

**Committee for the Fiduciary Standard Analysis of Study under  
Section 913(b)-(c) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (HR 4173)**

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Study to evaluate:

1. Effectiveness of existing standards of care for providing personalized investment advice and recommendations about securities to retail customers.
2. Whether there are legal or regulatory gaps, short-comings or overlaps in standards.

| <b>Considerations:</b>   | <b>Resources:</b>  |
|--|--|
| <p>1. Effectiveness of existing legal or regulatory standards of care for brokers-dealers, investment advisers, and their representatives by the SEC, FINRA, States, and other regulators.</p> <p>2. Whether there are legal or regulatory gaps, shortcomings or overlaps in legal and regulatory standards.</p> | <p>Expertise of SEC policy staff in the Division of Investment Management (“IM”) and Division of Trading &amp; Markets (“T&amp;M”)</p> <p>Expertise of NASAA and its member securities administrators</p> <p>RAND Report: <a href="http://www.sec.gov/news/press/2008/2008-1_randiabdreport.pdf">http://www.sec.gov/news/press/2008/2008-1_randiabdreport.pdf</a></p> <p>Securities are regulated by the Securities and Exchange Commission and by states securities agencies in a system of complementary regulation (see William G. Galvin, Secretary of the Commonwealth Of Massachusetts, Testimony before the House Financial Services Committee, March 20, 2009, <a href="http://www.house.gov/apps/list/hearing/financialsvcs_dem/ma_-_galvin031909.pdf">http://www.house.gov/apps/list/hearing/financialsvcs_dem/ma_-_galvin031909.pdf</a>)</p> <p>In addition, the SEC regularly communicates with and coordinates its resources with state securities regulators and other regulators as required under Section 19(d) of the Securities Act of 1933.</p> |

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| <b>Considerations:</b>   | <b>Resources:</b>   |
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| <p>3. Whether retail customers understand there are different standards of care applicable to broker-dealers and investment advisers.</p> <p>4. Whether the existence of different standards of care confuses retail customers about the quality of advice they receive.</p> | <p>RAND Report: <a href="http://www.sec.gov/news/press/2008/2008-1_randiabdreport.pdf">http://www.sec.gov/news/press/2008/2008-1_randiabdreport.pdf</a></p> <p>Expertise of SEC staff in Office of Investor Education and Advocacy as well as SEC T&amp;M and IM policy staff</p> |

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| <b>Considerations:</b>  | <b>Resources:</b>   |
|---|---|
| <p>5. Regulatory, examination, and enforcement resources devoted to SEC, State and FINRA activities related to enforcing the standards of care – including the effectiveness, frequency, and length of exams.</p> | <p>Expertise of SEC Office of Compliance Inspections and Examinations and SEC Division of Enforcement staff</p> <p>SEC’s 2009 Performance and Accountability Report:<br/><a href="http://www.sec.gov/about/secpar/secpar2009.pdf#performancesummary">http://www.sec.gov/about/secpar/secpar2009.pdf#performancesummary</a></p> <p>SEC Congressional Justification FY 2011: <a href="http://www.sec.gov/about/secfy11congbudgjust.pdf">http://www.sec.gov/about/secfy11congbudgjust.pdf</a></p> <p>Select SEC and Market Data, Fiscal 2009: <a href="http://www.sec.gov/about/secstats2009.pdf">http://www.sec.gov/about/secstats2009.pdf</a></p> <p>FINRA statistics: <a href="http://www.finra.org/Newsroom/Statistics/">http://www.finra.org/Newsroom/Statistics/</a></p> <p>Information on the SEC’s exam program, including frequency of exams:<br/><a href="http://www.sec.gov/about/offices/ocie/ocieoverview.pdf">http://www.sec.gov/about/offices/ocie/ocieoverview.pdf</a></p> <p>SEC OIG Report: <a href="http://www.sec-oig.gov/Reports/AuditsInspections/2009/470.pdf">http://www.sec-oig.gov/Reports/AuditsInspections/2009/470.pdf</a></p> <p>Testimony of SEC Commissioner Walter before the House Financial Services Committee, March 20, 2009, on federal enforcement:<br/><a href="http://www.house.gov/apps/list/hearing/financialsvcs_dem/walter032009.pdf">http://www.house.gov/apps/list/hearing/financialsvcs_dem/walter032009.pdf</a></p> <p>Testimony of State Officials and Regulators before the House Financial Services Committee, March 20, 2009 on state enforcement:<br/><a href="http://www.house.gov/apps/list/hearing/financialsvcs_dem/ma_-_galvin031909.pdf">http://www.house.gov/apps/list/hearing/financialsvcs_dem/ma_-_galvin031909.pdf</a><br/><a href="http://www.house.gov/apps/list/hearing/financialsvcs_dem/de_-_ropp.pdf">http://www.house.gov/apps/list/hearing/financialsvcs_dem/de_-_ropp.pdf</a></p> <p>Expertise of NASAA Enforcement Section, Investment Adviser Section, and Broker-Dealer Section</p> |

