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## Is Your Financial Advisor A “Seller” or a “Buyer”?

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You sit across the table from a financial advisor who offers to prepare a financial plan for you. Such a plan might include retirement planning recommendations, college funding recommendations, and/or asset allocation advice. It may also recommend specific investment products to you. So - who's sitting across the table? Is it: (a) a stockbroker, who is providing you with commissioned-based and/or fee-based brokerage services; or (b) a registered investment advisor, who has a fiduciary duty to act in your best interests and must disclose any and all conflicts of interest to you; or (c) someone who professes to be both. The answer - it could be any one of the foregoing three.

In recent comments to a proposed SEC Rule relating to fee-based brokerage firm accounts, the distinction between stockbrokers (i.e., "registered representatives" of broker-dealer firms) and registered investment adviser firm representatives (investment advisers) was made quite clear. Here's excerpts from a few of the submitted comments:

"I worked for [a stock brokerage firm] ... This firm ... purported to be non-biased financial advisors, but in fact forced me to sell only their own manufactured products for the first year. Aft the second year I was allowed to sell the products of 2 other firms, but I was still paid more if I sold proprietary products ... The local management team ... used financial planning as a tool to get people in the door so that we could sell their products ... They called us Advisors ... but the atmosphere was completely sales."

Another commentator noted,

"If there is one lesson that the SEC should have learned about the numerous violations and scandals in the brokerage and mutual fund industry over the last 3-4 years, it is that disclosure of hidden fees and conflicts of interest is imperative for the consumer to make an

educated choice. This is not currently the situation with broker-dealers - they are not required to disclose fees, yet market themselves as financial advisors ...."

By contrast, a fee-only investment adviser is quite different from a stockbroker. As one commentator, in discussing investment advisers and their role under the Investment Advisers Act of 1940, stated:

"Two fundamental principles upon which the pioneers in this new profession undertook to meet the growing need for unbiased investment information and guidance were, first, that they would limit their efforts and activities to the study of investment problems from the investor's standpoint, not engaging in any other activity, such as security selling or brokerage, which might directly or indirectly bias their investment judgment; and, second, that their remuneration for this work would consist solely of definite, professional fees fully disclosed in advance."

In short, the Investment Advisers Act of 1940 formed a new profession - one in which the investment adviser had the fiduciary duty to act in the best interests of the investor.

Hopefully the SEC will soon act to enable investors to clearly delineate with whom they are dealing. Is the person sitting across the table selling a product? Or is the person providing, under a higher duty of due care and loyalty to the client, truly independent and objective investment advice, and then working with the client to purchase the most suitable investments which may be available in today's world.

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