

I've devoted both my law practice and adult life to representing investors and retirees. I'm proud to have represented thousands of retirees in cases against their brokers and brokerage firms in FINRA arbitration, in several ERISA class actions against large financial services firms, and against insurance agents masquerading as financial advisors.

I have twice served as the chairman of the Business Torts Section of the American Association for Justice, served as the President of PIABA, currently sit on the board of directors of PIABA, served on the FINRA taskforce, testified extensively on behalf of the fiduciary rule, and I have even testified at the DOL on the very topic at hand.

Whenever I have an opportunity to speak for investors, I feel compelled to talk about the retirees of a major oil and gas company in Louisiana who lost most of their life savings to a conflicted broker. Some were left with so little that I hosted a few of them in my home during the trial and my extended family graciously opened their doors to others. When someone walks in our doors, typically, they've been absolutely devastated. When I say devastated, I think of a man who had to rent a room from his ex-wife and countless others who have either contemplated or attempted suicide. My vocation has truly become my avocation.

I could go on for days about this with actual client stories, but I only have a few minutes. So, I'll tell you the recent story of Millicent and her family. When I first met Millicent and her sons, she was a 91-year-old widow living in a nursing home in Boca Raton, Florida. Her sons were horrified to learn that before she became incapacitated, their mother had been dealing with a disgraced financial advisor.

The advisor had been the subject of 8 customer disputes regarding his unsuitable investment advice and sales practice violations. He was the subject of 4 regulatory events, the final of which resulted in him being barred from FINRA in May 2019.

Millicent was told to invest in high risk, illiquid, but most importantly, high commission products. Millicent's interests were clearly not considered. The majority of her savings were put into REITs and other alternative investments.

Tragically, last month, Millicent succumbed to COVID-19. Her sons are left scrambling to pick up the pieces. They do not know how to liquidate much of her portfolio and what these products are even worth. And, the broker who made \$200,000 is nowhere to be found.

Not only is the 1975 Regulation grossly inadequate, it's questionable as to who it even applies to and whether or not the minimal duties covered could be stripped away by contracts with unsophisticated investors.

Assuming it does apply to a particular advisor, retirement savings will be at greater risk of being plundered than the original DOL Rule requiring advisors to put the interests of their clients ahead of their own.

This summer as infection rates started spiking again and COVID-19 death rates soared, the SEC pushed through a controversial replacement for the fiduciary standard with the misleading name “Regulation Best Interest” or “Reg. BI.”

On July 7, 2020, the DOL adopted a final rule, which reinstated the 1975 Regulation and a new class exemption, the “2020 Proposal.” This is deeply troubling because retirees and workers rely on investment advisors and expect to receive advice that is actually in their best interest.

Combined with Reg. BI, the application of the 1975 Regulation and the 2020 Proposal would continue to provide false comfort to investors and the illusion that something has been done to protect them from the avarice of advisors. The problem is that “best interest” is used as a marketing slogan rather than a legally enforceable standard of care.

The new SEC rule doesn’t just rewrite FINRA’s flawed “suitability standard,” it creates a safe harbor that allows financial advisors to not work in their client’s best interest as long as they disclose their conflict. What good is a disclosure in a packet of documents like a house closing going to do other than give bad advisors a defense to their conflicted conduct?

The SEC has falsely stated that Reg BI is just as good as the original Fiduciary Rule. The fiduciary rule actually required brokers to act in the best interest of their clients, whereas the most generous reading of the misnamed SEC rule is that brokers can put their interests on an equal footing with investors. So finally, even the SEC conceded that this was not a fiduciary standard.

We have a wealth of data on investor protection. The SEC knows from survey after survey that investors rely on brokers to provide investment advice about paying for their first home, saving for retirement, financing the college education of their children, and much more. This isn’t play money. This is hard working American’s life savings. Rather than increased protections, workers and retirees are even more vulnerable today.

At worst, hardworking Americans deserve to have their financial professionals held to a higher standard when handling their retirement savings. At best, financial professionals should be held to the standard that workers and retirees already believe exists – a fiduciary standard.