A SavvyInterview – Meryl

Updated on July 19, 2016 By James

Meryl Wiener is a Partner at Warsaw Burstein, LLP in New York City**.** Ms. Wiener advises financial institutions, investment managers and hedge funds on a broad range of regulatory, compliance, securities, registration, inspection, organizational and structural matters. She focuses on the Investment Advisers Act of 1940 and represents clients in connection with regulatory examinations and enforcement proceedings. She appears in court and before the SEC, NYSE and NASD (FINRA) in connection with client investigations, and also handles arbitration and mediations defending broker dealers.

Early in her career, Ms. Wiener spent four years as trial counsel for the U.S. Securities and Exchange Commission in its Division of Market Regulation, where she investigated and prosecuted enforcement actions under the federal securities laws. In addition, Ms. Wiener has experience representing both plaintiffs and defendants in employment related matters.

[RetirementSavvy] Some readers may not be familiar with the 'fiduciary standard.' Can you please give some background?

[Meryl Wiener] The fiduciary standard is the highest standard of customer care available under law. The responsibilities of a fiduciary are both ethical and legal. Generally speaking, one who has the legal responsibility for managing someone else's money is a fiduciary. For example, a registered investment adviser ("RIA") owes a fiduciary standard of care to his clients, as does the trustee of a trust to the trust's beneficiaries. A fiduciary has a duty to act in the best interest of his/her clients. This means putting the client's interests above those of the fiduciary. An RIA cannot buy securities for his/her account prior to buying them for a client, and is prohibited from making trades simply because it may result in higher commissions for the RIA.

The duty of care that a fiduciary owes to its clients is much higher than the duty of care a broker-dealer owes to its clients. A broker-dealer has to satisfy a suitability standard, which requires only that the broker-dealer make recommendations that the broker-dealer reasonably believes are suitable for the client, but not necessarily in the best interests of the client. A broker-dealer does not have to place his or her interests below those of the client. Indeed, the suitability standard does not address conflicts of interest between the client and the broker-dealer, nor does it address any fees or financial benefit the broker-dealer might receive if the client purchases an investment that the broker-dealer recommends.

Conversely, an RIA or a trustee could not buy securities for his or her own account prior to buying them for a client or beneficiary, as the case may be, and is required to disclose any potential conflicts to placing the client's interests ahead of the financial advisor's.

The new Department of Labor ("DOL") Fiduciary Rules (collectively, the "Rule"), issued after years of study, expand the definition of fiduciary with respect to giving investment advice to an employment benefit plan under the Employee Retirement Income Security Act of 1974 ("ERISA"), to participants or beneficiaries of these plans and to individual retirement accounts ("IRAs") under the Internal Revenue Code of 1986 (the "Code"). The objective of the Rule is to broaden the scope of persons who are considered fiduciary advisors to plans, plan participants and IRA owners and to impose on fiduciary advisors heightened disclosure, reporting, procedural and other requirements under ERISA and comparable provisions under the Code. The Rule will begin to take effect in April 2017, with full implementation due in 2018, thereby giving affected advisors and broker-dealers ample opportunity to adapt their procedures to the new Rule.

[RS] How will these new standards impact financial brokers and advisors?

[MW] The new Rule creates a significant change in the obligations of broker-dealers. It raises the bar for broker-dealers that give advice to benefit plans and IRAs, as they will be held to a fiduciary standard. Under the Rule, the fiduciary standard will be substantially identical for both broker-dealers and RIAs, providing investment advice to retirement plans or IRAs. Broker-dealers will need to modify their policies and procedures, adapt their client agreements and their documents and provide additional and more robust disclosures about, among other things, the products they recommend. RIAs will be affected by the Rule, as well. For example, if an RIA is asked to review particulars of a 401(k) plan that it has not been involved with previously, the RIA would be required to make disclosures to the client about fees the firm must charge, versus fees that are part of the plan. Also, as a practical matter, there have been some industry discussions as to whether RIAs will have to make their pricing variable so that fees on simple investments, such as index funds would decrease, and those on complex investments would increase. Under the Rule, even recommending a financial advisor to a retirement plan or IRA could be deemed providing investment advice to a retirement plan or IRA.

[RS] How will they impact consumers?

[MW] It is unclear how consumers will be affected by the Rule. In the past, many consumers did not recognize the difference in standards between advice given to them by an RIA under a fiduciary standard, and advice given to them by a broker-dealer under a suitability standard. On the one hand, by creating a uniform standard with respect to retirement plans and IRAs, it will make saving for retirement easier for, and better understood by consumers. On the other hand, under the Rule, retail oriented broker-dealers who traditionally have avoided being characterized as fiduciaries and whose fees are commission-based, will become fiduciaries and may opt to discontinue that aspect of their business rather than have to explain why they are recommending a particular product avoid making particular recommendations. This would have the effect of giving smaller consumers fewer choices as to retirement advice and available products.

[RS] What's the best financial advice you ever received? The worst?

[MW] In this changing landscape relating to retirement investments, it is interesting to reflect on personal financial advice received over the years. The best financial advice I ever received was: "You can't make money if you're not in the market." The worst financial advice I ever received (think tech bubble) was: "valuations don't matter."

[RS] What is your favorite money quote?

[MW] My favorite money quote comes from a Disney movie, *Mary Poppins*. There is a scene towards the end of the movie, when the bankers try to convince the children of one of the bankers to deposit their small savings in the 'Fidelity Fiduciary Bank.'

"If you invest your tuppence wisely in the bank safe and sound, soon that tuppence, safely invested in the bank, will compound."