

August 7, 2018

Ropes & Gray Files Comments on SEC's Proposed Interpretation of Advisers Act Fiduciary Duty

On August 7, 2018, Ropes & Gray filed a [comment letter](#) with the U.S. Securities and Exchange Commission (“SEC” or “Commission”) regarding the Commission’s April 18, 2018 “Proposed Commission Interpretation Regarding Standard of Conduct for Investment Advisers” (“Interpretation”). Our [prior Alert on the topic](#) describes the proposed Interpretation. The proposed Interpretation was approved by the Commission by a 4-1 vote on April 18, 2018, along with proposed Regulation Best Interest and Form CRS (our [prior Alert on those rulemakings](#) describes the two proposed rules).

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In view of the fact that the proposed Interpretation would apply to all investment advisory firms, our firm believes it was important to weigh in with the Commission on aspects of the proposal with which we have concerns. Our comment letter includes the following four points:

1. The proposed Interpretation, with certain modifications, could be a useful tool for investors and investment advisers.
2. Full and fair disclosure, as established by the U.S. Supreme Court, is a core element of the Advisers Act fiduciary duty.
3. Parts of the proposed Interpretation appear to expand beyond current law regarding full and fair disclosure of potential conflicts, potentially suggesting a “best interests” standard that cannot be circumscribed by appropriate disclosure.
4. The Interpretation’s statement that “an adviser disclosing that it ‘may’ have a conflict is not adequate disclosure when the conflict actually exists” creates practical burdens, is not consistent with reasonable construction of language in disclosures, and runs the risk of unnecessarily expanding on precedent for what constitutes adequate disclosure.

The full text of the comment letter is available [here](#).

Please contact any of the principal authors of the letter, [Jason E. Brown](#), [George Raine](#), and [Joel Wattenbarger](#), or your usual Ropes & Gray contact lawyer, with any questions or comments.