INSTITUTE FOR
THE FIDUCIARY STANDARD

New Advice Standards Violate Common Sense

Remarks of Knut Rostad prepared for delivery, June 17, 2020 for the webinar, 'After the Advisers Act'

Eighty years ago this August Congress passed the Investment Advisers Act of 1940. This was a victory for fiduciary principles. It separated sales from advice and protected investors. Today, SEC rulemaking effectively rips out the heart of what our grandfathers and great grandfathers fought for in 1940. On June 30th their huge accomplishment will effectively be gone.

The SEC's Reg BI and the CFP Board standards abandon core principles of the Advisers Act. They are a giant leap backwards and unabashedly violate plain common sense.

American Heritage says common sense is, "sound judgment not based on specialized knowledge." Winston Churchill referred to "good sense" in his oft-quoted words, "to never give in, never, never, never … except to convictions of honor and good sense."

The new standards abandon such "good sense" in many ways. Here are three.

Advisers and broker are different. Brokers work for and are paid by manufacturers to sell securities in relationships of three. Advisers work for and are paid by clients in relationships of two. They are as different as butchers and nutritionists. This is common sense, but is not in the standards.

Conflicts are different. The SEC uses identical language for brokers and advisers conflicts, though brokers' compensation sources can take pages and pages to describe while advisers can take a paragraph. The language: "You should understand and ask us about these conflicts because they can affect the recommendations and investment advice we provide you." Conflicts differ greatly in magnitude, complexity and transparency. This is common sense, but is not in the standards.

Conflicts should be avoided if possible. Just a few years ago a senior SEC official, Carlo di Florio, compared conflicts with viruses that are a "mortal threat to the body". That was yesterday. Today, the SEC suggests conflicted advice is good for investors. This turns common sense on its head.

These three principles stand out. More examples, small and large, of violations of common sense abound.

Example: The difference between brokers and advisers, according to the SEC, come down to a matter of *monitoring* the account. "A broker … does not typically monitor the account" or offer advice on a regular basis, while an adviser does.

Example: The SEC continues to say brokers' fees will be disclosed. This is just not true. It is false. Sources of fees are disclosed, yes. But, actual fees and expenses, or even good faith estimates, can be and are regularly hidden.

Example: CFP Board requires CFPs to have policies and procedures to manage conflicts. Twelve years after CFPB said financial planning must meet a fiduciary standard, concrete guidance has not been offered to help CFPs know how to manage material conflicts. This is wrong. This is unfair to CFPs. This also is something CFP Board can provide a substantive fix.

The Board can either offer meaningful and concrete guidance so CFPs can meet the standard, or it can delay application and enforcement of the requirement. Either option beats doing nothing by a mile.

Bottom line: The magnitude of abandoning common sense "advice" is hard to see. The impacts are not. Confidence plunges and distrust flourishes absent common sense. Even short disclosures that don't make sense to investors create investor confusion. The SEC's own disclosure research suggests so.

What to do to combat attacks on common sense? Churchill had it right. "Never, never, never" give in.

The Institute will release this afternoon a new short story paper for investors, "Why Choose a Fee-only Fiduciary Advisor" and four image ads we will begin to place on social media. The story and image ads explain fee-only, fiduciaries are better for investors because; they follow common sense.