INSTITUTE FOR THE FIDUCIARY STANDARD

Real Fiduciary™ Practices
Professional Conduct Guidance for Advisors

February 22, 2019

The Institute for the Fiduciary Standard's Real Fiduciary™ Practices describe how conscientious and competent advisors serve clients today. The practices reflect principles that underlie fiduciary law and focus on the three overriding advisory duties of Loyalty, Due Care and Utmost Good Faith.[1] The Institute defines these terms as follows:

Loyalty means steadfast and uncompromising devotion to a client's best interest.

Due care means following a prudent process and applying the necessary professional skills as evidenced by appropriate education, expertise and experience.

Utmost good faith means acting at all times with honesty, integrity and transparency.

Many advisors and brokers talk like a fiduciary, though relatively few act like one. These Real Fiduciary™ Practices provide guidance for advisors. They also help investors distinguish advisors who work for and are paid only by clients—from sales representatives who work for and are paid by firms to distribute products. That is, these practices help separate brokers and advisors who merely talk like a fiduciary from advisors who really act like one.[2]

Real Fiduciary™ Advisors stand apart because they:

DEMONSTRATE LOYALTY

1. **Act as a fiduciary at all times. Affirm this commitment to the client in writing.**

   Affirm that the fiduciary standard under common law and the Investment Advisers Act of 1940[3] *(and when applicable, ERISA) governs all professional advisory client relationships at all times at both the advisor and the firm level.*[4]

2. **Decline any sales-related compensation.**

   Accept compensation that is paid by the client in the form of a percentage of assets under management, retainers, fixed fees or hourly fees. Decline any compensation associated with transactions and product sales such as commissions, shelf space payments and 12b-1 fees.[5]

3. **Avoid conflicts of interest.**

   Understand that a conflict of interest occurs when the interests of the advisor or the advisor's firm interfere with the advisor's fiduciary duties to clients. A conflict is material when it could reasonably be deemed to affect how a client who understands the conflict decides to act. Material conflicts are inherently harmful.[6] *Eliminating or avoiding these conflicts when possible has been the cornerstone of fiduciary law for centuries.*

4. Mitigate unavoidable conflicts.

Mitigating material conflicts means, at minimum, receiving appropriate client consent before executing the recommendation. The advisor will:

- *Explain the conflict in sufficient detail, both orally and in writing, so the client fully understands the conflict. Disclosure of conflicts of interest is a well-established obligation of the Investment Advisers Act of 1940 and a key requirement of Form ADV.*[7]
- *Ensure that the client understands the implications of the conflict. This includes the relative merits of options not recommended by the advisor and any additional compensation that may be earned by the advisor.*
- *Receive informed, intelligent and independent consent from the client in writing before any advice is implemented.*
- *Document and be prepared to demonstrate that the conflicted advice remains reasonable and fair and consistent with the client's best interest.*

ACT WITH DUE CARE

5. Maintain professional knowledge and competence.

Demonstrate baseline competence by holding a recognized designation which requires significant study and knowledge, experience and ongoing continuing education requirements, such as the CFP®, CPA/PFS or CFA designations. Decline to provide advice, regardless of its scope, unless the advisor possesses the appropriate expertise.

6. Explain agreements and disclosures clearly and truthfully, both orally and in writing.

Put all important client agreements and disclosures in writing. Do not make oral or written statements that are misleading. Client understanding of the advisor's actions is important in relationships of trust and confidence.

7. Establish and document a reasonable basis for advice.

Document relevant facts and circumstances supporting the advisor's advice in a manner that is appropriate for the scope and nature of the client engagement and for the client's goals and overall circumstances. Upon client request, provide a brief summary written in plain language of each recommendation and its respective reasonable basis. Having a "reasonable basis" for investment advice is a well-established obligation of the Investment Advisers Act of 1940.[8]

8. Follow and document a prudent due diligence process for rendering investment advice.

Research and analyze investment vehicles in a responsible manner. Use an investment policy statement that is based on a clear understanding of the client's circumstances and preferences and that clearly specifies assumptions regarding objectives, risk, and performance. Report performance based on data supplied by an independent third party and calculated using industry standard methods.

ACT IN UTMOST GOOD FAITH

9. **Decline gifts or entertainment or other benefits unless minimal in value, occasional in frequency, and consistent with the advisory firm's gift and vendor relation policies.**

   Decline any gifts or third-party compensation or other benefits received by the advisor or the advisor's firm that could impair advisor objectivity. Upon request, provide the firm's policy on gifts and entertainment. Explain clearly, both orally and in writing, any ongoing benefits the advisor or the advisor's firm receives from other entities.

10. **Charge reasonable fees and incur reasonable investment costs. Disclose and fully explain.**

    Provide in writing at the outset of the advisory relationship, and upon request throughout the client engagement, a good faith description and estimate of anticipated fees, investment costs and tax implications.[9] *Have procedures to check that client expenses are reasonable. Be aware that controlling investment expenses does not require the least expensive alternative; it does require a reasonable basis for selecting a more expensive alternative.*

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