

Publications

A Matter of Trust: Standards of Conduct under ERISA, the Exchange Act, and the Advisers Act: Part 1 of 2

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While most broker-dealers and investment advisers know whether they are supposed to be registered under the Securities Exchange Act of 1934 (Exchange Act) or the Investment Advisers Act of 1940 (Advisers Act), they are not aware of their fiduciary status under the Employee Retirement Income Security Act of 1974 (ERISA). Or, even if they do in fact know that they are fiduciaries for purposes of ERISA, they are unaware that there are substantial differences between how the securities laws and ERISA govern transactions involving employee benefit plan assets and the assets of an entity that are deemed to be employee benefit plan assets for purposes of ERISA.

The purpose of the attached article is to help a broker or dealer registered under the Exchange Act (BD) and an investment adviser registered under the Advisers Act (RIA) better determine at what point he or she is acting as a fiduciary for purposes of ERISA and the applicable standards of conduct under ERISA by comparing and contrasting the corresponding requirements under the Exchange Act and the Advisers Act. The importance of understanding the differences will grow in the near future as the Department of Labor (DOL) works to revise its regulations identifying fiduciaries that provide investment advice and the SEC looks to coordinate the conduct standards under the Exchange Act and Advisers Act.

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