

Uniform Fiduciary Standards On The Horizon For Brokers And RIAs

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Brokers and registered investment advisors (RIAs) have long been held to differing standards. Generally speaking and barring special circumstances (*e.g.*, discretionary authority for an account), brokers are not held to a fiduciary duty associated in connection with a customer's account. In contrast, RIAs generally accept the fiduciary duty with regard to many elements of the account. Nevertheless, lawyers on both sides have fought for decades over where the exact contours should be drawn. The issue is even more cloudy when you consider potential distinctions between state law. But, as more and more brokers jump to the RIA business model, it appears the duties imposed on these two groups are about to be unified. At the quarterly Investor Advisory Committee at SEC headquarters on April 9, SEC Chairwoman Mary Jo White explained the SEC is actively "discussing advancing rulemakings" this year to impose a uniform fiduciary duty on broker-dealers and investment advisors under Section 913. On March 17, White stated the agency should "act" on a uniform fiduciary standard for brokers and investment advisors. According to White, the uniform fiduciary standard should be "codified principles-based and rooted in the current fiduciary standard for investment advisors." While she acknowledged that a fiduciary rulemaking would take time and be challenging, she said her "next steps" would be to have "in-depth" discussions with the SEC commissioners. Given White's remarks on April 9, it appears the SEC is intent on moving forward with the rule making on fiduciary standards. The ultimate impact and contours of any uniform fiduciary standard remains to be seen. Many in the plaintiff's bar have long argued there is little practical distinction in the applicable standards for brokers and RIAs. If accurate, perhaps the net effect of any risk exposure for a broker may be minimal. But, this change may also impact the brokerage industries ability to use the specter of fiduciary liability to try to stem the tide of brokers moving to an RIA platform. Regardless, the SEC appears to be leveling the playing field between the two groups.

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