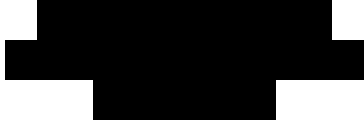


PETER J.CHEPUCAVAGE



The very long historical discussions on this issue have not addressed three basic points concerning the same size fits all nature of the proposed solutions. First is whether retirement accounts should be treated differently than regular brokerage accounts. Second whether all accounts should be treated the same regardless of the size and sophistication of the accounts. Third whether all bd's should be treated the same regardless of size. I note that none of these suggestions are considered in the Alternatives section of the release despite the Commission's continuous concern about small investors, senior citizens and small bd's.

I) Retirement Accounts Are Sacred

Most middle class Americans owning securities own them in their retirement accounts and many have not saved enough for retirement. Retirement accounts are far more important than regular brokerage accounts for most Americans. Therefore a strong argument can be made that they deserve a higher standard of care. The counterargument of confusion does not outweigh this fact especially since many accounts are company or government 401k accounts where assistance is readily available. Therefore the standards for the two accounts can and should be different especially for those owned by less affluent and older citizens. These individuals need personalized service at reduced costs. Neither the DOL or SEC proposal seems to recognize this.



If these less affluent customers wish to buy funds from the bank holding their checking account-and they have the disclosure and perhaps are told specifically that other banks may charge less with better results-the convenience and service to them may well outweigh potential conflicts especially if disclosed. But only if they get personalized service. Those forced to a call center should get fiduciary protection. While the staff has studied this subject I have never seen a list of firms that require small accounts to go online or use their call center. FINRA should easily produce such a list or perhaps a smaller list of those who do not require small accounts to do so. Forcing small accounts to trade online or at a call center is not conducive to informed financial management

I further fear that the amount of paperwork required by this rule will defeat its purpose for the small investor which ought to be its primary goal. In this regard I wonder how many small investors were interviewed in preparing the rule or were invited to a roundtable hearing? The release states that 220 comments were received pursuant to the Chairman 's request without identifying how many were retail investors. The short sale concept release produced 2778 comments and approximately another 500 comments were received in the development of REG SHO many from retail investors. More important perhaps is how many people involved in the promulgation of these rules on either side have recently in the last 5 years opened a retirement or brokerage account as opposed to simply using their employer plan. There is a very practical side to these issues which often is ignored in favor of the legal and political theories. The recent tax reform reformed out the deduction for investment advice when in fact a credit for small investors is needed. The small retail investor cannot possibly absorb the theories contained in the 1000 page release and even if interviewed could hardly give an informed opinion.

I suggest therefore a required fiduciary duty for small investors forced to a call center that is combined with a disclosure that other firms may offer better terms as follows:

Disclosure Obligation. The broker, dealer, or natural person who is an associated person of a broker or dealer, prior to or at the time of such recommendation, reasonably discloses to the retail customer, in writing, the material facts relating to the scope and terms of the relationship with the retail customer, including all material conflicts of interest that are associated with the recommendation, and that the customer may wish to compare the costs and performance of the broker-dealer with the many others offering similar services including personalized service beyond a call center.

An example of where confusion may lie is as follows.

Suppose a broker wishes to recommend a product to a new client but is well aware that client can execute a cheaper trade online, at the call center or at another bd. What is the disclosure obligation to that client. Would it include the fact that the call center is not as thorough an advice medium as a personal sit -down? Must it include the difference in fees between an index fund, mutual fund ,etf and annuity? The release suggests general

disclosure of fees related to transactions but does it include alternative firms providing better pricing and personalized service for the smaller accounts? Firms and customers should have a choice either a call center with fiduciary duty or personalized service with a BIC. Imagine an 80 year old with a small retirement account being explained the differences at a call center? That person needs a fiduciary duty.

III) Costs of Implementation

The release states numerous times that costs are unavailable because data is unavailable. I have never seen this statement before in an SEC release and it will subject a final rule to severe scrutiny on appeal. Costs for the small bd's however can be reduced with a commission approved standard disclosure which would add certainty and ought to be considered especially for the small investor. While the proposal seems to reject standard disclosure it may be worth rethinking in the case of small investors. A standard disclosure document would also be useful for the small bd that cannot afford the legal assistance needed to evaluate this 1,000 page proposal and draft appropriate documents. Surely there is some concern about how a small bd can afford a review of 1000 pages and subsequent development of documentation for a release that continuously states costs are unavailable. The estimates in the release seem to focus on the drafting of documents but not the review of the 1000 pages and final rule with analysis of what is required. The numbers in my experience would barely cover the review of the proposal let alone the final rule and documents for individual firms. I sincerely doubt a law firm would quote these numbers in view of the potential liability for drafting the needed documents. The numbers as follow are in my view severely understated unless they are excluding time needed for review of the proposal and final rule. The statement that smaller firms with fewer products incur lower drafting costs suggests that a review of the entire proposal and rule is not needed which is misleading.

“As an initial matter, we estimate that a large broker-dealer would incur a one-time average internal burden of 50 hours for in-house legal and in-house compliance counsel to update existing policies and procedures to comply with Regulation Best Interest.^[540] We additionally estimate a one-time burden of 5 hours for a general counsel at a large broker-dealer and 5 hours for a Chief Compliance Officer to review and approve the updated policies and procedures, for a total of 60 burden hours.^[541] In addition, we estimate a cost of \$4,720 for outside counsel to review the updated policies and procedures on behalf of a large broker-dealer.^[542] We therefore estimate the aggregate burden for large broker-dealers to be 123,300 burden hours,^[543] and the aggregate cost for large broker-dealers to be \$9.70 million

We believe small broker-dealers would primarily rely on outside counsel to update existing policies and procedures, as small broker-dealers generally have fewer in-house legal and compliance personnel. Moreover, since small broker-dealers would typically have fewer conflicts of interest, we estimate that only 40 hours of outside legal counsel services would be required to update the policies and procedures, for a total one-time cost of \$18,880 ^[545] per small broker-dealer, and an aggregate cost of \$15.1 million for all small broker-dealers.^[546] We additionally believe in-house compliance personnel would require 10 hours to review and approve the updated policies and procedures, for an aggregate burden of 8,020 hours.”

The Commission should therefore reconsider the impact of its proposal on small investors and small bd’s with the assumption that retirement accounts are significantly more important than regular brokerage accounts especially for small and elderly investors. A standard disclosure for small firms would reduce costs for the firms and their customers.