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RE: File 4-606

I have enclosed a resume to indicate more background than anyone responding. In short, I have taught the bulk of securities licensing instruction, insurance and real estate continuing education, wrote two courses approved for continuing education by the California Bar, Practical Investment Theory and Application and Practical Life Insurance and Annuities Analysis and Application. Taught CFP courses, wrote two books on planning, act as a financial planner, provide expert testimony............

What is so patently laughable in this observation is that there are effectively no "retail brokers" nor "registered representatives" left in the United States that deal with consumers. Ever see any cards with those simple words identifying who they are? No. They have all changed to various monikers describing levels of competency and knowledge far exceeding that of a broker- "financial counselor, financial consultant, wealth manager, financial planner" and on and on. In recent testimony, I stated that a prudent reasonable person hearing such potential capability would clearly assume independent analysis of all areas financial- including insurance, budgeting, analysis of standard deviation (recognize that most use Morningstar), risk of loss and more.

The defense argued that there are no laws denying that right of use. True. But if one even remotely wants some suitable", those titles have to go since they deceive the public.

But you want to know the real problem? The NASD, FINRA, SEC et al have never required its 650,000+ licensees to know the fundamentals of investing to begin with. Licensing requires nothing on alpha, correlation, diversification, standard deviation, risk of loss, or how to use a financial calculator. If you do not know how money works, you have no idea what you are doing.

The SEC currently has over 650,000 agents who are clueless how to properly allocate a portfolio. If you do not know diversification, you cannot determine risk. If you cannot determine risk, you cannot determine suitability.

It is entirely disingenuous to attempt- under current regs of suitability- almost any level or review since a rep doesn't know what suitability is to begin with. Neither do the compliance officers et al. There is no mandatory continuing education to same and Schapiro's comments that the attorneys in a claim will provide the insight is ludicrous in the extreme. As an arbitrator, I never met an attorney that knew the correct definition of diversification (nor will only 0.5% of readers), no judges nor any expert from the industry (though there must be some). Arbitrations are judged on a lot of superficial elements of investor (supposed) sophistication while there is no sophistication at the broker level. Interesting reversal of defense but quite valid when the plaintiffs counsel is ignorant of the basics of investing.

So, go ahead and apply a fiduciary standard. All you will do is line the coffers of attorneys who might learn what suitability was meant to be and then try to apply some fiduciary standard on top of that. Unless and until the SEC and FINRA step up to the plate with real life application of product via mandatory licensing requirements, all the organizations will remain in a limbo of useless words.

Actually, when looking at RIAs, you can dress up a broker with some type of oversight via the SEC or state, but let's get real. You do not have anyone at the SEC or FINRA that has much of a clue to the fundamentals of investing in any case so the fiduciary level of competency will always be suspect at its core. The Madoff oversight was not a fluke and considering the refusal by Schapiro to demand broker competency (see my letters to NASD starting in 1995) and I think this is a parade of political tomfoolery.

Let's take a look at some of the organizations behind this- CFP Board, NAPFA, FPA. Think they are competent? Why? The CFP is one semester in planning. NAPFA is fee only but what is the point if there is no fundamentals of investing that they truly may have learned. Beyond that are the ethical mandates. Are these organizations adhering to the same standards they demand of their members? Nope. Out of 8,000 CFPs in California, not one is fully licensed and legal to offer comprehensive fee services. No NAPFA. No CPAs either. See Section 1848 of the California Insurance Code. See also http://www.efmoody.com/ethics/cdi.html. Check another 30+ states and you will find the same thing. Irresponsible and illegal behavior in willful violation of the laws and ethics but with effective impunity due to unavailable and inadequate investigations by any state organization (that makes it right?).

So now we have the ethical entities acting illegally telling clueless Senators (and their staff) that a fiduciary level of review is needed.

Taking some liberty with one of your responses with no direct offense intended:

1.We feel the effectiveness of existing legal and regulatory standard of care for brokers, dealers, investment advisors and associated persons for providing personalized investment advice and recommendations is adequate.
EFM- As stated, there are no brokers. Investment Advisers are not required to know the fundamentals of investing- where does it come from?? They cannot offer personalized investment advice even under suitability standards (which are unknown).

