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Disclosure rules fail to clarify fiduciary role, survey says

Investors found unclear on difference between brokers and advisers

By Brooke Southall

SAN FRANCISCO — J. Thomas Bradley Jr. is back on the attack, wielding a new study that shows that enhanced disclosure rules have done little to improve consumers' understanding of the difference between the fiduciary obligations of stockbrokers and financial planners.

The president of TD AMERITRADE Institutional of Jersey City, N.J., is touting his company's latest survey showing that 54% of consumers still think that both stockbrokers and investment advisers have a fiduciary responsibility to act in investors' best interests in all aspects of the financial relationship.

Based on a comparison of the latest survey of 1,000 consumers with a similar one completed by the former TD Waterhouse Institutional Services of New York in 2004, "investors are as confused today as they ever were," Mr. Bradley said. In the earlier survey, 58% of respondents were unclear about the fiduciary responsibilities of stockbrokers and advisers.

TD AMERITRADE is developing a "turnkey kit" to give to advisers to help them become more effective in differentiating their offering from commission brokers, according to Mr. Bradley. It includes templates for presentations and seminars, and tips for handling the media.



J. Thomas Bradley Jr.: "We're the only one to stand up for the adviser on this."

Certainly, Mr. Bradley gets no argument about the new disclosure rules' effectiveness from Daniel Moisand, president of the Financial Planning Association in Denver. He also is a Melbourne, Fla.-based principal of Spraker Fitzgerald Tamayo & Moisand LLC, which also has headquarters in Maitland, Fla.

"[The rules aren't] doing the job at all," Mr. Moisand said.

The disclosure rules, which explain that consumers are dealing with brokers and not financial advisers, became mandatory by a Securities and Exchange Commission decree Jan. 31, and they apply only to fee-based accounts.

The survey was conducted online between April 28 and May 1 by Penn Schoen and Berland Associates Inc., a research and polling consulting firm in Washington.

Perfectly unclear

The SEC allows brokerage firms to use opaque language, Mr. Moisand said.

"[Consumers] don't understand what [the disclosure] means, because it doesn't mean anything," he said. "They're not telling the consumer what the conflicts are."

Indeed, at the end of the website disclosure used by Charles Schwab & Co. Inc. of San Francisco for its private-client offering, it says, "Please call us at 888-878-3892 if you have questions about the differences between a brokerage service and an advisory service."

Getting to that disclosure required navigating the website and then reading print in a smaller font than was used in other sections of the site.

Schwab believes it is taking a course consistent with the interests of investors. "We're in this together," said Alison Wertheim, a company spokeswoman.

"Our entire industry, including regulators, has agreed that a range of ad-

vice solutions is the best way to serve the varied needs of investors," she said. "The goal is to highlight the distinctions and communicate clearly."

Merrill Lynch & Co. Inc. of New York puts its disclosure in bold print on its website and emphasizes its toll-free number for fleshing out details. It requires that the consumer locate the information on its website through a series of steps.

Fidelity offers a more abbreviated warning on its public website, though it offers a more "robust" one after clients have entered their passwords, according to Stephen Austin, a company spokesman. It isn't technically a Fidelity disclosure, because it pertains to the retirement-income planning tool offered by Boston-based Strategic Advisers Inc., a wholly owned subsidiary of the company, he added.

Meanwhile, the SEC declined to comment on matters pertaining to the broker-dealer exemption to the Invest-

ment Adviser Act of 1940 because it is being sued by the FPA over the so-called Merrill Lynch rule, said SEC spokesman John Heine.

But he pointed to an SEC statement published March 3 advising the public that chairman Christopher Cox commenced a study "to compare the levels of protection afforded retail customers of financial services providers under the Securities Exchange Act and the Investment Advisers Act." Meanwhile, none of the bigger asset custodians are following TD AMERITRADE lead.

"We're going it alone," Mr. Bradley said. "We're the only one to stand up for the adviser on this," he said. "It's clear the competition doesn't have an interest in this."

Some advisers agree.

"I think TD AMERITRADE is smart to draw attention to themselves by doing this," said Stephen D. Johnson with Johnson & Marrotta Assets Management Inc. of Palo Alto, Calif., which

manages \$140 million. "It will certainly cause advisers to look at them anew as a custodian."

Praise from the FPA

The FPA also is praising Mr. Bradley. "I think it's absolutely fantastic," Mr. Moisand said. "I know his organization has received a lot of grief from his associates in the brokerage world."

Meanwhile, TD is getting a hand from the CFA Institute in Charlottesville, Va., and the Coalition for Investor Education, which includes the FPA as well as the Consumer Federation of America and the Investment Adviser Association, both of Washington.

The coalition put out a joint press release last Tuesday announcing a new brochure titled "Cutting through the Confusion: Explaining the Differences Between Brokers, Financial Planners and Investment Advisers."

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