

# XY Planning Network Files Suit To Challenge SEC's Regulation Best Interest Rule

Organization claims the SEC's rule ignores Congress' clear requirement to delineate between brokerage sales and investment advice.



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BOZEMAN, Mont., Sept. 11, 2019 /PRNewswire/ -- XY Planning Network (XYPN) announced yesterday at its XYPN LIVE National Conference that it is filing a lawsuit in the Southern District of New York to challenge the Securities and Exchange Commission (SEC) regarding the SEC's new Regulation Best Interest (Reg BI) rule as it pertains to the delivery of financial planning advice.

It is XYPN's belief that 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. Even though a non-broker providing identical financial planning services would be required to register as an investment adviser and be subject to a fiduciary duty for such financial planning advice.

In addition, XYPN alleges that the SEC also exceeded its authority by reinterpreting the investment adviser registration requirements under 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. Furthermore, XYPN claims that the SEC's creation of a "Best Interest" rule for broker-dealers that is not actually a full fiduciary rule to act in the best interests of the client at all times 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).

"We are ferocious advocates for the impact financial planning can have to help clients live their great lives, and therefore the fiduciary responsibility that a financial planner must have when delivering such advice to their clients. A duty that is required of all registered investment advisers, and that Congress first recognized in 1940 by requiring that anyone who delivers advice for compensation, and is in the business of providing such advice, must register and be regulated accordingly," said XYPN's Co-Founder and CEO Alan Moore. "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."

XYPN co-founders Alan Moore and Michael Kitces issued a Public Comment letter to the SEC after the initial draft of Regulation Best Interest was released, specifically raising concerns about the need to separate product sales from financial planning and investment advice. Yet instead of adjusting Regulation Best Interest to conform to the Investment Advisers Act, the SEC reinterpreted the Act's registration requirements for RIAs and the scope of the 'solely incidental' exemption for broker-dealers to permit brokers and dual-registrants to hold out as being in the business of advice and then providing non-RIA non-fiduciary financial planning advice, exceeding its regulatory authority by overwriting the laws of Congress.

"When a consumer hires a financial planner, they expect that the advice they receive will be in their best interests at all times, which is the very essence of a fiduciary rule and the definition of 'advice' itself," said Moore. "By allowing brokers to hold out as financial planners and provide financial planning advice upfront, and then switch to non-advisory services selling brokerage products during the implementation phase, the SEC amplifies the very consumer confusion they claimed they were seeking to fix with Regulation Best Interest."

"It is our hope that the Courts will recognize that when Congress created the Investment Advisers Act of 1940, they created a clear and bright-line delineation between brokerage salespeople in the business of selling products, and investment advisers in the business of

providing financial advice, and that the SEC's Reg BI has inappropriately attempted to redefine this bright line separation," said Michael Kitces, XYPN's Co-Founder and Chief Strategy Officer. "In the end, there is a place for both the sale of brokerage products and services, and financial planning and other investment advice, but reducing consumer confusion requires a clear separation between the two, including a requirement that all financial planning advice be delivered under an RIA and subject to the RIA's fiduciary duty, that brokers and dual-registrants should not be able to use titles that connote 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."

### **About XY Planning Network**

XY Planning Network is the leading financial planning platform for fee-for-service financial advisors who want to serve Gen X and Gen Y clients, providing comprehensive financial planning services for a monthly subscription fee and without product sales or asset minimums. The Network offers a virtual community for new and established financial advisors who want to serve a younger clientele, and provides its members compliance support services, marketing support, business tools and templates, and a wide range of technology solutions.

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