MEMORANDUM

TO: File Nos. S7-07-18

FROM: Adam B. Glazer
Counsel to Commissioner Hester M. Peirce

RE: Meeting with Representatives of the Institute for the Fiduciary Standard

DATE: April 30, 2018

On April 30, 2018, Commissioner Hester M. Peirce and her legal advisors, Adam Glazer and Richard Gabbert, met with the following representatives of the Institute for the Fiduciary Standard:

- Knut A. Rostad, President, Institute for the Fiduciary Standard; and
- Michael Zeuner, Board of Directors, Institute for the Fiduciary Standard.

The participants discussed, among other things, the Commission's proposed Regulation Best Interest, in Securities and Exchange Act Release No. 83062 (Apr. 18, 2018) and the attached documents submitted by the Institute for the Fiduciary Standard.

INSTITUTE FOR
THE FIDUCIARY STANDARD

What is "Good Advice?"

Knut A. Rostad *
May 23, 2016

Introduction and Summary

Questions of good advice and financial planning are *timely*. 2016 will (likely) initiate the DOL COI Rule era, 76 years after the Advisers Act of 1940, and 47 years since the "birth" of financial planning. And *timeless*. The force behind the DOL rule reflects the "shared mission" and question that attracted the financial planning founders in 1969. Can *advice* replace *sales* as the industry "driving force? [1]

2016 is important to the question of "good advice" because of the aligning of forces -- regulatory and technology and market forces eight years after the financial crisis. Aligning to remind and highlight why the core foundation of good advice must be a disinterested advice. Here, I highlight the arguments on fiduciary advice. I then discuss, citing the work of Arthur Laby, a basic (and overlooked) rationale for disinterested advice: common sense. And how much – common sense informs investors' views of sales and advice, generally, and will do so far more for "good advice" going forward.

Regulatory and Market Changes

The Department of Labor Conflict of Interest (DOL COI) rule resets the foundation of retirement and investment advice. For some firms, the rule will be shock therapy that requires fundamental changes; for all firms adjustments will likely be needed. It also puts mounting pressure on the Securities & Exchange Commission (SEC) to do its own rule.

Additionally, market forces are already transforming how advice and product recommendations are being delivered. New technology (including robo digital platforms) and products and aroused cohorts of disgruntled investors are demanding new advice relationships based on transparency, straight talk, broad planning expertise and reasonable fees. As in the TV ad for a BD firm, at the end of a father – son conversation about investing, the millennial advises his boomer father, "The world is changing."

At issue is whether these transformations rejuvenate "good advice" in securities regulation and separately, advisory firms. Whether we also see a renaissance in advisors speaking out on how fiduciary advice differs sharply from product recommendations. Or, alternatively, whether the forty-year trend of diminishing fiduciary duties continues unabated.

Knut A Rostad is founder and president of the Institute for the Fiduciary Standard. The Institute is a nonprofit formed in 2011 for the sole purpose to advance fiduciary advice in financial and investment advice through research, education and analysis. For further information, the Institute website can be found at www.thefiduciaryinstitute.org

SEC. The SEC's broad acceptance of conflicts of interest is discussed in an Institute paper covering SEC recent developments http://www.thefiduciaryinstitute.org/wp-content/uploads/2015/08/SECandConflictsApriil62015.pdf

Among these developments: the March 2013 SEC Request for Information on a potential uniform rule for advisers and brokers sets out parameters which effectively encourage conflicts and narrow the reach of fiduciary duties. Further, a number of recent SEC administrative decisions dealing with conflicts rest on the premise that disclosure sufficiently addresses conflicts. The question of whether the client's best interest is served is not addressed. Finally, a February 26 2015 speech by Julie M. Riewe, Co-Chief, Asset Management Unit (AMU) SEC Division of Enforcement, provides the rationale and analysis for concluding that disclosure alone presumptively addresses conflicts. This broad acceptance of conflicts is part of a more fundamental view, advocated by the brokerage industry, that brokers and fiduciary advisers are, for regulatory purposes, largely indistinguishable. In March 2015 SEC Chair White discussed her support for SEC rulemaking on a uniform standard. In part, she explained: "*You have to think long and hard before you regulate differently, essentially identical conduct.*" [3]

Chair White seems to say that whatever differences there may be between advisers and brokers, from a regulatory view today they are indistinguishable. This would seem to mean that advisers who are compensated and contractually obliged by their RIA to be fiduciaries to their clients, are no different from brokers, who are compensated and contractually obligated to their BD's, which are often obligated on a good faith basis, as one securities attorney notes, "to distribute the very securities that they provide advice and recommendations on to investors." [4]

The 'Conflicts are Harmful" View is Supported in Law and Logic and Common Sense –And By Many Investor and Advisor Groups

On the other side, the DOL, investor advocates, the association of state securities regulators, NASAA, and advisor groups are the bulwark of groups advocating for fiduciary duties. These groups reject the premise, "Conflicts are OK." Instead, they advocate that conflicts of interest are inherently harmful and should be avoided. Unavoidable conflicts must be managed to minimize their harms to clients. The inherent harms that can flow from conflicts are the core rationale for the DOL COI rule, and based on research and investor experiences. This evidence is compelling, but it's not the only basis for the view, "Conflicts are Harmful." Law, logic and common sense also support this conclusion.

Rutgers University law professor Arthur Laby discusses the law and logic in his paper, 'Why brokers should be fiduciaries' [5] Laby starts with the Oxford English Dictionary definition of "advice" meaning "to state one's opinion as to the best course of action, to counsel, to make recommendations ... (and) implicit in the "term" is that the guidance given will be the best guidance for the recipient of the advice, tantamount to a best interest standard." Laby notes, "An advisor's impartiality is implicit in the profession and the hallmark of adviser regulation." [6].

