

August 30, 2010

To whom it may concern:

With regard to the proposed changes in application of the fiduciary standard, I would like to submit the following comments. I was a broker for 22 years, and then a discretionary portfolio manager for the following six years. In that combined 28 years I have never had a customer complaint, a compliance reprimand from my firm, nor had any issue raised in any of many examinations. From my viewpoint owning my own firm where I am clearly and always a fiduciary, working in my former firm where I was sometimes a fiduciary and sometimes not, and in observing my many competitor firms, I have developed a strong aversion to the thought of applying the fiduciary standard to everyone representing investors in all situations.

By definition, a broker is one hired to negotiate a transaction on behalf of another. There are brokers of metals, foods, oil and gas, real estate, stocks and bonds, and a long list of other commodities. A broker may be hired to gain access to regulated markets, to achieve better pricing, to find the other side of the trade, to gain access to new issues, to combine their trade with those of others for meeting minimum bid requirements, to remain anonymous, or for a host of other reasons. In no case is a broker considered a fiduciary. By definition, they are acting on behalf of another in negotiating the transaction desired by that person. A suitability standard is in place for all of these brokers and seems entirely appropriate.

If all existing brokers for financial investments are required to become fiduciaries, who will step in to fill the role of broker? It would be naïve and unrealistic to believe that no one will. This is a role that has existed for as long as men have been on earth. The only question will be who will regulate them and how they will identify themselves to clients.

None of the problems associated with the financial crisis occurred due to the confusion between brokers and fiduciaries. That is not to say that this distinction should not be made more clear---it certainly should be---but simply to point out that this was not the cause of the financial crisis or of the loss of faith in our current systems.

I do believe that many people in and out of our industry misrepresent themselves to clients. Sometimes this is intentional, sometimes not. A very simple set of rule changes would solve nearly all of these problems.

1. Require that all BROKERS identify themselves as such. Call yourself a broker or representative of your firm, identify that you are hired by your firm to negotiate transactions, that you represent your firm as a salesperson, and that while you want the client to succeed in their endeavors, the decision is that of the client and the outcome is not your responsibility.
2. Require that EVERYONE (financial planners, attorneys, CPA's, insurance salespeople, advisors, managers) advising people about their financial needs be registered as fiduciaries. CPA's would be able to give specific tax advice, attorneys specific legal advice, insurance reps specific insurance advice, and other professionals specific limited advice related to their specialty outside of this requirement, but if they cross the line into general investment advice or recommendations, they should be required to be series 65 fiduciaries regulated in those capacities by the SEC.

3. Stop the obsession with method of payment for these services. Whether paid by commission or fees, the issue is whether you are acting to represent the interests of your firm or your client.

As for the specific issues for which you request comment:

1. The existing rules are sufficient. Efficient enforcement of those rules is not. There has been far too much emphasis on documentation of policies and far too little emphasis on evidence of disregard for policies. Sometimes results matter more than what is written on paper. Client interests would be far better served by street savvy investigators than by another batch of attorneys hired to scour documents for evidence of a missing or poorly worded phrase.
2. The rules and standards of care are sufficient. Client confusion is a result of unclear identification of the role of the employee. Were the distinctions required to be 1. Registered Rep of ABC Firm, 2. Client Advisor, or 3. Discretionary Portfolio Manager, then roles would be more clear. A registered rep would be the same as the salesperson for any other kind of firm. They are hired by that firm to sell their products to interested consumers. A client advisor would be hired by the client to advise them and put their interests ahead of the interests of anyone else, including the firm. A discretionary portfolio manager would be hired by the client to make investment decisions based on the manager's criteria for appropriate investing at the moment.
3. Clients have no difficulty understanding different roles. They have great difficulty trying to determine roles when job titles are misleading.
4. The differing standards of care are not only understood by clients but are expected by them. The suitability standard is for everyone competent to make their own decisions after being given accurate information necessary to make the decision. The fiduciary standard is expected by all clients who feel confused or overwhelmed by all of the choices and differences. If you "know your client" as the rules require, there is never any doubt about which client is which, or at which times the clients shifts from one to the other.
5. The current examinations could be effectively streamlined if the SEC were required to listen to the customer as well as the brokers and advisors do. When clients complain in large numbers about a particular firm or person relative to the overall rate of complaints, there is usually a good reason. Rather than focus on the NUMBER of examinations, or finding paperwork deficiencies, the public would be far better served by finding the Bernie Madoffs of the industry. Since the crooks and liars are routinely reported by those in the industry and by clients, it seems this would be the first line of examination enquiry. Effectiveness in ridding the industry of these people is far more important than frequency or length of examination. However, routine examinations currently are too lengthy and produce little result. Spend the time on those you have reason to doubt.
6. The differences in regulation are clear and sufficient, with the exception that each (broker or advisor) should more clearly identify which one they are. See point 2 above.
7. It is not the regulation of advisors vs. brokers which provides the greater or lesser protection to the client. The regulations are sufficient. It is the confusion of which is which.
8. The standards of State regulators vary by state and are not easily discussed here.

9. The impact of doing this would be disastrous. Right now there are three broad classes of clients. The first is competent to make decisions once the facts are provided. Suitability is entirely appropriate here. They are competent and have the RIGHT to decide for themselves, ***whether you agree with them or not***. The second broad class is competent but prefers to delegate the decision making. The fiduciary standard is appropriate for these clients. The third broad class is not competent to make their own decisions and the fiduciary standard is essential for these clients.

For the SEC to take any action to deny competent people the right to make their own decisions with their own money is to deny them one of the most basic rights and privileges this country offers. Yet making all brokers fiduciaries would do exactly this.

Once a fiduciary standard is layered over all industry activity with clients, then the fiduciary would have to refuse to represent all transactions for the client that are suitable, but below the standard of “best” interest in terms of choice, price, timing, or place. What makes you, me, or anyone else smarter or wiser than everyone else just because you have passed an exam?

10. See 9. It isn't the cost that is the issue, as massive as that would be. It is the fundamental denial of a person's right to make their own decisions with their own money.
11. Every business in the world is made up of companies with varying levels of service, price and availability. Why deny customers that same right with their investments? All customers are not the same, do not want or need the same things from brokers or advisors, and should never be denied maximum choice in these areas.
12. 13. And 14 have been addressed above.

Thank you for taking the time to sort through all of the input, gather the information, and make the effort to improve the system.

Cindi Showalter  
Investment Manager