1. 2) We feel there are no shortcomings with the current standards in the protection of retail customers relating to the standards of care.

EFM- how would they know? They are not taught either. The current standards allow deceit directly to customers.

3) Retail customers may not fully understand that there are different standards of care applicable to brokers, dealers, investment advisors and associated persons of each. This could be explained with increased disclosure to retail customers.
EFM- Not really. Retail consumers are clueless. And it would have to be phrased correctly in writing. But they wouldn't read it anyway. Verbal is useless.

4) We feel the differing standard of care is not a significant source of confusion for retail customers regarding the quality of personalized investment advice that retail customers receive. The quality is not affected by any

confusion they may have.
EFM- Retail consumers are clueless to what is offered. Always will be. Legalese in imperfect language will never work. Attorneys don't have the skill to write the material effectively.

5) We feel the current system of examinations of brokers, dealers, and investment advisers is adequate. The frequency of examinations of investment advisers could be shortened so that misappropriation of funds could be found more easily and the volume of data examined is not so extensive. The length of time of the examinations is reasonable in most cases.
EFM- the current examinations in no way address the competency of the plans and probably never will since the examiners have never been taught anything about suitability. Misappropriation of funds does not occur that frequently.

6) We feel the regulation differences between brokers, dealers and investment advisers when providing personalized investment advice is appropriate because the type of advice given is different. Typically, registered representatives are typically giving advice surrounding a single investment within a portfolio, while investment advisers are advising based on a full portfolio or financial plan.
EFM- disagree. If a rep is describing a single security, it may be unsuitable since it must mesh with the other investments. If you do not know diversification, you cannot determine risk. If you cannot determine risk, you cannot determine suitability. Standard deviation, correlation, diversification, risk of loss etc. are not taught.

7) The current regulation and oversight of investment advisers provides adequate protection to retail customers in the instance of disclosure, however, the regulation and oversight of brokers and dealers is stronger overall because more rules and regulations exist, and there is more oversight at both the firm level and the SRO level.
EFM- the oversight of brokers may be more but the point may be moot since who is overseeing the incomplete knowledge base for the products? Not Series 24- they have not been taught the fundamentals either.

8) The existing legal and regulatory standards of State regulators is adequate. The powers given the State regulators should not be decreased, or increased.
EFM- Even given that, there is no money, staff or, more specifically, knowledge of what should have been done. The planning organizations are actively violating state laws for well over a decade. That is the level of actual enforcement.

9) The potential impact on retail customers of applying the fiduciary care standard to the range of products and services offered by brokers and dealers would be detrimental. Retail customers with accounts under $100,000 would no longer be profitable for firms or their associated persons to service. The costs of the additional liability of a fiduciary standard and the required insurance coverage, would outweigh the fees earned for many advisers. A large portion of the investing public would be without adequate service if requirements of the Investment Advisers Act of 1940 were applied to all brokers, dealers and associated persons.
EFM- perhaps true. But if all have no idea what is a suitability standard, what is the fiduciary level of care. The exposure to liability is now high but nobody does much since the consumer is unaware of the lack of competency of their "financial consultants".
But it is generally true that many smaller accounts may not be handled that well under the new standards. But they are not that good now.

10) If the broker-dealer exclusion were to be eliminated, the impact and harm to retail customers would be wide-spread. Each recommendation could be viewed as personalized investment advice and such recommendations would no longer be available to small investors, as outlined in number 9. The additional litigation, insurance and oversight costs would require significantly higher levels of fees to be passed on to the lower net worth customers. The resources are not in place to regulate the hundreds of additional firms, and thousands of additional associated persons.
EFM- small investors are already hurt. But it is true that litigation costs will go up. But consider this. With proper knowledge, hundreds of thousands of consumers might have avoided the 44% losses of 2000 and 57%

losses of 2008. The Enron disaster to its employees could have been mitigated by 90%. But not if you do not know diversification or correlation.

11) Since investment advisory accounts typically have higher minimum fees and account size, the lower net worth customers would not have access to the same level of service or care as higher net worth retail investors. EFM- true in part except it the level of service is NOT the same.

