for the SEC to issue such rules and guidance on or before the date the new uniform fiduciary standard becomes operative. Absent such guidance, BDs could not be expected to know how to comply with the new standard. New Section 15(k) rules could be crafted to expressly preserve BDs' ability to engage in principal transactions under the new

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[2] *See, e.g.*, Comment Letter from Ira D. Hammerman, Senior Managing Director and General Counsel, SIFMA, to Elizabeth M. Murphy, Secretary, Sec. & Exch. Comm'n (Aug. 30, 2010) (available at http://www.sifma.org/issues/item.aspx?id=22263); SIFMA & Oliver Wyman, Standard of Care Harmonization: Impact Assessment for SEC (Oct. 2010) (available at http://www.sifma.org/issues/item.aspx?id=21999); Comment Letter from Ira D. Hammerman, Senior Managing Director and General Counsel, SIFMA, to Elizabeth M. Murphy, Secretary, Sec. & Exch. Comm'n (Nov. 17, 2010) (available at http://www.sifma.org/issues/item.aspx?id=22336); Comment Letter from Ira D. Hammerman, Senior Managing Director and General Counsel, SIFMA, to Marcia E. Asquith, Office of the Corporate Secretary, FINRA (Dec. 3, 2010) (available at: http://www.sifma.org/issues/item.aspx?id=22482); Comment Letter from Ira D. Hammerman, Senior Managing Director and General Counsel, SIFMA, to Mary L. Schapiro, Chairman, Sec. & Exch. Comm'n (July 14, 2011) (available at http://www.sifma.org/issues/item.aspx?id=8589934675); John Taft, Chairman, SIFMA, Testimony before U.S. House of Representatives Committee on Financial Services, Subcommittee on Capital Markets and Government-Sponsored Enterprises: The Regulation and Oversight of Broker-Dealers and Investment Advisers (Sep. 13, 2011) (available at http://www.sifma.org/issues/item.aspx?id=8589935390); Comment Letter from Kevin M. Carroll, Managing Director and Associate General Counsel, SIFMA, to Elizabeth M. Murphy, Secretary, Sec. & Exch. Comm'n (Mar. 23, 2012) (available at http://www.sifma.org/issues/item.aspx?id=8589938025); Supplemental Response from Ira D. Hammerman, Senior Managing Director and General Counsel, SIFMA, to Mary L. Schapiro, Chairman, SEC (May 4, 2012) (available at http://www.sifma.org/issues/item.aspx?id=8589938634); and Chet Helck, Chairman-Elect, SIFMA, Testimony before U.S. House of Representatives Committee on Financial Services: H.R. 4624, The Investment Adviser Oversight Act of 2012 (June 6, 2012) (available at http://www.sifma.org/issues/item.aspx?id=8589938957).

[3] The Request helpfully assumes that the new standard would accommodate different business models and fee structures of firms. Request at 26.

standard without the need to obtain specific trade-by-trade prior consent as is currently applicable to RIAs under the Advisers Act.[4]

Importantly, upon establishment of a new, rule-based standard contemplated by Section 913, BDs would *not* be subject to existing rules, guidance and legal precedent under Section 206 of the Advisers Act. Such rules, guidance and legal precedent should continue to apply to RIAs, as they were initially designed and intended, but should not apply to BDs whose business models differ from RIAs.[5] The plain language of Section 913, together with the legislative history of Dodd-Frank, make clear that the requirement that the uniform fiduciary standard be "no less stringent" than the general fiduciary duty implied under Section 206 of the Advisers Act does not require the SEC to impose Advisers Act rules, guidance and legal precedents on broker-dealers.[6]

Moreover, retail clients cannot sue their RIAs for breach of fiduciary duty under Section 206.[7] Direct application of Section 206 to BDs may imply that retail clients could not sue their BDs for breach of the "uniform" fiduciary standard. It is incumbent on the SEC to determine whether this result would be consistent with the purposes of Section 913.

We believe that a uniform fiduciary standard would result in a heightened focus on serving the best interests of retail clients. Our support, however, is predicated upon appropriate cost-benefit analysis and implementation of the standard in a manner that preserves investor choice, is cost-effective and business model neutral, and avoids regulatory duplication or conflict.

B. BROADER REGULATORY HARMONIZATION

SIFMA also supports harmonizing other areas of BD and RIA regulation, including advertising, the use of finders and solicitors, supervisory requirements, licensing and registration of firms and associated persons, and books and records, among others, particularly as they relate to the provision of services to retail clients. Moreover, we also support uniform examination and oversight of BDs and RIAs to ensure compliance with the fiduciary standard.

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[4] The Request assumes that the new standard would accommodate BDs' current principal trading practices. Request at 26–29, 33–34.

[5] The SEC staff recommends extending such rules, guidance, and precedent to BDs. Request at 30, 36-37. Accordingly, the Request asks commenters to identify specific rules, guidance, and precedent that would be problematic for BDs. Request at 37. We address this issue in Part III, *infra*.

[6] Letter from Congressman Barney Frank to Mary Schapiro, Chairman, Sec. & Exch. Comm'n 1 (May 31, 2011) (the **"Frank Letter"**) ("'no less stringent' … was not intended to encourage the SEC to impose the … Advisers Act… standard on broker-dealers….").

[7] *Transamerica Mortg. Advisors v. Lewis*, 444 U.S. 11 (1979).

II. THE SEC'S COST-BENEFIT REQUEST

A. SCOPE OF REQUEST

SIFMA believes the prospective benefits to retail clients of a uniform fiduciary standard are fairly self-evident. Specifically, we believe that such a standard: (i) would represent an appropriately high standard of conduct owed by BDs to their retail clients; (ii) would help ensure that BD resources and practices continue to focus on serving their clients' best interests; (iii) would represent the fairest, most rational and transparent means of ensuring that the same conduct (providing personalized investment advice) is subject to the same standard regardless of the registration status of the intermediary; and (iv) may reduce retail client confusion over what standard of conduct to expect from their financial advisor. We believe that these benefits are qualitatively significant and will contribute to a heightened sense of trust and confidence among investors in their financial service professionals.

