BROKER'S WORLD CANADA: Firms, Advisers Seek to Turn Away Fiduciary Duty

--Brokerage firms say fiduciary duty would cause legal uncertainties

--Compensation methods could be also be affected and lead to the end of the embedded-commission model

--Adviser group proposes mandatory membership in accredited organization for advisers as alternative to fiduciary duty

By Evelyn Juan

Canada's major brokers are seeking to defeat proposals by regulators to impose a fiduciary duty on financial advisers, fearing the proposed ruling sought by investor advocates would cause legal uncertainties and adversely hit compensation models.

The country's largest retail brokerage houses--including Bank of Nova Scotia's (BNS, BNS.T) Scotia Capital, National Bank of Canada's (NA.T, NTIOF) National Bank Financial, Royal Bank of Canada's (RY, RY.T) RBC Dominion Securities and Bank of Montreal's (BMO, BMO.T) BMO Nesbitt Burns--banded together to submit a letter to the Canada Securities Administrators last week. They argue that imposing a fiduciary duty on all investment advisers and dealers would result in a "multitude of legal uncertainties" because of a lack of clarity in the scope of the proposed ruling.

Fiduciary duty--the legal obligation to put a client's interest first--is currently being examined by CSA, the administrative council for Canada's 13 provincial securities regulators.

Investor-advocacy groups including the Ontario Securities Commission's Investor Advisory Panel have been lobbying for fiduciary duty for advisers to strengthen accountability and shore up investor protection.

However, the brokerage firms fear that the courts could restrictively apply a fiduciary duty and may not limit it to appropriate circumstances and business models.
The firms also argue that imposing a fiduciary duty will affect compensation methods, given that it implies that a fiduciary cannot profit from the relationship with the client except in limited cases.

Unless some exceptions to the rule are clear, "totally and unequivocally" prohibiting all forms of conflict of interest, particularly in selling proprietary products, could affect capital-raising in the industry, the companies said in a letter to regulators.

The Financial Advisors Association of Canada, the largest grouping of investment advisers known as Advocis, fears that introducing a statutory fiduciary duty could abolish the embedded-fee model due to its inherent conflict of interest in paying advisers commissions for executing trades.

"This would force all client accounts into the fee-based realm," either through a fee-for-service arrangement, or based on an hourly rate or as a percentage of assets, Advocis officials said in a letter to regulators.

The financial-adviser group also expressed concern that a fiduciary ruling will encourage lawsuits and nuisance claims from clients, increasing legal uncertainty and advisers' compliance obligations.

"A statutory fiduciary duty is likely to result in advisers exiting the industry," according to Advocis.

As an alternative, Advocis called for mandatory membership in an accredited professional organization for those who hold themselves out as financial advisers to raise the bar of professional standards.

Advocis's proposal calls for the provincial securities regulators to designate accredited associations that can look into the complaints against members and revoke membership.

This will resolve the issue of dealing with rogue advisers who are licensed as both insurance brokers and mutual-fund brokers. The Mutual Fund Dealers Association, the self-regulator for fund dealers, only has oversight of the mutual-fund practices of advisers. Roughly 60% to 70% of Advocis's more than 11,000 members are licensed as both insurance brokers and mutual-fund dealers.

"If someone is dual licensed and removed from the association because of a complaint from the insurance channel, they are also removed from the funds channel," according to Greg Pollock, president and chief executive of Advocis. "No sector hopping here from insurance to funds to securities."
(Evelyn Juan writes about financial advisers and their jobs, with a particular focus on news, trends, business strategies, organizational changes, and regulatory issues relevant to the retail brokerage sector in Canada. She also writes about wealth management practice and personal finance issues. She can be reached at evelyn.juan@dowjones.com.)

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