Compliance Challenges for Dually Registered Firms

By Robert L. Tuch

Introduction

The Securities and Exchange Commission (the "SEC") continues to pay close attention to the activities of dually registered firms and broker-dealer and investment advisory businesses that share common financial professionals.[1] Upon announcing its examination priorities, the SEC's Office of Compliance Inspections and Examinations ("OCIE") has indicated that the SEC staff would review:

- how financial professionals and firms satisfy their suitability requirements when determining whether to recommend brokerage or advisory accounts, the financial incentives for making such recommendations, and whether all conflicts of interest are fully and accurately disclosed;
- dually registered firms' policies and procedures related to such recommendations;
- the significant risks to investors of migration and other conflicts this business model presents;
- the impact to investors of the different supervisory structures and legal standards of conduct that govern the provision of brokerage and investment advisory services; and
- when a variety of fee arrangements is offered for advisory accounts, whether the recommendation of an advisory account is in the best interest of the client at the inception of the arrangement and thereafter, including fees charged, services provided and disclosures made about such relationships.[2]

With this regulatory focus in mind, it would be useful to review the functions performed by broker-dealers and investment advisers and note the differences. It would also be useful to note the differences in applicable laws, rules and regulations and take a look back at some important events that have helped shape the current state of the U.S. financial services industry. Accordingly, this article will (i) describe the different functions and regulatory regimes of broker-dealers and investment advisers, and (ii) address evolutionary changes that have led to the blurring of distinctions between investment advisers and broker-dealers.

Robert L. Tuch is a senior consultant with Oyster Consulting, LLC. With over 25 years of experience in the financial services industry, Bob provides advice on broker-dealer compliance and supervision issues as well as insurance agency compliance and supervision issues.*

This will provide a good foundation for a discussion of compliance challenges for dually registered firms and for financial professionals and firms that wish to become dually registered. Upon addressing those challenges, this article will identify recommended practices that may be appropriate for consideration by management personnel and compliance professionals.

I. Different Functions and Regulatory Regimes

Section 202(a)(11) of the Investment Advisers Act of 1940 (the "Advisers Act") defines an investment adviser as any person or firm that, for compensation, is engaged in the business of providing advice to others or issuing reports or analyses regarding securities.[3] This may include the provision of personalized investment advice about securities to retail customers. It also may include such things as (i) portfolio design and portfolio management (including asset allocation strategies), (ii) financial planning (including retirement planning), (iii) estate planning and generational wealth transfer and (iv) business succession planning.

The SEC continues to pay close attention to the activities of dually registered firms and broker-dealer and investment advisory businesses that share common financial professionals.

By contrast, broker-dealers operate as sales people whose primary roles are distributing and selling securities and executing securities transactions. Depending on the scope of a broker-dealer's business, it may be involved in (i) the provision of investment advice about securities when recommending securities transactions to retail customers, (ii) underwriting securities offerings, (iii) serving as syndicate members or wholesalers, (iv) matching buyers and sellers of securities, (v) acting as market makers, (vi) selling securities to the public from inventory and/or (vii) clearing and settling trades. With respect to the sale and distribution of securities, broker-dealers may act as agents for issuers, as principal underwriters or as wholesalers, while also providing advice and recommending the purchase of securities to the public. As such, broker-dealers often have competing loyalties; e.g., maximizing sales while also making suitable recommendations to customers.

Given the different functions noted above, investment advisers and broker-dealers have been subject to separate regulatory regimes.

The broker-dealer regulatory regime has been characterized as predominantly a rules-based approach.[4] It governs, among other things, the way in which broker-dealers operate, focusing in large measure on applying rules embodying principles of fairness and transparency to relationships between broker-dealers and customers. Broker-dealers are primarily subject to the Securities Exchange Act of 1934 (the "Exchange Act"), rules adopted under the Exchange Act and rules of self-regulatory organizations, including the Financial Industry Regulatory Authority ("FINRA"). These laws and rules govern a wide variety of brokerage activities related to securities transactions, including advising customers, executing orders on the most favorable terms, arranging for delivery and payment, maintaining custody of customer funds and securities and delivering required disclosures such as confirmations and account statements.[5] Under FINRA rules, a broker-dealer and its registered representatives must ascertain whether a specific securities recommendation (which includes recommended transactions and recommended investment strategies) is suitable for an investor.