On the other hand, the nature and magnitude of the prospective costs associated with modifying the standard of conduct for BDs to a fiduciary standard are more difficult to assess currently because, to a great extent, the ability to do so depends on the specific manner in which the SEC elects to implement the standard. To date, the SEC has not issued a specific proposal for implementing the standard.

In the absence of a specific SEC proposal for implementing the new fiduciary standard, the scope of the SEC's data request is very broad. The Request seeks data on numerous permutations of the manner in which the SEC could implement, or not implement, a uniform fiduciary standard. In the absence of a concrete proposal, it is not possible to adequately identify and estimate all the costs of establishing a uniform fiduciary standard. Moreover, neither SIFMA nor its member firms currently maintain electronic or other records that would enable a comparison of costs across the array of approaches the SEC may elect to take to implement Section 913, or that contain other requested data, such as comparative investment returns data (discussed in greater detail below). Nor have we undertaken the type of extensive survey and system build-out that would be required to request, receive, and collate this vast amount of data. Such data would be very costly and resource-intensive to collect. We also believe that much of this data would not be relevant to analyze whether to impose a uniform fiduciary standard.[8]

To assist the SEC's cost-benefit analysis, SIFMA focused its efforts on two specific areas that its members believe will likely result in increased costs for BDs should a new uniform fiduciary standard be adopted – the costs of developing and maintaining a disclosure form similar to Form ADV Part 2A,[9] and the costs of developing and maintaining new supervisory systems, procedures and training programs to implement the new standard. In estimating these costs,

[8] Other categories of requested data that we do not believe are necessary or relevant, and that appear to call for legal conclusions, include among others: "the extent to which different rules apply to similar activities"; "the nature and magnitude" of conflicts of interest; "the effectiveness of disclosure"; and "differences in state law."

[9] The Request assumes that the new standard would require upfront disclosure similar to Form ADV Part 2A, which we generally support, as opposed to and in lieu of a point-of-sale based disclosure regime. Request at 33.

SIFMA members have had to make certain narrowing assumptions about how the SEC will implement the uniform fiduciary standard, based on our view of how the SEC *should* implement the standard to maximize its benefits while minimizing costs. We discuss SIFMA's data survey and results in Part IV.

B. PROSPECTIVE DOL FIDUCIARY RULEMAKING

Given the breadth of the Request, we are concerned that it makes no mention of the Department of Labor's ("**DOL's**") expansive re-writing of the definition of fiduciary under the Employee Retirement Income Security Act of 1974 ("**ERISA**") that is expected to be published in the fall of 2013. While we do not yet know the full details of what the DOL will propose, the DOL's 2010 proposal would have turned virtually every broker who dealt with an individual retirement account ("**IRA**") or a retirement plan into a fiduciary subject to the strict standard of care and prohibited transaction rules contained in ERISA and the Internal Revenue Code.[10]

Based on the specific guidelines enumerated in Section 913, we believe that Congress clearly intended that the SEC, not the DOL, decide what standard of conduct should apply to retail accounts, including retirement accounts. We have grave concerns that the DOL does not appear to recognize this clear expression of Congressional intent.

In considering what impact the DOL's expansion of the fiduciary definition could have on retail accounts, we note that the fiduciary standard under ERISA and the Internal Revenue Code requires compliance with prohibited transaction rules, which would conflict with the principles Congress expressed in Section 913. Section 913 specifically states that "the receipt of compensation based on commission or other standard compensation for the sale of securities shall not, in and of itself, be considered a violation of [a fiduciary] standard applied to a broker or dealer." But if the DOL moves ahead with its anticipated rulemaking, a BD would be considered to be in violation of its fiduciary duty for receiving commission-based compensation.

Currently, overall IRA assets are approximately \$5 trillion, and are expected to reach \$7.3 trillion by 2016.[11] SIFMA BD members who furnished data to us collectively reported approximately \$1.77 trillion of assets in IRAs among approximately 21.5 million accounts, as of December 31, 2012. SIFMA's RIA members reported another approximately \$447 billion of assets in IRAs among approximately 3.31 million accounts, as of December 31, 2012. Virtually all IRAs with less than \$25,000 are in brokerage accounts, and approximately 40% of those contain less than \$10,000.[12] These small accounts are at risk of being adversely impacted in a very significant way if the DOL were to move forward with its expanded definition of fiduciary.

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[10] Definition of the Term 'Fiduciary,' 75 Fed. Reg. 65,263 (Oct. 22, 2010).

[11] *See* Cerulli Associates, *The State of the Rollover and Retirement Income Markets: Sizing, Segmentation, and Addressability* 1 (Dec. 2011), *available at* https://external.cerulli.com/file.sv?F0000FA.

[12] *See* Letter from Davis & Harman LLP to Employee Benefits Security Administration, U.S. Department of Labor, at 2 (Apr. 12, 2012) (available at http://www.dol.gov/ebsa/pdf/1210-AB32-PH060.pdf).

The unintended consequences and cost implications of the DOL's proposed rulemaking should be carefully studied and analyzed before the DOL takes any final action.

Both the DOL and the SEC fiduciary rulemakings carry potentially significant costs for investors and for our industry. The DOL proposal may cause all BDs that service IRA accounts to be ERISA fiduciaries, which would as a practical matter eliminate access to meaningful investment services for millions of IRA holders, particularly those who have smaller accounts. In doing so, the DOL rulemaking would reverse almost 40 years of established precedent that has been an integral part of the regulatory structure governing IRAs. The failure of the SEC and the DOL to act in concert to issue clear, harmonized and consistent fiduciary regulations has the potential to generate truly catastrophic and unnecessary costs. The SEC's cost-benefit analysis should address this potentially prohibitive cost, and the SEC should take steps to ensure that its efforts under Section 913 are not undermined by DOL rulemaking.