Laby then notes an underlying concern of the crafters of the Advisers Act of 1940 was "the presence of tipsters who were disguising themselves as legitimate advisers," and that advisers "have only services

Sales and BD Rules. This reminds us of two facts. First, financial services are dubiously distinctive, it seems, in engendering sky-high levels of irrational behavior among investors. (Dan Ariely, take note.) *Investor common sense* sometimes seems an oxymoron. Second, compared to other sales firms, BD policies, essentially handcuff brokers. They disallow or rebuff brokers' efforts to be transparent, clear and client centric. How many BDs allow brokers to put a fiduciary agreement in writing? Or provide clients a list of their conflicts? Or deviate from unintelligible legalese in boiler plate contracts and disclosures? Or provide complete pricing transparency?

BD rules that handcuff brokers seem to be the norm. Yet, they would not be tolerated elsewhere in sales situations. Think for a moment if your contractor would not tell you the cost of a new home he just designed. Or if he put the price in a broad range. Or if the Home Depot sales rep proudly explained *how he was paid*, if you purchased the refrigerator -- but did not tell you what you would pay. You'd laugh out loud. Or walk out. Or both.

Common Sense "Good Advice"

The battle for good advice has been steadily waged since the Advisers Act of 1940. 2016 may be a tipping point. Despite industry opposition, key regulatory, technology and market forces are aligning with history and law to simply conclude the core of "good advice" is disinterested advice. And this *is* common sense. The common sense of 'what is advice' or why (perhaps unfairly) so many investors still express distrust eight years after the financial crisis. And why they are seeking new ways to invest and to get their questions answered.

Common sense was paramount in crafting the Institute's Best Practices for Financial Advisors. The Best Practices seek to speak plainly and clearly and concretely to advisors and investors about what "good advice" means. It's a hope they contribute towards the mission set out by the industry pioneers who helped craft the Advisers Act and then again found financial planning.

http://www.thefiduciaryinstitute.org/wp-content/uploads/2018/01/BestPracticesGuidanceDecember222017.pdf

Knut A. Rostad

President and Founder
Institute for The Fiduciary Standard

Broker/Advisor "Titles": Potential Rulemaking at the SEC

Rulemaking on Titles is Needed to Comply with FINRA Rule 2210 and Fulfill the Mission of Advisers Act of 1940

Wednesday, September 6, 4:15pm ET

A Fiduciary September 2017 Event

INSTITUTE FOR THE FIDUCIARY STANDARD

TD Ameritrade

1

The Advisers Act of 1940

Why.

"One [reason] was to protect the public from 'fraud and misrepresentations of unscrupulous tipsters and touts.' and the other was to protect bona fide investment advisers from the 'stigma' of associating with unscrupulous members of the profession."[1]

What.

"The Advisers Act focused on the relationship between the adviser and the client...Another witness stated...'The relationship...is essentially a personal one involving trust and confidence.'"[2]

1 Arthur B. Laby, *Selling Advice and Creating Expectations*, p. 721 http://www.thefiduciaryinstitute.org/wp-content/uploads/2013/02/LabySellingAdviceCreatingExpectations.pdf

2 Ibid, 722

In Apparent Breach of FINRA Rule 2210

Why Branding Registered Reps "Advisers" is Inherently Misleading

- Obfuscates the primary role of BDs in primary offerings of securities, which is to distribute and offer securities *on behalf of, and as an agent of, the issuer*
- Implies to investors that the BD (and the RRs) serve solely as their agent and that the BD (and the RRs) are providing un-conflicted recommendations and are acting solely in their interest
- Conceals obligations owed by the BDs (and the RRs) to the issuers; causes customers to wrongly believe that the purpose of a BD (and the RRs) is to provide advice to the customers

Advertising Works

"Advertising advice and adviser titles induce individuals to contract with broker-dealers and ground a reasonable expectation that a broker-dealer will provide advice."[3]

"The SEC has stated that regulating advertising is important because of the impact Advertising has on retail investors."[3]

3. Laby, 764.

Goldman Sachs and "Puffery"

In Richman v. Goldman Sachs Group, June 21, 2012

Crotty also cites a precedent limiting the general principle of 'nonactionable statements':

"The important limitation on these principles is that optimistic statements may be actionable upon a showing that the defendants did not genuinely or reasonably believe the positive opinions they touted…"

Goldman Sachs and "Puffery"

In Richman v. Goldman Sachs Group, June 21, 2012

"Goldman's arguments in this respect are Orwellian. Words such as 'honesty,' 'integrity,' and 'fair dealing' apparently do not mean what they say; they do not set standards; they are mere shibboleths. If Goldman's claim of 'honesty' and 'integrity' are simple puffery, the world of finance may be in more trouble than we recognize."[6]

6 US District Judge Paul Crotty, footnote 8, p. 15

INSTITUTE FOR
THE FIDUCIARY STANDARD

Fiduciary Reference
Analysis of Investment Fiduciary Issues

July 7, 2017

Why Avoiding Conflicts of Interest Matters

Advisor DNA found in the Advisers Act of 1940 and championed for generations is *objective advice. It's knowing that conflicts can be toxic. Yet, in some quarters today industry and regulatory views reject this bedrock principle. Instead, they view conflicts as inevitable and "acceptable." This is a sharp departure from precedent that many RIAs fervently reject. Here, eight advisors explain "why"*

Knut A. Rostad *

Introduction and Summary

In September 2016 the Institute released a paper that surveyed the ADVs of 135 RIAs and nine large financial services firms. 1. Form ADV Part I and Part II offers investors a wealth of data about the scope and nature of an RIA's business. The Institute sought to describe key RIA attributes regarding business lines, employees' registrations, revenues and compensation and conflicts.

The 135 RIA firms aggregated assets are $465 billion. 18% of the 135 firms post AUMs of $3 billion or more; 82% from $250 mm up to $3 billion. 99% of the firms receive compensation as a % of AUM; 61% by hourly fees.100% perform portfolio management services; 94% financial planning services.

This paper follows our September 2016 paper by highlighting 25 of the 135 RIAs that further minimize their conflicts by refraining from certain practices. The 25 firms are identified and eight firm principals provide comments (noted below) on 'Why avoiding conflicts of interest matter.' Their remarks are illuminating, addressing topics from the "philosophical" to the "practical." In summary, their views may be distilled to 'Avoiding conflicts is essential to providing true advice.'

- These firm principals believe their mandate is to avoid conflicts; it is not to disclose conflicts. Why? Disclosing conflicts can limit or taint the client relationship, add burdens to the firm and confuse staff.

