Brent J. Fields, Secretary
U.S. Securities and Exchange Commission
100 F Street N.E. Washington, D.C. 20549-1090

RECEIVED
DEC 19 2018
OFFICE OF THE SECRETARY

December 7, 2012

Regarding File Number S7-09-18: Supplemental Comment on Proposed Commission Interpretation Regarding Standard of Conduct for Investment Advisers; Request for Comment on Enhancing Investment Adviser Regulation;

Ameriprise Financial (Poster Child for Fraud) Warrants Swift Action on Investment Adviser Suitability, Net Capital, Minimum Qualifications, Self-Regulator, and Continuing Education Proposals

Dear Mr. Fields and SEC Staff:

I observe that the comment file appears to have remained open on the SEC's 3 proposals (Regulation BI, Form CRS, and Investment Adviser Interpretations) based on the dates of recent submissions filed.[i] That is entirely appropriate in view of the SEC's November 4, 2018 posting of the RAND Corporation's 115 page document entitled *Investor Testing of Form CRS Relationship Summary*[ii]. The RAND summary contains a great deal of information concerning investor testing about FORM CRS. The SEC's Office of the Investor Advocate had engaged the RAND Corporation to conduct a nationwide survey and qualitative interviews of investors to gather feedback on a sample FORM SRS. This is an important part of the SEC's administrative rulemaking process and the comment period on all the 3 proposals should be significantly enlarged to enable the public to dissect the RAND Summary and offer responsive feedback.

I am also writing to supplement my comment[iii] on the proposals dated August 6, 2018. In that letter I emphasized that Ameriprise Financial's serial abuse of its customers provides a compelling case study about regularly occurring fraud within the investment advisory industry. This depraved behavior warrants strong actions by the Commission in its Proposed Interpretation Regarding Standard of Conduct for Investment Advisers and in its Proposed Regulation Best Interest. To demonstrate that point I highlighted numerous recent examples of financial depredations by one of the country's largest investment advisory organizations (Ameriprise) that evidence excessive, repeated failures of the "so called" fiduciary duty standard. Similarly, the current investment advisor regulations did not prevent these inexcusable behaviors by Ameriprise. How many Ameriprise customers had no idea they were being fleeced by Ameriprise and therefore never pursued a remedy?

After filing my submission on August 6, 2018, the SEC commendably prosecuted Ameriprise again in a strong cease and desist proceeding[iv] dated August 15, 2018 which stated that Ameriprise Financial Services Inc. will pay $4.5 million to settle charges that it failed to safeguard retail investor assets from theft by its advisors.

According to the SEC's order, five Ameriprise advisors committed numerous fraudulent acts, including forging client documents, and stole more than $1 million in retail client funds over a four-year period. The SEC found that Ameriprise, a registered investment advisor, failed to adopt and implement policies and procedures reasonably designed to safeguard investor assets against misappropriation by its representatives. If the criminal behavior at Ameriprise occurred over a long four-year period, it suggests that the compliance program the Ameriprise Investment Advisor was filled with more holes than Swiss cheese or was the product of willful blindness so that Ameriprise could share in the fruits of the investment advisors' crimes. Shameful conduct for certain and a crying need demonstrated for more rigorous and punitive standards for investment advisers under state and federal statutes and regulations. The trivial $4.5 million fine Ameriprise provided pales in comparison to the collective and unrepentant breaches of basic financial integrity.

This Ameriprise conduct is just another in a long litany of serial depredations against investment its investment advisory customers. Ameriprise's indefensible, long-standing pattern of unethical criminal conduct underscores the need for the SEC to restate and reinforce its position that investment advisors are subject to a comprehensive suitability obligation in addition to the relatively meaningless fiduciary duty under the Investment Advisors Act. The investment advisory industry's highly vaunted fiduciary duty did nothing to prevent these profound crimes by one of the largest investment advisory firms in the United States (Ameriprise). It is cruelly ironic that the Ameriprise website[v] prominently states that "when you put your client first, they return the favor" and noted that:

- Ameriprise Financial was rated #1 in the investment industry for trust according to the Temkin Group 2018 Trust Ratings.
- Ameriprise Financial was ranked #1 in the investment industry for customer loyalty according to the 2017 Temkin Group Loyalty Index.

