



THE CHAIR

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

September 18, 2015

The Honorable Tim Scott  
United States Senate  
520 Hart Senate Office Building  
Washington, DC 20510

Dear Senator Scott:

Thank you for your July 23, 2015 letter concerning the Department of Labor's ("DOL") proposed rule entitled "Definition of the Term 'Fiduciary'; Conflict of Interest Rule – Retirement Investment Advice" (the "Proposed Rule"). In your letter, you invite me to share my thoughts on the Proposed Rule.

I appreciate the concerns you and other commenters have expressed about the interplay between the Proposed Rule and existing requirements under both the federal securities laws and self-regulatory organization rules, and the potential for different standards applying to the provision of investment advice to retail investors. Whenever you have substantially similar services regulated differently, I believe you should carefully consider whether the distinctions are justified, and if not, work to address those differences.

As you know, my evaluation of the differences in the standards that apply to advice under the federal securities laws has led me to conclude that broker-dealers and investment advisers should be subject to a uniform fiduciary standard of conduct when providing personalized investment advice about securities to retail investors. I recognize that this is a complex issue, and that there are many challenges that will need to be addressed in proposing a uniform fiduciary standard, including how to define the standard, how it would affect current business practices, and the nature of the potential effects on investors, particularly retail investors.

I am discussing these concepts with my fellow Commissioners, and I have asked the staff to develop rulemaking recommendations for Commission consideration. As part of its analysis, the staff is giving serious consideration to, among other things, the recommendations of the SEC staff's 2011 study under Section 913 of the Dodd-Frank Act, the views of investors and other interested market participants, potential economic and market impacts, and the information we received in response to a 2013 staff request for data.

As separate agencies, I believe that the Commission, in advancing a proposal, and the DOL can each proceed to consider the appropriate standards that apply to advice given by Commission-regulated entities with respect to particular investments. I also understand the importance of consistency, and appreciate the impact that any potential rulemaking by the Commission and the DOL may have on those entities, investors, and the markets.

Consultation among staff members at the Commission and the DOL has been, and will continue to be, important. Those consultations were not intended to reach agreement between the agencies on DOL's Proposed Rule. However, as you know, Commission staff and I have been committed to providing technical assistance and expertise on our regulatory regime to DOL staff as they have developed their Proposed Rule. As part of these discussions, Commission staff shared their experiences and knowledge with how services are provided in this area of the market, and discussed the potential impact the Proposed Rule may have on Commission registrants, particularly broker-dealers, as well as the potential impact on retail investors. Commission staff will be available to continue to provide technical assistance to DOL staff as they review public comments on the Proposed Rule.

Thank you again for your letter. Please do not hesitate to contact me at (202) 551-2100, or have a member of your staff contact Tim Henseler, Director of the Office of Legislative and Intergovernmental Affairs, at (202) 551-2010, if you have any additional concerns or comments.

Sincerely,



Mary Jo White  
Chair