



CERTIFIED FINANCIAL PLANNER  
BOARD OF STANDARDS, INC.



Consumer Federation of America



September 15, 2010

The Honorable Mary L. Schapiro  
Chairman  
Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549-1090

**Survey: Vast Majority of U.S. Investors Support Clear “Fiduciary Standard” for Financial Professionals; Widespread Confusion Seen Linked to Current SEC Rules**

Dear Chairman Schapiro:

We are writing to bring to your attention new survey research, which we believe makes a compelling case for imposing the Investment Advisers Act fiduciary duty on all those who give personalized investment advice about securities to retail investors. We hope that this information will be taken into consideration as you prepare the study of standards of care with regard to investment advice required by the Dodd-Frank Wall Street Reform and Consumer Protection Act.

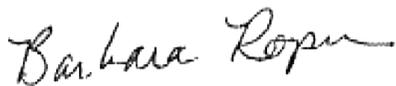
The complete survey report, as well as our announcement to accompany its release, are included with this letter. The following are a few of the key highlights:

- Investors do not understand the differences between brokers, investment advisers, and financial planners.
- Investors are not knowledgeable about the different standards of care that apply to their recommendations.
- Investors overwhelmingly believe that those who give investment advice – including insurance agents who recommend securities – should be required to act in the best interests of their customers and disclose conflicts of interest.

The unequivocal findings of this survey show that a common standard should apply to investment advice and recommendations of securities by brokers and investment advisers alike, and that that standard should be the principles-based fiduciary duty that applies under the Advisers Act.

We look forward to working with the Commission as it completes its study and issues its report to Congress. Please feel free to contact us if you have any questions or if we can offer any additional assistance.

Respectfully submitted,



Barbara Roper  
Director of Investor Protection  
CFA



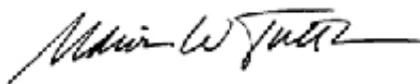
Denise Voigt Crawford  
President  
NASAA



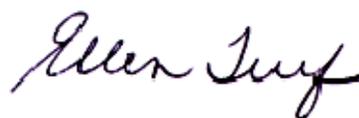
David G. Tittsworth  
Executive Director  
IAA



Kevin R. Keller, CAE  
Chief Executive Officer  
CFP Board



Marvin W. Tuttle Jr., CAE  
Executive Director and CEO  
FPA



Ellen Turf  
Chief Executive Officer  
NAPFA



David P. Sloane  
Senior Vice President  
Government Relations and  
Advocacy  
AARP

cc: The Honorable Luis A. Aguilar, Commissioner  
The Honorable Kathleen L. Casey, Commissioner  
The Honorable Troy A. Paredes, Commissioner  
The Honorable Elisse B. Walter, Commissioner  
Ms. Jennifer McHugh, Senior Advisor to the Chairman

## **SURVEY: VAST MAJORITY OF U.S. INVESTORS SUPPORT CLEAR “FIDUCIARY STANDARD” FOR FINANCIAL PROFESSIONALS, WIDESPREAD CONFUSION SEEN LINKED TO CURRENT SEC RULES**

***CFA/AARP/NASAA/Industry Survey Finds Most Investors Mistakenly Think Financial Professionals, Insurance Agents Already Held to Fiduciary Duty; 91 Percent Support Even-Handed Regulatory Approach From SEC.***

**WASHINGTON, D.C.///September 15, 2010///**As the U.S. Securities and Exchange Commission (SEC) weighs feedback on how to implement new financial reforms enacted by Congress, a major new national survey of investors shows that most U.S. investors are confused about which financial professionals are required to operate under a “fiduciary standard” requiring the financial professional to put their client’s interest ahead of their own. At the same time, the vast majority of U.S. investors believe that all financial professionals providing investment advice should be required to operate under such a pro-investor standard, according to the new survey.

The poll of 1,319 investors was conducted August 19-23, 2010 by ORC/Infogroup for the Consumer Federation of America, AARP, the North American Securities Administrators Association, and leading investment adviser and financial planning organizations, including the Certified Financial Planner Board of Standards, Inc., the Investment Adviser Association, the Financial Planning Association and the National Association of Personal Financial Advisors.

Chief survey findings include the following:

- Nine out of 10 U.S. investors (91 percent) think that “a stockbroker and an investment adviser (who) provide the same kind of investment advisory services ... should have to follow the same investor protection rules.”
- Nearly all investors (97 percent) agree that “when you receive investment advice from a financial professional, the person providing the advice should put your interests ahead of theirs and should have to tell you upfront about any fees or commissions they earn and any conflicts of interest that potentially could influence that advice.”
- Nearly all U.S. investors (96 percent) agree that the fiduciary requirement should extend to insurance agents selling investments.
- At the same time, there is widespread misunderstanding about which financial professionals are held to the fiduciary standard:
  - Three out of five U.S. investors mistakenly think that “insurance agents” have a fiduciary duty to their clients.
  - Two out of three U.S. investors are incorrect in thinking that stockbrokers are held to a fiduciary duty.
  - 76 percent of investors are wrong in believing that “financial advisors” – a term used by brokerage firms to describe their salespeople -- are held to a fiduciary duty.
  - By contrast, 75 percent of investors think the fiduciary standard is in place for “financial planners” and 77 percent say the same about “investment advisers.”

Barbara Roper, director of investor protection, Consumer Federation of America, said: **“This survey confirms that investors are clueless when it comes to the different standards of care that apply to brokers and investment advisers. They don’t even understand the differences between brokers, investment advisers, and financial planners, let alone that they are subject to different legal obligations to the client when they perform the same services. This lack of understanding is not because investors are stupid; it is because, bluntly stated, the policy itself is stupid. No one in their right mind would create a system in which individuals who call themselves by titles and offer services that are indistinguishable to the average investor are subject to two different standards when they do so. But this is precisely the world that SEC**

**policy over the past two decades has helped to create. Now, Congress has given the SEC a chance to fix those past errors by adopting a policy that makes sense to investors and puts their interests first. ”**

Denise Voigt Crawford, Texas Securities Commissioner and president of the North American Securities Administrators Association, said; **"Because we see the devastating effects of what happens when the interests of investors are pushed into the background, state securities regulators have consistently urged policymakers to give investors what they have long deserved. And that is to require all who provide investment advice to be held to the fiduciary duty currently applicable to investment advisers as established by the Investment Advisers Act of 1940. We encourage the SEC to listen to the voice of investors as expressed in this survey and do the right thing. Apply the fiduciary duty of the Investment Advisers Act to those who provide investment advice about securities."**