Investment advisers are subject to the Advisers Act and rules adopted under the Advisers Act. The Advisers Act governs an investment adviser's standard of conduct in providing advice to clients through the fiduciary duty recognized under Advisers Act Sections 206(1) and 206(2). Although the Advisers Act and its related rules impose certain requirements and prohibitions, this regulatory regime has been viewed as a more principles-based approach.[6] The fiduciary duty reflects the personal relationship between investment advisers and clients and the recognition that investment advisers are entrusted with client assets and investment authority.

As fiduciaries, registered investment advisers are expected to:

- manage portfolios in the best interests of clients;
- provide clients with undivided loyalty;
- make full and fair disclosure of all material conflicts of interest;
- seek best execution for client transactions;
- ensure that investment advice is suitable for clients' objectives, needs and circumstances; and
- refrain from effecting personal securities transactions that are inconsistent with client interests.[7]

II. Compensation Practices Within the Retail Brokerage Industry

A. The Tully Report

In response to concerns about actual and potential conflicts of interest in the retail brokerage industry, a broad-based Committee on Compensation Practices was formed in May 1994 at the request of SEC Chairman Arthur Levitt. Included within this Committee's mandates was the identification of best practices used to eliminate, reduce or mitigate actual and perceived conflicts of interest for both registered representatives and managers. The Committee became known as the Tully Committee, a reference to Daniel Tully, then Chairman and CEO of Merrill Lynch & Co., Inc. who also chaired this Committee. In its report issued in April 1995 (the "Tully Report"), the Committee noted, among other things, that some firms' practice of basing a portion of compensation on account assets is seen as one way to reduce the temptation to create inappropriate trading activity. The report further indicated that fee-based accounts may also be particularly appropriate for investors who prefer a consistent and explicit monthly or annual charge for services received, and whose level of trading activity is moderate.[8]

B. Fee-Based Brokerage Accounts and the Merrill Rule

The Tully Report caused many broker-dealers to re-evaluate their compensation practices. Many broker-dealers began to market fee-based brokerage programs, emphasizing the importance of the investment advice that was being provided. As fee-based accounts became more prevalent, however, many broker-dealers became concerned that the receipt of fees in connection with such accounts would be viewed as special compensation for investment advisory services, thereby requiring registration as an investment adviser under the Advisers Act.

The SEC attempted to address this in the form of a proposed rule under the Advisers Act. Focusing on the exception afforded to broker-dealers from Advisers Act registration requirements when investment advice was "solely incidental" to the provision of brokerage services, the SEC published proposed Rule 202(a)(11)-1 in November 1999, which came to be known as the "Merrill Rule" or the "Merrill Lynch Rule." Under the Merrill Rule, broker-dealers would not be subject to Advisers Act registration requirements just because they received fees from these fee-based brokerage accounts. The intent here was to focus on the services provided, which, in the SEC's view, could still be treated as advice that was solely incidental to the provision of brokerage services as long as broker-dealers were not receiving separate compensation for advisory services.

In July, 2004, the Financial Planning Association (the "FPA") filed a lawsuit in an effort to force the SEC to rescind the Merrill Rule. At this point in time, the Merrill Rule still remained in proposed form and had engendered much debate within the industry. Notwithstanding the controversy, the SEC adopted the Merrill Rule in the spring of 2005 even though the FPA lawsuit had yet to be decided. On March 30, 2007, the United States Court of Appeals for the D.C. Circuit vacated the Merrill Rule, holding that the SEC had exceeded its authority when creating this exception from investment adviser registration for broker-dealers.[9]

