

## **SEC Stalled on Uniform Fiduciary Standard For Broker-Dealers, Advisers, Sources Say**

By Maria Lokshin | September 26, 2012

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Sept. 27 (BNA - Daily Report for Executives) -- The Securities and Exchange Commission is unlikely to issue a public request for information soon on a potential uniform fiduciary standard for broker-dealers and investment advisers, industry participants said Sept. 25-26, blaming the delay in part on a lack of support by the majority of the commissioners.

Earlier this year, SEC Chairman Mary Schapiro said staff was working on a request for data on the costs and benefits of imposing a uniform standard for advisers and broker-dealers and said the request would be out in the near future (09 DER EE-12, 1/17/12). Schapiro's announcement was in line with a 2011 SEC staff report—as mandated by Section 913 of the Dodd-Frank Wall Street Reform and Consumer Reform Act—that recommended crafting rules to establish a uniform fiduciary standard for investment advisers and broker-dealers.

However, the request for information may not be moving forward in the foreseeable future, some in the industry suggest. SEC spokesman John Nester did not immediately respond to BNA's request for comment.

### **'Stalled' for Now**

Ron Rhoades, former chairman of the National Association of Personal Financial Advisors and an assistant professor at Alfred State College, SUNY College of Technology, said the majority of SEC commissioners do not support a draft request for public input that has been circulating internally for some time.

“It looks stalled, at least right now, under the current makeup of the commission,” Rhoades said Sept. 25 at an event at the Cato Institute. “Only two of the five commissioners will agree to issue that release.”

David Tittsworth, executive director of the Investment Adviser Association, told BNA in a Sept. 25 email that the SEC currently is unlikely to advance the request for information.

“At this point, it seems unlikely that the Commission will move forward, given the inability to muster three votes on a number of different issues, as well as the uncertainty created by the upcoming elections,” he said.

Kevin Carroll, associate general counsel and managing director for the Securities Industry and Financial Markets Association, told BNA Sept. 26 that it is “unclear” what is behind the delay.

“In our conversations we've had with the [SEC] staff, we understand that it's their intention to put out the release, but they haven't been able to give us any insights on the timing of that,” he added.

### **Potential Developments**

Rhoades, however, suggested that there may be developments in the near future that could “unstall” the issuance of the request for data. In particular, he pointed to a rule slated to be released by the Department of Labor that would redefine the definition of “fiduciary” under the 1974 Employee Retirement Income Security Act. That rule, coupled with DOL's economic analysis of the fiduciary standard, could “draw the SEC into the rulemaking.

Rhoades told BNA after the Cato Institute event that the DOL rule could come as early as the end of 2012. In addition, he said, the November elections could have a bearing on the “composition of the commission,” potentially garnering support for moving forward with issuing the request.