- Ameriprise is rated #1 in the investment firm category for customer service according to the Temkin Group 2017 Customer Service Ratings

Are you kidding me? How could those claims be true with the SEC's long and well documented list of flagrant Ameriprise abuse of customers and its serial pattern of unethical conflicted conduct? Did Ameriprise put its clients first in the long litany of SEC enforcement actions? Did they demonstrate trust, loyalty and service? I think not. Compliments to the SEC for bringing this criminal enterprise at Ameriprise to justice.

The SEC can weed out the serial investment advisory crooks like Ameriprise by enacting

- Meaningful minimum standards for entry into the investment advisory industry
- 50 hours of annual continuing education and 50 hours of annual ethics training
- FINRA authority to become a self-regulator of investment advisers
- High net capital thresholds for investment advisers like those broker-dealers must satisfy
- Strong prohibitions on using the term "registered investment adviser" or RIA which is abused by this industry to suggest that they have met some standards and are blessed by the SEC
- A restated, unequivocal and comprehensive suitability obligation on investment advisors
- An industry sweep to identify and prosecute investment advisors who use flimsy unsubstantiated titles to bamboozle unsuspecting customers into thinking they have attained some special training or fulfill some higher standard and
- A lifetime ban from the investment advisory industry for advisers who use phony mail order degrees.

As noted in my prior comment letter,

> It is flat wrong to continue to allow SEC registration of wholly incompetent people to dabble in consumers' most important financial assets. A basic understanding of financial, economic, and financial products is critically necessary for investment advisors to be authorized to direct customer's assets for investment. That is missing now. Broker dealers must be members of FINRA and must pass rigorous entry examinations and fulfill regular continuing education. The same should be required for investment advisers. The current system allows poorly educated "snake oil salesmen" to masquerade as government certified professionals. Even cosmetologists are required to

demonstrate their proficiency, training and education before being licensed. Shouldn't at least the same be true for investment advisors?

In this connection, I had mentioned that respectable sounding investment advisory organizations were so unscrupulous and greedy as to allow canines to obtain an impressive sounding titles and membership. An example of this phenomenon appears in an article[vi] about the Consumer Research of America's "Guide to America's Top Financial Planners" which listed Max Tailwagger (a dachshund puppy). Max had properly identified his actual canine capacity and nevertheless was given an impressive looking plaque that had the SEC's logo in the center. The article's author notes that "financial planners, peddling an award that is offered without any legitimate selection process, are misleading the public," and further explains that "there are other, far more subtle, ways financial planners try to win your trust" through radio and video shows that appear to be independent barometers of capacity but are nothing more than paid advertisements masquerading as unbiased educational information.[vii]

Finally, the article notes that

> There are more than a hundred financial credentials that can be obtained in a matter of a few days, or even a few hours, in Las Vegas. My personal favorite is the *Certified Retirement Financial Advisor*[viii] designation that's supposedly the second most respected financial designation by seniors. They also informed me of other related programs such as Seniorleads.com[ix], where I could tout my new designation and troll for seniors who wanted to buy annuities.

Shameful, shameful, shameful! Other organizations, such as the CFP Board (grantor of the CFP® designation) claim to have conduct standards protecting the public. That does not mean much because the ONLY consequence for violating the CFP standards is getting kicked out of the CFP club, nothing more. No prosecution, no remedial authority. That is meaningless and a cruel and joke on consumers who thought the CFP designation meant something. It really does not. Great marketing. Little actual shield for consumers.

The public is in dire need of rescue from the abusive serial behavior of the investment advisor industry. Please help. Continue to crack down on crooks like Ameriprise and adopt meaningful new interpretations that prevent charlatans from picking Americans' pockets under the umbrella of currently permitted practices within the Investment Advisors Act.

Thank you.

