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July 23, 2015

BY FIRST-CLASS AND ELECTRONIC MAIL

The Honorable Mary Jo White
Chair, Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Dear Chair White:

On July 21, 2015, the Subcommittee on Employment and Workplace Safety of the Senate Committee on Health, Education, Labor and Pensions held a hearing (the "Hearing") at which Secretary of Labor Thomas Perez testified concerning the "Conflict of Interest Rule" (the "Rule") recently proposed by the Department of Labor (the "Department"). As you know, the Rule would significantly impact how advice is provided to retail customers in the context of an ERISA plan.

My line of questioning at the Hearing focused on the Secretary's repeated claims of "dramatic and extensive coordination" with your office (but apparently not the offices of other commissioners) as the Department drafted the rule. I questioned the Secretary on whether it is his impression that this "coordination" resulted in *agreement* between your office and the Department; he intimated that there is agreement, noting that the Rule mimics the "best interest" standard proffered in the SEC's study published in 2011 pursuant to section 913 of the Dodd-Frank Act. I write to follow up on that line of questioning.

Your tenure as chair of the SEC has largely been marked by, among other things, a strong commitment to protecting the jurisdiction and prerogatives of the Commission as the primary regulator of the securities laws and a robust securities regulation and enforcement program in collaboration with SROs like FINRA. I would therefore be surprised if you agreed with the approach taken by the Department in the Rule. After all, the Rule is premised on the assumption that existing SEC and SRO regulation of financial professionals, or the enforcement thereof, is inadequate. A January 13, 2015, memorandum authored by two members of the White House's Council of Economic Advisers states, for example, that current regulations create incentives for advisors "to recommend excessive churning (repeated buying and selling) of retirement assets and to steer savers into

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higher cost products with financial payoffs for the advisor.”¹ As you are aware, however, the SEC and SROs have existing rules to prevent this conduct and have invested in sophisticated software and other tools to detect it.

Moreover, the SEC and FINRA have historically adhered to the principle that securities markets should be regulated primarily through disclosure requirements, not prohibitions on the sale of products. For many years, retail customers have received sound investment advice in what is arguably the most transparent and well-regulated securities market in the world. Yet in stark contrast to the SEC’s approach, the Department’s Rule would effectively prohibit the sale of certain products by financial professionals. In short, the SEC’s regulatory scheme amounts to “educate yourself before taking a risk”; the Department’s Rule, reflecting a Washington-knows-best approach to investment advice, tells America’s families “you’re too unsophisticated to know what’s best for your own retirement.”

Finally, I am sure you are aware that if the Rule is finalized, there will be multiple different standards of conduct that will apply to the provision of investment advice. FINRA, in its comment letter to the Department on the Rule, suggested that there would be at least six different regulatory permutations that could govern the relationship between the financial professional and the customer depending on the circumstances in which the advice is provided.² I am curious about your thoughts on whether the lack of harmonization across these scenarios is consistent with the SEC’s regulatory strategy and objectives.

In conclusion, the proposition that you and the Secretary agree on the merits of the Rule seems questionable in light of the SEC’s existing securities regulation framework and its enforcement efforts during your tenure as chair. I therefore invite you to reply to this letter to share your thoughts on the Rule with me, particularly on the question of the degree to which you support or agree with the details of the Rule, in light of your experience as a securities regulator. Time is of the essence; I look forward to your prompt reply.

Sincerely,



TIM SCOTT

¹ Available at <http://www.scribd.com/doc/253449711/WH-DOL-memo>.

² Available at <http://www.dol.gov/ebsa/pdf/1210-AB32-2-00405.pdf>.