

# The Broadest Fiduciary Standard

Industry Insight By: Bob Veres

## IF WE WANT UNIFORM RULES ON INVESTING RECOMMENDATIONS, WHY STOP AT ADVISORS?

Years ago, *Money* magazine created a list of top financial advisors. If you wanted to be on that list, you had to answer a detailed questionnaire about how you provided advice to your clients.

Just for fun, I filled out the lengthy form — on behalf of *Money* magazine itself. After all, it, too, was in the business of giving out investment advice.

When I came to the question about how, exactly, is detailed, specific information about clients gathered, I wrote cheerfully: “We don’t. We just give investment advice without having any idea about the actual financial situations of the people who are receiving it.”

*How do you provide your portfolio recommendations?* “We mostly recommend hot funds, and never ever tell you when to sell them, all the while having no idea about the current asset allocation mix of the people who receive our advice.”

There was a question about conflicts of interest: *How are you compensated?* I answered: “We get paid primarily by a lot of companies that want to sell their products to the people we give advice to.”

*What credentials or designations have you earned?* “None. Why would we need those?”

*What continuing education requirements do you meet on a yearly basis?* “Ha, ha, ha” ... followed by a chuckle.

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## TIME FOR NEW RULES

In just a few days, voters around the country will go to the polls to select a president as well as representatives in Congress. When the dust clears, we will almost certainly have a new SEC chief, a newly constituted legislature and a new opportunity to revisit the fiduciary debate. Our regulators — FINRA, the Financial Planning Coalition and various groups — will finally go into the endgame. By the time the snow melts off northeastern lawns, some combination of these groups will decide how we are going to impose a fiduciary standard on the advisors, brokers and agents who make up the financial services world.

This is crucially important issue for everyone reading this column. But I sometimes wonder whether the effort to protect investors isn’t focused too narrowly. The professionals who will (or will not) be fiduciaries offer, at most, a tiny sliver of all the advice received by the consuming public. And, as my little exercise with *Money* magazine shows, the advisory world is far from being the most conflicted provider of investment recommendations.

*Money* and its competitors still breathlessly report on “the best mutual funds to buy now,” offering different recommendations every six months or so. Cable channels offer nonstop coverage of minute-by-minute market moves, when every bit of research tells us a short-term investment perspective can be deeply harmful to client portfolios. Men and women in business suits routinely predict the future with straight faces.

Stock touts used to be marginal members of the criminal underclass, on a par with touts at the racetrack. Now, they may be celebrities and/or media personalities.

Meanwhile, investors are bombarded with cynical advertising from the large discount brokerage firms, which straightforwardly tell them they can beat the market if they sign on to churn their own portfolios. Even babies can supposedly beat the market with the right trading tools.

All of these visibly harmful channels of advice are not only legal, but even respected in our society. In aggregate, these various frauds and subtle dishonesties get far more attention than the honest advisors who try to give their clients the best advice available without compromise — and who, for the most part, are far better trained to do so. The nonsense put out by investment magazines and websites reaches millions of consumers every day, and they act symbiotically with the television talkers to co-create the dangerous illusion that what happened 10 seconds ago is relevant to your retirement portfolio.

## SMARTER QUESTIONS TO ASK

If Congress and our regulators are indeed serious about protecting the best interests of consumers, then perhaps it's time they took a wider view of financial advice. As we close in on a narrow professional fiduciary solution, perhaps, just for a moment, we should take a step back and look hard at all sources of investment advice in America. Then let's ask some simple questions:

- Is the net result of each provider's advice helpful or harmful in light of even the most basic research?
- Should cable stock touts be required to disclose the track record of their prior predictions on a disclaimer that scrolls across the bottom of the screen as they're confidently telling us what will happen next?
- When CNBC's Jim Cramer is screaming that he loves this or that stock, should there be a superimposition on the screen next to his reddening face that shows the subsequent performance of other stocks he has hyperventilated about in the past?
- Should the discount brokerage messages saying that you can day-trade your way to owning a tropical island be investigated for blatantly false advertising? Or should they be required to include a bold disclaimer, similar to what we see on packs of cigarettes, showing the typical result of a novice investor churning his own portfolio?

With this bigger picture in mind, we can start to ask basic questions that shed some light on our inter-industry discussions. Does it make sense to allow any representative of a product manufacturer — in our world, brokers and insurance agents — to pose as a provider of objective advice? Or should they, too, carry a disclaimer?

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FINRA has argued that protecting the public is a matter of bringing in a new bureaucratic organization (which pays its executives millions of dollars a year). But the broader question that suddenly emerges from this big-picture review is: Has the organization ever made an effort to evaluate the objectivity and effectiveness of advice that is provided to consumers? If so, where's its data?

*Money* magazine's process for evaluating "top" advisors made it clear that *Money* itself would not be remotely qualified to join the list; in fact, by its own standards, it should not be trusted. In fairness, I could fill out the same questionnaire on behalf of the organizations that provide 90% or more of the financial advice received by the general public, with pretty much the same result.

## WHAT'S AT STAKE

I think the fiduciary debate is about level playing fields and compelling certain disclosures. But, in fact, what is at stake is much larger. If we get the fiduciary debate wrong, we are in danger of eliminating the only safe haven in the entire conflict-ridden world of investment advice. If, after this election, we decide to compromise on whether advisors really do have to give unconflicted advice, then there will be nobody left on the entire industry landscape who investors can turn to for a straight answer.

In a perfect world, Congress, the SEC and even FINRA would apply strict fiduciary standards to their own actions, and put the interests of consumers first. That should motivate them to sweep aside the arguments about level playing fields and accommodations with certain business models. It should lead them to take a broader view, and create meaningful standards that all providers of advice should live by.

We don't, alas, live in that universe. But perhaps a broader perspective helps us all see why it's so important to hold those who call themselves financial planners or advisors to real fiduciary standards.

Even if they can't, or won't, do anything about the barrage of harmful advice that assaults the eyes and ears of America's financial consumers every hour of every day, Congress and our regulators can at least give America's investors a small safe haven of genuine objectivity.

Screw this up, and consumers won't know where to find sanity in a world where "Six Funds to Buy Now" passes for great advice.

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