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## Appeals Court Strikes Down SEC's 'Broker-Dealer Rule'

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In an almost stunning turn of events, the D.C. Federal Court of Appeals today struck down the Securities and Exchange Commission's now-infamous 'Merrill Lynch' rule, which exempted certain broker-dealers from the fiduciary requirements of the Advisers Act of 1940. Though the SEC can appeal the decision to the Supreme Court, the announcement nonetheless marks a remarkable victory for the Financial Planning Association, which filed the lawsuit to eliminate the rule in 2004.

The FPA has long claimed that the rule allowed different fiduciary standards for similar advisory services – most notably for advisory, or fee-based, accounts. Dan Moisand, the FPA's chair, said the decision would benefit consumers by removing "a thick fog of confusion shrouding their financial adviser," adding that the ruling "will bring clarity to the financial services marketplace." Opponents of the rule have argued that applying varied levels of fiduciary standards to similar advisory services leaves consumers in the dark about what they can expect from their investment advisors. In fact, a number of surveys have shown that the public has little grasp of the laws and standards that govern investment advice.

In a statement reacting to the decision, SIFMA--the Securities Industry and Financial Markets Association, an industry group in New York that represents virtually all of the largest players in financial services--said that the decision will cause "some regulatory uncertainty"--until the SEC and industry firms go through the process of converting brokerage accounts to advisory accounts. Such a process will invariably involve paperwork for each account as well as a new set of disclosures and agreements.

"That 'regulatory uncertainty' is nothing compared with the uncertainty caused by the broker-dealer rule," said the FPA's Moisand said in response during a conference call with reporters.

The SEC has a few legal options should it decide to challenge the D.C. court's decision. First, the SEC's lawyers could ask the court's entire bench of judges to review the case jointly—a request some say is unlikely to be granted. The SEC may also appeal the decision to the Supreme Court and has 90 days from today to do so.



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