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| <b>Considerations:</b>  | <b>Resources:</b>  |
|---|--|
| <p>6. The substantive differences in the regulation of broker-dealers and investment advisers when providing personalized investment advice and recommendations to retail customers.</p> <p>7. Specific instances where regulation and oversight of investment advisers provide greater protections and where regulation and oversight of broker-dealers provide greater protections.</p> | <p>Expertise of SEC IM and T&amp;M policy staff</p> <p>RAND Report: <a href="http://www.sec.gov/news/press/2008/2008-1_randiabreport.pdf">http://www.sec.gov/news/press/2008/2008-1_randiabreport.pdf</a></p> <p>Information on broker-dealer regulatory requirements:<br/><a href="http://www.sec.gov/divisions/marketreg/bdguide.htm">http://www.sec.gov/divisions/marketreg/bdguide.htm</a>.</p> <p>Information on investment adviser regulatory requirements:<br/><a href="http://www.sec.gov/divisions/investment/advoverview.htm">http://www.sec.gov/divisions/investment/advoverview.htm</a><br/>and<br/><a href="http://www.sec.gov/about/offices/oia/oia_investman/rplaze-042006.pdf">http://www.sec.gov/about/offices/oia/oia_investman/rplaze-042006.pdf</a>.</p> |
| <p>8. Existing legal or regulatory standards of state securities regulators and other regulators.</p>   | <p>NASAA Directory of Securities Laws and Regulations:<br/><a href="http://www.nasaa.org/Industry__Regulatory_Resources/Directory_of_Securities_Laws__Regulations/">http://www.nasaa.org/Industry__Regulatory_Resources/Directory_of_Securities_Laws__Regulations/</a></p> <p>Expertise of NASAA and member securities administrators</p>  |

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| <b>Considerations:</b>   | <b>Resources:</b>  |
|--|--|
| <p>9. Potential impact on retail customers, including impact on access of retail customers to the range of products / services offered by broker-dealers if broker-dealers are held to the standard of care and other requirements under the Advisers Act.</p> <p>10. Potential impact of eliminating broker-dealer exclusion from the Advisers Act in terms of:</p> <ul style="list-style-type: none"> <li>• Harm/benefits to customers, including impact on access to and availability of advice and recommendations</li> <li>• Number of additional entities/individuals that would be required to register under the Advisers Act, including additional requirements for their representatives and additional costs to entities/individuals</li> <li>• Impact on SEC and State resources for examinations and enforcement</li> </ul> | <p>Expertise of SEC IM and T&amp;M staff</p> <p>Expertise of NASAA Enforcement Section, Investment Adviser Section, and Broker-Dealer Section</p> <p>RAND Report: <a href="http://www.sec.gov/news/press/2008/2008-1_randiabdreport.pdf">http://www.sec.gov/news/press/2008/2008-1_randiabdreport.pdf</a></p> <p>Scholarly articles (e.g., Arthur B. Laby, Reforming the Regulation of Broker-Dealers and Investment Advisers, The Business Lawyer, February 2010)</p> |
| <p>11. Varying level of services provided by broker-dealers and investment advisers to retail customers, and the varying scope and terms of retail customer relationships with broker-dealers and investment advisers</p>  | <p>Expertise of IM and T&amp;M staff, FINRA, and NASAA and member securities administrators</p> <p>RAND Report: <a href="http://www.sec.gov/news/press/2008/2008-1_randiabdreport.pdf">http://www.sec.gov/news/press/2008/2008-1_randiabdreport.pdf</a></p>  |

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| <b>Considerations:</b>   | <b>Resources:</b>  |
|--|--|
| <p>12. Potential impact on retail customers resulting from changes in regulatory requirements and standards of care for broker-dealers and investment advisers, including impact on protection from fraud and access to and availability of advice and recommendations</p> | <p>Testimony of SEC Commissioner Walter before the House Financial Services Committee, March 20, 2009:<br/> <a href="http://www.house.gov/apps/list/hearing/financialsvcs_dem/walter032009.pdf">http://www.house.gov/apps/list/hearing/financialsvcs_dem/walter032009.pdf</a></p> <p>Testimony of James B. Ropp, Delaware Div. of Securities Commissioner, before House Financial Services Committee, March 20, 2009:<br/> <a href="http://www.house.gov/apps/list/hearing/financialsvcs_dem/de_-_ropp.pdf">http://www.house.gov/apps/list/hearing/financialsvcs_dem/de_-_ropp.pdf</a></p> <p>RAND Report: <a href="http://www.sec.gov/news/press/2008/2008-1_randiabdreport.pdf">http://www.sec.gov/news/press/2008/2008-1_randiabdreport.pdf</a></p> |
| <p>13. Potential additional costs and expenses to retail customers, broker-dealers, and investment advisers</p>  | <p>Expertise of SEC IM and T&amp;M staff as well as SEC Division of Risk, Strategy, and Financial Innovation staff</p> <p>Industry studies (e.g., Ticonderoga Securities LLC Research Note, June 18, 2010)</p>   |
| <p>14. Any other consideration the Commission deems necessary and appropriate</p>  | <p>Issues related to Standards of Care:<br/>                     -Disclosure issues<br/>                     -Managing conflicts of interests</p>  |

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**Topics Not Required Under Study**

- The types of exclusions or exceptions that would be necessary or appropriate to address any potential adverse impacts on retail customers that are not warranted by any qualitative changes in retail customer protections
- Whether retail customers understand the differences in terms of regulatory oversight and examinations between brokers, dealers, and investment advisers
- Whether retail customers understand whether transactions recommended by brokers, dealers, investment advisers, persona associated with brokers or dealers, and persons associated with investment advisers will be - fair, suitable, in the best interests of the retail customers; or meet a different standard of care
- Impact of imposing suitability standard on IAs (they are already subject to it)
- Impact of authorizing the SEC to designate an SRO to augment the efforts of the SEC to oversee IAs