



February 21, 2018

The Honorable Jay Clayton
Chairman
United States Securities & Exchange Commission
100 F Street, NE
Washington, DC 20549

RE: Standard of Conduct for Investment Advisers and Broker Dealers

Dear Chairman Clayton:

I write as president of the Institute for the Fiduciary Standard* in response to your request for comment on standards of conduct for investment advisers and broker dealers. This letter addresses clarifying the meaning of “investment adviser” and the importance of titles, and how brokers or advisers “hold out” to investors who they are and what they do.

Today, the lack of a clear line to separate conduct required of fiduciary advisers and conduct permitted of sales brokers has created misunderstandings among investors and investment professionals alike. Separate from, and not as a substitute for, addressing conduct standards for investment advisers and broker-dealers, the Commission should address the cause of some of these misunderstandings.

The Institute for the Fiduciary Standard urges the Commission to offer investors, investment advisers and brokers updated guidance on what constitutes rendering and holding out rendering personalized investment advice and, separately, advice that is “incidental”. Further, clear disclosures describing the business purposes of both investment advisers and broker-dealers should be required.

CFA Institute offers an innovative approach to implement such measures, applying them through Commission guidance as opposed to rulemaking. ¹ CFA identifies numerous benefits to investors, including: “Restoring a plain reading of the Advisers Act;” “limited, if any, regulatory costs on broker-dealers... and (effect on their) their business models;” help to “aid discussions between the SEC and DOL ... on a uniform standard of care” and “heightened retail investor understanding” about who is and who is not providing advice and whose interests they represent.”

CFA offers reasonable measures that may be more important than CFA lets on. That is, helping uphold the Advisers Act very foundation. The measures reinforce a core rationale for what the Advisers Act sought in a clear delineation between advice and sales. Rutgers law professor, Arthur Laby, cites a view of 1940, and notes, “A key concern underlying (the) Act was the presence of tipsters who were disguising themselves as legitimate advisers.” ² Fast forward to 2018. “Tipsters” of today?

The Wall Street Journal reported in January an investigation of discount brokers who hold themselves out offering advice, but are incentivized to sell more expensive products than an investor may need.



The Journal states: *“Investors who seek advice from discount brokerage firms might assume the counsel they get is impartial, (yet) ... advisers at some of the biggest discount brokerage firms make more money if they steer clients toward more-expensive products...”* 3

Defining “investment adviser,” “holding out” and “titles” are challenges that transcend generations. CFA Institute’s measured and cost-effective proposal deserves the greatest consideration.

Sincerely,

Knut A. Rostad

Knut A. Rostad
President

XC: The Honorable Michael Piwowar, Commissioner
The Honorable Kara Stein, Commissioner
The Honorable Hester M. Pierce, Commissioner
The Honorable Robert J. Jackson, Jr., Commissioner

*The Institute for the Fiduciary Standard is a nonprofit formed in 2011 to advance fiduciary principles in investment and financial advice through research, education and advocacy. We are honored that many respected scholars, former regulators and leading advisors participate in our programs and support our work. More information about the Institute may be seen here. www.thefiduciaryinstitute.org.

Notes

1. <https://www.sec.gov/comments/ia-bd-conduct-standards/cil4-2894141-161823.pdf>
2. <http://www.thefiduciaryinstitute.org/wp-content/uploads/2013/02/LabySellingAdviceCreatingExpectations.pdf>
3. <https://www.wsj.com/articles/advisers-at-leading-discount-brokers-win-bonuses-to-push-higher-priced-products-1515604130>