



ADVISER FUND UPDATE

Market Summary and Commentary for Individual Investors from Adviser Investments



May 5, 2017

The Future of Fiduciary Rule in Doubt

As [we covered last year](#), in April 2016, the U.S. Department of Labor issued regulations that would legally require financial advisers and stock brokers to act in the best interests of their clients investing for retirement—what’s known in the industry as “fiduciary duty.”

In February, President Trump issued a memorandum asking the Department of Labor to delay implementation of the so-called “fiduciary” rule in order to reassess its impact on businesses and retirement investors. This has resulted in the rule being delayed by two months from April 10 to June 9 this year (there has been lobbying from industry groups to further delay the rule). Among the Trump administration’s concerns: Will consumers have reduced access to financial advice? Is the rule overly disruptive to the financial services industry and will it cause litigation to increase significantly?

We don’t have the answers to those questions, but Adviser Investments has followed the Investment Advisers Act of 1940’s fiduciary standard for all of our clients’ investments, not just those earmarked for retirement, since our founding in 1994.

As implementation looms and a couple of high-profile presidential appointments (Secretary of Labor Alexander Acosta and Jay Clayton as chairman of the Securities and Exchange Commission) have been queried on the measure during their confirmation hearings over the last couple of weeks, the fiduciary rule has garnered a lot of space in the media. We thought a quick overview into what it means would be informative for retirement-savers hunting for a financial adviser for the first time or thinking about a change.

The Supreme Court ruled in 1963 that all investment advisers, as defined under the Investment Advisers Act of 1940, had to follow a fiduciary standard—acting in clients’ best interests—across all types of accounts. However, brokers were not held to a fiduciary standard and this remains so today. The new rules extend that obligation to cover how all advisers—including stock brokers and insurance sellers—are compensated (specifically aimed at curbing fees and conflicts of interest) for working with clients who are investing for retirement.

The fiduciary rule applies to all financial products that could be used in a tax-advantaged account, and is intended to protect Americans saving for retirement from unscrupulous investment professionals more concerned with their own financial gains than those of their clients. It’s a way to prevent (or, at least, disclose) conflicts of interest where an adviser might have a financial incentive unrelated to their clients’ investment objectives to direct clients into one fund or annuity rather than another, something that previously might’ve been hidden in the fine print of a contract, if disclosed at all. If enacted as written, the law is likely to accelerate the transition from commission-based financial advice to fee-based accounts.

(Adviser Investments is way ahead of the curve on this rule. Since inception, we’ve been a fee-only investment adviser. We don’t take money from fund or insurance providers or

anyone else to sell their products. We only get paid by our clients.)

According to the fiduciary rule, starting January 1, 2018, brokers and advisers can no longer earn commissions (or engage in other practices on behalf of a client where conflicted advice might occur) without a best interests contract in place. This is a document signed by both the retirement-focused investor and the financial adviser upon opening an account allowing that the adviser may earn "reasonable compensation" so long as they act in the "best interests" of the client, providing disclosure and transparency about all recommended products and compensation involved. (One might argue that these agreements are in fact a way of skirting the new fiduciary rules by getting investors to agree to practices that may not actually be in their best interests up front.)

Finally, it's important to note that the required fiduciary duty only applies to retirement accounts, which receive special protection under federal retirement and employee benefits law. As for investors in non-retirement accounts, without the Securities and Exchange Commission taking action, they remain on their own in determining whether a financial adviser is working in their best interests. If you fall into this category, we've created a [checklist of sample questions](#) to ask an adviser to get a feel for whether or not they are a good fit for you.

At Adviser Investments, fiduciary duty is at the heart of everything we do in our partnerships with clients. We firmly believe that investors are best served working with a trusted professional financial adviser with the experience to help them grow and protect their wealth over time.

As mentioned above, we are completely independent of Fidelity, Vanguard and all of the other fund companies we invest with. Our first and only loyalty is to our clients. We're glad that the new regulation may end up holding the rest of the industry to a similar standard, but if we were faced with a choice between an adviser who is being compelled to work in our best interests and one who has done so on principle for decades, we know which we would pick.

If you'd like to learn how Adviser Investments could work in *your* best interests, please call us at 1-800-492-6868 or email us at info@adviserinvestments.com.

About Adviser Investments

Adviser Investments operates as an independent, professional money management firm with particular expertise in Fidelity and Vanguard mutual funds. We advise more than 3,500 clients and have over \$4 billion under management. Our investment professionals focus on helping individual investors, trusts, foundations and institutions meet their investment goals. Our minimum account size is \$350,000. In 2016, Adviser Investments was named to *Barron's* list of the top 100 independent financial advisers nationwide and its list of the top advisory firms in Massachusetts for the fourth consecutive year. We have also been recognized on the *Financial Times* 300 Top Registered Investment Advisers list in 2014, 2015 and 2016.

For more information, please visit www.adviserinvestments.com or call 800-492-6868.

Please Note: The fiduciary standard imposed by the Department of Labor under the Employee Retirement Income Security Act of 1974 ("ERISA") is slightly different than the fiduciary standard imposed upon investment advisers under the Investment Advisers Act of 1940. For purposes of this discussion, those nuances are not pertinent. Rather, the point is that currently not all financial professionals are obliged to adhere to a fiduciary duty of any sort with respect to their clients.

Disclaimer: This material is distributed for informational purposes only. It is not legal advice. Consult an attorney if you have questions with regard to the Department of Labor's fiduciary rule and relevant exemptions. The investment ideas and expressions of opinion may contain certain forward-looking statements and should not be viewed as recommendations, personal investment advice or considered an offer to buy or sell specific securities. Data and statistics contained in this report are obtained from what we believe to be reliable sources; however, their accuracy, completeness or reliability cannot be guaranteed.

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Past performance is not an indication of future returns.

The *Barron's* rankings consider factors such as assets under management, revenue produced for the firm, regulatory record, quality of practice and philanthropic work. This award does not consider client experience and is not indicative of future performance.

Editors at the *Financial Times* bestowed "elite" status on 300 firms in the U.S., as determined by assets under management, asset growth, longevity, compliance record, industry certifications and online accessibility.

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