

Altruist Financial Advisors LLC

www.altruistfa.com
altruistfa@gmail.com
Toll Free: 1-888-894-8244

Fee-Only Financial Planning and Portfolio Management

3754 65th St
Holland, MI 49423
Fax: (269) 857-3753

August 7, 2018

Brent J. Fields
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Dear Mr. Fields,

Subject: File Number S7-08-18: Form CRS Relationship Summary; Amendments to Form ADV; Required Disclosures in Retail Communications and Restrictions on the use of Certain Names or Titles

We appreciate the opportunity to comment as the Commission considers its “Form CRS Relationship Summary; Amendments to Form ADV; Required Disclosures in Retail Communications and Restrictions on the use of Certain Names or Titles.”

FUNDAMENTAL MISCONCEPTION: That broker/dealer reps distribute “advice” and not “sales pitches”.

Throughout the proposed rule document, it is repeatedly either explicitly or implicitly asserted that broker/dealer reps distribute investing advice.¹ If this were, in fact, true advice (i.e., not “solely incidental”² to making a sale³), any broker/dealer giving such advice would be required to register as an RIA in accordance with the Investment Advisors Act of 1940 (accordingly, they would actually BE RIAs and not broker/dealers when it came to dispensing that advice).

So considering that broker/dealers dispense advice in a similar sense that RIAs do is just false.

Required description for standard of conduct for broker/dealers

I propose that the description of the standard of conduct for broker/dealers should say something resembling the following⁴:

¹ For example, from p. 7, “*Individual investors rely on the services of broker-dealers and investment advisers when making and implementing investment decisions. Such “retail investors” can receive investment advice from a broker-dealer ...*”, from p. 8, “*We recognize the benefits of retail investors having access to diverse business models and of preserving investor choice among brokerage services, advisory services...*”

from p. 162, “*As discussed above, both broker-dealers and investment advisers provide investment advice to retail investors.*” From p. 169, “*A broker-dealer can, and does, provide investment advice to retail investors...*”

² Section 202(a)(11)(C) of the Investment Advisers Act of 1940.

³ a.k.a., a “sales pitch”, which is not really advice at all.

⁴ This is consistent with my feedback on regulation best interest.

Altruist Financial Advisors LLC

Fee-Only Financial Planning and Portfolio Management

Any advice/recommendations that we should happen to offer you should be considered nothing more than a sales pitch. You should not assume that we have your best interest in mind when making such advice/recommendations. As a broker/dealer, we are allowed by regulation to take into account our own best interest exactly as much as we take into account your best interest. If you desire investment advice that is solely in your best interest, you should seek out a Registered Investment Adviser. We are not a Registered Investment Adviser.

On p. 53, you note, “After the description of the standard of conduct, broker-dealers would be required to state: ‘Our interests can conflict with your interests.’”

I believe that it would be more accurate and useful to instead require broker/dealers to state: “Our interests often conflict with your interests.” Or perhaps better, “Our interests usually conflict with your interests.”

Should we require firms to provide investors with personalized fee information in a different disclosure, such as an account statement? What would be the cost and benefits, including the costs of books and records requirements, of personalizing information to investors relative to the proposal? Do firms currently provide retail investors with personalized fee disclosure estimates at or before account opening?

This would be awkward. Often, when a new client comes to me, they don’t even know about all their investment assets and investing accounts. It often takes us a few months to find out about variable annuities, college savings accounts, old workplace retirement plans, etc. Accordingly, any estimate we might offer before we begin the relationship would tend to be biased low.

