RSM McGladrey

Wealth Wisdom

Grow. Protect. Transfer.

First Quarter 2008

Fiduciary responsibility and investment professionals

When selecting a professional to assist with investment decisions, most investors would probably agree that it makes sense to compare the products and services offered by different providers. When evaluating offerings of investment advisors with those of broker-dealers, investors should also consider the variations between the two types of providers, as well as the differences between the duties imposed on those professionals under the regulatory framework that governs the investment industry.

Both investment advisors and broker-dealers owe clients certain responsibilities, including the duty to refrain from engaging in securities fraud. However, investment advisors have additional fiduciary responsibilities that do not apply to broker-dealers in most situations. According to a report released Jan. 3, 2008 by the RAND Corporation[1], many investors do not fully understand the differences between investment advisors and broker-dealers, including distinctions concerning the level and types of responsibility these providers owe to clients. In fact, clients who have employed financial professionals for years may not understand these distinctions.

The following information provides a brief overview of some of the key differences between the services offered by, and responsibilities of, registered investment advisors and broker-dealers.

What is a fiduciary?

Simply put, a fiduciary is someone acting in a position of trust on behalf of, or for the benefit of, a third party. Where investments are concerned, fiduciary responsibility can be defined as the responsibility to act solely with clients' investment goals and interests in mind, free from direct or indirect conflicts of interest. While registered investment advisors are categorically considered fiduciaries for their clients, broker-dealers, in most cases, are not held to the same standard.

Investment advisors vs. broker-dealers

Investment advisors and broker-dealers operate under separate and distinct rules. Investment advisor representatives are registered with the Securities and Exchange Commission or individual states. Broker-dealer representatives must register with the state(s) in which they conduct business and with the Financial Industry Regulatory Authority, which is the self-regulatory organization for broker-dealers and issues its own rules for its registrants. In order to obtain either of these registrations, individuals must meet certain qualification requirements, although those qualification requirements differ and depend on the type of registration being sought.

From a compensation standpoint, investment advisors are typically compensated under a fee-based model – with project-based fees payable for services such as financial planning – and asset-based fees payable for investment advice and management. Investment advisors usually operate under an advisory services agreement with clients which outlines responsibilities and fees. Basically, this type of compensation arrangement means the advisor isn't compensated at different levels based on the selected asset classes or investments, and therefore has no built-in incentive to recommend one investment over another. In comparison, broker-dealer compensation has traditionally been transaction-based, with commissions based on the dollar amount of a particular transaction payable to the broker-dealer and possibly to the registered representative(s) involved in the transaction.

As mentioned, registered investment advisors owe fiduciary obligations to their clients. As fiduciaries, they're required to inform clients of any conflicts of interest and the procedures used to address those conflicts. Investment advisors are also required

Fiduciary responsibility, continued on page 3

[1] Hung, Angela, et. al, *Investor and Industry Perspectives on Investment Advisers and Broker-Dealers*, RAND Corporation Technical Report TR-556-SEC, 2008 Pre-Publication, 132.

In whom, or what, you trust could have long-term consequences

If you have accumulated significant wealth, chances are you already have a trust or are looking to establish one. If so, you may have named or are looking to name a family member or close personal friend as trustee.

What is a trustee?

A trustee is a person (or institution) selected to administer a trust. One of the primary roles of a trustee is to adhere to the terms of the trust document and fulfill its objectives. A trustee can be an individual (professional or nonprofessional) or a corporate trustee, such as a bank or trust company.

A trustee is responsible for administering the trust document and assisting in the fulfillment of the trust's objectives.

A trust may survive for at least one generation and may extend beyond two or three. This may have a significant impact on your choice of trustee or on your decision to appoint co-trustees or successor trustees. You must also weigh and consider many other personal, family, business, investment and non-tax factors. For example, does your candidate possess the necessary investment, accounting and tax planning expertise? Does he or she know the beneficiaries and will he or she be sensitive to their changing needs?

Why name a corporate trustee instead of an individual?

While there may appear to be strong rationale for choosing a relative to be a trustee, hiring an independent corporate trustee may be the wiser decision.

A corporate trustee brings objectivity, experience and expertise at a time that is often wrought with emotion. This influence is especially helpful in an unfriendly familial situation. A corporate trustee will remain neutral in the face of family disagreements. That is why trust and estate professionals frequently recommend hiring corporate trustees, rather than naming family members.

