REPORTER'S NOTEBOOK *Trump Swamp*
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If You're Wondering Who The SEC's New 'Best Interest' Rule Helps, Listen To The SEC

It's difficult to keep up with the fast-moving ticker of regulatory changes overseen by the Trump administration, so it's not your fault if you missed this one: As part of a larger package, the Securities and Exchange Commission this week adopted the new "Regulation Best Interest," which requires that stock broker/dealers act in their customers' "best interest," a term that is not defined.

Critics say the new standard isn't any better than the weak, existing one — which required only that brokers recommend "suitable" investments — but that it gifts an unearned sheen of trustworthiness to the industry.

The regulation, which uses a weaker standard than the "fiduciary duty" that financial advisers, by law, owe their clients, is being celebrated by the broker/dealer community and criticized by consumer and financial reform groups for not doing much at all. But one need not get too far in the weeds to see why: Just listen to members of the SEC's leadership, who make clear which side the regulation is meant to benefit.

In an interview on CNBC, Andrew Ross Sorkin pressed SEC Chair Jay Clayton — who before joining the administration was a lawyer for Goldman Sachs at the firm Sullivan & Cromwell — on the difference between the fiduciary duty and the "best interest" duty. The latter, Clayton (pictured above) said, "has many of the same elements, but we want people to understand that the investment adviser space and the broker/dealer space are different."

He lamented later: "You know what's happened in this industry? The power of competition has inured to the benefit of investors so much. When we all started in this business, the drag for a retail investor was 2 to 3 percent a year. If you invest your money in index funds these days, we're talking 10 bips [slang for "basis points," measured in 0.01% increments]. People are putting an extra 2.5 percent in their pocket every year."

The regulation passed 3-1. The one commissioner against, Robert Jackson, said in a statement on his vote: “Today’s rules fail to require the firms entrusted with Americans’ savings to put investor interests first.”

Referring to another rule passed in the package, which says both advisers and broker/dealers must give investors a brief “relationship summary,” the SEC’s investor advocate told the Times: “I believe it will fail to achieve its original objective of addressing the significant financial harm that results from investors being placed into accounts that poorly match their needs.”

In an email, Carter Dougherty of the watchdog group Americans for Financial Reform told TPM that “this rule creates an environment under which brokers get to say they are acting in your best interest but it’s just not true. It’s not a relationship like with your doctor where this professional is obliged to act in your best interest.”

This all has real financial consequences for investors, especially those without sophisticated knowledge of financial rules and regulations. The Times highlighted the story of Heather Heckel, an art teacher in New York. After a broker successfully convinced her to transfer her retirement savings from a Fixed Return Fund designated for teachers into a high-fee 403(b) retirement plan, “it cost her $2,500 to reclaim her money,” the Times reported. She only made the change after financial advisers — fiduciaries, held to the higher standard — told her they thought the 403(b) was a mistake.

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