Altruist Financial Advisors LLC

www.altruistfa.com *Fee-Only Financial Planning and Portfolio Management* **3754 65th St**
altruistfa@gmail.com **Holland, MI 49423**
Toll Free: 1-888-894-8244 **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 S7-09-18: Proposed Commission Interpretation Regarding Standard of Conduct for Investment Advisers

We appreciate the opportunity to comment as the Commission considers its "Proposed Commission Interpretation Regarding Standard of Conduct for Investment Advisers."

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 sale[3]), 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. Accordingly, all rationale that justify regulating RIAs in a manner similar to how broker/dealers are regulated[4] seems like quite tortured reasoning. Broker-dealers and RIAs are quite different in their goals (i.e., product sales for broker/dealers vs. fiduciary advice for RIAs) and methods and thus it seems reasonable that the regulation thereof should respect those marked differences.

Does the Commission's proposed interpretation offer sufficient guidance with respect to fiduciary duty under section 206 of the Advisers Act?

Yes.

---

[1] For example, from p. 4, "*Investment advisers and broker-dealers provide advice … Broker-dealers and investment advisers have different types of relationships with their customers and clients and have different models for providing advice, which provide investors with choice about the levels and types of advice they receive …*",
from p. 5, "While we are not proposing a uniform standard of conduct for broker-dealers and investment advisers in light of their different relationship types and models for providing advice …"

[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] From p. 27, "*We have identified a few discrete areas where the current broker-dealer framework provides investor protections that may not have counterparts in the investment adviser context, and request comment on those areas.*"

Are there any significant issues related to an adviser's fiduciary duty that the proposed interpretation has not addressed?

There are probably important issues that aren't directly addressed by the proposed interpretation. However, since the proposed interpretation presumedly doesn't "overrule" the general fiduciary principal imposed by section 206 of the Advisers Act, any such unintended omission presumedly wouldn't preclude prospective enforcement actions on the basis of those more general principles that weren't specifically addressed in the proposed interpretation.

Would it be beneficial for investors, advisers or broker-dealers for the Commission to codify any portion of our proposed interpretation of the fiduciary duty under section 206 of the Advisers Act?

I see little, if anything, to be gained by attempting to codify precisely what is meant by an RIA's fiduciary duty. Notwithstanding my comment above, I'm worried that trying to prescribe in detail what is meant by a fiduciary duty might possibly remove a material portion of the protections which the public should expect to get from the general fiduciary principle imposed by section 206 of the Advisers Act.

Should investment adviser representatives be subject to federal continuing education and licensing requirements?

I see little to be gained from this. What I mostly see is higher regulatory costs in the form of extra time and money on the part of both the commission and on RIAs.

Should these individuals be required to pass examinations, such as the Series 65 exam required by most states, or to hold certain designations, as part of any registration requirements?

While it seems consistent with increasing the professionalism of those who are allowed to dispense advice, I see problems with these suggestions.

First, I've taken the Series 65 exam. I found virtually none of it to be particularly relevant to what I do as an RIA. Accordingly, I don't see it as enhancing investor protection.

Second, requiring designations to be held is problematic in that it may put an unreasonable temporal "barrier to entry" into the profession.

- The CFP designation requires an educational requirement which might take several years to meet, as well as 6000 hours of practical experience.

- The CFA designation requires three comprehensive exams (each of which requires dedicated study) and four years of professional work experience.

If a designation requirement were to be imposed, there would need to be a many-year transition period associated therewith in order to avoid current RIAs from being precluded from continuing to practice their craft (and therefore precluding them from continuing to earn a living).

Would a competency or other examination be a meritorious basis upon which to determine competency and proficiency?

I see great problems with using some examination as a basis upon which to determine competency and proficiency. Mainly, it is associated with how the examination topics are chosen.

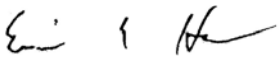
For example, some RIAs believe that their primary job is helping their clients choose among actively managed funds. Accordingly, such persons might write exams which emphasize various means of divining which actively managed funds are best. HOWEVER, there are similarly many RIAs who believe the copious research and theory which suggests that active management is imprudent at its very core. Given that there is such wide disagreement among practitioners, which group would get to write the exam? Should the second group be required to learn the ideas proffered by the first group just to pass the exam? Should the first group be required to learn the ideas of the second group just to pass the exam? Because I am in the second group, I would say that the first group should, in fact, need to learn the ideas of the second group. But there are relatively rationale people in the first group who would disagree.

What would be the expected costs of continuing education and licensing be?

All that I can say for certain is that the expected costs would be much greater than zero. These costs would primarily fall on those RIA reps who are affected, but also in the form of increased administrative burden for the Commission.

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

Sincerely,



Eric E. Haas, MBA, MS
Member
Altruist Financial Advisors LLC