

February 7, 2005

I would like to thank the Commission for providing this opportunity to comment on its re-proposed rulemaking, File No. S7-25-99, dated January 6, 2005.

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I would first note that the four weeks the commission has allotted to review and respond to this re-proposed rulemaking is not sufficient. Within the re-proposal the Commission makes numerous requests for comment and asks over 90 questions. Certainly the Commission is aware that most financial planners/investment advisors are small firms\_ many are sole proprietorships\_ and do not have the resources, unlike much larger broker dealers, to respond to the many and varied particulars of this re-proposal in four weeks. Nonetheless I will try to comment on the essential questions posed by this rulemaking.

1) At essence is the question of whether the broker-dealers are trying to get into the business of advising, without the regulatory constraints that investment advisors are subject to, or whether they are simply re-pricing their existing services. As the Commission says in its re-proposal: "Broker-dealers did not view the change in the pricing of brokerage accounts as significant except insofar as it better aligns the interests of registered representatives with those of their customers. 38 We request further comment on these differing views of the practices of broker-dealers and the implications for our rulemaking."

To put it bluntly Shawbrook believes that the broker-dealers cited by the Commission are being disingenuous. If this were merely a matter of "pricing" the same service differently then broker-dealers would find no need to significantly change their training programs for brokers, or as they now call them, "financial advisors." But in fact the broker-dealers over the past five years have significantly changed their training programs, as a May 1, 2002 article in one of the broker-dealer industry's main trade publications, Registered Rep, makes clear:

"... [A.G.] Edwards, like others, has a deal with the college to unbundle the units of the CFP program, and is starting to award internal designations to brokers as they complete one of the five steps toward the CFP. The first of these accreditations - retirement planning - will be rolled out in June...."

And from a Registered Rep article of January 1, 2003:

“Morgan Stanley now spends 52 percent of training costs on course work, compared with 26 percent just four years ago. Merrill's training program has been extended to five years and trainees have internal designations and a CFP after they're finished; other firms have monitoring programs, such as Prudential, which monitors new brokers for five years.”

And from another broker-dealer trade publication, *On Wall Street*:

“John Chapman, First Union's head of professional development, wants to shape a different kind of broker. ‘We've even gone as far as to avoid using the words, 'sales' and 'selling,' in our training programs. Those words don't fit as well as 'advise’ ...” January 1, 2001

Solely incidental? I don't think so.

Perhaps the Commission can explain why broker-dealers spending millions of dollars to have their brokers trained as certified financial planners when all they claim they are doing is introducing a new pricing schedule. Why are they giving their brokers the significant time and financial sponsorship to undertake the rigorous CFP program in order just so they can supposedly do a thing or two that are “solely incidental” to their business?

2) The Commission also requested comment “...on whether broker-dealers have contributed to this confusion when they refer to their representatives as “financial advisors,” “financial consultants” or similar titles.”

I am not sure why the Commission needs comment on this matter; common sense indicates that two supposedly different professions using the same title cause confusion. It is not surprising that, having decided to get into the “advice” business that broker-dealers naturally want to represent themselves as what they have in fact decided to be, “financial advisors” and not “brokers.” I'm not even sure that their attempt to escape the negative inferences some associate with brokers is anything new.

Shawbrook believes that brokers should be required to use the word “broker” or “brokerage” somewhere in their title and should not be permitted to use the word “advice” “advisory” “consul” or similar word.

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