Press Releases

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ATTORNEY GENERAL MADIGAN URGES SEC TO STRENGTHEN PROTECTIONS OF RETAIL INVESTORS

Madigan & 16 Attorneys General File Comments Urging the SEC to Strengthen Proposed Regulation Best Interest to Ensure That Broker-Dealers Put Customers' Interests First

Chicago — Attorney General Lisa Madigan today joined with 16 attorneys general to file comments urging the Securities & Exchange Commission (SEC) to strengthen its proposed Regulation Best Interest rule in order to ensure that broker-dealers put their customers' best interest first.

In the comments to the SEC, Madigan and the other attorneys general highlighted weaknesses in the SEC's proposed rule and a need for more investor protection. The proposed rule purports to impose a "best interest" standard on broker-dealers while requiring additional disclosures. However, that standard falls short of requiring broker-dealers to act as fiduciaries for their clients, which is required of investment advisers – meaning retail investors are not assured they are receiving unbiased advice from all of their financial professionals.

In addition, the proposed rule does not ban the most egregious broker-dealer conflicts, such as sales contests, trips, prizes and other similar bonuses that are based on sales of certain securities or accumulation of assets under management, which put a broker-dealer's financial interest above a customer's. The proposed rule also neglects to define key terms, creating ambiguity that risks confusion for regulators, investors and the securities industry.

"The average investor needs to be able to rely on a broker-dealer to provide unbiased financial advice," Madigan said. "The SEC's proposal fails to prevent brokers from acting in their own best interest as opposed to that of the investor."

In their comments, Madigan and the other attorneys general said the proposed rule is an inadequate attempt to address a long-recognized deficiency in regulation of broker-dealers. In the wake of the 2008 financial crisis, as part of the sweeping Dodd-Frank Act of 2010, Congress directed the SEC to study the effectiveness of existing regulations concerning the standards of care owed to retail investors. In 2011, the SEC study recommended a uniform fiduciary rule governing both broker-dealers and investment advisers. In 2016, with no action by the SEC, the U.S. Department of Labor adopted its own rule imposing a fiduciary duty on broker-dealers managing ERISA plans. That rule has since been overturned, with the administration declining to further defend it, making independent SEC action more critical. Yet, the SEC's proposed rule is inconsistent with its own study and the congressional mandate to enhance protection for retail investors.

Madigan and the coalition of attorneys general recommended strengthening the proposed rule by:

- Imposing a uniform fiduciary standard on broker-dealers and investment advisers;
- Eliminating the most pernicious of conflicts;
- Enhancing disclosure requirements; and
- Clearly defining all key terms.

These changes would ensure that retail investors are not subject to abusive and conflicted behavior. They also would promote more effective enforcement by regulators, the development of healthy broker-dealer compliance programs, and greater understanding by investors of the obligations owed to them by their financial professionals.

Joining Madigan in filing the comments were the attorneys general of California, Connecticut, Delaware, the District of Columbia, Hawaii, Maine, Maryland, Massachusetts, Minnesota, New Mexico, New York, Oregon, Pennsylvania, Rhode Island, Vermont and Washington.

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