

# Hey SEC, please clarify fiduciary duty so I can enjoy college hoops again!

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The NFL playoffs have been spectacular, but college basketball brings me even more viewing pleasure this time of year. Almost nothing can diminish the fun — except fiduciary duty.

A couple of weeks ago, I was watching my alma mater play a crucial conference game when a commercial from a financial firm aired. The ad touted that its advisers were fiduciaries to their clients.

That assertion caught the attention of a friend, who said all financial advisers have a fiduciary duty to their clients. Another friend responded: “No, that’s not right. There also is the suitability standard.”

They were both wrong.

I felt like Flo in the Progressive commercial, trying to resist the temptation to discuss insurance while at the beach when people nearby start talking about bundling their boat, car and homes in one package.

Unlike Flo, however, I sidestepped the conversation about fiduciary duty. Over my nearly 12 years at *InvestmentNews*, I have written more stories about investment advice standards than any other topic. On occasion, I have had dreams about the issue.

But I minded my own business and did not correct my friends, on a day off, while we were watching exciting college hoops.

But I could have said to them: Investment advisers are governed by fiduciary duty. Registered representatives of brokerage firms, however, now must adhere to [Regulation Best Interest](#), the broker standard of conduct that resembles fiduciary duty but is not fiduciary duty. Reg BI essentially has replaced suitability, but [there’s an ongoing debate](#) about whether it’s stronger than suitability.

The company in the advertisement that sparked my friends’ conversation was in fact an investment advisory firm and its adviser had to adhere to fiduciary duty. But as we watch the Super Bowl, the Winter Olympics, the NCAA men’s and women’s basketball tournaments — actually any sporting event — we will be bombarded with ads from brokerages and insurance companies implying that they are fiduciaries when, in reality, they’re not.

The ads in heavy rotation are designed to attract clients who are planning for retirement on their own thanks to 401(k) plans and individual retirement accounts. The firms beckon them, saying that they can be their trusted financial adviser. Trusted maybe, but, in most cases, not a fiduciary.

Whether a financial adviser is governed by fiduciary duty or Reg BI may not affect how she delivers investment advice.

She might put her clients' interests ahead of her own under either standard. Yes, I know, she only has to ensure she's not putting her own interests ahead of her clients' interests under Reg BI. But let's not split hairs. Or she may seek to pad her own revenue with her recommendations whether she is subject to fiduciary duty or Reg BI.

But it's up to the Securities and Exchange Commission to clearly explain the difference between the two standards. There aren't enough reporters covering investment advice regulations to sort out every conversation that will occur during commercial breaks of sports telecasts.

The agency must draw lines of demarcation between investment advisers who are fiduciaries and registered reps who are Reg BI adherents. The difference must be so crisp that no one ever will assert that all financial advisers are fiduciaries.

The place where this distinction is supposed to be made is on Form CRS, the client relationship summary that was created as part of the Reg BI rulemaking. But it turns out that there's so much gobbledygook on Form CRS that the SEC committee overseeing the document's implementation [issued guidance in December](#) on how to make the form more useful to investors.

The problem is that the guidance is dense and turgid. [Read it](#) for yourself. Tell me if the SEC should be giving lessons about writing in plain English.

The Institute for the Fiduciary Standard complained that the guidance actually confused the issue of whether the [term "fiduciary duty" can be used on Form CRS](#). That term can't appear in one section. Elsewhere, advisers have free rein to include it on their Form CRS.

The SEC needs to do better than it did with the Form CRS pointers if it wants to help investors decide whether to hire an investment adviser or a broker.

SEC Chairman Gary Gensler has said the agency will use examinations and enforcement to ensure Reg BI actually protects investors.

I hope the SEC also produces easy-to-read guidance — using short sentences and active verbs — that outlines exactly what Reg BI is supposed to accomplish and how. Make it as punchy as the commercials that imply a financial firm is acting in its clients' best interests. Perhaps that would be almost as rewarding as having your school make it to the Sweet 16.