



March 8, 2013

U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

To Whom It May Concern:

This letter is in response to the notice published on the SEC's Release No. 34-69013; IA-3558; File No. 4-606 Duties of Brokers, Dealers, and Investment Advisers request for data and other information.

Thank you for the opportunity to provide feedback regarding rules about the standards of conduct and regulatory obligations for broker-dealers and investment advisers when they provide personalized investment advice about securities to retail customers. You will certainly receive numerous responses with detailed and dense legal references. I would like to respond in terms that the average investor would more readily understand.

I understand that a significant goal of the request is to obtain data about the benefits and costs of the current standards of conduct for broker-dealers and investment advisers. Although I also understand the reluctance to impose unnecessary and potentially costly regulatory standards, I believe that this framing, focused on protecting existing business models instead of protecting the public, results in a myopic focus that will leave the investing public at a significant disadvantage. The risk to the average investor in the current regulatory environment is not a "Madoff" scheme that fleeces a relatively few investors of millions or billions of dollars. Rather, it is a system that allows financial professionals to position themselves as "trusted advisers" and, as a result of that trust, provide recommendations that, while neither fraudulent nor unsuitable, may well be more expensive than an available alternative investment from the same firm. The result may well be billions of dollars in excess cost paid by millions of investors. Unfortunately, while it is relatively easy to quantify the cost of "Madoff" schemes, it may be difficult, if not impossible, to accurately quantify the frictional cost of nickel-and-dime excess fees. However, that difficulty does not negate the reality that those costs exist.

The Achilles Heel of the current regulatory system is the public's belief that all professionals providing investment advice place the client's best interest first, coupled with an inappropriate allocation of responsibility; i.e., "where the buck stops." Under a suitability standard the buck stops with the client. Said differently, the advisor's duty of loyalty is to the firm, not the client. Under a fiduciary standard it stops with the adviser, whose duty of loyalty is to the client. These issues are so universal and obvious that they've even been beautifully captured by cartoonist Mr. Richard Klein in *Barron's* where he succinctly highlighted the issue of trust in the dialog between an old hand and a new broker. "You have to gain the customers' trust before you take advantage of them." And the results are reflected in a classic *New Yorker* cartoon by Leo Cullum, with a broker speaking to a disgruntled client. It highlights the ultimate caveat emptor spirit of the suitability standard - "If we're being honest, it was your decision to follow my advice that cost you money."

I would suggest that the Commission consider, in conjunction with any other criteria and guidelines it may develop, requiring anyone providing personalized investment advice to commit to a simple "mom-and-pop" statement describing the adviser's responsibility. The criterion for determining when this statement would be required is also simple; it is the "you" standard.

The 'You' Standard

If a prospective client calls an adviser and says "I would like to buy xx shares of YYY". No problem, the adviser would be subject to a suitability standard.

If a prospective client calls an adviser and says "I'm thinking of buying YYY, what does your firm think of the stock?" Again, no problem, the adviser would be subject to a suitability standard.

However, if the prospect then says "That sounds good, do you think I should buy YYY?" and the adviser responds "yes, I think YYY would be a good investment for **YOU**," he or she would then be held to a fiduciary standard and required to provide the client with the Mom-and-Pop commitment.

The obvious point is, as soon as an adviser uses the term "you" in a recommendation, he or she is no longer acting under a suitability standard. Trust is absolute; therefore, once a relationship of trust has been established and personalized advice has been provided; all subsequent business would be under a fiduciary standard.

Mom-and-Pop Commitment

This is a simple, easily understood by all parties, description of a fiduciary relationship developed by the Committee for the Fiduciary standard that the public both expects and deserves.

I will always put your best interests first.

I will act with prudence; that is, with the skill, care, diligence, and good judgment of a professional.

I will not mislead you, and I will provide conspicuous, full and fair disclosure of all important facts.

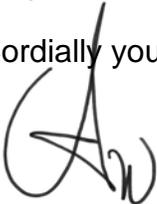
I will avoid conflicts of interest.

I will fully disclose and fairly manage, in your favor, any unavoidable conflicts.

In closing I would like to repeat that I recognize any regulation must consider the cost, however, it is at least as important to consider the consequences of not implementing an appropriate regulation. I believe that the cost of not requiring adherence to the simple commitment noted above, although difficult if not impossible to quantify, is obvious and when multiplied by millions of investors, significant. The questions for those objecting to adherence to this commitment are what elements would you eliminate, what costs would be saved and what would the cost to the investor be of failing to meet this commitment?

Again, thank you for the opportunity to share my thoughts on this most important subject.

Cordially yours,



Harold Evensky, CFP®, AIF®
President
Evensky & Katz Wealth Management , LLC