

The Committee for the Fiduciary Standard

November 8, 2017

Via Electronic Mail

The Honorable Jay Clayton
U.S. Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-1090

RE: Request for Information on Standards of Conduct for Investment Advisers and Broker-Dealers

Dear Chairman Clayton:

We appreciate the opportunity to comment on the SEC's request for information related to the standards of conduct of broker-dealers and investment advisers as well as consideration of potential harmonization of certain other aspects of the regulation of broker-dealers and investment advisers.

This response to the Chairman's Request for Information is submitted by the Steering Group¹ of The Committee for the Fiduciary Standard (www.thefiduciarystandard.org). The Committee, consisting of over 1,100 members via LinkedIn, is led by a volunteer Steering Group of fiduciary practitioners and financial and investment experts, and seeks to inform and nurture a public discussion on the bona fide fiduciary standard of conduct as applied to the delivery of investment and financial advice.

A Consistent High Standard of Conduct Benefits the Public at Large

We are concerned that the request for information could signal a move towards a redefined fiduciary standard that is less stringent than what currently applies to investment advisers under the Investment Advisers Act of 1940. The complexity of investing does not lend itself to an environment in which investors can quickly and easily evaluate an adviser's competence and prudence.

Consumers must increasingly place a high degree of reliance on financial advice but they are unclear about when an adviser is required to serve their best interest, particularly when the same person provides them with multiple services associated with different standards of care. Members of The Committee for the Fiduciary Standard are committed to serving the best interest of the public, which is the foundation of the fiduciary standard of care, and we believe that anyone representing themselves as offering investment advice should be held to such a standard.

¹ Steering Group Members: Blaine Aikin, AIFA®, CFA, CFP®; Clark M. Blackman II, CPA/PFS, CFA, CFP®, AIF®; Harold Evensky, CFP®; Sheryl Garrett, CFP®; Roger C. Gibson, CFA; Tim Hatton, CFP, AIF®; Patricia P. Houlihan, CFP®; Deena Katz, CFP®; Kathleen M. McBride, AIFA®; Ron A. Rhoades, JD, CFP®; Ronald W. Roge, MS, CFP®; W. Scott Simon, J.D., CFP®, AIFA®

<http://www.thefiduciarystandard.org/steering-group/>

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Objectivity is Imperative

Advice that consistently and reliably serves the best interest of consumers must be objective. Objectivity is a fundamental element of professional advice. A conflict of interest can entice advice providers to place their interests ahead of their clients'. When delivering advice to retail investors, all advisers should maintain objectivity and not be influenced by matters that could lead to delivering advice in a biased, partial or conflicted manner. Fiduciaries working in the best interest of their clients avoid conflicts of interest that impair their objectivity. This includes controlling investors' costs to make sure they are reasonable for the services provided.

The Committee for the Fiduciary Standard advocates that all financial and investment advice be rendered as fiduciary advice and meet five core fiduciary principles:

- Put the client's best interests first;
- Act with prudence, that is, with the skill, care, diligence and good judgment of a professional;
- Do not mislead clients--provide conspicuous, full and fair disclosure of all important facts;
- Avoid conflicts of interest;
- Fully disclose and fairly manage, in the client's favor, unavoidable conflicts.

Disclosure Alone is Not Enough

Transparency via disclosure is one of the many necessary elements that should be included in the principles of the fiduciary standard of care. However, disclosing a conflict and then harming an investor does not meet the fiduciary standard of care and is not in the public interest. Conflict of interest disclosures do not lessen the financial incentive to act against the client's best interest, but they often serve to legally protect advisers and firms from not acting in the client's best interest.

Consider the study, "The Dirt on Coming Clean: Perverse Effects of Disclosing Conflicts of Interest."² Findings in this report suggest that disclosure, while intended as a potential solution, "can increase the bias in advice because it leads advisors to feel morally licensed and strategically encouraged to exaggerate their advice even further." The investor, as cited by the study, does not "discount advice from biased advisers as much as they should, even when adviser's conflicts of interest are disclosed."

Furthermore, disclosure can have the opposite effect and encourage or allow biased advice because even well-meaning advisers are led to feel disclosure is sufficient. A follow-up study published in the *Journal of Consumer Research* stated that "the most effective antidote for the problems caused by conflicts of interest is not to disclose them but to *eliminate* them."³

² *Journal of Legal Studies*, Vol. 34 (January 2005) "The Dirt on Coming Clean: Perverse Effects of Disclosing Conflicts of Interest" by Daylian M. Cain, George Lowenstein and Don A. Moore.

³ *Journal of Consumer Research*, Vol. 37 (February 2011) "When Sunlight Fails to Disinfect: Understanding the Perverse Effects of Disclosing Conflicts of Interest" by Daylian M. Cain, George Lowenstein and Don A. Moore.

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Different Business Models Require Different Regulation

The SEC request for information indicates that a single standard of conduct *combined with* harmonizing rules and regulation is being considered which would apply to both broker-dealers and advisers.

We urge you to consider the reality that two distinct and very dissimilar business models exist for meeting the needs of retail investors. The vast majority of RIAs who provide investment advice provide those services in an advisory capacity for a fee only and are compensated for the advice they provide; there is no third-party compensation to the advisor or firm.

Alternatively, there are brokers who provide access to financial products for a commission, which is a transactional business model. If broker/dealer regulation were to be imposed on registered investment advisers, it would bring a sales model perspective to investment adviser regulation. That would not be in the interest of investors, who expect that any financial or investment professional who holds out as an “advisor” is working in that investor’s best interest, not in their own interest as a commission, or fee and commission, compensated salesperson.

The broker/dealer model’s rules-based approach is not conducive to appropriate oversight of the investment advisory profession, which should remain principles-based. Harmonizing the rules for these two different business models to the lower, “suitability, plus some more disclosure” is inappropriate and counterproductive to the best interest of the public. What would be in the best interest of the investing public is elevating all who provide investment or financial advice to the higher, ‘40 Act fiduciary standard of care. And, when representatives are dually registered as BD-RIA reps, that fiduciary standard is the only one that should apply.

Consumer Confusion Also Driven by Misleading Marketing and Misleading Titles

The numerous titles and designations that financial services providers use vary greatly in the expertise, training and standard of care that they represent, but consumers may not be able to distinguish among them. To avoid consumer confusion, any person or firm representing themselves as an investment advisor, or its equivalent, should be required to register under the Investment Advisers Act of 1940 and be required to act in the client’s best interest as a fiduciary at all times.

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Availability to Serve as a Resource

We appreciate your consideration of these comments and welcome the opportunity to discuss these ideas further. Please feel free call me at [REDACTED] or you may email me at [REDACTED].

Respectfully submitted,



Patricia Houlihan

Chair, Steering Group of the Committee for the Fiduciary Standard*

*On behalf of the following members of the 2017 Steering Group:

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