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DEFENDING INDEPENDENCE: STATUS OF THE PRO ACT

Federal rules impacting our advisor members' independent contractor classification remain top of mind to start this new year, as Democrats in Congress have renewed their push to pass the Protecting the Right to Organize (PRO) Act.

The bill, introduced in February in the Senate Health, Education, Labor and Pensions Committee, differs little from the version of the PRO Act passed by the House in the last Congress. If enacted, the bill would implement a more stringent worker classification test that would likely result in more financial advisors being misclassified as employees of broker-dealers, rather than being rightfully categorized as independent contractors.

As we did the first time the bill arose, FSI opposes the PRO Act on the basis that enabling financial advisors to operate as independent contractors is an essential element of our members' businesses and the services they provide to clients. Reclassification of advisors as employees would undermine thousands of thriving advisory practices across the country and place severe limitations on Main Street investors' access to high-quality financial advice.

Hanna Laver, FSI's Director for Legislative Affairs & Senior Counsel, says, "Independent financial advisors



are drawn to the independent model because of the freedom it offers to serve their clients in the way they choose. Independent wealth management firms have devoted significant resources to supporting this approach because they believe that Main Street investors deserve a wide range of options as they seek financial advice."

"While we recognize the need to address worker misclassification issues in some industries," she says, "the intent of the proposed bill runs in direct opposition to the interests of our membership and would unduly harm them and the investors they serve."

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LETTER TO MEMBERS

We hope this new year finds you and your family safe and healthy. While the last 12 months have certainly been disruptive for all of us, 2021 has brought with it some clarity about the road ahead for our country.

Thankfully, the COVID pandemic shows signs of easing as the distribution of vaccines has accelerated; some schools have re-opened; and event organizers (including us, with our OneVoice conference later this year) are contemplating the return of in-person gatherings—as long as they can be conducted safely.

With the Biden Administration ramping up and confirmation hearings for Cabinet secretaries progressing, we have also gained clarity on the regulatory and legislative issues that stand to impact our members and our industry this year and beyond.

With this in mind, our focus at FSI in the coming months will be to help our members return to 'normalcy'—or as close to it as possible—by guarding against any potential overreach by the new administration and Congress.

Many of the key issues that have already emerged in 2021 will be very familiar to our members. As one example, the Protecting the Right to Organize (PRO) Act—re-introduced in February by Senator Patty Murray (D-WA)—could once again jeopardize our advisor members' independent contractor status and undermine the foundation of their businesses.

As our members are aware, this is a battle we know very well, having successfully defended advisors' independent contractor status since our founding. We will be vigorously engaged on this legislation moving forward to secure a carve-out for our members.

In other areas, such as standard of care issues, we are pleased to say that our industry begins this new administration on much stronger footing than in 2012 or even 2016. This is thanks to the successful development and implementation of the SEC's Regulation Best Interest, which took effect last June.

While the rule may not be perfect, it represents a workable standard of care that has already achieved its stated goals of improving transparency and clarifying advisor-client relationships. Moreover, it is a standard our industry has rallied behind. Our members went above and beyond last year to implement the rule smoothly in the midst of the pandemic and have made every effort to comply with the new standard in its first nine months.

With Gary Gensler likely to be confirmed as the new SEC Chair in the near future, the SEC could amend Reg BI to make it less workable. My team and I will be watching closely for any such moves and are prepared to strenuously defend Reg BI in its current state. Our members' good-faith efforts to comply with the rule will be critical in that defense; we will also be working with our members throughout the year to gather data that demonstrates Reg BI's efficacy.

In another positive development, the Biden Department of Labor has already shown it understands the importance of harmonizing the various standards of care that govern our industry by implementing the prohibited transaction exemption (PTE) for ERISA fiduciaries that was finalized toward the end of the Trump Administration. Importantly, the PTE is premised on advisors' compliance with a standard patterned on the one contained in Reg BI.

As we move forward with the recovery from the pandemic, we also await the return to discussing our advocacy mission with members in person. We hope to see as many of our firm members as possible at our upcoming OneVoice 2021 event, to be held July 26–28 in Orlando, Florida. Members will also have the option to attend virtually if they prefer, to provide everyone an opportunity to participate safely.

In closing, I want to reiterate how much my team and I appreciate the trust you have placed in us over the last 12 difficult months. Despite the economy-wide headwinds we all have faced, we have continued to make strong progress with our mission of advocacy—and we look forward to building on those successes in the year ahead.

Dale E. Brown, CAE
President and CEO
Financial Services Institute



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With this in mind, we have joined forces with a coalition of like-minded trade organizations to oppose the PRO Act and argue for a carveout in the bill's worker classifications provisions for financial advisors, similar to the one we secured in California's 2019 independent contractor law.

An Arms-Length Relationship

For years, we have worked tirelessly on both the state and federal levels to safeguard our advisor members' independent contractor status. The core of our industry's argument is that the relationship between independent financial advisors and the wealth management firms with which they affiliate is, essentially, a supervisory one, centered on ensuring advisors' compliance with securities regulations.

For virtually all other purposes, the relationship is no different from any other arms-length, contractual agreement between an independent business owner and a technology or service provider. The independent contractor model empowers advisors to follow their entrepreneurial instincts by, for example, allowing them to develop their own technology platforms; determine their own mix of advisory versus commission-based services for clients; and exercise greater control over the products they offer to investors.

“The stakes are high—in addition to its immediate effects, the PRO Act could open the door for future laws and regulations that would erode financial advisors' independent contractor status even further.”

The PRO Act would undermine these positive features—which have proven to provide significant value to investors and increase access to financial advice—by creating requirements that do not serve advisors, firms or investors.

California's Assembly Bill 5, which came before the state's legislature in 2019, implemented a strict test for companies classifying workers as independent

contractors, but provided an exception for businesses in the independent financial services industry seeking to appropriately classify workers as independent contractors. FSI's advocacy played a significant role in securing the carveout, which provided a much-sought-after degree of clarity and certainty to our members in the state.

