

11th Annual IAA Adviser Advocacy Day

Wednesday, June 13, 2018

Hyatt Regency on Capitol Hill, Washington, D.C.



SEC Standard of Conduct Proposals

TALKING POINTS

Background

The SEC recently issued a package of proposals on the standards of conduct for broker-dealers and investment advisers that are designed to enhance retail investors' protection and reduce their confusion about the advice and services they're receiving from their investment professional.

The package includes Regulation Best Interest, which is intended to raise the standard of conduct for broker-dealers, a four-page relationship summary called Form CRS that both investment advisers and broker-dealers would have to provide retail investors before entering into a relationship with them, restrictions on the use of the term "adviser" or "advisor" by broker-dealers that are not also registered with the SEC as investment advisers, an interpretation that proposes to reaffirm and clarify the investment adviser fiduciary duty, and a request for comment on whether the SEC should propose rules for advisers in other areas.

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Talking Points

- We are pleased that the SEC is finally taking action in this area. We are studying the proposal and will recommend improvements to assist the SEC in getting this right.
- On the interpretive release for investment advisers, we believe that advisers already understand their fiduciary duty to their clients so do not feel that an interpretation is necessary. But we are pleased that the SEC is requesting comment on the release. We emphasized to the SEC staff the need to solicit public comment on interpretations such as this one.
- On Form CRS, any additional disclosure must be effective and not add to the confusion already out there. We are concerned that Form CRS may not achieve these goals. So we are pleased that the SEC will conduct investor testing on Form CRS. It is also critical that the public have a chance to comment on the results of the investor testing so we think the SEC should hold off on its comment deadline until those results are in.
- On the proposed new standard for broker-dealers, we are concerned that it is actually very narrow and would not be as customer-protective as the Advisers Act fiduciary duty. It only applies to a broker recommendation and does not extend past that recommendation to other conduct of the broker-dealer that may affect the customer. We want to make sure that the SEC adopts a strong and effective standard that will achieve its investor protection goals.
- On titling, our concern is that limits on specific titles will simply result in the creation of new ones. Also, the proposal would only apply to stand-alone brokers and would not address the confusion that results from "hat-switching," *i.e.*, when the same financial professional changes roles with respect to the same customer but does not clearly explain to the customer how the protections change with the role switch. We believe that any firm or individual that is not subject to a fiduciary duty should not be allowed to hold themselves out in a manner that implies a fiduciary relationship.