American Institute of CPAs
220 Leigh Farm Road
Durham, NC 27707-8110

March 23, 2015

Via Electronic Mail

Mr. Knut A. Rostad
President
Institute for the Fiduciary Standard
PO Box 3201
McLean, Virginia 22103

Re: Best Practices for Advisers and Brokers Seeking to Meet True Fiduciary Standard.

Dear Mr. Rostad:

The American Institute of Certified Public Accountants (AICPA) is pleased to comment on the best practices promulgated by the Institute for the Fiduciary Standard (IFS). These comments were developed by the AICPA's Responsibilities in Personal Financial Planning Services Task Force and approved by the Personal Financial Planning Executive Committee.

The AICPA is the world's largest association representing the accounting profession, with more than 400,000 members in 144 countries and a history of serving the public interest since 1887. AICPA members represent many areas of practice, including business and industry, public practice, government, education and consulting. The AICPA sets standards for the profession, including the Statement on Standards in Personal Financial Planning Services (SSPFPS), which provides authoritative guidance to members who provide personal financial planning services.

We have provided general and detailed responses to certain of the specific criteria set forth in the proposal. In general, we believe that clear and concise guidance regarding investment adviser behaviors are essential to the health of the financial planning and investment advisory industry and the welfare of the public interest. We support this effort of the IFS and the premise that specific and measurable behaviors that reflect generally accepted principles of fiduciary behavior are vital to the public interest. In that regard, the AICPA's SSPFPS similarly provides specific guidance for CPAs who provide personal financial planning services, including investment advice, that builds on the AICPA Code of Professional Conduct (Code) and basic tenets of behaviors required by a fiduciary - always acting in the best interest of the public (i.e., client, when providing personal financial

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planning services). We are in general agreement that the Best Practices set forth by the IFS are consistent with AICPA's standards of practice and behavior.

We respectfully submit the following comments for further consideration by the IFS:

1. *Affirm that the fiduciary standard under the Advisers Act of 1940 governs the professional Relationship at all time.*

We recognize that confusion exists as to whom the fiduciary standard applies. As reflected in the SSPFPS, the AICPA is committed to the best interest of the public, which is the foundation of the fiduciary standard. AICPA members are required to act in the best interest of their client at all times when providing personal financial planning services. We agree that written affirmation that the fiduciary standard is applicable is a best practice to ensure that the client can rely on all advice given as objective and in their best interest.

2. *Provide a "reasonable basis" for advice in the best interest of the client.*

We agree that documentation of a reasonable basis for advice meeting the best interest of the client is essential. This is consistent with the SSPFPS.

3. *Communicate clearly and truthfully, both orally and in writing. Make all disclosures and agreements in writing.*

Clear and truthful communications are an essential ingredient of a professional relationship. The SSPFPS similarly requires that disclosures and agreements be in writing.

4. *Provide, at least annually, a written statement of total fees and underlying expenses paid by the client. Include an accounting or good faith estimate of any payments to the advisor or the firm or related parties from any third party resulting from the advisor's recommendations.*

A written statement of total fees and expenses paid by the client and a full accounting of payments received by the adviser (and related parties) is substantially consistent with the SSPFPS. However, the requirement that all expenses paid by the client, directly or indirectly, in the course of their investment strategy implementation to *unaffiliated* third parties (such as mutual funds and separate account money managers not affiliated with the adviser) is not a requirement of the SSPFPS. An affiliation exists when there is any ownership or immediate family relationship between the parties involved, regardless of the amount. The affiliation is key, as a fee to an affiliated firm is considered a compensation conflict of interest and any fees and or expenses borne by the client must be disclosed in writing. In addition, compensation received by the adviser from any source other than the client must also be disclosed whether it is borne by the client or not. To require ALL costs incurred by the client, regardless of the relationship of the adviser to the other party (e.g., fund or money manager) may place an undue burden on the adviser to access the data necessary to determine those costs or even establish a reasonable basis for estimating them.