Sincerely,

G.O. Donohue

Gordon O. Donohue

---

[i] A comment from Gail C. Bernstein (Investment Adviser Association) dated December 4, 2018 appears in the Regulation Best Interest Comment File on the SEC's website. https://www.sec.gov/comments/s7-09-18/s70918-4726658-176756.pdf

[ii] https://www.sec.gov/comments/s7-07-18/s70718-4628415-176399.pdf

[iii] https://www.sec.gov/comments/s7-09-18/s70918-4330471-173253.pdf

[iv] https://www.sec.gov/litigation/admin/2018/34-83848.pdf

[v] https://www.ameriprise.com/

[vi] https://www.cbsnews.com/news/my-dog-americas-top-financial-planner/

[vii] For example, is the Ric Edelman radio show on AM 630 in Washington DC impartial information, or rather a mask of purchased air time under the guise of independent advice that grossly misleads consumers? Is the Mike Collins Legally Speaking" show on AM 630 WMAL in Washington DC a public service or more likely disguised purchased air time by an investment adviser simply attracting new business under false pretenses? The SEC should require such presentations to honestly and fully disclose that these types of shows are paid advertisements appearing as independent educational shows. In reality they are just lead generating, business development enterprises no different from the abusive "free lunch" seminars regulators criticize. The SEC needs to outlaw these deceptive and harmful practices.

[viii] http://www.crfa.us/

[ix] https://seniorleads.com/

Brent J. Fields, Secretary
U.S. Securities and Exchange Commission
100 F Street N.E.
Washington, D.C. 20549-1090

August 6, 2018

Regarding File Number S7-09-18: Comment on Proposed Commission Interpretation Regarding Standard of Conduct for Investment Advisers; Request for Comment on Enhancing Investment Adviser Regulation

Dear Mr. Fields and SEC Staff:

Ameriprise Financial's serial abuse of its customers provides a compelling case study of the investment advisory industry warranting strong actions by the Commission in its Proposed Interpretation Regarding Standard of Conduct for Investment Advisers and in its Proposed Regulation Best Interest. A few recent examples of financial depredations by one of the country's largest investment advisor and broker dealer organizations demonstrates excessive failures of fiduciary duty that current regulations did not prevent.

- On February 28, 2018, the SEC Ameriprise agreed to settle charges for recommending and selling higher-fee mutual fund shares to retail retirement account customers and for failing to provide sales charge waivers. According to the SEC's order, Ameriprise Financial Services Inc. disadvantaged certain retirement account customers by failing to ascertain their eligibility for less expensive mutual fund share classes.

  Ameriprise recommended and sold these customers more expensive mutual fund share classes when less expensive share classes were available. Ameriprise also failed to disclose that it would receive greater compensation from the purchases and that the purchases would negatively impact the overall return on the customers' investments.

  "Ameriprise generated greater revenue for itself but lower returns for its retirement account customers by recommending higher-fee share classes," said Anthony S. Kelly, Co-Chief of the SEC Enforcement Division's Asset Management Unit. "As evidenced by our recently announced Share Class Selection Disclosure Initiative, pursuing these types of actions remains a priority for the Division as we seek to get money back in the hands of harmed investors."

  Approximately 1,791 customer accounts paid a total of $1,778,592.31 in unnecessary up-front sales charges, contingent deferred sales charges, and higher ongoing fees and expenses because of Ameriprise's practices. In its litigation release[1] the

Commission explained that Ameriprise customers did not have sufficient information to understand that Ameriprise had a conflict of interest resulting from compensation it received for selling the more expensive share classes. The Commission emphasized that Ameriprise omitted material information concerning its compensation when it recommended the more expensive share classes to these Eligible Customers.

Ameriprise's knowing recommendation of higher fee mutual funds to advisory customers was not some innocent recent development. Both the SEC and FINRA have warned investors about these abuses for over a decade in SEC Investor Alerts and Bulletins[ii] and FINRA Investor Alerts[iii].

- In March 2015, Ameriprise settled a lawsuit[iv] for $27.5 million before trial on an action brought by a group of current and former employees of Ameriprise. The suit alleged that Ameriprise violated their fiduciary obligations as the sponsor of the 401(k) plan it offers to employees. The main issue is that Ameriprise offered several its proprietary mutual funds as options in the plan and that these proprietary funds were unreasonably expensive compared to other non-proprietary options that could have been utilized. Further the lawsuit alleged that these funds paid revenue sharing and other fees to Ameriprise and several of its subsidiaries.

