CENTER FOR CAPITAL MARKETS COMPETITIVENESS

TOM QUAADMAN
EXECUTIVE VICE PRESIDENT

1615 H STREET, NW
WASHINGTON, DC 20062-2000
(202) 463-5540
tquaadman@uschamber.com

March 13, 2019

The Honorable Carolyn Maloney
Chair
Subcommittee on Investor Protection,
Entrepreneurship, and Capital Markets
U.S. House of Representatives
Washington, DC 20515

The Honorable Bill Huizenga
Ranking Member
Subcommittee on Investor Protection,
Entrepreneurship, and Capital Markets
U.S. House of Representatives
Washington, DC 20515

Re: Hearing on the Securities and Exchange Commission's Best Interest Rulemaking Package

Dear Chair Maloney and Ranking Member Huizenga:

The U.S. Chamber of Commerce ("Chamber") is the world's largest business federation representing the interests of more than three million businesses of all sizes, sectors, and regions, as well as state and local chambers and industry associations, and is dedicated to promoting, protecting, and defending America's free enterprise system. The Chamber created the Center for Capital Markets Competitiveness ("CCMC") to advance the United States' global leadership in capital formation.

The SEC's proposed Best Interest Regulations promote investor choice and improve investor protection.

CCMC has been engaged with the Securities and Exchange Commission ("SEC") throughout the development of its three proposals and submitted comments regarding the standards of conduct for investment advisers and broker-dealers – "Regulation Best Interest,"[1] "Form CRS Relationship Summary,"[2] and "Proposed Commission Interpretation Regarding Standard of Conduct of Investment Advisers; Request for Comment on Enhancing Investment Adviser Regulation"[3] (collectively, the "Proposals").

[1] 83 Fed. Reg. 21574 (May 9, 2018).
[2] 83 Fed. Reg. 21416 (May 9, 2018).
[3] 83 Fed. Reg. 21203 (May 9, 2018).

CCMC believes the SEC is the proper agency to approach this rulemaking in the aftermath of the Department of Labor's ("DOL") failed "Fiduciary Rule."[4] Finalized in April 2016, the Fiduciary Rule sought to broadly define who is a "fiduciary" under the Employee Retirement Income Security Act of 1974 ("ERISA") and to treat individuals who provide investment advice or recommendations for a fee or other compensation with respect to assets of a plan or IRA as "fiduciaries" in a wider array of advising relationships. The Chamber consistently argued that DOL overstepped its legal authority in issuing the Fiduciary Rule. The U.S. Court of Appeals for the Fifth Circuit ultimately agreed with the Chamber and other organizations that challenged it, vacating the rule on March 15, 2018 on the grounds that a "perceived 'need' [for the rule] does not empower DOL to craft *de facto* statutory amendments or to act beyond its expressly defined authority" under ERISA.[5] The decision leaves the SEC as the appropriate agency to develop standards of conduct that serve all investors across all types of accounts.

We support the SEC's goal of maintaining different business models and appreciate that Regulation Best Interest accounts for different structures and avoids applying a one-size-fits-all regulatory approach. Investors have different needs. Some need ongoing, regular investment advice and comprehensive financial planning. Others need only episodic assistance in purchasing a particular financial product for a specific purpose.[6]

The various types of financial professionals and the different ways in which they are compensated and regulated allow consumers to select providers that best meet their different needs. Imposing one-size-fits-all regulation would impose requirements incompatible with differing business models, making it extremely difficult for financial professionals to offer certain services, such as brokerage accounts. Newer investors or those only investing a small amount tend to benefit most from the brokerage model. The SEC's rules will protect small and new investors and ensure they continue to have access to investment advice through the brokerage model.

The SEC's proposed rules will also protect investors from bad actors. The proposed rules would specifically require broker-dealers and investment advisers to act in the best interest of

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[4] Definition of the Term "Fiduciary"; Conflict of Interest Rule-Retirement Investment Advice, 81 Fed. Reg. 20945 (Apr. 8, 2016).

[5] Chamber of Commerce of the U.S. v. U.S. Dep't. of Labor, No. 17-10238 (5th Cir. Mar. 15, 2018) at 30.

[6] CCMC compiled profiles of different types of investors in various stages of the investment lifecycle to illustrate investors' varying needs: https://www.uschamber.com/sites/default/files/ccmc_sixprofiles_v13nomarks.pdf

their clients by mitigating or eliminating conflicts of interest, providing enhanced disclosures, and adhering to existing regulatory obligations. Investment professionals providing misleading advice or recommending products in their own self-interest will be penalized. For example, the SEC has made clear that they will eliminate sales contests that reward financial professionals for promoting a specific product. These types of contests have the potential to incentivize financial professionals to recommend a product to an investor even if the product is not the most suitable for that particular investor. Investors will now be protected from receiving product recommendations that may not be in their best interest.

Investors will also benefit from enhanced disclosure requirements, particularly through the SEC's proposed Form CRS. CCMC commissioned a poll of more than 800 investors to examine their perspectives on working with financial professionals and to gauge their priorities regarding new regulatory requirements.[7] In general, we found that investors are happy with their financial professionals. However, there is room for improvement, particularly relating to communication. To that end, when the SEC's proposed Form CRS was described in the survey, 72% of investors said they believe the Form will improve transparency.

CCMC also commissioned a survey of financial services companies,[8] including broker-dealers and firms dual-registered as broker-dealers and investment advisers to gain perspective on the SEC's Proposals' impact on investors, the financial services industry, and the marketplace. The firms surveyed are responsible for managing over 78.5 million investment accounts and nearly $23 trillion in assets. While the firms surveyed believe there are opportunities for streamlining, clarifying, and improving certain aspects of the proposals, they also believe investors will be better served because of the Proposals. Regarding impacts to the industry, most firms feel that implementation costs of the Proposals may be higher at first, but will lessen over time. Firms also noted that these costs will be offset by the business modernizations made over the past several years.

States should let the SEC take the lead to avoid a patchwork of regulatory requirements.

Several states have moved forward with legislation or regulation to promulgate their own fiduciary rules. However, strong and efficient regulation cannot be achieved on a state-by-state

[7] "Working with Financial Professionals: Opinions of American Investors," 2018: http://www.centerforcapitalmarkets.com/wp-content/uploads/2018/04/CCMC_InvestorPolling_v5-1.pdf

[8] "SEC Regulation Best Interest Rule Proposals: Request for Information Analysis," July 25, 2018: https://www.centerforcapitalmarkets.com/wp-content/uploads/2018/08/Reg-BI-Rule-Proposal-Research_8.7.18_FTI-Updated_final.pdf

basis through a patchwork of conflicting state regulations that differ materially with respect to one another as well as to Federal regulations. The reality is that no state can take such action in a vacuum—financial professionals simply cannot efficiently serve their clients if they are subject to material differences in regulation in every state regarding their legal obligations, documentation requirements, and legal risks. Indeed, financial transactions, at some point, must be completed through the use and the means of interstate commerce. Federal rules, rather than varying state standards, will protect investors from regulatory arbitrage and ensure each investor receives equal treatment, no matter where they live.

Conclusion

CCMC supports the SEC's efforts to modernize the standards of conduct for investment advisers and broker-dealers and believe the Proposals enhance investor protection, while maintaining investor access to different types of financial advice. We look forward to working with the SEC, the Subcommittee, and all parties interested in the SEC's work to ensure that the Proposals are effectively implemented to protect and preserve choice for the benefit of Main Street investors.

Sincerely,

Tom Quaadman