

ICI: Investors Will Win If SEC Swiftly Adopts—and DOL Recognizes—Best-Interest Standard for Brokers

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In Letters to Regulators, ICI Urges Consistent Best-Interest Standard for Brokers Serving Both Retirement and Non-Retirement Accounts

Washington, DC, August 8, 2017—The Securities and Exchange Commission (SEC) should promptly take the initiative to adopt—and the Department of Labor (DOL) should recognize in a streamlined exemption—a consistent best-interest standard of conduct for brokers when they provide recommendations to retail investors in retirement or non-retirement accounts, the Investment Company Institute (ICI) urges in two new comment letters to the agencies.

ICI advocates that the SEC take the lead by adopting a new, clearly defined best-interest standard of conduct for SEC-registered brokers that enhances the [current “suitability” standard and other obligations](#) that apply to brokers under federal securities laws and FINRA rules. Establishing a consistent best-interest standard for brokers providing recommendations to retail investors in non-discretionary accounts—regardless of whether they are saving for retirement or other goals—would “ensure that retail investors’ interests are put first, while preserving investors’ access to the products and services necessary to meet their savings goals,” ICI says. The letter urges the SEC to coordinate closely with the DOL, and says that the DOL should explicitly recognize the SEC’s best-interest standard of conduct in a corollary, streamlined prohibited-transaction exemption for financial services providers that are subject to an SEC-governed standard of conduct.

ICI's letters respond to SEC Chair Jay Clayton's [invitation in June for public feedback](#) on such standards, and to the DOL's recent [request for information](#) (RFI) regarding its fiduciary rule and related exemptions.

ICI Seeks Clearly Defined, Enhanced Standard for Brokers

The current suitability standard requires brokers to reasonably believe that the investments and strategies they recommend are suitable for their customers, considering a range of factors. The new SEC standard that ICI recommends (see [letter to SEC](#), page 3) enhances the suitability standard to provide an explicit duty of care and duty of loyalty, including:

- A broker's recommendation to an investor must not put the broker's interests (or the interests of anyone else) above the client's interests.
- A broker must exercise diligence, care, skill, and prudence in making recommendations to investors.
- The SEC should specify, among other obligations, that brokers receive only reasonable compensation, provide specified disclosures about their services, and are prohibited from making misleading statements.

ICI recommends that the fiduciary standard that currently applies to registered investment advisers—which has served investors well for more than seven decades—remain solidly in place.

ICI [calls upon the DOL](#) to establish a new, streamlined prohibited-transaction exemption relating to the fiduciary rulemaking that would apply to SEC-regulated financial services providers (brokers subject to the new best-interest standard of conduct, and investment advisers subject to the fiduciary duty standard of conduct). This new exemption would ensure that SEC-registered financial services providers are subject to standards of conduct that are consistent across retirement and non-retirement accounts, says ICI.

ICI cites distinct advantages of this coordinated approach over the current, incompatible regulatory regimes for retirement and non-retirement accounts, including:

- Enhancing retirement investors' protections without placing unnecessary, harmful burdens and legal risks on the financial professionals serving them.
- Reflecting the reality that individuals who seek financial guidance often have both retirement accounts and retail accounts, and would benefit from guidance that reflects consistent and compatible regulatory requirements.
- Allowing the DOL to abandon its use of contractual warranties and private rights of action, and end its reliance on the plaintiffs' bar as a means of enforcement. ICI's letter endorses an alternative—SEC and FINRA examination and enforcement—to appropriately protect all investors (See [letter to DOL](#), page 5).

ICI's [letter to the DOL](#) also calls for additional changes to the DOL's fiduciary rulemaking that will mitigate ongoing harm to investors and the market, echoing recent [ICI comment letters](#). The fiduciary rulemaking, ICI explains, is limiting investors' access to the products and services they may need to save for retirement—including commission-based accounts—and causing dislocations and disruption

within the financial services industry. “The fiduciary definition is overbroad and convoluted—turning commonplace interactions into fiduciary relationships and severely reducing exchanges of information currently provided at no cost to millions of retirement savers through call centers, walk-in centers, and websites,” the letter reiterates (see [letter to DOL](#), page 2, and ICI’s [July 21 letter to DOL](#), Section IV).

Delay by DOL in Applying Fiduciary Rulemaking Critical to Reform

ICI again urges the DOL to immediately postpone by one year—to January 1, 2019—the full implementation of its fiduciary rulemaking. This delay is essential to mitigate harm to investors and to allow critical time for effective SEC-DOL cooperation to achieve coordinated standards, ICI contends (see ICI’s original request in its [July 21 comment letter](#) to the DOL).

Recent ICI comment letters to the DOL relating to the agency’s fiduciary rule include:

- [ICI Seeks Delay of Remaining Conditions in Fiduciary Rule to Mitigate Harm to Retirement Savers](#) , July 21, 2017
- [DOL Must Rescind or Revise Fiduciary Rule to Protect Retirement Savers](#) , April 18, 2017
- [DOL’s Delay of Fiduciary Rule Justified to Avoid Costs, Disruptions for Retirement Savers](#) , March 17, 2017

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