Consumer Federation of America

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CFA Statement on SIFMA's Proposed Best Interests of Customer Standard for Broker-Dealers

Washington, D.C. – The Securities Industry and Financial Markets Association (SIFMA), the self-described "voice of the U.S. securities industry," has offered what appears to be intended as a proposed alternative to, or model for, the Department of Labor's Conflict of Interest rulemaking. If SIFMA's intent was to offer an alternative to the DOL proposal, it has failed. Even on its own terms, as a proposal to strengthen securities law protections, it falls well short of what is needed.

The SIFMA proposal would be "articulated…through amendments to existing FINRA Rules, as approved by the SEC." Furthermore, the proposal appears to subjugate the DOL's authority to update rules under the Employee Retirement Income Security Act (ERISA) to FINRA's and the SEC's regulatory authority under the securities laws. According to the proposal, "Any consideration by the DOL to adopt a best interests standard should be consistent with a prospective FINRA/SEC standard."

SIFMA's proposal should in no way be viewed as a substitute for DOL rulemaking. FINRA and the SEC have authority only over securities markets, and therefore SIFMA's proposal would not cover investment advice regarding non-securities within retirement accounts. As a result, SIFMA's proposal would not apply to retirement investment advice relating to insurance products, which are a major component of the retirement market and are often subject to significant sales-driven conflicts of interest. Nor would it address egregious abuses involving sales of art, gold, and other products to retirement investors. SIFMA's proposal also would apply only to retail accounts, and therefore not cover investment advice provided to employer retirement plans.

As we have said repeatedly, a comprehensive solution to the conflicted investment advice problem requires action by both the DOL and the SEC. In the securities context, the proposal that SIFMA has offered could be an important supplement to the DOL proposal if it were significantly strengthened in key ways. Specifically, the proposal would need to be less reliant on the disclosure and consent to material conflicts of interest, and more specific in how compensation practices and other incentives that encourage advisers to act in ways that are inconsistent with their customers' best interests would be reined in. In this regard, SIFMA's proposal is weak and vague precisely where the DOL's proposal is strong and clear.

Offering a securities law alternative to the DOL proposal is woefully insufficient, as it will not comprehensively protect retirement savers from conflicted investment advice. Offering a securities law proposal that does not even adequately protect retail securities investors from conflicted investment advice renders SIFMA's framework severely deficient standing alone.

It is clear that SIFMA's first priority is to obstruct, obfuscate, delay, and ultimately kill the DOL rulemaking. We think a better approach would be to work constructively within the context of the DOL rulemaking.