12) Changing the standard of care would not benefit retail customers in the protection from fraud, as the largest fraud cases in our recent history have stemmed from advisory activities. It would also reduce the access and availability to personalized investment advice for all but the high net worth customers, as explained above. EFM- direct fraud is not that common, Inadequate, erroneous and unknowledgeable advice is. But it will make little difference since the examiners (attorneys) don't know either.

13) We feel that changing the standard of care guidelines could impact customers in many unintended ways, such as having to pay ongoing management or advisory fees instead of a one-time commission. The cost for brokers, dealers and their associated persons could be immense because of the requirement of maintaining dual registrations, and dealing with dual examination and bookkeeping requirements.
EFM- tough one since ongoing advice can stop with commissionable transactions. If further advice is demanded, the costs of time would have to be passed on.

Summary

We have two clueless senators (and more importantly their staff) who have focused on a fiduciary standard with no idea of what is currently occurring in real life under the basic suitability requirements. .

There are no retail brokers dealing directly with consumers. The B/D firms are purposely deceiving the public. Of course, RIAs may be deceiving the public as well since their background might have simply come from the industry. But the SEC will continue to avoid knowledge since Schapiro has generally paid lip service to any increase in a knowledge base. And she wants to help the public? See http://efmoody.com/nasd.html

The fundamentals of investing have never been taught save for some extra separate courses one might have attended. But since they were not 'approved' who is to say they were any good? (Though the state and federal governments have extremely little knowledge to judge a course. They are attorneys.)

Most of the planning organizations pursuing the fiduciary standards are active and knowing violators of state laws.

The Government Accountability Office (GAO) is to conduct a comprehensive six-month study of the need for regulation of financial planners. A fine study- they do good work overall. But I am concerned that they will be barraged/inundated by industry and planning propaganda and miss the fact that it is the consumer who is to be protected. FINRA and the SEC are incapable. The planning organizations should not be actively involved in the final process since they have told members to continue to violate the law but just keep quiet about it.

The bottom line is not the regulation, it is the real life review of product application. This cannot happen without wholesale changes in licensing instruction and mandatory selective continuing education. Or set up our country for more Enrons, Worldcoms and 2000 and 2008.

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SUMMARY OF QUALIFICATIONS

Over 37 years of hands-on experience as a financial and real estate consultant to various title companies, corporations, CPA's, attorneys, partnerships, credit unions, non-profit organizations and individuals. For the last 25 years, major focus has been in individual fee financial planning. Expertise has covered investment analysis and monitoring, estate and pension planning, living trusts, charitable gifting, sales and management (stocks, bonds, partnerships, insurance, REIT's and mutual funds), retirement planning, life and disability insurance review, security arbitrations, taxation and national and international economic analysis. Offer expert testimony on brokerage and financial issues. Have written and taught extensively in the field.

Authored the largest (4,000+ pages and 1,650+ links) and most comprehensive independent financial planning site on the Internet (EFMoody.com) designed for consumer education and knowledge.

Author of No Nonsense Finance by McGraw Hill, (2004)

Author No Nonsense Finance II (2010)

Author of “Practical Investment Theory and Application”- the only investment continuing education course ever approved by the California State Bar (2008)

Author of “Practical Life Insurance and Annuities Analysis and Application”- the only course on life insurance and annuities ever approved for continuing education by the California State Bar (2009)

Author of “ELDER INVESTMENTS: A Critique of Professional and Consumer Mediocrity”, Marquette University Law School (2009)

PROFESSIONAL EXPERIENCE

1981- 1997: Dearborn Financial Institute & Securities Training Corporation. Instructor for the Series 6 (mutual funds, variable life and annuities); Series 7 exam (stocks, bonds, options, economics, security regulations); Series 22 (limited partnerships, personal and corporate taxation); Series 24 (General Securities Principal); Series 26 (Mutual Fund Principal); Series 63 (multi state license); Series 52 (Municipal Securities); Series 62 (Corporate securities) and insurance, special education programs and securities continuing education courses.

