August 30, 2010

As a Certified Financial Planner™ Practitioner and the Chief Investment Manager of a SEC Registered Investment Adviser as well as being a Registered Representative I have been servicing my clients under a fiduciary standard of care for many years. For us disclosure is paramount to an effective working relationship.

Upon entering the financial services industry in 1976 it did not take a long period of time until I realized the inequity of the 1933 and 1940 Acts. One regulating the financial products, the other financial advice, but nowhere did we find the term “financial planning” defined as investment advice, as was accepted by most academia.

As the financial markets began to change in the early to mid 80’s, commission products were shunned in favor of no-load or no commission products, whereby those practitioners who embraced a fiduciary standard of care were charging a fee, or by the hour, to manage ever increasing assets, causing the brokers and insurance agents who sold commission based products to take notice.

Enter the “free” financial plan, Stock brokers, insurance agents, and multi-level part-time sales people were all giving away a “so called” free financial plan in an attempt to gain a competitive edge. They used the free financial plan as an enticement (loss leader) to sell commission based products. This happened by exploiting the perceived regulatory loop-hole, feeling fairly comfortable as long as a fee wasn’t charged they were abiding by the regulation, or lack thereof.

They also began to use the unregulated titles “Financial Planner” or “Financial Advisor” to guise the fact they did not want to be know by their actual sales titles, thereby leading to additional confusion by the investing public. Most Registered Investment Advisers also offered financial planning to their clients, but on either a fee or hourly basis and because of the time involved to complete a financial plan it would be cost prohibitive to simply give away.

In my opinion this was the greatest lapse in regulatory history ever perpetrated upon the American people. This could have been corrected by enforcing a “holding-out” rule, requiring anyone holding-out that they render financial planning or financial advice to register under the act of 1940, and by including the term “financial planning” both as a service and title being codified and regulated as investment advisory terms.

A few states presently have regulations enforcing the “holding-out” rule and for that I applaud them, but the real issue is transparency for all of America. I believe until the SEC adopts a unified standard of regulations enforcing a code of conduct for everyone rendering financial advice, the unregulated have a vested interest in continuing to skirt true fiduciary standards, enabling them to maintain this seemingly competitive advantage.

Trying to modify or water down the definition of a fiduciary standard of care only serves to continue the same regulatory scheme, but under a different name. In the end it is the majority of the Citizens of America who misguidedly believe everyone holding themselves out as Financial Planners, Financial Consultants, or Financial Advisors are all held to the same regulatory standards, as a fiduciary. So the real issue would appear to be for the SEC to meet these expectations.

There is nothing wrong with earning a living by selling products, or by earning a commission, just simply tell the prospect before they make a buying decision that they are dealing with a sales transaction and that a commission will be paid. My belief is it is misleading and harmful to an investor by allowing a "look-alike" fiduciary process bypassing the regulations designed to provide full disclosure and which enforce a standard of conduct required of actual fiduciaries.

So what's the solution?

Step one, anyone "holding-out" they render investment advice should be held to a fiduciary standard of care as currently defined and universally understood by the public, irrespective of compensation method or even "no-compensation" particularly if commission based products are involved. (Investment Management, Financial Planning, Modular Planning, Financial Consulting, Comprehensive Planning, Financial Advice, or like advertised services.) If its financial advice they are promoting, ie… "holding-out" then it should be delivered under the same fiduciary regulations regardless of compensation, or in the alternative the provider can choose to simply not "hold-out", as I said nothing wrong with selling a product as long as disclosed.

Step two, anyone using a designation that "Holds-out" they are rending investment advice should be held to the same fiduciary standard of care. (Financial Advisor, Financial Consultant, Financial Planner, Accredited Planner, Certified Planner, Qualified Planner, Wealth Manager, Investment Manager, ect…)*(Conduct an experiment: Take your local yellow page listings from any city, look under Financial Planning and/or Financial Planning Consultants then screen the names against the SEC Advisor Check to verify which are actually registered as investment advisers or investment adviser representatives against those who are Insurance Agents or Registered Representatives only.)*

Step Three, anyone not rendering investment advice "Holding-Out" should use their legal title as designated in their respective controlling regulations or license. (Insurance Agent, Stock Broker, Branch Manager, Registered Representative, Registered Principal, ect…) Why would they not want to disclose their actual title? *(Conduct another Experiment: Take the same yellow page directory and look under Stocks, Securities, Insurance, Investments, and Mutual Funds, gather the names of the Listees then call them paying particular attention to their titles, can you determine if they are "holding-out"? If so, are they also listed under the SEC Advisor Check? Ask for a Form ADV Part II and record the response.)*

When a patient goes to the doctor who has M.D. after their name they expect to obtain medical advice for which they pay, likewise when they go to the pharmacist they expect to purchase a product which has been prescribed, both are necessary to maintain good health.

Why then should stock brokers or insurance agents be allowed to "Hold-Out" they offer investment advice, unless they actually do? Wouldn't that be similar to allowing a Pharmacist to practice medicine without a license?

Seems fairly simple, advertise what the real relationship is, be truthful, and forthright with the public.

Respectfully submitted,

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