INSTITUTE FOR
THE FIDUCIARY STANDARD

Fiduciary Reference

Analysis of Investment Fiduciary Issues

January 28, 2016

Fiduciary Duties Advanced in 2015; 2016 Will Reveal How Much These Gains Are Secured – Or Not

Winning the fiduciary "Debate" in 2015 was vital… and insufficient. The future of advice depends on how Fiduciary Duties and "Best Interest" are defined by regulators and advisors. History, law, research and common sense suggest that a stringent definition is necessary.

Knut A. Rostad and Darren M. Fogarty *

Executive Summary

2016 will become historic in the annals of financial planning and investment advice. The DOL will finalize rulemaking. The SEC will initiate rulemaking. The CFP Board will review its standards. The Institute for the Fiduciary Standard will advance Best Practices for Financial Advisors. The debate over *if* fiduciary duties should prevail is over. The battle over what fiduciary duties prevail rages on.

<u>The question.</u> The DOL will finalize a fairly stringent fiduciary rule by spring, while the SEC indicates it may propose a rule (likely a disclosure plus suitability rule) in October. FINRA and SIFMA have already set out their view that "best interest" means disclosure plus suitability. Meanwhile, CFP Board has not indicated if it will adjust its view of "best interest," while the Institute for the Fiduciary Standard Best Practices Board has set out its views. These diverse views of "best interest" breed confusion. Confusion that is exacerbated by a "debate" that looks often like a "horse race" between similar "candidates". This image is misleading.

<u>Au contraire.</u> The "battle" is different. First, it's ongoing and has no clear end in view. Second, it's between opposing principles (not forms of compensation). It pits a sales standard which exists to distribute products and embraces market practices versus a trusted advice standard which exists to serve clients first and curbs market practices. Further, the field is dynamic. New investor aptitudes and attitudes and new product, technology and digital offerings have already impacted what clients expect.

This battle will shape the future of advice and its outcome is uncertain despite, as discussed here, the compelling case for "trusted advice" found in history, law, research and common sense. And despite a lopsided advantage on the merits so large that industry advocates do not even attempt to reply. The best opportunity for prevailing lies in engaging investors about what to expect from true advice and defining "best practices" in concrete terms and in plain language. In other words, bringing Best Practices for Financial Advisors forward.

* Knut A Rostad is president and founder of the Institute for the Fiduciary Standard. Darren M Fogarty is the Research Associate at the Institute. 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.

Key Assumptions

Capital markets depend on investor trust. Trust depends on investor faith that a vibrant fiduciary culture operates to restrain firms' and advisors' conduct.

Trust constitutes the foundation of capital markets and the economy. In the age of investor skepticism, fiduciary duties take on even greater importance in regaining and maintaining investor trust.

The concept of fiduciary is essential. Fiduciary conduct nurtures investor trust.

Information asymmetry in socially important services is remedied by fiduciary conduct. The greater the asymmetry, the greater the risk to clients or beneficiaries, the more stringent are fiduciary rules. Fiduciary rules must to be proportionally stringent to the risks faced by investors.

Key Findings

Investors have a weak grasp of elementary financial concepts.

Investors lack critical knowledge and understanding of the most basic financial principles.

Investors fail to see the difference between advisors who operate as fiduciaries, and brokers who operate as sales representatives.

Investors are unable to say whether their own financial professional is either an advisor or broker, even after having the differences explained to them. Investors generally do not grasp the distinctions between sales and advice, or between the fiduciary standard of care and the suitability standard. Even when they do, they doubt the two standards differ much in practice.

Conflicts of interest disclosures simply do not work.

Many investors ignore disclosures. When they do read them, investors are often not able to understand the implications of disclosed conflicts of interest, such as factoring these implications into their choice of advisor or broker and investments. Also, many investors interpret conflict disclosures as a sign of honesty and professional standing. Investors feel constrained from questioning their advisor.

