INSTITUTE FOR THE FIDUCIARY STANDARD

Fiduciary Reference

Analysis of Investment Fiduciary Issues

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Panel: Fiduciary "Mindset" and Policies and Practices Starkly Differ from Sales Brokers' Payouts and Production

Editor's Note: During the public unraveling of wrongdoing at Wells Fargo in the Fall of 2016, Lou Gerstner, the former IBM Chairman and CEO wrote a piece in the WSJ about corporate culture.[1] *Specifically, about why it's so important and how it's widely misunderstood. Gerstner writes that conventional corporate reliance on written "value statements" is misplaced. He stresses, "A common vocabulary does not lead to common behavior" as "People do not do what you expect but what you inspect. Culture is not a prime mover. Rather it is a derivative. It forms as a result of signals employees get."*

While Gerstner's analysis springs from a large retailing banking organization, he also explains why advisers and brokers are so different. Simply, different conduct is rewarded. Incentives, priorities and rewards from leaders establish a culture; words do not. Gerstner essentially explains why Reg BI is likely to fail badly.

Gerstner provides a rich context for understanding how leaders' policies and practices can define a fiduciary, fee-only culture. Joel Isaacson, Tom Orecchio, Dan Moisand and Paula Hogan, drilled down on these issues and more at a recent Institute program. They channel Gerstner. The October 15 program, "Leadership through Fiduciary," took place at NAPFA's Fall conference.[2]

The discussion is an extraordinary dive into what differentiates fiduciary, fee-only firms and makes them such starkly better choices for all investors who seek real advice. Be they investors with basic planning needs or the most complex financial challenges, it doesn't matter. Here are highlights. Enjoy.

– Darren Fogarty, Research Analyst, 01.14.19

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[1] https://www.wsj.com/articles/the-culture-ate-our-corporate-reputation-1475445084

[2] https://thefiduciaryinstitute.org/wp-content/uploads/2018/10/2018-Fiduciary-September-October-15-Program-announcement.pdf

Paula Hogan, Founder and CEO, Hogan Financial, is the Moderator of the panel. Hogan is a nationally recognized leader in the financial advisory field and has served on the national boards of the Financial Planning Association and for NAPFA. She has published multiple articles in the AAII Journal and in the Journal of Financial Planning and has co-authored papers for the Wharton Pension Research Council and The John Marshall School of Law Employee Benefits Annual Symposium.

- "In this panel, we move beyond what's going on in the broker world and how we're different and what's happened in the past and instead we're going to delineate what is it that fiduciary fee-only firms do?
- "When you're interviewing a potential staff member, is it innate or do you think we can train this person?... How do you compensate staff so that they have the motivation that is in alinement with a fiduciary culture?"
- "How do you keep quality control from the fiduciary perspective? What issues may need management?"
- "As leaders of your firm, how do you manage the potential tension between a fiduciary culture and growth?"
- "If someone looks at you from the outside, how do they recognize that you are a fiduciary firm?"

Joel Isaacson, Founder and CEO, Joel Isaacson & Co., comments on marketing, talent acquisition, fee-structure, firm growth, and fiduciary maintenance. Isaacson considers himself to be a teacher and a practitioner and is active in many industry organizations while also having served on numerous boards. These include, among others, the NY Chapter of the International Association for Financial Planning, now FPA, and the Personal Financial Planning Committee of the NY State Society of CPAs.

- "No one does any marketing. (Our) culture is not one driven by sales."
- "We do much better with people right out of college… We would rather get them out of school and train them and put zero sales pressure on anyone."
- "We're probably 80% retainer based which I think, if I was a client, I would feel the best about. We try to base [our fees] on the complexity and not just the assets, and the time involved."
- "Our compliance officer, quarterly, randomly selects a dozen clients for review…We push [our advisors] to the edge to find out (the basis for their recommendations) and make sure we're comfortable with the advice."
- "We do no marketing and there is no culture around it so, it's really the capacity issues…[we can't handle more than about] 12% a year growth."