1977- 1999: Professor/instructor for University of California at Berkeley and Irvine, University of San Francisco, Orange Coast, Santa Ana, Coastline and Scottsdale Community Colleges. Includes MBA course in Real Estate Finance, courses for the UC certificate programs "Professional Designation in Financial Planning" and "Professional Designation in Investment Real Estate" and specialized seminars.

1987- 1998: Arbitrator with the National Association of Securities Dealers and Pacific Stock Exchange

1995- 2004: A.D. Banker, Instructor in Insurance for continuing education courses in Estate Planning, Managed Health Care, Annuities, Long Term Care, Qualified Retirement Plans, Government Programs and Medicare Supplements, Disability Income, Ethics, Principles of Contract Law, Principles of Agency Law, Taxation of Life

Insurance and Annuities, and Financial Products for Financial Planning.

DEGREES, LICENSES AND DESIGNATIONS

BSCE, LLB, MBA, PhD (Real Estate)
Masters of Science in Financial Planning (Estate Planning Major)

Life and Disability Insurance Analyst 0626414 (One of about 30 in California)

Certified Financial Planner 1984- 2010

Registered Investment Adviser (California)

California Real Estate Broker

California B-1 General Contractor

Series 7, 24, 27 and 63 Securities Licenses- inactivated

Series 65 Securities License (Multi State Adviser)

California Life and Disability License 0626414

ARTICLES and PUBLICATIONS

Authored courses accepted for securities continuing education in financial planning, estate planning, taxation and tax planning, investments and suitability, ethics, retirement planning and insurance and annuities. (1996)

Author of ELDER INVESTMENTS: A Critique of Professional and Consumer Mediocrity, Marquette University Law School, 2009

Authored the only courses on investments accepted for continuing education by the State Bar of California (1995 and 2008)

"Practical Investment Theory and Application"

Author of "Practical Life Insurance and Annuities Analysis and Application"- the only course on life insurance and annuities ever approved for continuing education by the California State Bar (2009)

Authored two courses accepted for 4 and 16 hours of continuing education for Certified Public Accountants by the California Board of Accountancy. Previous course accepted for CPA credit in 10 states.

"Advanced Business Continuation and Estate Planning"
"Advanced Financial Planning and Investing"

Authored two real estate courses granting 9 and 21 hours of continuing education by the California Department of Real Estate. Material was used in courses at several colleges including UC Irvine as part of Certificate program.

"Current Concepts of Real Estate and Investing"
"Major Concepts of Real Estate and Investing"

Authored additional courses in Long Term Health Care, College Funding, Business Continuation, Investments, Trustee Selection and Charitable Gifting.

Authored "Arbitrators Guide to Securities" for the Center for Investor Protection

Above material was compiled and offered as text for UC Certificate course in Survey in Financial Planning.

Author a monthly investment and financial planning newsletter- Moody's Review- since 1987. Author the largest (4,000+ pages and 1,650+ links) and most comprehensive financial planning site on the Internet (www.efmoody.com) designed for consumer education and knowledge. The Web site is noted as a Top Retirement Site by Forbes, Business Week, USA Today, and One of the Web's Most Useful Money Sites by Bottom Line. Has also been linked by Ernst and Young for Financial Planning, Department of Aging for Long Term Care and other sites around the Internet for Real Estate, Retirement, Investments, Long Term Care, Estate Planning, etc. and has been selected by AOL and Netscape as one of their top sites for stocks and financial planning advice, among others.

Have been published/quoted in numerous business magazines (San Francisco Chronicle, California Broker, Investment Adviser, Smart Money, Wall Street Journal, New York Times, Money Magazine, National Underwriter, Consumer Reports, Mutual Funds Magazine, Life Insurance Selling, Parenting Magazine, Realtor Digest, Corporate Finance, Numerous national newspapers, Registered Investment Adviser, Ticker magazine, Orange County Register, etc.) and have been interviewed frequently on local and national radio and TV.

SEMINARS

Have conducted seminars and classes on most financial and real estate issues to Chambers of Commerce, Corporations, Teachers, Union Officials, Securities and Insurance firms, Universities, American Association of Individual Investors, National Association of Personal Financial Advisers, Senior Groups, etc. to groups to 200.