



IFS aims to raise the bar

## Fiduciary standard gets new — and influential — advocate

Wealth managers join forces as SEC, Labor Department get ready to issue new investment advice rules

**By Mark Schoeff Jr**

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As the federal government prepares to issue new rules regarding investment advice, industry professionals and scholars have launched a nonprofit organization to promote the fiduciary standard.

The Institute for the Fiduciary Standard will advocate the broad adoption of regulations requiring that investment guidance be based on the best interests of clients and that advisers disclose all material conflicts of interest.

Investment advisers currently have to meet that bar, while broker-dealers adhere to a less stringent suitability standard that requires them to recommend financial products that satisfy a clients investment needs.

Under authority from the Dodd-Frank financial reform law, the Securities and Exchange Commission said that it intends to propose a rule this fall that would impose a universal fiduciary duty on anyone providing retail investment advice.

The Labor Department has proposed a rule that would significantly expand the number of advisers who are fiduciaries to retirement savings plans. The agency said that it is still on track to issue a final regulation by the end of the year.

“These next four to eight months are absolutely critical,” said Knut Rostad, president and a founding member of the Institute for the Fiduciary Standard.

The group will meet with SEC and Labor Department officials, as well as members of Congress and their staffs, over the next several weeks. It has scheduled a Capitol Hill panel discussion Sept. 9 focusing on disclosure rules.

In addition to Mr. Rostad, compliance and regulatory officer at Rembert Pendleton Jackson, the organization's founders are Marion Asnes and James Patrick of Envestnet Inc.; Philip Chao of Chao & Co.; Maria Elena Lagomasino, chief executive of GenSpring Family Offices LLC; Michael Zeuner, also of GenSpring Family Offices; and Kathleen McBride of the Institute for Private Investors.

The group has broken away from the Committee for the Fiduciary Standard, which will now be headed by Harold Evensky, president of Evensky & Katz LLC.

Mr. Rostad said that he and the other founders of the Institute for the Fiduciary Standard felt the need to establish a permanent organization that would go beyond advocating for fiduciary principles within the context of Dodd-Frank and Labor-Department rule making.

“Misunderstandings about about what fiduciary means,” Mr. Rostad said in a statement. “The Institute provides a permanent platform to build a full program of advocacy and education on this important public issue.”

Earlier this summer, the Securities Industry and Financial Markets Association sent a letter to the SEC urging the agency to develop a new fiduciary standard that would be applied on an “account-by-account basis” and be spelled out in an agreement at the start of an adviser-customer relationship.

“The framework is a mixed bag,” Mr. Rostad said. “There are some encouraging parts and other parts that raise serious questions.”

Fiduciary skeptics, such as the National Association for Insurance and Financial Advisors, warn that imposing a universal standard would undermine the broker-dealer business model and increase regulatory and compliance costs that could price middle-income investors out of the advice market.

But the institute will argue this fall that fiduciary protection is required to restore trust to the advice business.

“There is a tremendous need to help investors understand the sharp differences between fiduciary advisors and sales professionals, who may sound alike — but then often act very, very differently,” Ms. Lagomasino said in a statement.



## Coming this fall: Single fiduciary rule, says Schapiro

SEC boss acknowledges support for universal standard — along with hurdles for getting it passed

**By Mark Schoeff Jr.**

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Securities and Exchange Commission Chairman Mary Schapiro said that the agency will issue an initial rule this fall imposing a universal fiduciary duty for anyone providing retail investment advice — the next step in what is likely to be a long process.

“It’s my hope that in the fall, we’ll be able to get to it,” Ms.

Schapiro told reporters Thursday following a hearing of the Senate Banking Committee marking the first anniversary of the enactment of the Dodd-Frank financial reform law. “Whatever we do, we’ll have lots and lots of comments, and have lots of issues to work through.”

The Dodd-Frank law gives the SEC the authority to promulgate a fiduciary-duty rule but does not mandate that it do so.

The SEC delivered a report to Congress in January that recommended such a regulation to improve protection of investors who are confused by differing standards of care that investment advisers and broker-dealers must meet. Advisers have a fiduciary duty to act in a client’s best interests, while broker-dealers adhere to a less stringent suitability standard when selling financial products.

After completing the study, which was called for by Dodd-Frank, the SEC addressed dozens of other regulations required by Dodd-Frank. At Thursday’s hearing, Ms. Schapiro said that the SEC has proposed or adopted two-thirds of the more than 90 mandatory Dodd-Frank rulemaking provisions and finalized 10 of the more than 20 studies the law requires.

Interest groups that represent advisers used the one-year anniversary of Dodd-Frank on Thursday to urge the agency to revisit fiduciary duty.

“Having met many of the initial study and rulemaking deadlines required in the first year following the law’s enactment, the SEC should now turn its attention to one of Dodd-Frank’s most critical investor protection reforms,” the Financial Planning Coalition said in a statement. “Adopting a fiduciary standard would ensure that clients receive advice that is in their best interest, regardless of their advisers’ compensation or other interests.”