AARP Executive Vice President Nancy LeaMond said: **"Older Americans expect financial professionals to put their client's interest ahead of their own when giving investment advice, but that's not a requirement for all professionals today. As investors seek to recover from the devastating losses they suffered in the recent financial crisis, the need for the SEC to be a watchdog for investors is even more urgent. This is of particular importance to older investors, who have less time to recoup their losses as they approach retirement."**

Robert Glovsky, JD, LL.M., CFP®, chair of the Board of Directors, Certified Financial Planner Board of Standards, Inc., and president, Mintz Levin Financial Advisors LLC, Boston, said: **"Financial planners successfully operate in a variety of different business models and fee structures -- including brokerage and insurance models and commission-based structures. They are able to successfully provide financial planning services at a fiduciary standard of care. Our experience is strong evidence that the fiduciary standard is a practical, flexible, and workable standard no matter if the advisor is a stock broker, insurance agent, investment advisor or financial planner. Contrary to some who suggest that requiring the fiduciary standard will hurt consumers by increasing costs and reducing services, our experience is just the opposite: providing services with fiduciary accountability is good for the customer and good for business."**

David Tittsworth, executive director, Investment Adviser Association, said: **"Investment advisers have been subject to the fiduciary duty standard under the Investment Advisers Act for many decades. We strongly urge the SEC to ensure that the Advisers Act fiduciary duty standard is not watered down or weakened as it implements the Dodd-Frank bill. Others who provide investment advice to individuals should be subject to this same standard of care in order to provide consistency and for the protection of investors."**

The organizations sponsored the survey in response to concerns that the SEC is receiving extensive feedback from financial industry groups, but relatively little from the U.S. investing public. As required by the Dodd-Frank Act, the SEC has solicited public input, comments, and data on issues related to the effectiveness of existing standards of care for brokers-dealers and investment advisers, and whether there are gaps, shortcomings, and other problem issues in the current legal or regulatory standards.

The new survey updates earlier poll findings released in 2004 and 2007 by the Consumer Federation of America.

### **OTHER KEY SURVEY FINDINGS**

- Over three out of five American investors mistakenly believe that stockbrokers are investment advisers: Roughly a third of investors (34 percent, including 41 percent of 18-34 year olds and 45 percent of African Americans) incorrectly think that financial advice is the "primary service" offered by stockbrokers; and another 27 percent believe that "advice and assistance in conducting transactions are equally important services offered by brokers." (In reality, brokers are exempt from regulation as investment advisers, and the fiduciary duty that accompanies such regulation, on the grounds that investment advice is only an incidental component of their brokerage activities.) Only about three in 10 investors (29 percent) understand that the primary service of stockbrokers is to "buy and sell stocks, bonds, mutual funds, and other investment products on behalf of their clients, and they give only limited advice that is directly related to those transactions."

- More than nine out of 10 U.S. investors (93 percent) think that stockbrokers should be required to disclose conflicts of interest in advance, including cash “or other forms of compensation from a mutual fund company as an inducement to sell a particular mutual fund to his or her clients ...”

For full survey findings, go to <http://www.hastingsgroup.com/fiduciarysurvey>.

### **SURVEY METHODOLOGY**

The ORC/Infogroup survey was conducted August 19-23, 2010 among a sample of 2,012 adults comprising 1,007 men and 1,005 women 18 years of age and older living in the Continental United States. Most questions were asked only of those 1,319 who identified themselves as investors.

Where applicable, results for some questions were compared to similar telephone surveys of investors conducted in 2004 and 2007. Completed interviews were weighted by four variables: age, gender, region and race to ensure reliable and accurate representation of the total population, 18 years of age and older.

The margin of error for results based on the total sample is plus or minus 3 percentage points.

**CONTACT:** Patrick Mitchell, (703) 276-3266 or [pmitchell@hastingsgroup.com](mailto:pmitchell@hastingsgroup.com).

**EDITOR'S NOTE:** A streaming audio recording of the news event will be available on the Web as of 5 p.m. EDT on September 15, 2010 at <http://www.hastingsgroup.com/fiduciarysurvey>.



# **U.S. Investors & The Fiduciary Standard**

**A National Opinion Survey**

**September 15, 2010**

# Methodology

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# Executive Summary

# Executive Summary

**Most Americans are confused about which financial professionals are required to operate under a “fiduciary standard” that requires the financial professional to put their client’s interest ahead of their own. At the same time, nearly all U.S. investors believe that all financial professionals providing investment advice should be required to operate under this pro-investor standard.**

Those are the chief findings of a major new survey of 1,319 U.S. investors conducted August 19-23, 2010.

Survey highlights include the following:

- **Nine out of 10 U.S. investors (91 percent) think that “a stockbroker and an investment adviser (who) provide the same kind of investment advisory services ... should have to follow the same investor protection rules.”** Supporters of this even-handed approach to regulation include 92 percent of households over \$100,000 or more and 90 percent of college graduates.

# Executive Summary

- **Nearly all U.S. investors support the fiduciary standard for investment professionals providing advice.** A nearly unanimous 97 percent agreed that “when you receive investment advice from a financial professional, the person providing the advice should put your interests ahead of theirs and should have to tell you upfront about any fees or commissions they earn and any conflicts of interest that potentially could influence that advice.” Over four out of five investors (85 percent) agree strongly with that statement.
- **Nearly all U.S. investors (96 percent) agree that the fiduciary requirement should extend to insurance agents selling investments.** There was strong support for the following: “when you receive investment advice from an insurance agent -- including an agent selling annuities -- the insurance agent should have to put your interests ahead of theirs when making those financial recommendations and also tell you upfront about any fees or commissions they earn and any conflicts of interest that could potentially influence their advice.” Within the 96 percent overall support, more than four out of five investors (82 percent) agree strongly with that statement.

