

Private Sector: Your adviser or broker should put you first

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Does your broker or adviser portray himself as a fiduciary? The term "fiduciary" is inclusive of more than 5 million people who have the legal responsibility for managing someone else's money. Fiduciary status is determined by relevant facts and circumstances, but generally is defined as a person who:

- Manages property for the benefit of another, or
- Exercises discretionary authority or control over assets, and/or
- Acts in a professional capacity of trust and renders comprehensive and continuous advice.

Under the National Association of Securities Dealers (NASD) rules and regulations, a stockbroker has a duty to recommend only securities that are reasonably suitable and meet the investment objective of the client.

A Registered Investment Advisor (RIA) is subject to the Investment Advisor Act of 1940 and designated as a fiduciary and is required to follow the "trust" standard. The trust standard demands that the RIA place the interest of the client ahead of his or her own.

An example illustrates the difference: Two similar investments have a similar level of risk and both meet the client's objectives, yet have a substantially different cost structure. A broker could recommend the one with the higher fees, which would be best for his firm and that is where his loyalty lies. On the other hand, an investment adviser (or even a broker) who is acting as a fiduciary would only recommend the investment that is in the client's best interest, regardless of the commission.

I have worked on more than 200 securities arbitration and litigation cases, including being hired by the NASD as an expert on its behalf. I am frequently amazed when I hear a broker testify that he/she did not owe the client a fiduciary duty, even when they had obvious control over the client's account. By taking the position of a non-fiduciary, they are saying that they are not required to place the interest of their client above their own. This response will lead an attorney to ask if the broker has ever told a client that he/she will put his/her own interests ahead of the clients. I have yet to hear a broker testify in the affirmative.

While most investors expect and believe that their broker has the basic fiduciary obligation, it may not be so. The best recommendation I can give is simple: Have your broker list his or her duties to you in writing. This will tell whether your broker has a fiduciary duty to you, or if he or she is obligated to their employer and themselves. Most likely they will refuse to put anything of a fiduciary obligation in writing. This in and of itself is not a bad thing, but it will increase your knowledge and protect you from possible problems that could arise from advice rendered by brokers who are not putting your best interest first.