FINANCIAL SERVICES INSTITUTE
VOICE OF INDEPENDENT BROKER-DEALERS AND INDEPENDENT FINANCIAL ADVISORS
www.financialservices.org

VIA ELECTRONIC MAIL

February 9, 2011

Office of Regulations and Interpretations
Employee Benefits Security Administration
U.S. Department of Labor
200 Constitution Avenue, NW, Room N-5655
Washington, DC 20210

Re: Hearing on the Proposed Definition of the Term "Fiduciary"

Ladies and Gentlemen:

The Financial Services Institute (FSI) respectfully requests the opportunity to testify at the hearing scheduled for March 1 and March 2, 2011 on the Department of Labor's proposed regulation redefining the term fiduciary.

FSI is an advocacy organization for the financial services industry – the only one of its kind. FSI is the voice of independent broker-dealers and independent financial advisors in Washington, D.C. Established in January 2004, FSI's mission is to create a healthier regulatory environment for its members through aggressive and effective advocacy, education and public awareness. FSI represents more than 120 independent broker-dealers and more than 15,000 independent financial advisers, reaching more than 15 million households. FSI is headquartered in Atlanta, Georgia with an office in Washington, D.C. For more information, visit financialservices.org.

On February 3, 2011, FSI submitted written comments in response to the proposed regulation, which would redefine the circumstances in which a person is considered an investment advice fiduciary under the Employee Retirement Income Security Act of 1974, as amended (ERISA) and section 4975 of the Internal Revenue Code of 1986, as amended. The proposed change impacts thousands of FSI members and the retirement accounts that they service. We addressed several of our members' concerns in our comments; most notably, we explained why the final regulation should clarify that broker-dealers, in their normal course, are not fiduciaries, and how the final rule can (and should) be tailored more narrowly as applied to IRA providers. Our testimony would further address these two key issues. Our representative at the hearing will be selected at a later date. An outline of our testimony follows.

Thank you for your consideration. We look forward to providing comments on this important issue. Should you have any questions, please contact me at 202 379-0943.

Respectfully submitted,

Dale E. Brown, CAE
President & CEO

Outline of Testimony
Employee Benefits Security Administration Hearing
on the Proposed Definition of Fiduciary
March 1-2, 2011

I. The final regulation should clarify that broker-dealers are not investment advice fiduciaries in the ordinary course of business, and will not be considered fiduciaries under the revised definition. [4 minutes]

a. Description of the unique role of broker-dealers in the retirement plan space.

b. Discussion of the negative impact on plans and capital markets if broker-dealers and solicitors are inadvertently considered ERISA fiduciaries.

II. Due to the fundamental differences between ERISA-covered retirement plans and IRAs, only IRA investment service providers who affirmatively accept fiduciary status should be treated as investment advice fiduciaries. [4 minutes]

a. Discussion of the fundamental structural differences between ERISA plans and IRAs.

b. Discussion of the utility of a separate fiduciary definition for IRAs.