

MEMO# TAAC_15_30725_0717

July 12, 2017

15 SEC Chairman Issues Public Statement Requesting Comment on Standards of Conduct for Investment Advisers and Broker-Dealers

[30725]

June 2, 2017 TO: ICI Members
Investment Company Directors
ICI Global Members
Pension Committee
Pension Operations Advisory Committee
SEC Rules Committee
Small Funds Committee SUBJECTS: Disclosure
Distribution
Fees and Expenses
Investment Advisers
Operations
Pension RE: SEC Chairman Issues Public Statement Requesting Comment on Standards of Conduct for Investment Advisers and Broker-Dealers

Yesterday, SEC Chairman Jay Clayton issued a public statement (“Statement”)[\[1\]](#) regarding the implications of the DOL’s recent actions with respect to its “fiduciary rule.”[\[2\]](#) Chairman Clayton states that he welcomes the DOL’s invitation to engage constructively as each agency pursues its analysis of the standards of conduct that apply to investment advisers and broker-dealers when they provide investment advice to retail investors. He prefaces the Statement by emphasizing that “clarity and consistency – and, in, areas overseen by more than one regulatory body, coordination – are key elements of effective oversight and regulation.” The Statement, which we summarize briefly below, seeks public input to inform the SEC’s assessment of possible future action in this area.

ICI looks forward to engaging with members and the SEC on these issues. We will be scheduling a member call and will follow up shortly with additional information.

Chairman Clayton describes the history of the Commission’s efforts to examine the standards of conduct applicable to investment advisers and broker-dealers, including the

RAND study of investor perspectives commissioned in 2006,^[3] the study the staff conducted in 2010-2011 pursuant to Section 913 of the Dodd-Frank Act,^[4] and, most recently, a solicitation of data and other information in 2013.^[5] He also describes the variety of potential actions that have been suggested to the Commission as a result of these efforts.^[6] The Chairman explains that – in light of developments in the marketplace since the Commission last solicited public input on this issue in 2013, including the pending applicability of the DOL fiduciary rule – he believes an updated assessment of the current regulatory framework, state of the market for retail investment advice, and market trends is important for the Commission to evaluate the range of potential regulatory actions.

The Statement provides links to a webform and an email box to submit comments on these issues. No deadline for comments is provided. The Statement invites comment on seventeen categories of questions, summarized as follows:

1. Retail investor confusion about the standards of conduct that apply when financial professionals provide investment advice;
2. Potential conflicts of interest related to the provision of investment advice to retail investors in various circumstances;
3. Potential confusion or lack of information in emerging areas such as robo-advisers and fintech;
4. Impact of the trend in the provision of retail investment advice toward a fee-based advisory model and away from a commission-based brokerage model;
5. Experience of retail investors and market participants thus far in connection with the implementation of the DOL fiduciary rule;
6. Benefits and costs of having multiple standards of conduct;
7. Particular segments of the market (e.g., smaller and regional broker-dealers and investment advisers, or smaller investor accounts) to which the Commission should pay particular attention in considering potential future actions;
8. A disclosure-based approach or standards-of-conduct-based approach to potential regulatory action, and whether the standards for investment advisers and broker-dealers should be the same or different;
9. Implementation of any suggested approach to potential regulatory action;
10. Costs and benefits of incremental action by the Commission;
11. Private remedies for violations of any new requirements;
12. Changes in technology that could enhance the effectiveness and efficiency of regulatory action;
13. Definition of “retail investor”;
14. Definition of “investment advice”;
15. Expected benefits, costs, or other economic effects of the potential approaches that the Commission could consider in this area;
16. Regulatory developments in non-U.S. jurisdictions and whether they should inform the Commission’s analysis; and
17. Any material changes to the assumptions that the Commission laid out in its 2013 request for comment, or any other developments that the Commission should consider in its continued review and analysis of these issues.

The full list of questions is attached to this memorandum. The Statement also invites comment on any other information the public believes relevant to these issues and the Commission’s consideration of potential future actions.

In addition to specific suggestions for any potential action, Chairman Clayton also requests that the public submit data and other information that may inform the Commission’s

analysis, including data covering periods since the Commission's solicitation in 2013. In inviting comment, the Statement makes a distinction between (1) comments submitted "even before official comment periods may be opened," which commenters should submit via the webform or email address links included in the Statement, and (2) comments "on any future rulemaking . . ." which commenters should submit "during the official comment period, if applicable, that would start with the notice of the initiative published in the *Federal Register*."

Sarah A. Bessin
Associate General Counsel

Linda M. French
Assistant General Counsel

[Attachment](#)

endnotes

[1] Chairman Jay Clayton, *Public Comments from Retail Investors and Other Interested Parties on Standards of Conduct for Investment Advisers and Broker-Dealers* (June 1, 2017), available at

<https://www.sec.gov/news/public-statement/statement-chairman-clayton-2017-05-31>.

[2] The DOL recently stated that the applicability date for the rule will be June 9, 2017, and that it intends to issue a "Request for Information" regarding various aspects of the rule. See ICI Memorandum No. 30716 (May 24, 2017), available at

https://www.ici.org/my_ici/memorandum/memo30716.

[3] Angela A. Hung, et al., RAND Institute for Civil Justice, *Investor and Industry Perspectives on Investment Advisers and Broker-Dealers* (2008), available at https://www.sec.gov/news/press/2008/2008-1_randiabdreport.pdf.

[4] Staff of the U.S. Securities and Exchange Commission, *Study on Investment Advisers and Broker-Dealers As Required by Section 913 of the Dodd-Frank Wall Street Reform and Consumer Protection Act* (Jan. 2011), available at <https://www.sec.gov/news/studies/2011/913studyfinal.pdf>.

[5] See *Duties of Brokers, Dealers, and Investment Advisers*, SEC Rel. No. 34-69013 (March 1, 2013), available at <https://www.sec.gov/rules/other/2013/34-69013.pdf>.

[6] He notes these options have ranged "from maintaining the existing regulatory structure, to requiring enhanced disclosures intended to mitigate reported investor confusion, to the development of a best interests standard of conduct for broker-dealers, and, finally, to pursuing a single standard of conduct combined with a harmonization of other rules and regulations applicable to both investment advisers and broker-dealers when they provide advice to retail investors – and a variety of points in-between."

Copyright © by the Investment Company Institute. All rights reserved. Information may be abridged and therefore incomplete. Communications from the Institute do not constitute, and should not be considered a substitute for, legal advice.