

Statement of Joseph Peiffer

On behalf of the Public Investors Arbitration Bar Association (PIABA)

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Thank you for the opportunity to speak here today. My name is Joseph Peiffer and I am a past president and current board member of the Public Investors Arbitration Bar Association. PIABA is a national bar association whose mission is to promote the interests of the public investor in securities arbitration; to make securities arbitration as just and fair as systematically possible; and to create a level playing field for the public investor in securities arbitration. PIABA has almost 400 member attorneys who practice across the country and have represented tens if not hundreds of thousands of investors who have been harmed by bad and conflicted investment advice.

I have worked on this issue for awhile and I know that the concept of The “fiduciary duty” of financial professionals sounds like some hopelessly dry and technical legal concept to many. But it is important. When I hear that phrase, I think about the retiree who lost 75 percent of the life savings he entrusted to a disreputable broker and was left with so little to live on that he couldn’t afford a \$15 fishing license, much less the cost of a trip to visit his grandchildren.

I have represented over 1,000 investors in claims against their brokerage firms. All of these cases have two things in common. First, the investors, who often have trusted a broker with their life savings, believe it when they are told the financial professional will take good care of their nest egg. Second, the brokerage firms always deny that any such “fiduciary duty” to avoid conflicted advice exists.

Why do people believe that brokers have a duty to put their interests first? It is not because they come out of the womb and into this world thinking that they can trust their brokers. It is because of the relentless advertising that Wall Street directs at investors telling them that brokerage firms can be trusted. That they will be loyal. And, that the broker will be watching the investors’ money at all times so their family can sleep soundly at night.

In other words, brokerage firms advertise as if they have the duty of a doctor or lawyer, but when called to account for their actions, they take the position that they have duties akin to a used car salesman or time-share salesman.

The consequences for trusting investors can be devastating. On a macro level, a fiduciary duty would mitigate the substantial costs to investors as a result of conflicted advice, which costs New Jersey retirement savers and investors *\$610 million every year*.¹

On a micro level, our members, including myself have seen thousands of clients that retired, received conflicted advice, and ran out of money in their 60s leaving them just above the poverty line with little more than Social Security to rely upon. The price these investors pay is often harsh.

Clients have been forced to move in with their children or relocate from their house to a trailer in a friend's backyard. Even, in one case, a wiped-out investor had to resort to renting a room in the home of an ex-wife. In every one of these cases, the brokerage firms denied that they had any duty to refrain from giving conflicted advice. Clients have attempted suicide.

How can we fix this? PIABA has long advocated for a true fiduciary standard for brokers, one which acknowledges the position of trust and confidence such individuals occupy when dealing with their clients. A true fiduciary standard would consist of:

- a duty of care which should include on-going monitoring and advice, when appropriate; and
- a duty of loyalty.

We believe that the fiduciary duty should: 1) apply to all forms of financial advice; 2) arise whenever a financial or investment recommendation is made; and 3) last throughout the duration of the advisor-customer relationship. This regulation does that.

REGULATION BI

Some might try to claim that the problem of conflicted advice is solved by Regulation BI that the SEC put out. It is not. Despite its inapt name, Reg BI does not really require brokers put their clients' interests first and certainly falls short of imposing a true fiduciary standard upon broker-dealers and affiliated persons who

¹ See, Economic Policy Institute, "Here is what's at stake with the conflict of interest ('fiduciary') rule (May 20, 2017), available at <https://www.epi.org/publication/here-is-whats-at-stake-with-the-conflict-of-interest-fiduciary-rule/>

provide investment advice. Instead, it essentially tries to ensure that investors are sold something that is “suitable.” That is not good enough. No one would put up with a doctor that ran unnecessary, costly and risky tests just because he could justify it as being suitable for a patient. No, we want doctors to act in their patients’ best interest -- not to line their pockets with tests or procedures that are suitable, but not best. No less a standard should apply here. And, Reg BI falls short.

Reg BI does not define best interest, but rather, creates a checklist of four obligations a firm must discharge to meet the standard – disclosure, care, conflict of interest, and compliance obligations – none of which actually obligates the firm to place the customer’s interests ahead of the firm’s.

The weak and ineffective provisions of Reg BI stand in sharp contrast to these regulations. These Regulations hold all financial professionals who render investment advice to a fiduciary standard. These Regulations provide that conflicts of interest are presumed to be a breach of the duty of loyalty. These Regulations require that financial professionals adhere to a duty of care and a duty of loyalty, that cannot be discharged solely through purported disclosures. These Regulations define what the fiduciary duty requires, and what is meant by the duty of care and the duty of loyalty. These Regulations recognize that the fiduciary duty should endure for the duration of the relationship under certain circumstances. Lastly, these Regulations eliminate the false distinction between investment advisers and brokers by treating both as the financial professionals which they hold themselves out to be, and by requiring both to adhere to the same standard of conduct.

In short, these regulations provide real investor protection that stop broker bad conduct and Reg BI does not.

The suggestion that brokers should be held accountable to a “fiduciary duty” is not some radical, wild-eyed notion. It is supported by mainstream industry leaders such as John Bogle, the well-known and highly regarded founder of the investment management company Vanguard. As Bogle notes: "Fiduciary duty is the highest duty known to the law," ensuring that "the client ... must be king." And is that too much to expect when an individual’s life savings hang in the balance?

Acting now won't save the investors who already have been skewered by conflicted advice, but it will spare tens of thousands of New Jersey residents from the same dire financial fate. Even if you are not cleaned out, the cost can be high: The Council of Economic Advisors study concluded that conflicted advice causes investors to run out of money five years before they otherwise would have.

That is the kind of thing that can put a huge dent in a retiree's "golden years." I've seen this happen and know what it's like for a blue-collar worker, who, after receiving conflicted advice from his broker, retired from his \$80,000-a-year job at a major corporation. He was out of money before he was eligible for Social Security and had to take a job for \$10 an hour stocking vending machines at his former employer's offices.

That is the kind of fate no one should have to suffer in America. And, if New Jersey forces brokerage firms to put their clients' interests first, it can go a long way toward making sure this doesn't happen to its citizens.