- More broadly, avoiding conflicts reinforces objective advice. Clients sense the difference, that objective advice is not conflicted advice and a product recommendation. They sense the difference between a client advocate and a product advocate. With a client advocate, clients tend to be more trusting and respectful and have deeper advisor relationships. They show greater confidence in the advice rendered and, critically, in their own financial situation. This is powerful.

* Knut A Rostad is president and founder of the Institute for the Fiduciary Standard. The Institute is a non-profit that exists to advance the fiduciary standard through research, education and advocacy. For more information see www.thefiduciaryinstitute.org

How many of the 135 firms decline engaging in all five practices which present conflicts? Firms that decline registering advisers as insurance agents (1) or registered representatives (2). Decline selling proprietary products. (3) Decline receiving compensation other than fees paid by clients. (4) Also, do not disclose a relationship "material" to their business that creates a "material conflict of interest with your clients." (5) Combined, only 25 firms, 18% of the 135 firms, disclose they have chosen to not engage in any of these practices.

Twenty-five RIA firms that Choose to Avoid Practices or Firm Relationships that Create Conflicts

Advisory Firm	Location	AUM (billions $)
Oxford Financial Group, LTD	Carmel, IN	$13.6
The Colony Group, LLC	Boston, MA	$4.9
WE Family Offices, LLC	Miami, FL	$4.2
Sontag Advisory, LLC	New York, NY	$4.1
Welch & Forbes LLC	Boston, MA	$3.9
Symmetry Partners	Glastonbury, CT	$3.7
Balasa Dinverno Foltz, LLC	Itasca, IL	$3.1
Orgel Wealth Management, LLC	Altoona, WI	$3.0
Joel Isaacson & Co., LLC	New York, NY	$2.9
South Texas Money Management	San Antonio, TX	$2.8
MRA Associates	Phoenix, AZ	$2.4
EP Wealth Advisors, Inc.	Torrance, CA	$2.2
Matter Family Office	Clayton, MI	$2.2
Greenspring Wealth Management, Inc.	Towson, MD	$2.1
Andersen Tax LLC	Mclean, VA	$1.9
Modera Wealth Management, LLC	Westwood, NJ	$1.6
Sand Hill Global Advisors, LLC	Palo Alto, CA	$1.6
Water Oak Advisors, LLC	Winter Park, FL	$1.4
Accredited Investors, Inc.	Edina, MN	$1.4
GM Advisory Group	Melville, N.Y.	$.59
Traphagen Financial Group	Oradell, N.J.	$.42
Mois and Fitzgerald Tamayo	Orlando, Fla.	$.39
Starfire Investment Advisers	Southfield, Mich.	$.35
Ritter Daniher Financial Advisory	Cincinnati, Ohio	$.33
Net Worth Advisory Group	Sandy, Utah	$.26

Conflicts, professionalism and trust. **Itzoe**, "There is no doubt in my mind that conflicts around compensation prevents the advisory industry from being recognized as a true profession." **Moisand** says conflicts must be avoided because managing conflicts doesn't cut it for clients or the firm. "Managing conflicts requires the firm follow additional procedures… I don't worry about conflicts I avoid." **Levin** concludes, "Nothing is completely without conflict, but reducing conflicts as much as possible increases the likelihood of receiving objective, client-centered advice.

Michael N. Delgass, J.D.
Sontag Advisory

"Howard Sontag founded the firm in 1995 with a legal background in taxation and benefits. I joined Sontag Advisory in 2005, also with a legal background in estate planning and taxes. This legal background informs the firm's approach to wealth management and what acting In a fiduciary capacity means. There are "bright lines" – such as no proprietary products – which clients easily see. These Bright lines are sometimes subjects of media headlines of company wrongdoing and clients understand they should not be crossed. There are also many less-bright lines – "dull Lines" – that we also believe should not be crossed.

Dull lines are less apparent to most clients but still important to client-centered advice. Maintaining a uniform fee schedule across asset classes is a good example of this.

In some cases, the dispersion of client accounts can create potential conflicts when some are billed and others (perhaps held away) are not, and there a fixed dollar fee may be a way of ensuring objectivity. We try very hard to avoid situations that create conflicts, and create billing arrangements to minimize them where necessary.

Firm culture matters. We aim to "walk this walk", in part, by embedding issues of fiduciary due care and loyalty into our annual employee and executive reviews. This is hard to measure and quantify, but we ask that supervisors evaluate their reports in part on how well they adhere to our core values, and how well they maintain focus on the client's best interests.

We seek to identify specific employee choices and actions that demonstrate, in our view, an understanding of and fidelity to a high fiduciary standard. We highlight these examples and sometimes publicly commend the individual to reinforce our fiduciary culture."

Derek Holman, CFP
EP Wealth Advisors

When I was in college, I loved learning about how businesses worked, and the capital markets since they are an accumulation of all those businesses. I like the big picture. And so after I graduated I wanted to go work for a Wall Street firm, as any kid with my interests would want to, and I wanted to give people valuable investment advice.

But the two Wall Street firms I worked for were far different than I expected. I remember one manager telling me, quite directly, that success in the industry depended on selling well—not on advising well.

Josh Itzoe, CFP
Greenspring Wealth Management

My partner and I came from stints at Morgan Stanley and at Merrill Lynch and came up with idea for Greenspring in 2002 and then the firm was founded in 2004.

There was a push in the early 2000s in the wirehouses to do more fee-based business and our training programs were structured this way. We had about 95 to 98% of our business on the fee-based side when we left. Our transition to a fee-only RIA was much easier because we weren't really leaving any revenue behind that would have been critical to launching. So, we didn't see the purpose in having a BD relationship and felt like a fee-only RIA aligned with our vision and being a fiduciary would help us differentiate (this was before most people had much of a concept of what it meant to be a fiduciary).

At Morgan and Merrill we were not good at sales; we wanted to be good at advice. We attended NAPFA study groups before leaving the BDs and were regarded with some skepticism. From the start we believed being fee-only was very important. We also believed in full fee transparency because we felt like it created a depth of client trust you just can't get otherwise. At the wirehouses we felt conflicts and the lack of fee transparency created more of an adversarial relationship that put us in a difficult position and clients at a disadvantage. There's a powerful connection formed with clients when they know you are advocating for them alone and making sure the marketplace treats them fairly.