Retails investors are generally not sophisticated and cannot navigate the complexities of advice.

Investors are not able to evaluate advice or detect advisor misconduct. Investors often express satisfaction with their financial advisors while admitting not knowing the fees they pay. Assessing a financial professional is hard; many investors assess advisors *emotionally* (attentiveness, social skills).

Industry advocates who criticize a stringent fiduciary standard neither question nor negate these misconceptions. Instead they defend current regulations or just change the subject.

Since the current debate started in 2009 with the Obama Administration white paper on financial reform, the major industry advocates who criticize fiduciary duties have all but ignored the rationale for fiduciary duties. Instead, they have either defended the status quo or created new arguments not substantiated by credible research. Or they have asserted that fiduciary duties harm investors.

Introduction

Fiduciary status exists to mitigate the information asymmetry between providers and consumers of socially important services that entail a high level of complexity. The stringency of fiduciary duties increases with the risk these relationships present to investors.[1] A key issue in 2016 will be defining a best interest standard and the appropriate stringency of fiduciary duties.

Assumptions

Investor Shortcomings Highlight the Need for Fiduciary Duties and Stringent Rulemaking by DOL

Americans' deep-seated distrust of Wall Street in the wake of '08 and '09 persists. Retail investors possess "innate skepticism" of large and powerful financial institutions and believe that Wall Street holds itself to a "foreign code of conduct" altogether distinct from smaller businesses and free enterprise as a whole.[2] Investor distrust of the financial services industry serve as a clear reminder of why fiduciary duties matter.

Fiduciary relationships of trust and confidence between experts in the professions (I.E: law, medicine, or finance) and consumers serve to protect consumers unable to protect themselves – as they may in a contractual relationship. Fiduciary is necessary for people to rely on and trust experts. Thus, fiduciaries provide services which are "socially important,"[3] and investors have a basis to entrust their fiduciary with power.

A core principle is fiduciary duties must be sufficiently stringent and proportional to the risk assumed by the investor. Tamar Frankel, Professor of Law at Boston University, writes:

Stricter rules apply to fiduciary relationships that pose the most risk to [retail investors and small plan fiduciaries]. The risk, however, is not measured only by the magnitude and expertise of the fiduciary, but also by the ability of the [investor or small plan fiduciary] to protect himself and any other controls over the fiduciary's performance of his services.[3]

To reflect this principle effectively in considering the meaning of "Best Interest" and determining the stringency of particular fiduciary duties, the research and experience of investors' knowledge and aptitude and understanding must be considered. Particularly, investor knowledge of investing and brokers and advisors and finance firms are important.

Findings

Investors Lack Basic Understanding of Financial Concepts

According to a report delivered to the Securities & Exchange Commission (SEC) regarding survey findings of financial literacy among retail investors by the Library of Congress, "American investors lack basic financial literacy," and do not understand the following[4]:

Compound interest, inflation, diversification of investment portfolios, differences between stocks and bonds, and investment costs.

Two studies by Bernheim support these findings by evidencing that financial illiteracy is widespread and that many investors cannot "perform simple calculations or address basic financial issues."[5] In another report of a 2004 survey, only a third of respondents correctly answered the following three "*extremely basic* financial questions:"[6]

Suppose you had $100 in a savings account and the interest rate was 2% per year. After 5 years, how much do you think you would have in the account if you left the money to grow: more than $102, exactly $102, less than $102?

Imagine that the interest rate on your savings account was 1% per year and inflation was 2% per year. After 1 year, would you be able to buy more than, exactly the same as, or less than today with the money in this account?

Do you think that the following statement is true or false? "Buying a single company stock usually provides a safer return than a stock mutual fund."

Lack of financial literacy among investors has far-reaching consequences. The previously referenced Library of Congress Report concludes "low levels of investor literacy have serious implications for the ability of broad segments of the population to retire comfortably."[4] Not only are illiterate investors more likely to make mistakes in financial matters and decisions, but they are likely to shy away from scrutinizing their financial professional and his/her qualifications.