- **At the same time, there is widespread misunderstanding about which financial professionals are subject to a “fiduciary standard”:**
  - ❑ Fully three out of five U.S. investors (including 65 percent of 18-34 year olds and 57 percent of households \$100,000 or more) mistakenly think that “insurance agents” have a fiduciary duty to their clients.
  - ❑ Two out of three U.S. investors (including 70 percent of 45-54 year olds and 62 percent of college graduates) are incorrect in thinking that stockbrokers are held to a fiduciary duty.
  - ❑ 76 percent of investors are wrong in believing that “financial advisors” – a term used by brokerage firms to describe their salespeople -- are held to a fiduciary duty.
  - ❑ By contrast, 75 percent of investors think the fiduciary standard is in place for “financial planners” and 77 percent say the same about “investment advisers.”

- **Over three out of five American investors mistakenly believe that stockbrokers are investment advisers:** Roughly a third of investors (34 percent, including 41 percent of 18-34 year olds and 45 percent of African Americans) incorrectly think that financial advice is the “primary service” offered by stockbrokers; and another 27 percent believe that “advice and assistance in conducting transactions are equally important services offered by brokers.” (In reality, brokers are exempt from regulation as investment advisers, and the fiduciary duty that accompanies such regulation, on the grounds that investment advice is only an incidental component of their brokerage activities.) Only about three in 10 investors (29 percent) understand that the primary service of stockbrokers is to “buy and sell stocks, bonds, mutual funds, and other investment products on behalf of their clients, and they give only limited advice that is directly related to those transactions.”
- **More than nine out of 10 U.S. investors (93 percent) think that stockbrokers should be required to disclose conflicts of interest in advance,** including cash “or other forms of compensation from a mutual fund company as an inducement to sell a particular mutual fund to his or her clients ...”

## Detailed Findings

# Who Are Investors?

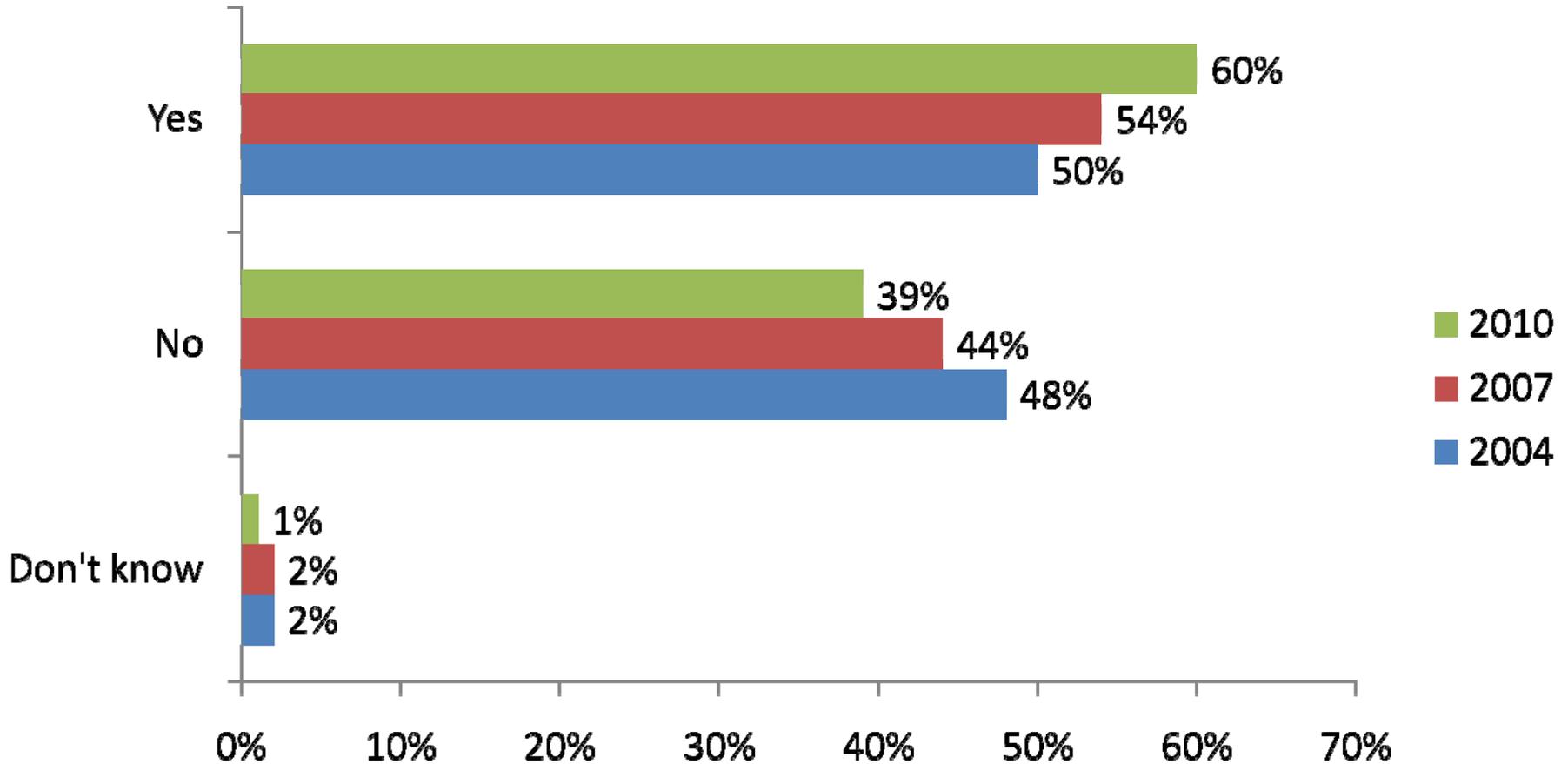
**The number of adult Americans who define themselves as investors has increased from 50% in 2004 to 54% in 2007 and now stands at 60%.**

## **In the 2010 survey:**

- Men are more likely than women to say they are investors (63% vs. 56%).
- Those age 18-34 are much less likely to be investors (42%) than are those age 35 and over (67%).
- The likelihood of being an investor is heavily dependent on household income. Only 31% of those with household incomes of less than \$35,000 are investors compared to 59% of those in households with incomes of \$35,000 to less than \$50,000. Seventy-six percent of those in households with incomes of \$50,000 or more identify themselves as investors.

# Who is Investing?

Q1: Are you an investor? By an investor I mean do you make decisions about where your savings are placed? This could mean you own bank certificates of deposit, stocks, bonds or mutual funds either directly or through retirement plans such as 401(k)s, IRAs, Roth IRAs or similar plans. Base = 2,069 adults in 2004, 2,052 adults in 2007 and 2,012 adults in 2010.