PRO Act—Not A Done Deal

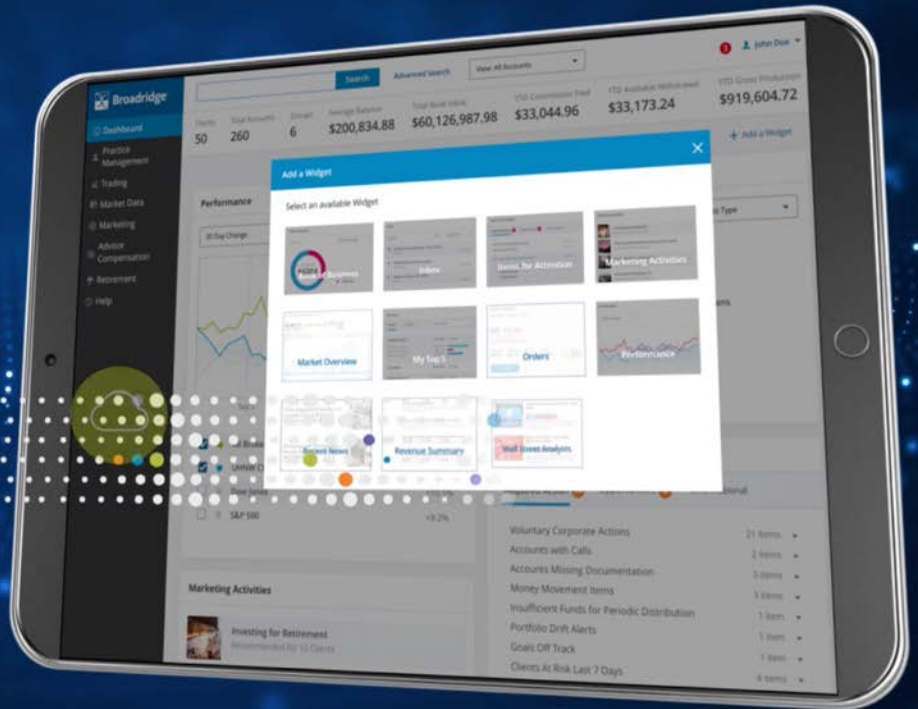
The previous version of the PRO Act died in the Senate last year, when Republicans still controlled that chamber. On Feb. 4, Sen. Patty Murray (D-WA), the newly appointed Democratic Chair of the Senate Health, Education, Labor and Pensions (HELP) Committee, reintroduced the bill. It has the support of her House counterpart, Education & Labor Committee Chair Rep. Bobby Scott (D-VA), as well as Senate Majority Leader Chuck Schumer and House Speaker Nancy Pelosi.

Even though the Democratic majority in the House passed a version of the PRO Act on March 9 that did not contain a carveout for financial advisors—and despite the fact that the Democrats now hold the presidency and the tie-breaking vote in the Senate—it is not a foregone conclusion that the bill will become law. Signs are positive for a favorable outcome, given that portions of the Democratic caucus appear not to favor the legislation in its current form. Additionally, passage of the PRO Act would require the support of at least 10 Republican Senators to overcome a filibuster.

We are continuing to express our opposition to the bill in discussions with key lawmakers. In addition, FSI members have sent over 3,500 letters to members of Congress so far in response to our Calls to Action. As long as the PRO Act remains active, we will continue to fight for an exemption for our members.

The stakes are high—in addition to its immediate effects, the PRO Act could open the door for future laws and regulations that would erode financial advisors' independent contractor status even further.

As we have for years, FSI will continue to safeguard our members' interests on this critical issue. We ask all of our members to get engaged by responding to our Calls to Action and reaching out to their elected officials to voice their opposition to this harmful measure.



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OUR CRUCIAL ADVOCACY PRIORITIES FOR 2021 AND BEYOND

As the new administration continues to ramp up with confirmations of President Biden's Cabinet nominees and a wide range of other initiatives, its actions on headline topics like the pandemic response, climate change and economic issues are drawing the bulk of the nation's attention. For our members, however, the new administration's approach to regulation will be among the most consequential outcomes of last year's elections.

At FSI, we are eager to work with the new nominees and other officials whose actions and policies will have profound impacts on our industry, including Gary Gensler and Marty Walsh, President Biden's nominees for SEC Chairman and Secretary of Labor, respectively. It will be critically important in the coming weeks and months that these policymakers engage with the independent financial services industry as they begin to solidify their regulatory priorities.

With that in mind, our team will be laser-focused on building and strengthening productive, solutions-oriented working relationships with these new regulators in order to educate them on our 2021 advocacy priorities, including:

Issues Impacting Clients

Standard of Care Issues: We have strongly supported the SEC's Regulation Best Interest (Reg BI), which has successfully established a common standard of care for advisors across our industry. We are encouraged by initial indications that Mr. Gensler will likely keep Reg BI in place if he is confirmed. However, it will be a high priority for us in 2021 to ensure that the SEC and other regulators understand that Reg BI has been very effective in accomplishing its goals of increasing transparency and clarifying advisors' obligations of care as currently implemented.

We will be keenly focused on guarding against any efforts to modify Reg BI in ways that would make this landmark rule overly burdensome or unworkable.

We will also work to ensure that the efforts at the Department of Labor and in the states do not lead to the creation of a conflicting patchwork of standard of care rules.

Improving Financial Literacy and Diversity:

Strengthening financial literacy—from grade school to adulthood—is one of our longstanding areas of focus. In 2021, we will continue to proactively support financial education efforts such as financial literacy events in our members' Congressional districts with members of Congress and others. We will also continue to support diversity, equity & inclusion efforts intended to expand the industry, making it more inclusive for clients and advisors of all backgrounds.

