Consumer Federation of America

For Immediate Release **Contact:** Barbara Roper
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SEC Study Proposes Sound Approach for
Requiring Brokers to Act in Customers' Best Interests

On Saturday the Securities and Exchange Commission issued a study required under Section 913 of the Dodd-Frank Wall Street Reform and Consumer Protection Act evaluating gaps and overlaps in the regulation of investment advisers and broker-dealers with regard to personalized investment advice to retail investors. CFA Director of Investor Protection Barbara Roper issued the following statement in response:

"For decades, the Securities and Exchange Commission stood by and allowed broker-dealers to market themselves to investors as trusted advisers without requiring them to meet the most basic standard appropriate to that role, a fiduciary duty to act in their customers' best interests. With the release of this report – which calls for brokers to be held to the same high standards all other advisers must meet when they recommend securities to retail investors – the SEC has taken the first, essential step toward reversing that troubling record. From the beginning of her chairmanship, Chairman Mary Schapiro has pledged to deliver on this top investor protection priority, and we are pleased that the agency has moved one important step closer to delivering on that promise.

"Now the agency faces the more difficult task of crafting rules that impose that best interest obligation in a way that both maximizes investor protection and preserves investor choice regarding how they receive advisory services. While the details still need to be worked out, the approach outlined in the report promises to do just that. Moreover, because the fiduciary duty is a flexible standard that can be adapted to a variety of business models, we are confident that this is an achievable goal, and we look forward to working with the Commission to craft a rule that achieves it.

"The report includes other recommendations designed to harmonize regulation of brokers and investment advisers by imposing new requirements from the broker-dealer regulatory regime on investment advisers. CFA's position has always been that brokers and advisers should be subject to the same standards when they perform the same functions. We look forward to reviewing these proposals in greater detail in the weeks ahead to determine whether the differences they seek to reconcile are significant and whether they offer important new investor protections. Based on our initial, cursory review, some at least appear to meet that standard.

“One glaring weakness of the report is that, in its discussion of costs, it offers no analysis of the potential for a fiduciary duty to reduce investor costs and improve the long-term performance of their portfolios by forcing brokers to consider investment cost when making recommendations. Moreover, the agency has made little effort to challenge the unsupported and exaggerated cost claims of industry members who are resistant to the notion that they should place customer interests ahead of their own. Fortunately, the rulemaking process offers an opportunity for the SEC to redress that imbalance, and it is essential that the agency seize that opportunity in order to provide a firmer foundation for its proposed policy approach.

“While there is much work still ahead, the rulemaking that is now possible with the release of this report has the potential to finally deliver to investors the protections they have been demanding for years – the simple assurance that the financial advisers they rely on for advice about retirement, college savings, and other crucial long-term goals deliver recommendations that are designed to benefit the investor rather than themselves.

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The Consumer Federation of America is an association of nearly 300 nonprofit consumer organizations that was established in 1968 to advance the consumer interest through research, advocacy, and education.