A little later in 2006, we saw an opportunity to get into the 401(k) business and promote fiduciary principles and practices. As we got deeper into it, I realized how confusing and opaque is the world of fees. It bothered me so I wrote a book called *Fixing the 401(k)* and dedicated a whole chapter to deciphering 401(k) fees and expenses.

There's no doubt in my mind that it is conflicts of interest around compensation that prevents the advisory industry from being recognized as a true profession – and not just one big sales organization. I think that's a big reason why CPAs and attorneys are often viewed as "trusted" advisors much more so than financial advisors.

Over the years (especially early on), some people encouraged us to sell insurance or other products. The rationale was we left a lot of money on the table. We disagreed. We have always believed that over the long-term it's our true independence and objectivity that sets us apart and receiving indirect compensation waters down that message and changes the way you advise clients. Personally, I would rather make less money but be able to sit in front of a client who has confidence that any recommendation I make to them is based on merit alone.

Today there is much talk around asking an advisor if he or she is a fiduciary. I think this is the wrong question. Being a fiduciary is simply "table stakes". The better question is: 'what's your expertise, experience, qualifications, processes and ideas that qualifies you to be a fiduciary.' I've often said that the word "fiduciary" is not simply a noun (who you are). Instead (and more importantly), being a fiduciary is a verb - it's what you DO that actually matters. Rather than simply asking prospective advisors if they are willing to accept fiduciary responsibility for their advice, prospective clients (both

Tom Orecchio, CFA
Modera Wealth Management

I have been fee-only for so long it's just what we do. I started in a firm that was fee and commissions and was there for four years until 1994. I did well and believe my clients were well served. But I was never entirely comfortable. As in when, once a year, the firm would have a contest and brokers and advisers could win prizes or trips. These incentives changed behavior and I did not like what I witnessed.

We have a conflict in our AUM fee model which we disclose on our ADV and verbally. Such as when a client asks whether she should pay off her mortgage. I believe our firm culture is highly sensitive to conflicts. It's deeply engrained. It's simple. For example, we don't do gifts or entertainment. Period. We politely decline such offers and may ask they be donated to charity, instead. It's so much simpler to avoid than it is to manage conflicts.

It appears the industry is coming in this direction on the brokerage front. There is a greater awareness of the importance of conflicts. However, in insurance, there has not been much change from how it was twenty years ago.

Patrick Sweeny
Symmetry

"My partner, David Connelly, and I came out of several years on Wall Street in institutional trading And sales and then at Dean Witter Reynolds serving high-net-worth individuals. We formed Symmetry in 1994 and our experience at Witter was particularly important. I was taken aback by how much pressure there was there to sell proprietary products to individual clients. This was my first experience with conflicts of interest. I am a big critic of the broker-dealer model, but am also a big fan of many individual brokers who, none-the-less, serve their clients despite the BD system.

At Symmetry we went fee-only and used Dimensional Fund Advisors and Vanguard. Today we advise clients directly and sub advise to advisors nationwide. We are missionaries about investor education and especially about investing costs. We take a lot of time to make sure investors understand what they are paying. Total cost transparency is so important. We are also passionate about what we believe will differentiate great advisors from also-rans in the future. This is financial planning that is thoughtful, in-depth and well-researched and delivered with outstanding service.

We have been fiduciaries since 1994 and are committed to helping brokers come to the RIA side and become the true professionals' investors sorely need. Minimizing conflicts of interest is key to becoming a profession."

These investment policy guidelines document your decisions and directives for Abacus Planning Group, Inc. to manage your investment portfolio. You have directed Abacus to consolidate the following accounts for purposes of asset allocation, rebalancing and performance reporting.

Client account information	account type	account number
Unit Name PSR and Primary Address City, State ZIP+4	Information	Numbers

Objectives

- To achieve a long-term, real rate of return, i.e., the return less income taxes, expenses and inflation, primarily through capital appreciation. Current income is of secondary concern.
- To preserve principal through reasonable efforts, but preservation of principal shall not be imposed as a requirement of individual investments.
- To reduce risk by prudent diversification across markets, managers and investment styles.

Management

Abacus shall be responsible for the following portfolio activities:

- Advising you about the selection and allocation of asset classes.
- Identifying specific investments within each asset class.
- Monitoring the performance of all selected asset classes and specific investments.
- Preparation and presentation of appropriate performance reports.

Directives

- You plan to make future contributions into your portfolio of $ _____.
- To pay for your short-term financial objectives, you plan to take withdrawals from your portfolio of no more than $ _____ annually, adjusted for inflation, in addition to the Abacus financial planning fee.
- To ensure that you will have sufficient cash available in the event of an unforeseen emergency, you direct Abacus to have liquid investments (exchangeable into cash within one month or less, without loss of market value) in the amount of $ _____ in the _____ account.
- You direct Abacus to implement this policy [X] immediately [ ] by spreading transactions over a _____ month period, dollar cost averaging purchases or sales.
- You direct Abacus to use no-load, low annual expense managers whenever prudent.
- You direct Abacus not to time the market or select individual stocks.

Rebalancing

The portfolio asset class weightings will range above or below your portfolio targets due to deposits, withdrawals, and differing rates of growth among asset classes. Abacus will review your portfolio for rebalancing no less than every 90 days. Abacus will, at minimum, rebalance your portfolio if your asset class percentages deviate from the minimums or maximums noted in this document. Abacus will be sensitive to minimizing transaction fees and income tax consequences that may result from this process.

Return objectives and risk tolerance

Abacus cannot guarantee the future performance or risk level of any individual security, asset class, or portfolio. Historical performance does not guarantee future performances. You do need, however, some reasonable process, some sensible way to forecast the future. We calculate estimated expected return, risk, and correlation coefficient of each asset class. In these calculations, we assume a U.S. equity premium of 5% and inflation of 3%. When you review what actually happens in any year, you will almost certainly observe results that differ from the average gross expected return.