Rather than appealing the Court's decision, the SEC requested a 120-day stay to allow firms ample time to decide what to do with client assets that were in these fee-based brokerage accounts. In an article addressing the aftermath of this court decision, it was reported that the bulk of assets within these accounts were moved into advisory accounts, where financial professionals began managing them as investment adviser representatives.[10] The other client assets were moved into broker-dealer commission accounts. According to data compiled in an April 2012 article published in *Fiduciary News*, this gave rise to a significant increase in the number of dual registrants.[11]

III. The Rand Report

In 2006, the SEC commissioned the Rand Corporation's Institute for Civil Justice ("Rand") to conduct a study. Rather than evaluating the regulatory environment or making policy recommendations, the study focused on two questions:

- What are the current business practices of broker-dealers and investment advisers?
- Do investors understand the differences between broker-dealers and investment advisers?

In its report to the SEC, Rand confirmed that the industry was becoming increasingly complex, firms were becoming more heterogeneous and intertwined, and investors did not have a clear understanding of the different functions and responsibilities of financial professionals.[12] The report also concluded that the distinctions between investment advisers and broker-dealers had become blurred, and that study participants had difficulty determining whether a financial professional was a broker or an adviser and instead believed that brokers and advisers offered the same services and were subject to the same duties. One reason cited in the report for the blurring of lines was the use by brokers of titles such as "adviser," "financial adviser" or "financial consultant."

IV. Dodd-Frank Section 913 and Related SEC Study

The Rand report helped to shape the discourse regarding potential reforms within the financial services industry. Section 913 of Title IX of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the "Dodd-Frank Act")[13] required the SEC to conduct a study to evaluate whether there were legal or regulatory gaps, shortcomings, or overlaps in legal or regulatory standards relating to the standards of care for providing personalized investment advice about securities to retail customers.

Section 913 included other items to be considered in conducting the study, including the potential impact of eliminating the broker-dealer exclusion from the Advisers Act definition of "investment adviser" and the potential impact on retail customers if regulatory requirements change, including their access to the range of products and services offered by broker-dealers.

On January 21, 2011, the SEC Staff released its study (the "SEC Study").[14] The SEC Study recommended rulemaking to establish a uniform fiduciary standard for investment advisers and broker-dealers that would be consistent with the standard that currently applied to investment advisers under the Advisers Act. To facilitate the implementation of the uniform fiduciary standard, the SEC Study recommended that the SEC adopt rules to address the following:

- **Disclosure Requirements**. Rules should be adopted to address both the existing "umbrella" disclosures (e.g., ADV, Part II) and specific disclosures provided by broker-dealers and investment advisers when a transaction is executed.
- **Principal Trading**. Rules should be adopted to address how broker-dealers can satisfy the uniform fiduciary standard when engaging in principal trading activities.
- **Customer Recommendations**. Rules should be adopted to address the duty of care obligations that broker-dealers and investment advisers have when making recommendations to retail customers.

The SEC Study further recommended that the SEC harmonize other areas of broker-dealer and investment adviser regulation, such as regulations pertaining to advertising and communication, the use of finders and solicitors, supervision and regulatory reviews, licensing and registration of firms, licensing and registration of associated persons and maintenance of books and records. In so doing, the SEC Staff noted that harmonization could benefit retail investors by providing the same or substantially similar protections when the same or substantially similar services are provided by investment advisers and broker-dealers. Regarding the areas of regulation noted above, the SEC Study recommended that the SEC (i) undertake certain reviews, and (ii) consider certain enhancements, including certain additional requirements for investment advisers and investment adviser representatives.

As of the date of this writing, the SEC has not undertaken any rulemaking to implement the recommendations contained in the SEC Study. A number of observers have offered their views regarding how best to implement Section 913 of the Dodd-Frank Act and the SEC Study recommendations. Other observers have offered guidance regarding how to prepare for a uniform fiduciary standard for investment advisers and broker-dealers.[15] These topics, however, are outside the scope of this article. The following section addresses key compliance challenges and offers several recommendations.

