Why Brokers Should Be Required To Live Up To What Their TV Ads Tell Investors

By Joe Peiffer

The “fiduciary duty” of financial professionals sounds like some hopelessly dry and technical legal concept. But it isn’t. When I hear that phrase, I think about the New York retiree who lost 75 percent of the life savings he entrusted to a disreputable broker and was left with so little to live on that he couldn’t afford a $15 fishing license, much less the cost of a trip to visit his grandchildren.

I have represented over 500 investors in claims against their brokerage firms. All of these cases have two things in common. First, the investors, who often have trusted a broker with their life savings, believe it when they are told the financial professional will take good care of their nest egg. Second, the brokerage firms always deny that any such “fiduciary duty” to avoid conflicted advice exists.

It is one thing to be uninformed as an investor and it’s another thing to assume that what you are hearing is truthful. Surveys show what you would expect: Consumers mistakenly believe exactly what all of those attractive television ads suggest about trustworthy brokers allowing them to sleep peacefully at night, with no worry about their life savings.

The consequences for trusting investors can be devastating. I’ve had clients that retired, received conflicted advice, and ran out of money in their 60s leaving them just above the poverty line with little more than Social Security to rely upon. The price these investors pay is often harsh.

Clients have been forced to move in with their children or relocate from their house to a trailer in a friend’s backyard. In one of the worst cases I’ve seen, a wiped-out investor had to resort to renting a room in the home of an ex-wife. In every one of these cases, the brokerage firms denied that they had any duty to refrain from giving conflicted advice.

These examples illustrate the larger national problem identified by the White House Council of Economic Advisers, which concluded that conflicted advice costs American investors $17 billion a year. Since the Dodd-Frank financial reforms became law in July 2010, the Securities and Exchange Commission (SEC) has been studying this issue without action. And, while the SEC studies the issue and the industry fights any rule that would force it to put investors’ interests ahead of their own, investors have lost almost $80 billion as a result of brokerage firms' conflicted advice.

The good news here is that SEC took a big step in the right direction this month when Commission Chair Mary Jo White called for a new regulation that would make brokers put the interests of their clients ahead of their own. The Department of Labor is also working on rules that would force brokerage firms to put investors’ interests first when providing advice about retirement funds.

The suggestion that brokers should be held accountable to a “fiduciary duty” is not some radical, wild-eyed notion. It is supported by mainstream industry leaders such as John Bogle, the well-known and highly regarded founder of the investment management company Vanguard. As Bogle notes: "Fiduciary duty is the highest duty known to the law,” ensuring that "the client … must be king." And is that too much to expect when an individual’s life savings hang in the balance?

Acting now won’t save the investors who already have been skewered by conflicted advice, but it will spare tens of thousands of Americans from the same dire financial fate. Even if you are not cleaned out, the cost can be high: The Council of Economic Advisors study concluded that conflicted advice causes investors to run out of money five years before they otherwise would have.

That is the kind of thing that can put a huge dent in a retiree’s “golden years.” I’ve seen this happen and know what it’s like for a blue-collar worker, who, after receiving conflicted advice from his broker, retired from his $80,000-a-year job at a major corporation. He was out of money before he was eligible for Social Security and had to take a job for $10 an hour stocking vending machines at his former employer’s offices.

That is the kind of fate no one should have to suffer in America. And, if the SEC and DOL force brokerage firms to put their clients' interests first, we can make sure it doesn't happen again.

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