5. *Avoid all conflicts and potential conflicts. Disclose all unavoidable potential and actual conflicts. Manage or mitigate material conflicts. Acknowledge that conflicts of interest can corrode objective advice.*

We agree that conflicts of interest can impair objective advice. The AICPA Code imposes the obligation to perform professional services in a way that will serve the public interest and demonstrate a commitment to professionalism. Consistent with that requirement, the Code requires that a member maintain objectivity in fulfilling professional responsibilities. These principles have no exception. Therefore, disclosure does not provide a way to allow for impaired objectivity resulting from a known conflict of interest. A "potential" conflict is any *apparent* conflict that could but does not actually impair objectivity. A potential conflict of interest must be disclosed in a manner that allows for informed client consent, and managed to ensure the potential conflict does not impair objectivity and professional judgment. Otherwise, conflicts of interest that unavoidably impair objective advice require members to decline to perform or discontinue the professional services. This approach is applied in the SSPFPS as:

> 20. The member should evaluate whether any conflicts of interest exist with regard to the engagement as follows: (Ref: par. A9-A10)
> a) If the member determines conflicts of interest exist, the member should determine whether the engagement can be performed objectively.
> b) If the member determines the engagement can be performed objectively, the member should disclose all known conflicts of interest and obtain consent as required under Interpretation No. 102-2, "Conflicts of Interest," under Rule 102, Integrity and Objectivity (AICPA, Professional Standards, ET sec. 102 par. .03).
> c) If the member determines that the engagement cannot be performed objectively, the engagement should be terminated.

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

Principle trading (selling an asset owned by the adviser or related party to the client) is, on its face, a direct conflict of interest that calls into question the prudence of the adviser as it relates to the best interest of the client. Presumably, if the adviser's firm has determined to sell from its inventory, then it is fair to ask why the adviser believes it appropriate for the client's portfolio. The transaction also calls into question the loyalties of the adviser. It is reasonable that prudence would dictate these transactions be prohibited as described.

7. *Avoid significant gifts, third party payments, sales commissions, or compensation in association with client transactions that cannot be directly credited back to the client or managed as a fee offset.*

It appears the presumption here is that third party compensation always impairs the objectivity, and therefore the professional judgment, of the adviser. This would effectively preclude a commission based relationship from meeting a "best interest" fiduciary standard. However, this may in fact be a rebuttable presumption. The AICPA believes this best practice could be overly strict in its application. The AICPA further believes advisers receiving commissions—whether or not used to offset fees—can be fiduciaries if their objectivity is maintained.

8. *Ensure baseline knowledge, competence, experience and ongoing education appropriate for the engagement*.

The AICPA has established a competency requirement for its members codified in the Code that goes back to April 9, 1917. Competency is an essential ingredient to providing prudent advice that is in the best interest of the client.

9. *Institute an investment policy statement (IPS) or an investment policy process (IPP) that is appropriate to the engagement and describes the investment strategy. Consistently follow and document a prudent process of due diligence to research and analyze investment vehicles; on request, document the prudent process applicable to any recommendation.*

Requiring documentation in writing is an essential component for ensuring appropriate due diligence and communication has taken place. Communicating these to the client and documenting this in the files is an important step to ensuring fiducially prudent behaviors. The fiduciary has an inherent responsibility to be able to prove the fiduciary standard has been met.

10. *Have access to a broad universe of investment vehicles that provide ample options to meet the desired asset allocation and in consideration of widely accepted criteria.*

Although the AICPA has not directly addressed the issue of open-architecture practices versus "captive agent" models, it is essential that, to always act in the best interest of the client, the adviser have access to alternatives to ensure minimally appropriate options for prudent implementation.

11. *Consider peer group rankings in ensuring compensation and expenses are reasonable.*

Although the AICPA has not directly addressed the issue of peer group rankings, quantifying appropriate compensation and expense levels can be complex because, as with most fiducial responsibilities, facts and circumstances must be given due and adequate consideration in judging fairness to the client. We agree that the marketplace helps define reasonableness, and it requires the adviser to understand that higher than average costs incurred in the implementation of advice puts an added burden on the adviser to demonstrate "reasonableness." Methods of compensation can further accentuate the challenge of justifying higher than average costs. All relevant facts and circumstances must come into the determination of what was reasonable at the time the advice was given.

Thank you for considering our views on the best practices of the fiduciary standard. If you would like to discuss our comments more in-depth or have any questions, please contact Dirk Edwards at (503) 222-4708 or dirk@edwardsconsultingllc.com; Lyle Benson at (410) 494-6680 or lyle@lkbenson.com; or Andrea Millar, AICPA Associate Director of the Personal Financial Planning Division at (919) 402-4818 or amillar@aicpa.org.

Sincerely,

Lyle K. Benson Jr.

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