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## Brokers Face New Rules On Client Care

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Brokers and investment advisers have long operated under different sets of rules and regulations. Now, as the two groups move ever closer to each other in terms of the services they offer, they are coming closer to being judged by the same standards.

A Securities and Exchange Commission rule set to take effect Jan. 31 -- coupled with heightened public scrutiny of Wall Street and growing competition for investors' assets -- is prompting the brokerage industry to grapple with a legal standard of customer care that once applied mainly to investment advisers: fiduciary duty.

In general, a broker -- or "financial adviser," as many prefer to be called today -- registered with the National Association of Securities Dealers must recommend investments such as mutual funds that are suitable, though not necessarily the best, for a client based on the client's financial profile.

By contrast, an investment adviser registered with the SEC always owes clients a variety of fiduciary responsibilities, including a duty to put customers' interests first and disclose all conflicts of interest.


The debate over whether both groups should come under the same set of regulations has raged for years, primarily pitting investment advisers and independent financial planners against brokers employed by securities firms.

Under the new SEC rule, brokers who offer financial-planning services must register with the agency and will fall under the same fiduciary and disclosure guidelines as investment advisers have been subject to since the Investment Advisers Act of 1940. The rule exempts only brokers who provide advice as part of their regular brokerage duties, such as executing stock or bond transactions for clients, even though they may charge an asset-based fee for their services just like investment advisers.

The registration requirement, say securities lawyers, will enable investors to sue broker-advisers for breach of fiduciary duty under federal law, in addition to bringing claims against brokers through the private arbitration process, currently the only avenue to resolve disputes. Breach of fiduciary duty consistently represents the leading cause for arbitration complaints against brokers, according to the NASD, the self-regulatory body of the securities industry.

But complying with the new rule may prove difficult for many brokers. All of the major brokerage

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houses, like **Merrill Lynch & Co.** and **Citigroup Inc.**'s Smith Barney unit, as well as many smaller firms, are already registered as both broker-dealers and investment advisers so that their brokers can advise clients on how to reach various financial goals -- like retirement -- beyond just investing.

Determining which of the two standards will apply will now depend on the individual relationship the broker-advisers have with each of their clients. For instance, some securities-firm executives say, a customer may not want a financial plan from his or her broker-adviser but want only to buy -- through the assistance of the adviser -- a bond or a stock of a company for which the brokerage firm has underwritten securities. Commissions on those securities can be higher than on those not from the firm's inventory. In such cases, the executives argue, it won't be fair to hold the broker-adviser to the fiduciary standards under the Advisers Act because the customer wants to utilize only the brokerage services the adviser can offer.

Independent financial planners and consumer advocacy groups remain adamant that broker-advisers should fulfill the same fiduciary obligations with no exceptions. The Financial Planning Association, a trade group, has sued the SEC, seeking to vacate the new rule.

Regulators also have acknowledged the confusion among investors over the roles and responsibilities of broker-advisers and investment advisers. They have promised a broader study on the issue.

Brokerage firms have countered that they are just as accountable because of various regulations such as suitability and continuing-education requirements.

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