



BOULEVARD®

May 9, 2016

Policy letter to the CFP® Board of Standards, Inc. and the Financial Planning Coalition

electronically via email to: mmohrman-gillis@CFPBoard.org

Dear CFP Board of Standards, Inc. and Financial Planning Coalition,

Boulevard Wealth Management, Inc. began as Alpha Investment Advisors, Inc., (Minneapolis, MN) and Boulevard Private Wealth Management, LLC (Phoenix, AZ), in June and November, 2008, respectively – months before the Financial Planning Coalition was established, but with an aligned mission (reference enclosed BOULEVARD Client Promise).

Regarding the recently implemented Department of Labor (DOL) fiduciary rule (“the rule”), we recognize that versions of the rule have yet to become law for universal investment advice for financial services businesses operating outside of the 1940 Investment Advisors Act, but have been considered by both the SEC and Congress (both houses) since the “Dodd-Frank” Financial Reform Act (2010). Further, we intend to contribute thought leadership to the merits of any universal rule and the formation of any universal rule that may implemented in the future. For today, we invite you to consider two points:

- **The difference between a fiduciary duty and a fiduciary standard.**
A fiduciary duty is that of a trustee with direct liability for financial decisions. A fiduciary standard requires a financial professional to act as a trustee would, when conducting business with the public. For the latter, liability is arguably more indirect, relating to bad advice. We believe this distinction is critical, though not yet been clarified by the DOL, the Financial Planning Coalition, regulators, lobbyists, legislators, or the media.
- **All broker-dealers and most insurance agencies presently operate under a suitability standard.** The spirit of the post-Dodd-Frank discussion about a universal fiduciary standard, focuses on regulating advice. Given that registered investment advisors already operate under the 1940 Investment Advisors Act (i.e., with a fiduciary standard) we believe the pre-requisite points for consideration are:
 - Broker-dealers and insurance agencies give investment advice incidental to their professions as processors. As with the rest of the “solely incidental*” professions (Cornell University Law School, 2016), simply enforcing current law, and adding language to apply a fiduciary standard to 1) the “crossover” from broker-dealer to investment advisor, and 2) to include insurance agencies, can advance Congressional adoption process quickly.

**Lawyers, accountants, engineers, or teachers whose performance of such services were solely incidental to the practice of his/her profession; certain banks and bank holding companies; publishers of a bona fide newspaper, magazine, or business/financial publication of general and regular circulation; and any broker or dealer whose performance of such services is solely incidental to the conduct of his business as a broker or dealer and who receives no special compensation therefor (Cornell, 2016).*

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- o Without additional adaptations to the 1940 Investment Advisors Act (or a new universal rule similar to those considered by Congress/SEC since 2010, or the DOL fiduciary rule for qualified retirement accounts), broker-dealers and insurance agencies need to become institutional-only businesses – a viable path driven by commissions that does not, by nature or by practice, serve the public. They may conceivably serve financial planning firms who, in turn, serve the public, but would then be better operated on a business-to-business level within the financial services industry.

We thank you for considering these points, and welcome the opportunity to participate in any ongoing discussions regarding these important matters. Please contact our Chief Compliance Officer, Aaron Kolkman, CFP®, AAMS® at your convenience. Aaron can be reached at: (763) 244-1163 or aaron@blydwealth.com.

Sincerely,

Troy Noor, CFP®, CFA
Executive Director

Derek Villars, CLU®, CASL®, ChFC®
Risk Management Director

Aaron Kolkman, CFP®, AAMS®
Operations Director

Joseph Rapacki, MST, CPA/PFS
Tax Planning Consultant

Jeremy Green, CFP®, CTFA, CLU®, CEBS, MSFS, AEP, EA
Advanced Planning Consultant

References

Cornell University Law School, 2016. *15 US Code 80b-2 Definitions*. Retrieved from:
<https://www.law.cornell.edu/uscode/text/15/80b-2>

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