

# 'Sufficient' regulation of planners isn't always enforced

BY MARILYN BOWDEN

In the aftermath of a series of exposés in the financial world, financial planners – sometimes fingered as the culprits in the massive losses incurred by investors – say that by and large, proper regulations are in place, but they are not always energetically enforced.

Matt McGrath, chief planning officer at Evensky & Katz and president of Financial Planners Association-Florida, said defining “financial planner” is itself confusing.

“The requirements to call yourself a financial planner are relatively thin,” he said. “Financial planner” doesn’t designate any one body of people. There are two different camps. On one side are folks who are part of a broker-dealer or large wire house and are regulated by the Financial Industry Regulatory Authority, or FINRA.

“On the other side are registered investment advisors regulated by the *Securities and Exchange Commission*, or SEC; a subset of those below a certain investment threshold is regulated by the state rather than the SEC.”

Certified financial planners take



Photo by Maxine Usdan

**Who is a financial planner depends on varying definitions, according to Matt McGrath, president of Financial Planners Association-Florida.**

many hours of classes culminating in a two-day test, said Elaine King, vice president of wealth & well-being at Gibraltar Private Bank & Trust and the Florida association’s incoming president.

“There’s an emphasis on putting clients first and on ethical standards,” she said. “We can lose our license or be put on probation if there are complaints that we don’t do that.”

“It’s important for folks to do some homework to see what kind of advisor they are working with,” Mr. McGrath said, “and how they

are compensated.”

The issue of compensation is thorny, said Benjamin Tobias, principal of Tobias Financial Advisors, whose background includes a stint with the industry’s Board of Professional Review, responsible for disciplinary actions against certified financial planning practitioners.

“Most people have no idea what the cost is, and this is a major issue,” he said. “Many use a commission model, so you think they are telling you to buy something as an advisor, but really they’re

telling you as a salesperson.”

For example, Mr. Tobias said, a retired couple recently came to him with a half-million-dollar portfolio. “Everything was in investments that have tremendous commissions,” he said. “Legally, there’s nothing to be done, but it’s morally reprehensible.”

Planners should adhere to a suitability standard as opposed to a fiduciary standard, Mr. Tobias said. “The difference is of putting the client’s interest first, acting as a true advisor – trying to give them what they need as opposed to what you want to sell.

“More and more registered investment advisors are now fee-only; 100% of their income comes from client fees as opposed to commissions for selling products.”

Mr. McGrath said the SEC requires certified advisors to give clients a form providing information about their company and its fee structure. Brokerages can be on FINRA’s Web site.

To protect themselves, Mr. Tobias said, clients should also get everything in writing or recorded.

“The only reason for refusing to do that is to be able to deny it later on,” he said. “If you hear that the compliance people won’t

allow it, my recommendation would be to get up, turn around and run away.”

One very important thing to consider, Mr. McGrath said, is separation between custody and advisory functions.

“Bernie Madoff raised a giant red flag [because] he was serving as custodian of assets in addition to managing them,” he said. “That was a failure on the part of regulators. You need a third-party custodian for independent verification of where your funds actually are.”

“We already have sufficient regulation, but it’s not enforced appropriately,” Mr. Tobias said. “Madoff is a great example. Apparently the SEC never audited him. The regulators didn’t do their job. So there is a lot of change that should happen.

“As a result of what has happened in the economy over the past few years, we’ll probably see additional regulation coming along, though I’m not sure if that is necessary.”

Mr. McGrath said discussions are under way at the national level to determine whether it makes sense to change regulation of the financial services sectors that are regulated by FINRA or the SEC.