What is all the noise about a *Fiduciary*?

By **Erik Ford**

For the last several years there has been a lot of commentary about the roles of registered representatives and financial advisors and the expectations of each in terms of acting as a fiduciary. It has prompted more frequent mention of "fiduciary" in advertising, regulatory action and court action. It is understandable if you haven't noticed, but for those of us providing financial services it has been ever present. With a recent rule issued by the Securities and Exchange Commission, the Best Interest rule or Rule BI, bringing the general public up to date may be helpful.

It may be beneficial to provide a little background for context. If you work with an investment professional, they are operating in one of two capacities. A registered representative, what is typically referred to as a broker, provides services on a transactional basis and is compensated on that basis. In that capacity the responsibility of the registered representative is that each transaction be "suitable" for the investor at the time it is completed. As conditions change either for the investment or the investor, there is no obligation to follow-up and provide ongoing advice. Best practices would call for those acting as registered representatives to stay on top of these changes, but unfortunately not all practitioners employ best practices. It is important for consumers to realize what the obligations are. A professional acting as an investment advisor representative, generally referred to as a financial advisor, is obligated to act in a fiduciary capacity towards their clients. This means they are not only responsible for the best interests of their clients when transactions are entered into, but also on an ongoing basis. They have a wider scope of responsibility as well, looking at the entirety of the client's situation. They are not paid on a transactional basis, but on a fee basis, most frequently a fee based on assets managed or perhaps a fixed fee. Obviously this presents a very different set of standards to the client and many consumers were probably not aware of the difference.

Ten years ago the Department of Labor took it upon itself to impose fiduciary obligations to all professionals working on retirement accounts. While the objective was laudable, it was arguably an overreach on the part of the Department of Labor for reasons beyond the scope of this article. In the end the DOL issued a rule in 2016, which was delayed by the new administration and subsequently struck down by the courts. In the interim, legislators made various moves to encourage the SEC to take up the mantle, arguably a more appropriate regulator. The SEC did just that and the result is the aforementioned Rule BI. The DOL may also come out with its own rule later this year, but more focused on where it has jurisdiction, namely employer sponsored retirement plans and perhaps not all retirement accounts. It is also hoped that the SEC and DOL rules will be consistent with each other to minimize confusion.

So, is a fiduciary standard a good thing? Absolutely. What someone may invest in at age 30 and that may be "suitable" for them at that point, may not be at age 50 or 60. A professional who is acting as a fiduciary will have the obligation to see to it that a client's investments remain in their best interest over time as their situation changes and or the outlook for the investment itself changes over time. Ultimately it is up to the individual investor to determine what type of service they want and want to pay for, however the difference between the two has not been appreciated by the general investing public, which is why the DOL originally took it upon itself to step in for retirement accounts.

The start and stop of the original DOL effort caused much confusion and changed how business was conducted for retirement accounts and employer retirement plans. It is hoped that the new rule issued by the SEC will make things clearer. Regardless, an investor can enter into an arrangement with a professional who will act as a fiduciary. An advisory relationship with an investment advisor representative is one way, and more and more this is becoming the preferred asset management and advisory structure for individual clients. Another way is to work with a Certified Financial PlannerTM (CFP®) certificate holder. The practice standards of a CFP® certificate holder requires full disclosure of conflicts and costs and acting always in the best interest of the client first. As the investing environment becomes more and more complicated and the ultimate outcome of our saving and

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