IDC Independent Directors Council
Promoting Excellence in Fund Governance

ICI Supports Strong Protections for Retail Investors

Recommends Refinements to SEC "Standards of Conduct" Proposals to Ensure Effective Framework for Investor Protection

Washington, DC; August 7, 2018—The Investment Company Institute (ICI) supports recent efforts by the Securities and Exchange Commission (SEC) to ensure that retail investors, whether they are investing for retirement or other important goals, are afforded strong protections when they receive recommendations from a financial professional, ICI told the agency in a comment letter today.

With some refinements, ICI said, the SEC's proposed Standards of Conduct for Investment Professionals will create an effective framework for achieving the SEC's objectives—including promoting investment recommendations in investors' best interest and preserving investors' option to choose the type of investment professional who can best help them pursue their investing goals.

"The SEC's proposals represent a critical step forward toward establishing a high standard of conduct for broker-dealers providing recommendations to retail investors," said ICI President and CEO Paul Schott Stevens. "Importantly, that standard would apply to both retail and retirement accounts. The proposals also seek to improve investors' understanding of their relationship with a financial professional. We commend the SEC and its staff for taking the lead at a crucial time in the debate over standards to ensure that financial professionals best serve America's investors."

Refinements Suggested to Achieve Objectives

ICI recommended several modifications to the SEC's proposals to better achieve the agency's goals, including the following:

Addressing Conflicts of Interest

The SEC should clarify when and how a broker-dealer must address conflicts of interest, especially regarding recommendations of products that are proprietary or limited in range (see letter, page 20). ICI recommends an approach that would be consistent with the DOL's approach in the fiduciary rule and would appropriately focus the mitigation obligation on incentives that create a material conflict of interest for the representative that may influence the recommendation to the customer.

Considering Fees and Expenses

The SEC should confirm that a broker-dealer recommending funds:

- May consider a variety of important factors, in addition to cost, in making a recommendation (see letter, page 14).
- May direct customers to the detailed, standardized information about fund fees and expenses in the fund prospectus, rather than independently calculating fund fees (see letter, page 8).
- Would not be required to calculate fees and expenses on an individualized basis at the beginning of the relationship or before making a recommendation. Predicting and providing prospective fee information would involve significant challenges and costs, and extensive fund fee information already is readily available, as required by existing regulations. (see letter, page 9).

Proposed Interpretation of Adviser's Fiduciary Duty

The SEC should refine its interpretation to make it more consistent with existing law by:

- Clarifying the scope and applicability of an adviser's fiduciary duty, recognizing key differences between institutional advisory relationships and the retail advisory relationships that are the focus of the SEC's interpretation (see letter, page 29).

- Confirming that the existing standard under the Advisers Act for a client’s consent to conflicts is whether the adviser has provided full and fair disclosure of material conflicts and obtained informed client consent (see letter, page 30).

In answer to the SEC’s question in the proposal about applying broker-dealer rules—such as licensing requirements—to the investment adviser regulatory regime, ICI recommended that the SEC not pursue these changes, noting that the SEC has neither articulated why these potential changes would be beneficial nor addressed key concerns and questions they raise (see letter, page 34).
