

Brokerage Industry Forced to Play Fair

The title on that linen, tri-color business card might read “financial advisor,” or “financial consultant,” or maybe even “senior vice-president of investments.” To the casual bloke looking for a little help investing his acorns, it may seem reasonable to conclude that the possessor of such a high-performance moniker might, in generic terms, be considered to be an investment advisor. After all, if one schedules a meeting with a financial consultant to review one’s portfolio or to discuss one’s investment strategy, how could that consultant *not* be considered to be an investment advisor? In reality, that consultant may, or may not be an investment advisor although the chances highly favor “not.”

Why the fuss about the term “investment advisor?” It matters more than one might think, but before delving into that, let’s touch upon the thorny topic of meaningless titles. The three listed above are particularly good examples. That is, they convey a certain element of accomplishment that may or may not exist in reality. Unlike regulated credentials such as “attorney,” “CPA,” or, you guessed it, “investment advisor,” generic terms such as “investment consultant,” and “financial advisor” convey little meaningful information other than to serve notice that the consultant/advisor is involved in some kind of financial services endeavor.

In contrast, the term “investment advisor” (or more properly, “registered investment advisor” or “investment advisor representative”) carries with it the legal duty to act in a *fiduciary* capacity. That’s big. Being a fiduciary means that the advisor is, by law, considered to be in a position of trust and is therefore required to honor that trust...like a trustee. In contrast, users of generic titles such as “financial advisor” are generally salespeople who are held to the much lower standard of making *suitable* recommendations. So while the terms “registered investment advisor” and “investment advisor representative” offer no guarantees of competence, it may be reassuring to know that clients’ interests are, by law, required to be placed ahead of all else.

Investment advisors who charge separate fees for investment advice have long been held to a fiduciary standard of conduct while brokerage sales reps, who may also charge fees for investment advice, have been held to lower standards of conduct. You can thank a variety of brokerage industry trade groups for that. By decree of a recent decision from a D.C. Court of Appeals, however, this long-standing broker exemption rule has been overturned.

Soon, sales reps who charge fees for investment advice will be forced to make a choice – get properly licensed and be held to a full fiduciary standard of conduct, or convert fee-based brokerage accounts back to a commission-based format where fiduciary standards of conduct will not be imposed.

If you have money that is being managed by someone sporting a generic title, you may soon be asked to sign a new agreement. If so, you'll know what's up.

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