

SEC Comments on File No. 4-606

August 27, 2010

To Whom It May Concern:

Consumer protection is very important in this day and age of many issues among our economy. However, imposing a fiduciary standard on registered representatives and broker-dealers is not a solution to the problem. Rather, it will be another hindrance of acting properly for client's interest due to the vague definition of "best interest"; additional compliance and regulation causing additional confusion by clients and representatives and cost; along with opening the opportunity for frivolous litigation.

"To act in the best interest of the customer without regard to the financial or other interest of the broker, dealer, or investment adviser providing the advice," is what may be currently proposed for all persons providing advice or guidance to consumers. However, as a registered representative and registered principle I already act in the best interest of my client. In this arena, I undergo countless efforts of scrutiny and regulation caused by the suitability standard, which enforces that we as ethical representatives help the clients decide which vehicle is suitable for their needs at the present time going forward. In an already highly compliant industry, ethical representatives and companies enforce an annual review with clients, in which we review all products the clients have and identify continued suitability for it. As a registered representative, I go through an annual FIRM Element continuing education, every few years I go through a Regulatory Element continuing education, as a registered principal I also get involved with my organizations high level best practices review so that we can identify better ways to train and disseminate information for our representatives to carry out the good work to the clients who need us. What would the imposition of a different standard provide that protects clients in which we currently don't have?

The key issues are continued enforcement, compliance and review. The issue is that, as we have seen regulatory bodies and some companies are not continually enforcing the already imposed standards and rules in a lot of instances— whether you are an investment adviser or registered representative. As a NAIFA member and local association President, I value the ethical standards and code of conduct that I uphold for my clients and my representatives. However, I know that it is ethical standards and loopholes in the regulations that have caused the breakdown for main-street consumers...not the lack of regulation or already existing standards for us operating as advocates for our clients.

The imposition of a written fiduciary standard will subject myself, my business and my peers to never ending lawsuits due to the ill defined best interest standards. The fiduciary standard in essence adds a vague legal liability standard that looks back (sometimes after many years) and is enforced after the fact by the SEC or trial lawyers who have perfect vision in hindsight. That in turn would increase operating costs for carriers and distribution, thus being passed to consumers whereas then obtaining financial advice would become cost-prohibitive to the group of consumers who really need it- the growing middle class. Receiving a commission, versus a fee, does not suggest or imply (if the rep is ethical) that the product is not suitable or best for the clients. Proprietary products are not bad, if they are from upstanding highly capable companies. As a registered representative and captive financial representative with an insurance and financial services firm I can attest that my client have a lot more available to them because of my business model and the direct contact with my company.

Please, imposing more regulations on representatives and broker dealers to be the “same” as investment advisers is not necessary. I would entertain better enforcing investment advisers, representatives or companies that may not hold themselves to some standard of ethical and moral conduct with clients. Those of us in NAIFA and taking part in additional education such as the American College provides, or other professional education systems all agree to hold ourselves out to protect our clients best interest, but we aren’t held to a vague legal standard which may cause many to think twice before recommending suitable solutions to our clients if this is upheld because we cannot identify the future, we do not know what is to come. However, doing the best work for our clients would cause constant communication as it stands now, which in turn will allow us all to avoid issues in the future as we are constantly working for our clients.

Thank you for your time and consideration.

Kindest Regards,

David M. Kujawa