

MEMO# 31040

January 19, 2018

Final Revised ICI Draft Best Interest Standard of Conduct - Your Comments Requested by January 23

[31040]

January 19, 2018 TO: Pension Committee

SEC Rules Committee RE: Final Revised ICI Draft Best Interest Standard of Conduct - Your Comments Requested by January 23

Thanks to those of you who participated in our call earlier this month to discuss ICI's draft revised best interest standard of conduct.[\[1\]](#) We appreciate your thoughtful comments, and have further revised our recommendation to the SEC to reflect your suggestions. As discussed on the call, we also have revised the explanatory notes in the draft with our SEC audience in mind.

We have attached a final revised draft for your review before we submit it to the SEC next week. Due to the nature of the revisions, I have not attached a redline document, but instead have also attached the prior draft for your convenience. If you have any final comments on the final revised draft, please send them to me at sarah.bessin@ici.org no later than Tuesday, January 23rd.

We have made extensive changes in this draft, although the recommended standard is not substantively very different. The key differences from the December 22nd draft are that in this draft we:

- Emphasize that the recommended best interest standard is consistent with the fiduciary duty standard applicable to investment advisers, and therefore would satisfy the requirements of Section 913 of the Dodd-Frank Act;
- Include additional explanation of how the recommended standard compares to the existing broker-dealer standard of conduct;
- Include extensive discussion of the DOL's Best Interest Conduct Standards, and explain that the recommended best interest standard would generally be consistent with those standards;
- Articulate the best interest duty of care to more explicitly add the standard from the DOL Impartial Conduct Standards;

- Clarify several issues that members indicated were confusing or unclear in the prior draft.

When we send this revised recommendation to the SEC next week, we plan to explain to them in a cover letter that our goal in submitting this revised recommendation is to assist the SEC and staff by more clearly articulating a best interest standard for broker-dealers providing recommendations to retail customers, and providing a legal framework that places the key elements of the best interest standard in the context of regulatory requirements under the Investment Advisers Act of 1940, the Securities Exchange Act of 1934 and FINRA rules, and ERISA.

Sarah A. Bessin
Associate General Counsel

[Attachment No. 1](#)

[Attachment No. 2](#)

endnotes

[1] See ICI Memorandum No. 30995 (Dec. 22, 2017), *available at* https://www.ici.org/my_ici/memorandum/memo30995.

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