

CFP Board Proposed Fiduciary Standards: A Good Small Step That Needs a Giant Leap

Advisor Perspectives

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What Do Investors Want?



CFA Institute 2016 Survey “From Trust to Loyalty”, finds:
“Transparency and consistent communications ... regular, clear communications on fees; upfront conversations about conflicts”

Fee-Only CFPs in 2018

The logo for the CFP Board, featuring the words "CFP BOARD" in a bold, yellow, sans-serif font. The text is centered within a white rectangular area that is framed by a thick yellow border.

An Institute survey of CFPs throughout the U.S. finds that only **15%** report themselves as Fee-Only

This number is a noticeable decrease from prior surveys, such as a 1999 CFP study that found **25%** of advisors were Fee-Only, and a 2009 FPA study that found **31%** to be Fee-Only.*

* Studies sourced from *The History of Financial Planning*, Brandon and Welch, 2009.

CFP Board's Revisions Are a Good First Step...

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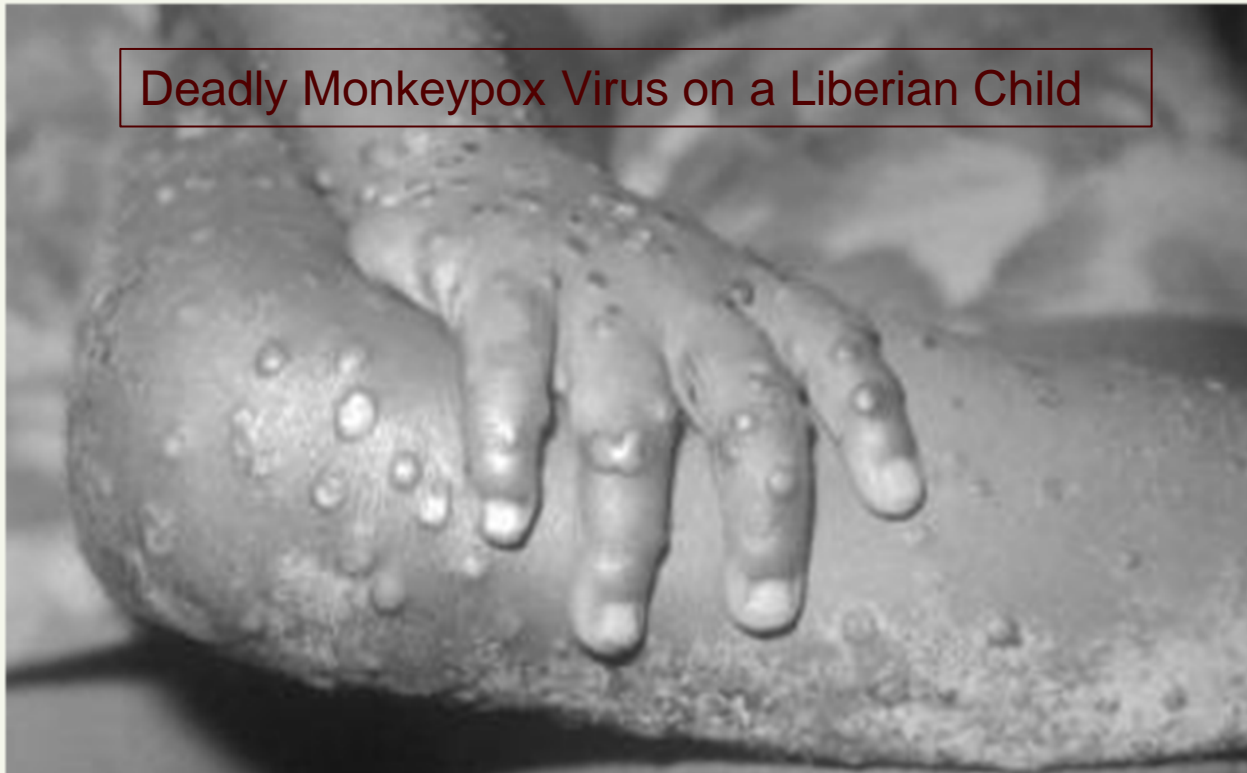
1. All CFPs who render advice must act as fiduciaries.
2. Statements on fiduciary duties are clear and strong.

