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FIDUCIARY WASHING

How Fiduciary Language Can Confuse Investors

OVERVIEW

"Fiduciary" has become one of the most overused and misunderstood words in financial services.[1] Broker-dealers, insurance agents, bank advisors, and dual-registrant platforms have all realized that investors respond positively to the idea of a fiduciary duty—someone legally required to put the client's interests first. Under U.S. securities law, **registered investment advisers do in fact owe a federal fiduciary duty of care and loyalty to their clients**.[2] But in the marketplace, the term "fiduciary" is now used so broadly that it often obscures more than it clarifies. This phenomenon is **fiduciary washing**: adopting fiduciary language in marketing even when operating within inherently conflicted, product-driven business models.

REGULATORY BACKGROUND

The regulatory backdrop is part of the challenge. The SEC has reaffirmed that investment advisers are fiduciaries under the Advisers Act, with a principles-based duty that applies to the entire advisory relationship.[2,3] Broker-dealers, by contrast, operate under **Regulation Best Interest ("Reg BI")**, a "best interest" standard that applies **only when making recommendations** and that is distinct from the full fiduciary duty applicable to advisers.[4,5] Despite this difference, there is **no bright-line prohibition** on sales-oriented firms using fiduciary-style language in their branding, as long as their detailed disclosures are not materially misleading. The SEC staff has cautioned advisers against "extraneous" use of the term fiduciary in Form CRS where it could suggest exaggerated or unsubstantiated claims,[6] but enforcement around the word itself has been modest. In practice, there are few real marketing consequences for stretching the term.

This leaves consumers navigating a marketplace where **brokerage firms, insurance companies, and banks can sound like fiduciaries while remaining structurally conflicted**. These institutions typically manufacture or distribute financial products—mutual funds, annuities, structured notes, proprietary SMAs, insurance contracts—and compensate their sales forces directly or indirectly based on product usage and firm revenue.

Even when individual brokers are well-intentioned, they may work on platforms designed primarily to protect and grow the firm's own balance sheet. Product shelves, payout grids, revenue-sharing arrangements, and capital-allocation decisions all tilt the playing field toward house priorities, not purely client outcomes.

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Dual-registrant firms can be particularly challenging for investors to understand. Research on these kinds of firms find that they **must act as fiduciaries in their RIA capacity, but may follow only a suitability/Reg BI standard for their brokerage accounts**.[7,8] To the client, the relationship feels seamless: one advisor, one brand, one office. Behind the scenes, however, the legal standard of care can **toggle** based on account type or product. The SEC's own studies (including the RAND and Section 913 studies) have documented that retail investors are often confused about the differences between advisers and broker-dealers and do not understand when their advisor is—or is not—acting as a fiduciary.[9,10,11]

Meanwhile, the marketing narratives around the industry continue to cloud the issue. Industry observers have described "fiduciary" as the most overused and misused word in the investment industry,[1] and the SEC has had to propose limits on broker-dealers' use of the "adviser/advisor" title because it implicitly conveys a higher standard of care.[12] However, there are firms out there that follow a fiduciary model.

FIDUCIARY MODEL

A fiduciary model is defined by an adviser's legal obligations, business structure, and sources of compensation, rather than by descriptive terminology alone. Firms that operate under this framework generally share several structural characteristics:

- They are registered as investment advisers and are subject to a fiduciary duty of care and loyalty with respect to their advisory services.[3,14]
- They do not manufacture or distribute the investment products they recommend.
- They are compensated primarily, and in some cases exclusively, through client-paid advisory fees rather than commissions or revenue-sharing arrangements.[15]
- They have the ability to construct portfolios and financial plans using an open-architecture approach, without limitations arising from proprietary product platforms or internal distribution requirements.

Firms structured in this manner represent a relatively small portion of the broader financial services industry, with estimates suggesting that approximately 10% of advisors operate under a primarily fee-based registered investment adviser model.[16]

CAVEAT EMPTOR

For investors, the practical implication is simple but uncomfortable: **you cannot trust the word "fiduciary" by itself**. Because there are limited direct consequences for fiduciary washing in marketing, the burden falls on consumers to separate branding from reality by asking pointed questions:

- Are you (and your firm) acting as a fiduciary 100% of the time, or only for certain accounts or services?
- Are you affiliated with a broker-dealer, insurance company, or bank that profits from the products you recommend?
- Do you receive any commissions, trails, or revenue sharing from the products I buy, or are you paid only by me?
- If your firm disappeared, who would have custody of my assets, and who truly controls the investment decisions?

