

Comments To Chairman Jay Clayton

June 19, 2018

As a co-founder and managing partner of WE Family Offices, an independent registered investment adviser, and co-founder and board member of the Institute, thank you for meeting with us today. I am a practitioner and have worked in the securities industry since 1997, at both broker-dealers and investment advisers. I deeply understand the differences between the two business models.

I applaud the Commission for addressing retail investor confusion through the lens of different business models – broker dealers and advisers. Just as the Department of Labor’s rule did, the act of proposing these rules raises awareness among the investing public that two business models and standards of conduct exist. This publicity and discussion is very beneficial.

As a registered adviser, I am pleased to see the Commission’s proposal to reaffirm and clarify the fiduciary duty owed by investment advisors to their clients. Specifically, holding registered advisers to the original intent of the fiduciary duty with respect to avoiding conflicts, and not simply disclosing them, is a positive step for our industry and investors.

I also applaud the effort to raise the suitability standard that applies to broker-dealers in Regulation Best Interest. However, I do not believe the proposed best interest standard is functionally equivalent to a fiduciary standard. A closer parity would serve investors well and I hope some of the gaps between the two standards can be closed before final rules are issued; my colleagues at the Institute will provide specific suggestions before the comment period closes.

In my view, the most problematic area of the proposed rules is the Form CRS – Relationship Summary. Far from helping retail investors understand the differences between business models and then choose accordingly, the sample Form CRS in the proposed rule, blurs the distinctions and makes it appear that there are only subtle differences between advisers and broker-dealers. This is potentially misleading because the differences in alignment and motive are material: brokers agree to sell investment products on behalf of manufacturers; advisers act on behalf of their clients to buy investment products that are best for the client. This difference is profound, and when investors don’t understand with crystal clarity that the person purporting to advise them is actually selling to them, bad outcomes happen.

In an advisory relationship there are only two parties – the investor and the adviser, and the adviser is bound to represent the investor’s interests at all times. In a broker-dealer relationship there are three parties – the investor, the broker-dealer, and the product manufacturer whom the broker-dealer is representing. If retail investors understood this fundamental and profound difference, and if the Commission could facilitate this understanding through the creation of a Form CRS that emphasized the fundamental differences between the business models, retail investors would be well served. The Institute will also provide specific suggestions in this regard before the comment period closes.



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