- In 2011, Ameriprise Financial, the largest employer of certified financial planners in the United States, was sued by six people,[v] including one current employee, for stuffing its 401(k) plan with expensive, underperforming mutual funds that came from the company's own investment management arm. According to a news story, Ameriprise's menu of mutual funds splayed out in the litigation, complete with details on poor performance and a handy chart showing fees that are three to five times what they are at Vanguard. The story's[vi] author quite properly asked "if it turns out that Ameriprise didn't even get its own 401(k) right, why would you put your financial future in the company's hands?"

- In July 2009, the Commission took an enforcement action against Ameriprise for receiving millions of dollars in undisclosed compensation as a condition for offering and selling certain real estate investment trusts to its brokerage customers. Ameriprise agreed to pay $17.3 million to settle the SEC's charges. "Few things are more important to investors than getting unbiased advice from their financial advisers," said Robert Khuzami, Director of the SEC's Division of Enforcement. "Ameriprise customers were not informed about the incentives its brokers had to sell these investments." Ameriprise did not disclose to investors that additional payments were being made in connection with the sale of REIT shares, or the conflicts of interest these additional payments created. The SEC's order found that Ameriprise issued a variety of mislabeled invoices to the REITs as a means of collecting the undisclosed revenue sharing payments that appeared to be legitimate reimbursements for services provided by Ameriprise.

- According to a news story[vii], Ameriprise Financial Services has long been accused of possessing a culture that's more concerned with sales commissions than compliance. The article notes that allegations against the company from the New Hampshire Bureau of Securities Regulation suggest that may still be very much the case. *In July* 2005, the firm paid $7.4 million to the New Hampshire Bureau of *Securities for fines, penalties and restitution* related to illegal incentives, conflicts of interest and lack of *proper disclosure* to its clients.

- FINRA fined Ameriprise Financial Services $12.3 million[viii] in connection with its receipt of directed brokerage in return for providing preferential treatment to certain mutual fund companies. The Securities and Exchange Commission (SEC) has also sanctioned the firm for related conduct.
  The action involves violations of FINRA's Anti-Reciprocal Rule, which prohibits firms from favoring the sale of shares of mutual funds based on brokerage commissions received by the firm. Among other things, the rule prohibits a firm from recommending funds or establishing preferred lists of funds in exchange for receipt of directed brokerage.

  The Anti-Reciprocal Rule is an important regulatory tool that is designed to ensure that firms recommend mutual funds on their merits and not because of the receipt of brokerage commissions, which are assets of the mutual fund shareholders and should not be used for marketing purposes.

  In this case, from January 2001 through December 2003, Ameriprise operated two *shelf space* (or revenue sharing) programs in which participating mutual fund companies paid a fee in return for preferential treatment by Ameriprise. That treatment included enhanced access to Ameriprise's sales force, including participation in conferences and meetings, distribution and display of marketing materials at Ameriprise branches, and in-office visits with Ameriprise registered representatives - all designed to increase sales of those mutual funds.

  In addition, Ameriprise promoted the funds on its internal website, identifying the mutual funds as "Preferred Providers," and posted sales literature for the funds as well as information about the funds and their fund managers. Ameriprise also charged its advisors reduced sales ticket charges for the sale of Preferred Provider funds. None of these benefits were available to non-participating mutual funds. While Ameriprise sold funds offered by approximately 32 fund companies during the period at issue, 24 were Preferred Providers.

The mutual fund complexes that participated in these programs paid extra fees for the preferential treatment they received. Seven of the 24 fund complexes paid their fees for participating in the programs by directing approximately $41 million in mutual fund portfolio brokerage commissions to Ameriprise. The funds accomplished this by directing portfolio trades to the trading desks of clearing firms designated by Ameriprise, and the clearing firms then remitted a portion of the trading commissions - generally 75 to 86 percent - to Ameriprise, the designated "introducing broker."

The commissions paid under these arrangements were sufficiently large to pay for the preferential treatment and other benefits received by the funds as well as the costs of trade execution. This use of directed brokerage allowed the fund complexes to use assets of the mutual funds instead of their own money to meet their revenue sharing obligations. The remaining fund complexes paid their fees for participating in the Preferred Provider program in cash to Ameriprise.

