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Piowar Doubts Need for Fiduciary Standard.

WASHINGTON — Securities and Exchange Commission member Michael Piowar said Tuesday that it isn't clear if implementing a uniform fiduciary standard of conduct for broker-dealers and investment advisers providing personalized investment advice about securities would benefit retail investors.

Piowar explained his thinking in a speech at the National Association of Plan Advisors D.C. Fly-In Forum, though he made clear that he has not yet decided whether or what new obligations should be imposed on broker-dealers. The Dodd-Frank Act mandated an SEC study of the effectiveness of existing legal or regulatory standards of care for providing personalized investment advice and recommendations about securities to retail customers. The act said the study should examine whether there are legal or regulatory gaps or other shortcomings in the protection of retail customers.

The commission is now mulling whether to adopt a rule meant to clarify what Piowar called the "blurry line" between IAs and broker-dealers, both of whom give investors advice on their securities purchases. Investment advisers are fiduciaries who must put their clients' interests ahead of their own, while broker dealers are subject to fair-dealing and suitability rules that require them to have a reasonable basis to believe a security is suitable for a customer.

Bond Dealers of America senior counsel and managing director for federal regulatory policy Jessica Giroux said BDA has generally been supportive of further regulating brokers under certain situations, but has reservations about any rule that would restrict what kinds of advice a broker could provide.

Piowar said that while it is obvious that retail investors are confused about the difference between IAs and broker-dealers, a fiduciary rule might not help.

"I am not aware of any evidence that retail investors are systemically being harmed or disadvantaged under one regulatory regime as compared to the other," Piowar said. "In fact, the SEC study found that 'investment advisers and broker-dealers are subject to extensive regulation and oversight designed to protect clients and customers, whether retail or other.'"

"Both regulatory regimes require investment advisers and broker-dealers to adhere to high standards of conduct in their interactions with retail investors, which are intended to encourage both broker-dealers and investment advisers to act in the interests of their investors and minimize conflicts of interests when providing personalized investment advice or recommendations," he continued. "Therefore, a uniform fiduciary standard of care may not even result in a client getting different investment advice than they receive today."

Piowar expressed concern about the potential costs of the SEC imposing a uniform fiduciary standard and suggested that the commission should instead consider developing a concise disclosure document that could help alleviate investor confusion about the duties owed to them by their financial professionals. It is not clear when the SEC could take action on a fiduciary standard,

but it is generally believed it would have to be next year. Piwowar said the commission should not act before the Department of Labor revises its definition of fiduciary, a redraft of which the DOL is set to unveil in January.

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