SEC Rules Committee Members,

Please keep in mind that as you review the comments from all sides that there is no one "right answer." And the SEC will still be unable to protect everyone from everything. It is just not possible.

Please also keep in mind that I am running a business predicated on helping families enjoy a worry-free retirement. This is my "full time job." So like many of the representatives and senators who voted for financial reform and didn't read the bill, I too have not read the entire 258 page SEC proposal. My broker-dealer, LPL Financial and the Financial Services Institute have given me briefings to consider. To be fair to your committee, I may not have a full appreciation for what you are trying to do. So I am sharing my concerns accordingly.

That being said, I am an advisor in Iowa. I work with sophisticated and unsophisticated investors. I work with all different sizes of investors… from a high schooler putting $50/mo into a mutual fund account on up to people with $5 million+ net worth.

I applaud you for helping make 12b1 fees more transparent. But I must tell you I am alarmed at the potential for eliminating share classes in an attempt to help the "Consumer" or "Retail Investor." I am hired by clients to help them identify their financial needs and then purchase financial products which address those needs. If an investor is knowledgeable or confident in their abilities, they will by-pass me for a no-load fund option. So in this case where competition allows people to choose, why would you want to dis-incentivize financial advisors from helping people? Why would the SEC want to put rules in place that may force advisors to ignore the average American because it is unprofitable to help them? I'm sure you agree that with the Baby Boomer Generation coming into retirement under-funded and heavily dependent on Social Security, Medicare, Medicaid, as well as under-funded corporate pensions that making advisors more expensive to work with is a terrible unintended consequence of trying to lower costs in this way.

It is a well known fact that the vast majority of Americans have under-accumulated for retirement. What monies they do have are typically in 401ks, 403bs, 457s, IRAs, and Roth IRAs. If the average account balance is less than $25,000 what is the real impact of some of the proposed changes? I ask you to take a look at what I face in the field.

Regarding smaller investors, I see no way for them to benefit from eliminating ways for them to pay for my services. With accounts which are too small (under $25,000 in size) to be charged an "asset management fee" or "wrap account" I will eschew Class A shares for Class C shares. Why?

1) The client invests 100% of their monies with a C Share instead of 94.25% of their money using A Shares.
2) The average mutual fund investor holds their investment for less then 3 years.
3) Even though the 12b1 fee is higher all along with C Share, the client pays less in fees overall until they hit the 6 to 8 year holding window. Which the majority of investors never get to that point (See #2).
4) The client can see on the investor approved prospectus and mutual fund "fact sheets" that total returns are typically lower over time with a C share with a higher 12b1 vs. A share.

Keep in mind, by using a C Share with a higher 12b1 fee I am being compensated on the client's account balance. Therefore I have an incentive to monitor and make appropriate changes (rebalance, reallocate, sell out,etc) to their account to try and increase what I earn. Whereas in general, A shares are a "set it and forget it" mentality for most advisors. What little money could be made was made by serving the client was made. And the client is typically ignored until they have another check to bring to the table. For example, a $5000 IRA in a C share class pays my broker dealer $50 which I receive a portion of. In an A share class pays $287.50 day one to my broker dealer who pays me a portion of that amount. That is quite a difference! Speaking as an advisor in the field, if you eliminate the 12b1 fee on the A share, I can assure you that advisors will not monitor the transactions at all. I don't care what regulations you put in place.

The advisors who utilize A shares on small accounts may be better businessmen than me. Afterall, $287.50 is more than $50.00. But what if we have a year like 2008? And there is “nothing safe” to put money into? Bonds are falling, stocks are falling, money markets are “breaking the buck”? Now what?. Well the average fund investor, who typically only holds a mutual fund for 3 years or much less has now paid $287.50 plus some additional 25bps fees to cash out and go to a CD. My client would have paid $50 on up to somewhere north of $150 in that hypothetical 3 year time frame if they want to go to cash. That is a much easier conversation to have. I think you could have made the same case for B-shares. Unless there is a breakpoint to meet, it is difficult for me to justify selling an A share fund when a client is investing less than $50,000. I don’t see that being in their best interest.

My point is that if you are considering getting rid of C Shares –DON’T. If the SEC could see the future of each individual AND guarantee that those folks would have no change in financial circumstance during a 6 or 7 year holding period and beyond… then I would be in favor of you eliminating C shares just as you did B shares. But those of us in the field can easily justify the use of A, B, or C shares. I’m not saying you shouldn’t review this issue now and in the future. However, with the proliferation of information available via the various outlets such as the internet, the wide-spread use of no-load funds and ETFs, I find it difficult to believe that competition would eliminate the SEC’s need to make changes to these rules/fees.

For what it is worth in protecting the average American Investor, the SEC would be better served monitoring the activities of advisors and broker dealers –both registered and unregistered. The American Investor has lost far more in both financial terms and in terms of confidence when the SEC and FINRA and state insurance departments fail to monitor activities and pursue wrong-doing. Getting rid of the “neither admitting, not denying wrongdoing” phrase from these enforcement action would go a long way to driving out the bad actors in this industry. I think the public is smart enough to figure out that if an advisor or a broker dealer is making restitution to clients AND they are paying a multi-million dollar fine that something was WRONG. The problem is that stupid phrase which immediately smacks of self-dealing and protecting our own. The other solvable problem is ACTIVELY publicizing the prosecutions and adverse decisions on the SEC website, or better yet –less expensive public records reports that could easily be published in Barrons, WSJ, industry publications such as Financial Planning Magazine, Investment Advisor, et al, and directly reported to the various groups that monitor designations and continuing education requirements such as the American College, RIIA, College for Financial Planning, etc.

Thank you for considering my comments and the impact it has on the investors you are trying to protect. I think you can act practically and the SEC will do more good than harm. If you act “beaucratically,” then investors are better served by you doing nothing. Please do contact me via phone or e-mail if you would like to discuss my suggestions or impacts of these rules with me. I would welcome the discussion.

Sincerely,
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