Preventing Financial Exploitation of Vulnerable Adults:

We will continue to support the adoption of the NASAA model law protecting seniors from financial abuse. In addition, we will support FINRA's efforts to provide additional tools and flexibility to help firms combat suspected financial abuse, such as longer hold periods on disbursements and other transactions when financial abuse is suspected.

Issues Impacting Firms and Advisors

Retirement and Tax Issues: With budget issues intensifying in various states, we will vigorously oppose efforts to create or expand taxes that would burden our members, including taxes on financial services and transactions or professional privilege taxes. We will also fight to preserve beneficial treatment for capital gains.

“We look forward to working with our members, regulators and legislators of both parties to drive progress on these critical topics in 2021.”

Additionally, we will continue our efforts to protect advisors’ independent contractor status at both the federal and state levels—a topic that impacts tax treatment for advisors along with a wide range of other areas that are crucial to their business models. You can read about our efforts to protect independent contractor status at the federal level in ‘Defending Independence: Status of the PRO Act’ on page 1 in this issue.

On the retirement policy front, we will continue to advocate for the passage of SECURE 2.0, which provides common-sense incentives and protections to expand access to qualified retirement plans, among other key provisions.

Reducing Burdens on Advisors and Firms: We will continue to seek relief from the SEC to allow the payment of securities transaction income directly from independent financial services firms or investment advisers to business entities operated by financial advisors.

Issues Impacting the Industry

Regulation by Enforcement: We remain concerned about regulators’ increasing reliance on enforcement activity to create new requirements without standard rulemaking processes that would include notice and comment. We will continue our efforts to raise awareness of this problem on Capitol Hill and elsewhere through measures like our petition for rulemaking regarding the SEC’s share class selection disclosure initiative (SCSDI) last year. The petition helped bring this problem to the attention of Senate Judiciary Committee Ranking Member Charles Grassley (R-IA) and Senator Tom Cotton (R-AK), among others.

This year, we will continue to raise concerns surrounding the SCSDI and the SEC’s subsequent enforcement activity regarding money market accounts and bank sweeps.

Modernization and Leveraging Technology: Throughout the pandemic, firms and advisors have found numerous areas in which operations and compliance practices might be modernized by encouraging regulators to adopt more strategic use of current technological innovations.

With that in mind, we will focus on encouraging regulators to allow greater use of virtual examinations and branch inspections, as well as e-delivery as a default option for client documents and broader use of e-signature and electronic disclosures. We will also seek clarity on the definition of “branch” offices and licensing requirements in the evolving virtual work environment. You can read about these efforts in greater detail in ‘2020’s Silver Lining: A Chance to Modernize Regulation Based on Advances in Technology’ on page 13.

With the influx of new legislators on both sides of the aisle, new leaders at key agencies and the Biden administration’s new approach to regulation overall, building productive working relationships while at the same time expanding on existing ones will be crucial this year. With that in mind, we will be reaching out to members to ask for your support and engagement by lending your voice to our advocacy efforts.

We look forward to working with our members, regulators and legislators of both parties to drive progress on these critical topics in 2021, and to continuing the tremendous positive strides we have made in recent years toward securing a more business-friendly environment for firms, advisors and their clients.





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“My mission will really be to make sure that we stay aligned with FSI’s well-established vision to serve the advisory community and the firms that support them as well as possible.”

—James Poer

INTERVIEW WITH 2021 BOARD CHAIR JAMES POER

The position of FSI Board Chair is always a crucial one, and never more so than after a major election. With regulators and legislators introducing new priorities and new initiatives that will have significant impacts on our members, our 2021 Board Chair, Kestra CEO James Poer, will play a key role in ensuring that the voice of the independent financial services industry continues to be heard whenever critical bills and rule proposals are being discussed.

We sat down with Mr. Poer (via Zoom, of course), to get his thoughts:

FSIVoice: How do you plan to help advance FSI’s mission of leadership in advocacy as Board Chair?

James Poer: I’m fortunate in my role as Chair that I don’t need to come in with a revolutionary approach to advancing the advocacy goals of our industry—I just need to look to the template that’s already been laid down by Dale and the other great leaders at FSI, as well as the efforts of my predecessors as Board Chair.

My mission will really be to make sure that we stay aligned with FSI’s well-established vision to serve the advisory community and the firms that support them as well as possible.

That means continuing to build the right relationships with regulators and legislators in order to create the paths that will help our advisors and our industry provide guidance to clients and get them where they want to go. Dale and his team have demonstrated their expertise in developing those relationships, so my job is really just to help them in any way I can.

FSIVoice: How do you view your role in helping to build and strengthen those key relationships?

James Poer: I think 2020 really put a spotlight on the central importance of empathy—the ability to put yourself in someone else’s shoes, understand the challenges they face, the goals they’re trying to achieve, the constituencies they serve and the road they’ve traveled. That element of empathy is a key part of any successful advisor/client relationship, and it’s a core component of my role as CEO of Kestra, as well.

I think that perspective will be a strong fit with FSI’s well-honed approach to building positive, productive dialogue with regulators and legislators.

There are a lot of new members of Congress this year, a lot of new Senators—not to mention the fact that, with the majority switching in the Senate, there are new committee chairs that we need to have a

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strong rapport with in order to serve our members as well as possible. FSI already has relationships with a lot of those Senators from their time as ranking members on those committees, but investing in those connections now becomes even more important.

All of this is to say that the ability to take an empathetic view toward the regulators and legislators we're working with is going to be extremely important over the next twelve months. We need to bear in mind that their intent is to protect investors—which is a goal we all share—even if we have different views sometimes on the best ways to accomplish that goal.



“I think 2020 really put a spotlight on the central importance of empathy—the ability to put yourself in someone else’s shoes, understand the challenges they face, the goals they’re trying to achieve, the constituencies they serve and the road they’ve traveled.”
—James Poer

So whether we're working to educate a new member of Congress for the first time or strengthen a longstanding relationship with a key regulator, we need to be able to see their side and understand their priorities in order to propose solutions that will work for them and for our members. I look forward to supporting that mission in any way I can.

