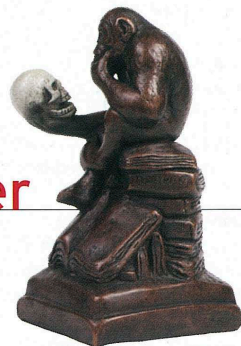


> BY NANCY LININGER

## The New Advisory-World Order

Don't fret about the Merrill-Lynch Rule; regulations soon will be "one size fits all."



*To B-D or not to B-D, that is the question:  
Whether 'tis nobler in the mind to suffer  
The slings and arrows of fee-only advisors,  
Or to take arms against our financial services brethren?*

Words similar to these reflected Hamlet's state of desperation as he contemplated suicide. In our industry, commissioned reps have lost clients over the years to discount brokers, day traders and now, the divine fee-only advisor.

In the early 1990s we saw commissioned reps turn to fee-based businesses in order to provide more stable income streams. But many of the early pioneers only tested the waters before becoming fee-only. To the good fortune of the investment advisors, the press bought into this concept from the start.

*The Report of the Committee on Compensation Practices* ("Tully Report") was released in 1995. Fee-based programs were labeled as a "best practice" because they more closely aligned the interests of the financial advisor and the customer, and reduced the likelihood of abusive sales practices such as churning. Fee-only advisors across the nation embraced the fiduciary mantra. They admitted to their clients that they were once conflicted, but then saw the light.

The Securities Exchange Commission (SEC) first proposed the rule "Certain Broker-Dealers Deemed Not To Be Investment Advisors" (more commonly known as the "Merrill Lynch Rule" or "B-D Rule") in November 1999. Registered reps, caving into popular opinion, began offering full-service brokerage for an asset-based fee. Battle lines were drawn, pitting brokers against advisors. At the very same time (1999), the Gramm-Leach-Bliley Act was passed, knocking down Depression-era barriers against banks, securities firms and insurance companies selling each other's products and services. Firms started to look more alike, and firms began to affiliate.

The NASD took a position in 2003 that "fee-based compensation programs must be appropriate." The NASD recognized the benefits of fee-based programs, but they are not appropriate for all circumstances. Our endangered stockbroker, perhaps living on the edge of extinction, was now vindicated. Straight commissions can be in the client's best interest!

But the fight continued, as comment letters on the B-D Rule rolled in fast and furious to the SEC. NASD proponents supported the rule stating that investment advisors engage in

activities indistinguishable from the brokerage business, but that investment advisors are not subject to the same detailed prophylactic regulation as brokers. "B-Ds are better!"

The fee-only contingency retorted that investment advisors are fiduciaries, and don't need no stinkin' detailed rules because of the grand regulatory scheme. "RIAs are better!"

The B-D Rule was finally adopted in April 2005. Much to the chagrin of almost everyone, the final rule was not as originally proposed. Brokers could no longer provide discretionary services; not offer financial plans (free or otherwise); and if they dare offer a fee-based account, must provide a warning label that it is not an advisory account and thus they have conflicts of interest to be disclosed. Now there is an incentive to scare you straight back to commission only!

Frankly, I'm not quite sure why the fee-only camp is upset with the ruling. The rule seems to give investment advisors a competitive edge that they can use to their marketing advantage. But upset they are. They feel the B-D Rule did not go far enough.

The reality is that the businesses are blending. There are not many commission-only firms anymore. Even Merrill Lynch is an investment advisor.

Looking into my crystal ball, here is what I see for the year 2016. (This is a ten-year projection because it will be a long time in the making.) We will be under one regulatory regime. No longer will we have the broker-dealer and registered investment advisor industries. There will be one registration for firms, one fee, one filing. One registration for reps, one fee—one grand slam exam. One full disclosure document used by all, to replace the Form ADV. Wealth management, life planning, financial planning, asset management or simple buy-and-sell securities recommendations will be done under one roof. There will be a choice of fee structures, based on client suitability. Some specialist firms will continue to exist—wealth management on one side of the spectrum and traditional brokerages on the other—but all under one regulatory scheme.

Firms embracing fees and commissions, and offering the most services and compensation options, will be reborn. ☉

*Nancy Lininger is founder of The Consortium of Camarillo, Calif., providing compliance and marketing consulting to advisors and broker-dealers. She can be reached at (805) 987-6115, [www.liftburden.com](http://www.liftburden.com) or [nancy@liftburden.com](mailto:nancy@liftburden.com).*