

RE: Release No. IA-4889; File Number S7-09-18: ***Proposed Commission Interpretation Regarding Standard of Conduct for Investment Advisers; Request for Comment on Enhancing Investment Adviser Regulation***

Dear SEC:

I am writing to provide commentary on a few specific elements of the above-referenced release.

In terms of professional background and experience, I am the owner/founder of Financial Planning Hawaii, a Hawaii-registered RIA that provides flat-fee planning guidance. I am also a registered rep and investment advisor representative with J.W. Cole and J.W. Cole Advisors, respectively. I have been a registered rep since 1989 and an investment adviser rep since 1996. I hold Series 3, 7, 9, 10, 24, and 63 brokerage registrations, as well as a Series 65 advisory license. As the name of my company suggests, I hold myself out as a “Financial Planner” and my ADV is presented prominently on the FPH website. I am also a co-founder of Nest Egg Guru, a maker of software for financial advisor websites. In addition to my nearly 30 years in the industry, I have a degree in economics from Williams College and have published numerous research papers in peer-reviewed academic and professional journals. Germane to this discussion, I have also written a number of articles on the ethics of advisor compensation and regulation of the financial planning profession.

My comments on this release are as follows:

Relationship Summaries – The SEC’s goal of aiding consumers in understanding the differences between brokerage and advisory platforms is laudable, and it is clear from the 471 pages of this Release that the Commission has gone to great lengths to document the sources of investor confusion. However, **I believe the mock-up Relationship Summaries provided as Appendices C, D, and E are ill-conceived and, if implemented, will be completely ineffective in resolving investor confusion.**

There are two basic reasons for this assertion. First, there is a mountain of marketing research that finds that **consumers will not read text-heavy disclosure documentation.** In fact, as any website-designer can attest, the digital age is making consumers increasingly visual and increasingly averse to written text. Anecdotally, I deliver my ADV each year to all clients electronically and have found that the open and engagement rates for this disclosure are exceedingly low. If the SEC were to survey clients of RIAs, I believe it would find that only a very small percentage have actually read these “Plain English” disclosures.

The second reason why the Relationship Summaries are, in my ardent opinion, doomed to fail is that they are unnecessarily arcane and are more likely to create further consumer confusion than provide clarity. It is also worth pointing out that the mock-ups seem to view compensation through an extremely narrow lens in suggesting that the only compensation models are transaction-based and asset-based. Flat-fee, retainer, and hourly billing are increasingly common in the planning profession as well.

Additionally, the very nature of a bifurcated regulatory structure with a third hybrid/"two hat" model is inherently complex and understandably confusing to consumers. In my view, a better solution would be to eliminate the two-hat model and simply hold advisors to the highest standard that is applicable to their licensing. Under this "highest standard" model, all non-SEC licensed registered reps and insurance agents would continue to be held to their respective regulatory standards. (Presumably, the new "Best Interest" standard would be applied to brokerage reps. However, all dual-registered advisors would be held to the SEC's fiduciary standard, even when they are transacting in brokerage accounts or doing insurance business.

The practical implication of this is that all dual-registered FAs (myself included) would be required to provide our ADVs to ALL clients and to disclose in advance (preferably in writing) the amount and/or percentage of commissions we might receive from the sale of insurance or brokerage products. For instance, if an advisor was to receive a \$10,000 commission on the sale of a whole life policy or a 7% commission on the sale of a private equity offering, such commissions would need to be disclosed in advance to the client. Although such disclosure, might make some dual-registered advisors uncomfortable, it is entirely in keeping with existing SEC policies and rules. The Commission has never objected to commissions as a form of compensation – so long as the potential conflict of interests and the amount of compensation are clearly disclosed in advance. The disclosure of the amount and/or percentage of commission paid would be required as that is clear material information to the client.

As an alternative to the SEC's proposed Relationship Summaries, I submit that a better alternative would be a single, concisely written **Uniform Regulatory and Conflict of Interest Disclosure** document that would be required to be provided to all prospective clients in advance of establishing a business relationship with a brokerage firm, RIA, or hybrid B-D/RIA. An example of the outline for such a document is provided as "**Exhibit A**" at the end of this document.

Investment Advisers' Fiduciary Duty – I have long maintained that the CFP Board of Standards has done a disservice to consumers by creating confusion over the meaning of the fiduciary standard. In its communications with the press and the public the CFP Board suggests that the fiduciary standard it applies to its member is equivalent to or superior to that applied under the Adviser's Act. A huge fundamental difference, however, is that the CFP Board's "Best Interest Standard" does not specifically require CFP certificants who operate exclusively as brokerage reps or insurance agents (i.e., who are exempt from SEC/Advisers Act regulation) to disclose the specific dollar amount or compensation they may receive from the sales of products where such commissions are opaque (e.g., insurance and annuity sales, private equity offerings, etc.). In contrast, under the SEC's fiduciary standard the disclosure of such asymmetrical information would be required since it is would indisputably be material to the client's decision making process. That said, this distinction is not made nearly as clearly as it could be in the SEC's current guidance to advisers. **I recommend that the SEC add clarity by specifically including in its description of the advisers' duty of care a requirement to clearly disclose not just the mode(s) of compensation, but the specific dollar amount or percentage of assets the adviser may expect to receive.**