C. INVESTMENT RETURNS AND SECURITIES SELECTIONS

The Request seeks comparative investment returns and securities selections data for brokerage accounts as compared to investment adviser accounts. For the reasons described below, it would be very difficult to collect data that isolates the impact that a different standard of conduct has on investment returns and securities selection. In addition, SIFMA believes that such data would not meaningfully advance the debate over whether and how a uniform fiduciary standard governing BDs and RIAs should be implemented.

A wide variety of factors contribute to returns and securities selections, including whether advice is given, the quality, extent and scope of the advice given, whether the investor follows the advice, the investor's risk tolerance and the investor's stated investment objectives. These factors, among many others, cannot be disaggregated in existing data sets and could not be analyzed in a manner that accounts for and controls for all contributing variables. Thus, we do not believe that broader conclusions about standards of conduct can be drawn from comparing investment returns and securities selections. If, for example, brokerage accounts showed equal or better returns than investment adviser accounts, we do not believe it would be proper to conclude that investors holding brokerage accounts would not benefit from a uniform fiduciary standard. Likewise, if brokerage accounts showed less favorable returns, it would not be reasonable to conclude from that data that a uniform fiduciary standard would be beneficial. In SIFMA's view, it would be very difficult to compile data that isolates the impact that a different standard of conduct has on investment returns and securities selection because of the variety and complexity of factors involved and their interrelationship.

Moreover, the SEC should not lose sight of a key variable that underlies an investor's decision to select brokerage accounts versus fee-based advisory accounts – which is cost. An important insight from the October 2010 SIFMA and Oliver Wyman study is that brokerage accounts provide affordability, product access and valuable choice and are preferred by a vast majority of households in the United States.[13] According to the SIFMA and Oliver Wyman study, 95% of

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[13] SIFMA & Oliver Wyman, *supra* note 2, at 4.

households hold commission-based brokerage accounts, while only 5% hold fee-based advisory accounts. The preference for brokerage accounts is evident across all wealth segments but is strongest for small investors with less than $250,000 in assets. The average investor in the lowest wealth segment trades relatively infrequently, so a commission-based fee structure is generally more cost effective than a fee-based account.

Therefore, even if it were theoretically possible to produce data that isolates the impact of different standards of conduct on investment returns and securities selection, we believe such data would contribute only marginally to the question of whether a uniform fiduciary standard governing BDs and RIAs should be implemented.

D. INVESTORS' ABILITY TO BRING CLAIMS AGAINST BDS AND RIAS UNDER THEIR RESPECTIVE REGIMES

The Request also seeks data and other information related to the ability of retail customers to bring claims against their financial professionals under each regulatory regime. While differences in retail customers' ability to bring private claims raise important policy questions, we do not believe such data is directly relevant to the question of whether a uniform fiduciary standard of conduct should be adopted.

We nevertheless believe it would be helpful to make a few observations.

FINRA Rules require a BD to arbitrate most claims brought by a customer, if requested by the customer and the dispute arises in connection with the BD's business activities.[14] Most BDs, in turn, include pre-dispute arbitration agreements in their customer contracts. As a result, most brokerage client claims are heard in FINRA arbitration. Notable exceptions are securities class action claims and shareholder derivative claims, which are typically adjudicated through court-based litigation.

As an equity forum, FINRA arbitration is less formal and typically faster and more cost-effective than court-based litigation. It also has the benefit of investor protection–focused rules and procedures and oversight by regulators.[15] Monthly, FINRA publishes its arbitration case statistics on its website, which includes data on the number of cases brought, the types of claims, and how often claimants recover, among other data.[16] For example:

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[14] FINRA Rule 12200.

[15] *See* SIFMA, *White Paper on Arbitration in the Securities Industry* (Oct. 2007), *available at* http://www.sifma.org/Issues/Legal,-Compliance-and-Administration/Pre-Dispute-Arbitration/Resources); *see also* FINRA, Statement on Key Issues to the SEC Investor Advisory Committee Panel on Arbitration (May 17, 2010) (defending the procedural fairness of securities arbitration), *available at* http://www.sec.gov/spotlight/invadvcomm/iacmeeting051710-finra.pdf (citing current data and statistics in support of FINRA arbitration).

[16] *See Dispute Resolution Statistics*, FINRA (May 2013), *available at* http://www.finra.org/ArbitrationAndMediation/FINRADisputeResolution/AdditionalResources/Statistics/ (monthly report of FINRA arbitration and dispute resolution statistics).

- During 2012, 4,299 new cases were filed and 4,877 existing cases were closed.

- In 2012, the average "turnaround time" (arbitration process in months) was 16.5 months for hearing decision cases and 7.2 months for simplified decisions, for an overall turnaround time of 14.3 months.

- In 2012, 50% of cases closed as a result of direct settlement by the parties, 10% of cases were settled via mediation, 21% of cases were decided by arbitrators (83% of which were decided after a hearing) and, finally, 12% of cases were withdrawn.

- 45% of cases decided in 2012 resulted in the customer being awarded monetary damages or non-monetary relief. In 2012, approximately 78% of customer claimant cases resulted, through settlements or awards, in monetary or non-monetary recovery for the investor.

- Notably, breach of fiduciary duty is usually the most common claim brought against BDs, and has been for some time, regardless of BDs' 'official' status under the law.

Advisory clients have only a limited private right of action under the Advisers Act, which allows them to void an advisory contract and seek restitution of fees paid. RIA clients that wish to hold their RIAs accountable for breach of their federal fiduciary duties must do so under principles of state common law fiduciary duty, except to the extent the RIA and client have agreed to arbitrate their disputes. There is no readily available means currently to track such cases or to extract relevant statistics regarding those claims and make them available in a transparent manner.

While it would be beneficial to retail clients if more consistent rules applied when pursuing private claims against their financial professionals, the SEC should not delay adopting a uniform fiduciary standard of conduct to gather more data on different dispute resolution forums and retail clients' relative experiences in those forums. As explained above, such data is not directly relevant to the question of whether or not a uniform fiduciary standard of conduct would be beneficial to retail clients. However, the SEC should consider in connection with implementing a uniform fiduciary standard for BDs and RIAs avenues for leveling the playing field in terms of retail clients' ability to seek remedies when there has been harm.