FSIVoice: Is there a particular area of advocacy or issue that you will be focused on during your time as Chair?

James Poer: I think, more than focusing on a specific issue, my emphasis is going to be on maintaining the momentum that FSI has developed across every element of its advocacy mission.

Think about the obstacles FSI faced last year: we already knew it would be an election year, meaning that getting significant legislation through Congress was going to be tough even in ideal conditions. Then in March, of course, we were hit with a once-in-a-century health crisis that changed the rules of the game for our entire economy.

A less nimble or less committed organization might have just thrown up its hands and considered 2020 a sort of 'lost year.' FSI, though, did exactly the opposite.

They immediately identified a list of issues where regulatory relief could provide an immediate benefit for advisors, helping them continue to serve clients and keep their businesses going. These included easing requirements for in-person inspections for 2020 and 2021; adopting measured expectations regarding Reg BI training; and allowing more extensive use of e-delivery for client documents and disclosures.

FSI also continued to play a leadership role in facilitating a smooth rollout for a major new standard of care in Reg BI; drove significant awareness of the problem of regulation by enforcement through their petition for rulemaking on the SEC's share class selection disclosure initiative; and played a significant role in encouraging the Department of Labor to harmonize its new PTE proposal with Reg BI's standard of care.

In the midst of a challenging year, FSI not only refused to back down—they actually accelerated their efforts and came out of 2020 with a lot of momentum. So my biggest objective will be to continue to build on that, by continuing to bring the community together to form a cohesive voice that will help legislators and regulators understand our members' views on the issues that matter.



STATE OF PLAY ON FEDERAL STANDARD OF CARE ISSUES

In a win for FSI and our members, Department of Labor (DOL) officials in the new Biden Administration in February affirmed an exemption allowing financial advisors working with retirement investors to receive compensation for transactions that would typically be prohibited under the ERISA standard.

The Prohibited Transaction Exemption (PTE) is part of a DOL rule aimed at updating the Department's regulatory framework regarding financial advice for retirement plan investors and bringing it into harmony with the SEC's Regulation Best Interest, which took effect last June.

Although the PTE was adopted in December by the Trump Administration, the rule's implementation had the potential to be frozen as part of a customary hold on "midnight regulations" when a new presidential administration takes office. Biden DOL officials reviewed the rule and, in a somewhat unexpected move, confirmed that it would take effect on Feb. 16.

We supported the PTE from its introduction and welcomed the DOL's decision. Disallowing the exemption would have created an unsustainable predicament for financial advisors and firms who offer retirement planning advice. It would have ultimately limited retirement investors' access to professional financial guidance.

Renee Barnett, FSI's Director of Federal Regulatory Affairs & Senior Counsel, said, "The PTE represents a workable solution, and we commend the Department of Labor for taking a reasoned and open-minded perspective on our members' concerns and, in the end, allowing the PTE to stand."

"Going forward," she continued, "we will continue our dialogue with DOL officials to ensure that the guidance they provide for wealth management firms as they implement the PTE is clear and practicable in real-world settings."

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“We believe that Reg BI, more than eight months after its full implementation, has succeeded in its crucial goals of increasing transparency in advisors’ relationships with their clients.”

STATE OF PLAY ON FEDERAL STANDARD OF CARE ISSUES *continued from page 11* ▶

The Nuts and Bolts of the PTE

The new DOL rule reinstates a five-part test for determining whether an advisor should be considered an ERISA investment advice fiduciary in their work with a retirement plan or retirement investors. However, the PTE exemption allows advisors making recommendations on rollovers from ERISA-protected retirement accounts, such as 401(k)s, to engage in a broad range of transactions—including ones in which they would be compensated by a third party—contingent on meeting specific requirements.

The exemption requires advisors and institutions to comply with a best-interest standard that is consistent with Reg BI, or with a registered investment adviser’s fiduciary duty, along with other qualification criteria.

Prior to the new rule’s implementation, there was a great deal of uncertainty as to whether the Biden administration would take a more aggressive regulatory stance on standard of care issues, including by potentially replacing the new DOL rule with requirements more in line with the Obama Administration’s stringent 2016 DOL fiduciary rule.

Our team, along with representatives from other trade organizations, held discussions earlier this year with Employee Benefits Security Administration officials, including Deputy Assistant Secretary of Labor Ali Khawar, on the merits of the rule and its crucial exemption. We were very pleased to see these discussions bear fruit when the Department confirmed the exemption.

In a statement at the time, Mr. Khawar said, “We recognize that investment advice providers have been preparing for the exemption, and this step will allow them to implement important system changes. That said, we will continue our stakeholder outreach to determine how we might improve this exemption, the rule defining who is an investment advice fiduciary, and related exemptions to build on this approach.”

Looking Ahead

With the PTE now in effect, firms and advisors are working to integrate it into their operational workflows, and our role as an advocate for our members is to make sure that any additional guidance from the Labor Department is clear and workable as our members provide services to Main Street Americans.

While the finalization of the DOL’s rule doesn’t preclude future rulemaking, it does serve as further evidence of the agency’s openness to understanding how best-interest standards work in practice in the day-to-day operations of advisors’ businesses.

