

MEMO# 31957

September 10, 2019

Seven States and the District of Columbia Sue the SEC Challenging Regulation Best Interest

[31957]

September 10, 2019 TO: ICI Members
Bank, Trust and Retirement Advisory Committee
Broker/Dealer Advisory Committee
Chief Compliance Officer Committee
Investment Advisers Committee
Operations Committee
Pension Committee
Pension Operations Advisory Committee
SEC Rules Committee
Small Funds Committee
Transfer Agent Advisory Committee
Variable Insurance Products Advisory Committee
SUBJECTS: Compensation/Remuneration
Distribution
Fees and Expenses
Investment Advisers
Pension
State Issues RE: Seven States and the District of Columbia Sue the SEC Challenging
Regulation Best Interest

On September 9, seven states[\[1\]](#) and the District of Columbia filed a lawsuit against the SEC, attempting to invalidate the SEC's Regulation Best Interest.[\[2\]](#) The states' attorneys general filed the complaint (attached) in US District Court in the Southern District of New York. The states claim standing to bring the lawsuit because Regulation Best Interest harms their "sovereign, quasi-sovereign, economic, and proprietary interests" and causes ongoing harm to their residents.

The complaint alleges multiple claims, including that the rulemaking:

1. exceeds SEC's statutory authority;
2. is not in accordance with section 913(g) of the Dodd-Frank Act[\[3\]](#) because the broker-dealer standard of conduct established under Regulation Best Interest is not "the same as" the standard that applies to investment advisers under the Advisers Act;

and

3. is arbitrary and capricious because it runs counter to the evidence before the SEC and is based on a flawed cost-benefit analysis.

The states request that the court vacate Regulation Best Interest and enjoin the SEC from implementing or taking any action under the rule.

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[Attachment](#)

endnotes

[1] The states include New York, California, Connecticut, Delaware, Maine, New Mexico and Oregon. It is worth noting that none of the states that have recently proposed regulations to impose a fiduciary duty on broker-dealers (Massachusetts, Nevada, and New Jersey) joined the lawsuit.

[2] For a summary of SEC's rulemaking package that included Regulation Best Interest, see ICI Memorandum No. 31815 (June 19, 2019), available at https://www.ici.org/my_ici/memorandum/memo31815.

[3] As the complaint acknowledges, the SEC relied in part on Dodd-Frank Act Section 913(f) as its authority for promulgating the rulemaking. However, the states argue that the SEC was obligated, instead, to rely on Section 913(g), which authorizes the SEC to establish a harmonized fiduciary duty for broker-dealers and investment advisers.