

What is a “fiduciary”?

Within days after the law reforming the financial industry was signed by the President, the Securities and Exchange Commission asked for public comments about possibly changing the standard of care associated with the delivery of investment advice. The new law requires the SEC to study the matter, and having studied it, the SEC is empowered to change those standards. The goal is to enhance investor protections and investor confidence.

Under current law, broker-dealers have a “suitability” standard. That is, they must be confident that the products they sell will meet client needs and investment horizons. Some investment advisors are held to a higher standard, that of fiduciary duty. They must put the interests of the client ahead of their own interests, and they must disclose all material conflicts of interest.

Those who believe that the suitability standard is sufficient are concerned that a change could undermine the broker-dealer business model, which currently provides investors with inexpensive financial advice along with the products that they buy. There’s also concern that pushing brokers toward the fiduciary standard could lead to increased litigation.

Some observers expected Congress to resolve this dilemma, but in the end, the responsibility was handed off to the SEC. Its report is due by January 21, 2011.

We are fiduciaries

The business model of bank trust divisions and trust companies already incorporates the standard of fiduciary duty, and it has done so since these businesses were founded. Fiduciary duty is an essential element of trust service, and it always has been. It goes well beyond a requirement to avoid conflicts of interests, though that element is present. There’s also a duty of loyalty to the beneficiaries, a duty to invest trust assets, a duty of confidentiality, a duty to furnish information and to communicate and a duty to enforce and defend claims, among many others.

We are steeped in the traditions of trust management and fiduciary responsibilities. Our operational systems are designed and our personnel are trained to see that these responsibilities are discharged properly. We do this job and do it well; we do it every day.

As to whether fiduciary standards should be extended to others in the financial services industry, we are content to leave that decision to the SEC. Meanwhile, we are proud to declare that we welcome the application of these standards to our service offerings.