

# insights

## Standards of care for financial advisors are not created equal:

Understanding fiduciary versus suitability standards of care, and how these different standards apply to investment advisors, broker-dealer representatives, and insurance agents.

Steve Hinkle, Key Private Bank Wealth Specialist

**Investor protections and standards of care are more critical than ever today, providing structure to the relationship between investors and their financial advisors. In today's economic environment, it's important to know that not all financial advisors are created equal.**

Even with the recent passage of financial reform legislation, some investment advisors, such as Key Private Bank's investment and trust department, are held to a stricter "fiduciary" standard, while stockbrokers and insurance agents are held to the less-stringent "suitability" standard, even if they call themselves a "financial advisor" and claim to offer unbiased advice.

The Dodd-Frank Wall Street Reform and Consumer Protection Act provides for sweeping regulations aimed to protect investors. While this law made significant strides toward protecting investor interests, it stopped short of requiring a universal fiduciary standard of care. However, on January 21, 2011, the Securities and Exchange Commission's (SEC) report to Congress recommended that anyone providing personalized retail investment advice should operate under the more stringent fiduciary standard.

The SEC is unlikely to make a final decision and issue a new universal fiduciary standard rule until late 2011 at the earliest. Implementing a new regulation, if passed, could take up to a year or more. Therefore, it appears that different types of financial advisors will continue to be held to varying standards of care for their clients for at least some period of time.

Investors should be aware of which standard of care their advisors are required to follow. Key Private Bank's investment and trust professionals are proud to operate under the fiduciary standard of care – the strictest and highest standard in the industry. We believe the current debate has helped highlight the benefits of working with a fiduciary advisor who commits to putting the investor's interests first.

### **fiduciary vs. suitability**

For many investors, the notion that there are varying standards of care can be confusing. In fact, according to a recent survey by financial research firm Investnet, 36% of surveyed investors believe that all financial advisors function under the same standard of care. The reality is drastically different.

The fiduciary standard requires advisors to put the best interests of the client first and to disclose all conflicts of interest. It is a commitment to providing the client with the utmost care, integrity, full conflict-of-interest disclosure, loyalty, and good faith. A fiduciary – that is, an investment professional required to adhere to the fiduciary standard – must make recommendations regardless of the amount of compensation the fiduciary might receive as a result of recommending any particular financial product.

Fiduciary: "In law, a person who is obliged to discharge faithfully a responsibility of trust toward another."

Source: *Columbia Encyclopedia, VI edition*

The suitability standard, by contrast, requires brokers or insurance agents who are regulated under this standard to recommend investment products that are "suitable at the time of purchase," based on information provided by the client. This means that they are only required to prove that the product sold was not blatantly wrong for the client, rather than being compelled to prove that a product was the

**Key Private Bank**



appropriate recommendation for a specific client.

Thus, the suitability standard does not impose a continuing duty of care; loyalty to clients; or require any disclosure of conflicts of interest. In contrast, an investment advisor must give continuous and comprehensive advice under the fiduciary standard.

## regulatory debate and oversight

Since the SEC's report was issued, the advisor and broker-dealer communities – and even different commissioners of the SEC – have been divided about whether a universal fiduciary standard should be applied. There is a consensus, however, that regulators need to address the current lack of clarity, investor unawareness, and confusion on this issue.

Unlike non-fiduciary financial advisors, KeyBank's investment and trust department submits to additional oversight and examination from federal regulators for our fiduciary activities. Through a demanding process, we ensure that the highest fiduciary standards are met in accordance with investment policy statements, governing documents, laws, and regulations.

## concluding remarks

At Key Private Bank, we believe unifying the protections and standards of care for all professionals who offer financial advice will be positive for investors in the long term. It will help clarify many issues that can be deterrents to trust, boost investor confidence in their decision-making, and level the playing field for those selling financial products.

We suggest that all investors ask their advisors the following:

- Is your advice subject to the fiduciary or suitability standard?
- What incentives do you and your firm have for selling me this financial solution and what are my other options?

The debate about financial reform has brought a fresh and welcome focus on what it means to be a fiduciary. Our business is, and always has been, built on what is best for the client. Our advocacy of - and adherence to - the fiduciary standard is a continuing confirmation of that unwavering commitment.



Any opinions, projections or recommendations contained herein are subject to change without notice and are not intended as individual investment advice. KeyBank does not provide legal advice. Bank and trust products from KeyBank National Association, Member FDIC. Investment products are:

**NOT FDIC INSURED • NOT BANK GUARANTEED • MAY LOSE VALUE • NOT A DEPOSIT  
NOT INSURED BY ANY FEDERAL OR STATE GOVERNMENT AGENCY**