III. THE PROBLEM WITH SUBJECTING BDS TO ADVISERS ACT GUIDANCE AND PRECEDENTS UNDER SECTION 206

The SEC Staff study on RIAs and BDs recommended that in implementing the uniform fiduciary standard, the SEC should extend the existing guidance and precedent under the Advisers Act where similar facts and circumstances would make the guidance and precedent relevant and justify a similar outcome.[17] In the Request, the SEC acknowledged the limitations of applying

[17] *See* SEC. & EXCH. COMM'N STAFF, STUDY ON INVESTMENT ADVISERS AND BROKER DEALERS AS REQUIRED BY SECTION 913 OF THE DODD-FRANK WALL STREET REFORM AND CONSUMER PROTECTION ACT 111 (2011) (*hereinafter*, "**SEC Staff Report**").

such guidance and precedents to BDs, pointing out that they turn on the specific types of services provided and disclosures made and, therefore, may not directly apply to BDs.[18] This is a critically important point, because establishing that an intermediary is a fiduciary who is required to act in the best interests of investors is the "beginning of the analysis, not the end."[19] The contours of one's fiduciary obligation are highly contextual and depend on the scope of one's responsibilities as defined by agreement and the factual circumstances of the relationship. The trustee of a family trust, for example, is held to a fiduciary standard but how that standard is applied will differ from how it is applied to a corporate fiduciary.[20] In the context of BDs and RIAs, the specific rules and guidance that should apply to BDs when providing episodic non-discretionary advice solely incidental to securities transactions will need to be different from that currently applicable under the Advisers Act to RIAs providing, for example, discretionary portfolio management services, even if both are derived from a uniform fiduciary standard.

Because of fundamental differences between BD and RIA roles and business models, attempting to apply Advisers Act guidance and precedent to BDs without further clarification and interpretation by the SEC would create a high risk of confusion and misapplication, resulting in unnecessary legal and compliance costs and exposure under the new uniform fiduciary standard. SIFMA therefore strongly opposes this approach. The SEC should instead establish new rules under Section 15 of the Exchange Act that would provide the detail, structure and guidance necessary to enable BDs to apply the uniform fiduciary standard of conduct to their distinct operational models.

We provide below examples of why applying existing Advisers Act guidance and precedent to BDs would be insufficient at best, and would likely create confusion and uncertainty under the new uniform fiduciary standard and ultimately undermine the intent of Section 913.

A. EPISODIC DUTY VS. CONTINUOUS DUTY

The scope of activity for federally-registered advisers is usually to provide continuous and regular portfolio management services or investment advice with respect to their clients' accounts, which extend beyond the time a particular trade is made, and which entails an ongoing duty to supervise the account, regardless of whether any trading occurs.[21]

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[18] Request at 30, n. 43.

[19] Elisse B. Walter, Commissioner, Sec. & Exch. Comm'n, Speech at Mutual Fund Directors Forum Ninth Annual Policy Conference: Regulating Broker-Dealers and Investment Advisers: Demarcation or Harmonization (May 5, 2009) (available at http://www.sec.gov/news/speech/2009/spch050509ebw.htm).

[20] *See* RESTATEMENT (THIRD) OF AGENCY § 1.01 cmt. e (2006) ("Any agent has power over the principal's interests to a greater or lesser degree. This determines the scope in which fiduciary duty operates.").

[21] RIAs' compensation structure by and large reflects this business model. According to the SEC Staff Report, over 95% of RIAs registered with the SEC charge clients fees for investment advisory services based on the percentage of assets under management.

In contrast, BDs provide investment advice incidentally to a specific transaction and are compensated through commissions or similar transaction-based arrangements. Therefore, the BD's duty is episodic – it should apply only when a BD is providing personalized investment advice to a retail client and the duty should end when the service has been rendered. Section 913(g)(1) explicitly provides that "[n]othing in this section shall require a broker or dealer or registered representative to have a continuing duty of care or loyalty to the customer after providing personalized investment advice about securities." Section 913 thus preserves the episodic, transaction-based duty for BDs.

Advisers Act case law, however, is strewn with language stating that an adviser's duty does not require a transaction to apply and instead is continuous and ongoing.[22] Applying such case law to BDs would be inconsistent with both Section 913 and BDs' business models.

B. NONDISCRETIONARY ADVICE VS. DISCRETIONARY ADVICE

Virtually all SEC and staff guidance currently applicable to RIAs relate to *discretionary* management services, which will not provide meaningful guidance as to what conduct is expected of a fiduciary that provides only *nondiscretionary* advice on a commission or transaction basis. Referring to SEC guidance applicable to RIAs, a leading subject matter expert has observed:

> "[T]he fiduciary standard of the Advisers Act . . . is incomplete when it comes to the obligations of financial professionals who provide non-discretionary investment advice to retail investors. This is understandable, given that most advisers provide only discretionary advice, but by making broker-dealers subject to a uniform fiduciary standard, closing this guidance gap is critical . . . . While it may seem attractive to simply apply the standards for discretionary relationships to include non-discretionary relations, in fact this approach seems impractical and simply would not provide an effective regulatory approach for non-discretionary relationships . . . ."[23]

SIFMA strongly believes that the SEC should articulate a clear set of rules that define how the uniform fiduciary standard would be applied specifically to BDs providing non-discretionary advice to retail investors on a commission or transaction basis. The SEC should, in the first instance, look to SEC and FINRA guidance currently applicable to BDs when providing non-discretionary investment advice in their capacity as BDs. At a minimum, new rules should make clear that BDs' fiduciary duties apply to specific accounts and not to the overall relationship, that

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[22] *See, e.g.*, *Sec. & Exch. Comm'n v. Capital Gains Research Bureau*, 375 U.S. 180, 187 (1963) (an investment adviser's most basic function is to "furnish[] to clients. . . continuous advice regarding the sound management of their investments" and the adviser should "limit [] efforts and activities to the study of investment problems from the investor's standpoint, not engaging in any other activity, such as security selling or brokerage. …."); *Laird v. Integrated Res., Inc.*, 897 F.2d 826, 837 (5th Cir. 1990) (the adviser has a duty to provide continuous advice to his client).

