

Regulatory Reform: Will you be a fiduciary?

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Topics

- The authentic fiduciary standard
- What “harmonization” means according to ...
- The latest on regulatory reform
 - Changes that seem almost certain
 - Thorny outstanding issues
- How can you differentiate yourself?
- Your questions

The Fiduciary Standard

- Defined in law (ERISA, UPMIFA, UPIA, MPERS) and regulation
- Principle-driven (versus rules-based)
 - Loyalty
 - Due Care
 - Utmost Good Faith
 - Avoid (or at least manage) conflicts of interest

What Harmonization Means According to ...

- Brokerage Industry Trade Groups (FINRA, SIFMA, FSI)

– Harmonization of Standards

- SEC Commissioners

– Harmonization of Rules

- Skeptics (FP Coalition, IAA, Others)

Regulatory Reform: Changes We are Likely to See

Harmonization of regulatory schemes:

- Extension of fiduciary duties to all advice givers
- Introduction of more rules for advisers, especially rules to manage conflicts
- Introduction of some fiduciary principles to the suitability side, e.g. “serve investors’ best interests”, full and fair disclosure
- Demarcation of the boundary between advisors and salespeople

Regulatory Reform: Changes We are Likely to See

Harmonization of disclosure requirements:

- Uniform duty of utmost good faith
- 408(b)(2) type disclosures
 - *Compensation*
 - *Affiliations*
 - *Fiduciary status*

Thorny Back-office Issues

- Principal trades
 - Pre-authorized
 - Subject to management of conflict
- Custody restrictions and required audits
 - Advisers will have to pay a high price to provide custody

Thorny Compensation Issues

- Commissions
 - Not inherently at odds with fiduciary duty
 - Very difficult to manage in a fiduciary setting
 - Much like fees being too confusing on the suitability side, commissions are too confusing for the fiduciary side

Thorny Product Issues

- Proprietary products (and insurance)
 - “Safe Harbor” rules to manage conflicts
 - Subject to due diligence
 - Informed consent
 - Open architecture a competitive necessity
 - Greater reliance on wholesalers

Thorny Business Model Issues

- Wearing two hats – advisor and broker
 - Once a fiduciary, always a fiduciary
 - Distinct brokerage and advisory businesses
 - When in doubt, adhere to fiduciary principles

How can you differentiate yourself ?

- Professional competence and reputation
- Referrals from other professionals
- Consider offering (more) consulting services
- If your calling is sales or trading, concentrate on being a transactional or “wholesale” broker

Wrap-up

Questions?

Announcements and reminders:

- Visit www.fi360.com for all things fiduciary
- Visit the fi360 Blog to continue the dialogue:
blog.fi360.com

Thank you for participating!