Public Investors Arbitration Bar Association

March 21, 2012

Ms. Elizabeth M. Murphy, Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Re: Dodd-Frank Investor Financial Literacy Study
Release No. 34-6614; File No. 4-645

Dear Ms. Murphy:

The Public Investors Arbitration Bar Association ("PIABA") submits this letter in response to the request for comments pertaining to the *Investor Financial Literacy Study* commissioned by the Commission under the directive of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("Dodd-Frank Act").

PIABA is a bar association whose member attorneys are devoted to representing the interests of investors in disputes with the securities industry. PIABA was established in 1990 as an educational organization for securities arbitration attorneys who represent the public investor in securities disputes. PIABA members are involved in promoting the interests of the public investor in securities and commodities arbitration by:

1. Protecting public investors from abuses in the arbitration process; and

2. Making securities and commodities arbitration as just and fair as possible through reforms to arbitration forum providers, such as FINRA.

Our members routinely represent public investors who have been financially harmed. As part of our on-going effort to "level the playing field" between Wall Street and Main Street investors, PIABA frequently comments on proposed legislation and rules. The vast majority of the public invest in financial markets at some point in their lives. Most investors begin their financial literacy process when they come into contact with individuals employed in the financial industry. PIABA believes that the issue of investor education is a cornerstone of protecting the investing public.

The financial industry prospers by generating fees from clients. In certain instances, conflicts exist between the revenue generating goal of the financial industry and the preservation and growth of capital of the public investor. Most investors have been told and therefore believe that their financial advisor is acting as their fiduciary. Many customers are often unaware of the high fees charged or of not properly disclosed conflicts of interest. Better investor education would go a long way towards assisting investors in avoiding certain pitfalls.

PIABA's comment is focused on three specific areas which we believe would strengthen investor education. First, PIABA believes that investor education should be conducted by those of who do not have a financial stake in the industry. Second,

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financial institutions should be required to clearly and prominently disclose fees charged to investors and fees generated by the firms. Third, the line between broker-dealers and registered investment advisors should not be blurred with respect to the fiduciary duty owed to customers.

INDUSTRY SPONSORED INVESTOR EDUCATION

In the ideal world, all high school curriculums would incorporate investor education. PIABA, however, recognizes the practical political difficulties with respect to mandating such educational programs on a large scale.

Today, seminars are sometimes disguised and marketed as investor education. The are often nothing more than broker led sales presentations that focus on investing in financial products. Attendees often leave the seminars believing that certain products are the best means to achieve their investment goals without the benefit of a balanced discussion concerning other investment opportunities. Investors may be confused and not necessarily understand that "free lunch" seminars or other similar presentations are not necessarily designed to educated the public.

PIABA believes that continuing to education the public about these type of seminars is crucial. PIABA also believes that efforts made by the Commission or others should be careful not to cede responsibility for investor education solely to the financial industry.

FEE DISCLOSURES

With the advancement of technology over the past several decades, the financial industry now has the ability to generate account statements detailing the investment holdings of their customers. Today, most monthly statements contain pie charts and graphs, entries for deposits and withdrawals as well as information on unrealized gains and losses. One important piece of information is not contained on the account statements—the amounts paid by the customer to the financial institution.

PIABA members routinely examine account statements in evaluating potential investor claims. Even with a trained eye, it is difficult to locate the fees assessed by a brokerage firm. Many investors do not have the ability to readily ascertain how much a financial institution is charging to sell investments or custody assets. Even though credit card companies may not necessarily be fiduciaries, customers can look at their monthly credit card bills to find out the exact amount of interest being charged. No such disclosure requirements exist for the customers of securities firms that owe a heightened standard of care.

A requirement relating to fee disclosures would greatly benefit investors. Investment institutions should be required to prominently display the amount of fees charged on the first page of their monthly statements. Besides setting forth the dollar amount of fees charged, financial institutions should be required to show the annual percentage fee charged with respect to both the net asset value of the account and as a percentage of the net gains and losses for the account.

Financial engineering has made it possible for financial institutions to create complex securities which are marketed and sold to the public investor. Be it collateralized debt obligations, principal protected notes, variable annuities or hedge funds, these products all have thing in common—they are laden with fees and various opportunities for firms to profit beyond the fees charged to the customer. The internal profit points are rarely if ever disclosed to the customer during a sales presentation. In the case of fees for 'derivative' or 'synthetic' products, investors are not advised whether fees would be substantially less if they purchased the individual components of the product separately rather than the product created by the brokerage firm.

Annuity companies frequently pay the brokerage firms sales force directly and then recoup commissions through high mortality expenses or other charges. Whether they are paid directly or indirectly by the customer is not of consequence, brokerage firms should disclose less transparent forms of compensation. With this information, the public investor may have a better understanding of financial products they are being sold.

FIDUCIARY STANDARD OF CARE

PIABA refers the Commission to its previously submitted comment with respect to the Dodd-Frank study of the investment fiduciary standard.[1] However, a discussion of the standard of care owed by the financial industry[2] to public investors must necessarily also be included in the study involving investor education.

Narrowing profit margins have reduced the number of accounts that pay transaction based commissions. Today, many financial institutions have moved from a commission based business model to a fee based model. The line between registered investment advisors and broker-dealers has blurred to the extent that a practical distinction no longer exists. Traditionally, registered investment advisors have been held to a fiduciary standard whereas broker-dealers have argued that a lesser suitability standard applies to their business despite the fact that certain state law already imposes a fiduciary duty on brokerage firms.

After being solicited to open an account and ***promised*** that the account will be handled putting the interest of the customer first, investors with claims against financial institutions are often startled to hear Wall Street and their attorneys argue that no fiduciary duty exists. Wall Street should be held to it's promises, even after a dispute arises.

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[1] Public Investors Arbitration Association comment letter dated September 10, 2010, *Study Regarding Obligations of Brokers, Dealers, and Investment Advisors*, http://sec.gov/comments/4-606/4606-2737.pdf

[2] See the speech of Lori A. Richards, Director, Office of Compliance Inspections and Examinations U.S. Securities and Exchange Commission, at The Eighth Annual Investment Adviser Compliance Summit, Washington, D.C., February 27, 2006, *Fiduciary Duty: Return to First Principles*:

> "I would suggest that an adviser, as that trustworthy fiduciary, has five major responsibilities when it comes to clients. They are:
>
> 1. to put clients' interests first;
> 2. to act with utmost good faith;
> 3. to provide full and fair disclosure of all material facts;
> 4. not to mislead clients; and
> 5. to expose all conflicts of interest to clients."
> http://www.sec.gov/news/speech/spch022706lar.htm

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CONCLUSION

PIABA applauds Congress and the Commission for looking into the vital area of investor education. PIABA welcomes this and future opportunities to provide the Commission with thoughts and ideas as this important effort moves forward.

Very truly yours,

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