Nevada SB 383: Creating Unnecessary, Duplicative and Confusing Obligations

SB 383 would remove the exemption for broker-dealers (B-Ds) and investment advisers (IAs) from the definition of "financial planner," thereby extending financial planner-specific duties and liabilities to already robustly-regulated brokers and investment adviser representatives. SB 383 should not be adopted for several reasons:

- <u>Financial planners perform a different function than brokers and investment adviser representatives</u>. Financial planners structure detailed plans for clients that cover a wide range of topics, including investment management, cash flow management, insurance planning, retirement planning, tax planning, and estate planning. Brokers and IA representatives have a substantially narrower focus. They have different functions and should be treated differently.

- <u>This law was enacted in the mid 1990's to regulate unregulated individuals who held themselves out as financial planners</u>. B-Ds and IAs and their agents were expressly excluded, as were lawyers and accountants. Brokers and IA representatives were and remain regulated by several federal and state agencies – including the Securities and Exchange Commission ("SEC"), the Financial Industry Regulatory Authority ("FINRA"), the Department of Labor ("DOL"), the Nevada Secretary of State, and others. There is no need for further state regulation.

- <u>Brokers and investment adviser representatives are already required to act in their client's best interests</u>. Investment advisers are already subject to a fiduciary duty under Section 206 of the Investment Advisers Act of 1940, as interpreted by the U.S. Supreme Court in *SEC v. Capital Gains Research Bureau.* While brokers are subject to suitability requirements, FINRA has made clear that, under that standard, brokers must act in their customer's best interests. SB 383 thus provides additional regulation without providing additional benefits.

- <u>Duplicative regulation would create consumer confusion, legal conflicts and compliance challenges</u>.

    - Section 103 of the National Securities Markets Improvement Act of 1996 ("NSMIA") expressly preempts states from enacting regulations that impose new or different recordkeeping requirements than those established under the Securities and Exchange Act. SB 383 would likely require B-Ds to maintain new records to demonstrate compliance with the "financial planner" standards and thus could be pre-empted.

    - Under Section 913 of Dodd-Frank, Congress granted the SEC complete rule-making authority to establish a uniform fiduciary standard for broker-dealers and investment advisers. That authority remains in effect and has not been withdrawn or modified. Explicit congressional intent is to create a uniform federal standard. State-specific standards would conflict with that intent.

    - DOL is reviewing a new fiduciary rule for retirement accounts. If SB 383 is enacted, it is possible that brokers could have three or more fiduciary duties when dealing with the same client: a federal duty when discussing retirement accounts and both a FINRA standard and a state financial planner fiduciary duty standard when discussing non-retirement accounts. This is confusing to both the broker and the client.

- <u>State-specific fiduciary standards are not the answer</u>. SIFMA has long supported a federal uniform fiduciary standard of conduct for B-Ds and IAs. State-specific standards would create significant expense and compliance burdens without providing additional benefit.