V. Compliance Challenges and Recommended Practices

A. Dually Registered Firms

Financial professionals serving retail investors are increasingly choosing to operate as an adviser or as a broker and an adviser, rather than solely as a broker.[16] Association with a broker-dealer and an investment adviser can provide financial professionals with a greater array of client investment solutions. With this broad platform, however, comes the responsibility for complying with the laws, rules and regulations that apply to both broker-dealers and investment advisers. For dually registered firms, there is no shortage of challenges, as managers and compliance professionals address product and service offerings, conflicts of interest, sales practice issues, supervision and controls and disclosure concerns, to name just a few of the important areas to be addressed. The following topics have been identified as key areas of focus, from a risk management standpoint, by regulators:

- Conflicts of Interest
- Disclosure
- Suitability of Investment Advisory Accounts

1. Conflicts of Interest

In Section II above, the discussion of broker-dealer functions addresses the different roles that broker-dealers play when they act in various capacities on behalf of issuers, principal underwriters, wholesalers and retail customers. These roles can give rise to conflicts of interest. Section II also describes the responsibilities of investment advisers regarding conflicts of interest, given their fiduciary responsibilities under the Advisers Act. The SEC and FINRA are each looking closely at the ways in which firms manage conflicts of interest and potential conflicts of interest.

OCIE has indicated that the SEC staff would focus on specific conflicts of interest, steps registrants have taken to mitigate conflicts and the sufficiency of disclosures made to investors.[17] OCIE has also noted that the SEC staff would look at the overall governance frameworks that firms have in place to manage conflicts on an ongoing basis.[18]

In July 2012, FINRA announced that it was undertaking a review process to better understand industry practices and determine whether member firms were taking reasonable steps to properly identify and manage conflicts that could affect their clients or the marketplace.[19] In October 2013, FINRA published a report ("Conflicts Report") that summarized its findings, including its identification of conflicts management practices that member firms should consider and, as appropriate, tailor to their specific businesses.[20]

In its Conflicts Report, FINRA identified several categories of conflicts and provided several examples. Included among the categories were general conflicts, supervision and compliance conflicts, research-related conflicts, conflicts related to banking and capital markets and conflicts relating to retail/private wealth. The following are some of the key effective practices that were identified in the Conflicts Report:

Enterprise-Level Framework

- Define conflicts of interest in a way that is relevant to the firm's business.
- Articulate employees' roles and responsibilities with respect to identifying and managing conflicts.
- Disclose conflicts of interest to clients, taking into consideration the different needs of retail and institutional clients.
- Train staff to identify and manage conflicts in accordance with firm policies and procedures.
- Introduction of New Products
- Include within the firm's new product review process a requirement to identify and mitigate any conflicts that a new product may present.

Compensation

- Avoid or minimize thresholds that enable associates to increase their compensation disproportionately through an incremental increase in sales.
- Minimize incentives to favor one product type (e.g., equities, mutual funds, variable annuities) over another.
- Reduce the incentive to prefer one mutual fund or variable annuity over a comparable product by capping the gross dealer concession that will be credited to an associate's production.

Oversight

- Monitor the suitability of recommendations around key liquidity events (e.g., a rollover of 401(k) assets) where the impact of those recommendations may be particularly significant.
- Develop a surveillance program to identify spikes in an associate's sales of a particular product. If a significant increase is discovered, a suitability analysis can be conducted regarding recommendations of that product.

2. Disclosure

Broker-dealers and investment advisers are subject to a vast array of disclosure requirements, the applicability of which depends on the nature and scope of the product or service being offered.

For investment advisers, Form ADV, Part 2, sets forth information required in client brochures and brochure supplements. Part 2A requires an investment adviser to prepare a narrative brochure that includes plain English disclosures of business practices, investment strategies, fees, conflicts of interest and disciplinary information. Part 2B requires an investment adviser to prepare a brochure supplement that contains information about each investment adviser representative that provides investment advice to clients, including the representative's educational background, business experience, other business activities and disciplinary history. Investment advisers must deliver the brochure (and updates to that brochure) to their clients annually and the brochure supplement to a client at the time the representative begins to provide advisory services to that client.[21]

For financial professionals who recommend securities transactions, the disclosures provided to the investor might include any combination of the following, depending on the firm and the securities that are recommended: a prospectus, a summary prospectus, trade confirmations, the firm's privacy policy, a description of how the firm and its representatives are compensated, annual and semi-annual reports, account statements, the firm's anti-money laundering policy, prospectus supplements and investor notices.

