The Troubling Sound Bite

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I had the pleasure of being invited to speak at TD Ameritrade's Fiduciary Leadership Summit earlier this year in Palm Beach, Fla. The symposium was in full swing when the electrical power to the hotel went out. Without missing a beat, the attentive staff continued with the meeting, opening doors to the outside to allow light to come into the darkened room.

As you can imagine, in no time the room went from warm to sultry.

However, it wasn't the Florida weather that sucked the cool air out; it was the friction inside the room that caused the temperature to rise. The friction reflected the still-differing attitudes about the role of fiduciaries.

Nearly every presentation was focused on what defines the "best interests" of the financial advisor clientele. For a number of years, I have been bothered by the "best interests" sound bite. However, it wasn't until this meeting that I recognized the source of my concern: People have been lulled into thinking that they must simply reach a consensus on what the clients' best interests are. If we can, the prevailing attitude seems to be that we will have unlocked the secret to a fiduciary standard.

I see it differently.

When you examine the first 20 years of the fiduciary movement, the focus was on three interlocking subjects:

1. Procedural prudence. We wanted to know the details of a fiduciary advisor's decision-making process.
2. Best practices. We wanted to know that a fiduciary's decisions reflected generally accepted investment theory, products and strategies.
3. Ethical discernment. We wanted to know that an advisor's decisions were made wisely and objectively.

Notice that, with the exception of ethical discernment, there was little written about the "best interests of the client." Why was that? Was it because we didn't care?

In fact, we didn't write about it because we considered it a given—a presupposition. Of course we were going to act in the best interests of the client. Why else would we elect to serve as an investment advisor?

During my presentation, I spoke about my time as a Coast Guard search and rescue helicopter pilot. I explained that at no time did anyone ever come up to me and ask whether I was willing to risk my life to save others. Of course I was willing. That's why I chose the Coast Guard over the other branches of the armed services. It ought to be the same with advisors. If somebody chooses to be an advisor instead of a broker, the understanding needs to be that the advisor will act in the best interests of the client. Period. No further explanation is needed or required.

What if the Coast Guard's search and rescue manual was prepared along the lines of suggestions made at the TD Ameritrade summit? It might read something like this:

"You have the option of deciding the conditions under which you are willing to risk your life. For example, as long as you notify the public in advance, it is permissible to state that you are only willing to fly when there are blue skies and calm seas.

"You are permitted to ascertain the net worth of any party desiring to be rescued. If it is determined that a party has investable assets of less than $50,000, you have the option of throwing the party back into the water.

"Legal counsel has prepared a 32-page disclosure and limited liability document which we are now requiring the public to sign in advance of any rescue attempt."

Get the point?

The Dodd-Frank Act is supposed to restore the public's trust in the financial services industry. We do, in fact, have dishonest people in the industry, and they can be found on both sides of the fiduciary debate. However, more rules and regulations (including unnecessary assertions about client interests) will only make it easier for dishonest advisors to hide within the system, and make it more difficult for honest advisors to effectively serve their clients.

You may recall that during Hurricane Katrina the Coast Guard was the only government agency that put up an appropriate response—nearly every other government agency failed to act. Do you know what those government agencies have in common with the big banks that caused the economic crisis? In both cases, lots of folks didn't act because they were following rules, even when they knew their actions or inactions were wrong. In both cases, too many rules were a bane to moral courage. Too many rules got in the way of real leadership.

In the early years, the work of the fiduciary movement was inspiring and was undertaken by those who were committed to advancing the profession. Today, the movement is being papered over with legal opinions; it has lost its way from being an honorable and noble cause.

"Best interests" is not up for debate or interpretation. Advisors should either accept the calling or take two steps back to make it easier for the public to identify those who are ready, willing and able to stand the watch.

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