The Committee for the Fiduciary Standard Statement on the SEC's Request for Comment on the Study to Evaluate "The effectiveness of existing legal or regulatory standards of care"

Statement July 28, 2010

The Committee for the Fiduciary Standard applauds SEC Chairman Mary Schapiro for speaking out on extending the fiduciary standard, and its significance to maintaining public confidence and trust in our capital markets. Since her appointment by President Obama, Chairman Schapiro has repeatedly discussed the importance of linking personalized investment advice and fiduciary duty. Further, the Committee notes that the Chairman just yesterday called for a study and rule-making process that offers an unprecedented and "maximum opportunity for public comment and to provide greater transparency."

The Committee is concerned, however, that the relatively short 30-day public comment period for the study might be misinterpreted by retail investors as the only opportunity to express their opinions on standards of care, and may have the effect of discouraging retail investor participation. This would be unfortunate. We believe this point should be clarified, and the opportunity for providing additional comment, in the event of rule-making after the study, made clear.

Background

2009 Chairman Schapiro has spoken pointedly, since her first days in office, about the fiduciary standard, and its role in the capital markets. The Chairman noted in May 2009 that markets only work if investors believe they do and "Above all that investors must know that the information upon which they base their investment decisions is the truth, the whole truth, and nothing but the truth." In June of 2009, she stated that all financial service providers delivering "personalized investment advice about securities" should do so as a fiduciary, and explained, "A Fiduciary owes its customers and clients more than mere honesty and good faith alone. A fiduciary must put its clients' and customers' interests before its own, absent disclosure of, and consent to, conflicts of interest."

July 27, 2010. Yesterday, in a speech at the U. S. Chamber of Commerce, Chairman Schapiro reiterated her support for a uniform fiduciary standard "no less stringent" than the standard applicable to investment advisers, and an investment adviser must "put the interest of their clients before their own." The Chairman also elaborated on the importance of the process for obtaining public comment.

"Investors, leaders of small and large businesses, academics and others who identify issues, and who offer ideas and alternatives, can help us create a regulatory structure that supports our shared goals over the long term…. (and) because of the significant rulemaking envisioned under the Act, we are expanding our process beyond what is legally required… to offer maximum opportunity for public comment and to provide greater transparency. We are inviting public

comment even before the various rules are proposed and before the official comment periods have begun.”

Request for Comment. The July 27, 2010 “Request for comment” identifies 14 questions regarding evaluating, “the effectiveness of existing legal or regulatory standards of care.” The request further states the Commission will accept comments from thirty days after the notice is published in the Federal Register.

Based on Chairman Schapiro’s statements in support for extending the fiduciary standard to all professionals providing advice, the Committee expects the SEC to engage in further rule-making after it completes its study on standards of care. The Committee notes that such a process will provide the public, and retail investors in particular, additional opportunity to provide input and comments on their views of investment professionals’ services and responsibilities.

The Committee for the Fiduciary Standard is comprised of over 800 investment professionals and was formed last year to advocate for the authentic fiduciary standard, as presently established under the Investment Advisers Act of 1940. The Committee’s Steering group members are recognized leaders in the investment profession:

- Blaine Aikin, fi360
- Clark M. Blackman II, Alpha Wealth Strategies, LLC
- Gene Diederich, Moneta Group
- Harold Evensky, Evensky & Katz
- Sheryl Garrett, Garrett Planning Network
- Roger C. Gibson, Gibson Capital, LLC
- Matthew D. Hutcheson, Independent Pension Fiduciary
- Gregory W. Kasten, Unified Trust Company
- Maria Elena Lagomasino, GenSpring Family Offices
- Kate McBride, Wealth Manager
- James Patrick, Envestnet
- Ronald W. Roge, R. W. Roge & Company
- Knut A. Rostad, Rembert Pendleton Jackson

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