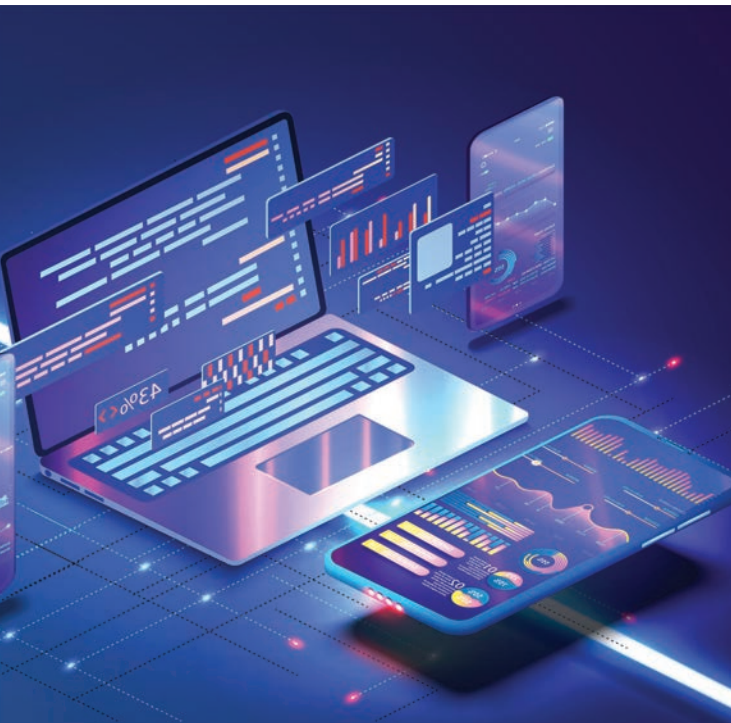
We believe that Reg BI, more than eight months after its full implementation, has succeeded in its crucial goals of increasing transparency in advisors’ relationships with their clients. It has also significantly improved disclosures, to the benefit of Main Street investors, advisors and firms alike.

In the coming year, we expect the SEC to continue issuing incremental guidance on Reg BI, which will provide further insights into its thinking, and there is the possibility that it will initiate, in certain cases, enforcement action. Our staff has been having ongoing discussions with member firms about their experiences in implementing and applying Reg BI, as well as with those that have undergone Reg BI examinations. We look forward to sharing feedback with regulators to help guide and encourage ongoing communications about the rule.

We are pleased to see the DOL implement a workable new fiduciary rule, providing value and protection for Main Street investors. Going forward, we will continue to work with the Department to ensure that its new rule and the PTE have a gradual runway following implementation—like the one Reg BI has enjoyed—by leaving a pre-existing non-enforcement policy in place until Dec. 20, 2021. We will continue to provide updates throughout the implementation process.

2020'S SILVER LINING: A CHANCE TO MODERNIZE REGULATION THROUGH ADVANCES IN TECHNOLOGY

As the world shut down last year to fight the spread of COVID-19, financial advisors and their firms lived through a period of forced and rapid change as they sought to maintain their operations and client service standards. In the months that followed, the wrenching and tragic pandemic would impact billions of people and wreak havoc on our economy and our day-to-day lives.



It is part of our nature as an industry of problem-solvers, however, to search for a positive dimension in even the most difficult of challenges.

In this case, the ‘forced pilot program’ of shifting our entire industry to a work-from-home footing for an extended period had at least one silver lining: It revealed significant opportunities to improve the way we work, the ways we manage our businesses—and the ways in which we are regulated.

Innovating to Solve Compliance Challenges in Real-Time

As advisors and firms overhauled their operations to ensure the safety of their employees and clients last year, they knew that maintaining strict regulatory compliance was still non-negotiable. However, how to accomplish this smoothly and successfully in a completely different working environment raised several open questions.

One area that required immediate clarification was the then-standing interpretation of FINRA’s requirement that annual compliance inspections of branch offices take place on-site.

As FSI Director of Federal Regulatory Affairs and Senior Counsel Renee Barnett explains, “While the on-site requirement is not outlined explicitly in the rule, firms needed regulatory clarity that FINRA would deem their measures to ensure continued compliance without increased COVID-19 exposure risk acceptable. In short, firms went virtual.”

FINRA acknowledged that our industry’s new approach was indeed viable—a confluence of views that may have been difficult or even impossible to reach under normal circumstances.

Thanks in part to our urging, FINRA agreed that on-site inspections may not be possible during the pandemic, and instead allowed firms to implement fully remote inspection plans. In November, the regulator adopted temporary guidance specifically affording firms the option to complete remote inspections without an on-site visit through 2021.

This new approach is working. Barnett notes that FSI members have had positive experiences with remote inspections, finding them to be as efficient as on-site inspections, and often even more detailed.

“We have heard from our members that they are able to closely monitor for compliance with federal securities laws and FINRA rules and promote investor protection via remote inspections,” she says. “Advancements in and widespread use of technology are enabling our members to easily conduct inspections virtually, and giving them more time to review materials and practices because they do not need to travel.”

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An Unexpected Opportunity—**for Both the Industry and Regulators**

It has quickly become clear that greater adoption of remote work technologies has the potential to significantly improve the way our industry is regulated—offering substantial savings of both time and money for regulators and industry members alike.

As Barnett says, “The changes the industry and its regulators were forced to implement over the past year have not only provided a safer environment during this pandemic, but they have also exposed more efficient ways to do business.”

The logical next step, then, is to enshrine many of the temporary measures regulators introduced to aid with compliance during the pandemic as permanent.

“During the past year, firms incurred significant costs to address these health and safety issues,” says Barnett. “Regulators should take this opportunity to update their rules to leverage these investments that provide meaningful efficiencies without sacrificing regulatory compliance.”

“The logical next step, then, is to enshrine many of the temporary measures regulators introduced to aid with compliance during the pandemic as permanent.”

Advancing temporary guidance and relief into permanent regulatory change is a top priority for our Regulatory Modernization advocacy efforts this year.

Opportunity Meets Execution

We emphasized the need to make these changes permanent in our initial feedback to FINRA in response to the regulator’s formal request for information on the subject earlier this year. We stressed the message further during a recent call led by more than a dozen FSI members.

Moving forward, we will be gathering data on the firsthand experiences of member firms that completed

virtual compliance inspections as part of our effort to provide empirical support for making pandemic-era temporary regulatory guidance permanent. We expect this data will support the observed efficiencies that the application of collaborative technology and acceleration of other consolidating trends over the past year. This complete picture will help us achieve significant gains on our current priorities.

As Barnett says, “If any good came from the forced social distancing of our industry, it will be that it pushed us into pilot programs that otherwise could not have been developed at this scale.”

