

Comments Regarding Fiduciary Standard

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The Securities and Exchange Commission (SEC) is currently considering whether to impose a fiduciary standard of care on broker/dealers and their representatives who provide personalized investment advice to clients. Such a standard has been imposed on Registered Investment Advisors and their representatives for six decades. According to certain news reports, there is some opinion that the SEC may impose a fiduciary standard that is somewhat different, perhaps weaker, than that which currently applies to investment advisors.

I have been a Investment Advisor Representative (IAR) and principal of a Registered Investment Advisor (RIA) for over twenty years. Previously, I had been a registered representative for a broker/dealer. I have seen business on both sides of this business. I have served as president and chairman of our local chapter of the Financial Planning Association, an organization for financial advisors, the members of which come from both ends of the fiduciary spectrum. Many of those members serve their clients in both capacities and live daily trying to walk this fine line between a fiduciary obligation to their clients and an agency loyalty to their broker/dealer.

I strongly support extending the current fiduciary standard of care obligation to broker/dealers and their representatives so that such a standard becomes uniform across the universe of those providing personalized investment advice to consumers. Consumers deserve to understand their relationship with their advisor. They also deserve to know that their advisor is obligated to provide them with advice that is in their best interest and not worry about whether the advice might, in some way they don't understand, be self-serving from the perspective of the advisor or the advisor's employer. "Dual registration" should be eliminated so that advisors do not have to worry about whether they are acting with the "right hat" on in any particular circumstance.

I would not support a diluted uniform fiduciary standard that might be offered to make a new standard more palatable to the broker/dealer industry. A diluted standard would not promote uniformity but, rather, serve to continue a state of non-uniformity because many current RIAs and IARs would continue to use the current higher standard simply because it is a higher standard of care.

I'm not an attorney, but I can imagine an argument that holds that imposing a fiduciary standard on broker/dealer representatives would create a conflict with the traditional agency relationship between the broker/dealer and its registered representatives. Should this legal objection arise, I would suggest that the SEC lobby Congress to pass legislation that would create an exception to agency law in circumstances where a conflict exists between an advisor's fiduciary obligation to clients and the advisor's obligations as an agent of his or her employer.

The SEC has an historic opportunity to enact rules that would truly serve the investing public and restore an element of confidence in the financial industry that has suffered greatly in recent years. I trust it will act wisely.