September Topic of Interest

"The new FinReg law does not address the loophole that allows some service providers to give only suitable advice. In other words broker-dealers still are not required to put their client's interests above their own."

-Chris Cahill, Principal & Co-Founder of
The Concord Advisory Group, Ltd.

Do you know that not all advisors are held to the same standards? Regardless of what your advisors call themselves, if they work for a brokerage firm they need only make recommendations that are suitable, rather than recommendations that are in your best interest. This may seem like a small difference, but it can mean the difference between investment success and failure, especially in the area related to investment costs.

Under the Investment Advisers Act of 1940 (Advisers Act), an investment adviser providing consulting services has a fiduciary duty to provide disinterested advice and disclose any material conflicts of interest to their clients. Brokers are not subject to these standards.

A U.S. Securities and Exchange Commission report released in May 2005, however, raised serious questions concerning whether some consultants are fully disclosing potential conflicts of interest. These conflicts may affect the objectivity of the advice they are providing to their clients. To view the fact sheet which provides questions you should ask your advisor, go to: http://www.dol.gov/ebsa/newsroom/fs053105.html

The recently passed FinReg bill weighs in at 2,300 plus pages, its breadth however does not resolve all the issues it addresses. In addition to addressing broker-dealer fiduciary duty the main areas the bill covers are; risk oversight, resolution of failed institutions, derivatives reform, propriety trading, and FDIC assessments. Many of the regulations the bill outlines still need to be created by more than a dozen regulatory agencies. Some of the agencies are not even formed yet, such as the new Consumer Financial Protection Bureau. Congress has left crafting many rules to regulators that are more familiar with the industry and how the markets work.

The fiduciary duty for brokers-dealers is one area that is still unresolved. The FinReg bill requires the SEC to conduct a six-month study of the issue to identify any gaps in standards of conduct that may exist. After the study is complete, the SEC has discretionary authority to draft rules. However it is pertinent to note that these new rules would apply to retail customers only. This means institutions like yours will be on their own to figure things out.

There is an absolute difference between "suitable" financial advice and financial advice which is, "in your best interest".

- Is the advice you're receiving meeting fiduciary standards?
- Is your financial advisor looking after your best interests, or his or her employer's best interest?
- Have you reviewed your investment advisor's ADV Part II? This document required by the SEC lists advisors potential conflicts. Find your advisor's here: http://www.adviserinfo.sec.gov

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