Encouraging e-delivery as a default option for client documents and disclosures will also be a top priority for our team this year, along with improving cybersecurity regulation. The industry’s experience during the pandemic will inform both efforts.

On e-delivery, we will look to build on the momentum we developed last year when we worked closely with the SEC’s leadership and developed an e-delivery white paper in conjunction with other trade organizations. During his confirmation hearing before the Senate Banking Committee to become the next Chairman of the SEC, Gary Gensler committed to addressing digital delivery alternatives and the potential elimination of paper when a recipient would prefer it.

“We are hopeful the new administration will be receptive to our position and the opportunities e-delivery represents for the industry,” says Barnett. “We look forward to resuming our efforts with the Commission in the coming months.”

Additionally, we have established an ongoing, bi-monthly dialogue with FINRA that has included an avenue to discuss a range of issues, including cybersecurity. This type of dialogue with regulators enables us to share our industry’s perspectives and insights, and to learn more about any potential threats that regulators have identified.

“With everyone working virtually, the urgency of the cybersecurity issue becomes even more apparent,” says Barnett.

We look forward to reporting on additional progress on each of these important issues in the months ahead.



Forward Together

ONEVOICE 2021: FORWARD TOGETHER

The pandemic has forever changed how our industry—and virtually all others—will do business in the future. On the bright side, some of these developments, like the widespread adoption of virtual conferencing platforms, may help us become more efficient in the future and make it easier for industry members across the country to connect.

Some industry events, however, are worth attending in person, in order to meet face-to-face with peers and bring the industry together. Our annual OneVoice conference is one of these. With that in mind, we look forward to coming together safely with our firm executive members for OneVoice 2021, with the option to attend virtually or in-person, at the Hyatt Regency Grand Cypress in Orlando, Florida, July 26 – 28.

OneVoice is one of the must-attend industry events on the calendar, and this year is no exception. Attendees will have the opportunity to meet with their peers for the first time in months, share best practices and hear from thought leaders in a healthy and safe environment for everyone.

This year's gathering could not happen at a better time, with significant changes occurring in Washington, D.C., a new administration taking charge and the United States Senate shifting hands. Our team is keeping a close eye on this shifting power structure to identify any new obstacles it might present for our firm members, financial advisors and Main Street investors.

OneVoice's first day will include a pre-conference workshop on Advancing Women in Leadership (pre-registration and additional fee apply).

The conference will kick off with the opening general session, "Ready for Action: Committing to Diversity and Inclusion." Lazetta Rainey Braxton, a CFP® professional, business owner and non-profit leader, joined by FSI President & CEO Dale Brown, will outline key tools and processes for helping individuals and firms build inclusive cultures in an increasingly diverse environment.

Other featured general sessions will cover the burgeoning ESG investing landscape and what the pandemic has meant for firms of all sizes across our industry. The second day will highlight breakout sessions focused on dedicated tracks for firm CEOs and fellow executives. On the final day of the event, we will dive deeper with peer-to-peer discussions on shared areas of interests.

Since this is not "business as usual", we are implementing *Risk-Free Registration*. If you feel you are not comfortable or unable to attend our in-person event, you may switch to our virtual event registration without penalty. And, if for any reason you are unable to attend either virtually or in-person, you may cancel your registration and receive a full refund by May 15, 2021.

We look forward to having you join us at OneVoice 2021—whether in-person in Orlando or virtually from the comfort of your own home—as we move *Forward Together*.

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financialservices.org/onevoice**



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“Our state advocacy team is keeping a close watch on issues related to state taxes that could create unnecessary costs for our members and their clients.”

STATE-LEVEL ADVOCACY ISSUES

In these dawning days of the Biden administration, much focus has been directed at the new president’s actions on a number of national fronts, including several issues before federal legislators and regulators that will potentially impact financial advisors and wealth management firms.

That does not mean, however, that attention should drift away from state governments around the country, which sit closer to where many FSI members run their firms—and which arguably hold as much, if not more, influence over our members’ businesses.

In particular, our state advocacy team is keeping a close watch on issues related to state taxes that could create unnecessary costs for our members and their clients. We are also monitoring proposed state-level standard-of-care rules and potential new worker-classification requirements that could compel independent advisors to be considered employees.

In addition to our advocacy to protect our members against these potentially onerous state rules and laws, our key state-level priorities this year also include securing protections for vulnerable investors. Here’s an update on the state-level developments our staff is monitoring:

State-Level Fiduciary Rules

Our team continues to watch for developments in Massachusetts, which last year became the first state to adopt rules imposing a separate fiduciary obligation on independent financial services firms and advisors who operate in the commonwealth.

To date, there is no evidence that officials have focused on FSI members in enforcement actions. In December, however, the commonwealth charged the online trading platform Robinhood with violating its fiduciary rule. The case, which is unrelated to the GameStop short squeeze, is notable because Robinhood primarily facilitates trades that users themselves initiate and does not offer recommendations.

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STATE-LEVEL ADVOCACY ISSUES *continued from page 17* ▶

New Jersey has been considering a fiduciary rule similar to the one established in Massachusetts, but has yet to finalize it despite completing its comment and hearing process. Meanwhile, in New York, a state assemblyman has repropoed a fiduciary disclosure requirement that potentially would conflict with the SEC’s Regulation Best Interest.

We will continue to work diligently in statehouses across the country to prevent a patchwork of varying fiduciary rules that would only sow confusion among advisors and investors. However, if states do opt to pursue their own standard-of-care requirements, either through legislation or regulation, we will also engage with those states to support the adoption of measures that align with Reg Bl.

State Proposals that Could Impact Independent Contractor Status

In the past year, state governments have moved to safeguard the rights and welfare of independent contractors and gig-economy workers, two categories of workers hard hit by the pandemic’s economic effects.

Unfortunately, these efforts have led to proposals of overly sweeping worker classification rules that would have a devastating impact on the independent advisory model, which is predicated on advisors being able to run their own independent businesses.

