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When Your Adviser Can't Be Trusted
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Why is it so difficult to expect that people selling us investment products will put our interests first?

The debate over this fundamental principle, which has been raging for years, may finally be coming to a head. Until it does, there are some important steps you can take to make sure you aren't being taken advantage of by your financial adviser.

The first question to ask: Is the person who gives you advice on your portfolio and retirement account a "registered investment adviser" or a "broker-dealer"?

If you aren't sure, you have lots of company. The distinction is lost on most investors even though the two operate under very different standards.

Simply put, registered investment advisers must act as "fiduciaries" -- that is, they must put their clients' interests ahead of their own. Broker-dealers typically operate under a far-less-stringent obligation.

Now, new rules and recommendations are slowly moving the industry toward a one-size-fits-all approach that could require those providing financial advice -- including stockbrokers, insurance agents and mutual-fund representatives -- to act as fiduciaries.

The distinction is more than academic. Currently, broker-dealers who advise individuals must ensure only that investments are suitable for their clients. That means they can recommend "the least suitable of suitable investments" and still comply, says Barbara Roper, director of investor protection for the Consumer Federation of America, an advocacy group.

By contrast, registered advisers not only have to put customers' interests first, but also must either eliminate or disclose any conflicts of interest, including fees or commissions. Broker-dealers' conflicts of interest sometimes aren't disclosed until a transaction is completed.

The staff of the Securities and Exchange Commission, prodded by the Dodd-Frank financial overhaul, recommended in January that both groups be considered fiduciaries when providing personalized investment advice to retail clients. The SEC also may expand the regulation of investment advisers, who are subject to less supervision than broker-dealers.

When, or if, new standards will be adopted isn't clear. The SEC could propose rules as soon as this summer, but two of the five commissioners criticized the staff's recommendations, calling for more analysis, and the SEC could do more research to encourage consensus. Congress also might hold hearings on the issue.

Earlier this month, meanwhile, the Department of Labor held hearings on proposed rules that would require more people who provide specific advice to retirement plans and plan participants to adhere to fiduciary standards.

Currently, some people who provide important advice about plan investments currently aren't held responsible for the quality of their recommendations. But mutual-fund companies are worried that the proposed new rules will be so restrictive that they will prevent them from offering general advice about, say, asset allocation or rollovers to individual retirement accounts.

The Labor Department is reviewing comments from the recent hearings and hopes to issue final retirement-plan rules by the end of the year.

Much is at stake for consumers, who rely on all kinds of advisers to sort out complex investment options and ensure that they won't outlive their investments. Expecting those advisers to take into account clients' best interests should be a basic tenet of the business.

Many industry groups are supporting a uniform standard. With brokers often offering the kinds of advice that investment advisers provide, "we're now getting close to regulations that catch up with reality," says Ira Hammerman, general counsel of the Securities Industry and Financial Markets Association, a trade group. Yet some insurance groups oppose such a standard, saying that new regulatory burdens on their members will raise costs and could reduce products and services offered.

While the rules are being debated, there are some steps you can take to put your own interests front and center:

-- Ask those giving you investment advice, sales pitches or specific retirement-plan suggestions if they are acting under a fiduciary standard of care. If they aren't, ask if they are willing to act as a fiduciary in your case, putting your interests first -- and to confirm that in writing.

-- Insist that advisers offering specific investments inform you of any conflicts of interest related to their recommendations and disclose any commissions, referral fees or other compensation they would receive from selling you a financial product. Both should be put in writing.

-- Don't be afraid to be impolite -- always ask what an investment will cost, both in commissions and in built-in expenses such as fund expenses.

-- If you are going to have an ongoing relationship with an adviser, you will want to know more than the details of his investment philosophy and strategy. Ask about his qualifications, experience and what kinds of continuing education he has. You can check whether he has ever been disciplined on the websites of the SEC (adviserinfo.sec.gov) -- or the Financial Industry Regulatory Authority, the broker-dealers' self-policing industry group (brokercheck.finra.org).

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