Average gross expected return %	Variability of portfolio selected %	Maximum expected 1-yr loss %
6.75%	−17.2% to + 30.5%	− 30.7%

	6.75	%	**Gross return** (this number includes annual interest, dividends, capital gain or loss)
−	0.60	%	Abacus investment fee
−	0.39	%	Annual projected expenses paid to the underlying managers
−	0.00	%	Transaction costs
=	**5.76**	%	**Net return**
−	3.00	%	Inflation
−	0.40	%	Taxes (your average projected income tax rate multiplied by your projected taxable yield)
=	**2.36**	%	**Real return**

Portfolio monitoring

Abacus will compare the performance of the total portfolio to the following composite benchmark: 70% Global stock/ 30% US bonds, as measured by the following indices: S&P 500 Total Return Index, MSCI EAFE Index, MSCI EAFE Emerging Markets Index, HRFX Fund of Funds Index, Barclays US TIPS Index, and Citigroup 1-3 Year Treasury Index.

Management discretion

We grant Abacus Planning Group, Inc. the right to act with full investment discretion regarding my portfolio, within the bounds of these investment policy guidelines.

Client initials .....

Client initials .....

Client acknowledgement

We hereby acknowledge receipt of these investment policy guidelines and agree to the guidelines set herein.

Date .....

Client signature .....

Client signature .....

Abacus Planning Group, Inc. .....

INSTITUTE FOR
THE FIDUCIARY STANDARD

Fiduciary Reference

Analysis of Investment Fiduciary Issues

September 9, 2013

Six Core Fiduciary Duties for Financial Advisors

Knut A. Rostad *

Introduction

Fiduciary duties exist to mitigate the information asymmetry (also known as the "knowledge gap") between expert providers of socially important services – such as law, finance and medicine – and the non-expert, consumers of these services. This knowledge gap is neutralized by requiring experts to be fiduciaries. Fiduciaries are bound by an undivided loyalty to clients, to put clients' interests first, ahead of their own interests. Here is the legal and practical basis for investors to rely on the advice of experts, and enter relationships of trust and confidence. Fiduciary law, then, is the foundation on which investor trust is based. [1]

Fiduciary care embodies the highest standard of excellence. Throughout history, fiduciaries have held a unique and important role in law and the investment profession. Fiduciaries possess two sets of attributes distinct from business practitioners meeting a commercial standard of conduct. Fiduciaries possess the technical expertise, experience and specialized knowledge that equip them to render advice (due care). They are also bound by an undivided loyalty to their client.

The Six Core Fiduciary Duties embody the major elements of fiduciary responsibility under the Advisers Act of 1940. The duties are explained, in part, through the principles articulated by the SEC Commissioners in its off-cited 1948 case, *In the Matter of Arlene Hughes*.[2] In *Hughes* the SEC clearly sets out its views on essential aspects of fiduciary responsibility, focusing on the burdens of advisors when conflicts are present.

The six duties are:

Serve the client's best interest
Act in utmost good faith
Act prudently -- with the care, skill and judgment of a professional
Avoid conflicts of interest
Disclose all material facts
Control investment expenses

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* *Knut A Rostad is president of the Institute for the Fiduciary Standard. The Institute is a non profit that exists to advance the fiduciary standard through research, education and advocacy. For more information see www.thefiduciaryinstitute.org.*

One: Serve in the Client's Best Interest

Loyalty requires that fiduciaries put the best interests of clients first. Doing so means clients interests are put ahead of the advisor's interests, the interests of their firm, and the interests of all others at all times.

While loyalty is essential to rendering *advice*, it is not required of those who distribute products and provide information and opinions about their products. Here is the key difference: a fiduciary represents and advises clients; a sales professional represents manufacturers and sells products. A product salesperson provides information and opinions about products or services and generally operates with divided loyalties – at best – between the product manufacturer and the client. Fiduciary advisors can not do so; fiduciaries must always act with undivided loyalty. For an advisor to enter into a relationship with a client when an unavoidable and material conflict is present sharply increases the burden on the advisor to be scrupulous in ensuring the client's interests remain first and foremost.

In the client's best interest describes how advisors must act. *Best* means, according to the American Heritage Dictionary, "Surpassing all others in excellence, achievement, or quality; most excellent: *the best performer*... " The advisor must put the client's best interests first and never behind, below or second to the interests of the advisor, his firm or any third parties. A recommendation in the client's best interest means that no materially superior option is available. As one legal scholar explains, the advisor must adopt the goals of the client as his own goals. [9]

Thus, advisors are not allowed to self-deal, or profit from a transaction in a way that undermines the client's goals or is not also entirely fair to the client. Advisors must not favor one client over another. As the SEC articulates clearly in *Hughes:*

> *The very function of furnishing investment counsel .... cultivates a confidential and intimate relationship.*
>
> *... registrant's clients have implicit trust and confidence in her. They rely on her for investment advice and consistently follow her recommendations as to the purchase and sale of securities. Registrant herself testified that her clients follow her advice "in almost every instance." This reliance and repose of trust and confidence, of course, stem from the relationship created by registrant's position as an investment adviser. The very function of furnishing investment counsel on a fee basis -- learning the personal and intimate details of the financial affairs of clients and making recommendations as to purchases and sales of securities -- cultivates a confidential and intimate relationship and imposes a duty upon the registrant to act in the best interests of her clients and to make only such recommendations as will best serve such interests. In brief, it is her duty to act in behalf of her clients. Under these circumstances, as registrant concedes, she is a fiduciary; she has asked for and received the highest degree of trust and confidence on the representation that she will act in the best interests of her clients. (p. 6)*

objectivity impossible. At the Institute for the Fiduciary Standard September 9th Fiduciary Forum, 2011, Yale Management Professor Daylian Cain concluded:

> *"Conflicts of interest are a cancer on objectivity. Even well-meaning advisors often cannot overcome a conflict and give objective advice. More worrisome, perhaps, investors usually do not sufficiently heed even the briefest, bluntest and clearest disclosure warnings of conflicts of interest."*

In *Hughes*, the SEC stresses the importance of advisors avoiding conflicts of interest but for allowing an exception when "the principal gives his informed consent."

