



TESTIMONY OF KEVIN CARROLL

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BEFORE THE U.S. DEPARTMENT OF LABOR,
EMPLOYEE BENEFITS SECURITY ADMINISTRATION

HEARING ON: IMPROVING INVESTMENT ADVICE FOR WORKERS AND RETIREES

SEPTEMBER 3, 2020

Good afternoon. I am Kevin Carroll, Managing Director and Associate General Counsel at the Securities Industry and Financial Markets Association. SIFMA represents the interests of hundreds of broker-dealers, investment banks and asset managers.

We appreciate the opportunity to further comment on the Department's proposed exemption.

First, let me express SIFMA's strong support for the Department:

- Replacing the vacated 2016 investment advice rule and reinstating the original five-part test;
- Reinstating Interpretive Bulletin 96-1; and
- Reinstating the class exemptions that were part of the same 2016 initiative, as they existed prior to 2016.

Directionally, SIFMA also supports the Department's proposed exemption to the extent that:

- It permits financial professionals to provide investment advice in a flexible manner; and
- It is aligned with the SEC's Regulation Best Interest ("Reg BI").

Accordingly, SIFMA urges the Department to proceed without delay to finalize its new protections for retirement savers, while at the same time ensuring that those same investors receive the benefit of a consistent best interest standard across both the DOL and SEC regulatory regimes.

As you know, the SEC's Reg BI compliance date passed on June 30, 2020.

In the weeks and months both before and since that date, SIFMA's members have worked diligently to implement the new and meaningful protections – and the materially heightened standard of conduct – that Reg BI requires when broker-dealers make investment recommendations to their retail clients.

While firms have taken a range of different approaches to comply with Reg BI, we note that all of the various business, operating model, and technological changes made by our members in response to Reg BI can be fairly characterized as both significant, and reasonably expected to inure to the benefit and heightened protection of retail investors.

In fairness, and to DOL's credit, many of these firm-level changes have been a work-in-progress for several years, trending since the days of the DOL's 2016 investment advice rule. Reg BI accelerated the trend by properly incentivizing firms to build-upon, refine and formalize these changes.

For example, in a recent sample survey of nearly 50 of our member firms, more than half of firms reported that they plan to eliminate certain conflicts of interest.

Nearly 70% of firms reported that they would enhance their existing conflict registry.

Our members also reported that Reg BI was driving their business models towards eliminating certain products and services from their retail customer product shelf, such as mutual funds with high fees and low analyst ratings.

Some firms are also eliminating or changing third party revenue sources by introducing a single use share class (also known as Clean Shares) and capping mutual fund and annuity upfront fees and trailing commissions.

Still other firms are adopting a single payout formula and are equalizing compensation for mutual funds in the same category to address instances where a financial advisor may be incentivized to recommend one product over another, where it may not be in the customer's best interest to do so.

And still other firms are adopting a wide range of third-party vendor solutions, including automated solutions that help an advisor collectively evaluate product cost, fees, performance, risk - and of course conflicts of interest – to arrive at an optimal best interest recommendation for the customer.

Of the firms we surveyed, they ranked their top three business model changes precipitated by Reg BI as:

- Modifications to their commission and/or fee schedules,

- Changes to other advisor compensation and incentive programs, and
- Rationalization of continuing to offer certain products and/or product types on their shelf.

In sum, the collective requirements of Reg BI have compelled our members to implement such fundamental changes to their systems, policies and procedures, such that it is fair to say that Reg BI and the requirements of the Department's proposed exemption are "functionally equivalent."

For that reason, we believe it is particularly important that the requirements of the proposed exemption hew as closely as possible to the requirements of Reg BI in order to promote clarity, certainty and consistency in the application of a best interest standard that intersects, at least in part, both the DOL and SEC regulatory regimes.

We refer you to our written comment for further details on our position in this regard.

We appreciate the opportunity to present this supplemental information today, and we thank you for your consideration.