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February 10, 2015

Institute for The Fiduciary Standard
Sent electronically

Ref: Institute Proposes *Best Practices* for Advisers and Brokers Seeking to Meet True Fiduciary Standard

I am submitting this letter in response to the Institute for The Fiduciary Standard's (Institute) request for comments to its proposed fiduciary *Best Practices*. I believe I qualify as an expert on the subject of investment fiduciary responsibility.[i]

The fiduciary movement was started more than a quarter-of-a-century ago. The pioneers of the movement have all shared a common vision of trying to improve the decision-making process of investment fiduciaries – the eight million men and women who have the legal responsibility for managing the investment portfolios of pension plans, foundations, endowments and the assets of individual wealth holders. The movement's proposition is simple: *A rising tide lifts all boats.*[ii] If we can educate and train fiduciaries to make better investment decisions, then we can have a positive, material impact on the fiscal health of the nation.

I have reviewed the Institute's proposed *Best Practices*, and I am familiar with its governance. It is my opinion that:

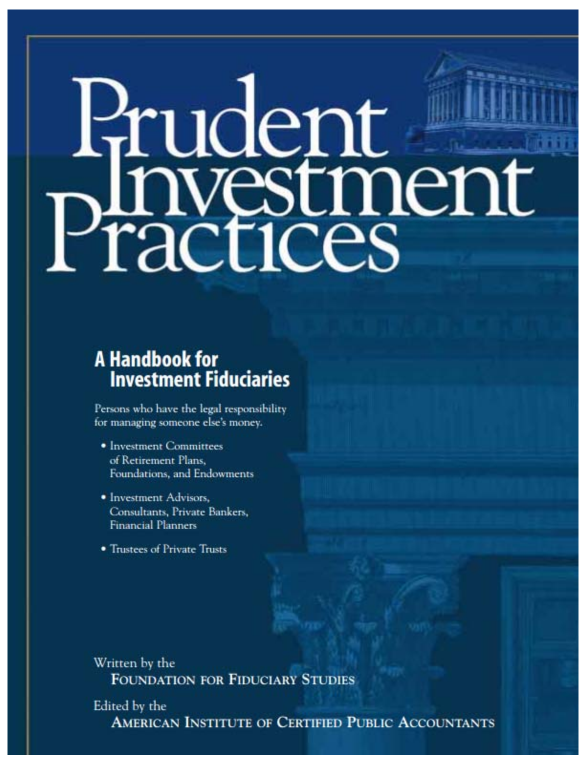
1. The actions of the Institute are not consistent with the objectives of the fiduciary movement. The pioneers of the fiduciary movement never intended for their work to be used for punitive purposes. The Institute's messaging is hateful and is causing more harm than good. The Institute is taking the position that only fiduciaries are honest and anyone who is not should not be trusted. I disagree. No one has ever demonstrated that there is a correlation between the registered status of a financial advisor (fiduciary versus suitability), and integrity. Following the passage of the Dodd-Frank Act there was industry consensus for a uniform fiduciary standard. That consensus has since eroded in large part because of the Institute's negative grandstanding.

2. There is nothing new or original about the Institute's proposed *Best Practices*. I recently heard Joe Torre[iii] speak at a Barron's conference where he made the comment: *You have to continue to get better, just to stay the same.* The fiduciary movement has evolved over the last 25 years; however, in this situation the *Best Practices* do not advance a single new concept. Even the Institute's reference to their work as "The Fiduciary Standard" demonstrates a lack of familiarity with the movement's history. In 1992, Bill Allbright and I reached out to Edward Halbach, who was chairing the drafting committee for the Uniform Prudent Investment Act (UPIA), to ask whether it was the committee's intention to define fiduciary best practices along the lines of those that had been developed to support the Employee Retirement Income Security Act of 1974. Mr. Halback responded that they had never considered defining similar best practices, but now that we had pointed it out, it made sense. This is when the concept of defining a *uniform fiduciary standard of care* began to take shape. There is no such thing as "The Fiduciary Standard" as headlined by the Institute. What has evolved over the years are best practices that can support any fiduciary act (ERISA, UPIA, UMPERSA and UPMIFA) and can be used by anyone serving in a fiduciary capacity – be it as an advisor, trustee or investment committee member.

3. The *Best Practices* are not properly cited. There is only one endnote crediting a source, and the credit is wrong. If the *Best Practices* were submitted as part of a Doctoral dissertation, it would be turned down for failing to adequately cite previously published works on the same subject.[iv] Professionals attribute the works of others to demonstrate how a particular subject has evolved, and to preserve the intellectual integrity of the body of work.

Specific to the proposed *Best Practices*, the initiative appears to be a very poor attempt to replicate the fiduciary handbook, ***Prudent Investment Practices***, which was published by the Foundation for Fiduciary Studies[v] in 2003. In the interest of full disclosure, I was the founder and President of the Foundation.

