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We apologize for the bad news

Many of our readers are fiduciary trustees for large pools of money: pension funds, charitable foundations, employee welfare & retirement plans, and so on. You, the fiduciaries, should be applauded for adopting this burden, for it is often an under-appreciated duty. As fiduciaries, you are responsible for a great deal and the scope of your responsibilities is ever increasing.

At Westminster Consulting, we sometimes are bearers of bad news. It would be easier to tell investment committees all the ways that their attention wasn't required and how much more leisure time everyone gets. In reality, we are obligated to explain where your fiduciary duties are.

Here's where the bad news come in. We have spoken with trustees working for a retirement plan or charity that have, in an effort to offload fiduciary responsibility, hired a fiduciary consultant to help manage their plan. Herein lays the Myth:

The Myth: "Our trustees hired an investment consultant with fiduciary status. Our consultant has no conflict of interest because he is a fiduciary! So, our plan is totally covered and we, the trustees, we are no longer responsible for the plan."

The Facts: This is wrong in two important ways:

1. Once you hire a consultant, even one that adopts a fiduciary standard, plan fiduciaries cannot completely offload their fiduciary responsibility. They may *share* responsibility with a consultant, but they cannot offload it completely.
2. Most importantly, the plan fiduciaries will always be responsible for overseeing the consultant. Why is this difficult? The sad reality is that some consultants may claim to act as a fiduciary but still have major conflicts of interest.

The Perfect Example of Failure

As a reminder, what's the difference between a broker and a fiduciary? In summary, brokers are salesmen while fiduciaries are legally obliged to act in your interests alone, without conflict of interest or undivided loyalty.

Let's consider about the investment landscape for a moment. For decades, investment consultants and brokers working for wirehouses and large brokerage firms were subject to a lesser standard – the suitability standard – but now the fiduciary standard is expanding to become the new legal benchmark of behavior. The salesman can compete by expanding their business to include fiduciary lines of business, but it is not clear when they are acting in their own interest or for their clients.

In “food” terms, the difference between a broker and fiduciary could be described as neighborhood butchers selling their wares, whereas fiduciary consultants are compared to dieticians, trying to make the best recommendations for your overall health. There’s nothing wrong with a knowledgeable butcher but – in the end – they are salesman. Your butcher will never recommend going next door to a competing fishmonger, or buying from the fruits and vegetable store instead.

So, it’s a simple solution: just hire a fiduciary investment consultant and you are set, right?

Not so fast! Business Insider discovered that some fiduciary firms had a significant conflict of interest because they were affiliated with a broker-dealer. The firm had financial incentives to sell you their own products. Or, as Business Insider put it, “the dieticians own a butcher shop.”

How can fiduciary firms get away with this obvious conflict of interest? The biggest reason is that brokers can **dual-register** as brokers and fiduciaries. In other words, these fiduciaries can easily revert to act like a salesman, subject only to a suitability standard, when selling their products.

In reality, the biggest brokerage firms are filled with so-called fiduciary advisors who wear multiple hats, selling on-platform products with embedded fees whenever possible, despite the best interest of the client.

In short, being a fiduciary won’t protect clients from conflicts of interest.

Watch for these Red-Flags

So, how do you know if you’re dealing with a conflicted broker or a loyal fiduciary? There are several red-flags to look for:

1. Get explicit documentation on your consultant’s total sources of revenue. This information should be included in the annual 408(b)(2) disclosure. If your consultant accepts anything other than an explicit hard-dollar fee for services, then there may be a conflict of interest.
2. Does your consultant prefer to have custody of assets? Do they use an investment platform with specially vetted mutual funds, separately managed accounts, or alternative investments? These products typically have special revenue and incentive arrangements, and there may be a conflict of interest.
3. If your consultant requires a Series 7 license to practice, they may be dual-registered with a broker/dealer and there may be a conflict of interest.
4. How big is the disclosure? How complex? If the disclosure is filled with pages of small print and “Legalese”, it becomes easier for brokers to continue business as usual without taking your best interests in mind.