InvestmentNews
The Leading News Source for Financial Advisers

Plan on fiduciary standard wins praise

Obama's financial regulatory reform proposal leaves open possibility of Finra rule over advisers

By **Sara Hansard**
June 21, 2009

Investment advisers and consumer advocates have applauded President Obama's proposal to establish a fiduciary duty for broker-dealers offering investment advice.

“We think it's great,” said Diahann Lassus, chairwoman of the National Association of Personal Financial Advisors in Arlington Heights, Ill. “There should be a fiduciary standard for all advisers.”

Richard Salmen, president of the Denver-based Financial Planning Association, agrees.

“I'm encouraged by the fact that the administration is proposing a fiduciary standard for all that provide advice to the public,” he said. “That's a positive sign.”

The proposal was part of a historic reform package unveiled by the White House last Wednesday that is intended to overhaul nearly every aspect of Wall Street in order to prevent another financial crisis.

Both the FPA and NAPFA have been ardent proponents of requiring brokers offering investment advice to be brought under a fiduciary standard, which would require that they put their clients' interests ahead of their own. Currently, brokers are required to meet a suitability standard, meaning the advice and products they offer have to be suitable for their clients.

The different regulatory scheme for brokers and advisory firms has long been a source of discord between the two segments of the retail-financial-services industry.

Consumer advocates also have hailed the administration's proposal.

The proposal “correctly identifies the problem that exists in the current marketplace about investor confusion and inability to distinguish advisers and brokers, and the ability of brokers to offer advice without meeting fiduciary duty,” said Barbara Roper, director of investor protection for the Washington-based Consumer Federation of America.

She also commended the proposal for specifying that the SEC should be given the power to

"ban forms of compensation that encourage intermediaries to put investors into products that are profitable to the intermediary but are not in the investors' best interest."

Bloomberg

A new direction: *The proposal is part of a historic reform package that the Obama administration revealed last week.*

In issuing the proposal, the administration made it clear that brokers no longer should be exempt from registering as investment advisers, because the advice they give is "incidental."

"This is a broad attack on the very basis of the broker exclusion," said Mercer Bullard, president and founder of Fund Democracy Inc. in Oxford, Miss. "It specifically rejects the idea that incidental advice should continue to be subject only to broker regulation."

To be sure, the brokerage industry's reaction to the proposal is less enthusiastic.

""Fiduciary is a broad concept," said Dale Brown, chief executive of the Financial Services Institute Inc. of Atlanta, which represents independent broker-dealers. "The challenge going forward is how we define what we mean under that standard so what we end up with is workable."

"The brokers don't want any part of fiduciary duty," which carries greater legal liability, commented Peter Chepucavage, general counsel of Plexus Consulting Group LLC in Washington, which provides compliance consulting, primarily for small brokerage firms.

Mr. Obama's Financial Regulatory Reform plan also calls for Congress to "harmonize the regulation of investment advisers and broker-dealers."

That has some in the advisory community worried that it could lead to regulation that would make the Financial Industry Regulatory Authority Inc. responsible for overseeing all advisers.

Indeed, Finra of New York and Washington in recent months has been lobbying hard to regulate investment advisers as well as brokers.

"We'd be concerned that by harmonization, they would subject investment advisers to the oversight of Finra," said Dan Barry, director of government relations in the FPA's Washington office.

Indeed, in remarks prepared for the Exchequer Club in Washington on Wednesday, Finra chairman and chief executive Richard Ketchum hailed the administration's call for harmonizing the regulation of investment advisers and broker-dealers, and he again called for putting investment advisers under Finra regulation.

"Finra is uniquely positioned to build an oversight program that ensures investment advisers are properly examined and their customers are adequately protected," he said in his remarks.

Treasury Secretary Timothy Geithner last week declined to comment on whether the administration will support Finra as a self regulatory organization for investment advisers.

Finra did not return phone calls asking for Mr. Ketchum's direct response to the Obama plan.

Bloomberg

Timothy Geithner: *Gave Congress an 88-page analysis on reform.*

The plan also calls for giving the SEC authority to prohibit mandatory-arbitration clauses in broker-dealer and investment advisory accounts with retail customers. The Securities Industry and Financial Markets Association of New York and Washington opposes eliminating the clauses, arguing that investors are better-served going through arbitration in disputes than filing lawsuits in court. Legislation has been introduced in Congress that would bar arbitration clauses in consumer contracts.

"If they get stuck with it and they lose the right to arbitrate, that is a substantial hit for the retail-broker-dealer business," Mr. Chepucavage said.

The White House also called for putting the Federal Reserve Board in charge of regulating systemic risk throughout the financial services system.

E-mail Sara Hansard at shansard@investmentnews.com.