One observer has expressed the view that numerous regulators and regulations have unintentionally created disclosure redundancies and disparities, often contributing to retail investor confusion.[22] For dually registered firms, disclosure requirements present quite a challenge, especially if one of the goals is to promote investor education and understanding regarding products and services that are offered. With this in mind, here are some of my recommended practices to consider:

- An emphasis should be placed on concise, plain-English disclosures that are presented in a user-friendly format.
- Provide an explanation of the brokerage services and investment advisory services that are offered by the firm.
- Explain how the firm and its financial professionals are compensated. This explanation should include all forms of transaction-related compensation, including commissions, sales loads and mark-ups, as applicable, and all fee arrangements for the firm's investment advisory programs.
- Conflicts of interest should be disclosed, including a discussion of how they are mitigated and/or managed. If applicable, this should include any financial incentives that financial professionals may have to recommend certain products or services over similar ones.
- Take steps to ensure that disclosures are presented in a balanced manner, including a discussion of risks.
- Financial professionals should be prepared to supplement written disclosures with appropriate explanations to ensure a proper understanding by the customer of the products and services being offered. This is particularly important when recommending complex products to retail customers.

3. Suitability of Investment Advisory Accounts

As noted above, broker-dealers receive transaction-based compensation. This is, in large part, in the form of commissions. Investment advisers, on the other hand, employ a variety of fee structures for the investment advisory services offered to clients. For investment advisory accounts, a commonly-used arrangement entails the imposition of a fee that is based on the level of assets in the account, independent of the level of trading activity. By deciding to pay a fee, based on services provided rather than transactions, the client may pay a greater amount than the cost of a commission alternative during periods of lower trading activity.

Fee-based advisory accounts include discretionary and non-discretionary accounts. In a discretionary account, the investment adviser, or an unaffiliated adviser retained by the investment adviser, chooses the underlying investments for the account. In a non-discretionary account, the client chooses the underlying investments, with assistance in the form of recommendations from the financial professional.

Fee-based advisory accounts are often structured as wrap-fee programs ("Wrap Accounts"), whereby a bundled fee is charged that covers all services and charges, including ticket charges (i.e., trading costs). Wrap Accounts are utilized by investors who have an intention to actively trade positions within their accounts. An alternative to Wrap Accounts is a fee-based advisory account with a lower ongoing fee that does not cover ticket charges.

An investment adviser must carefully consider whether a Wrap Account is suitable and appropriate for a client before entering into such an arrangement. In a letter to the National Association of Personal Financial Advisers, the SEC's Division of Investment Management made this point and further indicated that investment advisers have an obligation to make such a suitability determination for these accounts on an ongoing basis thereafter.[23]

The trading activity of a fee-based advisory account is just one factor to be considered when reviewing the suitability of the account. Although inactivity in a fee-based account may not, by itself, establish that an account is unsuitable, inactivity is an important factor. It should be noted that there may be a disincentive for a financial professional to trade for Wrap Accounts since the profit from the Wrap Account fee is reduced each time a trade is executed and the resulting execution costs are incurred.

The following are recommended practices when determining the suitability of a fee-based advisory account:

- All relevant factors should be considered in order to determine what is in the best interests of a client at the inception of the arrangement and thereafter.
- Relevant factors in making this determination include:
  - the client's investment objectives and goals;
  - the client's financial situation and needs;
  - past and anticipated investment activity;
  - proposed investments and eligible assets for inclusion within these accounts;
  - the nature and cost of services to be provided;
  - the entire suite of services provided by the financial professional; and
  - the client's preferences concerning available payment alternatives.
- Advisory accounts should be monitored and reviewed on a regular basis (annually, unless a reason exists to do so more frequently) to determine whether they are suitable for a fee-based environment. This should include a review for inactivity. Inactivity reports should be produced and shared with appropriate supervisory and compliance personnel.
- Where appropriate, inactive advisory accounts should be converted to accounts with more favorable pricing structures.
- Financial professionals should maintain records that show evidence of suitability for advisory accounts. Such evidence may include documented client meetings and documented account reviews, including portfolio monitoring and asset allocation reviews.