So I recommend against requiring a personalized fee estimate. An accurate fee schedule should suffice.

p. 92 says, “Finally, a tabular chart would compare certain specified characteristics of a transaction-based fee and an ongoing asset-based fee side-by-side, set off by the wording “You can receive advice in either type of account”

Consistent with the Advisers Act broker/dealer exemption, an investor can only get true advice (i.e., that isn’t “solely incidental” to a broker/dealer selling something, a.k.a., a “sales pitch”) from a Registered Investment Adviser. It would be wrong to give the public the mistaken impression that the sales pitches that they can expect from a broker/dealer are in any way similar to true advice that they can expect from an RIA. A sales pitch is NOT the same as objective advice. We must do everything we can to help the public to realize the difference. Accordingly, it would be wrong to say “You can receive advice in either type of account.” Better would be to require broker/dealers to say something resembling the following⁵:

Any advice/recommendations that we should happen to offer you should be considered nothing more than a sales pitch. You should not assume that we have your best interest in mind when making such advice/recommendations. As a broker/dealer, we are allowed by regulation to take into account our own best interest exactly as much as we take into account your best interest. If you desire investment advice that is solely in your best interest, you should seek out a Registered Investment Adviser. We are not a Registered Investment Adviser.

⁵ This is consistent with my feedback on regulation best interest.

Altruist Financial Advisors LLC

Fee-Only Financial Planning and Portfolio Management

Given the required relationship summary, is it necessary to impose any restrictions on the use of names or titles?

Absolutely. This is one of the most important things you've ever proposed.

Do you agree with our proposed restriction on the use of “adviser” and “advisor”? Why or why not?

Yes, but I believe it needs to go a bit further. Rather than only restricting use of “adviser” and “advisor”, I'd like to see you similarly restrict use of “consultant”, “counselor”, and any other term which might suggest a relationship of trust.

The broadening to include any term suggesting a relationship of trust is consistent with the “principles”- based nature of the RIA's fiduciary duty. Accordingly, there should be a principle that, if you hold yourself out to have an RIA-like relationship of trust, you need to be an actual RIA. Broker/dealers might not like such a broad prohibition, but the broader prohibition would be more useful in protecting the public from broker/dealers holding themselves out as fiduciaries.

Is our approach too broad or too narrow?

Too narrow, as discussed above.

Do commenters believe that names or titles are a main factor contributing to investor confusion and the potential for investors to be misled, or are there other more significant factors?

I believe that titles are an enormous part of the problem. This is an extremely important proposal that will go far towards protecting the public.

Do commenters believe that retail investors will understand that there is, and will continue to be under proposed Regulation Best Interest, differences in the standards of conduct, compensation structures, and services offered (among other items) depending on the capacity in which such professional engages a retail investor?

Sadly, I believe that the answer is, “no.” Many retail investors simply don't have an interest in trying to understand details like these.

Do you agree that the use of the terms “adviser” or “advisor” by broker-dealers are the main sources of investor confusion?

Yes!

If so, what do these terms confuse investors about (e.g., the differences as to the standard of conduct their financial professional owes, the duration of the relationship, fees charged, compensation)?

Yes!

Are investors harmed by this confusion? If so, how?

Altruist Financial Advisors LLC

Fee-Only Financial Planning and Portfolio Management

Investors tend to enter into relationships with broker/dealers assuming a fiduciary relationship exists. They tend to accept the broker/dealer's recommended products (again assuming that the broker/dealer has the investor's best interest at heart) and consequently tend to pay large commissions for often outrageously expensive inferior financial products, like high cost variable annuities.

Do you agree that “adviser” and “advisor” are often associated with the statutory term “investment adviser”?

No. Virtually no retail investors know or care what the statutory term, “investment adviser” means.

Do you believe that retail investors understand what the terms “adviser” and “broker-dealer” mean and can correctly identify what type of financial professional they have engaged?

No. Virtually no retail investors know or care what the difference is and virtually none can correctly identify what type of financial professional they have engaged.

Should we include an exception to permit the use of professional designations that use the terms “adviser” or “advisor”? What factors should the Commission consider if it were to include such an exception? For example, should such an exception be conditioned on prominent disclosure that the individual is not an investment adviser or supervised by one?

This seems appropriate. Yes, a prominent disclosure seems appropriate for such a circumstance.