The Financial Services Institute Inc. also called on the SEC to act.

“For the last year, FSI has urged the implementation of Dodd-Frank in a way that preserves investor choice and investor access,” FSI president and chief executive Dale Brown said in a statement. “We have urged regulators to take a thoughtful approach that avoids unintended consequences and moves us toward our goal of harmonized, effective regulation. Unfortunately, we are no closer to that goal than we were a year ago. A big first step toward that goal would be the adoption of a uniform fiduciary standard of care and the creation of a self-regulatory organization for investment advisors.”

As the SEC contemplates a new fiduciary-duty rule, it is seeking more funding to implement Dodd-Frank. Ms. Schapiro reiterated to the Senate committee that the agency can’t hire the additional 770 staff required to handle the new law without a bigger budget.

“The new responsibilities assigned to the agency under the Dodd-Frank Act are so significant that they cannot be achieved solely by wringing efficiencies out of the existing budget without also severely hampering our ability to meet our existing responsibilities,” Ms. Schapiro said in prepared testimony.

Under a bill approved in June by the House Appropriations Committee, the SEC's budget will be frozen at its fiscal 2011 level of \$1.18 billion. That's \$222 million less than the amount requested by the Obama administration in its budget proposal.

House Republicans have prioritized federal spending reductions and said all agencies should take a budget hit. Critics said the GOP is trying to starve agencies of the funding they need to implement Dodd-Frank.

One of the ways that Dodd-Frank tries to ease the SEC burden is by moving about 3,200 investment advisers with assets under management of

\$25 million to \$100 million from SEC oversight to state regulation by next June.

Ms. Schapiro told reporters, however, that the adviser "switch" will not result in streamlining the agency's agenda, because Dodd-Frank adds oversight responsibility for more than 750 advisers to hedge and private-equity funds.

"While we lose a significant number of advisers to state registration in the middle of next year, we will take on a significant number of hedge funds for the first time," Ms. Schapiro said. "Our workload isn't diminished in any way. The complexity of the assets under management is going to be increasing."

The agency examined only 9% of the approximately 11,800 investment advisers under its aegis last year. About one third of investment advisers never have been examined.



## Broker-dealer groups heavily armed in fiduciary battle

In the high-stakes political game surrounding the adoption of a fiduciary standard, broker-dealer interest groups have outgunned their opposition in spending.

In the first quarter, the Securities Industry and Financial Markets Association spent \$1.3 million on lobbying, according to the Center for Responsive Politics. The National Association of Insurance and Financial Advisors spent \$315,000, while the Financial Services Institute Inc. doled out \$90,000.

On the other side, the Investment Adviser Association spent \$50,000 in the first quarter, while the lobbying tab at The Financial Planning Coalition — the umbrella for the Certified Financial Planner Board of Standards Inc., the Financial Planning Association and the National Association of Personal Financial Advisors — was \$30,000.

First-quarter numbers suggest that the groups are on track to spend about as much on lobbying in 2011 as they did in 2010, when SIFMA spent \$5.4 million, NAIFA \$1.3 million and the FSI \$150,000. The fiduciary groups' overall spending in 2010 was much lower — \$160,000 for the Investment Adviser Association and \$210,000 for the Financial Planning Coalition.

NAIFA and SIFMA also are major campaign contributors, donating \$2 million and \$574,571, respectively, during the 2010 election cycle. Over the same period, the Investment Adviser Association's political action committee contributed \$33,500 to campaigns.

In terms of their in-person lobbying efforts, the interest groups are fairly even competitors.

Between Aug. 26 and June 1, SIFMA conducted 12 meetings at the Securities and Exchange Commission on fiduciary issues, according to the SEC website. The IAA and the planning coalition have visited the SEC 11 times, while the North American Security Administrators Association Inc., which is on the same side of the fiduciary debate, held three meetings.

Even though the fiduciary groups expend about as much shoe leather as their financial industry counterparts, they still feel outgunned when it comes to disseminating their message.

“The brokerage and insurance industries are very effective in their lobbying both on [Capitol] Hill and at the SEC,” said David Tittsworth, executive director of the Investment Adviser Association. “I think we have a long way to go, to be perfectly honest.”

“The David-and-Goliath meta-phor doesn't quite fit the situation,” said David Mendels, director of planning at Creative Financial Concepts LLC and president of the Financial Planning Association of New York. “David had a slingshot; we have a peashooter.”

But even those with a larger war chest are not immune from lobbying frustrations.

William Johnstone, president and chief executive of Davidson Cos. and a member of the SIFMA board, said that Washington lawmakers and regulators don't have a firm grasp of the financial industry and its many variations.

“There's not an appreciation of the diversity of financial services in the United States,” he said. “There are a lot of financial services companies that are not located in New York City.”

Mr. Tittsworth agrees that the investment advice business is fragmented.

“To be effective, we need to marshal all the numbers we have,” he said. “I think it could be a very potent force if we were able to get everyone rowing in the same direction. I hope we're getting better.”

— *Mark Schoeff Jr.*