FOR IMMEDIATE RELEASE
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NAPFA Statement on Recent Regulatory Events

Several significant legal and regulatory events have occurred recently that will have an immediate impact on NAPFA Members, consumers seeking financial advice, and the financial planning profession.

Federal Appeals Court Decision Upholding SEC Regulation Best Interest

On June 26, 2020, a three-judge federal appeals court panel upheld SEC Regulation Best Interest. NAPFA has criticized this rule package, because of its weak fiduciary protections for Main Street investors and is disappointed by the appeals court's decision.

Rather than adopting rules that would hold broker-dealers, when providing personalized investment advice to retail customers, to the same fiduciary standards applicable to investment advisers, the SEC has adopted weaker conduct standards for broker-dealers and has taken a step in the wrong direction in its interpretation of the fiduciary duties that are owed to clients.

NAPFA and other pro-fiduciary stakeholders, including the Petitioners in this lawsuit, have long contended that the public record clearly demonstrates that Congress intended, and federal agency law obligated, the SEC to hold broker-dealers, when providing personalized investment advice to retail customers, to the same fiduciary standards applicable to investment advisors.

Effective June 30, 2020, the SEC began enforcing compliance with Regulation Best Interest, following a one-year implementation period.

Form CRS Required Delivery to Clients

Implementation of Regulation Best Interest also triggers requirements for broker-dealers and investment advisors to deliver a customer relationship summary (Form CRS) to clients and prospects by the July 30, 2020 compliance deadline. A Form CRS must be delivered when starting a client relationship or when the client account changes (e.g., an IRA rollover).

DOL Investment Advice Rule Proposed

On June 29, 2020, the U.S. Department of Labor (DOL) released its proposed "Investment Advice Rule" to replace the ERISA fiduciary rule approved by DOL in 2016 and subsequently vacated by a federal appeals court in 2018. NAPFA successfully advocated in support of the 2016 rule and, collaborating with Financial Planning Coalition partners and other stakeholders, played a key role in that rule's adoption. NAPFA's position continues to be that financial professionals who provide advice to investors on their ERISA-qualified plans must act in a fiduciary capacity at all times.

As part of this release, DOL included a final rule reintroducing its 1975 five-part test that determines whether or not a retirement investment advisor is a fiduciary under ERISA, the federal retirement benefits law. Because this was issued as a final rule, the five-part test again determines ERISA fiduciary status. DOL unfortunately did not provide any opportunity for public comment. In addition, the proposal permits retirement investment advisers to receive commissions or transaction-based compensation from rollovers of retirement assets, which currently is prohibited.

Working with our Financial Planning Coalition partners and other pro-consumer stakeholders, NAPFA will review the proposal, assess its impact on retirement investors, and provide comments to DOL prior to the conclusion of the 30-day comment period. NAPFA will focus our review and comments on the extent to which the proposal, if adopted, would provide additional protections for retirement investors under ERISA beyond those under the SEC's new Regulation Best Interest.

In our view, these recent developments are more likely to contribute to, rather than to mitigate, the confusion in the marketplace that American consumers and Main Street investors experience when seeking professional financial advice.

This is why NAPFA Members adopt and adhere to the NAPFA Fiduciary Oath which requires NAPFA-Registered Financial Advisors always to act with candor and in good faith; avoid, mitigate and disclose actual and potential conflicts of interest; and avoid accepting referral fees or other compensation that is contingent upon the purchase or sale of a financial product to a client.

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About NAPFA
NAPFA provides Fee-Only financial advisors across the country with some of the strictest guidelines possible for professional competency, comprehensive financial planning, and Fee-Only compensation. With more than 3,900 members, NAPFA has become the leading professional association in the U.S. dedicated to the advancement of Fee-Only financial planning and fiduciary principles. Learn more at www.napfa.org.