Duty of Loyalty Means Need to Avoid Conflicts



Professor Arthur Laby reminds how much conflicted sales in 20's concerned framers of the Investment Advisers Act. Today, the nation is reminded again of conflicts' presence in another realm.

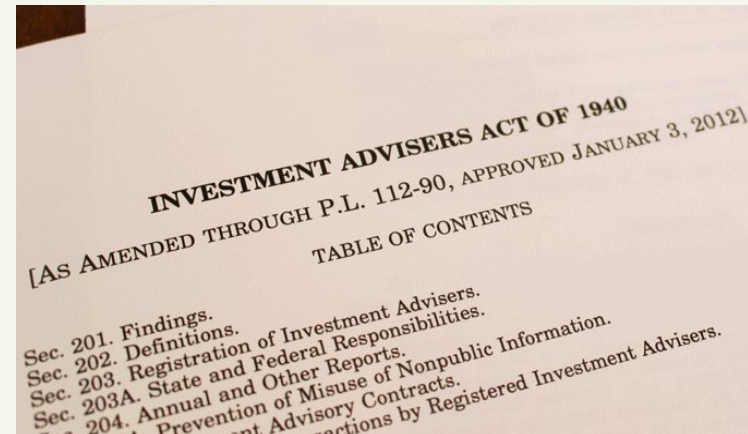
Conflicts as Viruses: A Mortal Threat



As Carlo V. di Florio, then Director of the SEC Office of Compliance and Inspections put it in 2012, “**Conflicts of interest** can be thought of as viruses that threaten the organization’s well-being.... And if not eliminated or neutralized, even the simplest virus is **a mortal threat to the body.**”

Divergent Views of Advisers Act Framers, DOL Rule And CFP Board on Conflicts

CFP BOARD



For 10 Years, CFP Board has Said CFPs Are Trusted Advisors, Without CFP Guidance on Avoiding or Mitigating Conflicts' Harms



Without guidance, (85% of CFPs) brokers rely on experience, training and culture of suitability rules.

A Reasonable Basis to Believe the Proposed Standards Will Result in Fiduciary Advice?



.... With no ‘rebuttable presumption’ that CFP means fiduciary, no urging CFPs avoid conflicts over disclosing conflicts, no guidance on mitigating conflicts, no required written conflict disclosures / client consents, and no clues as to enforcement.

There is No Question Board and Commission Members...



1. Act in good faith to move financial planning towards professionalism.
2. Have solid fiduciary pedigrees.
3. Correctly view this as a journey in progress.
4. Feel enormous pressures from brokerage industry.

Key Questions Remain...



1. Why is a core premise of Advisor's Act and DOL Rule rejected?
2. Why is there no CFP guidance after 10 yrs of CFP fiduciaries?
3. Why are CFPs not urged to avoid conflicts, v. disclosing them?
4. Why is rebuttable presumption deleted? A broken promise?
5. How near is the destination?

CFP Board's Revisions Are a Good First Step...

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Take the next step; make CFP *fiduciary*.

1. Re-insert rebuttable presumption.
2. Urge CFPs to avoid conflicts over disclosing them.
3. Insert the Rhoades guidance on mitigating conflicts.
4. Require written disclosures, consents, agreements.
5. Require transparency, clarity on fees and conflicts.

“No thinking man can believe that an economy built upon a business foundation ... can permanently endure without some loyalty to that (fiduciary) principle.”

Justice Harland Fiske Stone
Harvard Law Review, 1934

Knut A. Rostad Remarks . March 8 Webinar on CFPB Standards

We frame this discussion, with apologies to Dick Wagner, to ‘Think like a consumer.’ So, here are consumer questions we think matter ... “Tell me why you’re qualified, what you do and why. Tell me the costs. Your conflicts. Tell me plainly. And please, no legalese. No BS.”

