# What's Next for the Fiduciary Standard?

By Howard J. Stock January 24, 2011 Financial Planning Daily

So the results are in: The Securities and Exchange Commission announced Saturday morning, after six months of study, that advisors should be held to a fiduciary standard because investors assume their brokers are acting in their best interests anyway.

Industry response has been as predictable as the SEC report's findings—it's hard to argue against putting investors' interests first, after all, but don't bring in a rule that will hurt broker-dealers' bottom lines.

Scott Smith, an associate director at Cerulli Associates in Boston, said the report's findings, while they don't set any kind of deadline for a blanket fiduciary standard, at least are "moving the ball in the right direction." And while the SEC's two Republican-nominated Commissioners Kathleen Casey and Troy Paredes objected to the study's rigor, Smith doubts that there's any political merit in actively blocking a fiduciary standard.

As to the effect such a standard will have on the brokerage industry, Smith said that lawmakers specifically have not suggested outlawing commission-based sales—investors who would rather pay a single commission upfront rather than pay an ongoing fee should have that option—a new fiduciary standard would simply require advisors to be able to show that any recommendation they made is defensible and that the paperwork is in place to ensure investors understand exactly the service they're expecting from their advisors.

As for potential timelines, Sophie Schmitt, a senior analyst at Aite Group in Boston, says the U.K.'s Financial Services Authority took two or three years to introduce a fiduciary standard for advisors that disallowed commission business. She doubts anyone will threaten commission-based business in the U.S.—forces in the financial services industry are too powerful to make it a winnable fight—but she expects the SEC to have by the end of the year at least a framework for defining what constitutes a "fiduciary" and what could be expected of advisors.

Schmitt says continuity of care won't necessarily be part of new fiduciary standards, which could water down existing requirements for registered investment advisors (RIAs), who are currently policed by the SEC. A new standard could, however, help speed the trend toward fee business. As that happens, advisors who aren't able to make a living off fee-based business would leave the industry voluntarily, she said, organically creating the type of environment reformers are clamoring for.

Merrill Lynch, the firm behind the famous 2005 exemption that meant broker-dealers didn't have to adhere to the fiduciary obligations required of advisors under the Investment Advisers Act of 1940, didn't return calls for comment at press time.