

Chapman Client Alert

June 2, 2017

Current Issues Relevant to Our Clients

SEC Seeks Public Comments on Standards of Conduct for Investment Advisers and Broker-Dealers

The Securities and Exchange Commission (“SEC”) announced that it is requesting comments from retail investors and other interested parties on the standards of conduct applicable for broker-dealers and investment advisers. The public statement from SEC Chairman Jay Clayton announcing the request is available [here](#).

Background

As Chairman Clayton noted in his public statement, the SEC has been reviewing the legal and regulatory requirements applicable to broker-dealers, investment advisers, and associated persons for a number of years. This includes the RAND study of investor perspectives commissioned by the SEC in 2006 (final report available [here](#)), the SEC’s Dodd-Frank Act mandated study released in 2011 (available [here](#)) and a request for data and other information relating to various approaches regarding standards of conduct and other obligations of broker-dealers and investment advisers in 2013 (available [here](#)). Chairman Clayton further noted that a range of potential regulatory actions have been suggested to the SEC during these efforts including, but not limited to:

- maintaining the existing regulatory structure;
- requiring enhanced disclosures intended to mitigate reported investor confusion;
- the development of a best interests standard of conduct for broker-dealers; and
- pursuing a single standard of conduct combined with a harmonization of other rules and regulations applicable to both investment advisers and broker-dealers when they provide advice to retail investors.

The public statement and request for comments comes as the Department of Labor’s (“DOL”) new “Fiduciary Rule” becomes applicable on June 9, 2017. In his public statement Chairman Clayton noted that he welcomed the DOL’s invitation to engage constructively as the SEC moves forward with its examination of the standards of conduct applicable to investment advisers and broker-dealers. He further noted in his statement that the

Fiduciary Rule could have significant effects on retail investors and the capital markets which fall within the SEC’s mission of protecting investors; maintaining fair, orderly and efficient markets; and facilitating capital formation. The DOL continues to review the Fiduciary Rule in accordance with the instructions it was given in the February 3, 2017 Presidential Memorandum (described in our Client Alert available [here](#)). The Presidential Memorandum directed the DOL to conduct an economic and legal analysis of the Fiduciary Rule’s potential impact and, depending on the results of its examination, instructs the DOL to publish for notice and comment a proposed rule to rescind or revise the rule. Throughout the Fiduciary Rule rulemaking process there were many calls for the SEC to take the lead on establishing the appropriate conduct standards for broker-dealers and investment advisers rather than having the DOL create a separate standard applicable to advisers who provide advice to ERISA retirement plans and IRA customers.

Request for Comments

The SEC is requesting comments on a variety of areas related to the needs and experiences of retail investors in working with broker-dealers and investment advisers. The SEC is also requesting information from the public relating to existing and potential alternatives for regulating the conduct of broker-dealers and investment advisers. While many of the specific areas of comment identified in Chairman Clayton’s public statement focus on information to be provided by retail investors, the SEC is requesting information from all interested parties.

Comments can be submitted by webform [here](#) or by email to rule-comments@sec.gov. The SEC requests that commenters who are responding to a particular question from Chairman Clayton’s public statement specifically identify the question in their response. The SEC will post submissions on the SEC’s

website without change and the request for comment notes that commenters should only make submissions that they wish to make available publicly. There is not currently any deadline set for submitting comments.

For More Information

If you would like to discuss any topic covered in this Client Alert, please contact a member of the Investment Management Group or visit us online at chapman.com.

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