Consumer Federation of America

Statement of CFA Director of Investor Protection Barbara Roper Regarding SEC Adoption of Anti-Investor Advice Standards for Brokers and Advisers

"Today is a real low point for the SEC, but this fight is not over."

June 5, 2019

Today was a real low point for the SEC. The agency whose mission it is to protect investors chose instead to adopt a set of rules that will make it easier for brokers to dupe investors into believing that their biased sales recommendations are best interest advice, rules that erode and degrade the fiduciary standard that has long applied to investment advisers, and that leave investors confused about where they can turn for advice they can trust. Investors will suffer very real, painful financial harm as a result of this vote. They would have been better off if the Commission had failed to act at all.

And on this bleak day, the only member of the Commission who was willing to stand up for investors, instead of industry interests, was Commissioner Rob Jackson. So, I want to start by thanking Commissioner Jackson for the strong stand he took today in defense of investors. When everyone else is oohing and ahing over the Emperor's finery – in this case, this new "best interest" standard for brokers – it's not easy being the one who points out that the Emperor's outfit seems to be a little short on fabric. That's what was so badly needed here and what Commissioner Jackson provided: someone who was willing to point out that what's noticeably missing from Regulation Best Interest and the Investment Advisers Act Guidance is any obligation to do what is best for the investor.

To be clear, our objection to Reg BI is not that it's weaker than the Department of Labor's fiduciary rule, as some have suggested, or that it doesn't label its new standard a fiduciary standard. After all, the SEC just rendered that term meaningless. Our objection to the rules is that they won't do what they pretend to do, which is improve protections for investors. Instead, this makes things worse. Obviously, Commissioner Jackson's the only one of us who's had a chance to review the final rule, so he can tell me if I get anything wrong or if any of these problems we've identified have been fixed. Based on his earlier statement, however, I feel fairly confident they have not.

- Our first concern is that Reg BI doesn't actually require brokers to do what is best for their customers. It doesn't require them to recommend the investments and investment strategies they reasonably believe are the best available options for the investor. Instead, they can go right on evaluating and selecting investments the same way they did before the rule was adopted, because Reg BI's care obligation simply codifies existing requirements under FINRA rules.

- Our second concern is that Reg BI won't prevent brokers from putting their interests ahead of their customers' interests. Brokers won't have to eliminate incentives that encourage and reward advice that is not in investors' best interest. And they won't have to ensure that their policies and procedures to mitigate conflicts are effective in preventing conflicts from tainting the broker's advice. Simple common sense tells us that as long as brokers are paid to put the firm's interests ahead of the customer's interests (and they still will be under Reg BI), that's exactly what they'll do.
- Our third concern is that, instead of strengthening the standard for broker-dealers, the SEC has instead eroded and degraded the standard that applies to investment advisers under the Advisers Act. This is a shocking development and a real betrayal of the SEC's mission, particularly when you consider that most investment advisers enthusiastically support and embrace a much higher standard than the SEC is willing to enforce.

We will take time in the coming days and weeks to carefully review the regulatory text, but nothing in this morning's discussion prior to the vote gives us cause for optimism that these fundamental deficiencies in the rules have been addressed. As a result, they will mislead investors into expecting protections the rules do not deliver and deprive them of protections they currently receive, the exact opposite of what we should be able to expect from an agency that, at least in theory, is dedicated to protecting investors.

While today is a dark day for the SEC, no one should make the mistake of assuming this fight is over. This is an anti-investor rule that directly conflicts with congressional intent, adopted on a partisan vote, with only the brokerage industry in support. As soon as there's a Democrat in the White House, and new leadership at the SEC, re-opening this rulemaking will be a top priority. In the meantime, the burden will be on investors to protect themselves, since the SEC is unwilling to do so. We will be out in the coming days with tips investors can use to do just that.

The Consumer Federation of America is an association of more than 250 nonprofit consumer organizations that was established in 1968 to advance the consumer interest through research, advocacy, and education.