Tom Orecchio, Principal and Wealth Manager, Modera Wealth Management, LLC, comments on fee-structure, fiduciary maintenance, the importance of growth, and how to effectively communicate 'fiduciary' to clients. Orecchio brings over 20 years of experience in wealth management and is actively involved in the community as a member of the Board of Directors of the Modera Charitable Foundation and a Director of the Modera Wealth Management Scholarship Fund.

- "We have an investment policy statement and we have a client agreement and the wording in both of those speaks to what's in our ADV about being a fiduciary, having a fiduciary oath, so that clients are aware that we will always act in their best interest and that there will still be conflicts of interest and that those will be managed to the best of our ability."
- "We're AUM and flat fees or retainer fees…There are conflicts in any model that you have, and you've just got to manage those conflicts, but we just find that the mix works best for us."
- "We have a financial planning committee and an investment committee, and they meet monthly…Never really viewed it much like a peer review but more of a sharing of ideas. They also put out minimum standards."
- "Growth is very important because provides opportunities to our staff…[it] is in line with being a fiduciary as long as it's kept in perspective."
- "While we have a prospective client in the room, we'll bring up the website and show, 'securities offered through…' [They] appreciate that transparency and that goes a long way toward them understanding that we're different."
- "My one-pager would be to have things like: fiduciary vs. suitability standard, it would say 'securities offered through…' It would say, 'do you have an ADV, are you paid fees vs. commissions? ...Who owns you?'"

Dan Moisand, Principal and Financial Advisor, Moisand, Fitzgerald, Tamayo, LLC, comments on firm and fee structure, talent acquisition, fee transparency, communicating 'fiduciary' to clients, issues with Reg BI, and why he prefers working as a fiduciary. Moisand served as a national President of the FPA and has been featured as one of America's top financial planners by 10+ financial planning publications. Additionally, he served on the CFP Board of Practice Standards from 1999-2001 and as Chairman of the Discipline and Ethics Commission in 2008.

- "We have five owners. We're not owned by anybody. Each client has two advisors that work with them."
- "Is ['fiduciary'] something that is trainable or is it something that's innate? I suspect it's probably trainable, but we haven't tried. What we tried to do is to hire for that mentality to start with and that's worked very well for us."
- "We're almost exclusively assets inter management billing… If clients are arguing that much about the fees, I think you have a relationship issue. They're not quite getting the scope of what you're doing..."
- "The crux of a one-pager would simply be a short description of the fiduciary and the fact that the only party that pays us is the client directly."
- "The public should not need a freaking glossary to be protected and our regulators are lettings down the American public in a big way."
- "['Fiduciary'] is a fantastic way to make a living, especially from a financial planning perspective. It's just a continual set of new puzzles to solve for people. It's awesome."

Paula Hogan

For the next panel, we're going to extend from the earlier panels. There has been a theme in this conference today about the need and the desire of all of us to have a better articulation of how fiduciaries are different. In this panel, we're going to move beyond what's going on in the broker world and how we're different from that and what's happened in the past and instead we're going to see how close we can get to delineating, what is it that fiduciary firms do?

"Design a mail order kit, and the kit is: How to build and run a fiduciary, fee-only planning firm."

Not what we don't do but what do we do in each of the areas. I've asked the panel members to engage in a thought experiment. Design a mail order kit, and the kit is: how to build and run a fiduciary, fee-only planning firm. I'm going to ask the panel a bunch of questions and each of the different areas, starting with purpose and mission, through firm structure, staff, clients, firm quality control, relations with our professional collogues, and then in the big picture: what does it all mean? What we're listening for and what we hope you'll get as audience members is, if you're running a fiduciary planning firm, we hope this panel will be like a checklist, you can go through: I'm doing that, I can get better at this, wow, I didn't even know about that. We hope then you'll have insights and practical tips, and we're also hoping that these guys will be very frank about, in running large fiduciary planning firms, what are the issues in terms of making that work at the firm level.