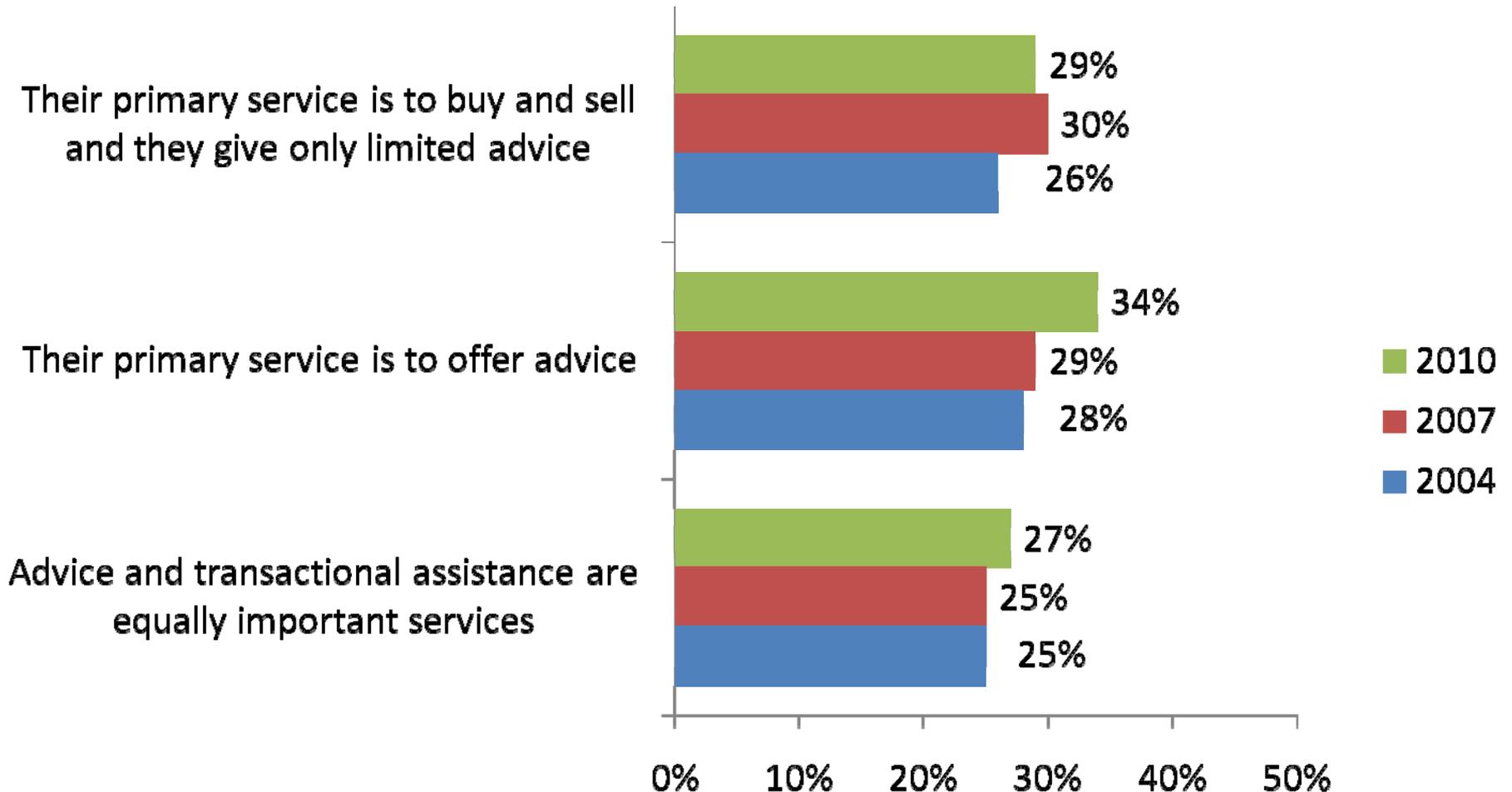
# Understanding of the Role of a Stockbroker

**Despite the fact that the percentage of adults identifying themselves as investors has increased since this survey was first asked in 2004, investors' knowledge of the proper role of stockbrokers has not increased.**

- **Those investors who correctly identify the role of stockbrokers as primarily buying and selling and secondarily giving limited advice, was 26% in 2004, 30% in 2007 and 29% in the latest survey.**
- **The number of investors who incorrectly identified a stockbroker's role as offering advice, has increased from 28% in 2004, to 29% in 2007 and is now at 34% in the latest study.**

# Understanding of the Role of a Stockbroker

Q3: Based on your knowledge of stockbrokers, which one of the following statements do you believe best describes the services they provide to their customers? Base = investors: 1,319 in 2010, 1,073 in 2007 and 1,044 in 2004.



