Retirement Income
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Lawmakers Dilute Fiduciary Standard for Discount Brokers

By Editor Test *Wed, Dec 23, 2009*

Under proposed law, registered reps would have no "continuing duty of care or loyalty to the customer" after providing advice.

A one-sentence provision in the huge financial services reform bill passed by the House last week would require brokers to provide advice as fiduciaries but hold them only to suitability standards when they execute that advice by making trades, *Investment News* reported.

The legislation, which the Senate has yet to consider, would require the Securities and Exchange Commission to establish a fiduciary duty for brokers who provide investment advice. But the bill adds language that says registered reps have no "continuing duty of care or loyalty to the customer" after providing the advice.

The provision was apparently for the benefit of discount brokerage firms, such as Charles Schwab & Co. Inc., the report said.

"That could be read to eviscerate fiduciary duty," Marilyn Mohrman-Gillis, managing director of public policy for the Certified Financial Planner Board of Standards Inc., said of the provision.

"It's OK to hat-switch" under the provision, said Neil Simon, vice president of government relations for the Investment Adviser Association. Under the clause, "The duty applies only at the time the advice is given. It does not extend throughout the relationship." Allowing brokers to "switch hats" between the two standards of care would confuse clients, he adds.