

SEC CLARIFIES: Defining The Term ‘Advisor’ Shouldn’t Be This Complicated

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The Securities and Exchange Commission (SEC) has clarified when broker-dealers and their registered representatives would be permitted to use the terms ‘advisor’ or ‘adviser’ as part of their name or title once Regulation Best Interest goes into effect on June 30.

In the rulemaking itself, the SEC did not specifically prohibit the use of ‘advisor’ or ‘adviser’ by broker-dealers and their reps.

When providing investment advice or making recommendations to individual retail customers, a broker-dealer or its reps will generally be presumed to be in violation of Reg BI’s disclosure obligation if they use the terms, according to the FAQs. That’s unless they are also a state or federal registered investment adviser.

The agency said that being a broker-dealer affiliated with an RIA would not be sufficient to allow for the use of the terms ‘advisor’ or ‘adviser.’

However, these restrictions only apply to broker-dealers and their registered representatives. If someone is only licensed as an insurance producer, the rules regarding the use of ‘advisor’ or ‘adviser’ do not apply, according to the FAQs.

The FAQs also indicate that a broker-dealer can use these terms when acting as a municipal advisor, a commodity trading advisor, an advisor to a special entity, or ‘in a role specifically defined by federal statute.’

‘A broker-dealer that provides advice in other capacities outside the context of investment advice to a retail customer may in its discretion use the terms “adviser” and “advisor,”’ the FAQs said.

The debate about the extent to which broker-dealers should be able to hold themselves out as advisors or advisers has spanned decades. Barbara Roper, director of investor protection at the Consumer Federation of America, has said the transition began in the 1980s, when broker-dealers began to shift their focus to counteract the cheaper transaction costs offered by discount brokers.

‘Brokers started competing by marketing themselves as advisors, and that’s when they picked up titles like financial consultant and financial advisor,’ she said. ‘There’s some indication that the nature of the services that they provided evolved, but they continued to be regulated exclusively as sales people.’

Roper said advocates have been ‘begging’ the SEC since Arthur Levitt was chairman, from 1993 to 2001, to do one of two things: acknowledge that brokers have pivoted so that advice is the primary function they offer and hence regulate them as advisors, or acknowledge they are first and foremost sales people and therefore stop them from marketing themselves as advisors.