Investors fail to see the difference between advisors who operate as fiduciaries, and brokers who operate as sales representatives.

The widely cited report by RAND titled *Investor and Industry Perspectives on Investment Advisers and Broker-Dealers* exposes the breadth of investor misunderstanding. Because of the heterogeneity of the financial services industry, investors are understandably overwhelmed when considering many thousands of firms offering a wide variety of services and products.[7] What is less understandable and more worrisome is investors' inability and disengagement when it comes to understanding the simple, yet paramount differences between advisors and brokers.

RAND clearly describes the difference between the duties of investment advisors and brokers. A broker has a "contractual duty (which allows a party relatively broad discretion to pursue its own self-

interest, subject to a loose good-faith constraint).” An investment advisor’s fiduciary obligation “requires the adviser to act solely with the client’s investment goals and interests in mind, free from any direct or indirect conflicts of interest that would tempt the adviser to make recommendations that would also benefit him or her.”[8] Unfortunately, retail investors “typically fail to distinguish broker-dealers and investment advisers along the lines defined by federal regulations.”[7]

RAND’s study finds 63% of focus-group participants believed that brokers “are required by law to act in the client’s best interest” and 70% believed they “are required by law to disclose conflicts of interest.”[9] Interestingly, only 60% of these same participants believed that investment advisors are required to disclose conflicts. Ironically, investment advisors are clearly required to do so, while brokers often not required to disclose conflicts, a fact clearly lost on these focus group investors.

Furthermore, investors oftentimes are “unable to tell whether their own financial professional [is] a broker or an adviser even after reading brief fact sheets explaining the differences.”[10] They “[struggle] to understand the differences” between the fiduciary and suitability standards of care even after having them explained in “plain language,”[11] and some investors may even be misled to believe that advisors are not as qualified as brokers because advisors do not have to be certified.[12]

Investors have often been labeled as *confused* in light of findings similar to those aforementioned. However, the magnitude of investor inability to discern even the most fundamental of investment concepts, let alone investors’ unawareness of the basic distinction between brokers and advisors, between sales and advice, and between suitability and fiduciary care, would suggest that a term such as *investor disengagement* is a more appropriate and accurate term. Calling it *investor confusion* risks understating the issue at hand.[13]

Disclosing Conflicts of Interest Is Ineffective …. and Can Even Harm Investors

Disclosures simply are ineffective at increasing investor investment competence and awareness. Representatives of brokerage firms acknowledge that, “regardless of how carefully they craft documentation, investors rarely read disclosures.” Reasoning for this stems from the fact that many clients view the reason they solicit a financial professional in the first place is so they do not need to read through the burdensome literature that goes along with investment decisions. For this reason, investors oftentimes see disclosures “as meaningless.”[14] Clearly, retail investors oftentimes are ill-equipped to make informed decisions on investment options and investment advice.

Investors often ignore disclosures. What happens when investors do read disclosures? A 2012 SEC study conducted by Siegel & Gale on disclosure effectiveness found that just over half (56.9%) of respondents who recalled receiving a conflicts of interest disclosure reported that they fully understood the potential impact on their advisory relationship. And only 55.2% fully or somewhat took action to protect their interests. The rest reported that they either did not do so, or did not know how to do so.[15]

Still, though not supported by research or experience, the SEC defaults to disclosure, as being “adequate to manage conflicts, even where conflicts are clearly avoidable.” On the contrary, Barbara Roper writes “some academic research suggests that investors actually experience worse outcomes under a disclosure-based approach to managing conflicts.”[16]