Perhaps, this sounds too simple, but CFA Institute research in 2016, “From Trust to Loyalty,” suggests not at all. It finds clarity and transparency on fees and disclosing and managing conflicts rank high. A key point: Fee transparency beats competitive returns.

Here’s the rub. CFPs mostly work in brokerage sales where these things are hard – or impossible. An Institute survey released today reveals that just 15% of CFPs are fee only. 85% report full or partial commissions or no methods. This is fairly consistent in different parts of the country.

The Board boldly sets out fiduciary duties for ALL advice. Their statements are clear and strong. This is an important step. But alone, this falls very short. Why?

It’s about conflicts. The duty of loyalty is about avoiding conflicts. Professor Arthur Laby notes conflicts harms and conflicted sales dominated much thinking of the framers of the Investment Advisers Act of 1940. Just as, in a totally different realm, the nation is reminded today about conflicts matter.

In 2012 an SEC director said, “Conflicts of interest can be thought of as the viruses that threaten the organization’s well-being. ... and if not eliminated or neutralized, even the simplest virus is a mortal threat to the body.” A mortal threat, just as is the Monkey pox virus.

This is why it’s important that CFP’s core premise on standards and compensation differs so completely from the premises of the framers of the Advisers Act and the DOL Rule.

The framers of the Advisers Act were concerned with conflicted sales and the need to eliminate conflicts. The DOL Rule's premise: conflicts are toxic and hidden BD commissions a chief toxin. Transparent fees are not a toxin. DOL distinguishes fees from commissions.

In sharp contrast, the Board advocates compensation neutrality and pledges allegiance to commission and fee equality as fundamental to its standards. This premise is a pretty direct rejection of fiduciary convention.

For ten years, the Board has said to investors that CFPs are trusted advisors – without providing any guidance on avoiding conflicts, or mitigating conflicts harms.

Without guidance, brokers (seemingly 85% of CFPs) rely on industry training, culture and experience. BDs live by suitability rules. And these are the home field to hidden conflicts of interest, as the White House report revealed in 2015.

Yet, evidence suggests brokers already believe they are fiduciaries. A survey CFP Board cites investor professionals says just 16% “expect their advice might be different” under a fiduciary standard. This speaks volumes.

So, the question is whether there's a reasonable basis to believe the proposed standards will result in fiduciary advice. When there is no rebuttable presumption that the CFP mark means fiduciary conduct, no urging CFPs to avoid conflicts over disclosing them, no guidance on avoiding or mitigating conflicts, no required written disclosures, client consents, and no clues on enforcement.

To be very clear There's no question the Board and Commission members are acting in good faith to move financial planning to professionalism. There is also no question many have fiduciary pedigrees. They're well known. And there is no question this is a journey and that members feel great pressures from the brokerage industry. Still, questions remain.

Some of the most basic questions

- Why is a core premise of fiduciary convention rejected?
- Why, after ten years holding CFPs out as trusted advisors, is there still no Board guidance today to help CFPs avoid or mitigate conflicts?
- Why are CFPs not be urged to avoid conflicts over disclosing them?
- Why is the rebuttable presumption deleted? Is this not breaking a promise?
- The Board refers to raising the standards as a journey. Fair enough. Yet, there is no reference as to where in the journey the standards are today. How near or far away is the destination?

The Board could move the standards much closer, a giant leap forward, with these measures.

1. Re-insert rebuttable presumption.
2. Urge CFPs to avoid conflicts over disclosing them.
3. Insert the Rhoades guidance on mitigating conflicts.
4. Require written disclosures, consents, agreements.
5. Require transparency, clarity on fees and conflicts.

After all. These measures are what consumers want and experts agree that fiduciary advice should include.

A closing thought on where is the financial planning flag.

Leaders, over decades, have fought for a profession. What do names like Fain, Blackinship, Hopewell, Kinder, Hughes or Wagner evoke?

What does it mean when FPA risked so much to courageously challenge the SEC – and WON? The answer should be obvious. It's where the financial planning flag must be planted today.