B. Becoming Dually Registered

This section will focus on two significant industry trends: (i) registered broker-dealers becoming dually registered, and (ii) financial professionals opting to create a "hybrid" practice.

1. Broker-Dealers Becoming Dually Registered

When choosing to register as an investment adviser, a broker-dealer should be mindful of common elements of compliance programs operated by broker-dealers and investment advisers. This can help the firm leverage its compliance controls and procedures to satisfy the regulatory requirements for dual registrants. In a *Regulatory Brief* issued by PricewaterhouseCoopers in 2012, the following common elements were identified[24]:

- a designated Chief Compliance Officer ("CCO");
- a knowledgeable CCO who has authority within the organization;
- the compliance program must be effectively designed to achieve compliance with certain securities laws and regulations applicable to the firm;
- the effectiveness of the compliance program must be reviewed at least annually;
- the compliance program must be dynamic (i.e., must be modified as business, regulatory and legislative changes and events dictate); and
- the compliance program must "report up," that is, report to the firm's executive management, on the effectiveness of compliance policies and procedures.

The *Regulatory Brief* concludes that CCOs and others can benefit from being aware of the commonalities in legal requirements that are applicable to broker-dealers and investment advisers.[25] A similar theme was presented in a September 2013 article entitled *Dually Registered Brokers and Advisers*.[26] In this article, the authors address the common elements cited above and also address how prospective dual registrants with pre-existing broker-dealer compliance controls and procedures can expand their programs to satisfy the requirements of the Advisers Act. The following key Advisers Act requirements are discussed:

- fiduciary duties of investment advisers;
- the investment adviser Code of Ethics;
- rules governing the use of advertising and marketing;
- pay-to-play rules; and
- dispute resolution mechanisms applicable to investment advisers.

With these common elements and the key differences as to duties in mind, CCOs can go about building effective compliance programs. For broker-dealers seeking to become dually registered, a clear understanding of the difference between the suitability standard, applicable to broker-dealers, and the fiduciary duties applicable to investment advisers, is essential. Financial professionals operating as investment adviser representatives of such dual registrants will need to be well-trained concerning their fiduciary duties to clients.

2. The Hybrid Model

For financial professionals who desire to offer investment advisory services, many have opted to operate a so-called hybrid practice. Under this scenario, the financial professional conducts a brokerage business as an associate of a broker-dealer, while also conducting an investment advisory business through an investment adviser that he or she owns and controls. The investment adviser is not affiliated with, or overseen by, the broker-dealer.

Under a hybrid model, the financial professional maintains independence with respect to the management of his/her investment advisory business while, at the same time, retaining access to a suite of products and services that are made available by the broker-dealer. With this independence comes the responsibility of managing the investment adviser in a compliant manner while also growing the business and tending to the needs of clients. This can present quite a challenge, especially in the case of financial professionals who have previously relied entirely on employers to provide compliance and back office support. To meet this challenge, some financial professionals have hired experienced compliance professionals to take on the CCO role. For those financial professionals who may not want to hire a full-time compliance officer, a viable alternative could be the use of an independent consulting firm that makes available a seasoned compliance professional that can step into that CCO role. In any event, those individuals who choose to operate a hybrid practice will need to be aware of all the key Advisers Act requirements noted in this article. In addition, the broker-dealers that are associated with registered representatives who operate unaffiliated investment advisers under this model must be aware of, and manage, the risks that they have assumed, since these broker-dealers exercise no supervisory control over the activities of the unaffiliated investment advisers.

