

SEC Broker Standards Rule Falls Far Short

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In a market plagued by conflicts of interest, brokers too often steer investors into poorly performing, high-cost investments that are profitable for the broker, but bad for individual investors. The Securities and Exchange Commission has proposed a new regulation that purports to address the problem, but its remedy is too vague and too weak. By creating a veneer of protection, but not the reality, it would deliver a false sense of security that could leave investors worse off than they are now.

The regulatory package consists of three parts: a new “best interest” standard of conduct for brokers; new guidance on investment advisers’ fiduciary duty; and a proposal to create a new disclosure document for brokers and advisers alike. On Aug. 7, the SEC will close the public comment period for the proposal and get to work on a final rule. **After reviewing the nearly 1000-page proposal, investor advocates have [written the agency with a clear message](#): We should all be wary of what the SEC is doing.**

The problem savers face is serious by any measure. The best estimates suggest that broker advice that is marred by conflicts of interest costs savers at least [\\$40 billion each year](#), a number that does not take into account the lost growth on those savings over the years before investments are liquidated to finance retirement, college educations, or other needs. It should hardly surprise us that the brokerage industry does not want tough new rules that would put those billions of dollars at risk.



The personal stakes are high for small investors. Click [here](#) to watch the story of **George and Rachel Wheeler**. These two Coloradoans fell prey to the promises of a broker who sold them on high-fee investments by posing as a trusted adviser, a predicament that confusing disclosure forms did not solve then and will not solve now. They, and all savers, deserve strong regulatory protections that ensure that their interests will truly come first.

The SEC issued a proposal for public comment in April that appears on the surface to deliver those protections. But “Regulation Best Interest,” as it’s officially known, doesn’t have the detail or the clarity that it needs to effectively protect investors against the kinds of practices that are all too common in today’s market for financial advice.

1 Despite the “best interest” label that the SEC has affixed to its new regulation, it doesn’t unambiguously require brokers to do what is best for their customers. It’s not even clear that the new proposal is stronger than “suitability,” the current and clearly inadequate legal standard that brokers must follow. Experts who have pored over the proposal trying to determine if the new standard improves on suitability stumbled over this perplexing sentence: “We are not proposing to define ‘best interest’ at this time.”

An undefined standard will not solve the problem. Investors do not need window dressing – they need real protections.

A whimsical yet penetrating [video](#) illustrates the problem. Walking around the New York Stock Exchange, interviewers asked people on the street what it means for a broker to act in a client’s “best interest.” The answers were all over the map. And if the SEC can’t or won’t define its standards, how will anyone – including the people who have to adhere to it – be able to understand it?

- 2 The SEC has also failed to outline how it will crack down effectively on sales incentives that have long distorted the market for investment advice to the detriment of investors. With sweeteners like free trips or lucrative bonuses, brokerages have often encouraged employees to put clients into investments that work well for everyone but the client. The SEC is proposing that firms “mitigate” these obvious conflicts of interests, but here again it left the language on how to do so vague. It doesn’t even clearly prohibit brokers from creating incentives intentionally – like sales quotas or bounties for the sale of certain products -- that would undermine compliance with the new standard.
- 3 The SEC has proposed that investors be given a disclosure that describes the services that brokers and advisers provide along with information on their legal obligations. But the SEC has not released data from tests of the disclosures that would tell us whether they are likely to work, an important good-government step that ought to be a given. Instead, it is chatting with various people about the disclosures at [“investor roundtables” that are closed to the public, and the media.](#) This process violates basic norms of government transparency.
- 4 The SEC would prevent brokers from calling themselves “advisers,” but leave them free to use other terminology that creates an aura of trust, by speaking of their work as “advice” and their role as “wealth manager.” The new legal standard has to be stronger and clearer, so that brokers have to live up to the titles they use to market their services.

If the SEC wants to win support from investor advocates, the proposal will have to change dramatically.



Source: [The Wall Street Journal](#)

The problems in the SEC proposal are very serious, but they are also fixable. The question is whether the SEC is willing to fix them.

In today’s Washington, many financial regulators are steering full-tilt toward deregulation, tearing down rules put in place after the 2008 financial crisis, and leaving the public at greater risk of abuse. The SEC proposal, too, would leave investors at continuing risk. [SEC Chairman Jay Clayton himself said](#) the goal of the rule is “to bring the standard of conduct in line with what an investor would expect.” Investors would expect that their broker is obliged to act in their best interests, full stop. But that’s not what the SEC has proposed. It needs to do a lot better.