State proposals related to worker classification were introduced in New Jersey, New York and Minnesota last year, following sweeping changes enacted in 2019 in California, where we successfully secured a carve-out that exempted financial services workers from the state law’s new classification test.

As part of our advocacy efforts, we are looking at a generally favorable model state bill from the American Legislative Exchange Council (ALEC) called the Uniform Worker Classification Act, which would unify all of a state’s worker-classification laws into one definition that workers themselves can opt into if they choose.

ALEC drafted the model bill in late 2020, and versions of it have been introduced in West Virginia and Oklahoma.

Taxes on the Industry and Investors

COVID-related difficulties for retail businesses have led to a drop in economic activity in many states, with devastating results for their budgets. The shortfalls are prompting states, many of which already were facing tight fiscal circumstances before the pandemic, to consider new taxes on the provision of financial services or on financial transactions themselves.

We continue to advocate for the repeal or modification of the long-standing professional privilege tax in Tennessee, which imposes a \$400 annual fee on certain professions, including registered representatives and investment advisers. Lawmakers in New York in February reintroduced a proposed stock transfer tax that would impose levies on equity, bond and derivative sales, the costs of which would likely filter down to Main Street investors. New Jersey, meanwhile, has been mulling a financial transactions tax that we have worked to thwart when it has been raised on previous occasions, most recently last September.

A year into the pandemic, many state policymakers appear reluctant to heap more burdens onto small businesses. Instead, many are looking to increase taxes on the “wealthy,” or at least those perceived to be more able to bear an increased burden. Increasing capital gains tax rates appears to be one avenue states are pursuing, and we are monitoring the progress of bills currently under consideration in New York, Maryland and Hawaii.

Protecting Vulnerable Investors

To date, 28 states have enacted legislation or regulations based on the North American Securities Administrators Association’s Model Rule to protect seniors and vulnerable investors from financial exploitation. In general, the model removes barriers to the disclosure and reporting of suspected exploitation and allows temporary holds on disbursements and, in some states, on transactions. We support the adoption of the model rule as part of our years-long mission of advocacy for protecting our nation’s senior citizens and other vulnerable investors. We are looking to back such bills in more states in 2021.



“We see great potential for Gensler and Walsh to support policies that help our members and empower independent financial advisors to provide clients with innovative solutions.”



PROFILES ON GARY GENSLER AND MARTY WALSH

President Biden’s picks to lead the Securities & Exchange Commission (SEC) and the Department of Labor (DOL) will be crucial for the near-term future of the independent financial services industry. With his nominations of Gary Gensler for SEC Chair and Marty Walsh for DOL Secretary, Biden has signaled the new administration could take a more active approach in seeking protections for consumers and workers.

We see great potential for Gensler and Walsh to support policies that help our members and empower independent financial advisors to provide clients with

innovative solutions. At the same time, we have been watching both officials’ confirmation proceedings closely for indications of their priorities, and will be prepared to engage with them to advance sensible rules that make it easier for independent firms and advisors to deliver quality, professional financial advice to their clients.

To provide our members with additional background on these two key nominees, here are brief profiles on Gensler and Walsh:

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Gary Gensler

President Biden likely nominated Gensler, a former Goldman Sachs investment banker, as SEC Chair thanks to his track record of serving the previous two Democratic presidents at the Commodities Futures Trading Commission (under President Barack Obama) and at the U.S. Treasury (under President Bill Clinton).



The Baltimore native holds a B.S. in Economics and an MBA from the University of Pennsylvania. From 1988 to 1997, he was a Partner and Co-Head of Finance at Goldman Sachs. Gensler then transitioned to the Treasury, first as an assistant secretary and later as an under-secretary. In 2002, he worked on the Sarbanes-Oxley Act. From 2009 to 2014, he was the CFTC Chair, and from 2017 to 2019, he was Chair of the Maryland Financial Consumer Protection Commission.

During his career, Gensler has consistently pushed for stronger regulation of financial markets, influencing everything from accounting standards to derivatives swaps. Before being nominated for the top spot at the SEC, Gensler taught at MIT, focusing on fintech applications of blockchain. Years before the SEC charged Ripple Labs, he called its XRP cryptocurrency a “non-compliant security” and has indicated that Bitcoin may require stricter regulation.

Marty Walsh

Walsh, currently Mayor of Boston, is an ardent backer of labor unions who also has received accolades from the Boston Chamber of Commerce.

Born to Irish immigrants, Walsh was elected to the Massachusetts House of Representatives in 1997 and then in 2014 was elected mayor of the 21st most populous city in the country. During his last two years in the state House, Walsh served as president

of his labor union. He earned his B.A. from Boston College in 2009 and was Secretary-Treasurer of the Boston Metropolitan District Building Trades Council in 2010.



Walsh has been a union member throughout his adulthood and once was arrested at a workers rally. He has pushed for a \$15 minimum wage, workforce development projects for low-income families, finding jobs for previously incarcerated people, expanding housing for the homeless, and launching substance abuse programs. Walsh also participates in the U.S. Conference of Mayors. These positions and connections might reflect some of his priorities as DOL Secretary.

Policies to Watch

Assuming both Gensler and Walsh are confirmed, we will be watching for certain policy proposals from each that could gain momentum while Democrats control the U.S. House and have a tiebreaker vote in the Senate.

We oppose any DOL move toward reclassifying independent contractors as employees, which would hurt our member firms and advisors. At the SEC, we would oppose any moves to repeal or revise Regulation Best Interest and impose an overly burdensome fiduciary duty for financial advisors. In addition, we will continue to speak out against regulation by enforcement, encouraging the SEC to return to required rulemaking to impose new regulations, rather than regulating without rules.

Rather than dwell too much on what *could* happen, we will approach our dialogue with these leaders and their staffs with an open mind. Our sincere expectation is that both will work with us to foster positive outcomes for firms, employees, advisors and clients alike.