[23] THOMAS P. LEMKE & GERALD T. LINS, REGULATION OF FINANCIAL PLANNERS § 3:12 at 3–38 (2012).

such duties end once the personalized investment advice has been provided and that, absent specific agreement, BDs do not owe a duty to continuously monitor a nondiscretionary account.

C. Conflicts That Can Be Managed and Disclosed vs. Impermissible Conflicts

Given the very different business model of BDs and the services they provide as compared to RIAs, different guidance and standards will need to be developed concerning how conflicts can be managed and disclosed to clients. A key difference between BDs and RIAs is that the former customarily engages in principal transactions with clients. Importantly, in omitting any reference to Section 206(3) of the Advisers Act in Section 913 of the Dodd-Frank Act, Congress intended to preserve for BDs the ability to engage in principal transactions under the uniform fiduciary standard of conduct.

The Request appears to suggest that the SEC would take a fairly moderate "eliminate or disclose" approach towards managing conflicts of interest in implementing a new uniform fiduciary standard. SEC staff guidance issued over the years regarding the fiduciary duty of RIAs under Section 206, however, appears to express a preference for entirely avoiding conflicts over disclosing and managing them, and this line of guidance risks being misapplied if simply overlaid on BDs without further rulemaking.

Examples of such guidance for RIAs include:

- Amendments to Form ADV, Release No. IA-3060, Jul. 28, 2010 (SEC summarizes the fiduciary duty of an adviser under the Advisers Act by stating that "[a]n adviser must … seek to avoid conflicts with its clients and, at a minimum, make full disclosure of any material conflict or potential conflict," citing to *SEC* v. *Capital Gains Research Bureau, Inc.*, 375 U.S. 180 (1963) and *In the Matter of Arleen W. Hughes*, Exchange Act Rel. No. 4048 (Feb. 18, 1948)).

- Information for newly-registered investment advisers, available at http://sec.gov/divisions/investment/advoverview.htm ("You should not engage in any activity in conflict with the interest of any client . . . .").

- *In re Terence Michael Coxon*, Release ID-140 (Apr. 1, 1999) ("A fiduciary must therefore refrain from putting himself in a position of conflict of interest since it does not permit him to 'retain the freedom of judgment and action' that he ought to have as manager of other people's money.").

If Congress had intended the SEC to apply wholesale the Advisers Act to BDs, it could have simply eliminated the broker-dealer exception to the Advisers Act definition of "investment adviser." This would have resulted in both BDs and RIAs becoming subject to the general fiduciary duty implied under the Advisers Act. Congress chose not to take this approach but

explicitly recognized that the uniform fiduciary standard should "appropriately adapt to the differences between broker-dealers and registered investment advisers."[24]

While BDs regularly provide advice about securities, they also provide a broad range of additional products and services that are beneficial to both the economy and retail investors, but often carry inherent conflicts of interest. For example, BDs provide initial and follow-on public offerings and other underwritten offerings and sell fixed income and affiliated products, all of which contribute to a strong financial industry and capital raising, which is essential for economic growth and job creation. Given the very different role of BDs in the marketplace and the services they provide, different guidance and standards will need to be developed regarding, for example, when the fiduciary duty begins and ends and when a conflict will be deemed so impermissible that it must be eliminated rather than disclosed and managed.

The SEC should carefully consider the differences between the BD and RIA business models and adopt conflict rules for BDs that are suitable for and calibrated to BDs specifically. Not doing so would negatively impact choice, product access and affordability of customer services, and thereby negatively impact the U.S. economy.

IV. NEW INFORMATION AND DATA TO ASSIST IN THE SEC'S COST-BENEFIT ANALYSIS

The following section presents data collected through a survey of 18 SIFMA member firms that are registered BDs relating to the costs of developing and maintaining a disclosure form similar to Form ADV Part 2A and of developing and maintaining a comprehensive compliance and supervisory system and procedures, and related training programs, to implement the uniform fiduciary standard. The surveyed firms, all of which are either dually-registered as RIAs or are affiliated with RIAs, were composed of 12 large BDs[25] and six regional BDs.[26] No firm responded that it was a small BD.[27] A summary and analysis of the survey results are presented below. Not all firms responded to all of the questions in the survey, so sample sets for certain questions were smaller than 18 as indicated in the discussion below.

[24] *See* Frank Letter, *supra* note 6, at 1.

[25] We defined large firms as firms with an international presence that generate hundreds of millions or billions in revenues from investment banking, capital markets and/or from diverse securities product lines both retail and institutional.

[26] We defined regional firms as firms that operate in several geographically significant areas and generate hundreds of millions in revenue from diverse securities product lines. These firms are often full service, retail and institutional broker-dealers.

[27] We defined small firms as primarily retail-oriented, although some are small institutional firms. They operate in a limited geographical area with few employees and/or independent contractors and few, if any, branch offices.

A. PROFILE OF SURVEYED FIRMS

Survey participants covered a broad spectrum of the BD community, as described below.

Regarding the minimum investment amount required to open an advisory account, of the 17 firms that responded, the average was approximately $43,000, with a high of $250,000, a low of $5,000 and a median value of $25,000.

Next, to assess the volume of retail investor assets held at the surveyed firms, each firm was asked to approximate the dollar amount of assets in “retail client” broker-dealer accounts and in “retail client” investment adviser accounts at the firm as of December 31, 2012. Firms were requested to apply the definition of “retail customer” used in the Request, which is “a natural person, or the legal representative of such natural person, who (A) receives personalized investment advice about securities from a broker, dealer or investment advice; and (B) uses such advice primarily for personal, family, or household purposes.”