A copy of the Foundation's handbook can be viewed by entering the words "SEC fiduciary practices" in a search engine or by opening the following link http://www.sec.gov/nb/comments/akendal033105-hand1.pdf .



A side-by-side comparison of the Foundation's handbook with the Institute's *Best Practices* would reveal the following:

Name	**Foundation for Fiduciary Studies**	**Institute for The Fiduciary Standard**
Year Founded	2000	2011
Mission	Define fiduciary best practices; seek public consensus; assess fiduciaries against the practices	Define fiduciary best practices; seek public comment; certify advisors against the practices
Terminology	Best Practices	Best Practices
Year Best Practices Were Published	2003	2015
# of Defined Best Practices	27	11
Best practices are uniform for advisors and brokers	Yes	Yes
Best practices are uniform for trustees and investment committee members	Yes	No
Best practices are uniform based on existing and proposed fiduciary acts – ERISA,UPIA, UMPERSA, and UPMIFA	Yes	No

All of the Institute's proposed *Best Practices* are covered in the Foundation's handbook, with the exception of #6:

> *Abstain from principal trading unless a client initiates an order to purchase the security on an unsolicited basis.*

This particular *Best Practice* (#6) already is addressed by an existing SEC regulation – Rule 206(3)-3T. Furthermore, the majority of financial advisors who are attempting to meet a fiduciary standard probably do not include principal trading as part of their practice.

I believe the Institute is causing more harm than good, and I question its motives and objectives. To be a leader of the fiduciary movement, one must be viewed as a point of inspiration for moral, ethical and prudent decision-making. As previously stated, the objective of the fiduciary movement should be to educate and train fiduciaries to make better investment decisions so that they can have a positive, material impact on the fiscal health of the nation. Hateful messaging and grandstanding does not inspire , and does not accomplish the objectives of the movement.

Respectfully submitted,

Donald B Trone, GFS®
Founder & CEO

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[i] I was the founder and President of the Foundation for Fiduciary Studies; principal founder and former CEO of fi360; have authored or coauthored eight books on the subject of investment fiduciary responsibility; was appointed by the U.S. Secretary of Labor to the ERISA Advisory Council; have testified before the U.S. Senate Finance Committee on fiduciary practices; have served as an expert witness on pay-to-play schemes; and, have trained the Directors of the Federal Retirement Thrift on fiduciary responsibility.

[ii] Commonly attributed to John F Kennedy.

[iii] Joe Torre is a famous baseball executive, manager and player.

[iv] I have attempted to compile a list of authors who have contributed to the fiduciary movement.

1985 Charles Ellis, ***Investment Policy: How to Win the Loser's Game***
1987 John Lohr, ***Invest According To ERISA: A Handbook For Employee Benefit Plan Sponsors, Trustees And Fiduciaries***
1988 Eugene Burroughs, ***Investment Success: For the Employee Benefit Plan Fiduciary***
1992 Don Trone and Bill Allbright, ***Procedural Prudence***
1992 Edward Halbach et al, ***Restatement of the Law Third, Trusts***
1996 Don Trone, Bill Allbright and Phil Taylor, ***The Management of Investment Decisions***
1997 Harold Evensky, ***Wealth Management***
2002 Scott Simon, ***The Prudent Investor Act: A Guide to Understanding***
2003 Don Trone and the Directors of the Foundation for Fiduciary Studies, ***Prudent Investment Practices***
2004 Jack Gardner, ***How to Write an Investment Policy Statement***

2005 Tim Hatton, ***The New Fiduciary Standard: The 27 Prudent Investment Practices for Financial Advisers, Trustees, and Plan Sponsors*** [The book is about the Foundation's 27 best practices]
2005 Russell Olson, ***Handbook for Investment Committee Members***
2007 Rocco DiBruno, ***Best Practices for the Investment Committee***
2007 Anton van Nunen, ***Fiduciary Management: Blueprint for Pension Fund Excellence***
2009 Don Trone, ***The Management of Native American Investment Decisions***
2009 Don Trone, ***Fiduciary Ethos***
2010 Don Trone, ***Fiduciary Ethos – FPA Edition***
2011 Charles Lowenhaupt and Don Trone, ***Freedom from Wealth***
2014 Don Trone and Mary Lou Wattman, ***LeaderMetrics®***

[v] The Foundation for Fiduciary Studies was founded in 2000 with the purpose of defining fiduciary best practices that provide the details of a prudent process. The Foundation's seminal work was its fiduciary best practices handbook, ***Prudent Investment Practices***. The Foundation terminated its activities in 2011 after a 42-month legal battle with fi360, in which fi360 claimed that it was the coauthor of the Foundation's fiduciary handbook and owned the rights to the Foundation's intellectual property.