I'm commenting about the proposed fiduciary standards to be applied to Register Representatives.

I've been a registered representative since 1976. During that time I have seen an ever increasing regulatory burden imposed upon the field representatives who actually work with the public. The current oversight rules by FINRA apply substantial suitability requirements when we make sales recommendations. Every communication by letter or e-mail is monitored by our broker dealers. Every piece of sales presentation material must be submitted through compliance and approved prior to its usage. My broker dealer will not allow for our presence on a social networking site fearing that it may run afoul of compliance regulations. All mail is opened and reviewed for compliance.

I am required to attend an annual compliance meeting and to complete annual compliance training by our broker dealer and FINRA. Every two years I am required to complete continuing education on compliance.

The best evidence of the liability that register representatives already have is the premium on errors and omissions insurance. People who are primarily in the insurance business, as I am, but also sell mutual funds and a variable products have a substantially higher errors and omissions premium than those agents who are not registered representatives.

Imposing a fiduciary standard will only open the door to unnecessary litigation. It will be impossible to meet the standard by recommending any financial product since it is impossible to determine what the best products may be or how the market may impact them in the future. The major obstacle that I have faced over the past 10 years is managing unrealistic expectations. If a person doesn't get double digit returns all the time they think that you have sold them a bad product and of course this just isn't true.

The cost of compliance, including my errors and ommissions insurance, is substantial not only to me but to my broker dealer and to my agency. Simple transactions take hours to complete because of all the compliance paperwork required to accompany new business.

I fear that imposing these proposed fiduciary standards will force many qualified and client oriented professionals to leave the business and they will be replaced by fee oriented marketers who are more concerned with collecting the fee rather than with doing what is economically correct for their client.
The vast majority of the public can not afford to pay the high fees that will be required in order for a fee planner to take on the fiduciary responsibility.

Just this past week while attending a luncheon, a registered rep from a different firm and I talked about the proposed fiduciary standards. In his opinion he was in favor of the standards. Why? Because he was planning on making money by teaching other registered representatives how to complete the paperwork and keep the notes that would help shield them from liability and convert to a fee based practice. In other words, to him it was a moneymaking proposition, and nothing more than having the paperwork in the file in case someone complains. And that is the rub of it. Too often the focus is on making sure that there is plenty of exculpatory documentation in the file.

I would like to point out that the meltdown in the financial services sector was not due to the actions of the many thousands of register representatives who meet and do business with their clients every day. The meltdown was precipitated at the top of the financial firms, in the executive suites. The exotic products that were designed and sold were usually not sold openly on the market to the average investor but were sold to so-called sophisticated investors. The Madoff scandal was not about a rogue registered representative but about greed and the ability of one man to convince people that he could deliver unrealistic returns over a prolonged period of time. His greed and his clients' greed made the scandal possible. He was nothing more than a con man and no fiduciary standard would have prevented what he did. Only better oversight into his record keeping and client account management. In other words, at the broker dealer level not at the registered rep level.

A final point, or should I say question. How many mutual funds will be forced out of business because registered salespeople will refuse to sell them because of their fiduciary concerns? How many IPOs will have trouble because registered representatives are fearful of fiduciary requirements? The winners will be the biggest mutual fund families and the largest broker-dealers. The losers will be everybody else including the public.