

The Fiduciary Standard's Defining Moment

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www.thefiduciaryinstitute.org

A Defining Moment?

Remembrances of President GHW Bush's public service of Competence, integrity, decency and humility; fiduciary duties loyalty, care and utmost good faith?

“The best presidents, he believed, put the national interest ahead of self-interest—no matter what the price ...

Bush was a steward, not a seer, and made no apologies for his preference for action—steady, prudent, and thoughtful—over ideology.”

Jon Meacham on
George H W Bush
Time Magazine, 12-1-18

What Investors Want*

A “Best Interest” standard that requires an advisor ...

- Will help me choose the lowest cost products, all other things being equal. **73-11%**
- Will disclose payments that they receive that may influence them to advise me to buy one product over another. **59-15%**
- Will avoid higher compensation when a similar, less costly product is available. **61-19%**

* RAND 2018 study / (OIA), “The Retail Market for Investment Advice”

What Investors Want*

- “How important would it be to you that your financial rep receives all his/her compensation from you directly?”

Not important, not at all important.	22%
Neither.	28%
Important, extremely important.	51%

* RAND 2018 study / (OIA), “The Retail Market for Investment Advice”

Reg BI: Let Brokers be Brokers*

Commissioner Kara Stein



“Regulation Status-Quo”

Commissioner Hester Peirce



“Suitability-Plus”

* Proposed by the SEC as Reg BI in April 2018 and subsequently rebranded by Florida financial planner, Dan Moisand, as Reg BS.

Reg BI: Let Brokers be Brokers

“Nor does [RBI] prohibit...recommendations from a limited range of products, or recommendations of proprietary products...provided the Care Obligation is satisfied”*

*(“a. ...Have a reasonable basis to believe that the recommendation could be in the best interest of at least some retail customers.”)**

* Regulation Best Interest, Release pg. 135; Proposed Reg BI, release pg 405-6

Reg BI: Let Brokers be Brokers

“In lieu of mandating specific mitigation measures ... the Commission’s proposal would leave **broker-dealers with flexibility** to develop and tailor reasonably designed policies and procedures that include conflict mitigation measures, based on each firm’s circumstances ... In a manner that **fits their business models**... measures that depend on factors related to a **broker-dealer’s business model**”*

* Regulation Best Interest, Release pg. 179

Reg BI: Wipes out Fiduciary Standard for tens of millions of BD customers



The New Sheriffs



“If Goldman’s claim of honesty and integrity are simple puffery, the world of finance may be in more trouble than we recognize.”

- Judge Paul A Crotty, 2012



“We believe we are honoring the spirit of the new (DOL) Rules, not looking for ways to get around them.”

The New Sheriffs



“The law requires I meet a best interest standard.”

* Picture from SEC’s video PSA, available at:

<https://www.youtube.com/watch?v=a4KSsymwavM>

Survival of the Differentiated

“Our advisors focus on what you need.” ... “Putting clients first is ingrained in the way we do business.” ... “Clients come first.”... “Our clients always come first.” ... “We put our clients’ interests first.” ... “We believe in doing what’s right for our clients.” (From firms’ web sites.)

All Advisors talk like a fiduciary (above). Only some act like one (below).

1. Be a fiduciary at all times.
2. Be reasonable.
3. Put agreements in writing.
4. Show clients what they pay and the firm gets in all fees.
5. Doggedly avoid conflicts – or mitigate them.
6. Avoid principal trading.
7. Only accept client fees.
8. Avoid gifts, entertainment.
9. Have the knowledge, education, competence.
10. Use an IPS.
11. Minimize expenses.
12. Affirm compliance.

Get an advisor who *acts* like a Fiduciary. Get a Best Practice Advisor.

Institute for the Fiduciary Standard Best Practices
Best Practices can be found here: <http://www.thefiduciaryinstitute.org/wp-content/uploads/2018/01/BestPracticesDec222017.pdf>
Information: info@thefiduciaryinstitute.org