

# Business law

Law



Business Law From a legal perspective, in general, the concept of fiduciary duty is embedded in common law and comes from the Latin word for trust. Someone acting in a fiduciary role must act for the benefit of the person for whom he or she holds the fiduciary duty to the exclusion of any contrary interest (McDonald 840). Within the investment industry, whether an investment firm or its advisors are in a fiduciary role depends somewhat on their actions. Although the brokerage function of facilitating the buying and selling of securities does not involve a fiduciary responsibility, providing continuous comprehensive investment advice is considered a fiduciary role. McDonald (McDonald 840) suggests that to fulfill fiduciary responsibilities in providing investment advice, one must (a) put the client's interests first, (b) act in utmost good faith, (c) provide full and fair disclosure of all material facts, (d) not mislead clients, and (e) divulge all conflicts of interest to clients (McDonald 840).

This article recommends the film *Inside Job* as an effective teaching tool for illustrating the ethical issues that surrounded the global financial crisis of 2008 and the subsequent economic downturn (McDonald 840). The study discusses issues such as the revolving door, conflicts of interest, fiduciary duty, executive compensation, and financial regulation. The presentation of each ethical issue comprises suggested questions, background information, and guides to specific sections of the film. An overview of the film is provided as well (McDonald 840).

Whether the investment firms that sold CDOs had a fiduciary duty has been the focus of both congressional hearings and legal proceedings. This section of the film focuses largely on the activities of Goldman Sachs and whether its representatives violated the concept of fiduciary duty in selling CDOs to their

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clients (McDonald 840). In addition to selling CDOs that Goldman Sachs obviously believed were of suspect quality, the firm took positions from which it would clearly benefit given a collapse in the CDO market. Goldman Sachs executives argued that they were simply satisfying the brokerage or market-making function by facilitating the buying of CDOs and did not have a fiduciary responsibility (McDonald 840).

Whereas the film clearly blames Goldman Sachs for failing to protect its clients' interests, this situation is not trivial. Legendary investor McDonald (McDonald 840) notes that, while a broker has a definite responsibility not to lie, he or she does not owe fiduciary duty on a trade. In other words, a broker is not required to warn clients about low-quality investments (McDonald 850). Similarly, betting against a client on a transaction should not be a concern if a broker does it to hedge his or her exposure to the security purchased by the client. Thus, the difference between fiduciary duty and deontological ethics lies at the heart of the debate and makes for an interesting class discussion (McDonald 853).

Fabrice Tourre, a Goldman vice-president, was ultimately the only Goldman employee named in a SEC case brought against the firm in 2010. The SEC alleged that Goldman Sachs had materially misstated and omitted important facts with regards to the sale of a CDO product to various investors. The case was settled for \$550 million, and Goldman did not admit to any wrongdoing (McDonald 840).

Inside job, the briskly paced film suggests an era with crimes without punishment, with an outrage escaping legal sanctions as well as societal stigma. This can even be termed as betrayal of the public trust and also the collective values (McDonald 839). Through no own fault, the film leaves you <https://assignbuster.com/business-law-essay-samples-15/>

dispirited and enraged as well. The victims' fate should be so shameful and shrugged off by everyone watching it. If brought in a court of law, the victims of the perpetrators have a chance to prevail (McDonald 839).

#### References

McDonald, Gren. " Objections to the teaching of business ethics." *Journal of Business Ethics* (1995): 839-853.