

Regulators Compose New Music for Broker-Dealers and Investment Advisers

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Federal regulators finally seem to be sharpening their pencils to achieve greater harmony between broker-dealer (BD) regulation and investment adviser (IA) regulation. In March, for example, SEC Chair Mary Jo White testified to Congress that the agency's staff is developing rule recommendations to "harmonize" the standards of conduct applicable to BDs and IAs when providing personalized retail investment advice. Specifically, she believes such standards should be "codified, principles-based, and rooted in the fiduciary duty applicable to [IAs]." In a parallel initiative, the Department of Labor (DOL) in April issued a reworked version of its 2010 proposal to redefine "fiduciary" under ERISA and the Internal Revenue Code and in other ways to address conflicts of interest in the provision of retirement investment advice. For more about the DOL proposal, see "Department of Labor Proposal Would Fundamentally Alter Fiduciary Relationship" on page 14. Chair White and the DOL say the two agencies have been coordinating closely to minimize the possibility of conflicting or duplicative requirements. Consistent with the apparent thrust of the SEC's initiative, the DOL's proposal would impose on many BDs who provide advice in the retirement plan context duties that are more akin to those that already apply to IAs. **In some respects, however, "harmonization" also is likely to subject IAs to requirements that are more like those now applicable to BDs.** For example, IAs currently are subject to much less frequent regulatory examinations than are BDs, and there is wide agreement that this disparity should be reduced—partly to promote uniform compliance with fiduciary duty requirements. Because SEC budgetary constraints have prevented the SEC from examining IAs frequently enough, Chair White's March testimony also advised Congress that the SEC staff's work on fiduciary duty harmonization would address this issue. Specifically, the staff will make recommendations for the SEC to consider a program of IA compliance reviews by non-governmental "third parties" to supplement the IA examinations that the SEC staff itself conducts.

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