



Fiduciary Standard

Time For A Higher, Single Standard Of Care For Investors

Paul Tramontano, Constellation Wealth Advisors 12.29.10, 4:02 PM ET

Why have we continued to prolong a decision that essentially has no downside, and has the desired effect of ensuring that our financial industry adheres to a higher quality of service to the investing public? The debate I am referencing is about whether the fiduciary standard for advisors should be extended to include traditional wire house brokers and insurance agents, and what impact such a law might have on our industry.

In short, a fiduciary duty is a legal or ethical relationship of confidence or trust between two or more parties. Under the current law, investment advisors are obligated to put clients' interest first, a standard to which brokers are not currently held. This divergence has been the topic of a long-standing argument with many opinions on both sides.

As a rule, most professional investors like me would normally opt for fewer regulations whenever possible, but this seems like an obvious exception. Medical doctors, lawyers, and real estate brokers, to name just a few, all have standards and guidelines encouraging them to represent the interests of their clients first. It seems very counterproductive in today's environment that our industry continues to debate the finer points of this law rather than enthusiastically embracing and supporting the concept with rigor and oversight.

The responsibilities of a typical broker have evolved mightily over the years. When I joined the industry in a broker training program at Merrill Lynch in 1983, many members of my office still referred to themselves as "customer's men," and their business was predominantly transaction-oriented. Over the past 27 years, firms have encouraged those brokers to migrate towards selling repeatable, fee-oriented financial products, and have trained them to take on more of an "advisory" role in areas such as retirement planning and asset allocation.

Today, large firms such as Morgan Stanley, UBS, JPMorgan Chase and Ameriprise Financial hand out titles like financial advisor, financial consultant, investment management consultant, senior advisor and a host of other advisory related names, but rarely, if ever, do they refer to their sales force as "brokers." In fact, these "advisors" have taken on a completely different, more expanded role than just an executing agent; generally this has been a positive step for the industry and for the investing public.

It is duplicitous, however, to foster a perception that your contact at an investment firm is "much more than just a broker," through advertising, in-house training or title enhancement, and then hold that person to the same old non-fiduciary standard that brokers have operated under for years. Regardless of one's title, true advisors should look at themselves as fiduciaries and naturally should put clients' interests first, as many do already. Those that do not recognize the difference should be filtered out of the advice business altogether.

There continues to be much discussion about the so-called conflict of interest on Wall Street. For example, Goldman Sachs recently settled federal charges by paying a large fine brought on by their perceived conflict with clients. In the minds of many critics, we have steadily moved the line of what is acceptable corporate behavior, with many of our founding principles pushed aside in the name of profitability and financial gain.

A uniform fiduciary standard would certainly encourage financial advisors to put client interests' first. Although it seems like a baby step, it is still a move in the right direction for an industry suffering from public distrust and dissatisfaction today. Shouldn't Wall Street itself attempt to create a client-friendly industry standard, and in the process regain some of the trust we have squandered in the eyes of the public? Wouldn't a proactive move by the industry be better than the inevitable overreach that could occur if regulation is left to others? After all, regulation is best promulgated by those who are most familiar with the potential abuses that can occur and who have the most to lose from a reputational viewpoint.

It may just be that clients will force this issue as they transition their trust (and money) away from those that do not adhere to the highest fiduciary and ethical standards. Frankly, I think most clients want to believe their advisors have their interests at the very top of the list, and for the most part, I believe that the great majority of advisors that I've met still strongly embrace the client-first mentality.

Recent events show our industry's attempt at self policing to be feeble and generally unsuccessful. Many advisors, who have crossed ethical lines but generate large revenues, have been slapped on the wrist and set free to commit the same mortal sins time and again. It is embarrassing that the fiduciary standard debate rages on without a resolution. A more stringent fiduciary standard will indeed be established in the wave of new regulation to come, but I can't help but think we have all missed an opportunity to be proactive and client-centric in this debate. It's time to put our clients, and our industry, first again.

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