Erasing CFPs Compensation Methods is a “Doozy” of a Mistake

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Yesterday the CFP Board defended its decision to erase compensation categories on its website. In *Investment News,* the Board CEO Kevin Keller said, “It’s about fiduciary, not about fees,” and, “It’s part of a natural evolution of not focusing on how a person is paid but the professional obligation.”

Mr. Keller is wrong on the facts, the law and common sense. Starting with the Advisers Act of 1940, methods of compensation have always been integral to how commissions and brokerage sales serve issuers and manufacturers, while fees and fiduciary advice serve investors.

The Advisers Act was meant to differentiate “legitimate advisory organizations” from conflicted sales of “tipsters and touts.” At the time it was enacted, leading advisors advocated that investment advice should only be compensated by fees and advisors should not engage in other businesses. In 1963, the Supreme Court noted this legislative history and affirmed the fiduciary duty of investment advisors.

What the authors of the Advisers Act understood is how the compensation method is, part and parcel, closely tied to the ability of an advisor to act as a real fiduciary. That acting as a real fiduciary is far easier when conflicts really are avoided whenever humanly possible. This is the opposite of what the CFP Board is espousing.

Conflicts can be overcome and a financial representative receiving a commission can act as a fiduciary. But it’s not for the faint of heart. As the CFP Board calls for, dealing with a material conflict requires managing the conflict and obtaining informed customer consent. Doing so is difficult. It’s a burden. It’s a burden by design because a material conflict can cause irreparable harm to the financial welfare of the customer.

Unfortunately, the sloppiness of the debate of over fiduciary duties obscures an important point. “Fee-only” compensation is not something hatched up by a small group of contrarians and industry disrupters (as was the case with the origins of NAPFA) during the first Reagan administration. Its ancestry in history, jurisprudence and law is far-reaching and stellar. This point is forgotten today.

Fee-only compensation is common sense too, based on the sharp difference between a transparent and straight forward negotiated fee and an opaque, complex and wide-ranging commission along with other third party payments.

Retail investors may appreciate that ancestry and commonsense. According to a survey and research from the SEC in 2018, by a margin of 51% to 22%, retail investors agreed it’s important a financial representative, “receives all their compensation from you directly.” 28% were in the middle.

The CFP Board should look to the late Texas Senator, Lloyd Bentsen, for guidance on how to reverse course. In 1987, the senator invited lobbyists to breakfasts in exchange for $10,000 campaign contributions. According to the *New York Times*, “Rather than make excuses, he admitted to a "doozy" of a mistake and refunded the $92,500 he had collected.”

The CFP Board made a “doozy” of a mistake in erasing the compensation methods. It should follow Senator Bentsen’s example. Admit the mistake. Reverse the decision. Move on. There are other matters requiring attention.

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