



American Council of Life Insurers

Jigar Gandhi
Counsel

August 3, 2018

Brent J. Fields
Secretary
Securities and Exchange Commission
100 F Street N.E.
Washington, D.C. 20549-1090

Re: Proposed Commission Interpretation Regarding Standard of Conduct for Investment Advisers;
Request for Comment on Enhancing Investment Adviser Regulation

File Number S7-09-18

By Electronic Delivery

Dear Mr. Fields:

The American Council of Life Insurers (“ACLI”)¹ is a national trade association representing 290 life insurers that hold over 95 percent of the industry’s total assets. Our members serve 75 million American families that rely on life insurer’ products for financial and retirement security. Our members offer life insurance, annuities, retirement plans, long-term care, disability income insurance, and reinsurance. we greatly appreciate the opportunity to provide the Securities and Exchange Commission (“SEC”) our input on the proposed Commission Interpretation Regarding Standard of Conduct for Investment Advisers (“Interpretation”). ACLI will also be separately providing input on the SEC’s corresponding proposals, Regulation Best Interest and Form CRS.

ACLI’s member life insurance companies have differing business models, however many of our members have associated investment advisers which makes the SEC’s Interpretation and Request relevant to them. ACLI’s members understand that the SEC is not proposing any new requirements in its current interpretation, and ACLI would encourage that the Commission not seek to codify its interpretation or to further propose additional, unnecessary requirements in the investment adviser space. Investment advisers are adequately regulated, and ACLI recommends that the SEC not use its current interpretation as a foundation to promulgate additional regulation in an area where it is not needed.

I. Overview of SEC’s Investment Adviser Proposed Interpretation

The Commission’s proposed interpretation seeks first to clarify the existing interpretation fiduciary obligations for investment advisers and further seeks comment on three “potential enhancements” to

¹ The American Council of Life Insurers (ACLI) advocates on behalf of approximately 290 member companies dedicated to providing products and services that contribute to consumers’ financial and retirement security. ACLI members represent 95 percent of industry assets, 93 percent of life insurance premiums, and 98 percent of annuity considerations in the United States. 75 million families depend on our members’ life insurance, annuities, retirement plans, long-term care insurance, disability income insurance and reinsurance products. Taking into account additional products including dental, vision and other supplemental benefits, ACLI members provide financial protection to 90 million American families.

the regulation of investment advisers that would mirror requirements currently governing broker-dealers.² The SEC does not lay out a specific rule proposal as it does in its Regulation Best Interest proposal, however the request for information anticipates a possible rule proposal at some future date. In short, the SEC:

- States that, as a fiduciary, an investment adviser owes his or her clients a duty of care, which comprises of 1) a duty to provide advice that in the client's best interest; 2) a duty to seek best execution; and 3) a duty to act and to provide advice and monitoring over the course of the relationship.³
- States that as a fiduciary, investment advisers owe their clients a duty of loyalty, which requires an adviser to put the clients' interests first.⁴
- Request Comment on Areas of potential enhanced investment adviser regulation. Specifically, the SEC requests comment on 1) federal licensing and continuing education; 2) provisions of account statements; and 3) financial responsibility.⁵

II. Summary of ACLI's Position

- ACLI appreciates the considerable work done by the SEC staff but has concerns that any proposed enhanced regulation for investment advisers would create duplicative and unnecessary regulation. We discuss the unique characteristics of life insurers associated with broker-dealers and investment advisers in section nine our comments on the SEC's Regulation Best Interest ("Reg. BI").
- The SEC must consider the impact of any future proposals on the unique business models of life insurance companies. Life insurers with associated investment advisers and broker-dealers are subject to multiple layers of regulation from state insurance commissioners, state securities regulators, the SEC, and FINRA. We elaborate significantly on life insurers regulatory framework in section ten of our comments on the SEC's Reg. BI, that was filed concurrently with this letter.
- In lieu of any proposed regulation, the SEC should continue to provide interpretative guidance and rely upon the voluminous existing guidance and case law regarding the duties of investment advisers, rather than attempting to codify this body of existing law.

III. Request for Comment Regarding Areas of Enhanced Investment Adviser Regulation

The SEC's proposed interpretation poses approximately 24 questions in its request for comment on areas of potential enhanced regulation of IAs, ranging from questions regarding continuing education requirements, licensing requirements, and registration requirements. Many of the SEC's questions portend a potential effort to mirror the broker-dealer registration model, currently regulated by FINRA.

ACLI believes that the implication of this approach to licensing and continued education would be duplicative of exist state securities licensing and continuing education requirements for investment adviser representatives ("IARs"). ACLI believes that such proposed "enhancements" are aiming to fill a perceived gap that does not exist.

ACLI believes that creating a parallel continuing education and licensing scheme to those of broker-dealers is a potential solution in search of a problem. Both the SEC and state securities regulators ably

² Proposed Commission Interpretation Regarding Standard of Conduct for Investment Advisers; Request for Comment on Enhancing Investment Adviser Regulation, <https://www.sec.gov/rules/proposed/2018/ia-4889.pdf> (last visited on July 16, 2018).

³ SEC Interpretation at 21206, 21207.

⁴ SEC Interpretation at 21207.

⁵ SEC Interpretation at 21208.

regulate investment advisers. Absent some demonstration that existing provisions are inadequate, we believe additional continuing education and licensing requirements are unnecessary.

IV. Conclusion

In summary, ACLI urges that the SEC consider the impact of any future proposals on the unique business models of life insurance companies. We appreciate your consideration of our comments and would gladly provide any other information should you require it.

Sincerely,

A handwritten signature in black ink, appearing to read 'J. Gandhi', with a stylized flourish at the end.

Jigar Gandhi