

MEMORANDUM

To: File Nos. S7-07-18, S7-08-18, S7-09-18

From: Staff of the Divisions of Trading and Markets and Investment Management

Re: 2019 SEC Investor Advocacy Clinic Summit

Date: April 30, 2019

At the Investor Advocacy Clinic Summit sponsored by the Office of the Investor Advocate on April 4, 2019, participants from law school arbitration clinics at Cornell University, St. John's University, and Howard University advocated for a uniform fiduciary standard for broker-dealers and investment advisers providing advice to retail investors. Participants from the law school arbitration clinic at the University of Miami advocated for certain disclosures from broker-dealers and investment advisers to retail investors.

The Cornell University law students argued that investment advisers owe a higher duty as fiduciaries than broker-dealers under suitability. Based on their anecdotal observations, broker-dealers advertise themselves as putting their customer's interests first but then disclaim fiduciary status in arbitration. The presenters argued that proposed Regulation Best Interest is not sufficient to address the perceived gap in standards of care received by investors and that a uniform fiduciary standard is necessary, with the ability for potentially stricter state standards.

The St. John's University law students advocated for a single uniform fiduciary standard with required ongoing monitoring and conflict mitigation beyond disclosure, and further titling and advertising reform to avoid investor confusion.

The Howard University law students discussed the investor protection difficulties presented by dually registered persons. They recommended that brokers should always disclose their dual registrations to customers and should not be able to limit their fiduciary duties. Finally, they recommended that financial professionals should refuse "dangerous trades" even if unsolicited.

The University of Miami law students discussed disclosures to retail investors by broker-dealers and investment advisers, including the proposed Form CRS. They recommended that the proposed Form CRS be replaced with an interactive, personalized video for retail investors.

Law students from Pace University stressed that clients rarely understand how fees are being paid and inherent conflicts. Georgia State University law students advocated for the empowerment of investors and noted that investors should do their own research and be comfortable asking questions.

During general discussions, law students also noted that most investors they meet do not know about the availability of BrokerCheck, an online tool that allows the public to learn the disciplinary history of firms and financial professionals, among other things. Some law students recommended disclosure of BrokerCheck as part of the account opening process. Law students also were in favor of adapting financial literacy resources to different technological products so that they are more engaging. Law students noted generally the need to reduce search costs for investor education resources and that many investors do not know what questions to ask. Law students also supported the use of instructive

videos that would help investors understand basic disclosure and financial literacy concepts. They noted that videos would help initiate a conversation between the investor and his or her financial professional.

In the concluding remarks at the Clinic Summit, Mr. Joseph Brady of the North American Securities Administrators Association (“NASAA”) stated that NASAA has been engaged with the Commission and staff on Regulation Best Interest and that NASAA has advocated for a rule with clear disclosure requirements that, in particular, addresses conflicts and fees, and generally provides more transparency. Mr. Brady noted that several states are continuing to pursue their own regulatory efforts in this area, stating that Nevada and New Jersey are developing a uniform fiduciary standard. In response to a question from a law student, he observed that industry participants see a tension in applying a uniform fiduciary standard with compliance and monitoring obligations inherent in a transactional broker-dealer model. He also stressed the importance of investor education and its role in investor protection.