SPOTLIGHT ON NEW BOARD MEMBERS

This January, we were pleased to welcome four new members to our Board. The new Board members—Wells Fargo Advisors Financial Network President C. Kent Christian, financial advisor and Sage Financial Associates Registered Principal Mary Beth Hofmeister, Advisor Group President & CEO Jamie Price and Cetera Financial Head of Wealth Management and Recruiting Sales Tim Stinson—will bring decades of experience and insight to our Board, along with the unique perspectives that come from their roles in both serving and leading other members of our industry.

FSIVoice spoke with the new (or returning) Board members in order to provide a brief introduction for each to our members:



Kent Christian, President,
*Wells Fargo Advisors
Financial Network*

Kent Christian enjoyed his first term on our Board so much that he's been kind enough to return for a second term of service. "I've been blessed with a great run," he said in an interview from his St. Louis, Mo. home office. "My experience across my career, and during my first term on the FSI Board, gave me the confidence to jump right back into this critical work."

Christian's focus in his second term will remain on what he calls the "lynchpin" of our industry, the advisors themselves. "A good financial advisor is right up there with a family's doctor in terms of trust and involvement in their lives. We must make sure the system helps good advisors do their job well, within a reasonable regulatory framework that protects clients and advisors."

While he is pleased with what he says has been the "close to just right" implementation of recent national regulations like Reg BI and the Department of Labor's new PTE, Christian still sees a need to closely monitor pending legislation, such as the PRO Act—a "gig economy" reform bill that could have serious unintended consequences for independent advisors.

Christian has been pleased to see the growing appreciation of the independent advice model—as well as for independent advisors themselves—over the course of his engagement with FSI.

"We find ourselves in a very different space now, compared to just a decade ago," he says. "This part of the business isn't for everyone, but more than ever people realize the value independent advisors

provide to retail investors. It's a big part of why I'm excited to be back on the Board."



Mary Beth Hofmeister,
*CPA[®], Financial Advisor
and Registered Principal,
Sage Financial Associates*

From attending one of the first classes that admitted female students at her alma mater, the University of Notre Dame, to serving as one of the first women as an account executive in MetLife's Chicago office in the 1980s, Mary Beth Hofmeister has been blazing a trail for women (and others) her entire career.

Her early career brought her to many leading insurance and financial advisory firms, including Prime Capital, Northwestern Mutual and Princor Financial Services. Her dedication to inclusive professional environments earned her leadership positions with the Financial Planning Association and elsewhere, and will be a guiding principle during her service on our Board. She has become passionate about our advocacy mission despite joining FSI relatively recently.

"While I joined FSI just last year, I come to this position with a decades-long track record of representing advisors' needs," Hofmeister told FSIVoice. "And now, as we rely on digital interactions to maintain professional connections due to the pandemic, the personalized service an independent financial advisor provides is an even more precious resource."

As Registered Principal for Sage Financial Associates in Albany, N.Y., Hofmeister's approach to motivating and connecting people has helped her develop a network of individual advisors who support each other's independent businesses through a commitment to shared success—an approach she looks forward to bringing to our Board.

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“While I’m dedicated to ensuring our industry is armed with the tools it needs and reasonable regulations that protect our clients, my true passions are supporting advisors and enhancing the diversity of the wealth management space, from the C-suites of our firms, to the advisors in the field, and importantly, our clients,” she says.

Jamie Price,

President and CEO, Advisor Group



Jamie Price has always felt a powerful sense of purpose about his career in the independent financial services space—a conviction he shares with FSI.

“One of the most important pieces of advice I ever received came from my

father,” says Price, “when he told me, ‘If you can do well by doing good, then you’re in the right profession.’ During my career in this industry, I’ve never doubted that I’m in the right profession, because our business is about exactly that—helping investors live full and rewarding financial lives through sound professional guidance.”

FSI’s commitment to educating legislators and regulators on the importance of this mission is one reason Price is so enthusiastic about joining our Board.

“Over the years, FSI has been more effective than just about any other organization in the country in conveying the importance of the role independent advisors play in the lives of their clients. Thanks to FSI, lawmakers and regulators have come to understand that Main Street investors also need professional advice—and it’s the independent advisor who is fulfilling that need.”

Price is particularly passionate about preparing advisors for the continuing evolution of the current fiduciary era, and he commends FSI’s efforts to secure a unified standard of care for the industry.

“FSI has done a great job of advocating for a consistent, workable standard of care for all advisors that will protect investors while preserving access to advice,” he says. “As a member of the

Board, I will support efforts to ensure that we don’t ‘muddy the waters’ through a patchwork of conflicting fiduciary standards.”

Tim Stinson, Head of Wealth Management and Recruiting Sales, Cetera Financial Group



Tim Stinson’s 30-year career includes positions with large institutions like Fidelity and Northern Trust, and smaller firms like SEI. One thing that has remained the same across his three-decades of service, he told FSIvoice, was his enjoyment of the work.

Stinson is excited to apply his enthusiasm for helping independent financial advisors grow their businesses through cutting-edge wealth management solutions to his role as an FSI Board member.

“Helping clients achieve financial wellness is at the core of our industry, and I look forward to leveraging my experience to advocate on behalf of our industry at a national and state level,” he says.

Stinson has been appointed to the Diversity and Inclusion subcommittee, where he will contribute to FSI’s longstanding commitment to strengthening minority and gender diversity throughout our industry.

“I’ve not only been passionate about diversity throughout my entire career, but throughout my life,” he says. “We have to understand that seeing the world through others’ eyes doesn’t take away from your experience, it only enhances it. With that in mind, we’re going to be focused on implementing tangible and achievable programs that produce demonstrable impacts in addressing systemic challenges in our profession.”

Stinson sees opportunities to implement programs such as unconscious bias training, new mentorship programs and other initiatives within member companies and at FSI itself. “Supporting greater diversity within our industry will only help us develop a better understanding of the communities we serve and enhance the service we’re able to provide,” he said.

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