June 25, 2019

To Members of the U.S. House of Representatives:

The Securities Industry and Financial Markets Association ("SIFMA")[1] urges you to oppose the Waters amendment (#78) to H.R. 3351, the Financial Services and General Government Appropriations Act (FSGG). The Waters amendment would prohibit the Securities and Exchange Commission ("SEC") from implementing, administering, enforcing or publicizing the final rules and interpretations of SEC's Regulation Best Interest: The Broker-Dealer Standard of Conduct ("Reg BI").

Adopted by the SEC on June 5, 2019, Reg BI is the most comprehensive enhancement of the standard of conduct rules governing broker-dealers since the enactment of the Securities Exchange Act of 1934. The new SEC rules dramatically and undeniably exceed the previous suitability standard by requiring a duty of loyalty, meaning that a broker's recommendations must be in the customer's best interest and that the broker cannot place its own interests ahead of its customer. The regulations impose a duty of diligence, care and skill in making the recommendations, thereby holding the broker accountable for failures of knowledge or skill.

Contrary to what some commentators have asserted, under the new Reg BI, conflicts cannot be satisfied by disclosure *alone*. Brokers must also have policies and procedures to mitigate or eliminate financial conflicts. The new Reg BI standard is both equivalent to and, in certain provisions, exceeds what is required by the Investment Advisers Act of 1940.

Reg BI also includes significant compliance policies and procedures for brokers which will be enforced by the Financial Industry Regulatory Authority (FINRA) and the SEC. Brokers must create a record of all information collected from and provided to the retail customer as well as the identity of each registered representative responsible for the account.

Were Congress to prohibit the SEC from using any funds to implement, provide guidance or interpretations or enforce Reg BI, firms would still be obligated to follow the rule. Presumably FINRA (a non-governmental, congressionally mandated self-regulatory organization) would examine and regulate firms subject to the provisions of Reg BI. Consumers could continue to bring claims asserting violation of provisions under Reg BI through FINRA arbitration. However, regulated firms would not be provided the benefit of guidance from the SEC, nor would the SEC be able to bring enforcement actions pursuant to Reg BI. More importantly, the amendment will prevent the SEC from educating consumers about the new protections this rule would provide.

[1] SIFMA is the leading trade association for broker-dealers, investment banks and asset managers operating in the U.S. and global capital markets. On behalf of our industry's nearly 1 million employees, we advocate for legislation, regulation and business policy, affecting retail and institutional investors, equity and fixed income markets and related products and services. We serve as an industry coordinating body to promote fair and orderly markets, informed regulatory compliance, and efficient market operations and resiliency. We also provide a forum for industry policy and professional development. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA).

The issue of raising the standard of care for broker-dealers has been debated for decades. The SEC has promulgated a substantive rule that materially and unalterably raises that standard consistent with Section 913 of the Dodd Frank Act. As promulgated, brokers must be compliant by June 30, 2020. It makes no sense to prevent the orderly implementation of this important new set of regulations that would provide strong investor and consumer protections for forty-three million households.

To that end, SIFMA and its members strongly oppose the Waters amendment #78 and urge you to vote no.

Sincerely,

Kenneth Bentsen, Jr.
President and CEO