We understand that the terms “adviser” or “advisor” are included in some professional designations earned by financial professionals.⁴³⁰ We also understand that particular professional designations have been an area of concern for FINRA and NASAA.⁴³¹ Should we include an exception to permit the use of professional designations that use the terms “adviser” or “advisor”? What factors should the Commission consider if it were to include such an exception? For example, should such an exception be conditioned on prominent disclosure that the individual is not an investment adviser or supervised by one?

I believe that it would be wrong to preclude a wealthy person from getting the benefits of these protections just because they are wealthy. I see no good reason to have any limits on what sort of clients it applies to.

Do investment advisers and their supervised persons also use names, titles, or professional designations that can lead or contribute to retail investor confusion?

I don't think so.

We request comment on the alternative approach in which a broker-dealer would not be considered to provide investment advice solely incidental to the conduct of its brokerage business if it uses the term “adviser” or “advisor” to market or promote its services and would instead treat such practices as indicating that the broker-dealer's advisory services are not “solely incidental” to its conduct of business as a broker-dealer. What would be the advantages or disadvantages of using this approach instead of the approach we have proposed? Would the alternative approach address and mitigate investor confusion about the differences between broker-dealers and investment advisers?

Altruist Financial Advisors LLC

Fee-Only Financial Planning and Portfolio Management

I see this approach as similar. Basically, in this alternative approach, any broker/dealer using a title signifying a relationship of trust would be required to register as an RIA – and would therefore be an RIA and completely subject to the fiduciary duty. It makes this problem go away. This is an elegant option. But the Commission would need to aggressively enforce such a policy. A lack of enforcement would just be a continuation of the status quo.

Would the alternative approach discussed above that would preclude a broker-dealer or an associated natural person of a broker-dealer from relying on the broker-dealer exclusion of section 202(a)(11)(C) of the Advisers Act if it “held itself out” as an investment adviser address investor confusion?

Yes! Again, if (and only if) such a policy were aggressively enforced by the Commission, it would subsume the title issues. So this would be a more encompassing way to accomplish a similar goal, but only if aggressively enforced by the commission!

Instead of a prohibition or restriction on the use of certain terms, should we permit such terms but require broker-dealers and their associated natural persons other than dual registrants and dual hatted financial professionals to include a disclaimer in their communications that they are not an investment adviser or investment adviser representative, respectively, each time they use or refer to the term “adviser” or “advisor”?

No – that would just confuse the issue. We need to protect the public, not confuse them further.

To what extent do firms already clearly and conspicuously disclose their federal and/or state registration as investment advisers or broker-dealers?

My understanding is that I am currently prohibited from using “RIA” or “Registered Investment Adviser” in a fashion that might suggest that being an RIA somehow implies a level of competence. So this is generally not prominently done.

Do retail investors understand what it means for a firm to be “registered” with the Commission or a state? Additionally, do retail investors understand what it means for a financial professional to be an “associated person” of a broker-dealer or a “supervised person” of an investment adviser?

No. No.

Are we correct that investors would find it helpful to know whether a firm is registered as an investment adviser or a broker-dealer or a financial professional is associated with a broker-dealer or supervised by an investment adviser so that they can refer to the relationship summary to better understand the practical implications of the firm’s registration and such financial professional’s association with that firm?

It seems unlikely that very many investors would notice or care about the difference.

Should the proposed rules apply to all communications to retail investors, including oral communications?

This would be awkward for a practitioner to implement. So no – not oral communications.

Altruist Financial Advisors LLC

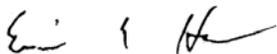
Fee-Only Financial Planning and Portfolio Management

Should we require broker-dealers, investment advisers and financial professionals to state that registration with the Commission does not imply a certain level of skill or training?

Requiring more fine-print disclosures just muddies the water more. So no.

If you have any questions whatsoever about anything, feel free to contact us.

Sincerely,



Eric E. Haas, MBA, MS

Member

Altruist Financial Advisors LLC