

## Does the Dodd-Frank Financial Reform Bill go far enough for you?

September 2010

If you expect straight advice on what is best for you from your broker, financial consultant, agent, planner, banker, wealth advisor, financial guru, dollar genie, etc., the recently enacted Dodd-Frank Financial Reform Bill stops far short of ensuring that you get it.

The vast number of views on the different issues we face as a nation and the freedom to express them is one of the greatest strengths of our nation. That said, no matter which side of the aisle you prefer, I find it hard to believe that there is a question about whether consumers have the right to expect that the person they trust for financial advice will **have the obligation to put their interest first**. After all, isn't that the basis of trust?

Terms like fiduciary and suitability are not always clear to the investing public. Registered Investment Advisers (RIAs) are regulated by the Investment Advisers Act of 1940. The terms of that Act imposes a **fiduciary** duty on all investment advisers. "As a fiduciary, an adviser [has] - an affirmative duty of utmost good faith to act solely in the client's best interests. [RIAs] are required to make full and balanced disclosure of all material facts, especially with respect to actual or potential conflicts of interest that may be materially adverse to a client's interests. [An RIA must] place the interest of clients ahead of the interests of the firm or its personnel."<sup>1</sup>

Brokerage firms are held to the "suitability standard," which Forbes defines as a "legal standard that requires that whoever is handling your investments puts you in products that are suitable for your objectives, means and even age."<sup>2</sup> The publication goes on to say that "it doesn't require brokers to find the best products, only ones that are ostensibly suitable for you. If an underwhelming house brand security lines up with the vague outlines of what is considered suitable, they can still push it, even if it costs more to own, or under performs peer securities."

The question is: Why such a tremendous fight over the phrase, "must put the investor's interest FIRST"? After all, isn't it reasonable to expect that the person in whom we place our trust for financial advice is putting our interests first? The scary and even shocking fact is that the majority of people dispensing financial advice are not required to meet the fiduciary standard. The fight in Congress is about making sure that the banks, brokerage firms, and insurance agents, who position themselves as financial advisors, are held to a standard that ensures that they are worthy of the trust of their clients. After all, selling financial advice is not the same as selling an object, such as a DVD player, a car, or a pack of

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<sup>1</sup> Cortese, Richard S. "Overview of the Investment Advisers Act of 1940." *Schwab Institutional: Compliance Review* 16.10 (2007)

<sup>2</sup> Serchuk, David. "Suitability: Where Brokers Fail." *Intelligent Investing Panel*. 23 June 2009.

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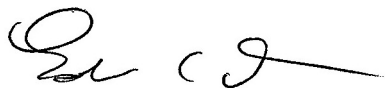
Numerous organizations, including the Investment Advisor Association, the Financial Planning Association, the National Association of Personal Financial Advisors, the Certified Financial Planners Board, as well as a number of consumer groups have been fighting fiercely to establish the highest legal standard of care for everyone giving financial advice. Many insurance companies, brokerage firms, and banks have been spending millions in opposition, arguing that their clients have the right to freedom of choice. Some choice, especially when you consider that the cost of hiring a Registered Investment Advisor, who is required to operate at the highest standard of care, is often less than the cost for "advisors" who do not have to live up to the fiduciary standard. What's truly at stake for the opposition is not their clients' right to choose, but the revenue they earn from product sales which may or may not be the best for their clients.

Those seeking the higher standard of care have never been closer to making it part of the law for ALL those providing financial advice. This requirement was included in the House version of the bill which has passed, but the provisions failed in the Senate version after fierce lobbying efforts by Wall Street firms and the insurance groups. Unfortunately, in the compromise bill that emerged, all that was left of the original was a provision mandating that the SEC conduct a study examining whether regulation is needed, despite the fact that numerous studies have been done already, including one performed by the SEC.

Perhaps I am biased in my judgment of this issue. After all, I made the decision years ago to work as a fiduciary, with the legal obligation to put my clients' interests first. That was probably the happiest day of my professional life. Ever since that day, I have had the privilege of working with my clients as an independent, objective, trusted advisor.

Is the fight to make all firms that provide financial advice to be held to this highest standard over? Not by a long shot. Is there something you can do now to make a difference? Perhaps the best way would be to send your thoughts to your Senator and Congressman or even SEC Chairman Schapiro and President Obama. Chairman Schapiro and President Obama probably have the greatest impact on how the SEC study is conducted and what actions are taken thereafter. Let them know what you think.

Sincerely,



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