Indeed, in *Conflicts of Interest* (2005), Daylian Cain et al. conclude it to be "unlikely that [investors] will be able to use disclosures of conflict of interest to correctly discount advice from biased sources, even if those disclosures are honest and thorough." They allude to a kind of "disclosure distortion" which may cause disclosures to worsen advice for two reasons: (1) "Strategic exaggeration," which holds that not unlike a seller preemptively heightening prices to account for discounting and counteroffering in the bargaining process, advisors may skew advice to compensate for their clients' discounting from disclosure, and (2) "Moral licensing," which essentially suggests that an advisor who feels he/she has "level[ed] the strategic playing field" by disclosing all his/her conflicts of interest will feel less compelled to fervently look out for the interests of the client.[17] Lastly, Cain et al. raises the possibility of a rather counterintuitive, yet perhaps obvious result of disclosure:

One might think that disclosure of a conflict of interest would decrease trust, but it also is possible that disclosures will increase trust in the person giving the advice, especially if the person with the conflict of interest is the one who 'warns' the [investor] about it…Insofar as disclosure demonstrates advisor honesty, the disclosure could serve as an assurance of trustworthiness rather than serving as a warning…and would therefore reduce scrutiny, opening the [investor] to further exploitation.[18]

<u>Retail investors do not effectively judge the quality and accuracy of investment advice</u>

RAND shows respondents "report[ing] that they are largely satisfied with the services they currently receive from financial professionals," despite clearly misunderstanding all of the above issues. A 2004 content analysis of 740 customer reviews of online brokerage surveys conducted by Yang and Fang finds "responsiveness (e.g., prompt service, order execution, order confirmation), service reliability (e.g., accurate quotes, order fulfillment, calculation of commissions), competence (e.g., research capacity), and security (e.g., privacy)" to be closely related to investor satisfaction.[19]

The evidence is clear, however; investors are unable to distinguish between titles, roles, and legal obligations of the various financial professionals and do not understand conflicts of interest and how disclosure is ineffective, if not inflammatory, at resolving these conflicts. As a result, "most retail investors are unlikely to have the financial sophistication necessary to check the quality of advice, detect adviser misbehavior, and adequately protect themselves from conflicts."[20]

An ALP survey by RAND shows that out of 235 respondents, 80 positively commented on their financial professional's "accessibility or attentiveness," and 74 on their "relationship or personality" compared to only 29 on "acts in my best interest," 22 on "honesty and integrity," 10 on "trust," and 8 on "cost."[21] The implication is that investors do not objectively assess whether or not their financial professional is acting in their best interest. They instead rely on assessing them through emotional or subjective means, based on whether or not their advisor is sociable, attentive, and accessible.

Industry Advocates Respond

The evidence is conclusive. This much is clear: investors hold major misconceptions which disclosures fail to mitigate and from which significant investor harms often ensue. The strength of this evidence is strong. It is so strong that industry advocates who clearly oppose fiduciary duties also do not refute evidence that support fiduciary duties. That they essentially do not even try to do so speaks loudly.

Industry advocates, of course, do offer arguments to oppose fiduciary duties for broker rendering advice. Their central argument is grounded in industry economics and cost structures. The argument is that fiduciary duties are "unworkable" and that increased costs will force broker dealers to abandon smaller accounts. While there is some merit to some economic arguments [the Institute has previously suggested parts of the DOL COI rule should be simplified] the overriding point is that these economic arguments have been roundly refuted and industry advocates do not refute the case for fiduciary duties.

One spirited attempt to challenge the case for the fiduciary standard is a March 2015 white paper by Morgan Lewis.[22] First, what is interesting is that which this paper does not discuss. The Morgan Lewis paper does not refute the historic or legal basis for fiduciary duties or refute the evidence that retail investors lack elementary financial literacy. The paper does not refute the evidence that retail investors do not understand what sales brokers and investment advisers do, or evidence concluding that disclosures fail. The Morgan Lewis paper ignores these questions.

