GOVERNMENT RELATIONS POLICY POSITION PAPER

Harmonization of the Best Interest Standard

The issue

The SEC's Regulation Best Interest ("Reg BI") has been in effect since June 30, 2020. This regulation requires broker-dealers to act in their customers' best interest and provide full and fair disclosure of material facts and conflicts of interest. In addition, the National Association of Insurance Commissioners ("NAIC") has adopted a Model Rule requiring annuity recommendations to be similarly in the best interest of the customer. Together, these two pieces of guidance lay the groundwork for a uniform and rigorous set of rules that require all financial professionals to act in the best interest of their customers. LPL is committed to working to ensure that this sound structure is preserved.

Current status

Three potential concerns exist that could disrupt this sound structure:

1. First, it is possible that the Department of Labor (DOL) will propose another fiduciary rule, which would resurrect portions of the 2016 rule, including revisiting the definition of "fiduciary" under the five-part test. Intent to undertake this rulemaking was most recently published in the Spring 2022 Regulatory Agenda. The DOL has also been reviewing prohibited transaction exemptions, including 84-24 and possibly 86-128, to have them align with 2020-02. No rule proposal has been sent to the Office of Management and Budget (OMB) for review, indicating that the DOL is still in the drafting process.
   - In 2016, the U.S. Department of Labor (DOL) finalized a new set of fiduciary rules that made it extremely burdensome and risky to provide brokerage advice, leading to millions of low and middle-income Americans losing access to brokerage services. However, on March 15, 2018, the Fifth Circuit Court of Appeals vacated the DOL rule in whole, effectively killing it.

2. Second, it is possible that the SEC will revisit Regulation Best Interest (Reg BI). This year, we have seen the SEC take a closer look at how the industry has implemented Reg BI with a focus on examination and enforcement. Gary Gensler, Chairman of the SEC, has been vocal about the need for strong fiduciary standards in the past and could pursue changes to Reg BI.

3. The third threat comes from state legislatures and regulators, some of which have begun exploring the adoption of new fiduciary rules that could create a patchwork of inconsistent rules that would increase compliance costs dramatically, and also undermine the brokerage model, which is the main source of advice and assistance for low and middle-income investors. We have seen several states act on their own fiduciary or best interest standards. Additionally, NASAA is considering drafting a model best interest standard, which each state would then need to adopt.

On the other hand, the best thing for states to be doing is to adopt the NAIC model rule on annuity products, so that we can move closer to a uniform best interest standard for annuities. More than 20 states have already passed legislation or regulation to adopt the model rule for annuity products and we anticipate additional states will begin the process of adopting the model rule during the next legislative session.

LPL Position

LPL has long supported regulations requiring that investment advice be in the investor's best interest. We have consistently voiced our support for standards that will protect investors by helping to ensure that they receive investment advice and recommendations that are fair and appropriate for their particular investment, savings and financial needs. We also believe it is important that financial institutions and professionals provide clear disclosures regarding the nature of their services, their fees and compensation, and material conflicts of interest so that investors can make informed choices about investment services and products.

At the same time, we have urged that such standards and requirements be adopted in a way that preserves investor choice and access to a wide range of investment and financial services. Harmonized best interest standards will reduce investor confusion and costs, facilitate compliance, and promote holistic investment services, advice and planning. This will result in better savings and investment outcomes for all Americans, regardless of whether they are saving through a tax-qualified retirement account or a taxable account, and regardless of whether they receive advice from a broker-dealer or an investment adviser.

LPL has been very supportive of the SEC's efforts to date. As the prudential regulator for broker-dealers and investment advisers, the SEC is best positioned to engineer such a comprehensive rule. Furthermore, the SEC has the mechanisms to enforce such a standard of conduct, and a clear interest in protecting all retail investors.

We will continue to work with the SEC and DOL while also engaging proactively with state legislatures and regulators through individual meetings, comment letters and testimony. During our outreach, we emphasize the need for a single standard of conduct and for that standard to be Reg BI; it is untenable for financial advice to be subject to conflicting standards from the SEC, DOL, the states, and possibly even cities and counties. We need a clear harmonized best interest standard.

We look forward to our continued partnership with Congress, our regulators, and our industry partners to work in concert with existing obligations to protect American investors. Through our advocacy efforts, LPL will continue to push for a thoughtful resolution of this complex issue so that we may end the lingering uncertainty for our advisors and our collective business.