Continuing Education – It is interesting that the SEC is considering instituting a continuing education requirement for IARs when it currently has no education or experience requirements for obtaining the license in the first place! This has been a persistent criticism launched by supporters of the CFP Board, including well-known industry thought leader, Michael Kitces. For the record, it should be noted that the CFP Board did not require CFP candidates to have a college degree prior to 2008, and even today, no prior academic experience in finance or economics is required to become a CFP. That said, I agree that the interests of consumers would be better served if there was at least some baseline education and/or experience requirement for advisers to be able to guide them on how to manage their life savings. **In my opinion, a reasonable standard would be an undergraduate degree in finance or economics, an MBA, or the attainment of the CFP, CPA or CFA designations. Such a regulatory requirement would go a long way toward improving IAR competency. For individuals who would like to enter the industry but do not have prior academic experience, the CFP curriculum would still offer a legitimate path to a career.**

I do not necessarily oppose adding a continuing education requirement as well, particularly as a tool for updating advisers regarding regulatory changes. However, the CE landscape is currently unnecessarily burdensome for advisers with multiple licenses or designations. CPAs, CFPs, registered reps, and insurance agents all have multiple CE requirements which combined can add up to fifty or more hours per year. This is bordering on absurd. What would be helpful would be a uniform CE standard that could be applied/accepted across all disciplines and designations. **As a practical matter, I know of no published research supporting the notion that financial industry CE has a lasting impact in enhancing advisor ethics or knowledge. For better or worse, CE is widely regarded by advisers as a mind-numbing waste of time.**

Thank you for the opportunity to submit this commentary.

Respectfully,

John H. Robinson, Financial Planner

Enclosure: Exhibit A – Uniform Regulatory and Conflict of Interest Disclosure Outline

Related Articles by This Contributor

[Who's the Fairest of the All? A Comparative Analysis of Advisor Compensation Models](#) (Journal of Financial Planning)

[Why the Future is Bright for AUM-Based Advisors](#) (Advisor Perspectives)

[The CFP Board's Duplicitous Dance](#) (Advisor Perspectives)

EXHIBIT A

UNIFORM REGULATORY AND CONFLICT OF INTEREST DISCLOSURE [Outline]

This document is to be provided to all prospective brokerage and Registered Investment Advisor clients in advance of establishing a business relationship. Its purpose is to educate and inform consumers about different platform choices and to inform them of potential conflicts of interest that may arise under common compensation models.

PLATFORM CHOICES – Brokerage vs. Registered Investment Advisor (RIA)

[Insert plain English summary of how brokerage firms are regulated by FINRA and held to suitability/best interest standard.]

[Insert plain English summary of how the SEC regulates IARs and financial planners and introduce the fiduciary standard and what it means (this should include more than just the “put the interest of the clients first” and should include requirement to provide ADV and obligation to disclose all compensation and potential conflicts of interest.)]

CONFLICTS OF INTEREST

Consumers should be aware that there are many different means by which financial advisors may be compensated and that all compensation models involve certain inherent conflicts of interest. The key to a successful advisor-client relationship is to have full disclosure of the compensation models offered and of the potential conflicts that may arise in advance of establish the business relationship. The following is a summary of the primary compensation models used by brokerage firms and RIAs

Commission/Transaction-Based Based Compensation – [provide plain English disclosure of when commissions may be transparent and when they may not and of the potential conflicts that may arise from such models (e.g., incentive to churn, informational asymmetry when commissions are opaque, etc.)]

Asset-Based Fees – [Provide plain English summary of how this model works and how the fees may be higher or lower than other models. Include disclosure of potential conflicts of interest (i.e., incentive to gather assets, disincentive to encourage clients to sell assets under management, etc.)]

Hourly Billing – [Include disclosure of conflicts of interest – “value billing,” incentive for FA to bill high hours, disincentive for client to spend time sharing information with advisor, etc.)]

Flat-Fee/Retainer Billing – [include disclosure of conflict of interest – “shirking”, incentive for advisor to do minimal amount of work necessary to earn the fee, disincentive for taking on time intensive research/projects that might benefit the client, etc.]

QUESTIONS YOU SHOULD ASK [a couple of sample questions are as follows-]

- In our relationship, will you be acting as a fiduciary and regulated by the SEC or will you be acting as a broker regulated by FINRA?
- Will you clearly disclose all compensation you receive in advance of all transactions?
- Do you take discretion over trading in my account or must you review all transactions with me before executing them?

REGULATORY AGENCY CONTACT INFO