



When is a Fiduciary not a Fiduciary?

By Jeffrey Briskin

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Question: When is a fiduciary not a fiduciary? Answer: When the fiduciary is not acting with undivided loyalty, due care and prudence when advising clients on their investments.

You would think this truism would be self-evident to any investment professional who claims to be acting in a fiduciary capacity for his or her clients. But the results of a recent survey of brokers and RIAs indicates that many apply their own personal “fiduciary litmus test” when determining where these responsibilities start and end.

Findings from the *Q1 2011 ByAllAccounts Survey* incorporated responses from more than 250 financial professionals, among whom roughly half were RIAs and 30% were brokers. Nearly 85% defined themselves as either fee-based or fee-only advisors, and 10% said they were fully commission-based.

Defining the standard

There is a great deal of confusion among investment professionals about what it means to be a fiduciary. For the record, the 1940 Investment Advisors Act, which regulates the investment activities of all Registered Investment Advisors, defines the following as principles advisors must follow when serving in a fiduciary capacity:

- Advisors must act in the best interests of their clients and provide investment advice that represents those best interests.
- Advisors owe their undivided loyalty to their clients and must always act in good faith.
- Advisors should not engage in any activity that conflicts with their clients’ interests or, at the very least, disclose the nature of these conflicts to their clients and minimize their potential impact.
- Advisors must provide full and fair disclosure of all material facts related to any advice they offer their clients and prospects.
- Advisors must seek the best price and execution for their clients’ securities transactions.
- Advisors must fully document and communicate their portfolio management processes, trading practices, marketing strategies, and safeguards for protecting clients’ assets against loss and theft.



Brokers who serve clients in a fee-only investment advisory capacity are expected to conform to these standards as well.

According to the survey, 96% of all RIAs and 76% of all brokers believe they're acting in a fiduciary capacity for their clients. Yet many advisors' own assessments of how they fulfill their fiduciary requirements demonstrate more of a commitment in spirit than in practice.

The “full picture” fiduciary

Over two thirds of survey respondents believed that collaborating with their clients' lawyers and accountants and reporting or advising on all of their clients' assets are the most important actions they can take to demonstrate their commitment to putting their clients' best interests first.

Indeed, these commendable financial planning practices can help advisors be more effective fiduciaries. But these activities in themselves are not required under the 1940 Act.

Conversely, those activities that have become *de facto* fiduciary standards in the industry – developing investment policy statements and receiving fee-based compensation only – were only recognized as important fiduciary “proof points” by roughly 50% of respondents.

Investments not included

Perhaps the most surprising finding of this survey was that roughly half of all respondents don't believe that their fiduciary responsibilities extend to their investment activities.

Only 55% said that they need to act in their clients' best interests when advising their clients on mutual funds. Only 47% said it's necessary to practice due care and undivided loyalty when providing advice on stock and bond investments, and less than a third said it's important when advising on hedge funds and limited partnerships.

That 90% of respondents claimed to be acting as fiduciaries when only 56% said that these standards apply to all of their clients' investments may be symptomatic of a lack of “fiduciary awareness” among many advisors. It may also result from advisors' belief that they can cherry-pick those responsibilities that most appeal to them.

Is it any wonder that 81% of the respondents indicated that their clients don't understand the fiduciary distinctions between brokers and RIAs, or that only around 55% of RIAs and 45% of brokers said that serving as a fiduciary is an important differentiator when cultivating new clients?



“Being a fiduciary is a black-and-white issue, not a grey area,” says Mario Giganti, a fiduciary educator and principal with Ohio-based Cornerstone Capital Advisors, a fee-only investment advisor.

“Most, if not all, clients believe that their advisors are acting in their best interests and trust their advice,” Giganti said. “Advisors need to justify this trust by assuming fiduciary responsibility both in spirit and action, letting each client’s best interests guide the advice they offer and the decisions they implement on their behalf.”

Since the market meltdown of 2008-2009 and the passage of the Dodd-Frank Wall Street and Consumer Protection Act, both the SEC and the Department of Labor have been working to bring greater transparency and economy to the industry. These agencies are also devising a uniform fiduciary standard that both brokers and RIAs should follow when advising both individual and institutional clients.

More than 75% of survey respondents favored the adoption of such a uniform standard for both brokers and RIAs. It’s also encouraging that a growing number of advisors and firms are demonstrating their commitment to institutionalizing industry-recognized fiduciary best practices by earning CEFEX, AIF and AIFA certifications.

This is all a step in the right direction. Implementation of a uniform fiduciary standard, augmented by robust advisor and client education and disclosure policies, will result in better client service, reduce confusion, and help to restore trust in an industry that has all too often taken investors’ best interests for granted.

About the author

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Data for this paper were drawn from a survey of financial advisors conducted by ByAllAccounts, a provider of online account aggregation technologies and services. An executive summary of the survey can be downloaded [here](#). Interpretations of the survey results presented in this article solely represent the opinions of the author.

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