August 27, 2010

Delivered via email: rule-comments@sec.gov

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

Reference: File Number 4-606: Study Regarding Obligations of Brokers, Dealers and Investment Advisers

Dear Ms. Murphy:

The American College is the foremost educator of financial planners and other financial professionals in the United States. With the highest level of academic accreditation, The College has an 83-year heritage as a non-profit public charity with a mission of raising the standards and professionalism of advisors to benefit the clients they serve.

Thank you for the opportunity to respond to your request for comments on the effectiveness of existing legal and regulatory standards of care for brokers, dealers, and investment advisors and the identification of any regulatory gaps. It is troubling to us as educators that a number of those favoring a broad extension of the fiduciary standard aren't grasping the full potential impact on the public. Some groups are motivated by competitive factors and strong self-interest, such as fee-based planners. Others, such as consumer groups, may not really understand the issue.

Here's the core concern: a "pure" fiduciary standard is workable in some distribution models and not in others, and consumers highly value having the product and service choices provided by multiple delivery channels. It's helpful to specify as Dodd-Frank does that "the receipt of compensation based on commission" and "the sale of only proprietary or other limited range of products by a broker or dealer" shall not in and of themselves be considered violations of a fiduciary standard of care. That wording, however, is not enough to protect a distribution model in which an advisor must act as an agent of the company (such as an insurance advisor selling variable products). It is by definition impossible to be an agent of the company and the client at the same time. The practical result of an ill-advised, broad-based extension of the fiduciary standard could, in fact, adversely impact costs and product access for consumers and significantly increase compliance expenses for advisors.

Dodd-Frank provides the authority to apply the following standard-of-care definition: "…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." How will "best interest" be defined practically? By maximum financial return? Over what time horizon?

What role does risk tolerance play? If another asset class performs better over a multi-year period, was the original carefully considered recommendation really in the consumer's best interest? What is the trade-off between return and an underwriting company's financial strength for a variable insurance product? Which factor is the primary consideration in determination of a consumer's best interest?

Advocacy groups love a good sound bite. "Fiduciary for all" seems to fit that bill and garner the headlines, but the implementation of this overregulation is not only difficult, it could negatively impact the marketplace in multiple ways. Most discussions of the issue don't seem to focus on the impact to insurance advisors who are also registered reps. The regulatory burden is already extreme for these advisors, to the extent that small practices are forced to engage fulltime compliance specialists. Consumers aren't even reading the reams of forms they are being handed to sign. Rushing to find an easy solution in this difficult area, as has been the case for regulators a number of times in the recent past, is not a wise course.

There is another common -- and incorrect -- perception that a principles-based fiduciary standard is far superior to a rules-based suitability standard. Here's another way to think about the issue: a rules-based approach gives advisors solid guidelines *before* the sale. It supports proper actions and provides detailed rules prior to the execution of a recommendation. A principles-based standard provides more nebulous guidance, albeit with good intent, and leads to evaluation after the sale has already occurred. Enforcement patterns reflect this difference, with much more frequent examinations for broker-dealers than for investment advisors. Think about fiduciaries such as Bernie Madoff: where's the consumer protection in limited inspections and after-the-fact enforcement?

A positive difference can be made for consumers in the area of disclosure. Simple, streamlined education for clients that clearly discloses any potential conflicts of interest and explains the standard of care their chosen advisor operates within could produce tangible consumer benefits. Adding to advisors' regulatory burden with no clear purpose would not.

Your task of translating a high-minded concept into practical application -- and not harming consumers in the process -- is not an easy one. You must protect various forms of distribution that the public values, appropriately consider the impacts to insurance products and services, and avoid creating a nightmare of added liability and cost. It is our sincere hope that you'll be able to avoid the roar of groups trying to grab publicity and competitive advantage and tune your thinking instead to the needs of middle-American financial services consumers. Their true "best interest" is at risk of getting lost among the very loud voices that are not, regrettably, speaking on their behalf.

Very best regards,

Keith Hickerson

Keith Hickerson
Senior Strategy Consultant
keith.hickerson@theamericancollege.edu