

Smart Strategies

(by Michael J. Searcy and Jessica A. Maldonado)

The New “F” Word

What “fiduciary” means to your investments and your business.

Secure, sound investments provide the financial resources for future growth of a small business. With the future of your business possibly on the line, you want to make sure that your investment decisions are best for you, not your financial advisor. But do all financial advisors have a fiduciary responsibility to act in your best interest?

A fiduciary has a legal responsibility to act in their client’s best interest in all instances, with no personal agenda. Even if the fiduciary could gain substantially by steering you in a direction that would be deemed “suitable” if acting as a representative of a broker/dealer (B/D), a fiduciary cannot do so as they must put your best interest first.

The SEC May Step In

The Securities and Exchange Commission is looking at whether to impose a fiduciary

duty on broker/dealers, which they don’t currently have. The Dodd-Frank financial regulatory reform bill has given the SEC the authority to conduct a six-month investigation of this issue, and then possibly write rules that would apply to both broker/dealers and investment advisors.

Under current laws, a fiduciary must abide by the Investment Advisers Act’s stated definition for fiduciary duty. Any advice from a broker/dealer affiliate, on the other hand, is only upheld to the “suitability” level of care. The suitability standard allows non-fiduciary brokers to sell investments that can directly benefit themselves or their firms, and also sell their proprietary products. There are no documents required of them to disclose their sources of income or any potential conflicts of interest. The SEC

investigation will seek to provide a basis to impose a fiduciary duty on all advisors to increase the standard set by suitability.

Who You Work With

There are three types of financial advisors you could work with: registered investment advisors (RIA), broker/dealer representatives and RIAs with a broker/dealer affiliation. Only independent RIAs are legally held to the fiduciary responsibility 100 percent of the time. Broker/dealer related advisors are able to switch which hat they’re wearing, and it is often hard to tell when they’re advising as a fiduciary or as a non-fiduciary broker. Investment advisors are required to provide up-front disclosures about their qualifications, what services they provide, how they will be compensated and any possible conflicts of interest.

When looking for a fiduciary, get clarification on these questions:

- Fiduciaries are registered as such with the SEC or the state, ask: How are you

registered? Are you dually registered as an investment advisor and as a registered representative/principal of a broker/dealer firm?

- How do you get paid? What other forms of compensation do you receive above the fees I pay? Do you receive any commissions?
- Are you willing to accept fiduciary responsibility in writing?

The investments you make now can provide the future capital you need for the growth of your business. Potential new rules from the SEC could help clear up confusion in the future, but until then, don’t get caught dealing with a sales representative who may be placing their interests ahead of yours.



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