

Investors and Pension Plan Participants Deserve Better Protection

Published on January 8, 2018



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"Fiduciary" and the protection it entails is a hot buzzword in the investment industry. Despite promises by the Department of Labor and the Securities and Exchange Commission (SEC), two of the U.S.'s primary investment industry regulators, investors and pension plan participants remain exposed to unnecessary risks due to the inherent conflict of interest between product promoters and investors. These unchecked inherent conflicts of interest result in misleading marketing strategies and the recommendation of high commission, but consistently underperforming and cost-inefficient investment options, resulting in net losses for investors

It can be argued that the failure of the SEC to adopt a meaningful fiduciary standard would be consistent with the agency's pattern of ignoring the needs and protection of the public. And yet, the SEC could quickly and simply provide investors with vital information that help them protect their financial security.

In 2007 the Financial Planning Association won a lawsuit that it filed against the SEC to force them to enforce the registration provisions of the 1940 Investment Advisors Act against Merrill Lynch. In an attempt to resolve the dispute, the SEC had proposed the following disclosure in lieu of registration:

Your account is a brokerage account and not an advisory account. Our interests may not always be the same as yours. Please ask us questions to make sure you understand your rights and our obligations to you, including the extent of our obligations to disclose conflicts of interest and to act in your best interest. We are paid both by you and, sometimes, by people who compensate us based on what you buy. Therefore, our profits and our salespersons' compensation may vary by product and over time.

Once the court ruled against the SEC, the SEC withdrew the disclosure requirement. Despite subsequent calls for bringing back the disclosure to address current conflict of interest issues plaguing the investment industry, the SEC has not done so. Given the fact that the SEC has already approved the quality of the disclosure, one would think the SEC would simply re-institute the disclosure requirement to at least educate and warn the public, which would clearly be in furtherance of the agency's mission statement. And yet, for some reason, the SEC refuses to take this simple and much-needed step.

In the battle of the best interests between Wall Street and the American investor over investor protection and the investment industry's inherent conflict of interest issue, it appears that the SEC has made its choice.