

What is a “fiduciary”?

You might get investment advice from any of the following sources:

- a financial planner;
- a financial consultant;
- a financial advisor;
- an investment advisor;
- an investment representative;
- a stock broker;
- a wealth manager;
- an insurance agent;
- a relative; or
- a bank trust officer.

Which of these sources will owe a fiduciary duty to his or her clients? That is, which advisor will be required, by law, to put the interests of the client ahead of his or her own interests?

The most accurate answer is, we can't be sure. Within days after the law reforming the financial industry was signed by the President, the Securities and Exchange Commission asked for public comments about possibly changing the standard of care associated with the delivery of investment advice. The new law requires the SEC to study the matter, and having studied it, the SEC is empowered to change those standards. The goal is to enhance investor protections and investor confidence.

Brokers generally have been held to a “suitability” standard. That is, they must be confident that the products they sell will meet client needs and time horizons. Some investment managers are held to a higher standard, that of fiduciary duty. In addition to putting client interests first, they must disclose all material conflicts of interest.

Those who believe that the suitability standard is sufficient are concerned that a change could undermine the broker-dealer business model, which currently provides investors with inexpensive financial advice along with the products that they buy. There's also concern that pushing brokers toward the fiduciary standard could lead to increased litigation.

Certified Financial Planner Elaine Morgillo wrote in December: “It continues to astound me that so little regulation currently exists to impose a set of standard qualifications or rules for everyone who provides financial or investment advice to consumers.” She decried the use of titles and designations used by some advisors, along with an “alphabet soup” of initials after an advisor's name, to send a message about expertise that may have little basis in reality.

We are fiduciaries

The business model of bank trust divisions and trust companies already incorporates the standard of fiduciary duty, and it has done so since these businesses were founded. Fiduciary duty is an essential element of trust service, and it always has been. It goes well beyond a requirement to avoid conflicts of interest, though that element is present. There's also a duty of loyalty to the beneficiaries, a duty to invest trust assets, a duty of confidentiality, a duty to furnish information and to communicate and a duty to enforce and defend claims, among many others.

We are steeped in the traditions of trust management and fiduciary responsibilities. Our operational systems are designed and our personnel are trained to see that these responsibilities are discharged properly. We do this job and do it well; we do it every day.

As to whether fiduciary standards should be extended to others in the financial services industry, we are content to leave that decision to the regulators. The recent bankruptcy of MF Global, coupled with the apparent misuse of over \$1 billion in customer assets, suggests that the regulators still have plenty of work to do.

Meanwhile, we are proud to declare that we welcome the application of fiduciary standards to our service offerings.

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