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BY ELECTRONIC FILING rule-comments@sec.gov

Elizabeth M. Murphy, Secretary
Securities and Exchange Commission
100 F St NE
Washington DC 20549-1090

RE: File Number 4-606 Duties of Brokers, Dealers, and Investment Advisers

Dear Ms. Murphy,

ABOUT THE CONSORTIUM AND NANCY LININGER:

I bring a unique, broad and unbiased perspective on this topic. I am founder of The Consortium, a compliance consulting firm serving both Broker-Dealers ("BDs") and Registered Investment Advisers ("RIAs"). The Consortium's financial services clients run the gamut from fee-only to commission-only, and commission-or-fee.

I entered my financial services career as a stockbroker in 1978 for a wirehouse. This was during an era where fee-only "financial planners" were first entering the scene and "portfolio managers" were truly exclusive, offering services to the "wealthy." Since the dot.com era (which occurred many years later), the wealthy class has broadened, bringing in a greater array of wealthy investors. Portfolio management is now mainstream.

Turning from the sales side of the business to compliance in 1983, I became a Compliance Officer first for a BD, and then for an RIA. I founded The Consortium in 1989; where I continue to work with firms as a compliance consultant on compliance, practice management, and marketing.

COMMENTS:

I appreciate the opportunity to comment on the proposal. I am in general support of the proposals for fiduciary standards of conduct for BDs and RIAs, and harmonization. At the same time, I have concerns on certain provisions.

I was an early proponent of harmonization, even speaking about it before first proposed. But as discussions have ensued, most assuredly the devil is in the details.

I am in agreement that the industries have blended, and that an investor may seek advice on investing from either a BD or RIA, without knowing the differences. In fact the end result may look the same - a portfolio built for two or family of more comprised of mutual funds or individual securities. How the portfolios got there may be a little different - perhaps through a financial plan (albeit segmented on investments only) or perhaps just through suitable recommendations. The cost may have differed based on commissions or fees. Sometimes the commission method being the lowest cost depending upon certain factors, but being the highest suspect of conflicts.

Through the process of harmonization, I am not certain that one can come up with a "uniform" fiduciary standard of conduct with varying requirements for BDs and RIAs, or if there will be a "separate but equal" fiduciary standard of conduct. As the SEC has already acknowledged, one should not assume that the fiduciary duty would require all firms to stop offering proprietary products, or to charge only asset-based fees (and not commissions).

The Current Market

The current market allows investors to invest in stocks, bonds, mutual funds, ETFs, and other investment vehicles through either a BD or RIA.

Under the current regulatory regime, BDs implement on a commission basis and RIAs on a fee basis. Firms and persons that are dually registered can offer the client the option of a compensation plan.

Also under the current regime, BDs are not allowed to have discretion, while RIAs may allow discretion, non-discretionary, or the option. Dual registered firms also have the option for either, after the account has been designated as a brokerage account or advisory account.

RIA firms can offer other advisory services such as a financial plan, which may focus on investments, taxes, insurance, and/or estate issues. Comprehensive financial plans are not as common as a few years back – most firms opting for segmented planning – and mostly with the investment focus.

A BD firm can watch the markets and make recommendations to the client to buy or sell (or now under FINRA rules, even a recommendation to "hold"). A registered representative providing good service for clients will be in constant or periodic contact with clients to assist clients in meeting their financial goals. A suitability determination most assuredly results in advice on investments, albeit "incidental" to the brokerage services.

It is "assumed" that the RIA that implements recommendations will "monitor the portfolio" perhaps continuously or on a periodic basis. Periodic can mean monthly, quarterly, annually, or even ad hoc as the economy dictates. However, it should not be assumed what type of services (financial planning, portfolio management, and/or other) the RIA offers until after reading the "full disclosure brochure," Form ADV 2.

A Futuristic Regulatory Regime

Under the SEC's current search for truth and finding the right balance of harmonization, to what extent should we consider breaking down the two Acts of Congress (Investment Advisers Act of 1940 and Securities Exchange Act of 1934) and rewriting one new Act (e.g. Financial Advisory and Investment Transaction Services Act "FAITS Act")?

Under this imaginary FAITS Act, all retail advice whether by fee or commission would be subject to a single set of advice rules. Institutional services (Broker to Broker "B2B") or the clearing of trades would be under a different set of transactional rules of the same Act.

Registered persons under FAITS would be employed by a firm registered under FAITS. The firm would decide its compensation method (fees direct from clients albeit deducted through the account, and/or commissions paid by clients albeit through the brokerage transaction).

All registered persons would be fiduciaries and provide full disclosure to retail clients under "Form FA." We need a disclosure document that looks alike for all advisors/reps whether paid by fees or commissions, so that investors can compare all conflicts. While commissions are a

big red flag conflict, fee-only advice is not without conflicts. Read any Form ADV regarding soft dollars, personal trading, avoiding frontrunning, solicitor arrangements, and more.

Under a principles-based theory of law and doing what is in the best interest of the client, principal trades (trading from the firm's portfolio) can be done ethically at a fair and disclosed mark-up. While the principal trade can be a source of conflict, fiduciaries would be directed to do what is right in these circumstances. Dishonest professionals will always be around to do the wrong thing, and the SEC should catch and punish these persons.

While on the topic of principles-based rules (as is under the Investment Advisers Act but not under the FINRA rules), I would be looking for more principles-based rules for all. FINRA who took on the challenge to consolidate the NYSE and NASD rulebooks as more principles-based really missed the mark. The consolidated rules still are not consolidated all these years later, and I would say in great part by keeping the minutia instead of opening up the principles.

In Conclusion

Fiduciaries can break the rules and steal client money. Reps abiding by suitability standards can have the highest of ethics. Fiduciary is a standard of law that all financial professionals should be held to.

Being a fiduciary – acting in the best interest of the client - does not mean it has to be to the detriment of the advisor/rep. Whether the advisor/rep makes a fee or a commission, the person is being compensated for services. A commission based product may be in the best interest of the investor – perhaps the fee based product may be.

All financial services professionals should have full disclosure and the legal standing of fiduciary. Send the law breakers to jail.

Sincerely,

Nancy Lininger
The Consortium