The Morgan Lewis paper is a broad-based defense of FINRA. It states as much in its title that current regulations, "Comprehensively Protect Investors." It asserts that rules regarding conflicts of interest for brokers are similar to those for investment advisers and the DOL COI Rule is unnecessary. Yet, while spirited, and while FINRA Chair Richard Ketchum has expressed his view that brokers need to move towards a best interest standard, evidence of enforcement actions that seriously challenge the prevalence of conflicted advice are not offered. The paper offers no persuasive evidence that FINRA's brokerage culture and history has been slain and replaced with an investor-centric fiduciary culture.

For example:

Morgan Lewis says. The paper asserts the Council of Economic Advisers' (CEA) report, "The Effects of Conflicted Advice on Retirement Savings," errs regarding the "perceived inadequacies in the existing regulation of investment advice." Morgan Lewis claims "The CEA report does not recognize that broker-dealers … are subject to extensive regulation."[23]

While this assertion may seem strong, Morgan Lewis offers no evidence countering CEA that wide gaps exist in the present regulatory regime.

Morgan Lewis says. Morgan Lewis also claims, "Investment advisers and broker dealers are both required to address conflicts of interest."[24] This statement is followed by Morgan Lewis citing FINRA Chairman, Richard Ketchum. Ketchum criticizes CEA for noting brokers receive undisclosed "conflicted payments." Ketchum stated, "If there's an impression in America that undisclosed backdoor payments are the driver of what goes on in the securities industry, that impression is false."[25]

Again, though this assertion may seem to be a strong point, it is not. The fact is neither brokers nor advisers are consistently urged to avoid conflicts, or are urged to truly mitigate unavoidable conflicts' harms and ensure informed client consent of the harms. This issue gets to the very heart of the dueling standards and CEA wins the point. Morgan Lewis offers no evidence to counter CEA's contention that conflicted payments are prevalent or that, as President Obama noted February 15 2015, "There are also financial advisors who receive backdoor payments or hidden fees for steering people into bad retirement investments that have high fees and low returns."

Further, Ketchum's "denial" statement is curious. The statement is very narrowly tailored, and does not appear to address the central point. Consequently, it concedes the issue by not refuting the CEA finding of the prevalence of undisclosed conflicted payments.

<u>Morgan Lewis adds.</u> Morgan Lewis then adds, "Many financial professionals do not receive any compensation from third-parties in connection with client dealings, and if they do, the third-party compensation may directly or indirectly off-set or reduce the fees that clients may other-wise pay."

Once again, while this statement may seem strong, it in fact very weak. Its logic and assertion is completely consistent with this alternative statement: "Many financial professionals ***do receive*** *third-party payments which* ***may not off-set or reduce the fees*** *that clients otherwise pay."*

Further, it does not refute the prevalence of practices which result in investors unknowingly paying fees, and it does not refute research suggesting many investors believe brokerage services and products are "free." Most importantly it offers no evidence to counter CEA evidence showing wide gaps in the present regulatory regime.

Concluding Comments

The battle over the meaning of fiduciary duties and the "Best Interest" standard between opposing sales and trusted advice principles rages on. The battle will shape the future of advice and its outcome is uncertain. This paper highlights the persuasive case for trusted advice – a case founded in history, law, research and commonsense – and comments on how opposing industry advocates fail to respond to the case for trusted advice.

This paper also considers how very lopsided is the battle of ideas – and why. It is not lopsided only because many arguments of industry advocates are founded on dubious claims, claims which have been well refuted in comment letters and testimony. It is lopsided also because of the character and essential strength of the case for a trusted advice standard, in and of itself and irrespective of any counter claims. This character and essential strength has been significantly undervalued.*

Still, the battle rages on in a manner CFA Institute Managing Director Kurt Schacht just described, "A national disgrace with investors getting the short end of the stick." Tough words that are on point considering the magnitude of the cynicism at play. Wall Street lobbyists continue to publicly cheer for, and/or claim to support, a "Best Interest" standard, all the while lobbying vigorously against it.

