Investment Advisers: Who Are They and Why Does It Matter?

The universe of financial advisers can be very confusing. People who give financial advice use many different labels, including:

• investment adviser

• investment manager

• asset manager

• broker

• financial planner

• financial consultant

• financial adviser

• certified financial planner

With such a variety of titles, it can be difficult to know which legal standards – if any – apply to the individual who is giving you financial advice. And it is important to know which standard your adviser must follow, because **not all advisers are required to put your interests first**.

Some advisers may receive financial incentives from mutual funds or insurance companies for selling a particular investment product. These advisers can and often do put their own financial interests ahead of yours when they recommend an investment, earning high fees and commissions for themselves while costing you thousands of dollars in lost earnings.

Advisers for Workplace Retirement Plans: The ERISA Standard

If you are in a retirement plan set up by an employer (such as a traditional pension plan or a 401(k)), you will benefit from the highest standard for investment advice. A retirement plan established by an employer must be administered solely in the interests of the employees participating in the plan with the exclusive purpose of providing them with benefits. This is the "fiduciary standard" of the Employee Retirement Income Security Act (ERISA), the law that governs private-sector employer retirement plans. This standard ensures that **investments made and advice given will be only in employees' interests**. For example, if you participate in your company's 401(k) plan and seek advice from someone who was hired by your employer to provide investment advice to employees, that adviser is required to act in your best interest.

However, if you take money out of an employer plan (such as by rolling over a 401(k) into an IRA or taking a lump sum from your pension plan) or if you seek investment advice outside of the plan, the high fiduciary standards of ERISA no longer apply. Those saving for retirement outside of an employer plan must seek financial advice in the marketplace, where legal protections can vary significantly.

Investment Advisers: The Securities and Exchange Commission Standard

The most comprehensive standard for investment advice outside of ERISA is the Securities and Exchange Commission (SEC) standard for investment advisers. This standard is a fiduciary standard that requires those giving advice to put the interests of their clients first. It also requires that advisers disclose all information (such as risks and fees) associated with the investments that they recommend. However, unlike the ERISA fiduciary standard, **it does not require that the adviser be free of conflicts of interest**. Instead, it requires that advisers disclose any potential conflicts of interest to their clients.

The SEC has a description of the duties of investment advisers. Although "investment adviser" is the legally correct title, investment advisers may use other titles, such as "investment manager" or "asset manager."

Investment advisers managing assets of $110 million or more must register with the SEC. Smaller investment advisers register with the securities regulator in the state where the adviser has its principal place of business. The SEC maintains a list of investment adviser firms and individuals registered with the SEC or with state securities regulators. You may visit this website to learn if your investment adviser is registered.

It is important to note that someone might have the title "investment adviser," but, unless that individual is registered with the SEC or a state regulator, he or she does not have to follow the SEC's rules.

Brokers: The Suitability Standard

Brokers are not subject to the fiduciary standard that applies to investment advisers. The standard that applies to brokers is the "suitability" standard of the Financial Industry Regulatory Authority (FINRA), the self-regulatory organization run by brokers. This standard requires that an investment must be "suitable" for a client. An investment is suitable if it is appropriate for a client's age, income, investment objectives, and risk tolerance. However, **the suitability standard does not require putting the client's interests first or disclosing conflicts of interest**.

For example, a suitable investment for a saver close to retirement age could be a bond fund. A broker may have many bond funds available for investment with a wide variety of fees and investment performance histories. A broker under a suitability standard can recommend a bond fund that gives the broker a high commission, even though the bond fund has high fees or a poor performance history.

The suitability standard can be found on the website of the Financial Industry Regulatory Authority (FINRA).

Brokers buy and sell securities and other investments on behalf of clients. A brokerage firm may be full-service or discount. Full service firms often research investment options and give advice on investments. Discount brokerage firms may offer few services other than buying and selling securities. Other names for brokers include "stockbroker," "financial adviser," and "financial consultant." Brokers are regulated by the SEC, state securities regulators, and FINRA. A "dealer" is a firm that buys and sells securities for its own account, and since most brokers are also dealers, they are typically referred to as "broker-dealers."

FINRA maintains a list of registered brokers on its Brokercheck website.

Financial Planners

There is no single regulatory scheme for financial planners. Although there are standard-setting organizations, such as the Certified Financial Planner Board of Standards, no single government agency oversees financial planners. Instead, financial planners are regulated according to the services they provide, such as providing investment advice or selling securities. Their activities are governed by the appropriate federal or state law for that activity.

For example, a financial planner giving investment advice should be registered with the SEC or a state securities regulator and subject to a fiduciary standard of care. Someone selling securities should be registered with FINRA and subject to the suitability standard of care. A financial planner selling insurance products would be subject to the appropriate state law for insurance sales. Financial planners performing multiple services are subject to different standards of care for each service provided. **It can be difficult, if not impossible, for a client to tell whether the advice given falls under the higher fiduciary standard that requires putting the client's interests first or not.**

Supervision of financial planners and financial planning firms is inconsistent and sporadic, since regulators only review the activity within their jurisdiction. It is complicated further by the multitude of titles used by financial planners. Some titles may imply an expertise that has no basis in fact. For example, seniors may be targeted by persons using titles such as "Senior Expert" or "Certified Senior Investment Planner," even though expertise in senior issues is not a recognized specialty. FINRA maintains a website with information on professional titles including education or certification requirements. However, these titles are industry titles and not recognized in federal law.