

# PEIFFER WOLF

— CARR KANE & CONWAY —

August 28, 2020

The Honorable Jeanne Klinefelter Wilson  
Acting Assistant Secretary  
Employee Benefits Security Administration  
U.S. Department of Labor  
200 Constitution Avenue NW  
Washington, DC 20210

Re: Improving Investment Advice for Workers & Retirees  
Docket ID No. EBSA-2020-0003  
Request to Testify

Dear Acting Assistant Secretary Wilson:

Please accept this as my request to testify on behalf of workers and retirees at the upcoming hearing on “Improving Investment Advice for Workers & Retirees.” When I read the title of this hearing, I think about the Exxon retirees in Louisiana who lost most of their life savings that they entrusted to an unscrupulous broker. Some were left with so little that I hosted a few of them in my home during the trial and my extended family graciously opened their doors to others.

Having devoted both my law practice and adult life to representing investors and retirees over the past 20 years, I’ve been able to represent thousands of retirees in cases against their brokers and brokerage firms in the Financial Industry Regulatory Authority (“FINRA”) arbitration, hundreds of investors in several Employee Retirement Income Security Act (“ERISA”) class action lawsuits against large financial services firms, and hundreds of investors against insurance agents masquerading as financial advisors.

As the co-author of a treatise published by Thompson West, *Litigating Business and Commercial Tort Cases*, which has been updated every year since 2011, I’ve taught and lectured extensively on these issues across the country. I have twice served as the chairman of the Business Torts Section of the American Association for Justice, served as the President of the Public Investors Advocate Bar Association (“PIABA”), currently sit on the board of directors of PIABA, served on the FINRA taskforce, worked with legislators and regulators to protect investors, testified extensively on behalf of the “Conflict of Interest Rule – Retirement Investment Advice” (the “Fiduciary Rule”), and have even testified at the Department of Labor (“Department”) on the very topic at hand.

If invited to testify, I would focus on the systematic attack on regulatory protections as it directly relates to workers and retirees. As an experienced investor advocate representing workers and retirees throughout the ever-evolving legislative and regulatory landscape, I will be uniquely positioned to rebut financial industry comment letters from the perspective of real investors impacted by the stripping away of regulatory protections. This would satisfy the requirement to address “material factual issues that could not be fully explored through written submission,”

because the comment letters submitted in response to the proposal were not available for review until after the comment deadline had passed. The investing public's response has not been heard.

Within that general topic, I would be prepared to comment on the following:

- Retirement savings are now at greater risk of being plundered by greedy financial advisors than when the Fiduciary Rule was in effect and required brokers to put the interests of their clients ahead of their own.
- This summer as infection rates started spiking again and COVID-19 death rates soared, the U.S. Securities and Exchange Commission ("SEC") pushed through a controversial replacement for the fiduciary standard with the misleading name "Regulation Best Interest: The Broker-Dealer Standard of Conduct" ("Reg. BI") and "Form CRS Relationship Summary and Amendments to Form ADV."
- On July 7, 2020, the Department adopted a final rule, which reinstated the 1975 Regulation (the regulation in effect prior to the Fiduciary Rule) and a new class exemption (the "2020 Proposal"). The 1975 Regulation and 2020 Proposal are deeply troubling because retirees and workers rely on investment advisors and expect to receive advice that is actually in their best interest. In effect, the 1975 Regulation and the 2020 Proposal will leave investors more vulnerable to improper and conflicted financial advice as regulatory protections continue to be stripped away from workers and retirees.
- Combined with Reg. BI, the application of the 1975 Regulation and the 2020 Proposal would continue to provide false comfort to investors and the illusion that something has been done to protect them from the avarice of advisors. The problem is that "best interest" is used as a marketing slogan rather than a legally enforceable standard of care.
- The new SEC rule doesn't just rewrite FINRA's flawed "suitability standard" (which requires in the broadest terms that brokers limit their investment advice to those things that are appropriate for investors based on their expertise, ability to handle risk, and other factors), it creates a safe harbor that allows financial advisors to not work in their client's best interest as long as they disclose their conflict.
- The SEC has falsely stated that Reg BI is just as good as the original Fiduciary Rule. The fiduciary rule actually required brokers to act in the best interest of their clients, whereas the most generous reading of the misnamed SEC rule is that brokers can put their interests on an equal footing with investors.

We have a wealth of data on investor protection. The [SEC knows from survey after survey that investors rely on brokers](#) to provide investment advice about paying for their first home, saving for retirement, financing the college education of their children, and much more. Rather than increased protections, workers and retirees are even more vulnerable today. I urge you to allow me to testify on behalf of the workers and retirees who deserve to be heard and protected rather than helplessly standby and witness the constant erosion of investor protections.

I look forward to the opportunity to present at the hearing on the Department's Proposal. If you have any questions, please feel free to contact me. Let me know if you have any questions or need additional information.

/s/ Joseph C. Peiffer

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