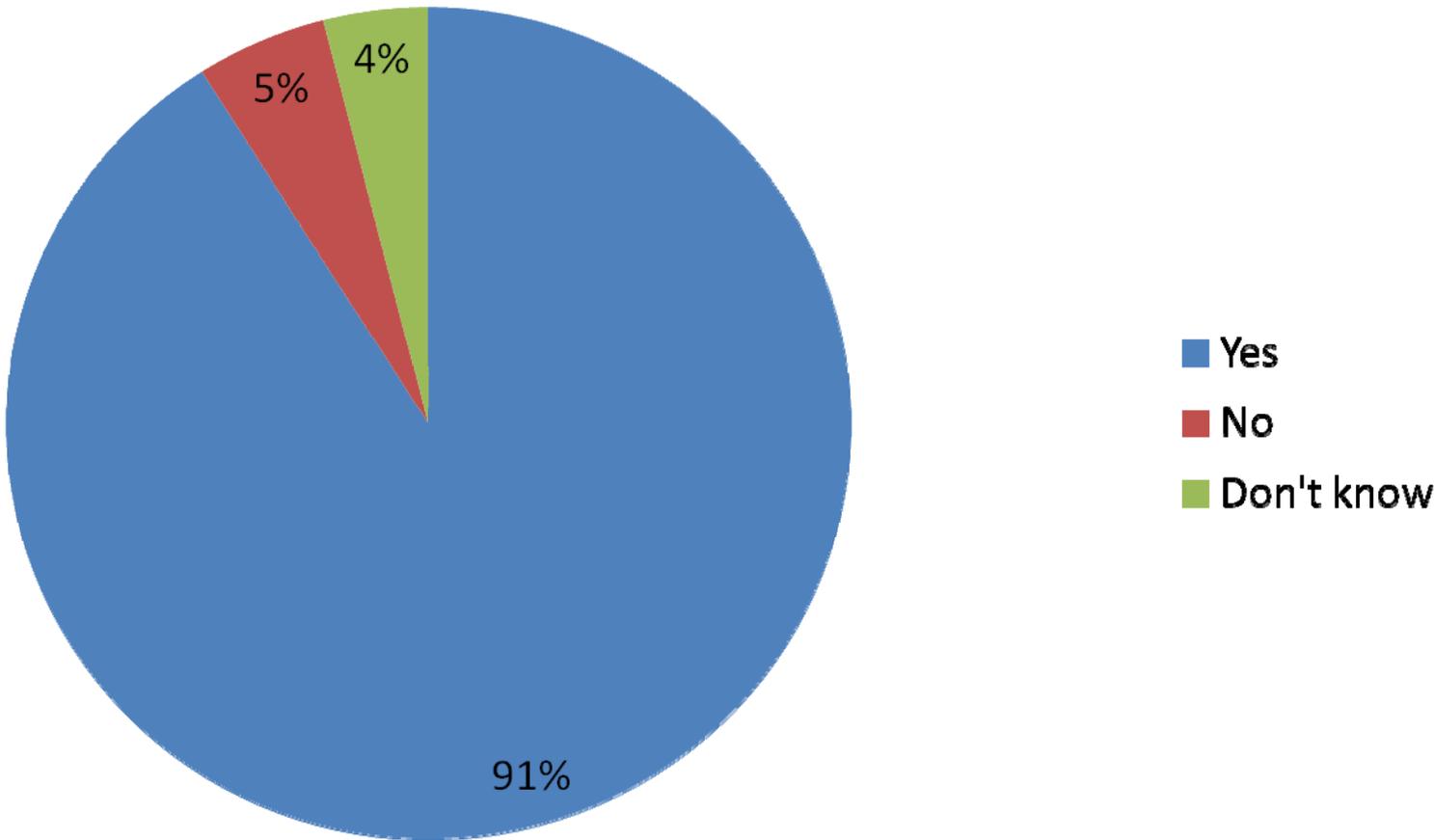
## Following the Same Investor Protection Rules

**Virtually every investor agrees (91%) that if a stockbroker and an investment adviser provide the same kind of investment advisory services, they should both have to follow the same investor protection rules.**

**A similar question asked in 2004 and 2007, asked about stockbrokers and financial planners and found that over 90% in both surveys agreed that if these two professionals offer the same type of advice, they should have to follow the same rules.**

# Following the Same Investor Protection Rules

Q4 If a stockbroker and an investment adviser provide the same kind of investment advisory services, do you think they should have to follow the same investor protection rules? Base = 1,319 investors.

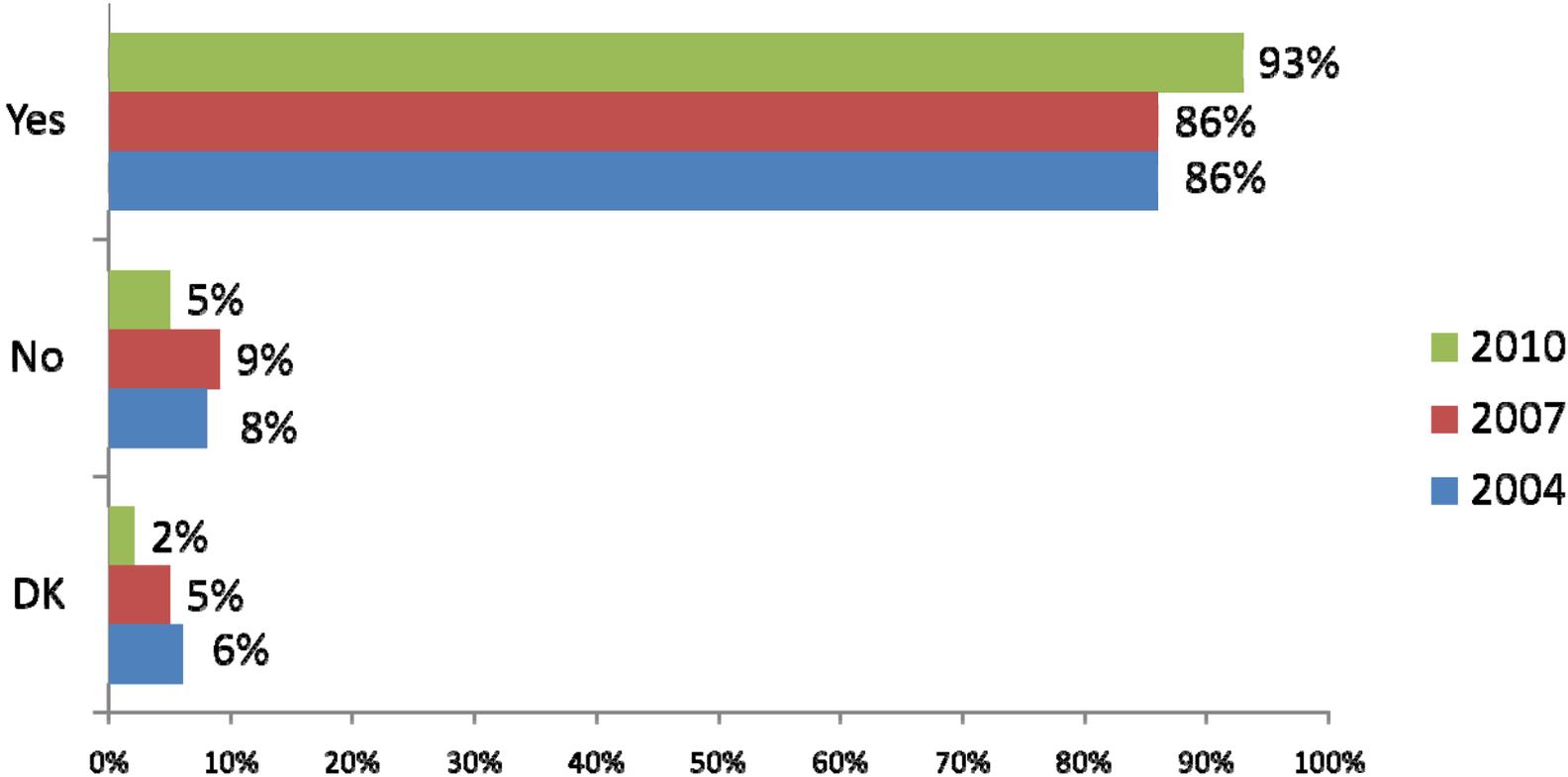


## Disclosing Possible Conflicts of Interest

**Again, virtually all investors interviewed (93%) think a stockbroker should be required to disclose any financial incentives they receive from an investment provider before they recommend those products to their client. This percentage has increased from 86% in both the 2004 and 2007 askings of the same question.**

