Español

AG James Leads Coalition Suing SEC For Putting Brokers Ahead Of Investors

'Regulation Best Interest' Fails to Protect Investors or Meet Standards Laid Out in Landmark Dodd-Frank Act

NEW YORK – New York Attorney General Letitia James today led a coalition of eight attorneys general from around the nation in filing a **federal lawsuit**, in the Southern District of New York, challenging the Securities & Exchange Commission's (SEC) "Regulation Best Interest" for failing to meet basic investor protections that were laid out in the historic 2010 Dodd-Frank Act.

"With this rule, the SEC is choosing Wall Street over Main Street," said **Attorney General James**. "Instead of adopting the investor protections of Dodd-Frank, this watered-down rule puts brokers first. The SEC is now promulgating a rule that fails to address the confusion felt by consumers and fails to remedy the conflicting advice that motivated Congress to act in the first place. Despite the SEC's refusal to do its job, New York will continue to lead the charge to protect the millions of individuals investing in their futures, including the millions of Americans saving for retirement."

In June, over an earlier objection made by a coalition of attorneys general led by New York, the SEC adopted Regulation Best Interest, which purports to address long-standing investor confusion concerning the standards of care applicable to broker-dealers providing investment advice. While many retail investors mistakenly believe that broker-dealers must place investors' interests first, that has historically not been the case. In fact, federal law has generally only required that broker-dealers' recommendations be "suitable" with respect to the investor's objectives, meaning that a broker-dealer could sell an investor a lower-quality, higher-cost investment as long as that investment otherwise met the investor's investment objectives. Alternatively, investment advisors are fiduciaries who must act in their clients' best interests and are subject to duties of loyalty and care. Under a fiduciary duty standard, an investment advisor is required to put their client's interests ahead of their own, to recommend suitable investments, to monitor client investments and accounts, and to avoid or disclose conflicts of interest.

This investor confusion motivated Congress to take action in 2010. With the passing of the 2010 Dodd-Frank Act, Congress authorized the SEC to draft regulations that would align the standard of conduct for broker-dealers and investment advisors. Under the Act, the SEC was authorized to impose a uniform fiduciary duty on broker-dealers and investment advisors, and require that their recommendations be made "without regard" to their own interests. This uniform fiduciary duty would ensure that investors were protected and treated fairly, regardless of the type of financial professional with which they worked.

While the SEC is claiming that Regulation Best Interest ends the confusion in the industry, Attorney General James and the coalition of attorneys general are arguing that the regulation fails to heed Congress' call to action in a number of different ways.

First, the regulation fails to meaningfully elevate broker-dealer standards beyond their existing suitability requirements. In fact, the SEC's own professional staff recommended that the SEC adopt the uniform fiduciary standard articulated in the Dodd-Frank Act, but the regulation expressly rejects imposing a fiduciary standard on broker-dealers and, instead, allows them to consider their own interests when making recommendations.

Second, Regulation Best Interest is likely to produce continued investor and industry confusion because it relies on a vague "best interest" standard and leaves key terms undefined. Moreover, the SEC's adoption of a supposed "best interest" standard — while failing to actually implement requirements to realize that promise — will exacerbate investors' existing confusion over the duties of broker-dealers.

By enacting this flawed regulation, the SEC ignored Congress' express direction in the Dodd-Frank Act, making the regulation unauthorized, arbitrary, and unlawful.

Because the SEC claimed authority to issue Regulation Best Interest under such a broad set of statutory authority, it was necessary to file for relief in both the Southern District of New York and U.S. Court of Appeals for the Second Circuit, which has original jurisdiction over rules promulgated pursuant to the Securities Exchange Act of 1934.

Joining Attorney General James in filing the lawsuit are the attorneys general of California, Connecticut, Delaware, Maine, New Mexico, Oregon, and the District of Columbia.

The lawsuit is being led by Chief Counsel for Federal Initiatives Matthew Colangelo, Deputy Solicitor General Steven Wu, Acting Chief of the Investor Protection Bureau Kevin Wallace, and Assistant Attorneys General Rita Burghardt McDonough and Jeffrey A. Novack of the Investor Protection Bureau. The Investor Protection Bureau is part of the Economic Justice Division, led by Chief Deputy Attorney General Christopher D'Angelo.

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