> *It is the general rule that a fiduciary must not put himself into a position where his own interests may come into conflict with those of his principal.*
>
> *Since loyalty to his trust is the first duty which a fiduciary owes to his principal, it is the general rule that a fiduciary must not put himself into a position where his own interests may come in conflict with those of his principal. To prevent any conflict and the possible subordination of this duty to act solely for the benefit of his principal, a fiduciary at common law is forbidden to deal as an adverse party with his principal.*
>
> *An exception is made, however, where the principal gives his informed consent to such dealings. The question of law presented here is the extent of disclosure which must be made by a person, in the type of fiduciary relationship assumed by registrant, in obtaining consent to his selling his own securities to his principal. More specifically, the issue is whether such a fiduciary must make any disclosure in addition to the fact that he proposes to deal on his own account. We believe that it is perfectly clear that additional disclosure, and a consent based on such additional disclosure, are necessary before the fiduciary can assume such a conflicting position. (p. 6)*

The SEC speaks clearly. It frames the significance of conflicts to be, inherently and fundamentally, at odds with the duty of loyalty. As a consequence, the SEC underscores "the general rule" that a fiduciary "must not put himself into a position" that is conflicted.

Four: Disclose All Material Facts and Conflicts;
Manage All Material Conflicts

Disclosure is a cornerstone of securities regulation. This is well-known and not in dispute. What seems less well known is that the precise nature of the disclosure requirement changes, and changes materially, with the facts and circumstances presented.

Advisors are required to make clear, complete and timely disclosure of all material facts and conflicts. These disclosures are typically set out in Form ADV. Material conflicts, those conflicts defined as being sufficiently significant such as to reasonably influence a client decision to not proceed with the engagement or transaction, require the greatest care.

Registrant cannot satisfy this duty by executing an agreement with her clients....

Registrant has an affirmative obligation to disclose all material facts to her clients in a manner which is clear enough so that a client is fully apprised of the facts and is in a position to give his informed consent. And this disclosure, if it is to be meaningful and effective, must be timely. It must be provided before the completion of the transaction so that the client will know all the facts at the time that he is asked to give his consent. Registrant cannot satisfy this duty by executing an agreement with her clients which the record shows some clients do not understand and which, in any event, does not contain the essential facts which she must communicate. (p. 9, 10)

The explanation must be such, however, that the particular client is clearly advised and understands before the completion of each transaction that registrant proposes to sell ***her*** *own securities*

It is clear from this testimony that certain of registrant's clients did not understand that registrant consistently proposed to, and in fact did, sell her own securities to them. Accordingly, registrant did not fulfill her affirmative obligation to disclose the capacity in which she acted, a duty which even she concedes she must perform. In this connection, we may point out that no hard and fast rule can be set down as to an appropriate method for registrant to disclose the fact that she proposes to deal on her own account. The method and extent of disclosure depends upon the particular client involved. The investor who is not familiar with the practices of the securities business requires a more extensive explanation than the informed investor. The explanation must be such, however, that the particular client is clearly advised and understands before the completion of each transaction that registrant proposes to sell her own securities. 17

The SEC stresses three points that are particularly relevant. First, even though an advisor is permitted to do so, it is described in *Hughes* as "highly improper" or a very inappropriate choice for an advisor to elect to "take a conflicting position... where she is motivated to sell securities which may be most profitable to her and in her own best interests.."

Second, a blanket disclosure in a contractual agreement does not satisfy the heavy burden placed on the advisor who renders conflicted advice.

Third, and perhaps most pertinent today, there can not be, by the very nature of the facts and circumstances assessment required, any "hard and fast rule" as to what a disclosure entails that is true for all disclosures at all times. The SEC reminds us here, "The method and extent of disclosure depends on the client involved." The reason for this facts and circumstances disclosure rule: The overriding requirement of any disclosure is that the client "understands" the implications of the conflict, and that the advisor is the party held responsible to ensure the client understands.

Conclusion

The Six Core Fiduciary Duties reflect principles that have served society for centuries. In recent times, the legislative history of the Advisers Act set out in the 1930's underscored the need for fiduciary principles as the backbone of "competent, unbiased and continuous advice." They echo in the SEC's practice today to urge advisors to avoid conflicts of interest, and in a thoughtful speech by the then SEC Director, Office of Compliance and Inspections, Carlo V. De Florio, in October 2012. De Florio called conflicts, "viruses that threaten the organization's well being."

The Duties are plainly evident through *Hughes*, an SEC opinion focused on the challenges created when an advisor puts herself in a conflicted position. Hughes transcends legal nuances to focus on the core challenge of conflicted advice and the need for self-restraint. *Hughes*' vigor is its clarity. It applies and expresses basic principles to common circumstances, and states clearly what it means to be a fiduciary, to be held accountable.

Take the circumstances around the nature of the advisor-client relationship. The SEC notes in *Hughes*, "Learning.. personal and intimate details of the financial affairs of clients and making recommendations as to purchases and sales of securities -- cultivates a confidential and intimate relationship and imposes a duty upon the registrant to act in the best interests of her clients."

Or what loyalty means. "Since loyalty to his trust is the first duty which a fiduciary owes to his principal, it is the general rule that a fiduciary must not put himself into a position where his own interests may come in conflict with those of his principal." And why one must avoid "a conflicting position." To avoid being, "Motivated to sell securities which may be most profitable to her and in her own best interests .."

This common sense in plain language pervades *Hughes*, and helps illuminate four points at the center of today's discussion of the Advisers Act and a potential "uniform" fiduciary standard:

- the core nature of an advisors/client relationship of trust and confidence;
- the incompatibility between loyalty and conflicts of interest;
- the regulatory burden placed on a fiduciary advisor who chooses to align with material conflicts of interest; and
- the advisor's responsibility to make sure the client understands the conflict.

Hughes articulation of the meaning of fiduciary does not presume regulation alone is at issue. "Choice," the advisor's freedom to choose is paramount. The opinion speaks of the advisor's "free choice" either to avoid or to not avoid conflicts. And if the advisor "chooses to assume a role where she is motivated by conflicting interests," she then accepts the additional responsibilities implicit in that role. To exercise self-restraint -- or to not -- is the choice at hand.