Although 12 of the 16 responding firms reported they had systems allowing them to distinguish between retail and institutional accounts, several firms reported that their systems did not track for “retail clients” as defined in the Request and, therefore, it was not possible to extract data pertaining solely to that particular group of clients. In particular, some firms noted that their retail client data included accounts where the majority of transactions are self-directed and pointed out the difficulty of isolating data to retail clients to which investment advice is actually provided. These comments suggest that the SEC should carefully consider how it formulates and applies the retail client definition in its rules.[28]

[28] For example, certain FINRA rules define a retail account as an account that is not an institutional account, as defined in FINRA Rule 4512(c).

15 firms responded with data on assets held as of December 31, 2012, as follows:

	BD retail client accounts	Retail investment adviser accounts
Aggregate assets among the 15 responding firms (including assets held in IRA accounts)	$4.79 trillion held in 47.7 million accounts	$1.72 trillion held in 5.71 million accounts
Per firm average	$319 billion held in 3.18 million accounts	$114 billion held in 381 thousand accounts
High/low range	High: $1.4 trillion Low: $1.76 billion	High: $397 billion Low: $1.28 billion
Portion of aggregate assets among 15 firms held in IRA accounts	$1.77 trillion held in 21.5 million accounts	$447 billion held in 3.31 million accounts
Per firm average	$118 billion held in 1.44 million accounts	$29.8 billion held in 236 thousand accounts
High/low range	High: $614 billion Low: $1.83 billion	High: $134 billion Low: $107 million

In addition, each surveyed firm was asked to provide information about the dollar amount of principal transactions it engaged in with retail clients in 2012. 10 firms[29] responded, as follows:

	BD retail client accounts	Retail investment adviser accounts – principal transactions under Section 206(3)	Retail investment adviser accounts – principal transactions under Rule 206(3)-3T
Total $ amount of principal transactions in 2012 among the responding firms	$809 billion across 2.48 million accounts	$36 billion across 498 thousand accounts	$8 billion across 163 thousand accounts
Per firm average	$80.9 billion across 248 thousand accounts	$6.03 billion across 83 thousand accounts	$1.15 billion across 23 thousand accounts
Types of securities transacted on a principal basis (per firm approximate average among the responding firms)	• Equities (market making): 12% • Fixed income: 75% • Underwritten public offerings: 9% • Affiliated products (*e.g.*, affiliated mutual funds, structured products, private equity, annuities, and other alternative investments): 3% • Currency: 2%	• Equities (market making): 5% • Fixed income: 63% • Underwritten public offerings: 24% • Affiliated products: 7% • Currency: 2%	• Equities (market making): 5% • Fixed income: 72% • Underwritten public offerings: 5% • Affiliated products: 2% • Currency: 1%

Not surprisingly, firms engaged in far more principal transactions with BD retail client accounts than with retail investment advisory accounts – approximately 18 times as much in terms of aggregate dollar amount, and with approximately four times as many retail accounts.

B. SUGGESTED APPROACH AND COST ESTIMATES OF IMPLEMENTING A NEW DISCLOSURE REGIME

With respect to the appropriate disclosure regime to be applied under a new uniform fiduciary standard, we believe that a layered approach to disclosure would be the most effective. Such an approach would front load disclosure at the commencement of the relationship when customers are most likely to focus on the details of the relationship and supplement disclosure as necessary.

Disclosure provided at account opening should clearly communicate significant types of potential conflicts of interest and BDs generally should be allowed to make the disclosure other than through hard copy mailings. More detailed disclosure, such as disclosure that is applicable

[29] With respect to the three categories of principal transactions (BD, RIA under Section 206(3), and RIA under Rule 206(3)-3T), 10 firms, 6 firms, and 7 firms, respectively, responded with relevant data.

to only a limited subset of customers, should be permitted to be made on a website. In addition, standards for updating disclosures should be clearly delineated. Updates should be permitted to be made through a website where a firm can highlight specific changes to its disclosures. Firms should be required to provide customers with an annual notification of the firm's website address. Web-based disclosure is an effective means to make information available to customers at a time that is most relevant to their investment decisions, and therefore can make disclosure a more useful tool for customers as they contemplate investment decisions.

For purposes of uniformity, and for the benefit of dually-registered firms, the current Form ADV Part 2A for RIAs should be modified to be used by BDs to provide disclosure to retail clients to whom personalized investment advice will be provided. Moreover, any new requirements should build upon existing systems, such as FINRA's BrokerCheck database.

Consistent with the proposed approach to disclosure outlined above, the Request assumes that the new uniform fiduciary standard would require BDs to provide disclosure in the form of a general relationship guide similar to Form ADV Part 2A, to be delivered at the time of entry into a retail customer relationship. Accordingly, we surveyed our BD members regarding their projections of prospective costs associated with developing, preparing, maintaining, and updating such an up-front disclosure and relationship guide.

In doing so, we asked our members to assume that the relationship guide would contain a description of, among other things, the firm's services and fees, and the scope and terms of advisory services offered to retail customers, including: (i) whether advice and related duties are limited in time or are ongoing, or are otherwise limited in scope (*e.g.*, limited to certain accounts or transactions); (ii) whether the BD only offers or recommends proprietary or other limited ranges of products; and (iii) whether, and if so the circumstances in which, the BD will seek to engage in principal trades with a retail customer. The guide could include disclosure of other material conflicts of interest, such as conflicts of interest presented by compensation structures. Firms would also be required to maintain and update the guide with new, material disclosures and as developments arise in terms of regulatory guidance, legal precedent, and changes in the firm's practices.

In terms of the cost components for developing, preparing, maintaining, and updating a BD relationship guide, we asked our members to consider any (i) outside legal counsel costs, (ii) outside compliance consultant costs, (iii) other out-of-pocket costs, and (iv) employee- and staff-related costs. For each of these components, we also asked our members to consider the initial, one-time, up-front costs to develop and prepare the guide, as well as the ongoing annual costs to maintain and update the guide.

For employee- and staff-related costs, for example, we asked our members to estimate, for each applicable department of the firm (*e.g.*, legal and compliance, management and administration, retail, institutional and research), the approximate total number of incremental, additional person-hours spent on, and the approximate total cost of, activity related to the initial development and preparation of the relationship guide and maintaining and updating it.

