

Congress of the United States
Washington, DC 20515

March 17, 2011

The Honorable Mary L. Schapiro
Chairman
U.S. Securities and Exchange Commission
100 F St., NE
Washington, DC 20549-1090

Dear Chairman Schapiro:

We appreciate the hard work of the Commission and its staff as you seek to protect investors, assure that the capital markets serve their capital raising function, and oversee the financial professionals who help investors access a multitude of different investment products and services. We nevertheless write to express concerns about the recent SEC staff study required by Section 913 of the Dodd-Frank Act ("Study").

As you are aware, Commissioners Casey and Paredes released a separate statement pertaining to the Study in which they outlined their concerns including, "...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..." They go on to state that while the Study recommends the adoption of a new uniform fiduciary standard, "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."

We share these concerns with Commissioners Casey and Paredes and also share their point of view that before any rulemaking goes forward in this area a much stronger analytical and empirical foundation than provided by the Study is required. Indeed, while the new law gives the Commission discretion to adopt a fiduciary duty rule, it does not mandate it, and in no way suggests a congressional intent that the Commission move forward on such a rulemaking without sufficient basis.

It is our view that the Commission has not identified and defined clear problems that would justify a rulemaking and does not have a solid basis upon which to move forward. The SEC should not only conduct a thorough cost-benefit analysis that considers consumer preferences while evaluating the specific impact that any changes in the marketplace would have on investors, but also should assess the broader practical impact that such changes might have throughout the entire financial marketplace. For example, should the SEC's activities involve on some level a relationship with the regulatory activities of other agencies, such as the Department of Labor's proposed rule modifying the existing definition of "fiduciary status" under the

Employee Retirement Income Security Act ("ERISA"), this should factor into the SEC's analysis and subsequent activities so as to minimize harm or disruption to the provision of financial services to investors.

Furthermore, the fiduciary duty issue can not be considered in a vacuum. Issues related to the SEC's recent Study required by Section 914 of the Dodd-Frank Act pertaining to the oversight, examination and enforcement programs that different financial service providers are subject to must be considered concurrently.

It is the intention of the Chairman and members of the Capital Markets Subcommittee to hold a hearing on these issues in the coming weeks. Such a venue should provide a beneficial opportunity to explore the important need for the SEC to conduct much more rigorous analysis and to provide proper analytical justification for action before it considers any rulemaking in this area.

Sincerely,

Scott Harris

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Paul Mangano

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Miss Patricia
