



I write as an individual with both regulatory and investment experience to address two narrow issues in this request for data.

*Harmonization is not needed for the small number of investors with individual stocks in bd accounts*

This request for data is misplaced and will again delay the goal of resolving this issue. It is based on the incomplete statement that the issue is about brokers and advisers performing the same services. While in many ways they do, the key point is that they charge differently for them. Every retail customer has the choice of paying commissions only or paying commissions and an advisory fee. With proper mandated disclosure customers can make that choice. The choice becomes even more clear in light of the current variety of products that have replaced individual stocks, thereby leaving holders of individual securities to a small wealthy portion of the population divided between adviser clients and bd clients. See Robert Samuelson, [http://www.washingtonpost.com/opinions/robert-j-samuelsen-the-stock-market-strikes-back/2013/03/10/6ab9e1d0-8817-11e2-9d71-f0feafdd1394\\_story.html](http://www.washingtonpost.com/opinions/robert-j-samuelsen-the-stock-market-strikes-back/2013/03/10/6ab9e1d0-8817-11e2-9d71-f0feafdd1394_story.html). See also [http://www.ici.org/pdf/rpt\\_08\\_equity\\_owners.pdf](http://www.ici.org/pdf/rpt_08_equity_owners.pdf), and Government Policy and Ownership of Equity Securities by Kristian Rydqvist. [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1428442](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1428442)

Whether bd clients should have the benefits of a fiduciary duty depends on whether they want to pay for it (unless the Commission is mandating that they pay for it). The choice of payment will be pretty clear to most customers. If you do not use the internet and want to talk to a broker-you will pay high commissions and if you trade frequently you will pay higher commissions. The amount of such commissions should be ascertainable by the SEC. Those commissions represent a basic conflict of interest but one that is often accepted instead of an adviser's fee. Of course a bd charging a high commission will not be comfortable in saying it has no fiduciary duty.

The amount of advisory fees should also be ascertainable. What will not be ascertainable is the future cost of each bd determining when or if he might breach a fiduciary duty. Fiduciary duty is a complex assessment as indicated by a recent Court of Appeals case.

<http://www.sidley.com/files/News/52884648-16a3-4ac4-91b1-cf4d7444659e/Preview/NewsAttachment/68d32cc8-a118-4d59-8373-d185fb68906a/Leimkuehler%207th%20Circuit%20decision.pdf>

The cost of doing so will fall disproportionately on the smaller firms. A bd will always have more sensitivity because it sells as principal. An adviser does not do so unless affiliated with a bd. Therefore no extra data is needed to know that the cost to bd's of a fiduciary duty will be significant and the cost to small bd's will even be more significant. A fair assumption is that the cost will be passed on to the customers who may not want and may not need such fiduciary duty when they have the choice of paying such a fee at an advisor.

The costs therefore should be analyzed as they relate to the *customers*, not to the brokers. The commission should get a good idea of how many investors they are trying to protect before they impose a duty with costs that cannot be estimated in advance. The commission should have a current understanding of who is purchasing individual stocks and adjust its regulatory agenda to that understanding. If it is less than 10% through bd's, I would argue that the certain increase in costs will not justify the uncertain results. While other products such as mutual funds, ETF'S and structured products may be held by more bd clients, I believe they can be adequately protected by the bd's disclosure that it has no fiduciary duty but that it also charges no advisory fees and is not an advisor under the law.

#### *Applying BD Rules to IA's is Not Needed for the Small Number of IA Problems*

The application of bd rules to advisors is a more useful debate but does not include a very basic request for comment: *i.e.*, should both entities be regulated and examined by the same Division at the Commission since the services they provide are very similar? The imposition of such rules must be justified by real problems and the Commission should acknowledge that the Madoff and Stanford cases were bd cases. The combining of these entities into one Division would allow for a more experienced analysis of which rules worked and perhaps might even result in the elimination of some rules. This Division should also have control of the examining force for both entities. This issue has been raised before both by Congress and a former SEC chairman and this is a good time to for the Commission to debate its value.