VI. Conclusion

Given the separate regulatory regimes, the different standards of conduct and the voluminous regulatory requirements, the operation of a dually-registered firm can be a daunting task. A culture of compliance and a desire to implement best practices can go a long way toward meeting the challenges that lie ahead. Effectively managing conflicts of interest, providing meaningful and understandable disclosures and making suitable recommendations of products, strategies and platforms are just a few of the ways that dual registrants can successfully meet these challenges.

ENDNOTES

* Robert Tuch has served as in-house counsel for Nationwide Financial Services, Inc., an affiliate of Nationwide Insurance Company, and BISYS Fund Services, a mutual fund administrator and product distributor. At Nationwide, he managed a practice group that supported Nationwide-affiliated broker-dealers and provided legal support for Nationwide insurance agents. At BISYS, he provided legal support for BISYS mutual fund clients, including the preparation and review of mutual fund registration statements, the review of advertising and sales literature and the preparation of board meeting agendas, resolutions and minutes. Prior to serving in these in-house counsel roles, Bob held the position of Attorney Adviser in the Investment Management Division of the SEC.

1. SEC, Examination Priorities for 2013 (February 21, 2013); SEC, Examination Priorities for 2014 (January 9, 2014); SEC, Examination Priorities for 2015 (January 13, 2015).
2. Id.
3. Section 202(a)(11). See also Applicability of the Investment Advisers Act of 1940 to Financial Planners, Pension Consultants, and Other Persons Who Provide Others with Investment Advice as a Component of Other Financial Services, Investment Advisers Act Release No. 1092 (October 8, 1987).
4. See Investment Adviser Association, Letter to SEC commenting on Study Regarding Obligations of Brokers, Dealers, and Investment Advisers ("IAA Letter") (August 30, 2010).
5. See Exchange Act Release No. 27018 (July 18, 1989).
6. See, e.g., IAA Letter, supra, note 4.
7. See Michael B. Koffler, The Brave New World of Fiduciary Duty for Broker-Dealers and Investment Advisers, Envestnet White Paper (February 2010).
8. Report of the Committee on Compensation Practices, [1995 Decisions Binder] Fed. Sec. L. Rep. (CCH) Paragraph 85,614 (April 10, 1995).
9. Financial Planning Association v. Securities and Exchange Commission, 482 F.3[rd] 481 (D.C. Cir. March 30, 2007).
10. See Susan Konig, Managers Learn to Live Without the "Merrill Lynch Rule", Wealth Management.com (November 8, 2007).
11. See Chistopher Carosa, Will Broker Evolution Obviate the Fiduciary Standard Debate? Fiduciary News.com (April 18, 2012).
12. Angela A. Hung, et al., RAND Institute for Civil Justice, Investor and Industry Perspectives on Investment Advisers and Broker-Dealers (2008).
13. Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No.111-203, Section 913, 124 Stat. 1376, 1871 (2010).
14. SEC Staff, Study on Investment Advisers and Broker-Dealers as Required by Section 913 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (January 2011).
15. See, e.g., Michael B. Koffler, The Brave New World of Fiduciary Duty for Broker-Dealers and Investment Advisers, Envestnet White Paper, supra, note 7.
16. See SEC, Examination Priorities for 2015, supra, note 1.
17. See SEC, Examination Priorities for 2013, supra, note 1.
18. Id.
19. FINRA, Letter to Firms Announcing Conflicts Review (July 2012).
20. FINRA, Report on Conflicts of Interest (October 2013).

[21] Rule 204-3(b)(3).

[22] See LPL Financial LLC, Letter to FINRA commenting on the Disclosures of Services, Conflicts and Duties Concept Proposal issued by FINRA (December 27, 2010).

[23] SEC, Letter to National Association of Personal Financial Advisers (September 20, 1989).

[24] See PricewaterhouseCoopers LLP, Broker-Dealer and Investment Adviser Compliance Programs: More Similar Than Different (2012), available at www.pwcregulatory.com.

[25] Id.

[26] Wink, Paulovic and Shaw, Dually Registered Brokers and Advisers, Securities & Commodities Regulation (September 4, 2013).