Looking ahead, the dynamics of the battle will change. It's a new world where the battle will be far more influenced by market forces. New investor attitudes and aptitudes matter greatly. As do products, technologies and digital offerings that have already started to disrupt the landscape and raise awareness and expectations on reasonable fees, breadth of services and transparency.

Advisors can make a difference in this battle in this new world. They can speak out for fiduciary advice and against visible faux fiduciary actions and practices. They can demonstrate to skeptical investors how some advisors merit trust and confidence – not just in words, but in deeds. And how some advisors do communicate plainly and clearly and truthfully. And how some advisors do act transparently and in their clients' best interest. They follow written practices that are concrete, verifiable, and understandable and reflect true fiduciary duties. Those advisors already effectively follow the Institute's Best Practices for Financial Advisors. The Best Practices can be found here: http://www.thefiduciaryinstitute.org/wpcontent/uploads/2015/09/BestPracticesSeptember302015.pdf

----

*This is a topic for another paper, but here is one possible explanation why fiduciary duties have been undervalued. The fiduciary issue is widely framed today primarily as an investor protection issue (which it is in part) and is between competing service providers. It has been explained in language that researchers suggest investors do not understand and it should noted, for which they have no comparable experience. (My medical doctor, the "sales doctor?") In industry or consumer media, it has not been framed as a fundamental law or basic governing principle. As a principle that may be comfortably positioned with, for example, civil rights or marriage equality and property rights or free speech. Principles that are championed by opinion leaders from both right and left.

Appendix A. Resources Supporting Investor Misconceptions

What follows is a representative, not comprehensive, list of sources which document misconceptions and the failure of disclosure at resolving conflicts of interest. Most of the following sources are those used in Appendix A of the CFA 2015 Comment Letter on DOL COI rule. Others are sourced from Gale and Levine's "Financial Literacy: What Works? How Could It Be More Effective?"

AARP Research (2013) - *Fiduciary Duty and Investment Advice: Attitudes of 401(k) and 403(b) Participants* http://bit.ly/1HO5d5f

Belth, Joseph (2015) – Guardian Life Rectifies an Unsuitable Rollover http://bit.ly/1JcccFE

Bernheim, B. Douglas, 1995. "Do Households Appreciate their Financial Vulnerabilities? An Analysis of Actions, Perceptions, and Public Policy." *Tax Policy and Economic Growth*, American Council for Capital Formation, Washington, D.C.

Bernheim, B. Douglas, 1998. "Financial Illiteracy, Education, and Retirement Saving," in *Living with Defined Contribution Pensions* ed. Mitchell, Olivia S. and Sylvester J. Schieber. University of Pennsylvania Press, Philadelphia.

Bullard, Mercer (2011) - "DOL's Fiduciary Proposal Misses the Mark" http://bit.ly/1Ie1NZh

Cain, Daylian, Loewenstein, George, and Sah, Sunita, The Limits of Transparence: Pitfalls and Potential of Disclosing Conflicts of Interest http://bit.ly/1gJYyP6

Cain, Loewenstein and Moore, Don, The Dirt on Coming Clean http://bit.ly/1gJYBu8

Campbell, John, 2006. "Household Finance." NBER Working Paper 12149.

Chater, Nick; Huck, Steffen; Inderst, Roman; and Goethe, Johann Wolfgang (2013) - *Consumer Decision-Making in Retail Investment Services: A Behavioural Economics Perspective* http://bit.ly/1RJi4f5

FINRA Investor Education Foundation (2009) - *Financial Capability in the United States, National Survey—Executive Summary* http://bit.ly/1JbtPFz

Government Accountability Office (2013) – *401(k) PLANS: Labor and IRS Could Improve the Rollover Process for Participants* http://www.gao.gov/products/gao-13-30

Haziza, Mor and Kalay, Avner (2014) - Broker Rebates and Investor Sophistication http://bit.ly/1LmYXDG

IFF Research Ltd (2006) - *Investment Disclosure Research* http://bit.ly/1LmSJ6Z

Lusardi, Annamaria and Olivia S. Mitchell, 2006. "Baby boomer Retirement Security: The Roles of Planning, Financial Literacy and Housing Wealth." NBER Working Paper No. 12585.

