

Small SEC Steps Toward a Uniform Fiduciary Standard?

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Securities and Exchange Commission Chair Mary Jo White has directed the Commission's staff to prepare a document that outlines all alternative approaches the SEC could take to proposing fiduciary rules applicable to broker-dealers that provide retail investment advice. These range from a full-blown uniform fiduciary standard applicable to broker-dealers and investment advisers alike, to measures that may be, in Chair White's words, "more targeted and achievable in the shorter term." This call to action is notable for what it may signify. For one thing, it reaffirms that Chair White places a high priority on at least making progress on the issue of "harmonizing" the different standards of conduct applicable to broker-dealers and investment advisers. However, it is also a reminder that, despite Chair White's enthusiasm, the SEC staff has yet to present to the Commission any proposals related to harmonization. Indeed, according to reported remarks of Commissioner Daniel Gallagher, **the commissioners have yet to formally discuss whether the SEC should proceed with any rulemaking** in this area—despite the SEC's March 2013 request for cost-benefit data regarding the different standards. Chair White's directive seems to confirm other indications that no consensus has developed among the Commission's staff or among the commissioners themselves. Has the available cost-benefit data so far proved inconclusive, thus precluding any obvious solution? Is a uniform fiduciary standard now unlikely? Or, will "targeted and achievable" measures simply be steps down a longer road toward a uniform standard? Clear answers to these questions have not yet emerged. But Chair White's request for alternatives seems to increase the likelihood that a comprehensive resolution of the issue may be remote, even if the Commission does take some action in the not too distant future.

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