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Fee-Only Financial Planning and Portfolio Management

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December 12, 2010

Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Dear Ms. Murphy,

Subject: SEC Study under Section 913 of the Dodd-Frank Wall Street Reform and Consumer Protection Act

We appreciate the opportunity to comment as the Commission studies the need for a common regulatory standard for Broker/Dealers and Registered Investment Advisers ("RIAs").

Executive Summary: We recommend that the Commission simply request that Congress repeal the Broker/Dealer exemption of the Investment Advisers Act of 1940.

RIAs and Broker/Dealers should NOT be regulated similarly

An argument has been made that broker/dealers and RIAs should be regulated similarly because they provide similar services. The assumption that broker/dealers and RIAs provide similar services, however, is patently false. The job of a broker/dealer is to enrich themselves by selling financial products. Increasingly, they have been posing as objective fiduciaries (i.e., RIAs) in order to do so. The fact that they pretend to be objective fiduciaries as part of their sales pitch does not mean that they are, in fact, objective fiduciaries.

As a metaphor, imagine the difference between an actor who plays a physician on TV and a real physician. It can be argued that the two are similar (they look the same and they talk the same and they do very similar things). However, it would be silly to regulate physicians and those who pretend to be physicians similarly.

Another metaphor would be to regulate the pharmaceutical industry and the physician industry similarly. It can be argued that both are involved with distributing drugs to the public, so both should be regulated the same. The pharmaceutical industry buys expensive TV ads to encourage the public to utilize its drugs. Likewise, physicians may encourage their patients to utilize certain drugs. But these two industries are NOT the same.

In practice (as in principle), there is an enormous difference between a salesperson posing as an objective fiduciary in order to sell something and a true objective fiduciary whose sole goal is to provide objective counsel to a client. It would not benefit the public interest to legitimize the former and "water-down" the high standards of the latter by having the former's SRO increase the scope of its authority to include regulating the latter.

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Broker/Dealers should be regulated as SalesPeople

It has been proposed that Broker/Dealers should have some sort of fiduciary standard applied to them. We believe that this suggestion assumes (wrongly) that Broker/Dealers and RIAs perform similar functions. As already discussed, this is a patently false assumption.

Broker/Dealers sell things. It is that simple. As such, they should be treated as salespeople. Should the fiduciary standard apply to used-car salespersons? Should the fiduciary standard be applied to toaster salespersons? The nature of the sales business is such that the sales person has a principle obligation to their employer and, if they are compensated by commission, to themselves. Expecting them to act in a fiduciary manner towards a sales target just seems wrong.

The problem isn't that Broker/Dealers need to behave as fiduciaries. The problem here is that they are pretending to act as advice givers without the necessity of being regulated as advice givers (i.e., they aren't being required to perform up to the high ethical standards of advice givers).

It shouldn't be a surprise that the public is confused – that they think that those pretending to be advice givers (i.e., Broker/Dealers) and the actual advice givers (RIAs) have similar roles and responsibilities. This public impression is a direct result of the long-standing policy of allowing Broker Dealers to give advice without being regulated as advice givers.

Broker/Dealers who are masquerading as RIAs should be regulated as RIAs

At present, the common practice of a Broker/Dealer representative masquerading as an objective fiduciary as part of their sales pitch -- without the need to behave like an objective fiduciary -- is legitimized by section 202(a)(11)(C) of the Investment Advisers Act of 1940. This exemption, which allows pretending to be a fiduciary while not requiring fiduciary behavior, contributes to confusing the public and not serving the consumer well. The SEC should ask Congress to eliminate the Broker/Dealer exemption of section 202(a)(11)(C) of the Investment Advisers Act of 1940. This would require anybody who gives investment advice to be regulated as an investment advice-giver (i.e., to act as a fiduciary). A broker/dealer representative who desires not to be regulated as an advice-giver would need to carefully avoid any perception that they were doing anything other than selling. This would lessen the chances that the public were misled by a sales pitch masquerading as objective advice.

We believe that no "harmonization" of regulations between Broker/Dealers and Investment Advisers is required nor desired. The fiduciary question is best solved by simply eliminating the Broker/Dealer exemption.

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If you have any questions whatsoever about anything, feel free to contact us.

Sincerely,



Eric E. Haas, MBA, MS

Member

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