Lusardi, Annamaria and Olivia S. Mitchell, 2008. "Planning and Financial Literacy: How do Women Fare?" American Economic Review: Papers and Proceedings 2008, 98:2,413-417.

Lusardi, Annamaria and Mitchell, Olivia S. (2009) - *How Ordinary Consumers Make Complex Economic Decisions: Financial Literacy and Retirement Readiness* http://bit.ly/1JbtPFz

Lusardi, Annamaria and Olivia S. Mitchell, 2009a. "Financial Literacy, Retirement Planning, and Retirement Wellbeing: Lessons and Research Gaps." Prepared for the RSP Conference on Financial Literacy. Washington, D.C.

Lusardi, Annamaria and Olivia S. Mitchell, 2009b. "How Ordinary Consumers Make Complex Economic Decisions: Financial Literacy and Retirement Readiness."

Lusardi, Annamaria and van Rooij, Maarten, Financial Literacy (2009) - *Evidence and Implications for Consumer Education* http://bit.ly/1MCYwT2

ORC/Infogroup (2010) - U.S. Investors & The Fiduciary Standard: A National Opinion Survey http://bit.ly/1fMAERB

Permanent Subcommittee on Investigations, U.S. Senate (2011) - *Wall Street and the Financial Crisis: Anatomy of a Financial Collapse* http://1.usa.gov/1RJM4HT

Prentice, Robert A. (2011) - Moral Equilibrium: Stock Brokers and the Limits of Disclosures http://bit.ly/1MD3JKL

RAND Corporation (2008) - *Investor and Industry Perspectives on Investment Advisers and Broker-Dealers* http://www.rand.org/pubs/technical_reports/TR556.html

RAND Corporation (2015) - Impacts of Conflicts of Interest in the Financial Services Industry http://bit.ly/1MfFjJ9

Robertson, Christopher Tarver (2011) - Biased Advice http://bit.ly/1MfFhkC

Roper, Barbara and Brobeck, Stephen (2006) - "Mutual Fund Purchase Practices, An Analysis of Survey Results" http://bit.ly/1IicqGD

S. Anagol, S. and H.H. Kim, 2012, "The Impact of Shrouded Fees: Evidence from a Natural Experiment in the Indian Mutual Funds Market," American Economic Review, 102(1): 576-593)

Siegel & Gale, LLC (2012) - *Investor Research Report* http://1.usa.gov/1MfBbss

Staff of the Securities and Exchange Commission (2012) - *Study Regarding Financial Literacy Among Investors* https://www.sec.gov/news/studies/2012/917-financial-literacy-study-part1.pdf

End Notes

1. Tamar Frankel explains this aspect of fiduciary law in her 2009 paper, Fiduciary Duties of Brokers-Advisers-Financial Planners and Money Manager, writing "[t]he strictness of fiduciary law conflict-of-interest rules depends mainly on the level of [the clients'] risks from the fiduciaries abuse of trust." Available here: https://www.bu.edu/law/faculty/scholarship/workingpapers/documents/FrankelT101009Revsep2010.pdf

2. Bowman, Karlyn and Rugg, Andrew. "Five Years After the Crash: What Americans Think about Wall Street, Banks, Business, and Free Enterprise." *American Enterprise Institute* (2013), 5, 10. http://www.aei.org/wp-content/uploads/2013/09/-five-years-after-the-crash-what-americans-think-about-wall-street-banks-business-and-free-enterprise_083339502447.pdf

3. Frankel, Tamar. "Fiduciary Law in the Twenty-First Century." *Boston University Law Review* 91, no. 3 (2011), 1292-3. https://www.bu.edu/law/central/jd/organizations/journals/bulr/documents/FRANKEL.pdf