We asked firms to identify the various expense categories that comprised their estimates of "out-of-pocket" costs. The firms identified the following costs, among others:

- Information technology suppliers and vendors;
- Information technology systems, hardware and software, support and testing/audit;
- graphic layout, printing, distribution, postage and mailing costs; and
- communications, marketing, business review, risk review and surveillance.

17 of the 18 member firms responded to our request for cost estimates. These firms in the aggregate estimated that they would need to furnish the BD relationship guide to a combined total of approximately 50.6 million retail customers.

Over 75 percent of responding survey participants said they planned to hire outside legal counsel in connection with preparing their relationship guide. Less than a handful stated that they planned to hire outside compliance consultants. In any event, the vast majority of the firms' estimated costs fell into the categories of out-of-pocket expenses, and employee and staff-related costs.

The 17 responding firms' total estimated upfront cost of creating and maintaining a BD relationship guide varied significantly by firm and did not indicate a clear consensus.[30] The largest cluster of firms (a group of seven firms) provided estimates of initially developing the BD relationship guide and maintaining it for the first year in the range of $1.2 to $4.6 million. Upon eliminating the two highest and two lowest estimates as outliers, the remaining 13 firms estimated a per firm average cost of about $2.8 million. 12 of the 16 firms that provided ongoing annual cost projections estimated that the average per annum cost of updating and maintaining the relationship guide would be about $631,000.

The foregoing estimates of the costs of creating and updating up-front disclosure similar to Form ADV Part 2A are based on the assumptions set forth in the Request and as outlined above. These cost estimates would increase significantly if additional disclosure and conflict management obligations were imposed under the new standard. The following prospective obligations, among others – which we believe are unnecessary – would be burdensome and increase substantially firms' costs:

- Requiring BDs to also provide Form ADV Part 2B disclosure, known as the brochure supplement, disclosing information about the firm's supervised persons (*i.e.*, RIAs). Such disclosure would be unnecessary and duplicative, given that

[30] For example, one firm's estimates were uniformly several multiples higher than the next highest firm's estimates, and many multiples higher than the average firm's estimates, for both the BD relationship guide, and the system and procedures and training program, discussed in Part IV.C, *infra*.

BDs already make robust disclosures about their registered representatives through the BrokerCheck and CRD systems maintained by FINRA.

- FINRA rulemaking to impose additional disclosure obligations above and beyond those established by the SEC under the uniform fiduciary standard.

- Requiring disclosures and updates to be delivered via hard copy mailings and/or imposing additional disclosure requirements, such as mandating firms to generate special periodic reports detailing principal transactions, for example. In particular, hard copy mailings are very costly[31] and, SIFMA believes, generally are no more effective (and in some cases, may be less effective) than web-based disclosures.

- Requiring written client consents from existing customers regarding the disclosed conflicts. Requiring such consents would be very time consuming and expensive, and likely would not result in high response rates.

- Effectively prohibiting BDs from offering certain products through the imposition of overly onerous or rigid conflicts of interest rules.[32] We assume the new standard will be generally conflict disclosure–oriented, and not conflict avoidance–oriented. If products with significant, built-in conflicts are banned (*e.g.*, certain structured products), that would undermine investor choice and product access, and thereby hurt our economy more generally.

C. COMPLIANCE AND SUPERVISORY SYSTEM AND PROCEDURES, AND TRAINING PROGRAM DATA

In addition to up-front disclosures, a new uniform fiduciary standard would require BD firms to develop and implement a new, comprehensive compliance and supervisory system and procedures and related training programs to adapt to the new uniform fiduciary standard. Accordingly, we also surveyed our BD members to estimate these costs.

In doing so, we asked our members to assume that the compliance and supervisory system and procedures would need to address, among other things:

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[31] One member estimated that the printing and postage costs associated with delivering a summary prospectus of 8-10 pages was about $1.50 per mailing. Similarly, the costs of printing and mailing a 20 page Form ADV Part 2A disclosure was about $2.30 per mailing. These figures translate to between $3 million and $4.6 million in printing and postage costs alone for a firm with a 2 million customer base.

[32] Page 34 of the Request states, "Assume that the rule would prohibit certain sales contests. The rule would prohibit the receipt or payment of non-cash compensation (e.g., trips and prizes) in connection with the provision of personalized investment advice about the purchase of securities." To our understanding, the prospective prohibition on non-cash compensation would be limited to sales contests that do not comply with existing FINRA rules and guidance, but we ask the SEC to confirm that understanding. In addition, we reserve the right to comment in greater detail on this issue, as we deem it beyond the scope of this response letter.

- oral or written disclosure at the time personalized investment advice is provided of any new material conflicts of interest, or any material change to an existing conflict;

- guidance regarding documenting "no advice" transactions;

- guidance regarding documenting instances where a retail client refuses to follow or contradicts personalized investment advice;

- guidance regarding the circumstances under which a continuing duty to monitor may attach, and the process and documentation to avoid such an ongoing duty;

- a principal transactions policy that clarifies BD obligations when offering corporate bonds, new issues, and other securities which are initially only offered on a principal basis;

- an allocation of investment opportunities policy, including procedures to document non-standard allocations, and techniques for testing allocation fairness;

- a proprietary and structured products policy that highlights any special obligations when recommending such products;

- guidance on how to communicate with retail clients about, and conduct a comprehensive review of, the totality of their accounts, including advised and non-advised accounts, and the process and documentation to avoid creating fiduciary obligations with respect to non-fiduciary, transactional and self-directed accounts; and

- comprehensive firm-wide training in connection with the new system and procedures.

Firms would also be required to regularly maintain and update their system and procedures, and conduct initial and periodic training, as developments arise in terms of regulatory guidance, legal precedent, and/or the firm's practices.

As with the relationship guide, in terms of the cost components for developing and implementing their compliance and supervisory system and procedures, we asked our members to consider any (i) outside legal counsel costs; (ii) outside compliance consultant costs; (iii) other out-of-pocket costs; and (iv) employee- and staff-related costs. For each of these components, we also asked our members to consider the one-time, up-front costs to develop the system and procedures, as well as the ongoing annual costs to maintain and update the system and procedures.