# Disclosing Possible Conflicts of Interest

Q5: Stockbrokers receive financial incentives from investment product sponsors to recommend particular investments to their customers. If, for example, a stockbroker receives cash payments, vacation trips or other forms of compensation from a mutual fund company as an inducement to sell a particular mutual fund to his or her clients, should the stockbroker be required to disclose that fact to a customer buying the mutual fund?  
Base = investors: 1,319 in 2010, 1,073 in 2007 and 1,044 in 2004.



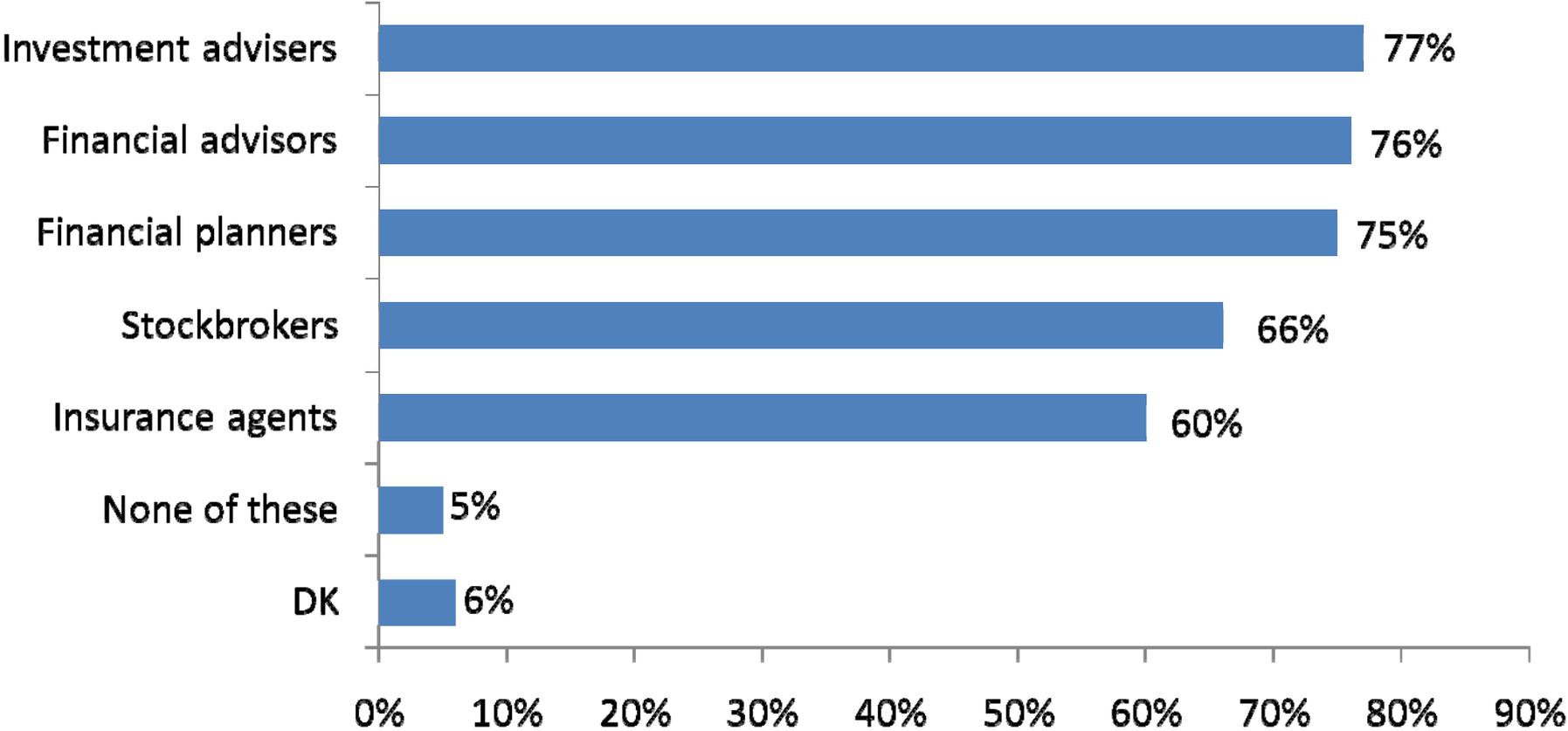
# Operating Under a Fiduciary Duty

**A majority of investors think that each of the following professionals have to comply with a “fiduciary duty” which means they put their clients’ financial interest ahead of their own. But in the case of stockbrokers (where 66% say yes), insurance agents (where 60% say yes) and financial advisors (where 76% say yes), this is not correct.**

**Investment advisers and many financial planners are subject to a fiduciary duty; the survey indicates that most investors understand this fact (77% for advisers and 75% for planners).**