4. U.S. Securities and Exchange Commission. "Study Regarding Financial Literacy Among Investors." *U.S. Securities and Exchange Commission* (2012), vii, viii. https://www.sec.gov/news/studies/2012/917-financial-literacy-study-part1.pdf

5. Bernheim, B. Douglas, 1995. "Do Households Appreciate their Financial Vulnerabilities? An Analysis of Actions, Perceptions, and Public Policy." *Tax Policy and Economic Growth*, American Council for Capital Formation, Washington, D.C.

   Bernheim, B. Douglas, 1998. "Financial Illiteracy, Education, and Retirement Saving," in *Living with Defined Contribution Pensions* ed. Mitchell, Olivia S. and Sylvester J. Schieber. University of Pennsylvania Press, Philadelphia.

   Both of the above are cited in the secondary source: Gale, William and Levine, Ruth. "Financial Literacy: What Works? How Could It Be More Effective?" (2010), 7.

6. Gale, William and Levine, Ruth. "Financial Literacy: What Works? How Could it Be More Effective?" (2010), 7-8.

7. Hung, Angela A., Noreen Clancy, Jeff Dominitz, Eric Talley, Claude Berrebi and Farrukh Suvankulov. *Investor and Industry Perspectives on Investment Advisers and Broker-Dealers*. Santa Monica, CA: RAND Corporation (2008), 118. http://www.rand.org/content/dam/rand/pubs/technical_reports/2008/RAND_TR556.pdf

8. Ibid, 10, 13. For further elaboration on how RAND sees the distinction, see these pages.

9. Ibid, 110.

10. Roper, Barbara. "CFA Comment Letter on Department of Labor Conflict of Interest Rule." Consumer Federation of America (2015), 37.

11. Hung, et. al. *Investor and Industry Perspectives on Investment Advisers and Broker-Dealers.* RAND Corporation (2008), xix.

12. Ibid, 111.

13. For a more detailed analysis of the nuances of this word choice and why it matters, see pages 12 and 13 of http://www.thefiduciaryinstitute.org/wp-content/uploads/2013/09/InstituteSixCoreFiduciaryDuties.pdf

14. Hung, et. al. *Investor and Industry Perspectives on Investment Advisers and Broker-Dealers.* RAND Corporation (2008), 77.

15. Siegel & Gale, LLC, *Investor Research Report*, Submitted to the Securities and Exchange Commission in 2012, 67-8. Available here https://www.sec.gov/news/studies/2012/917-financial-literacy-study-part3.pdf

16. Roper, Barbara. "CFA Comment Letter on Department of Labor Conflict of Interest Rule." Consumer Federation of America (2015), 14.

17. Cain, Daylian, George Loewenstein, and Don Moore. "Coming Clean but Playing Dirtier: The Shortcomings of Disclosure as a Solution to Conflicts of Interest." In *Conflicts of Interest: Challenges and Solutions in Business, Law, Medicine, and Public Policy*. New York, New York: Cambridge University Press, 2005, 114-5.

18. Ibid, 117.

19. Hung, et. al. *Investor and Industry Perspectives on Investment Advisers and Broker-Dealers.* RAND Corporation (2008), 32.

20. Roper, Barbara. "CFA Comment Letter on Department of Labor Conflict of Interest Rule." Consumer Federation of America (2015), 44.

21. Hung, et. al. *Investor and Industry Perspectives on Investment Advisers and Broker-Dealers.* RAND Corporation (2008), 101.

22. Lewis, Morgan. "Department of Labor Retirement Initiative Fails to Consider Current Regulatory Regime, Which Comprehensively Protects Investors, Including IRA Investors, and Preserves Investor Choice. Lewis & Brockius LLP (2015).

23. Ibid, 3.
24. Ibid, 11.
25. Ibid, 12.