
Subscription-based planners sue SEC over Reg BI

By Editorial Staff Thu, Sep 12, 2019

Like eight state attorney generals, the subscription-based XY Planning Network has filed a federal lawsuit against the SEC in New York. XYPN was co-founded by celebrity adviser Michael Kitces and Alan Moore.

XY Planning Network (XYPN) is filing a lawsuit in the Southern District of New York to challenge the Securities and Exchange Commission (SEC) over its new Regulation Best Interest (Reg BI), the co-founders of the subscription-based network of financial planners serving Gen X and Gen Y investors said in a release this week.

“Brokers and dual-registrants should not be able to use titles that connotes they are in the business of providing fiduciary advice unless they do so at all times, and that once a consumer engages a fiduciary advisor that advisor remains a fiduciary for the entirety of the advice relationship and such advisors cannot downgrade their fiduciary duty when implementing brokerage products pursuant to that fiduciary advice,” said Michael Kitces, co-founder and chief strategy officer of XYPN.

In the release, XYPN said “the SEC has exceeded its regulatory authority in the creation of Reg BI by permitting comprehensive financial planning services to be delivered in connection with the sale of brokerage products without requiring the financial planner to register as an investment adviser and/or without fully subjecting such financial planning advice itself to an RIA’s fiduciary duty.

“XYPN alleges that the SEC also exceeded its authority by reinterpreting the Investment Advisers Act of 1940, and the ‘solely incidental’ exemption for broker-dealers therein, to permit dual-registrants under Reg BI to use advisor-like titles and hold out as being in the business of providing financial planning advice while actually selling non-advisory brokerage services and products.”

The SEC’s creation of a “Best Interest” rule for broker-dealers that is not actually a full fiduciary rule... is anti-competitive to Registered Investment Advisers who differentiate in the marketplace by their actual Best Interests commitment to consumers (and are actually held to such a standard), the release said.

“With Reg BI, however, the SEC is permitting brokers and dual-registrants to provide financial planning advice, without being subject to full RIA registration and/or without being subjected to the fiduciary duty that Congress prescribed for such advice,” said XYPN’s co-

founder and CEO Alan Moore, in the release.

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