

Transparency in Financial Advice: Essential, Insufficient ... in the Dark Ages

The Transparency Symposium
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Institute for the Fiduciary Standard
www.thefiduciaryinstitute.org

Transparency: Essential and Insufficient in Financial Advice

- The Institute for the Fiduciary Standard mission and background 2011—2017
- Battle over meaning of advice; ‘Houston, we have a problem’
- Best Practices: More Transparency, Clarity, ‘Must Do’s’

Institute for the Fiduciary Standard

- Institute for the Fiduciary Standard formed in 2011, a non profit, to advance fiduciary principles in investment and financial advice through research, advocacy and education
- Papers, conferences, webinars, Fiduciary September
- Best Practices for Financial Advisors, Campaign for Investors
- Voices: leading scholars, regulators, advocates, practitioners



John C. Bogle
The Vanguard Group



Paul Volcker
Federal Reserve
Chairman 1979-87



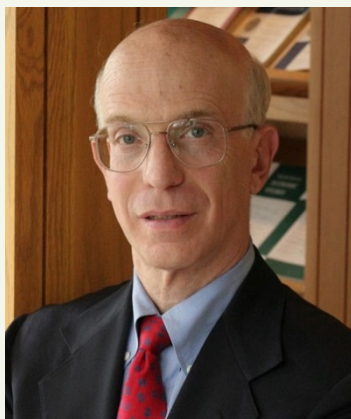
Arthur Levitt
SEC Chairman 1993-2001



Luis Aguilar
SEC Commissioner (2008-15)



Sheila Bair
FDIC Chair (2006-11)



Alan Blinder
Economist and Professor at
Princeton University



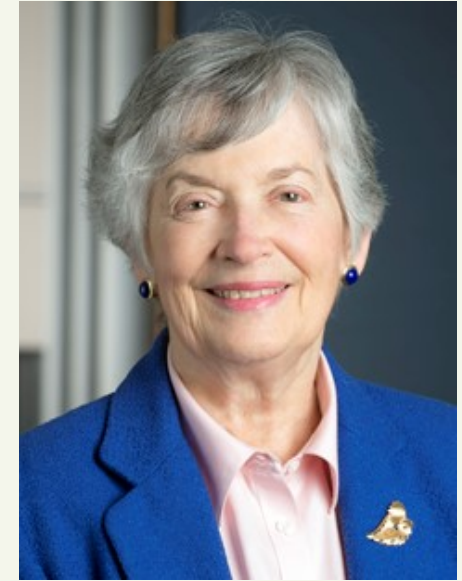
Phyllis Borzi
Assistant Secretary for
Employee Benefits Security at
the DOL (2009-17)



Tamar Frankel
Professor of Law at
Boston University



Barbara Roper
Director of Investor Protection at CFA
2017 Frankel Fiduciary Prize
Honoree



Brooksley Born
Chair of the US Commodity
Futures Trading Commission
(1996-99)

Battle Over Meaning of Advice

Industry View: ‘We are all salespersons, now’*

- Antithetical to history, law, logic and Advisers Act
- AKA “Conflicts are OK View”: Conflicts are everywhere, part of life, cannot be avoided; thus, “acceptable”
- Widely held by certain federal securities regulators and financial service industry

*With apologies to Milton Friedman, whose quote “We are all Keynesians now” was popularized by Richard Nixon

“Advice” at the SEC: “You have to think long and hard before you regulate differently, essentially identical conduct..”

Former SEC Chair Mary Jo White , as cited by Wall Street Journal columnist, Jason Zweig, March 21, 2015. The former Chair here is explaining her rationale for supporting the SEC writing a new “uniform standard” to treat broker-dealers and investment advisers the same.

Advice re: the Trump Admin: “We think it (DOL) is a bad rule..... This is like putting only healthy food on the menu, because unhealthy food tastes good but you still shouldn’t eat it because you might die younger...”

Gary Cohn, White House Economic Counselor. as cited by the Wall Street Journal, February 3, 2017.

‘We are Family ...’



Goldman Sachs and “Puffery”

In *Richman v. Goldman Sachs Group*, June 21, 2012⁵

“Integrity and honesty are at the heart of our business.”

“Our clients’ interests always come first.”

“Defendants argue that these statement (which include the ones above) are non-actionable statements of opinion, puffery...”

⁵ US District Judge Paul Crotty, p. 15. <http://www.law.du.edu/documents/corporate-governance/securities-matters/richman-v-goldman-sachs-group-062512crotty.pdf>

Goldman Sachs and “Puffery”

In *Richman v. Goldman Sachs Group*, June 21, 2012

“Goldman’s arguments in this respect are Orwellian. Words such as ‘honesty,’ ‘integrity,’ and ‘fair dealing’ apparently do not mean what they say; they do not set standards; they are mere shibboleths. If Goldman’s claim of ‘honesty’ and ‘integrity’ are simple puffery, the world of finance may be in more trouble than we recognize.”⁶

⁶ US District Judge Paul Crotty, footnote 8, p. 15.



“Houston, we have a problem” Misleading advertising and disclosure by broker-dealers has removed lines between advice and sales in regulation, practices and brokers minds

The 'Jason Zweig Rule'

- Wall Street Journal writer, Jason Zweig, says fiduciary status is “Far from universal and in some ways in retreat”
Investors are on their own to identify fiduciary advisors ...
- ‘Here are 19 questions....’

