



## **SEC Releases Study on Broker Dealers and Investment Advisors with Recommendations toward a Uniform Fiduciary Standard and Harmonization of Regulation**

**January 26, 2011**

New York, NY - On Friday, January 21<sup>st</sup>, 2011, the SEC released a [Study on Broker Dealers and Investment Advisors](#) as required by Section 913 of the Dodd-Frank Wall Street Reform and Consumer Protection Act. The study aims to evaluate the effectiveness of existing regulations governing the provision of investment advice to retail customers – and – whether there are gaps, shortcomings, or overlaps in the different standards of protection currently employed.

### ***From the Regulators on a Uniform Fiduciary Standard and Harmonization of Regulation***

In the study on broker dealers and investment advisors, the Staff of the SEC finds that retail investors are generally not aware of the differences in regulatory guidelines governing broker dealers and investment advisors nor the legal implications of those differences and investor protection would be increased through a uniform fiduciary standard and harmonization of regulation.

Study Recommendations:

- **Uniform Fiduciary Standard** - “The Staff... recommends establishing a uniform fiduciary standard for investment advisers and broker-dealers when providing investment advice about securities to retail customers that is consistent with the standard that currently applies to investment advisers. The recommendations also include suggestions for considering harmonization of the broker-dealer and investment advisor regulatory regimes, with a view toward enhancing their effectiveness in the retail marketplace.” This would include engaging in rulemaking, eliminating/disclosing conflicts of interest under a duty of loyalty, providing guidance on how broker dealers can meet the standard while still engaging in principal trading, Duty of Care, defining ‘personalized investment advice about securities, and Investor Education.
- **Harmonization of Regulation** – “The Staff believes that a harmonization of regulation... would offer several advantages.” The Staff suggests that the commission should consider consistent rules for advertising and other communications, review the use of finders and solicitors, review supervisory requirements, review disclosure requirements in Form ADV vs. Form BD, consider continuing education and licensing requirements for investment advisor representatives, and consideration of books and records retention requirements for investment advisors.

In a [statement released by Commissioners Troy Paredes and Kathleen Casey](#), it is declared that though the study recommends the adoption of a uniform fiduciary standard “the Study does not identify whether retail investors are systematically being harmed or disadvantaged under one regulatory regime as

Accounting & Compliance International  
40 Wall St, 34<sup>th</sup> Floor, New York, NY 10005  
Phone: 212-668-8700  
Email: [info@acisecure.com](mailto:info@acisecure.com)



Accounting & Compliance International

compared to the other” nor does it identify what problems would specifically be alleviated through the harmonization. To that end, they propose that the study does not reasonably conclude that investor protection would be enhanced by a uniform fiduciary standard.

### *From the Industry’s Advocacy Groups*

In a [statement released by SIFMA](#), The Securities Industry and Financial Markets Association, the broker dealer advocate firm found that the SEC had “appropriately articulated a workable comprehensive approach for personalized investment advice for retail customers.” That said, SIFMA reiterated the concern that “the SEC ensure that the broker-dealer role is not hindered” and called for leadership in “applying comparable oversight, examination and enforcement” for any regulation passed.

Similarly, in a [statement released by FSI](#), The Financial Services Institute supports the study’s “roadmap to improved investor protection through a uniform standard of care” while reinforcing the need for guidance on how to cost-effectively implement such a plan.

The National Association of Insurance and Financial Advisors, NAIFA, said that they are concerned with potential costs of the recommended study. As per their [NAIFA statement](#), “NAIFA’s fundamental concern is that the potential additional costs and increased potential liability of applying a ‘one size fits all’ fiduciary standard of care to the broker-dealer business model could result in middle- and lower-market investors having less access to the account services and investment advice that are currently being delivered by registered representatives of broker-dealers.”

[The Financial Planning Coalition](#) has long advocated for a uniform standard for all those providing personalized investment advice for the highest standard of investor protection and in their statement release “applauds the SEC study for recommending ... to establish a uniform fiduciary standard that applies to both broker-dealers and investment advisers that is no less stringent than the standard currently applied to investment advisers.”

### **Regulatory Compliance – from Debate to Implementation**

As the debate continues, regulators will continue to look to the financial community for guidance on how regulatory changes will affect their firms, so ACI encourages our clients and members of the financial community to consider how these changes would affect them and what guidance they’ll need to react accordingly when the time comes. For assistance with regulatory compliance programs, contact [info@acisecure.com](mailto:info@acisecure.com) or call 212-668-8700.

Accounting & Compliance International  
40 Wall St, 34<sup>th</sup> Floor, New York, NY 10005  
Phone: 212-668-8700  
Email: [info@acisecure.com](mailto:info@acisecure.com)