



2017 SUMMER CONFERENCE

## Mapping Solutions for the DOL's Fiduciary Rule and Beyond

July 17-18, 2017 • Salem State University, Salem, MA

# DOL COI Rule 'Ain't no place for Sissies'

The Rule is rigorous and reasonable. Consistent with law, logic, commonsense and what retirement beneficiaries want. Major questions regarding enforcement remain.



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### **Founder and President, Institute for the Fiduciary Standard**

Knut A. Rostad is the founder and president of the Institute for the Fiduciary Standard, a non profit formed in 2011 to advance fiduciary principles in investment and financial advice through research, education and advocacy. Previously, Rostad served as the regulatory and compliance officer at Rembert Pendleton Jackson, a registered investment adviser in Falls Church, Virginia. For more information: [www.thefiduciaryinstitute.org](http://www.thefiduciaryinstitute.org)



**“Old age ain’t no place for sissies.”**

**Bette Davis (1908 –1989), Academy Award winning actress**



## **Impartial Conduct Standards 'Ain't for Sissies'**

- **Impartial Conduct Standards are 267 words and foundation of DOL**
- **Best Interest Standard requires the care, skill, prudence of a professional; Prudent Investor Rule prohibits wasting client assets**
- **Material misleading statements must be avoided**
- **Total firm and advisor compensation cannot be "in excess of" reasonable compensation**



## Impartial Conduct Standards 'Ain't for Sissies'

- Prudent Investor Rule prohibits wasting client assets

*"... A trustee may only incur costs that are appropriate and reasonable ... Wasting beneficiaries money is imprudent ... It is important for trustees to make careful cost comparisons, particularly among specific products of a specific type"*

-- Uniform Prudent Investor Act, Section 7.



## **Impartial Conduct Standards Reflect Laws, Jurists, Leaders in History**

- **Code of Hammurabi, (circa, 1780 BC), Confucius (551-479 BC), Aristotle (384-322 BC), English Common Law (courts in) Equity (from the 12<sup>th</sup> century),**
- **Harvard College v Amory (1830), Justice Benjamin Cardozo (1928)  
“Not honesty alone, but a punctilio of an honor the most sensitive”**
- **Advisers Act of 1940, United States Supreme Court in SEC v. Capital Gains Research Bureau, Inc.**



## **Impartial Conduct Standards Reflect What Investors Want Today**

- **Opinion research reveals investors distrust and disdain for finance and advisors persists**
- **Conservative leaning American Enterprise Institute assembled findings that included, “70% of public agrees that most people on Wall Street would be willing to break the law if they believed they could make a lot of money and get away with it.”**
- **Also, “Americans see Wall Street as a culture apart and one that operates by a foreign code of conduct.”**



## **Impartial Conduct Standards Reflect What Investors Want Today**

- **CFA Institute 2016 Survey, “From Trust to Loyalty: A Global Survey of What Investors Want”, Discussed in Institute white paper:  
<http://www.thefiduciaryinstitute.org/wp-content/uploads/2017/06/CFPPaperFinalJune14.pdf>**
- **Disclosure, transparency, plain / clear speaking and honesty about fees, conflicts and basic reporting stand out.**



# Impartial Conduct Standards Reflect What Investors Want Today

*“How important are the following attributes when it comes to working with an investment firm”?* (Top tier attributes, 70% + important)

<b><u>Fully discloses fees and other costs</u></b>	<b>80%</b>
<b>Has reliable security measures to protect my data</b>	<b>79%</b>
<b><u>Clearly explains all fees and costs before they are charged</u></b>	<b>79%</b>
<b>Generates returns similar to or better than ... (other firms)</b>	<b>73%</b>
<b>Protects my portfolio from losses</b>	<b>73%</b>
<b>Generates returns similar to or better than a target benchmark</b>	<b>73%</b>
<b><u>Is forthright about disclosing and managing conflicts of interest</u></b>	<b>72%</b>
<b><u>Provides investment reports that are easy for me to understand</u></b>	<b>72%</b>
<b>Charges fees that reflect the value I get from the relationship</b>	<b>71%</b>
<b>Has never had regulatory or compliance violations</b>	<b>71%</b>
<b><u>Helps me understand why my portfolio is positioned as it is</u></b>	<b>70%</b>



# Impartial Conduct Standards Reflect What Most BDs\* Do Not Want

- DOL proposed rule introduced April 14, 2015
- 27 months of brokerage and insurance industry comments show widespread and deep opposition
- Thousands of pages of opposing letters. How many “for” the ICS?
- Recent opinion piece by John Taft (link below), is an excellent example
- \* (This reflects firms’ stated opposition, not individual brokers’ views)
- <https://www.financial-planning.com/opinion/a-fiduciary-rule-wealth-managers-can-get-behind?feed=00000153-9f99-dba7-afd7-bffd80ac0000>



## **Impartial Conduct Standards: How Will They be Enforced?**

- **No DOL enforcement until 2018**
- **IRS “Not particularly interested or vigilant in enforcement”**
- **BICE strengthens investors hands in arbitration or court**
- **Key BICE leverage : class action suits**
- **July 3 DOL court brief: Decision to not defend class action suits**
- **Bottom line: Uncertainty around enforcement**



## **Impartial Conduct Standards Enforcement: the ‘Honor System’?**

- **Opaqueness around conflicts and fees persists**
- **Few clients can discern product sales from fiduciary advice**
- **Rush to monetize increased investor awareness of “Fiduciary”**
- **Messages of “trust” and “best interest,” irrespective of accounts or registrations will flood the market place**
- **What to do?**



## **RIIA to the Rescue**

- **RIIA turns Code of Ethics into fiduciary practices that meet ICS requirements , are concrete and understandable to investors**
- **Requires all RMAs ® adhere to these practices**
- **Communicates that RMA ® certificate holders do more to serve clients. They put what they do in plain language clients understand.**



RIIA PRESENTS THE 2017 SUMMER CONFERENCE

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