INSTITUTE FOR THE FIDUCIARY STANDARD

NEWS RELEASE

Wednesday, March 6, 2013

Statement of Institute for the Fiduciary Standard on SEC Release Seeking Additional Information on a "Possible" Uniform Fiduciary Standard

The Institute applauds the Commission for seeking additional data and information regarding the costs and benefits of broker dealers putting the best interests of investors first.

*The important purpose of this release, however, is overshadowed by certain discussions on fiduciary duty. One such discussion concerns the duty of loyalty in a "possible" * uniform fiduciary standard. This discussion sets out assumptions as well as prescriptions the Commission may consider.** It is focused on "disclosure" and includes, the role of the "general relationship guide" (a disclosure document), the option of "oral" disclosure for "new material conflicts of interest," and treating conflicts of interest inherent in principle trades "the same as other conflicts of interest."*

The issues not discussed, the issues not even mentioned are also important. There is no mention that conflicts of interest can harm investors; there is no mention of the wide recognition of these harms by many industry leaders who helped craft the Advisors Act of 1940. There is no mention of the established practice of the Commission and its staff urging advisors to avoid conflicts of interest. There is also no mention of any of the independent research addressing the harms of conflicts to investors, or the research that underscores the ineffectiveness of disclosure.

In short, longstanding legal, academic, and industry views that underscore how conflicts are bad for investors, in essence a cancer on objective advice, are simply absent in this discussion. The absence of this vital part of the heritage of fiduciary duty fundamentally resets the direction of the discussion of "loyalty" in a way that is worrisome.

Background. The Securities & Exchange Commission release (34-69013; IA – 3558; File No. 4-606) http://www.sec.gov/rules/other/2013/34-69013.pdf, seeks information to assess whether it should proceed with rulemaking to apply a uniform fiduciary standard to broker dealers that requires they act in the best interest of investors when providing personalized investment advice. Pursuant to Dodd-Frank, this standard must be "no less stringent" than the standard applicable to investment advisers. The release notes that using its example of a possible uniform fiduciary standard, "does not suggest our policy view, or the ultimate direction of any proposed action by us."

* The release notes, its description "of a potential uniform fiduciary standard is only one example of how we could implement a uniform fiduciary standard …"
** The discussion is prefaced by a curious statement that Dodd Frank "addresses the duty of loyalty" by stating a material conflict of interest "shall be disclosed" and "may be" consented to (this is curious because there is no mention of "the duty of loyalty" in this section of Dodd Frank).

Contact: Knut A. Rostad, President . Institute for the Fiduciary Standard
703-821-6616 x 429; cell: 301-509-6468