I think all of you know that we have an all-star panel here with Tom Orecchio, Dan Moisand, Joel Isaacson. These guys know what the broker world is like and they are in the cohort of advisors who lifted out of the world from being a bunch of small practices, almost tradesmen, into having real firms, real scale, and a real impact on the industry. The benefit of this panel is to hear from these people, what does it take to make a fiduciary culture imbed all the way through your firm, particularly, as it gets larger.
To start off, we're going to start with purpose and mission. Here's the image: you can order this kit and it has been delivered to your door step…and you open up the kit and there is a manual and it says how to build a fiduciary financial planning firm. The first sentence says, 'This kit will help you build a firm that…and that's important because…'

Tom, why don't you start.

Tom Orecchio

Like a lot of you in the room, I don't think we needed to give this too much thought. Being a fee-only firm for a long time, I thought it was pretty straight forward that the kit would be designed to help you build a structure and a culture that promotes transparency and that avoids conflicts of interest and when conflicts of interest continue to exist, that they are properly managed and that they are properly disclosed to the client. I think that's important because we believe that this is in the best interest of our clients and that, ultimately, what's in the best interest of our clients is what's in the best interest of our firm.

Dan Moisand

Purpose and mission. There is a saying that all businesses exist to alleviate some pain, in some way. There is a lot of pain for the public with respect to personal finances, it's very stressful subject matter. It's right up there with all the other big ones that effect families and the world is getting more and more complex all the time from a personal finance standpoint. More and more of the responsibility keeps getting pushed on to the public. Our mission is to help clients alleviate some of that stress. To do that we have to have processes and procedures in place. I think a lot of that comes from the natural financial planning process but when you overlay that into a fiduciary environment, there are other processes and procedures that you can lay over that to make sure that you're avoiding as many conflicts as possible and managing the ones that remain.

Joel Isaacson

Being around NAPFA for…33-34 years now, I think the issue of planning first is what I always thought was the key for NAFPA. For example, certain people come to us and say, 'Here's $2 million, can you manage it for us?' That's not our business and we don't really want that business. So, I do think the environment of NAPFA and the planning first is key from the client perspective as to what's most important to them. In the industry, the differentiation I see is a lot of firms became AUM driven and that became kind of the key for them. That has changed somewhat. The planning first mantra is very important. The plan is the key for us as to, you know, do no harm, do what's in the client's best interest, and let that be the driving force.

We also don't really have a sales culture. I don't know if we're spoiled in New York because, again, Tom's in New Jersey, I could say there's

really not competition in New York with other advisors or NAPFA, so we can grow our top line 8-10% a year just through referrals. No one in the firm does any marketing. That's not the kind of culture we have, driven by sales.

Paula: Let's move on to firm structure. How about if you guys dive in where it makes sense for you. What I'm thinking of is, when you start a firm you make a choice of how you are regulated, which seems to me is one of the first differentiating questions a potential client could ask of an advisor is 'How are you regulated?' What about credentials? What professional groups do you hang out from? Where do you learn? And what about ownership? Who owns you and what do you own?

"No one in the firm does any marketing. That's not the kind of culture we have."

Dan: Our structure is, we have five owners. We're not owned by anybody. Each client has two advisors that work with them. Client service administrator. All of the portfolio management function is taken care of by a separate portfolio department. That helps alleviate a lot of the issues that can come up in an investment arena. Because you have policies/procedures, investment committees, that are making the decisions about what investments to use in the portfolios and how to use those, so the individual advisors don't' have to deal with handing that. They do interface with the investment department, but we've got that as a separate function and all they do is focus on that type of thing…

One of the reasons that we have it set-up that way is because we didn't want to be spending so much time on the nuts and bolts of the investment management function. You could also use a tamp to do this, we chose to do it internally. Early on, if you've literally got the kit and you're on day one, you are doing a lot of these things on your own and you have to envision how your personal capacity is going to strain and what kind help you're going to need along the way. Along the way, that's what we've been doing. We've been laying out, we have right now another ten years' worth of growth projections and personnel projections and client count projections. That helps us make sure that we're doing what we can to try to say up to speed on our staffing.

