



U.S. Securities and Exchange Commission

SEC Influence to Trusts

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Division of Investment Management - Overview

- The Division of Investment Management works to protect investors, promote informed investment decisions and facilitate appropriate innovation in investment products and services through regulating the asset management industry.
- The Division is responsible for regulation of investment companies, variable insurance products, and federally registered investment advisers.
 - Types of investment companies include mutual funds, closed-end funds, business development companies, unit investment trusts, and exchange-traded funds.
- The Division carries out its mission by focusing primarily on guidance, disclosure, rulemaking, and risk monitoring and analysis.
 - <https://www.sec.gov/investment-management>
- Current rulemaking projects (Agency Rule List – Fall 2018)
 - https://www.reginfo.gov/public/do/eAgendaMain?operation=OPERATION_GET_AGENCY_RULE_LIST¤tPub=true&agencyCode=&showStage=active&agencyCd=3235



Rulemaking Package – Overview

Standards of Conduct Rulemaking – Three Proposals

- Proposed Regulation Best Interest, Exchange Act Release No. 83062 (April 18, 2018), available at <https://www.sec.gov/rules/proposed/2018/34-83062.pdf>.
- Proposed Form CRS Relationship Summary; Amendments to Form ADV; Required Disclosures in Retail Communications and Restrictions on the use of Certain Names or Titles, Exchange Act Release No. 83063, Investment Advisers Act Release No. 4888 (April 18, 2018), available at <https://www.sec.gov/rules/proposed/2018/34-83063.pdf>.
- Proposed Commission Interpretation Regarding Standard of Conduct for Investment Advisers; Request for Comment on Enhancing Investment Adviser Regulation, Investment Advisers Act Release No. 4889 (April 18, 2018), available at <https://www.sec.gov/rules/proposed/2018/ia-4889.pdf>.



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Standards of Conduct Rulemaking – Regulation Best Interest

Under the proposal, a BD, *“when making a recommendation of any securities transaction or investment strategy involving securities to a retail customer, shall act in the best interest of the retail customer at the time the recommendation is made, without placing the financial or other interest of the broker, dealer or natural person who is an associated person of a broker or dealer making the recommendation ahead of the interest of the retail customer.”*

– See Proposed Regulation Best Interest, § 240.15l-1(b)(1).

- Under the proposal, the best interest duty is satisfied if the BD complies with:
 - a disclosure obligation
 - a care obligation, and
 - two conflict of interest obligations.



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Standards of Conduct Rulemaking –

Form CRS Relationship Summary

- Retail investors can receive investment advice from a BD, an IA, or both. The regulatory regimes and business models under which BDs and IAs give advice are different.
- Proposed Form CRS – the “Relationship Summary” – would:
 - highlight key differences in: (1) principal types of services offered, (2) legal standards of conduct that apply to each, (3) fees the retail investor will pay, and (4) certain conflicts of interest that may exist.
 - include relevant questions for retail investors to ask, and
 - provide retail investors direction as to where and how they might get more information, including on the firm’s or investment professional’s disciplinary history.



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Standards of Conduct –

Investment Adviser Interpretation

- A proposed new Commission interpretation would reaffirm, and in some cases, clarify the Commission's views on RIA fiduciary standards, specifically, that a RIA:
 - must act in the best interest of its client, and
 - owes its client a duty of care and a duty of loyalty.



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Standards of Conduct –

Investment Adviser Interpretation

*“The Advisers Act establishes a federal fiduciary standard for investment advisers. This fiduciary standard is **based on equitable common law principles** and is fundamental to advisers’ relationships with their clients under the Advisers Act. **The fiduciary duty** to which advisers are subject is not specifically defined in the Advisers Act or in Commission rules, but reflects a Congressional recognition ‘of the delicate fiduciary nature of an investment advisory relationship’ as well as a Congressional intent to ‘eliminate, or at least to expose, all conflicts of interest which might incline an investment adviser – consciously or unconsciously – to render advice which was not disinterested’ ...*

“It is made enforceable by the antifraud provisions of the Advisers Act.”

