Regulating Financial Planners: Assessing the Current System and Some Alternatives

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Investment Adviser Regulation

- No specific regulation of “financial planners” *per se*
- Primarily regulated under laws and regulations governing investment advisers
- SEC and states share oversight responsibilities
- SEC has limited resource capacity for oversight

Broker-Dealer and Insurance Regulation

- Financial planners that provide brokerage services are subject to broker-dealer regulation by FINRA and states.

- Financial planners that sell insurance products are subject to state insurance regulation.

- Sale of variable life insurance or variable annuities subject to both insurance and to broker-dealer regulation

Marketing and Disclosure Rules

- SEC and FINRA have rules on advertising and other communications
- SEC and states have requirements for what must be disclosed to clients

Comprehensiveness of Regulation

- Existing regulation covers nearly all financial planners and their activities
- However, some have argued for a single law to govern the broad, integrated array of financial advice
- Concerns remain about enforcement of existing regulation

Consumer Confusion: Standard of Care

- Financial planners must act in client's best interest ("fiduciary") when providing investment advice, but not when selling insurance or recommending specific securities

- Evidence that consumers are confused about these varying "standards of care"

- SEC has taken or recommended actions to address this confusion

Consumer Confusion: Titles and Designations

- Financial planners use dozens of different titles and designations
- Some require extensive training or other requirements; others require very little
- Evidence that consumers have difficulty distinguishing among these designations
- Regulators have taken some actions to address this

Alternative Approaches: Board to Oversee Financial Planners

- Financial Planning Coalition has proposed Congress establish professional standards-setting oversight board for financial planners

- Potential advantage: Would regulate across the full spectrum of planners’ activities and set high, common standards

- Potential disadvantage: Would largely duplicate existing regulation and oversight

Alternative Approaches:
SRO Oversight of Investment Advisers

- FINRA or another self-regulatory organization could supplement SEC oversight of investment advisers
- Potential advantage: Would allow more oversight and examination, given SEC's limited resources
- Potential disadvantage: Some claim SROs lack the objectivity and consumer focus of a government agency

Alternative Approaches: Extending Coverage of the Fiduciary Standard

- SEC has recommended extending fiduciary standard ("client's best interests") to all brokers, dealers, and investment advisers

- Potential advantage: Improved consumer protection

- Potential disadvantage: Some argue standard is vague and would increase compliance costs

Alternative Approaches: Clarifying Credentials and Standards

- One nonprofit has proposed voluntary credentialing standards for financial professionals
- Potential advantage: Greater oversight of credentials and standards that could provide “seal of approval” and raise quality
- Potential disadvantage: The necessity and value-added of such an effort is unclear

Conclusions

- An additional layer of regulation specific to financial planners does not appear to be warranted at this time.
- Yet concerns remain about consumer confusion regarding standards of care and titles & designations
- SEC, FINRA, and states have taken actions to address these issues, but their effectiveness remains to be seen.