



Consumer Federation of America

SIFMA Continues Its Unrelenting Efforts to Derail New Protections for Retirement Savers

The Securities Industry and Financial Markets Association (SIFMA), the self-described “voice of the U.S. securities industry, representing the broker-dealers, banks, and asset managers,” has commissioned and published yet another [study](#) attempting to derail the Department of Labor’s (DOL’s) efforts to strengthen protections for retirement savers by requiring all financial advisers to put their customers’ interests first. This “white paper,” developed by Morgan Lewis, picks up where the last [study](#) left off, trying unsuccessfully to discredit the White House Council of Economic Advisers’ (CEA) Report, [“The Effects of Conflicted Investment Advice on Retirement Savings.”](#) Here, SIFMA/Morgan Lewis contend that:

- The current regulatory framework governing financial professionals, which includes extensive regulation and oversight by the SEC and FINRA, comprehensively protects all investors. The CEA report, according to SIFMA/Morgan Lewis, fails to appreciate the comprehensive protections that are in place to protect investors, including protections against conflicts of interest.

Once one gets past the white paper’s professional veneer, these arguments just don’t hold water.

- As the CEA report explains, different legal and conduct standards apply to different professionals. Registered Investment Advisers (RIAs) are subject to a fiduciary duty, meaning they must serve their clients’ best interest and satisfy a duty of loyalty and duty of care. Brokers are not subject to a fiduciary duty; they can make recommendations that are merely suitable for a client’s investment profile, taking into account factors such as age, income, net worth, and investment goals. What SIFMA/Morgan Lewis fail to point out is that, under a suitability standard, out of all the options that are suitable, brokers are free to recommend the option that serves their best interest, not their clients’. So, even though the SEC and FINRA regulate and oversee brokers, they do so under a lower, suitability standard.
- RIAs are paid in ways that result in significantly fewer conflicts of interest than brokers. Brokers are often paid based on conflicted payments that depend on their clients’ completing transactions and on which investment products they purchase. Therefore, brokers have an incentive to maximize the number of transactions and to recommend those products that offer the most generous compensation in order to maximize their revenues. To argue that compensation practices don’t affect brokers’ recommendations ignores human incentives and opportunistic behavior.
- The CEA report cites peer-reviewed, academic papers that find evidence of conflicts of interest between brokers and investors. For example, several cited academic papers find evidence that funds marketed and sold through the broker distribution channel underperform funds marketed and sold directly to the public; one cited academic paper finds that funds that provide brokers larger load-sharing payments receive higher inflows. Based on that evidence, CEA estimates that retirement savers suffer financial harm of more than \$17 billion a year as a result. Where’s SIFMA’s data showing investors do not suffer harm as a result of broker conflicts?
- Investors aren’t protected fully against conflicts: the SEC has not fulfilled its mandate under Dodd-Frank to examine, and where appropriate, prohibit or restrict certain sales practices, conflicts of interest, and compensation schemes for brokers-dealers and investment advisers that are contrary to the public interest and the protection of investors. And, there is no real-world evidence that the various disclosures that brokers provide to their clients sufficiently protect them from broker conflicts.
- The current regulatory framework doesn’t protect investors who purchase non-security investments, including insurance, because the SEC and FINRA have no jurisdiction over those products.
- If the current regulatory framework comprehensively protects investors, then why does SIFMA support rulemaking under section 913 of Dodd-Frank to raise the standard on broker-dealers?

SIFMA can commission all the studies, reports, and white papers it wants to try to attack the CEA report and undermine DOL’s regulatory authority. But in doing so, SIFMA only shows how weak its arguments are and how defensive it is being.