Avoiding fees is frequently the primary reason in naming a family member or friend as trustee. Paradoxically, individual trustees must often hire other professionals to assist them in carrying out their obligations as trustee which may eliminate any expected cost savings. Naming a corporate trustee could very well provide you with much greater value than the fee charged. Some advantages of using a corporate trustee over individual trustees include:

- **Accountability** – Record keeping systems exist to ensure timely, accurate accounting of principal and income as well as production of regular statements.
- **Collective thinking** – More fully informed opinions can be voiced and decisions made by knowledgeable and experienced professionals.
- **Confidentiality** – Privacy is maintained and matters are treated with the utmost confidence.
- **Experience** – Knowledgeable, experienced professionals are well versed in complex trust management.
- **Focus** – Attention and resources are dedicated to the needs of grantor, beneficiaries and other interested parties.
- **Impartiality** – Decisions are made objectively in an unbiased atmosphere.
- **Permanence** – Perpetual existence assures a capable, professional organization is ready to complete the trust tasks required for decades going forward. Corporate trustees always have a backup; they don't become ill or die. Additionally, a company's circumstances, such as a merger, will not affect a corporate trustee for fulfilling its fiduciary obligation.
- **Regulation** – Corporate trustees are subject to standards set by state or federal regulatory agencies, including maintenance of defined levels of capital and insurance.
- **Value** – Specialization in trust administration provides services in an efficient, cost-effective manner.

The choice of trustee is a very significant decision and should be considered carefully, as this may have long-term consequences. Be sure your selection will ensure the original intent of the trust is fulfilled.

Note: The foregoing is provided as an overview and discussion of some of the attributes which may be available by using a trust and should not be used as a substitute for legal advice. Due to the complexity of estate and wealth planning issues, a qualified financial planning, tax and/or legal professional should be consulted before making any decision regarding estate and wealth planning.

Mike Flinn is senior vice president of business development at AST Capital Trust and works with RSM McGladrey. For more information or to get in touch with Mike Flinn, contact Robert Eichten at robert.eichten@rsmi.com.

Tax tips

Familiarize yourself with recent legislation

In a flood of last moment actions in December, Congress passed several bills including:

1. **The Tax Increase Prevention Act of 2007,** signed into law by President Bush on Dec. 26, 2007. This law extends the Alternative Minimum Tax (AMT) patch for one year, beginning Jan. 1, 2007. The Act increases the AMT exemption amounts as follows:

Single	$44,350
Married filing jointly	$66,250
Married filing separately	$33,125
Head of Household	$44,350

   The Act also allows taxpayers to use most nonrefundable personal credits to offset AMT liability in 2007 (as was the case in 2006).

2. **The Mortgage Forgiveness Debt Relief Act of 2007,** signed into law by President Bush on Dec. 20, 2007. This law provides a permanent exclusion from gross income for discharges of up to $2 million in indebtedness that is secured by a principal residence and that is incurred in the acquisition, construction or substantial improvement of that residence. This relief is available for three years beginning Jan. 1, 2007. The basis in the principal residence is reduced by the amount excluded from income.

3. **The Energy Independence and Security Act of 2007,** signed by President Bush on Dec. 19, 2007, extends the additional .02 percent Federal Unemployment Tax Act (6.2 percent total) surtax through 2008.

4. **The Prevent Taxation of Payments to Virginia Tech Victims and Families Act,** signed by President Bush on Dec.19, 2007, excludes from gross income payments made to an individual from a special memorial fund for victims of the Virginia Tech massacre.

Robert Eichten, PFS, CFP® is a director with RSM McGladrey Wealth Management. For more information, contact him at robert.eichten@rsmi.com.

Fiduciary responsibility, continued from page 1

to inform clients of all types of compensation, including indirect compensation and any additional compensation they may receive from someone other than a client in connection with providing investment advice. These disclosures are included in Part II of the investment advisor's registration statement, known as Form ADV — a copy of which must be offered to clients annually.

While broker-dealers are expected to disclose conflicts of interest, there's no mechanism for a disclosure document specific to the broker-dealer analogous to Part II of Form ADV. Broker-dealers also have a responsibility to ensure that investments are suitable for their clients. However neither broker-dealers nor individual registered representatives have an explicit fiduciary responsibility to act solely with clients' investment goals and interests in mind, unless the client relationship is discretionary. In a discretionary relationship, the client has authorized the broker to execute transactions on the client's behalf without consent for each transaction.

