



# *Investment Adviser Rules – From the Broker-Dealer’s Perspective*

*March 27, 2007*

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# *Recent Developments*

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- Rand Study
- FPA Litigation
- Other Litigation
- CFP Board Proposed Ethical Standards
- FPA's March 14, 2005 Request for SEC Guidance

# *FPA's 3-24 Request for SEC Guidance*

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1. Whether preparing one or more modules constitutes financial planning
  - Strikes at brokers' ability to provide "goal oriented plans" (e.g., retirement plans, income plans, cash flow analysis, estate plans)
  - Would be extremely burdensome to implement
2. Whether implementation of a financial plan should be governed by the Advisers Act
  - For a fee-based account, if a broker dealer has delivered a financial plan and then "represents to the customer that the advice is provided as part of a financial plan, **or directly provides advice in connection with the financial plan.**"
  - Could force a choice between financial planning and fee in lieu of commission brokerage accounts
3. Timing of fee-based account disclosure
  - Requiring same timing as ADV disclosure (48 hours before/ 5 days after)

# *Rule 202(a)(11)-1 – One Year Later*

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- Business Trends
  - Has the rule affected the structuring of brokerage services?
- Differing Approaches to Financial Planning
  - “Just say no”
  - Action plans
  - Unbundled plans
  - Plans with transition to broker in implementation
- Other Programs
  - Non-Discretionary Advice Programs
- Disclosures
  - Plain English guides
- Controls
  - System coding
  - Statement and confirmation disclosure
  - Testing

# *Practical Issues: Broker v Adviser issues*

- Continuing to wear two hats
  - Industry upgrade in awareness of consequences of fiduciary status
    - Litigation issues
    - Required oversight of asset quality, diversification, risk tolerance
    - ERISA implications
    - Principal trading prohibitions
  - Arrival of “flagship” disclosure for websites and client brochures: UBS, MS
    - Standalone, account opening, links in product and marketing material
  - Review of marketing material
    - Firm services and individual products
    - Field material (local ads)
    - Third party material (insurance companies, mutual funds)
  - Comprehensive mandatory training for reps
    - 30-60 minute online presentation with a Quiz
    - Hard to train because legal issues not sound bites
  - Call center staff trained to answer questions
  - Have we come far enough to make a difference in the Rand study?

# *Practical issues: Financial Planning*

- Classification of existing tools and products as 1) brokerage, 2) financial planning, or 3) other advisory
  - Inventory, consider investor perception
  - Label each tool
  - Revise capability if necessary: e.g. for FP remove implementation
- Uncertainty in defining financial planning
  - Number of topics covered: 3?
  - Combinations of separate tools vs one tool
  - Sophisticated asset allocation tools
  - Holding out
- Approach to advisory financial planning
  - Client letters at beginning and end of relationship
    - Question: Does negative consent work?
  - Deliver ADV
  - Track that draft plans close: deem within 1 year
  - Repeat process for updates
  - Question: Does implementation need to be at a separate meeting?
- Supervision issues
  - Firm has fiduciary responsibility for methodology of plan
  - Track registration of reps providing financial planning: Series 65/66
  - Track FP clients
  - Question: ADV updates if plan is open?
  - More difficult with web based plans or third party software

# *Practical issues: Limited Discretion Brokerage*

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- Difficulty with practical use
- UBS letter: Narrow relief for cash management

# ***New Products: Non-Discretionary Advisory Accounts***

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- Identity crisis: can't be a substitute for Fee in Lieu of Commission Brokerage accounts
- What makes an account advisory?

# *Rule's Impact on Dual Registrants & Independent BD/IAs – Similarities*

- Lack of publicized regulatory or litigation actions on financial planning provisions lends false sense of security
- Requests for more financial planning options
  - Tools offered that allow more tailoring of plans by reps
  - “Legal pad” plans
- Continued pressure to allow reps to hold themselves out as financial planners
  - Continued confusion over what activities constitute financial planning
  - Challenge of distinguishing the rep’s role as broker from financial planning
- Pushback on firm disclosures

# *Rule's Impact on Dual Registrants & Independent BD/IAs - Differences*

- Dual Registrants
  - Focus on preserving “hats-on, hats-off” approach
  - Review of disclosures to shorten or eliminate them based on business need/risk
  - Consideration of additional financial planning alternatives per rep requests for greater control over the end product
- Independent BD/IAs
  - Review of potential business options, and associated risks and infrastructure required, for expanded financial planning to include firm-sponsored programs
  - Analysis of activities of existing reps and prospective recruits
  - Firm decision not to sponsor a financial planning program
  - Development of guidance on current firm offerings
  - New process & oversight for outside RIA conduct of financial planning

# *Institutional Brokerage Issues*

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- Hard dollars and unbundling
  - “Special compensation” and “separate fee”
- Who’s the Client?
  - The adviser
  - The adviser’s underlying clients
- Approaches

# *Principal Trading*

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- Avenues for relief
  - Broad carve out for registered brokers
  - More targeted relief
    - Chinese walls
    - Riskless principal trades
    - Trades in liquid securities
    - Investor eligibility



**Compliance & Legal Division**

of the Securities Industry and Financial Markets Association

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