Democrats urge SEC to strengthen broker standard in advice rule

In letter to SEC chairman Jay Clayton, lawmakers say agency's proposal is weaker than standard Congress laid out in Dodd-Frank.

September 12, 2018 By Mark Schoeff Jr.

Leading Democratic lawmakers are calling on the Securities and Exchange Commission to strengthen its proposal to raise investment advice standards for brokers, asserting it "falls woefully short."

In a letter to SEC chairman Jay Clayton on Wednesday, 35 House and Senate Democrats said the SEC's proposal, which requires brokers to act in the best interests of their clients, is weaker than the standard Congress laid out in the Dodd-Frank financial reform law.

Under the Dodd-Frank measure, the Democrats said Congress provided the SEC the authority to establish an advice rule for brokers that would be equivalent to the fiduciary standard investment advisers currently meet.

The SEC's proposal maintains the fiduciary standard for advisers and proposes a new standard for brokers called Regulation Best Interest, which is designed to beef up the current suitability standard governing brokers.

But the Democrats said the SEC doesn't show how its broker standard differs from the status quo.

"Regulation BI falls woefully short," the Democrats wrote. "We urge the SEC to revise its proposal consistent with [the Dodd-Frank law] and require brokers to abide by the same high standard that currently applies to investment advisers so that their advice to retail investors is provided without regard to their financial and other interests. Regulation BI for brokers and the SEC's interpretation of the 'fiduciary' obligation owed by investment advisers fail to clearly do this, enabling investors to 'consent' to harmful conduct in complex and legalistic disclosures that most will never read and would not understand if they did."

The letter was written by Rep. Maxine Waters, D-Calif., ranking member of the House Financial Services Committee; Rep. Bobby Scott, D-Va., ranking member of the House Education and Workforce Committee; Sen. Sherrod Brown, D-Ohio, ranking member of the Senate Banking Committee; and Sen. Patty Murray, D-Wash., ranking member of the Senate Health Education Labor and Pensions Committee. It was co-signed by 31 of their Capitol Hill colleagues.

The three-part SEC advice reform package was introduced in April, and the public comment period ended Aug. 7. It's not clear how much the commission will revise the proposal based on public input, nor when it will release a final rule.

The letter is another indication that Democrats are likely to increase pressure on the SEC regarding advice reform if the party takes over the House and possibly the Senate in November's mid-term elections.

In its proposal, the SEC said it avoided the Dodd-Frank language requiring brokers to "act without regard to" their own financial incentives because it might be interpreted as forcing brokers to eliminate all conflicts of interest.

"That was clearly not Congress' intent since, as the SEC acknowledges, [Dodd-Frank] expressly provides that neither commission-based compensation nor offering only proprietary products would alone violate any uniform fiduciary standard," the Democrats wrote.

And they asserted the SEC proposal "relies heavily on disclosures … without any evidence suggesting that these disclosures would be effective."

They also said the SEC's proposed prohibition on brokers calling themselves financial advisers was "too narrow of a fix that fails to address the numerous other titles professionals use, including wealth manager, financial consultant, financial manager, money manager, investment manager, financial planner or investment consultant."