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Investors want fiduciary rules to be uniform

Survey shows confusion about different standards

By Mark Schoeff Jr.

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Although it is still unclear whether the Securities and Exchange Commission will back a universal standard of care for brokers and investment advisers, one thing is certain: Investors want a single standard.

More than 90% of investors want fiduciary rules to apply to brokers and insurance agents, according to a survey released Wednesday.

Opinion Research Corp./Infogroup found that among 1,319 investors it surveyed, 91% said that they think that a broker and investment adviser should follow the same investor protection rules, and 96% said that they favor applying those uniform rules to insurance agents as well.

In addition, 97% said that financial professionals should put investor interests ahead of their own, and disclose fees and conflicts of interest, the standard to which investment advisers adhere.

More fodder for the SEC to consider: More than half of investors are confused about the standards of care that different advisers must meet.

And at least 60% of the respondents said that they assume that insurance agents and stockbrokers are already held to a fiduciary duty, which isn't the case. Currently, brokers have to meet a suitability standard ensuring that investments meet a client's needs, risk appetite and timeline.

“This lack of understanding is not because investors are stupid,” said Barbara Roper, the Consumer Federation of America's director of investor protection. “It's because the policy itself is stupid.”

Fiduciary advocates hope that the survey results will encourage the SEC to clear up the confusion and establish a universal fiduciary standard of care for retail investors.

Under the Dodd-Frank financial-reform law, the SEC must submit to Congress by January a study about the differences between investment adviser and broker-dealer oversight, and any existing regulatory gaps. The SEC is then authorized to promulgate a standard-of-care rule that covers anyone providing personalized retail investment advice.

Fiduciary advocates said that the investor survey directly answers two questions that the SEC study covers: Do investors know that different standards of care exist, and does this difference lead to confusion about the advice that they receive?

“This study is probably going to be the seminal study to address those issues,” said Denise Voigt Crawford, Texas' securities commissioner and president of the North American Securities Administration Association Inc., which was one of the sponsors of the poll.

She also said that the poll provides a chance for the SEC to hear from investors whose voices went unheard during the comment period last month, during which the commission was inundated by more than 2,500 responses from interested parties in the industry.

“Many of these comments were the result of industry-funded campaigns designed to jam the SEC's inboxes and drown out the voices of investors with the same tired rhetoric that was used to influence Congress” during the financial-reform debate, Ms. Crawford said.

In addition to NASAA, poll sponsors include AARP, the Certified Financial Planner Board of Standards Inc., the Consumer Federation, the Financial Planning Association, the Investment Adviser Association and the National Association of Personal Financial Advisors.

The groups contend that investors assume that everyone in the advice business is looking out for the client's best interests rather than trying to sell investment products. That is partly because broker-dealers have become more advisory in their practices.

Broker-dealer groups argue that the different standards are necessary to preserve their business model, which revolves around charging commissions for financial transactions. Investment adviser fees are based on a client's asset level.

The Securities Industry and Financial Markets Association didn't respond directly to the fiduciary duty survey.

“SIFMA supports and investors deserve a clear, uniform standard of care when receiving personalized investment advice about securities,” SIFMA spokesman Andrew DeSouza wrote in an e-mail. “Following the SEC study of this issue, we hope they exercise their rulemaking authority to develop a new uniform standard that protects investors while preserving investor choice and access to the products and services that best fits their financial needs.”

Other groups skeptical of imposing a fiduciary duty on broker-dealers and insurance agents, such as the Financial Services Institute and the National Association of Insurance and Financial Advisors, declined to comment about the poll.

In comment letters to the SEC, broker-dealer advocates warned that meeting a fiduciary standard would drive up their costs and potentially price out the market customers who couldn't afford fee-based advice.

But Robert Glovsky, chairman of the CFP Board, noted that CFP designates must meet a fiduciary standard in running commission businesses.

“It does not require abandoning their brokerage or insurance business models,” he said.

Another argument that broker-dealer and insurance groups made to the SEC is that their constituents are already heavily regulated by the Financial Industry Regulatory Authority Inc. and state commissioners. Adding a fiduciary duty to the mix would cause regulatory overload and increase costs and litigation, they claim.

In addition, the National Association of Insurance and Financial Advisors asserted that ethical practices are instilled in its 200,000 members because their businesses are integrated into their communities, where they see clients “at places of worship, the school, the grocery store and as neighbors.”

Fiduciary advocates said that this kind of self-policing doesn't substitute for codifying a fiduciary standard to protect investors. Mary Wallace, a senior legislative representative at AARP, said that the elderly are especially vulnerable.

“Older people feel the impact [of varying advice standards] more acutely because they have fewer opportunities and less time to recoup losses,” she said.

Fiduciary advocates hope that they can bring the SEC around to their point of view.

“We encourage the SEC to listen to the voice of investors as expressed in this survey and do the right thing,” Ms. Crawford said.

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