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SIFMA Squares Off with SEC Advisory Group Over Fiduciary Standard.

Claims adhering to 1940 Act would be too restrictive to brokers

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A major Wall Street trade organization opposes a recommendation by a Securities and Exchange Commission advisory group that calls on the agency to raise investment advice standards for brokers based on the law that currently governs investment advisers.

In an Oct. 11 letter to the SEC, the Securities Industry and Financial Markets Association said that if the agency proposes a rule to strengthen the standard of care for retail investment advice, it should use as its starting point the Securities Exchange Act of 1934, which set rules for broker-dealers.

SIFMA said that it supports a rule that would require brokers to act in the best interests of their clients — the standard that advisers now meet. Brokers currently operate under a less stringent suitability standard.

This month, a subcommittee of the SEC Investor Advisory Committee released a proposal saying that the SEC should craft a rule to establish a uniform fiduciary duty by narrowing the broker-dealer exemption to the Investment Advisers Act of 1940.

But brokers rely on the exemption in the 1940 law to charge commissions for securities transactions related to retirement and investment planning, according to SIFMA. It has long opposed subjecting brokers to the law.

“The proposal would completely foreclose broker-dealers from the retirement-planning and investment-planning businesses — businesses in which broker-dealers have served clients for many decades,” wrote Kevin Carroll, SIFMA’s managing director and associate general counsel. “Only investment advisers could then engage in those businesses. Such an approach would be grossly anti-competitive and unfair, and completely out of line with [the financial reform law] promise of a business model neutrality.”

In an interview, Mr. Carroll said that changing the broker-dealer exemption must be done legislatively rather than through regulation.

“Only Congress can do that,” Mr. Carroll said. “The notion that the SEC can modify the 40 Act is not a workable solution.”

The Dodd-Frank financial reform law authorizes the SEC to raise investment advice standards. It has not yet made a decision to proceed.

The Investor Advisory Committee, which was created by Dodd-Frank to represent the interests of small investors, was scheduled to vote on the fiduciary-duty proposal at an Oct. 10 meeting. That session was canceled due to the government shutdown and has not been rescheduled.

In addition to the SIFMA letter, the SEC has received comments from fi360 Inc., a fiduciary-duty consulting firm, the Investment Adviser Association and the Institute for the Fiduciary Standard regarding the fiduciary-duty proposal.

An IAC subcommittee recommended that the SEC use the 1940 Act as its foundation for a fiduciary-duty rule in order to ensure that the current standard is not watered down.

“We did not expect them to support the recommendation of rule making under the Advisers Act,” said Barbara Roper, director of investor protection at the Consumer Federation of America and a member of the IAC subcommittee.

She stressed that the subcommittee also recommended a way for the SEC to propose a fiduciary-duty rule under the 1934 law, as long as it includes a requirement for brokers to act in their clients’ best interests. In its letter, SIFMA endorsed that approach.

“It is gratifying that the main broker-dealer trade association is in support of one of those two options,” Ms. Roper said.

By Mark Schoeff Jr.

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