

SIFMA Proposes “Best Interests of the Customer” Standard for Broker-Dealers

On June 3, 2015, SIFMA proposed a “best interests of the customer” standard that would apply to broker-dealers and the recommendations issued to any of their individual retail customers about any brokerage accounts. SIFMA’s proposal was in response to an April 14, 2015 definition proposal by the Department of Labor (“DOL”) about who is considered a fiduciary under ERISA, and the DOL’s carve-out from their proposed definition for broker-dealers who service IRA accounts. SIFMA’s standard articulates its support for a move toward a uniform “Best Interests of the Customer” standard for broker-dealers.

SIFMA President and CEO, Kenneth Bentsen, Jr., addressed a SIFMA DOL Fiduciary Seminar on June 3, 2015, and in his remarks, stated what SIFMA believes the core elements of a “best interests of the customer” standard should be, as well as what an optimal legal standard should be.

The core elements, according to Bentsen were: (1) create and articulate an enforceable legal broker-dealer obligation; (2) include in the considerations, the existence of investment-related fees; (3) create a way to avoid or manage conflicts of interest that may arise; and (4) create disclosure policies, as related to conflicts and fees, to enhance transparency levels.

The optimal legal standard, according to Bentsen, should: (1) apply to all investment recommendations that are made to any individual retail customer related to any type of account; (2) Integrate and be consistent with the SEC's current standard under §913 of the Dodd-Frank Act; (3) provide "best interest" protections for customers; and (4) continue to follow the traditional approach of creating a rule that provides for the same levels of disclosure, examination, and enforcement by regulatory agencies, coupled with a private right of action, that already exist under current standards.

Kenneth E. Bentsen, Jr.'s speech is available at [here](#).
[Download Bentsen DOL Seminar Remarks](#)

The SIFMA Proposed Standard is available at [here](#). [Download SIFMA Best Interest Standard June 2015](#)