So, what is the point of highlighting these Ameriprise abuses in response to Commission's Request for Comment on Enhancing Investment Adviser Regulation? Simply this: if one of the largest, supposedly well-respected investment advisory firms demonstrated these profound abuses (and this is only a short recitation), then the current regulations are inadequate to protect consumers. Change is immediately necessary. Other similarly situated investment advisers, large and small, have likely committed analogous abuse of their customers.

The Commission needs to act and quickly, in several areas where comment was invited:

1. Minimum standards of education, experience, background and honesty must be established for registered investment advisors

Investment advisors should have minimum standards of education, experience, background, and honesty before they are licensed to offer investment advice. Currently, any one with any (or no) background, experience or education can register as an investment adviser. The public assumes if the Commission grants an investment adviser registration that the individual has the requisite expertise to provide financial advice. In actuality, investment advisors can and do provide advice based on unfounded theories, such as the cycle of the astrological chart. Other charlatans obtain phony (but impressive sounding) mail order investment advisor certificates. Commissioner Piwowar showed in his comments at the Commission meeting a picture of the flimsy investment advisor degree he obtained from a mail order certification organization that had no standards at all other than paying a fee. In the 1990s, an organization called the Financial Planner

Registry maintained a public list of qualified financial planners and charged a fee to administer the registry. A journalist had an application for his dog "Fido" accepted in the registry, even after indicating the he was canine and had little human education.

It is flat wrong to continue to allow SEC registration of wholly incompetent people to dabble in consumers' most important financial assets. A basic understanding of financial, economic, and financial products is critically necessary for investment advisors to be authorized to direct customer's assets for investment. That is missing now. Broker dealers must be members of FINRA and must pass entry examinations and fulfill regular continuing education. The same should be required for investment advisers. The current system allows poorly educated "snake oil salesmen" to masquerade as government certified professionals. Even cosmetologists are required to demonstrate their proficiency, training and education before being licensed. Shouldn't at least the same be true for investment advisers?

In response to this problem, some organizations have voluntarily created standards of competence and ethical behavior, such as the CFP Board. Their standards are impressive, but toothless and potentially harmful to consumers. If a CFP certificate holder violates the organization's standards, they just get kicked out of the organization. There is no enforcement, no penalty. That is meaningless and provides no consumer protection. A better approach would be to delegate to FINRA the testing and examination authority over investment advisers to insure compliance with the new Commission interpretations and regulatory requirements. A bill in congress a few years ago would have mandated this. The Commission should pursue statutory authority mandating FINRA testing, examination, continuing education, and prosecution pursuant to the investment advisor act rules and regulations.

2. The SEC should require Investment Advisors to regularly obtain continuing education.

Other professionals charged with important responsibilities, such as doctors, lawyers, teachers, and securities salespeople are required to obtain continuing education. There are no good reason investment advisers are not currently required to obtain continuing education as well. Continually changing financial products and rapidly changing laws are complex. Not requiring continuing education is wholly inexcusable and allows malpractice. A minimum of 25 hours per year of continuing education by approved training organizations must be required for investment advisers. FINRA could administer compliance with this important improvement in the delivery of qualified advice.

3. Investment Advisors should have significant net capital requirements.

It is preposterous that investment advisers do not have to maintain a safe margin of net capital like broker dealers. Had Madoff been subject to net capital standards, the damage he inflicted could have been limited. Instead, he and other investment advisory crooks have no financial brakes on committing fraud with customer assets. Reserving, margin, net capital, and leverage ratios are required by other financial regulators, and something like that should be imposed on investment advisors. Investment advisors should also have something like SIPC to protect consumers' assets under management when advisors go bankrupt.

4. Investment Advisors should be prohibited from identifying themselves as "registered investment advisors" and should be banned from using the initials "RIA" following their names and in their advertisements.

The Commission has wisely proposed limits on the use of the term advisor and adviser in its proposed regulation best interest because it conveys a misleading impression in the context of broker dealers. Similarly, investment advisers should be barred from calling themselves registered investment advisers or RIAs because that terminology grossly misleads consumers under the current regulatory standards to believe that the advisor did something more than just filling out the application and paying the registration fee. Until the Commission imposes minimum educational, experience and background standards, it is reckless and irresponsible to allow advisors to cloak themselves in the illusion that they have obtained some measure of government scrutiny preliminary to registration. Individuals using the initials RIA know exactly what they are doing: misleading consumers.