"Clients are aware that we will always act in their best interest and that there will still be conflicts and that those will be managed to the best of our ability."

Tom: It sounds like our firm is very similar to Dan's firm. I would add that we have an investment policy statement and we have a client agreement and the wording in both of those speaks to what's in our ADV about being a fiduciary, having a fiduciary oath, so that clients are aware that we will always act in their best interest and that there will still be conflicts of interest and that those will be managed to the best of our ability and we'll be transparent about communicating those to clients if and when they pop up.

We have eleven owners. I think one of the things that's difficult for us is that we have multiple locations and we want to make sure that there is an owner at each location so that we are spreading that culture from location to location because we want clients at all of the locations to get the same type of experience, they would get regardless of which one they walk into.

Joel: We have six shareholders in our management company, but we do have an outside investor, we did a deal nine years ago with Focus Financial. Again, it's one where, obviously there can be conflicts, there are other Focus firms around the country, some which try to kick us out of NAPFA for a while because one of them had owned a broker/dealer. One of the deals with Focus is we have management control over how we handle our clients. The only thing they have control over is the accounting and the compliance side. They can't tell us to do any sales processes there. Again, it's one where, generally, all our financial advisors are CFPs and have been trained and again, most of them have gone through extensive tax training also because we do a lot of in-house tax work. We have multiple people on a team. An investment committee but it's not a separate one, it's pretty much headed by me, that runs the investment and has a recommended list of the funds that each advisor can work within.

Paula: I'd like to turn now to staff. We all know that finding staff is a really important and challenging part of the business. I have a personal curiosity. Do you guys think that a fiduciary outlook is innate or is it something that you train. When you're interviewing a potential staff member, is it innate or do you think we can train this person?

"Is a fiduciary outlook innate or is it something that you train?"

Also, in our industry, we talk a lot about fiduciary and we have some CE and we have initial training that we take a test on but where do we actually have fiduciary training for staff? Bonus question, you can say how you compensate staff so that they have the motivation that is in alinement with a fiduciary culture?

Joel: First of all, we put no sales pressure on staff. We do much better with people right out of college. People that come with, you know 10 years of experience, we haven't had great success with over time, with a lateral transfer. We would rather get them out of school and train them and put zero sales pressure on anyone until they become a director and then it's, again, not sales pressure but people in our firm can make a very nice living as a client service advisor. Then they get to a point and you say, 'if you really want to make money from here, business development will be a key for you.'

"We're probably 80% retainer-based which I think is the least conflicted compensation for financial advisors."

But no pressure from a standpoint as far as sales…The examples before of the mortgage payoff. We probably pay off more mortgages than any other firm out there. We also, just from a bias, we're probably 80% retainer based which I think is the least conflicted compensation for financial advisors. Again, when you get into a situation of paying off mortgages, it shows them what you're doing. Staff will see the best interest for clients. We have a half billion dollars with an outside money management firm that we use our buying power to get the best fee for the clients. We're not good at individual bonds. Most firms, I think, in the industry, and I'm excluding NAPFA firms, would want to have that money as AUM and get the fee that goes with it. For us, again, we feel that it's in the clients' best interest and that's the culture that's permeating from day one within the firm.

Dan: To your question about fiduciary training, there are some programs out there, at least with respect to investments…

"I suspect it's probably trainable, but we haven't tried to train it."

Is it something that is trainable or is it something that's innate? I suspect it's probably trainable, but we haven't tried to train it. What we tried to do is to hire for that mentality to start with and that's worked very well for us. As a fiduciary, what you're supposed to be doing, financial planning fiduciary, is you're supposed to be trying to figure out what's best for this family. What are the things that they need to do? How do they marshal their resources? What obstacles do they have in place? Get all that stuff coordinated for them. We want employees that are coming with the mindset that, 'My job is to figure out what's best for these people.'

