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SEC Study Recommends Uniform Fiduciary Standard for Broker-Dealers and Investment Advisers

On January 21, the U.S. Securities and Exchange Commission (SEC) released a study mandated under the Dodd-Frank Wall Street Reform and Consumer Protection Act. The key recommendation of the study is that the SEC should adopt a uniform fiduciary standard for broker-dealers and investment advisers. Specifically, the study proposes that the SEC adopt the following regulation:

> The standard of conduct for all brokers, dealers, and investment advisers, when providing personalized investment advice about securities to retail customers (and such other customers as the Commission may by rule provide), shall be to act in the best interest of the customer without regard to the financial or other interest of the broker, dealer, or investment adviser providing the advice.

The study's recommendation for a uniform fiduciary standard shouldn't be a big surprise to anyone in the financial services industry. More interesting is that the study highlights a number of existing rules and standards of practice the SEC may modify in an effort to implement this uniform standard. To implement the uniform fiduciary standard, the study recommends that the SEC adopt rules to address the following:

Disclosure Requirements. The study recommends rules to address both the existing "umbrella" disclosures as provided in investment advisers ADV-Part II, as well as the specific disclosures provided by investment advisers and broker-dealers at the time each transaction is executed. Broker-dealers may be required to provide umbrella disclosures similar to investment advisers at the time of entering into a new client relationship.

Principal Trading. The study recommends adopting new regulations to address how broker-dealers can meet the uniform fiduciary standard when engaging in principal trading activities.

Customer Recommendations. The study recommends uniform regulations to address the duty of care obligation a broker-dealer or investment adviser has in making recommendations to retail customers.

The study goes beyond recommending a uniform fiduciary standard. It also highlights certain other areas where it believes there should be uniform rules for broker-dealers and investment advisers. These include the following:

- Advertising and communication,
- Use of finders and solicitors,
- Supervision and regulatory reviews,
- Licensing and registration of firms,

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- Licensing and continuing education requirements for persons associated with broker-dealers and investment advisers, and
- Maintenance of books and records.

Based on the study's findings, it appears inevitable that the SEC will adopt a uniform fiduciary standard. However, it remains to be seen exactly how such a standard will impact the manner in which broker-dealers and investment advisers conduct their business. The SEC has indicated that it would propose rules based upon the study's findings during the second quarter of 2011. Therefore, the study's findings are just the beginning of the regulatory process, with the SEC likely adopting a number of new regulations in order to implement the new standard. Importantly, the study indicates that the SEC may use the Dodd-Frank mandate to address a number of other regulatory areas under the concept of "harmonization."

If you have questions about this or any other securities-related issues, please contact one of the attorneys listed below or your Baker Donelson attorney.

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