We also asked firms to identify the various expense categories that comprised their estimates of "out-of-pocket" costs. The firms identified the following costs, among others:

- Information technology suppliers and vendors;

- Information technology systems, hardware and software, support and testing/audit;

- communications, marketing, business review and risk review;

- training materials: creating, editing, and circulating new materials; reviewing, editing, finalizing, and publishing all impacted training materials;

- training: providing training and communication to all impacted personnel, particularly sales and operations personnel;

- reviewing and updating all existing client contracts and client disclosures;

- documentation and delivery of disclosure;

- review and updating of sales surveillance tools;

- reviewing and updating all impacted policies and procedures, including written supervisory procedures;

- publishing and distributing revised policies and procedures;

- reviewing, editing, finalizing and publishing all impacted marketing materials; and

- updating exam test modules and instructions, training examiners, and executing additional testing procedures across all branch offices.

The same 17 member firms that provided cost estimates for the relationship guide also provided cost estimates for the initial development of a compliance and supervisory system and procedures and training programs. As with the relationship guide estimates, the vast majority of responding member firms stated their intent to hire outside legal counsel to help develop their system and procedures, and only about a handful stated that they planned to hire outside compliance consultants. Likewise, the vast majority of the firms' estimated costs fell into the categories of out-of-pocket expenses and employee- and staff-related costs.

The same firms also responded with the estimated annual cost to maintain and update such system, procedures and programs.

As with the firms' estimates for the BD relationship guide, the firms' estimated cost to develop, maintain and update a system and procedures and training program also varied significantly by firm and did not indicate a clear consensus. The largest cluster of firms, a group of 9 firms, estimated the total costs of initially developing the necessary infrastructure and maintaining and

implementing it for one year in the range of approximately $1 to $6 million. Upon eliminating the two highest and two lowest estimates as outliers, the average estimate was approximately $5 million. 12 of the 16 firms that provided ongoing annual cost projections estimated that it would cost about $2 million per year to update, maintain and implement those systems, procedures and programs.

As a point of comparison, we asked firms to report the total costs incurred to date to implement FINRA's new suitability rule, Rule 2111,[33] which took effect in July 2012. Of the 18 responding firms, the average firm estimated it had spent approximately $4.6 million to comply with new FINRA Rule 2111 to date.

Finally, in assessing the costs to firms of developing compliance and supervisory systems and procedures and related training programs related to implementing the uniform fiduciary standard, the SEC should also consider the costs to firms of complying with additional rules FINRA may impose following the SEC's rule adoption.

V. BROADER REGULATORY HARMONIZATION

As discussed earlier, SIFMA also supports harmonizing other areas of BD and RIA regulation, including advertising, the use of finders and solicitors, supervisory requirements, licensing and registration of firms and associated persons, and books and records, among others, particularly as they relate to the provision of services to retail clients.

As the SEC has recognized, while both BDs and RIAs are subject to extensive regulation across all of these areas, in general, the regulation of BDs is more detailed and involves significantly more regulatory costs than investment adviser regulation.[34] In some instances, the disparity has prompted regulatory arbitrage, as registered representatives of BDs have opted to forgo their brokerage licenses for adviser licenses.

SIFMA believes there is substantial room for broader harmonization of BD and RIA regulations relating to the provision of services to retail clients that would eliminate inconsistent regulation of similar conduct, decrease regulatory burdens, reduce incentives for regulatory arbitrage and, more generally, result in a more streamlined, transparent and rational regulatory framework. Importantly, harmonized rules would need to be sufficiently tailored to account for the differing operational and business models of BDs and RIAs.

[33] FINRA Rule 2111 expanded BD suitability obligations by requiring suitability analysis of investment strategies and hold recommendations, expanding the necessary customer profile information that a BD must obtain and requiring BDs to obtain affirmative consent from clients in order to rely on the institutional suitability safe harbor.

[34] *See*, *e.g.*, Asset-Based Brokerage Fee Rule, Exchange Act Rel. No. 50,980 (Jan. 6, 2005) ("Although . . . the Advisers Act contains some restrictions, and those impose some costs on investment advisers that are not a part of broker-dealer regulation, broker-dealer regulation is much more detailed and involves significantly more regulatory costs than investment adviser regulation.").

VI. CONCLUSION

SIFMA supports a uniform fiduciary standard for BDs and RIAs when providing personalized investment advice about securities to retail clients and broader regulatory harmonization. Our support, however, is predicated upon appropriate cost-benefit analysis and implementation of the standard in a manner that preserves investor choice, is cost-effective and business model neutral, and avoids regulatory duplication or conflict. In implementing a uniform fiduciary standard, SIFMA urges the SEC to provide guidance that would specifically apply to the BD business model, rather than attempting to apply Advisers Act guidance and precedent to BDs.

While SIFMA has collected data that sheds some light on important aspects of the costs of implementing the new standard, we note that the SEC will need to significantly refine its data collection efforts, which can only be possible once the SEC determines how it plans to implement the uniform fiduciary standard.

Finally, as noted, DOL rulemaking should be closely monitored and coordinated, as the failure of the SEC and the DOL to act in concert to issue clear, harmonized fiduciary regulations has the potential to be catastrophically disruptive and costly.

After so many decades of bifurcated standards and rules, individual retail investors deserve a single, new uniform fiduciary standard when receiving personalized investment advice from either a BD or an RIA. That standard should ensure that retail investors' best interests are put first while also maintaining their ability to choose the products and services that best suit their needs. The Dodd-Frank Act provided the road map for the SEC to establish a uniform fiduciary standard of conduct that accomplishes that goal. SIFMA remains a willing partner in an SEC-led process that preserves investor choice, while not picking a winner between the BD and RIA business models. Working together, all interested parties can change the status quo and enhance investor protection along the way.

Please contact the undersigned if you would like to further discuss these issues or if we can provide further assistance as you consider this important topic.

Sincerely yours,

Ira D. Hammerman
Senior Managing Director
and General Counsel

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