Client Alert

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CURRENT ISSUES RELEVANT TO OUR CLIENTS JANUARY 30, 2012

SEC to Seek Further Input on Broker-Dealer Fiduciary Duty Rule

The Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act") requires the Securities and Exchange Commission ("SEC") to conduct a study of legal and regulatory requirements applicable to broker-dealers, investment advisers, and associated persons who provide personalized investment advice and recommendations about securities to retail customers. The Dodd-Frank Act also amends the Securities Exchange Act of 1934 and Investment Advisers Act of 1940 to expressly permit the SEC to adopt rules that provide a standard of conduct for broker-dealers and investment advisers when they provide personalized investment advice to retail customers. The SEC has generally indicated that it intends to propose such rules and to do so on timetable that has concerned some industry participants given the gravity of the issues involved and possible unintended consequences. However, SEC Chairman Mary Schapiro recently suggested that the SEC will now seek additional public comment before proposing such a rule.

Chairman Schapiro indicated that the SEC has three economists within the Division of Risk, Strategy, and Financial Innovation that have spent substantial time gathering, reviewing, and analyzing data and information necessary for a meaningful consideration of potential standard of conduct for broker-dealers and investment advisers when providing retail investment advice. In moving forward with possible regulatory action, Chairman Schapiro indicated that the SEC will follow its usual practice of including its economic analysis for review and public comment as part of any proposal. Furthermore, she noted that the SEC staff is currently drafting a public request for information to obtain data specific to the provision of retail financial advice and regulatory alternatives which would suggest that this further public comment is going to be requested before the SEC proposes a rule to impose a fiduciary duty on broker-dealers.

The SEC released its required Dodd-Frank study on these issues in January 2011 (available at http://www.sec.gov/news/studies/2011/913studyfinal.pdf). Initially, the SEC's online plan of Dodd-Frank implementation indicated that the SEC would propose rules implementing recommendations contained in the study in the April to July 2011 range. The SEC subsequently changed this item to the January to June 2012 range but now lists this item under "Dates still to be determined".

Chairman Schapiro's statement is contained in a letter to Representative Scott Garrett, Chairman of the House Subcommittee on Capital Markets and Government Sponsored Entities, and is available at http://www.chapman.com/media/news/media.1139.pdf. That letter came in response to a December 2011 letter from Representative Garrett available at http://www.chapman.com/media/news/media.1138.pdf. For more information about this issue, please see our publication Dodd-Frank: Impact on Asset Management available at http://www.chapman.com/media/news/media.901.pdf.

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