

August 3, 2010

Peter - well said!

You set this up nicely in the first sentence by differentiating "standard of care" (rules or proscriptive retrospective codified best practices (RFP fairness) vs. "standard of disclosure (prescriptive standards relative to transparency).

Steve

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We respectfully suggest that the issue here is not the standard of care but the standard of disclosure to retail customers as to what financial services they are receiving. The Commission has tried to solve this issue in the past only to be rebuffed by the courts but it now has full authority to do so in a simple way. Customers need to understand whether they are purchasing executions or advice. They need to understand whether its a one night stand or a relationship. They do not understand that now. We believe that three simple principles could clarify and solve the problem. The commission should:

- 1) make very clear that unsolicited transactions especially internet trades are not subject to either suitability of fiduciary duty.
- 2) insist that using the word adviser /advisor requires a fiduciary duty
- 3) insist that customers acknowledge that a trade is unsolicited and that they are not getting financial advice for a special fee or else the fiduciary duty requirement applies and the seller must register as an investment adviser. Additional disclosures that might be useful would include "we don't pay you for margin account stock loans and we may facilitate short sales in stocks we heavily recommend." Those actions should also raise serious questions under the fiduciary standard for advisers affiliated with brokers..

Retail customers today especially those facing near term retirement have the most discretionary wealth for investment. But their decisions are also the most consequential as they face a significant shortfall in retirement and complex healthcare decisions along with declining or stagnant real estate investments. Issues like reverse mortgages and annuities are more complex then the financial decisions of their parents. This may suggest that the rules in this regard be different for individuals over 50 years of age.

But most importantly the Commission should try to simplify the message that customers receive when they engage a broker or adviser. We think most customers want a relationship but may not want to pay for it, just as most psychiatric patients need therapy but drugs are cheaper and less time consuming for the therapist. Brokerage execution is cheaper than brokerage advice but too many customers do not understand the difference

and too many brokers do not explain it. Our point is that these customers and brokers do not care about the standard but instead the service. The customer may need broker time and the broker needs executions. Of course many large brokers are shipping the less than \$100,000 asset customers to call centers where these explanations are surely more limited.

We believe that most members of the financial services industry are honorable but are also stretched by certain regulatory policies intended to reduce costs but which must of necessity reduce services. See the Grant Thornton study in this area.

[www.GrantThornton.com/IPO](http://www.GrantThornton.com/IPO) <<http://www.GrantThornton.com/IPO>>. In this regard we do not believe there are many suitability or fiduciary cases out there but the Commission should disclose them in this rulemaking. A comparison of these cases to the recently announced subprime crisis settlements against big firms would be instructive. The number of cases in relation to the reduction in execution costs/broker profits is a **subject especially worthy of study and especially sensitive to small bd's and advisers. The time honored phrase comes to mind; "you get what you pay for"**. Customers must therefore understand that if you want an adviser to study your entire financial situation including your nursing home future you must pay for it.

Having said this we also note that discretionary accounts at brokers should not be subject to adviser registration for the same reason-customers paying only commissions are not paying for advice and this service should be available as long as its adequately disclosed. Some customers like this concept and they should be allowed to use it as long as they are told that the only thing the broker does is to manage a certain amount of money and not do the financial analysis done by an IA..We suspect that the staff will learn nothing new with this study but that intense pressure will be applied to avoid the disclosures listed above. One alternative way to view this problem is to allow the customer to choose where he wants to be with enforced disclosure. Today its too often the broker who forces the customer into the bd regime when the customer may want to be in the IA regime and may think he is. The goal of the study and the rulemaking should be that every customer makes a conscious choice of who his financial doctor will be.

Finally the Commission must not overlook the pricing pressures it has imposed on small bd's and advisers while asking them to adopt a fiduciary standard. Cheap executions and intense regulation do not equal comprehensive financial counseling. It reminds of the famous Viet Nam phrase -"we had to destroy the village in order to save it." This issue is rarely if ever addressed in discussions about the appropriate standard. Competition is necessary unless we want all middle class investors directed toward a call center. The Commission should therefore be prudent in imposing standards on small brokers and advisers fighting to survive and consider the need for a vibrant small firm financial services community. See the intense debate for the small member seats on Finra's board of governors. <http://www.investmentnews.com/article/20100730/FREE/100739987/-1/INDaily01>.

Investment News has also reported extensively on the declining number of small brokers. <http://www.investmentnews.com/article/20100627/REG/306279981>. Small brokers and advisers are vital to the serious financial advice needed by those facing retirement. They should not be disadvantaged by a blanket desire to make everyone a fiduciary. If a customer wants a fiduciary he has to pay for that service and understand the difference.

Peter J. Chepucavage  
Executive Director, CFAW  
General Counsel  
Plexus Consulting LLC