Institute for the Fiduciary Standard Best Practices Affirmation Program

- Best Practices distill fiduciary duties to a few tasks and actions and ... In language that is concrete, verifiable and understandable to individual investors
- Best Practice advisors subscribe to the highest practices in the industry; a market regulation mechanism by affirming adherence in their form ADV

... Only some firms ***Do*** Fiduciary

Only some firms show investors – in writing – what they do to serve clients best interests. Firms that ***Do*** fiduciary adhere to the 12 best practices from the Institute for the Fiduciary Standard. They are Best Practice Advisors. Look for them. They will: **1.** Be a fiduciary at all times. **2.** Put agreements in writing. **3.** Be reasonable. **4.** Show clients what they pay and the firm gets in all fees. **5.** Avoid conflicts – or mitigate them. **6.** Avoid principal trading, unless a client insists. **7.** Avoid advice tied to commissions – or explain honestly and mitigate the conflicts. **8.** Avoid gifts, entertainment. **9.** Have baseline knowledge, education, competence. **10.** Use an IPS. **11.** Control investment expenses. **12.** Affirm compliance.

Best Practice Advisors do more as fiduciaries to serve clients. They put what they do in plain writing investors understand. They stand out by what they do.

Do more. Stand out. Tell Investors. Be a Best Practice Advisor.

Best Practices Affirmation Program

- Restores (historic, legal, commonsense) meaning of “advice”
- Separates advice from sales. Requires concrete and verifiable actions
- Provides investors a guide to evaluate and screen advisors
- Provides fiduciaries a guide to differentiate what they do from what others say
- Provides a platform: To lead. Do more. Stand out. Speak out

The Essence of Best Practices

1. Avoid Conflicts, 'All-the-Way'



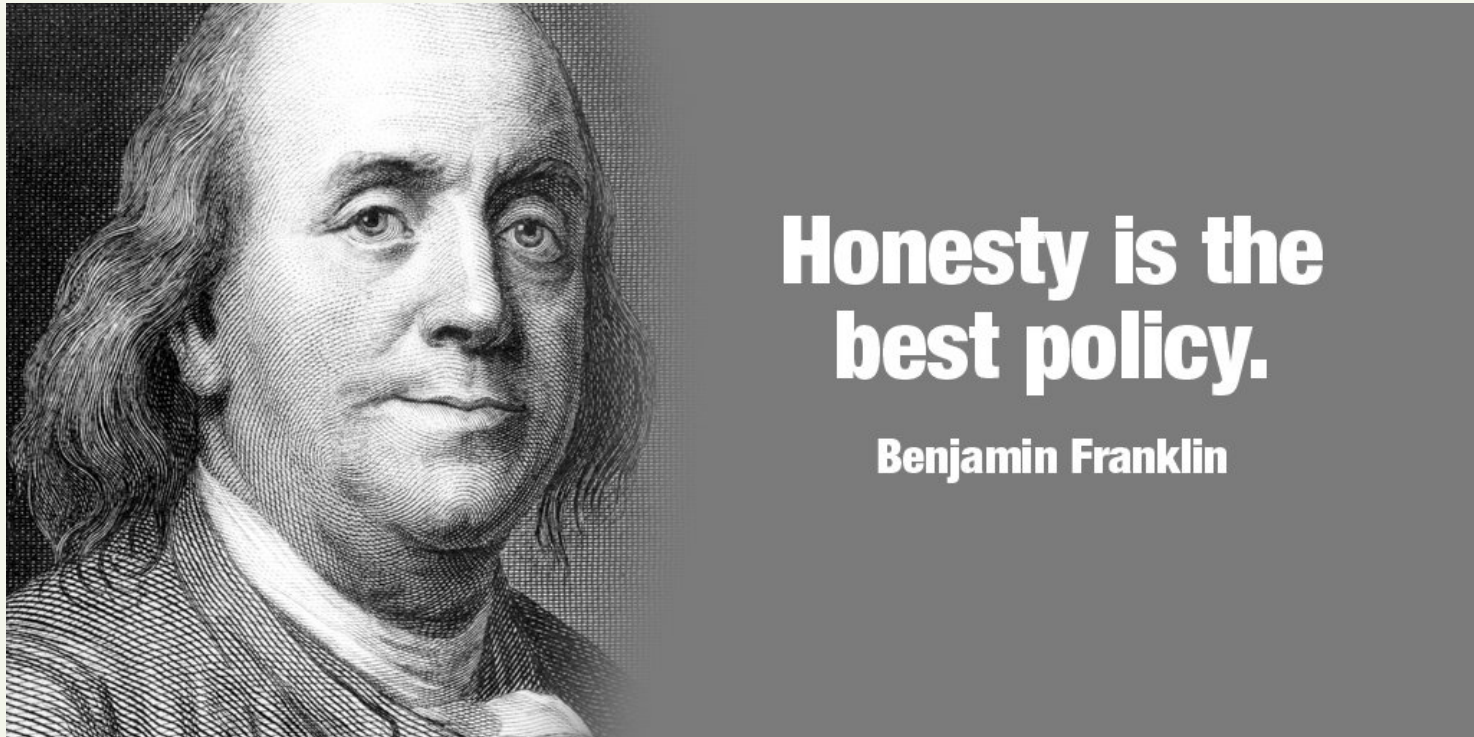
The Essence of Best Practices

2. Education, experience ... Competence



The Essence of Best Practices

3. Honesty, Spoken and Written -- Plainly



The Essence of Best Practices

4. On fees: get out of the Dark Ages



Transparency: Essential and Insufficient in Financial Advice

- Lax federal regulations and misleading advertising: Wall Street Journal's Jason Zweig: 'You are on your own'
- Best Practices: More Transparency, Clarity, 'Must Do's'
- Bottom Line: Transparency plus specific requirements are required to serve investors interests first