# Operating Under a Fiduciary Duty

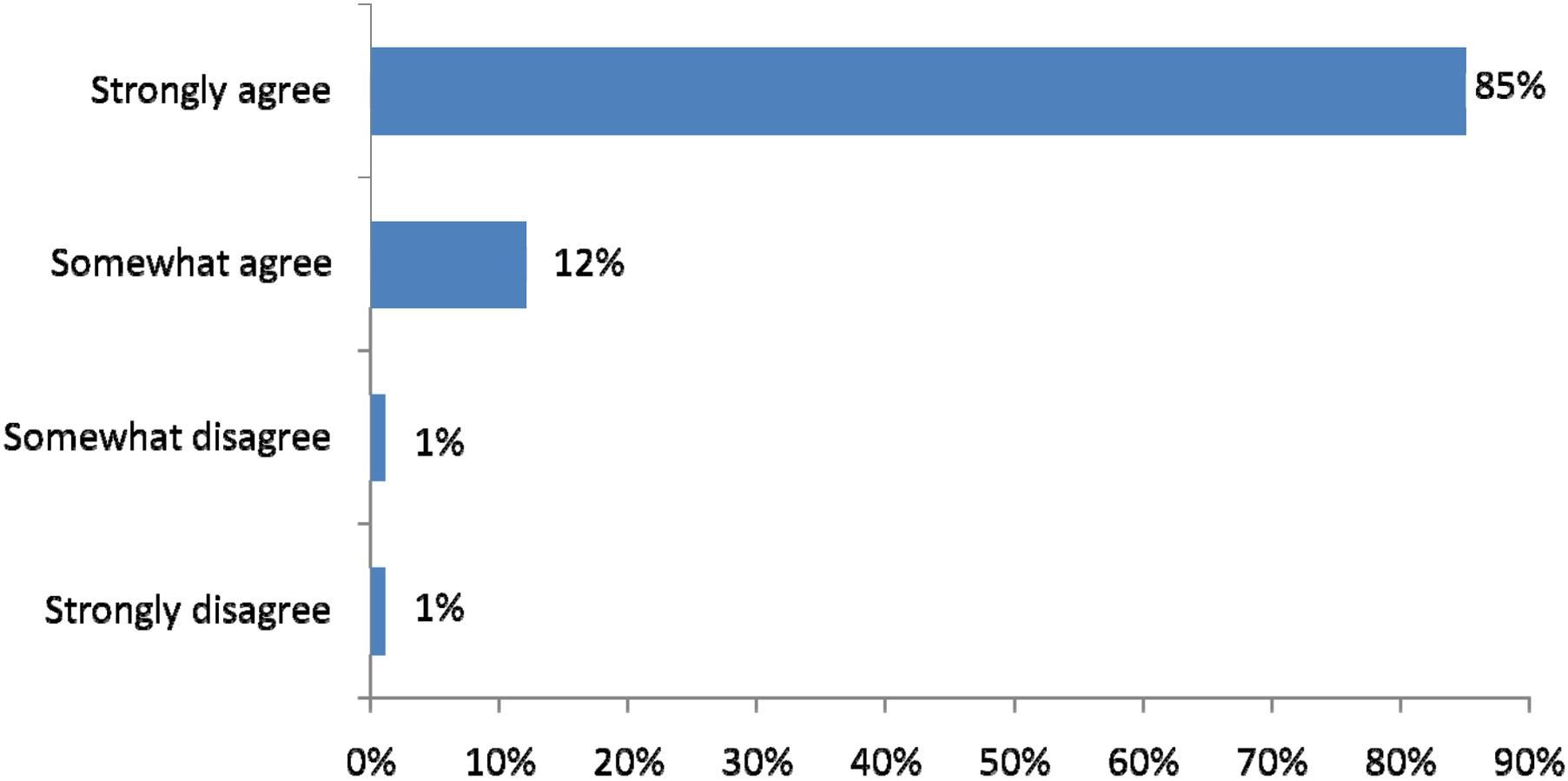
Q6 Some financial professionals are required to comply with what is called a “fiduciary duty” which means that they are required to put your interests ahead of theirs when making recommendations, and tell you upfront about any fees or commissions they earn and any conflicts of interest that potentially could bias that advice. Based on your understanding, which of the following types of financial professionals are required to uphold this standard? Base = 1,319 investors.



**Ninety-seven percent of investors agree strongly or somewhat that “when you receive investment advice from a financial professional, the person providing the advice should put your interests ahead of theirs and should have to tell you upfront about any fees or commissions they earn and any conflicts of interest that potentially could influence that advice.”**

# How Financial Professionals Should Behave

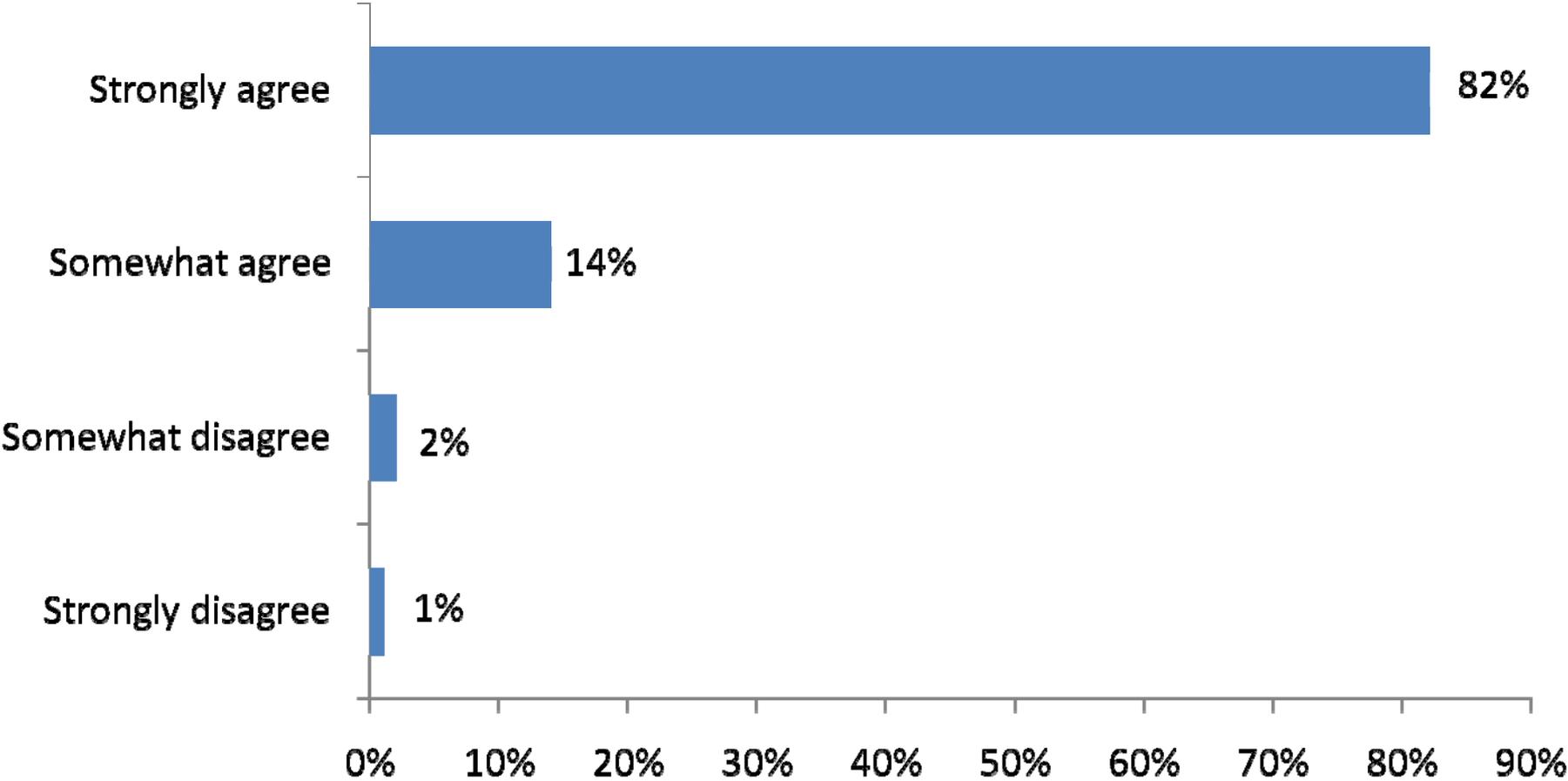
Q7: Do you agree or disagree with the following statement: When you receive investment advice from a financial professional, the person providing the advice should put your interests ahead of theirs and should have to tell you upfront about any fees or commissions they earn and any conflicts of interest that potentially could influence that advice. Would you say you... Base = 1,319 investors.



