

## Little Love for SEC 'Best Interest' Proposal

By Kerry Pechter      Thu, Apr 19, 2018

*Having kicked the fiduciary can for two decades, the SEC has finally done something. But it didn't seem to do much--or, more importantly, enough--to define the phrase "best interest."*



By a 4-1 vote this afternoon, the Securities & Exchange Commissioners approved their department's proposal for what it called "Regulation Best Interest." The public will get 90 days to comment on it, after it is published in the Federal Register.

In her dissent, Obama-appointee attorney Kara Stein blasted it as "maintaining the status quo" and "protecting broker/dealers, not the customers." In favor were Trump-appointees chairman Jay Clayton, Hester Peirce, and Robert J. Jackson, Jr., (all attorneys) and Republican economist Michael Piwowar (an Obama appointee).

None seemed enthusiastic about the thick 1,000-page proposal, which calls on SEC-regulated intermediaries to act in the clients' best interest; disclose duties, fees and conflicts in a four-page Client Relationship Statement; and not use the title "adviser" or



"adviser" if they aren't one.

For statements by the commissioners, click [here](#).

The proposal is "principles-based." Like ineffective proposals of the past, it requires "reasonable," not stringent, efforts to protect consumers. Not much was said about accountability. And it relies on disclosures, which were categorically ridiculed during the

recent Mark Zuckerberg Facebook hearings in the Senate and which virtually everyone in the financial industry knows go unread by most investors.

Regarding the four-page model disclosure, Stein said, "We are asking a retail investor to flip through four pages of boilerplate text, read through a series of questions, and then take the initiative to engage in a conversation with his or her financial professional about matters with which he or she may not be familiar. Why are we, in effect, placing the onus on a retail investor to cure his or her own confusion?"

Although Piwowar voted for the proposal, he criticized its vagueness. "This proposal imposes on broker-dealers a new "best interest" standard. This sounds simple enough — it's not merely a "good" interest or a "better" interest standard, it is a "best" interest standard — and that term has attracted many advocates within the industry," he said.

But "the devil is truly in the details," he added. "This 'best interest' standard is wholly different from the well-established Investment Adviser's Act fiduciary standard and FINRA's suitability standard. Unfortunately, after 45 days of reviewing and commenting on this release, I am not convinced that we have clearly and adequately explained the exact differences. This lack of clarity is worrisome."

[Piwowar also made an unflattering comparison between the inaccessibility of the prose of one of the greatest works of American literature, saying that the SEC staff's suggested language for the CRS may be "about as comprehensible to the average reader as Herman Melville's *Moby Dick*." Why throw Ahab's symbolic sperm whale under the bus?]

Since this is the SEC, annuities and their hidden fees and commissions weren't mentioned; IRAs weren't distinguished from taxable accounts; and no one noted how some intermediaries switch hats, working as brokers, advisors, or insurance agents as their licensing allows and as opportunities arise. Having kicked this can for two decades, the SEC has finally done something. But it didn't seem to do much or, more importantly, enough.