

SEC advisory-panel proposal calls for tough fiduciary standard

Not an 'attempt to change all brokers into advisers,' Roper says

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A draft proposal being considered by a **Securities and Exchange Commission** advisory group calls for the agency to raise investment advice standards for brokers, based on the law that currently governs investment advisers.

A subcommittee of the Investor Advisory Committee is recommending that the SEC proceed with a rule mandating that brokers put the best interests of their clients before their own when providing retail investment advice — the standard that advisers meet.

The group wants the SEC to develop the rule by narrowing the broker-dealer exclusion from the Investment Advisers Act of 1940. Certain sales-related conflicts of interest would be permitted if they're disclosed and managed.

“One significant benefit of such an approach is that it would provide a firm assurance that the fiduciary standard for investment advice by broker-dealers and investment advisers would be the same and would be no weaker than the existing standard,” the proposal states. “There would be minimal risk that existing investor protections would be weakened as a result of efforts to accommodate the broker-dealer business model.”

An Oct. 10 meeting of the Investor Advisory Committee has been postponed due to the federal government shutdown. But the group could vote on the subcommittee proposal in a teleconference. No call has yet been scheduled.

The proposal is the most significant development on the fiduciary duty topic since the comment period closed in July on a **cost-benefit analysis** the SEC is conducting to determine whether to proceed with a rule.

The subcommittee recommendation differs from the approach called for by the **Securities Industry and Financial Markets Association**. In the **fiduciary framework** it submitted to the SEC in July 2011, the group called for the SEC to create a new fiduciary standard using elements of the Investment Advisers Act and the 1934 Securities Exchange Act, which regulates.

Whatever standard is devised, it should not be a mirror image of the Advisers Act rules, which would forbid sales of proprietary products, SIFMA officials have said.

Investor advocates also support a fiduciary duty for brokers. But they have differed on how to get there.

“It is cleaner to achieve the same goal under the Advisers Act,” said Barbara Roper, director of investor protection at the Consumer Federation of America and a member of the advisory subcommittee. “You don’t have to try to re-create the law.”

Ms. Roper said the panel isn’t forcing the Advisers Act standard on brokers.

“This is not an attempt to change all brokers into advisers,” Ms. Roper said. “We bent over backwards to ensure that this would be done in a way that is consistent with the broker-dealer business model. This is not an effort to demonize brokers. This is really just an expression of what the standards should be when brokers give advice.”

A SIFMA spokesman did not respond to a request for comment.

The advisory subcommittee acknowledged that the SEC could promulgate a fiduciary duty rule under the Dodd-Frank financial reform law, which authorizes the SEC to produce an investment advice standard through so-called parallel rule making using the Advisers Act and the 1934 law.

The advisory subcommittee said that if the agency proceeds in this way, it should not water down the current standard for investment advisers.

“The commission must include, in its definition of fiduciary duty, an enforceable principles-based obligation to act in the best interests of the customer,” the proposal said.

The cost-benefit analysis that the SEC initiated this year concerned investor advocates because it contained assumptions about fiduciary duty that didn’t mention the best-interests standard.