From: Chris Cooper, CFP, EA [mailto:chris@chriscooper.com]
Sent: Tuesday, December 28, 2010 10:31 AM
To: EBSA, E-ORI - EBSA
Subject: RE: Definition of Fiduciary Proposed Rule

Attached is a copy of a letter of comment written to the Chair of the Securities and Exchange Commission and submitted during their comment period on a similar rule change matter. I offer it to you so that you can see the difficulty we are facing in finding someone who wants to be a fiduciary.

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TO: Ms. Mary Shapiro, Chair, Securities and Exchange Commission

FROM: Chris Cooper, MSFS, CFP®, CLU, ChFC, EA

RE: Comments on Study Regarding Obligations of Brokers, Dealers, and Investment Advisers ***Other Release No.:*** IA-3058 ***File No.:*** 4-606

I offer my comments to you in your quest to gain the truth of the matter regarding the behavior and obligations of Registered Representatives of Broker/Dealers and those of Registered Investment Advisers. I am retired from the career Life Insurance industry and retired after 21 years as a Registered Principal and Registered Representative of Broker/Dealers. I am a fee only Registered Investment Adviser and do not work for any financial institution.

The difficulty of your task comes down to this: securities and the products derived from securities, such as mutual funds, credit default swaps, and others, are very complex products, perhaps more complex than or at least equal in complexity of that of an automobile. People who sell automobiles and people who sell securities and all the derivatives have a lot in common, namely hidden compensation and motivations that the consumer cannot see nor can consumers really understand what these incentives and other hidden compensation does to the way complex information is presented or omitted to a potential purchaser. Also, the sales person of neither automobiles nor securities has any idea what is in the best interest of the consumer, as neither are trained that way, and because of hidden financial incentives, has every incentive to gain as much information about the consumer to manipulate the consumer to purchase the product being offered.

You might say "registered representatives must sell only what is suitable to a consumer." Let's look at this from the perspective of an automobile dealer again. Just because a car is brand new, but has a history of lousy performance and reliability, does not make it suitable for anyone. Yet, we taxpayers own two such companies which has a long history of lousy performance and reliability and dealers to sell them to the public. Same is true for securities products as we have witnessed these past two years with the subprime mortgage meltdown (who were these securities really suitable for?) Since when in the low return investment environment is an investment product with over 3% a year in fees suitable when nothing earns three percent return? (Again, we taxpayers own such a company that manufactures these unsuitable investment products.) Suitability has never been good policy in any consumer area from automobiles to securities.

In equal fashion let's look at Registered Investment Advisers or RIA's. RIA's are supposed to act in the best interest of a consumer. Yet most RIA's do not have to do this, by simply having the client agree in writing that the RIA is not acting in their best interest, or is only providing a very limited amount of advice, such as a timing signal program. In timing signals, the RIA simply tells his customer when to switch money from one investment into another, without giving advice as to which investments to buy or sell. It looks like a duck, but it doesn't quack like duck. Thus, by limiting the

engagement by the RIA, the RIA avoids giving specific investment advice, and thus has nothing to worry about in regards to the best interest of the consumer.

Other RIA's manage large pensions or mutual funds. As there are many investors in any one mutual fund, the manager of the fund, the RIA, has no way to know what is in the best interest of the individual investors or of any one of the investors. What might be in the best interest of any one investor is NOT to invest in the fund the RIA is managing, however, mutual funds are sold through FINRA registered representatives and broker/dealers (including no load funds such as Vanguard) which don't have a best interest requirement, thus the RIA manager is insulated from consumer liability.

If it isn't apparent, there isn't a good thing about being a customer of either a broker/dealer or an RIA who has limited the scope of their engagement. It's still caveat emptor for the consumer of either one of these, and thus, neither one is appropriate as an advice giver, because the consumer has no way to compare either of these service providers.

The only way the SEC can implement the law that consumers so desperately need, is to have a complete separation of advice givers from product manufacturers and distributors. Similar to separation of Medical Doctors from Pharma and other medical device manufacturers, American consumers need a doctor to go to who gives them a prescription (a note that gives them permission to buy something that is controlled like a narcotic) will we then reduce the need for arbitrations against broker/dealers. At present we are using the civil procedure of lawsuits to enforce laws, and some that don't exist now, and would not have had been needed if advice givers had been completely separated from product manufacturers financial incentives and controls.

No one, including yourself Ms. Shapiro, has any business doing business with any financial institution without your own personal advocate to screen for and look for what you are missing, and to cool off the emotional high of purchasing something (like an automobile), or similar to having an attorney at a real estate closing to review all the documents you will sign. If this had happened, most of the arbitrations the broker/dealer industry would not have needed to happen.

The problem is FINRA, the Financial Industry Regulatory Authority, Inc. makes BIG money on arbitrations, thus the self regulator has great incentive to NOT reduce investor losses and lawsuits, but rather to keep the status quo. FINRA benefits from the disasters of poor investment products and from misleading investors into buying expensive, poor performing, and unreliable products. If we had for profit courts in the USA, then we would have an incentive to encourage lawlessness.

Separate advice from distribution and manufacturing, and eliminate the financial incentives of a self regulatory agency, those are my comments for you.