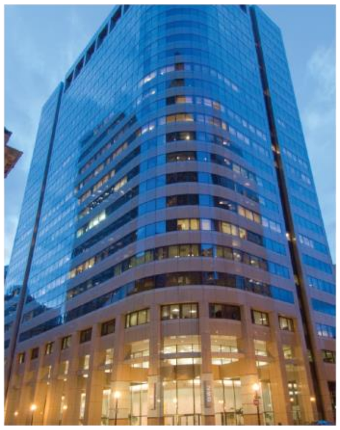
TFC FINANCIAL
The Financial Counselors

MARKET UPDATE
MARCH 26, 2015

OUR VIEW



Almost Across the Finish Line (Whose Interest Is Paramount?)

"Wall Street" is a mosaic of paving stones etched with the labels of thousands of financial products for which caveat emptor should always be the buyer's mantra. Many of these offerings are burdened with vaguely disclosed fee structures, collectible whether the buyer comes out ahead or not. The sales forces marshalled to flog these wares to the public are usually compensated by brokerage commissions ranging from 1% up to 7%.

The measure by which broker-dealers determine if they should offer such products to a given *customer* is whether the merchandise is SUITABLE to the buyer's personal financial circumstances and ability to assume risk. This is, of course, a standard interpreted and administered through the eyes of the beholder. Usually (except in the case of "hot IPOs") the *customer* is <u>sold</u> the product. It is not generally a demand-driven transaction. For the most part, an unaware buyer has been a compliant party in this equation, but recently the playing field has begun to tilt back toward a more balanced relationship between seller and buyer.

Worthy of note also is that the purchasers of Wall Street-originated financial products are referred to by brokers as *customers*, rather than *clients*. Until lately, the distinction between customer and client did not concern financial product vendors. Today, since *client* implies a more professional relationship between buyer and seller, the term customer is used less often.

A fiduciary always assures that the client's interests are paramount.

Enter Dodd-Frank, the SEC, and Now the US Department of Labor

In the aftermath of the financial market meltdown of 2008-2009, the difference between the sell-side purveyors of financial products and investment *advisors* who are compensated not for transactions executed, but rather by a fee for services rendered to individuals, has come into more vivid relief. Although some brokers have changed the designation on their business cards to "consultant," or even filed with a somewhat revived Securities and Exchange Commission (SEC) as Registered Investment Advisors (RIA), they remain creatures of their residual sell-side culture, still partially hostage to the quota-driven traditions of the past.

Enacted in July 2010, the Dodd-Frank Wall Street Reform and Consumer Protection Act legislated that a study be done to determine whether the broker-dealer suitability standard was sufficient protection for investors. The bill further indicated that after such a study the assumption would be that imposing *fiduciary* responsibility upon financial product vendors would be the expectation. The investment banking and broker-dealer lobby behind-the-curtain battle to derail this Congressional initiative has been epic. But to give credit where credit is due, the Obama Administration, in support of the SEC's preliminary leanings in this direction, has moved the discussion toward a conclusion forcing sell-side purveyors to assume a more fiduciary-like role.

TFC FINANCIAL
The Financial Counselors

Suitability only requires the transaction be appropriate at the time . . .

Within the past few months, the US Department of Labor has decreed by Rule that all institutions and individuals associated with retirement plan investments (be they pension plans, 401(k) accounts, IRAs, etc.) will be regarded as *fiduciaries*. In other words, like professionals of most stripes, all such retirement plan services entities must place their beneficiaries' interests first. The *suitability* standard of conduct relied upon by the broker-dealer community, as it relates to the administration of retirement fund assets, no longer suffices. Many readers of these letters, perhaps to their distraction, will recognize that this, on our part, often-stated and hoped-for outcome finally means the sell-side must align its interests with those of the buying public.

Beyond this, if the new fiduciary responsibility rule applies to retirement plans, although such a shift will be painfully slow in application to the broader markets, the same standard of conduct should apply to all seller-buyer relationships in the entire US financial services marketplace. But, turning financial product sales forces into fiduciaries will be a generational challenge. This shift in responsibility and enforcement thereof, will, of course, be another lawyer's annuity, but perhaps one worthwhile in this instance.

As always, we welcome your comments and questions.

Sincerely,

James L. Joslin, CFP®
Chairman, CEO and CCO

Renee Kwok, CFP®
President

TFC Financial Management, Inc.
260 Franklin Street, Suite 1888, Boston, MA 02110
p 617.210.6700 | f 617.210.6750 | tfcfinancial.com