The case for fiduciary principles indispensable role runs through history. The SEC in *Hughes* parallels and amplifies this case. The logic, tone and texture of the discussion in *Hughes* describes what it means to be a fiduciary, in practical terms in a manner that is meaningful to regulators, the profession and individual fiduciaries alike. It deserves close attention.

(NOTE: While a long standing case, Hughes continues to be cited by the SEC. This point was noted, recently by Melissa A. Roverts, SEC Branch Chief, Office of Investment Adviser Regulation at the Investment Adviser Association Compliance Conference, March 7, 2013.)

3. For a general discussion of the role of the fiduciary from an historic perspective see, Blaine F. Aikin, Kristina A. Fausti, "Fiduciary: A Historically Significant Standard."

4. 375 U. S. 180.

5. Id at 184.

6. http://www.sec.gov/news/speech/1934/030034douglas.pdf (Article in *Yale Law Review.*)

7. See: http://www.sec.gov/news/studies/bkrcomp.txt

8. http://www.sec.gov/news/press/2012/2012-172.htm

9. Professor Arthur Laby, "The Fiduciary Obligation as the Adoption of Ends," Buffalo Law Review, Vol 56, 99.

10. Professor Arthur Laby, "Selling Advice and Creating Expectations: Why Brokers Should be Fiduciaries." Washington Law Review, Vol. 87:707, at 720.

11. http://www.finra.org/Newsroom/Speeches/Ketchum/P120289

Rick Ketchum, CEO, FINRA, October 27, 2009

Here, Ketchum draws the contrast between a "minimum standard of acceptability" and an investor's "best interest" with a "true fiduciary spirit".

In recent years, business practices have evolved to a point where for some firms products and services were being offered not on the basis of whether they were in the best interest of the customer, but whether they met a minimum standard of acceptability. We've seen this with a variety of structured products, in which there was no change in the business model despite a dramatic change in the business climate..... there needs to be a shift in the way some firms approach their development of new products and the way they market these products to the public. Your integrity and commitment to good business practices should be the first line of defense in investor protection, and I urge you to view your responsibilities in a true fiduciary spirit.

Conclusions. These research studies offer insight into the nature of investor "misunderstanding," and the consequent level of investor risk. The level of the general lack of awareness of the fees and expenses investors pay for their brokerage and advisory services and the prevalence of the belief that these services are "free" suggests a picture that should, at minimum, raise red flags to the profession and regulators alike.

a. See http://assets.aarp.org/rgcenter/econ/401k_fees.pdf

b. See http://www.sec.gov/news/press/2008/2008-1_randiabdreport.pdf

c. See http://www.thefiduciaryopportunity.com/

d. To suggest that investors are merely *confused,* in light of research findings, may be to understate general investor misunderstandings with their service providers. It is true that investors "confuse IAs from BDs." But this particular confusion is just part of the picture.

   A dictionary definition of "confuse" serves to suggest that the investor behavior noted here extends beyond *confusion.* The definition of confuse includes "perplex," "bewilder," or "to fail to distinguish." As examples, of using *confuse* or *confusion* in a sentence, these definitions offer, for example: "He always confuses the twins." Or, "Try not to confuse the papers on the desk." (See Dictionary.com)

   The scale of investor unawareness of fees, expenses and compensation reflects such a fundamental "gap" that it seems far more appropriate to associate this phenomenon as an indicator of *disengagement* more than of *confusion.* Examples of definitions of *disengage* include: "To release or become released from a connection," or, to "detach," disconnect" or "uncouple." (See Dictionary.com for further examples.)

   By only suggesting that investors are *confused,* we may be framing the circumstances far more positively than the evidence actually warrants. In doing so, we may be understating the gravity of investors' misunderstandings of investing and their advisor or broker.

INSTITUTE FOR
THE FIDUCIARY STANDARD

Best Practices: Professional Conduct Standards

December 22, 2017

Best Practices are professional conduct standards that outline what the Board believes fiduciary advisors should do for clients. Here, each Best Practice is listed and described in *italics* below it. The practices seek to uphold a high standard of transparent and objective advice. A firm subscribing to Best Practices affirms with these actions, to:

1.Affirm the fiduciary standard under the Advisers Act of 1940, common law and, if applicable, ERISA and DOL's COI Rule, govern all professional advisory client relationships at all times.

Fiduciary status, as required in law, applies at all times in all client engagements and this affirmation is stated in writing.

2. Establish and document a "reasonable basis" for advice in the best interest of the client.

Advice is given on a "reasonable basis" and a summary of this "reasonable basis" will be provided by your advisor in writing upon request.

3. Communicate clearly and truthfully, both orally and in writing. Do not mislead. Make all disclosures and important agreements in writing.

All important client agreements and disclosures are put in writing and that no written or verbal statements are misleading.

4. Provide a written statement of total fees and underlying investment expenses paid by the client. Include any payments to the advisor or the firm or related parties from any third party resulting from the advisor's recommendations.

Your advisor provides a good faith estimate of fees and expenses in writing during the starting phase of the engagement when the investment policy is agreed to. Thereafter, your advisor will offer to all clients and will provide, upon request, an annual good faith estimate in writing of total fees and expenses incurred by each client and paid to the firm or related parties because of my advice.

5. Avoid conflicts and potential conflicts. Disclose all unavoidable conflicts. Manage or mitigate material conflicts. Acknowledge that material conflicts of interest are incompatible with objective advice.

Your advisor seeks to avoid conflicts of interest. For unavoidable conflicts, your advisor 1) affirmatively discloses the conflict in writing with 'sufficiently specific facts' to allow client understanding, and 2) manages the conflict to preserve the client's best interests. For material conflicts your advisor 3) obtains informed written client consent. Also, 4) your advisor affirms the transaction remains consistent with the client's best interests. Further, he or she provides clients and prospective clients a written description of conflicts and steps to manage them.

