Are You Part of 'One of the Greatest Scams of Our Time?'

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Are you part of "one of the greatest scams of our time?" (Article copied on our site) You are if you're offering investment advice on anything other than a fee-only basis, according to one author. In a scathing attack on the financial advisory industry, Business Insider, Clusterstock contributor Andrew Haigney slammed investment advisory firms.

According to Haigney, "The underlying problem is that investment advice has become a 'product,' and investment advisers steer prospective clients right into their own products." The jumping-off point for his argument is a New York Times op-ed by David Swenson, chief investment advisor of Yale University, that pans the mutual fund industry and its "punitive fees." The conclusion of Swenson's argument, and the premise of Haigney's article, is that advisors must be scamming their clients if they aren't offering them all low-cost index funds.

Haigney claims that investment advisors don't counsel their "prospective lucrative clients" to invest in low-cost funds. Why don't they suggest low-cost funds? Apparently, with crushing quotas to fill, advisors are more concerned with their bottom line than their clients' best interests.

Don't make the mistake of assuming his article is just another expose on the bad behavior of a few advisors. Haigney doesn't pull any punches; and he isn't talking about a few bad apples. He's making broad assertions about the entire industry and all its participants.

Many advisors reading Haigney's article probably find themselves shouting "fiduciary duty" at their computer screens, but Haigney foresaw the objection and explained why the fiduciary standard applicable to advice given by RIAs isn't all it's claimed to be.

According to Haigney, the lack of a consensus definition of "fiduciary standard" contributes to its downfall. But the fiduciary standard has always been an amorphous concept in British and American law. There cannot be one single, clear definition of fiduciary standard, and that's the way it should be. Tying the principle down to an "all-encompassing" definition won't catch every possible permutation of behavior, and bad actors will always be able to find a loophole to fit their bad acts through.

Want to see what happens when the law attempts to tie a concept down to a simple definition? Look at the ever-expanding Tax Code. By necessity, most tax principles must be concrete and subject to rigid definitions that capture every possible exception and exception to the exceptions. Every time a taxpayer finds a loophole, Congress must respond by closing the loophole. It's a never-ending cycle that has grown tax law to ridiculous proportions. Do we really need that same regulatory bloat in the already heavily regulated financial services industry?

Although some specific rules promulgated by FINRA and the SEC define "fiduciary duty," it must always keep some of its amorphous character. That gives regulators and courts the leeway to halt bad advisor behavior when they see it—regardless of whether a specific rule defines the behavior as a breach. Haigney apparently believes the nebulous fiduciary standard is toothless because all conflicts of interest can be disclosed away. According to Haigney, because disclosures are generally incomprehensible to clients, the standard is impotent and doesn't offer a solution to the problems plaguing the investment advisory world.