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The following is in response to several recent articles on the topic of fiduciary standards:

Missing from the controversy over advisors' fiduciary duty is hundreds of years of legal precedence on existing agency law.

Sales people are agents of their employers whether their product is window blinds, insurance, securities, cars or houses. For example, real estate listing agreements and laws are clear about for whom the agent is working, even though the prospective buyer often wants to believe otherwise.

Society's increasing acceptance of "nanny state" oversight on nearly everything that has associated risks has whitewashed *caveat emptor* from the marketplace. The financial services industry has redefined sales people to be consultants and confidants of the investor, while retaining the traditional agency relationships. The legal position of wire house brokers is quite clear. The client of the firm is corporate America for whom the brokers raise money through the mechanics of their firm.

Independent advisors, in their position as independent contractors, think of themselves as serving clients better than wirehouse brokers. However, there is no doubt about their agency duty. It is with the broker-dealer, which, as their employer, has very specific oversight and supervisory duties. If the broker-dealer is not the employer, it has no standing to supervise. Therefore, the investing client is not the advisor's employer.

The legal role and duty of sales people has not changed; only the branding and framing of their role as presented to the public.

The law of agency clarifies the "fiduciary" issue.

Who is your employer? If it is a broker-dealer, your duties lie there. If you have a contract with the investor, your duties lie with the investor. One cannot be a dual-agency fiduciary. Just ask your attorney if he is representing you and your claimant. If a registered rep wants to appear as a fiduciary, start by fully disclosing all compensation and perks in actual and total dollar terms instead of merely delivering a prospectus. Fiduciaries must make a full, unambiguous disclosure of the cost of their client's engagement. Clients make their own determination of whether the work and costs are beneficial for them.

Reversing the SEC's acceptance of dual registration would be a big step to clarifying the problem. If you want the opportunity for big commissions, stay with a broker-dealer or insurance company. If you are going to be a fiduciary for the

investor, register with the SEC, disclose and charge your fee for services. Quit "switching hats" in the middle of plan implementation.

When I started in the industry, I had to make a choice. The SEC and Washington securities department (until 1978) considered dual licensing an irreconcilable conflict of interest. This has proven to be confusing for the consumer, and now, apparently for regulators, various authors and the CFP board.

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Here are some references. Even the regulators have lost sight of the differentiation in the 1934 & 1940 Acts. The 34 covers sales activity. The 40 covers advice.

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