5. The Commission should codify its interpretative positions in formal rules.

The Commission has issued several important interpretive positions in its investment advisor pronouncements. They would have greater legal weight and validity if they were compiled into a formal rule under the investment advisers act.

6. The Commission should reconfirm that investment advisers must fulfill suitability standards when making recommendations to customers.

The Commission's proposal to codify the suitability obligation for investment advisers in a formal rule is very important and necessary. Investment advisory organizations promote that their fiduciary duty is vastly superior to broker dealers' suitability standard. In truth, the fiduciary duty is a hollow standard without any enforcement and no self-regulatory organization backing. The Dodd-Frank Act delegated to the states the responsibility to oversee most investment advisors except for very large advisors. Unfortunately, most states (except for large states like MA, NY, FL, CA, and IL) have tiny securities divisions with ever shrinking budgets. Consumers are likely less protected than when the Commission had authority over advisors because at least the SEC had the staff, expertise and inspection framework to properly regulate advisors. The current state system of regulation is a weak patch work quilt of varying standards, expertise and budgets. The Commission should raise investment advisor registration fees and impose annual fees on investment advisors to cover proper regulation and should require a self-regulatory organization membership to fully achieve consumer protection. FINRA could be drafted to perform SRO functions for investment advisors quite effectively, modeled on their broker dealer framework. Many investment advisors commit unpunished breaches of fiduciary duty every day when they stuff all their customers in annual assets under management fees when many customers do not need annual oversight from these individuals, but only need sporadic infrequent guidance that would be best funded by an hourly fee. Their retirement and savings nest eggs are corroded by annual investment adviser fees that greatly reduce net account performance. Likewise, investment advisers that have annual AUM fees allowing a percentage of assets under management should equally share in customers' losses by returning fees. Under current arrangements, these investment advisers gain when account values go up, but do not share equally in losses when values plunge. That should be corrected so that advisers have equitably balanced "skin in the game." To do otherwise is a breach of fiduciary duty.

7. *Regulation Best Interest* should be adopted as soon as possible

Many investment advisors often wear two hats simultaneously as broker dealers and investment advisers. Some of the Ameriprise abuse discussed in the beginning of this letter involved dual registered advisor-broker dealers. This situation accentuates the opportunity for noxious conflicts of interest and financial fraud. Regulation best interest would better protect consumers together with the proposed Form CRS. Both should be adopted ASAP to prevent abuse by largely unregulated investment advisors. The states and the Commission are inadequately equipped to comprehensively inspect and prosecute investment advisors committing fraud and cheating customers through conflicts of interest.

Conclusion.

The Commission has exercised commendable leadership in promulgating proposed rules, codification of interpretations about investment advisors, regulation best interest, and Form CRS. Consumer protection is greatly lacking, and large changes are badly needed to help Americans from being fleeced by investment advisors like the Ameriprise examples highlighted in the front of the letter.

Please act firmly and quickly. The public needs the Commission's *commitment to consumer protection and more meaningful* regulation as Americans try to achieve financial management and retirement security.

Thank you. Sincerely,

G. O. Donohue

Gordon O. Donohue

---

[1] https://www.sec.gov/litigation/admin/2018/33-10462.pdf

[ii] https://www.investor.gov/additional-resources/news-alerts/alerts-bulletins/investor-bulletin-mutual-fund-classes
[iii] https://www.finra.org/sites/default/files/InvestorDocument/p125866.pdf
[iv] https://thechicagofinancialplanner.com/the-ameriprise-401k-lawsuit/;
http://www.marottaonmoney.com/ameriprise-sued-by-ameriprise-employees-over-excessive-401k-fees/
[v] https://www.nytimes.com/2011/10/15/your-money/turning-a-lens-on-ameriprise-financial.html
[vi] https://www.nytimes.com/2011/10/15/your-money/turning-a-lens-on-ameriprise-financial.html
[vii] https://www.wealthmanagement.com/regulation/ameriprise-branches-face-potential-fines-fake-financial-plans
[viii] http://www.finra.org/newsroom/2005/nasd-fines-ameriprise-financial-services-123-million-directed-brokerage-violations