INSTITUTE FOR
THE FIDUCIARY STANDARD

CFA Institute Calls for Universal Disclosure of Fees and Performance Across Investment Industry; Investor Trust Will Follow, Study Finds

84% of Investors Surveyed Say Trust in Advisers Driven Mostly by Full Disclosure of Fees, Yet only 48% Satisfied with Disclosure

New York City, United States 26 Mar 2018

In a new global survey on the importance of trust in the investment management industry, CFA Institute provides a roadmap for how the investment industry can increase its credibility and allay investor concerns. By adhering to the core tenets of professionalism – putting clients first, being transparent about fees and performance, demonstrating expertise – advisers will earn the trust of their clients.

CFA Institute, the global association of investment professionals, commissioned the survey to help advisers understand the pivotal role that professionalism plays in building trust in client relationships and in the industry overall. As investor expectations continue to rise, the survey finds that the trust equation of credibility and professionalism will acquire even more importance.

The 12-market survey, *The Next Generation of Trust: A Global Survey on the State of Investor Trust*, reveals a significant gap between what more than 3,000 retail investors expect from their financial advisers and how satisfied they are with the relationship. Retail investors believe that financial advisers fall short of meeting expectations the most in the areas of transparency and performance. Investors surveyed say that their trust in advisers is driven by priorities of full disclosure of fees (84% importance), disclosure and management of conflicts of interest (80%), and generating returns better than a benchmark (78%), yet respectively, only 48%, 43%, and 44% of participants say that advisers deliver satisfactorily on these.

Among the more than 800 institutional investors surveyed, the factors that were considered to be most important ranked similarly to retail investors. However, the gap between institutional investors' expectations of and satisfaction with those priorities is much narrower, with less than a 10 percentage point shortfall. Overall, institutional investors surveyed are more satisfied.

Hogan Financial

John A. & Jane B. Sample
As of March 31, 2018

Dimensions of Your Portfolio - Risk & Cost

Savvy investors focus on what they can control.

The areas where investors have control is risk and cost.

Here is data on the risk and cost of your portfolio.

Risk: *This is the mutually agreed upon targeted risk level for your portfolio. We are accountable for keeping your portfolio pulled to this level of portfolio risk.*

Objective: Moderate

Description: An investment portfolio characterized by moderate risk. This objective is for an investor who accepts a fair degree of risk and is looking to exceed long-term inflation by a fair margin (e.g. 3-5% over the long term). The investor understands and is comfortable with the fact that short-term volatility is a price to be paid for higher long-term returns. General Allocation: Portfolio will be allocated among equities, fixed income, alternatives, and cash, with generally 41%-60% allocated to equities.

Cost: *These are the three layers of your financial expenses. The first two expenses are included in portfolio performance data. The last is not.*

Mutual Fund Expense[1]: (as a % of Your Performance Portfolio)	0.22%
Brokerage Firm Transaction Fees[2]: (as a % of Your Performance Portfolio)	<0.01%
Hogan Financial Advisory Fee[3]: for Financial Planning & Portfolio Management (as a % of Your Whole Portfolio)	0.35%
Previous quarter's advisory fee:	$3,000
Fee calculation method:	Flat Fee

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[1] Mutual Fund Expense: The weighted average expense ratio for Your Performance Portfolio, calculated using the expense ratio reported by the mutual fund company for the current quarter for each mutual fund in your portfolio applied to the market value of each fund.

[2] Brokerage Firm Transaction Fees: The transaction fees levied by your account custodian whenever you buy or sell an investment.

[3] Hogan Financial Advisory Fee: Our fees for advising, coordinating, implementing, and reporting on financial planning and investment management. The stated fee reflects your most recent quarterly fee annualized, expressed as a percentage of Your Whole Portfolio, i.e. including all of your long-term investment accounts regardless of whether or not consolidated performance reporting is possible.

INSTITUTE FOR
THE FIDUCIARY STANDARD

April 30, 2018

RE: SEC Commissioner Hester Peirce Meeting
April 18 Statement: Introduction and Discussion

Selected highlights: the importance of clarity in demarcating suitability and fiduciary standards. Branding the suitability standard. Disclosing fees and expenses.

Relationship Summary

1. Overriding objective of 'a clear standard for broker-dealers … and investment advisers.'(and) a clear, simple and informative disclosure for retail investors.

2. 'The length of these releases … makes it difficult for readers to understand what we are proposing, and thus harder to elicit comments on key points'

3. 'The language and forms in today's package are not a model of clarity … I look forward to seeing the results of … testing the forms'.

4. 'The relationship summary .. monitoring as the main line of demarcation ….'

5. 'One of the most valuable things for investors to know is how much the services and products in which they will invest will cost them'

Regulation Best Interest

6. 'What (it) is and how it relates to existing (BD duties) … Better to acknowledge that we are imposing a suitability-plus standard,' explain what we mean by "plus".

7. 'We risk exacerbating a decline in BDs (from) lack of clarity and .. uncertainty'.

8. 'Best interest … (as a) Commission-approved … spell that … charms investors into not asking questions precisely because it is devoid of concrete content'.

Fiduciary Standard and Investment Advisers

9. 'I do not favor steps that would force (IAs) to look more like (BDs) any more than I favor forcing (BDs) into the adviser mold.

INSTITUTE FOR
THE FIDUCIARY STANDARD

April 30, 2018

RE: SEC Commissioner Hester Peirce Meeting
April 18 Statement Discussion: Materials Attached

1. Institute on Best Practices and Fiduciary Duties

   Institute Best Practices: Professional Conduct Standards, December 22, 2017.

   Institute paper: *Six Core Fiduciary Duties for Financial Advisors, September 13, 2013*

   Institute paper: *Key Principles for Fiduciary Best Practices and an Emerging Profession, September 10, 2014.*

2. Selected Material on Fee Transparency

   CFA Institute 2018 Survey on investor trust.

   Quarterly reporting from Hogan Financial.

   Investment policy guidelines from Abacus Planning Group.

3. Additional Institute Papers, Presentation

   Institute paper: *Why Avoiding Conflicts of Interest Matters, July 7, 2017.*

   Institute Presentation: *Broker/Advisor Titles: Potential Rulemaking at the SEC, September 6, 2017.*

   Institute paper: *What is "Good Advice", May 23, 2016.*