

September 8, 2015

Investment Advisers Act 75th Anniversary – Statements from Industry Leaders and Experts

The Investment Adviser Association (IAA) asked a number of industry professionals, regulators, and other experts to share their views on the value the Investment Advisers Act has brought, and also asked them to forecast what lies ahead for the Act and its founding principle, the fiduciary duty. The Institute includes two responses, one from former SEC Chairman, Arthur Levitt, and the other from former IAA CEO, David Tittsworth, because they focus sharply on the challenge confronting the SEC regarding fiduciary duty and why this highest standard matters to investors. Below are the transcriptions of their video responses.

Link to the IAA's event website for the celebration of the 75th anniversary of the Investment Advisers Act: <https://www.investmentadviser.org/eweb/dynamicpage.aspx?webcode=iaact75>.

Arthur Levitt on Investment Advisers Act's 75th Anniversary

Former Chairman
Securities and Exchange Commission

Transcription of video response (found at https://www.youtube.com/watch?v=sC95_ugbka0):

The Advisers Act was a landmark bill in the history of the country, and it's withstood the test of time. I started my career in financial services as a broker and I loved brokers and the interface with customers. But through the 20 years or so that I was a broker running one of the largest brokerage firms in America with thousands of salesmen, I came to the conclusion that there was hardly ever an occasion where a client purchased or sold a security that there wasn't some level of discussion from the broker involved on the other end of that transaction. So when the issue of a fiduciary standard arose and the argument was made that brokers are mainly order takers, my personal experience told me otherwise.

And the notion that professionals who are investment advisers must abide by a standard that is higher than those of brokers who deal generally with a level of personnel less sophisticated than those dealt with by investment advisers, I feel very strongly that there should be the same standard applying to both. It's only the most egregious cases that the suitability standard comes to light. But there are many cases, many instances that are much more subtle than outright fraud. And it's those subtle cases which are on the line where the fiduciary standard would cause a broker to think twice before giving certain advice or withholding certain judgments.

I wish that the SEC was so structured that they could deal with a problem as divisive as this appears to be. But the commissioners at the SEC are so divided philosophically, on this and many other issues, that I believe they will be locked in conflict on this issue for a long, long time. And because of that, I think that we should try to move ahead on the standard set forth by the

Department of Labor. Is it perfect in terms of wording and content? Probably not. I don't know that there is any standard or rule that is ever perfect, or never has unintended consequences. Having said that, I think we've long passed the time where we can afford to have side-by-side advisers with one set of responsibilities, and brokers with a much easier set of responsibilities and standards.

David Tittsworth on Investment Advisers Act's 75th Anniversary

Counsel, Ropes & Gray
Former President & CEO, Investment Adviser Association

Transcription of video response (found at <https://www.youtube.com/watch?v=Jh0aogKr-IY>):

It is a big deal because the fiduciary duty is what separates investment advisers from all other financial services professionals, and especially broker-dealers and insurance agents. It is the highest duty of care. I know that when I testified in 2011 on Capitol Hill about the Dodd-Frank Act and Section 913, which gives the SEC authority to impose a fiduciary standard on broker-dealers, the chairmen of the committee at that time asked all of us (there were 8 people at a witness table): is a fiduciary standard a higher standard than the standard for broker-dealers, yes or no? And to a person, eight people sitting at that table, the CEO of FINRA, the CEOs of broker-dealers in the insurance companies, consumer representatives, the state securities regulators, to a person everyone said, "Yes, the fiduciary standard under the Advisers Act is the highest standard of care; it is a big deal.

And to the extent that anyone cares about our capital markets and the integrity of those markets and the vibrancy, the vitality of our markets ... if we promote higher standards of care, people are going to trust and invest and keep our capital markets the best in the world.

It is possible that the SEC, despite its good intentions, could water down the existing Investment Advisers Act fiduciary duty, or they could determine that only certain types of retail customers are entitled to protections under the Investment Advisers Act fiduciary duty. I hope, sincerely hope, that it will remain very robust, that it will remain basically the same, that this principles based put-the-interest-of-your-client-ahead-of-your-own-at-all-times standard will remain in place.

If not, we're going to lose something very valuable. Investors will lose something very valuable. Our markets will lose something very valuable. And the profession itself will not have the ability to distinguish itself from other salespeople that are out there. So I think and hope that the Securities and Exchange Commission and the United States' Congress as well as other regulators and policy-makers in the U.S. and, really, throughout the globe [will] understand the importance of maintaining the highest standards of care.