sifma
Invested in America

Written Testimony of Jerry Lombard, the President of the Private Client Group at Janney Montgomery Scott, LLC

On behalf of the Securities Industry and Financial Markets Association

before the U.S. House of Representatives

Committee on Financial Services

Subcommittee on Capital Markets, Securities, and Investment

Hearing entitled "Impact of DOL Fiduciary Rule on the Capital Markets"

July 13, 2017

Chairman Huizenga, Ranking Member Maloney, and distinguished members of the Subcommittee, I am Jerry Lombard, the President of the Private Client Group at Janney Montgomery Scott, LLC. I greatly appreciate the opportunity to testify today on behalf of the Securities Industry and Financial Markets Association (SIFMA)[1] and share our perspective on the best path forward to establish a best interest standard for the broker dealer industry. SIFMA represents the broker dealers, banks and asset managers who play an active role in the capital markets and are dedicated to promoting investor opportunity, access to capital, and an efficient market system that stimulates economic growth and job creation. We are grateful for this Committee's willingness to consider legislation that would allow the Securities and Exchange Commission (SEC) to establish a best interest standard for broker dealers that would create a high standard of care for retail customers across all accounts.

On June 9, 2017, some key provisions in the Department of Labor (DOL) fiduciary rule became applicable, and as an industry we are beginning to see its harmful impact on America's retirement savers - limiting product choice and access to advice, while raising costs. At Janney, we are already experiencing many of these issues. Our customers and advisors are very confused by the phalanx of new DOL rules applying to retirement plans. They do not understand why there are now two sets of rules one for retirement accounts and one for taxable brokerage accounts. Since June 9th customers are restricted from making certain investments. Upwards of 10,000 of our customer retirement accounts will be relegated to a "no advice service" desk –as they are too small for the risks imposed by the DOL or too costly to place in an advisory account that would remove the supposed conflicts the DOL is trying to regulate. How switching small retirement savers from a full-service advisor to a "no advice" service desk is in their best interest, I will never understand.

It is the position of SIFMA that the right answer for investors is a consistent best interest standard that could apply across all types of accounts, but does not have the additional onerous conditions created by the DOL rule. A best interest standard done right by the SEC, the expert agency responsible for broker dealer standards of conduct, would provide protection for retail customers without a bifurcated compliance regime imposed on the same market participants by different regulators.

We are greatly encouraged by the SEC's June 1st request for public comment on standards of conduct for investment advisers and broker dealers. It is SIFMA's intention to share with the SEC our desire that they consider establishing a best interest standard for broker dealers that mirrors the elements of the Impartial Conduct Standard under the DOL Rule, but unlike the DOL Rule, would apply across all broker dealer accounts, not just retirement accounts. For that reason, the DOL should at a minimum delay the January 2018 applicability date to allow the SEC to lead the effort to put in place a standard that works for all accounts.

---

[1] "SIFMA is the voice of the U.S. securities industry. We represent the broker-dealers, banks and asset managers whose nearly 1 million employees provide access to the capital markets, raising over $2.5 trillion for businesses and municipalities in the U.S., serving clients with over $18.5 trillion in assets and managing more than $67 trillion in assets for individual and institutional clients including mutual funds and retirement plans. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, visit http://www.sifma.org."

Congresswoman Wagner's legislative draft provides this path forward by establishing a SEC applied principles-based standard to ensure that all broker dealer recommendations about securities are driven by the best interest of the retail customer. Specifically, the Suitability Rule would be amended to provide that when making a 'recommendation' to a 'retail customer' a broker dealer shall act in the best interest of such customer at the time the recommendation is made. Further, the recommendation shall reflect the 'reasonable diligence' and the reasonable care, skill, and prudence that a registered representative would exercise based on the 'customer's investment profile.'

We firmly believe that Congresswoman Wagner's approach could provide a number of significant regulatory efficiency and investor protection benefits which would:

- enhance the existing suitability obligation under FINRA rules, building upon them to create a heightened and more stringent best interest standard of conduct for the benefit of retail customers;

- apply across all securities recommendations made to retail customers in all broker dealer accounts (not just limited to IRA accounts);

- build upon, and fit seamlessly within, the existing and long-standing securities regulatory regime for broker dealers, coupled with robust examination, oversight, and enforcement by the SEC, FINRA and state securities regulators; and

- be akin to, and well aligned with, the Investment Advisor standard under the Advisers Act insofar as the new standard would include a duty of loyalty and a duty of care, and an obligation to manage investment costs, and would require up-front disclosure to the customer of important information.

Thus, we greatly appreciate Congresswoman Wagner's work on this legislative discussion draft, and we look forward to continuing to work with her and this Committee on language that ensures the best interest standard established in the bill operates in harmony and consistency with all existing standards of conduct, including the current broker dealer, Investment Advisor, and DOL Rule regulatory frameworks, as well as any future rulemaking by the SEC or FINRA.

In doing this, we will help relieve America's retirement savers from the burdens that have arisen as a consequence of the DOL's misguided rule.

Thank you.