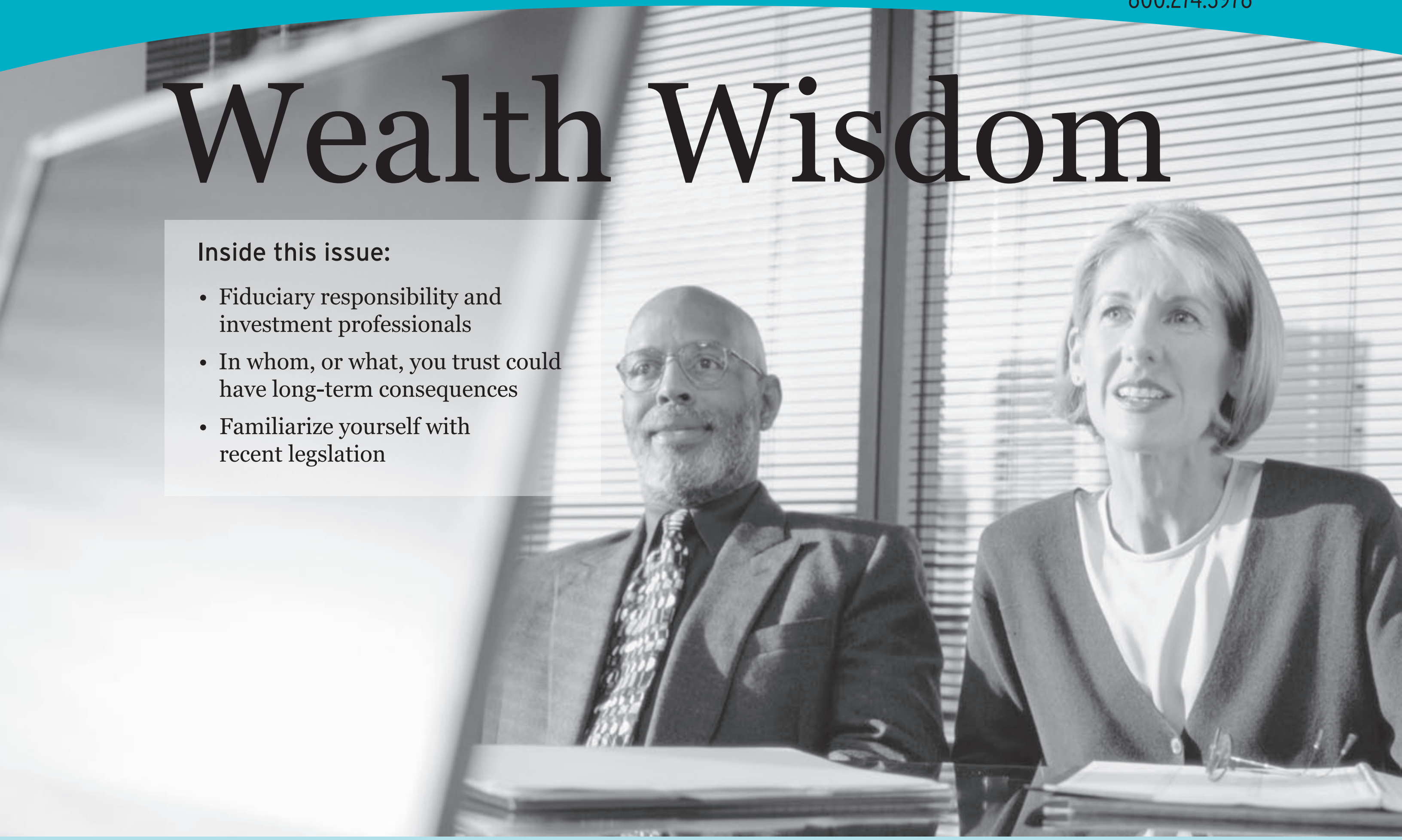
When choosing an investment professional, investors should understand whether the provider is an investment advisor or a broker-dealer. Both providers can offer important services to clients and many financial professionals are registered as investment advisor representatives and registered broker-dealer representatives. Investors should always understand in what capacity the investment professional is working, how the professional will be compensated for the service provided and whether the provider has any real or perceived conflicts of interest that could affect the service being offered. If the investment professional is acting as an investment advisor representative, answers to these questions will be found in Part II of the Form ADV.

Cindy DeRuyter ChFC, CLU, is a compliance associate with RSM McGladrey. For more information, contact her at cindy.deruyter@rsmi.com.

The early edition — get desktop delivery of *Wealth Wisdom*

Don't want to wait for your next issue of *Wealth Wisdom*? Get quicker – and paper-free – access to wealth management information by signing up for the electronic version of our award-winning publication. Visit www.rsmmcgladrey.com/wealthwisdom and click on "Sign up now" to receive your *Wealth Wisdom* e-newsletter.

Wealth Wisdom



Inside this issue:

- Fiduciary responsibility and investment professionals
- In whom, or what, you trust could have long-term consequences
- Familiarize yourself with recent legslation

RSM McGladrey

Editor: Julia L. Ramirez

Wealth Wisdom is published by RSM McGladrey, the leading professional services firm providing accounting, tax and business consulting to midsized companies. McGladrey & Pullen LLP (a partner-owned CPA firm) delivers audit and attest services. RSM McGladrey and McGladrey & Pullen have an alternative practice structure. Though separate and independent legal entities, they can work together to serve clients' business needs. They are member firms of RSM International, an affiliation of separate and independent entities.

RSM McGladrey Wealth Management, a business of RSM McGladrey Inc., provides investment advisory services, financial planning and other wealth management services to individuals and businesses. RSM McGladrey Inc. is an SEC-registered investment advisor.

Insurance products and services are offered through Birchtree Financial Services, Inc., member NASD/SIPC and a wholly owned subsidiary of RSM McGladrey, Inc.

RSM McGladrey Tax Services, a business of RSM McGladrey, Inc., provides tax, estate and gift planning services to businesses and individuals.

Send additional copy requests, change of address, comments or suggestions to julia.ramirez@rsmi.com or call 612.629.9083.

For more information about RSM McGladrey or any of our business services, visit www.rsmmcgladrey.com or call 800.274.3978.

Wealth Wisdom First Quarter 2008 Printed in U.S.A.