Even high-quality advisors may not be able to fully escape the constraints of platforms that can often be built - first and foremost - around corporate profits. Fiduciary washing is what happens when those platforms borrow the language of loyalty and client-first duty without changing the underlying incentives.

KEY TAKEAWAYS

Investors who truly want advice aligned with their interests cannot rely on the word *"fiduciary"* alone—they need to follow the **incentives, ownership structure, and legal standard of care** all the way back to the source.

The good news is that there ***are*** firms free from product-driven conflicts that offer genuinely unconflicted fiduciary advice. The challenge is sorting through all of today's "fiduciary washing" to find them.

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CITATIONS

[1] *"The most overused, misused and misunderstood word in the investment industry is 'fiduciary,'" Advisor Perspectives, August 3, 2010.*

[2] *U.S. Securities and Exchange Commission, "SEC Adopts Rules and Interpretations to Enhance Protections and Preserve Choice for Retail Investors in Their Relationships with Investment Professionals," Press Release 2019-89, June 5, 2019 (stating that an investment adviser owes a fiduciary duty to its clients under the Advisers Act).*

[3] *SEC, "Commission Interpretation Regarding Standard of Conduct for Investment Advisers," Investment Advisers Act Release No. 5248, June 5, 2019 (interpretation describing the adviser's fiduciary duty of care and loyalty as principles-based and applying to the entire relationship).*

[4] *SEC, "Regulation Best Interest: The Broker-Dealer Standard of Conduct," Exchange Act Release No. 86031, June 5, 2019 (final rule establishing Reg BI as a standard distinct from the Advisers Act fiduciary duty).*

[5] *FINRA, "SEC's Regulation Best Interest (Reg BI)," key topics overview (explaining that Reg BI applies when broker-dealers make recommendations to retail customers and outlining its four component obligations: disclosure, care, conflict of interest, and compliance).*

[6] *NAPA-Net, "SEC Cautions Advisers Against 'Extraneous' Use of Term 'Fiduciary'," April 15, 2022 (summarizing SEC staff guidance warning that use of "fiduciary" must not be exaggerated or misleading in Form CRS).*

[7] *Nicole M. Boyson, "The Worst of Both Worlds? Dual-Registered Investment Advisers," working paper (2019) (noting that dual registrants act as fiduciaries in their RIA capacity but may follow only suitability-based standards for brokerage accounts).*

[8] *Robert J. Tuch, "Compliance Challenges for Dually Registered Firms," Oyster Consulting white paper, March 28, 2015 (discussing the operational and compliance complexity of dual-registrant models and the different standards that apply).*

[9] *SEC, "Study on Investment Advisers and Broker-Dealers," January 2011 (Section 913 Study) (finding that many retail investors are confused by the differences between advisers and broker-dealers and their respective standards of care).*

[10] *RAND Corporation, "Investor and Industry Perspectives on Investment Advisers and Broker-Dealers," 2008 (prepared for the SEC; documenting retail investor confusion about titles and roles).*

[11] *Cadwalader / Seward & Kissel / Ropes & Gray client alerts summarizing the SEC's 2019 adviser standard-of-conduct interpretation and emphasizing the two-pronged fiduciary duty (care and loyalty).*

[12] *CFA Institute, "SEC Proposes to Restrict Broker-Dealer Use of 'Adviser' Title," August 15, 2018 (noting that many financial service providers adopted "adviser/advisor" in their names to imply a higher standard of care associated with RIAs).*

[13] *Garrett Planning Network, "Your Agent Is Incorrectly Calling Themselves a Fiduciary," September 11, 2024 (arguing that a true fiduciary advisor should not accept commissions or other compensation that conflicts with client interests).*

[14] *Investment Advisers Act of 1940, Section 206; see also SEC v. Capital Gains Research Bureau, Inc., 375 U.S. 180 (1963).*

[15] *U.S. Securities and Exchange Commission, Regulation Best Interest: The Broker-Dealer Standard of Conduct, Release No. 34-86031 (June 5, 2019); see also SEC, Form ADV: Instructions for Part 2A (brochure disclosure regarding fees, compensation, and conflicts of interest).*

[16] *Cerulli Associates, U.S. Advisor Metrics and The State of U.S. Wealth Management (most recent editions). Cerulli research estimates that advisors operating primarily as registered investment advisers represent a low-teens percentage of the overall advisor population.*

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