

Rule-Comments

From: Will W. Woodard, III [will@darecapital.com]
Sent: Friday, April 04, 2003 8:04 AM
To: rule-comments@sec.gov
Subject: RE: Proposed RIA compliance - File No. S7-03-03

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Response to Proposed Rule:
Compliance Programs of Investment Companies and Investment Advisers
File No. S7-03-03

04/04/03

Dear Sir:

My name is Will Woodard. I am a small Registered Investment Advisor (RIA). I do business in a fee-only manner and do not take custody of client assets. I want to go on the record as being opposed to the increased compliance rule proposed by the SEC.

A fellow RIA who is a mentor of sorts to me in our NAPFA small group meetings, Ron Pearson, presents his feelings on the matter much more eloquently than I ever could. I agree with his position and have included his response below:

In your proposals for increased compliance reviews of Registered Investment Advisors (RIAs) you frequently cite the relationship between increased compliance and reduced violation of securities laws and less harm to investors. I have no doubt that increased compliance reduces violation of securities laws. However, nowhere in your analysis do you provide any documentation of "harm to investors" by RIAs (either those in compliance or those not in compliance). Nor do you show that low cost compliance, sampled occasionally, is demonstrably better for the investing public than high cost compliance checked much more frequently.

I submit that most RIAs have only Limited Power of Attorney for clients rather than custody like most Registered Representatives. I believe that the asset management practiced by RIAs significantly reduces the incentive for actions harmful to investors. I believe that investor harm attributable to RIAs is orders of magnitude less that caused by Registered Representatives.

I am not saying RIAs should not have compliance programs. What I am saying is that the cost of compliance for RIAs should be roughly commensurate with the potential harm to investors. Based upon what I know (and a lack of evidence to the contrary from you), I believe the cost of compliance should be low.

The simple addition of a fiduciary bond requirement is a great example. These bonds would cost thousands of dollars in expenses, even for a small advisor like myself (with total expenses of \$25,000 annually). A fiduciary bond requirement could add 10% - 20% to my annual costs). Yet, I fail to see how investors would be better off.

I am a sole proprietor. Thus, my own net worth is at risk should an investor feel harmed. I have Errors and Omissions (E & O) Insurance to cover most potential investor issues. If I took custody of client assets, I would be forced to acquire a fiduciary bond as well as audited financials. Although I consider myself a fiduciary for my clients, I do not put myself in a position to "harm" clients. For those situations that sometimes arise with investors, E & O Insurance should be sufficient.

Regarding the proposal for compliance reviews by a third party Self Regulatory Organization (SRO). I believe the current system of state and SEC compliance responsibility works fine. You have provided no data to indicate the current system is broken and needs to be fixed.

If the SEC decides to transfer responsibility for compliance reviews to an SRO, the last organization that should get this responsibility is the NASD. The NASD has not performed well in a difficult job of preventing Registered Representatives from harming investors. The NASD's necessarily intrusive oversight of Registered Representative sales of products is dramatically different from the oversight needed by RIAs.

As a financial advisor, I must maintain a very close relationship with my clients. This includes all manner of email, phone and personal consultations regarding every facet of their financial lives from car purchases to college planning. The NASD's intrusive compliance regime would prevent me from providing timely responses to the financial planning needs of my clients. If an SRO should be needed, financial planners should be overseen by an organization familiar with financial planners, such as the CFP board.

Sincerely,

Ronald S. Pearson, CFP
Beach Financial Advisory Service
6204 Ocean Front Ave.
Virginia Beach, VA 23451
757-428-6634
rpearson@infi.net

Please do not pass this bill!

Respectfully,

Will W. Woodard, III
Dare Capital Management & Advisory
(252)480-0156
will@darecapital.com
"Independent, objective, and professional financial advice"