- Investment Advisers Act Release No. 4884, citing *SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 194 (1963) (“SEC v. Capital Gains”) (*emphasis added*).



Proposed Interpretation: Duty of Care includes:

1. Duty to provide advice that is in the client's best interest.
 - Make a reasonable inquiry into a client's financial situation, level of financial sophistication, investment experience, and investment objectives
 - Provide personalized advice that is suitable for and in the best interest of the client based on the client's investment profile.
2. Duty to seek best execution, where the IA has responsibility to select broker-dealers to execute client trades.
3. Duty to act and provide advice and monitoring over course of the relationship.



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Standards of Conduct –

Investment Adviser Interpretation

Proposed Interpretation: Duty of Loyalty

An RIA must:

- not favor its own interests over those of a client or unfairly favor one client over another;
- make full and fair disclosure to its clients of all material facts relating to the advisory relationship; and
- with respect to material conflicts of interest that could affect the advisory relationship, disclosure must be clear and detailed enough for a client to make a reasonably informed decision to consent to such conflicts and practices or reject them.



- **Use of Certain Names and Titles**
 - Proposed new rule under the Exchange Act would restrict BDs and associated natural persons of BDs, when communicating with a retail investor, from using the term “adviser” or “advisor” in specified circumstances.
 - Proposed Exchange Act Rule, § 240.15l-2
- **Disclosure About Regulatory Status and Financial Professional Association**
 - Proposed new rules under the Exchange Act and Advisers Act would require BDs and IAs, and their associated natural persons and supervised persons, to disclose, in retail investor communications, the firm’s registration status with the Commission and an associated natural person’s and/or supervised person’s relationship with the firm.
 - Proposed Exchange Act Rule, § 240.15l-3; Proposed Advisers Act Rule, § 275.21h-1



Amendments to the custody rules are on the SEC's long-term unified agenda.

- <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201804&RIN=3235-AM32>

Recent Engagement Requests

- Staff Letter to ICI and SIFMA AMG: Engaging on Fund Innovation and Cryptocurrency-related Holdings, January 18, 2018
 - <https://www.sec.gov/divisions/investment/noaction/2018/cryptocurrency-011818.htm>
- Engaging on Non-DVP Custodial Practices and Digital Assets, March 12, 2019
 - <https://www.sec.gov/investment/non-dvp-and-custody-digital-assets-031219-206>



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Proxy Advisors and Proxy Process

- SEC Staff Roundtable on the Proxy Process, Nov. 15, 2018
- Statement Regarding Staff Proxy Advisory Letter, IM Information Update, September 2018
 - <https://www.sec.gov/divisions/investment/imannouncements/im-info-2018-02.pdf>

IM Next Steps - In 2019, focus will include questions such as:

- how to promote voting practices that are in the best interests of advisory clients, including voting on an issuer-specific basis when appropriate;
- whether advisers are expected to vote every proxy;
- how advisers should evaluate recommendations of proxy advisers, particularly where the issuer disagrees with the factual assumptions of the recommendation; and
- how advisers should address conflicts of interest that a proxy adviser may have.
 - Dalia Blass, Keynote Address: ICI Mutual Funds and Investment Management Conference (March 18, 2019), at <https://www.sec.gov/news/speech/speech-blass-031819>



Engagement with Rulemaking Staff and Writing Comments

Investor Bulletin: Suggestions for How Individual Investors Can Comment on SEC Rulemaking

– https://www.sec.gov/oiea/investor-alerts-and-bulletins/ib_secrulemaking.

- State your opinion of the proposal and explain why. Indicate what aspects of the rulemaking you support or oppose, and why.
- Use examples.
- Suggest solutions or alternatives. It is helpful if you include specifics, explain how an alternative would achieve the goals of the rulemaking, why you believe your alternative is better, less costly, or more effective.
- Provide data. Information on how the rulemaking would change current practices is helpful.