

**Testimony of**  
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Before the N.J. Bureau of Securities  
Re: Fiduciary Duty/Pre-Proposal  
November 19, 2018

Ladies and Gentlemen:

Thank you for the opportunity to offer the Bureau a comment about the legal fiduciary duties of brokers.

**1. Legal fiduciary duties play a significant social role.** These duties encourage socially desirable services, such as medical, legal, and trustee services. Because these services pose dependence of the service receivers and bestow power on the service-givers, abuse of such power would drive dependents to avoid these beneficial services, and thereby harm our society. The law imposes on these service-givers duties to act both expertly and honestly in order to encourage fiduciary services and strengthen trust in the service-givers.

**2. Fiduciary duties should apply to brokers.** Brokers act in different capacities and offer different services, which are subject to fiduciary duties.. As custodians, they hold other peoples' money, securities or other financial assets. As agents, they act on behalf of investors, and can legally bind them to the broker' activities or failures to act. As sales-people they offer advice about securities trading. In addition, as traders, brokers can and do affect our securities markets.

**Brokers have greater expertise than many, if not most, of their clients.** They offer investment advice, whether paid for, or given free, on which most client-investors rely. To trade on behalf of their clients, brokers acquire possession of their clients' securities and money. Like all agents and custodians, brokers must be trusted by their clients. Therefore, the law should ensure that this trust is justified and enforced. That is the purpose of fiduciary law.

**Financial investments, sales, acquisition, and trading, require expertise, which many investors lack.** Therefore, investors must rely on experts to choose suitable investments, and on agents to trade for them in financial assets.

**3. Brokers' services as custodians, agents, and advisors can be abused by:** (i) Failure to exercise proper expertise, and (ii) Dishonest conflict of interest. Therefore, fiduciary duties include a duty to exercise expertise—the duty of care; and a prohibition dishonestly acting in conflicts of interest—the duty of loyalty. A duty of loyalty includes fully and fairly disclosing the nature of conflicts of interest so that the client can either reject the broker's recommendation or provide a written, informed client consent. The specifics and nature of the disclosure will vary with the sophistication of the client and the client's ability to protect his or her interests.

**Abuses of entrusted power may lead to: investors' withdrawal from the financial markets and financial investments, resulting in the decimation of our financial system**

The lower the investors' self-protection is, the more power is entrusted to agents and experts, the stricter the fiduciaries' duty of loyalty should be. In sum: these duties are the backbone of trust in the financial system. As history demonstrated time and again,, when these duties are not followed, the system collapses.

**4. What brokers' recommendation should trigger a fiduciary duty?** I believe that the duty should cover any recommendation, advice, and service relating to investments in any type of financial assets, including sale, purchase, lending, borrowing, depositing, and combining with other securities, and new securities.

**5. To whom should fiduciary duties be owed?** Fiduciary duties should be owed to direct and indirect recipients of the brokers' fiduciary's services. An investor that uses brokers' services or the services of a related broker should be owed fiduciary duties by both. Further, transfer from one service provider to another should require the investors' consent.

**6. Charles Schwab Corporation's concern that State's regulation of brokers will create confusion is misplaced.** Brokers need not worry. Lawyers have lived with State regulations for decades and survived. We manage to serve clients not only in the United States but all over the world.

I trust that New Jersey would lead other states to solve a serious problem facing our financial system. I am delighted at New Jersey's actions. American investors and the American financial system need the protection of fiduciary duties of whoever deals with the other people's investments and money or advises other people as a sales person, whether paid or not paid for advice.

Thank you.

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