News Release
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Academic Research Shows Disclosure Fails to Protect Investors from Advisors' Conflicts, Leading Academic Tells Fiduciary Standard Forum

Yale Professor Daylian Cain terms conflicts 'a cancer on objectivity' but says studies indicate more disclosure would have little impact

Researchers, lobbyists spar over key issues affecting pending regulations stemming from Dodd Frank law

WASHINGTON, DC – Yale Management Professor Daylian Cain offered a sobering view of what academic research reveals regarding conflicts. "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."

Professor Cain's remarks came at the September 9th, Fiduciary Forum 2011 on a panel, "Crafting Effective Disclosure – is it Possible?" The event, co-sponsored by The Institute for the Fiduciary Standard, The Heartland Institute and TD Ameritrade Institutional comes just as the Securities And Exchange Commission, in accordance with Dodd Frank, and the Department of Labor seeking to protect individuals' retirement accounts, engage in rule-making on the fiduciary standard..

Cain was joined on the panel by Arthur B. Laby, Professor of Law Rutgers-Camden School of Law, Ira Hammerman, General Counsel, SIFMA and David Bellaire, General Counsel Financial Services Institute.

The Institute for the Fiduciary Standard also released a paper by University of Texas Professor Robert Prentice, "Moral Equilibrium: Stock Brokers and the Limits of Disclosure," to be published early next year. Prentice reviews the existing research on disclosure, behavioral psychology, and "new developments in the field of behavioral ethics" and concludes disclosure is inadequate.

No Option to Disclosure?

Lobbyists for the brokerage industry, Hammerman and Bellaire both pointed out that securities regulation has been based on disclosure since the 1930s. Bellaire also suggested, quoting Winston Churchill on the lack of workable alternatives to democracy, that there is effectively no other option to using disclosure. Professor Laby commented that, in fact, there are alternative options to addressing conflicts of interest and that even the disclosure option comes in various shapes and sizes.

"The SEC has many options at its disposal. Some conflict of interest transactions are permitted with minimal disclosure, others are permitted with disclosure and informed consent, while in rare instances certain transactions are banned outright. The SEC could consider a graduated approach, pegging the strength of disclosure and consent to the magnitude of the conflict," Laby noted.

No Dispute As to Disclosure Effectiveness; Time to Rethink Role of Disclosure in Fiduciary Relationships

"The independent academic research speaks clearly how disclosure is generally not effective. There is no debate that disclosure often fails to overcome conflicted advice." said Knut A. Rostad, President, The Institute for the Fiduciary Standard. "It is time to rethink the role of disclosure in fiduciary relationships in securities regulation. Smart regulation adapts to changing facts and circumstances. Just because a disclosure-based regime in fiduciary relationships may have been appropriate when, in 1930, 1.2% of the population – the wealthier segment of the population owned stocks – does not mean it may be appropriate today when 50% of the population is invested in the capital markets, " Rostad stated.

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Fiduciary Forum 2011 Presenters

Professor Cain joined the Yale School of Management after serving as Harvard's Russell Sage Fellow of Behavioral Economics. A former Canada Science Scholar, Cain has three master's degrees and earned his PhD at Carnegie Mellon University. Cain teaches award-winning graduate/executive-level courses such as "Business Ethics Meets Behavioral Economics" and "Negotiations: Beyond Win-Win." Professor Cain's research on judgment and decision-making sheds insight on to how "smart people do dumb things and good people do bad things." Cain is a leading expert on conflicts of interest and co-editor of Cambridge Press's *Conflicts of Interest* (2005).

Professor Laby teaches courses in securities regulation, business organizations, and the regulation of mutual funds. He is a recognized expert in securities law, the regulation of investment management, and fiduciary obligation. Before joining the faculty, Professor Laby served for nearly ten years on the staff of the U.S. Securities and Exchange Commission, most recently as Assistant General Counsel. Before working on the SEC staff, Professor Laby was awarded a Fulbright scholarship and was a visiting lecturer in Germany. Earlier, he was an associate at the law firm of Wilmer, Cutler & Pickering, practicing in the areas of securities regulation and commercial law.

Mr. Hammerman, prior to joining SIFMA, was a partner of Clifford Chance US LLP, the global law firm, where he specialized in securities regulatory and enforcement matters. has over twenty-five years of experience representing the financial services industry on a wide variety of matters before the US Securities and Exchange Commission, the Financial Industry Regulatory Authority, NYSE Regulation, Inc. and state regulatory authorities. In addition, Mr. Hammerman has represented public companies with respect to general corporate law, securities and transactional matters.

Mr. Bellaire has more than 18 years of broker-dealer compliance, legal, and operations experience. Most recently, he was vice president of operations and general counsel at Securities Service Network, Inc. He also previously was compliance manager and special investigations attorney with InterSecurities, Inc., assistant director of compliance at Commonwealth Financial Network, Inc. David received a B.S. in business management from Providence College and a JD from the University of Denver, Sturm College of Law.

Sponsors

The Institute for the Fiduciary Standard is a recently formed think tank based in Falls Church, Virginia. The Institute formed to provide research, education and advocacy on the vital role of the fiduciary standard to investor protection, market integrity and capital formation.

The Heartland Institute is a free market think tank with offices in Chicago, Washington, DC, Austin, TX, Columbus, Ohio, and Tallahassee, FL. Its mission is to discover, develop, and promote free market solutions that empower people while shrinking the size and scope of government.

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