KIM: “Fiduciary Rule” or no, all financial advice is conflicted

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According to *The Wall Street Journal*, “a fiduciary—rooted in the Latin words ‘fides’ (faith) and ‘fiducia’ (trust)—is someone who must put your interests ahead of his or her own. That means acting prudently, revealing all relevant information, eliminating as many conflicts as possible and disclosing any conflicts that remain.”

The Department of Labor’s (“DOL”) fiduciary rule (“Rule”) was years in the making and holds financial professionals providing investment advice on retirement savings to a fiduciary standard (i.e. requiring them to act in customers’ best interests, charge no more than reasonable fees and avoid misleading statements). The Obama administration had said conflicted advice costs U.S. families $17 billion a year and reduces annual returns on retirement savings by a full percent. Opponents asserted the Rule would limit investment options and cause advisors to abandon smaller accounts.

The Rule was to be effective April 10, 2017, but on February 3rd President Trump ordered the DOL to further examine the Rule. The DOL subsequently postponed implementation of the Rule to June 9, 2017. Labor Secretary Alexander Acosta subsequently determined there was no legal basis for further delay.

Though effective now, the Rule may eventually be changed or even scrapped. In addition, new SEC Chair Jay Clayton has indicated the SEC intends to take a leading role in the discussion of a fiduciary standard covering ***all*** investors.

Terminology is confusing. Registered investment advisers (RIAs) are registered with the SEC or state securities regulators and governed by the Investment Advisers Act of 1940, which already holds investment advisers to a ***fiduciary standard***. RIAs typically charge fees based on a percentage of assets under management.

Stockbrokers who work as “registered representatives” of broker-dealers can earn commissions, other fees and bonuses on stocks, bonds, mutual funds and other financial products they buy and sell for customers. Brokers are held to a lower ***suitability standard***, which means the broker can recommend a security that is “suitable”—though not necessarily the best option—for their customer.

Now that the Rule is effective, does that mean you can relax your vetting process? Absolutely not, as it’s been proven time and again it’s impossible to legislate ethical behavior. Regarding financial products, it will always be *Caveat Emptor* (let the buyer beware).

The three most important words in financial products are: Follow the Money. Ask your prospective advisor how much money she will make from the recommendation, the different ways she will receive it, both upfront and ongoing, and from whom. Is your firm or the company providing the product running a sales contest that could lead to additional benefits to you (like a trip)? Similarly, do any of the companies your firm works with offer “educational” trips? Finally, will your firm collect any “revenue sharing” fees because they have limited their platform to certain favored products and locked out others?

We are big believers in “eating our own cooking,” so my favorite is, “how much of your own wealth do you have invested in the product you are recommending to me?”
There is no such thing as conflict-free advice, including mine. At the end of the day, it’s all about trust. Remember, this isn’t “Miracle on 34th Street” and the Macy’s Santa isn’t going to send you to Gimbels.

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