**Ninety-six percent of investors agree strongly or somewhat that “when you receive investment advice from an insurance agent, the person providing the advice should put your interests ahead of theirs and should have to tell you upfront about any fees or commissions they earn and any conflicts of interest that potentially could influence that advice.”**

# How Insurance Agents Should Behave

Q8: Do you agree or disagree with the following statement: When you receive investment advice from an insurance agent – including an agent selling annuities – the insurance agent should have to put your interests ahead of theirs when making those financial recommendations and also tell you upfront about any fees or commissions they earn and any conflicts of interest that could potentially influence their advice. Would you say you... Base = 1,319 investors.



*Topline results of telephone interviews with 2,012 adults, conducted August 20-23, 2010.*

- B1 Are you an investor? By an investor I mean do you make decisions about where your savings are placed?

This could mean you own bank certificates of deposit, stocks, bonds or mutual funds either directly or through retirement plans such as 401(k)'s, IRAs, Roth IRAs or similar plans.

2010	2007	2004	
60%	54%	50%	YES
39%	44%	48%	NO
1%	2%	2%	DON'T KNOW/NOT SURE

<p>IF INVESTOR, B1 [01], CONTINUE. ALL OTHERS SKIP TO NEXT SECTION</p>
----------------------------------------------------------------------------

- B2 Do you use...  
(READ LIST. RECORD AS MANY AS APPLY. WAIT FOR YES OR NO FOR EACH)  
[ROTATE]  
BASE = 1,319 investors

41%	An investment adviser
17%	A stockbroker
52%	NONE OF THESE
--	DON'T KNOW/NOT SURE

- B3 Based on your knowledge of stockbrokers . . . which ONE of the following statements do you believe BEST describes the services they provide to their customers?  
(READ ENTIRE LIST BEFORE RECORDING ONE ANSWER)

2010	2007	2004	
29%	30%	26%	Their primary service is to buy and sell stocks, bonds, mutual funds, and other investment products on behalf of their clients, and they give only limited advice that is directly related to those transactions
34%	29%	28%	Their primary service is to offer financial advice to their clients. They then help their clients to implement their recommendations by buying and selling stocks, bonds, mutual funds, and other investment products
27%	25%	25%	Advice and assistance in conducting transactions are equally important services offered by brokers
11%	16%	21%	DON'T KNOW/NOT SURE

- B4 If a stockbroker and an investment adviser provide the same kind of investment advisory services, do you think they both should have to follow the same investor protection rules?

91%	YES
5%	NO
4%	DON'T KNOW/NOT SURE

- B5 Stockbrokers receive financial incentives from investment product sponsors to recommend particular investments to their customers.

If, for example, a stockbroker receives cash payments, vacation trips or other forms of compensation from a mutual fund company as an inducement to sell a particular mutual fund to his or her clients, should the stockbroker be required to disclose that fact to a customer buying the mutual fund?

2010	2007	2004	
93%	86%	86%	YES
5%	9%	8%	NO
2%	5%	6%	DON'T KNOW/NOT SURE

- B6 Some financial professionals are required to comply with what is called a “fiduciary [PRONOUNCED: fi-DOO-shee-er-ee] duty” which means that they are required to put your interests ahead of theirs when making recommendations, and tell you upfront about any fees or commissions they earn AND any conflicts of interest that potentially could bias that advice.

Based on your understanding, which of the following types of financial professionals are required to uphold this standard?

(READ LIST. RECORD AS MANY AS APPLY. WAIT FOR YES OR NO FOR EACH)  
[RANDOMIZE]

77%	Investment advisers
75%	Financial planners
60%	Insurance agents
76%	Financial advisors
66%	Stockbrokers
5%	NONE OF THESE
6%	DON'T KNOW/NOT SURE

- B7 Do you agree or disagree with the following statement: When you receive investment advice from a financial professional, the person providing the advice should put your interests ahead of theirs and should have to tell you upfront about any fees or commissions they earn AND any conflicts of interest that potentially could influence that advice.

Would you say you . . .

(READ LIST. RECORD ONE ANSWER)

85%	Strongly agree
12%	Somewhat agree
1%	Somewhat disagree
1%	Strongly disagree
1%	DON'T KNOW/NOT SURE

- B8 Do you agree or disagree with the following statement: When you receive investment advice from an insurance agent -- including an agent selling annuities -- the insurance agent should have to put your interests ahead of theirs when making those financial recommendations and also tell you upfront about any fees or commissions they earn AND any conflicts of interest that could potentially influence their advice.

Would you say you . . .

(READ LIST. RECORD ONE ANSWER)

82%	Strongly agree
14%	Somewhat agree
2%	Somewhat disagree
1%	Strongly disagree
1%	DON'T KNOW/NOT SURE