FROM THE PRESIDENT & CEO

The Value of Fiduciary Advice Stands Strong

After decades of intermittent debate, the SEC has finally adopted its standards of conduct rulemaking package. The package was expected to raise the standard of conduct for broker-dealers and clear up confusion among investors about the services they could expect from brokers and investment advisers. The final rules, however, have drawn a wide range of disparate and sometimes heated reactions – from jeers to cheers – depending on one's perspective. Our initial takes:

Karen Barr,
IAA President & CEO

At first blush, the package appears to have made some modest enhancements to the standard of conduct for brokers. Only time will tell whether new Reg BI has effectively or sufficiently raised the standard, depending on how it is interpreted, implemented, and enforced.

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The SEC's rulemaking did not alter the investment adviser's special relationship of trust and confidence with its clients. As fiduciaries, investment advisers continue to have an affirmative duty of care, loyalty, and the utmost good faith to act in the best interests of their clients. Investment advisers must not put their own interests ahead of their clients – or, in plain English, *must put their clients' interests first.* Investment advisers must continue to make full and fair disclosure of their conflicts of interest and also ensure that their conflicts do not compromise their advice. These high standards remain at the core of an investment adviser's relationship with its clients. They have served investors, the capital markets, the economy, and our profession well for decades and will continue to do so.

The rulemaking package presents a number of potential challenges. First, brokers will market themselves as being required to act in their customers' best interest. The package has made this easier for brokers by using similar language in Reg BI and the Advisers Act fiduciary duty interpretation. But brokers are not fiduciaries and Reg BI is not the same as a fiduciary duty. It is a transaction-by-transaction standard, limited both in time and scope.

Second, the SEC's approach to the "solely incidental" interpretation and "holding out" concepts did not fully address these issues. While we are pleased that some brokers will not be able to use the "adviser/advisor" titles, the SEC did not go as far as we requested with respect to brokers holding themselves out as providing ongoing advice. And the SEC has now interpreted the brokers' exclusion from the Advisers Act in such a broad way that brokers may be able to provide more than transaction-by-transaction advice without having to register as an investment adviser.

As a result, investors are likely to be as confused as before – if not more so. We must continue to educate the public about the key differences between brokers and advisers and the services they provide, including:

- Investment advisers are fiduciaries to their clients throughout their entire relationship, and with respect to all agreed-upon advisory services.
- Investment advisers generally provide ongoing advice over the long term, as opposed to transaction-by-transaction recommendations or product sales.
- Investment advisers' business models and compensation structures typically align more closely with clients' interests, while brokers and their reps' financial structures are dependent on sales and commissions and therefore present more acute conflicts.

Investors increasingly recognize the value of fiduciary advice and have been gravitating toward investment advisers to help them meet their financial objectives, including investing for retirement, homeownership, or education. That trend is not likely to change.

We appreciate our members' substantial feedback and engagement on these issues – both in the current rulemaking process and for the past two decades. Please reach out to us with any questions or concerns. We look forward to working closely with you on implementation and to ensure that this new rulemaking package serves investors' best interests.