That is very different, and we have had no success probably because of this, with breakaway brokers. They've been working, for the most part, in a job where their position is to figure out how to get somebody to do something that makes them or their firm money. Very different mindset. There are brokers over there that quote, 'See the light.' And come over from the dark-side and all that, don't get me wrong, that definitely happens. We haven't had any of them successfully come to our firm. Everything that we've seen in that area, the mindset is just wrong.

"We want employees that are coming with the mindset that, 'My job is to figure out what's best for these people.'"

Tom: On comp, we are mostly base and bonus. The bonus is two components: it's how the company is doing and how the individual is doing. We don't have sales guidelines for any of our people. We talk a lot about it, but we never really implemented that. We've also not had any luck with break-away brokers. In my conversations, New York City is loaded with brokerage firms and my conversation usually ends when they say, 'well, what are my production requirements? What's my payout going to be?' That's usually early in the conversation and then once again, we end the conversation, say thank you and good luck, but that's not a good fit for us. We see that time and again where we're located.

"Fiduciary never seems un-fresh because it's there all the time."

In terms of teaching or training for fiduciary, we have a compliance training twice a year and embedded in that compliance training are some fiduciary issues. Conferences are a good example. We do disclose in our ADV that there are soft dollars involved in going to conferences and we acknowledge that that is the case and that we do go to conferences were the rate may be reduced because we're advisors as opposed to members of the public.

We also have things like agreements about divorce with our clients where we would end the relationship and have them sign two separate agreements and are usually assigned two separate advisors to try to avoid additional conflicts of managing that divorce process. Our staff does get trained in all of this at least once a year and mostly twice a year.

Paula: Staying on the topic of staff, especially as firms grow large, how do you keep a fiduciary mentality fresh? Any small practical tips or ah ha moments? Training is one of them, so twice a year you've got really embedded training but on the day-to-day, what do you see in your firm that makes you feel good? Or worry? What do you talk about in the board room? How do you keep staff, not only tuned into fiduciary, but feeling good about it?

"We don't have sales goals for any of our people."

Dan: We haven't really had much of an issue keeping staff feeling good about it. Again, we're hiring specifically for that type of mentality so it's a strange question for me to try to answer. It never seems un-fresh because it's there all the time.

Paula: That's the dilemma: we all feel that way, but the public doesn't know what fiduciary is, so we're all pumped up about feeling fiduciary but when people come in, one of the times we're trying to get at it is: how do they know that?

Tom: We have ours as part of our mission statement. It's on the walls and it's on the desks and we reinforce it at our staff meetings but like Dan said, this is the easiest question of them all because it's never hard to take the high road.

"We have hired administrative staff people away from the banks and brokerage firms and they've told us that taking the high road is just refreshing."

I think it's always pretty easy to take the high road and I think our staff finds it refreshing if they worked somewhere else where that might not be the standard and they come to a NAPFA style firm where we all believe in doing what's in the best interest of the client. We have hired staff members, administrative staff people away from the banks and brokerage firms and they've told us that it's just refreshing. We haven't hired advisors because, again, it's usually about productivity and payouts.

Joel: The only thing I would add to that is I think it does lead by example. We had four planning partners and I think the staff learns from that. Whether it's the para planners or the staff planners and different things, I think it comes from the top and just the culture that you have. Again, we have no production quotas that would make them effected by non-fiduciary thoughts.

Paula: I can imagine that staff relations like that can make it easier to recruit and retain. Let's move on now to clients and, in particular, fees. How do you charge and how transparent are you about fees? How important is it to be transparent?

"Breakaway brokers position (has been) to figure out how to get somebody to do something that makes them or their firm money."

Joel: We're probably 80% retainer based which I think, if I was a client, I would feel the best about. We try to base that on the complexity and not just the assets, but the complexity and the time involved. We do track time because some clients we do bill hourly and we find that's a good check for us to do that. On the AUM side, it's in there and I think for perspective of the retainer I think is one that is not the easiest on an ongoing basis, to go back to the clients to get fee increases from there. We probably are on the side of being a little less expensive than other firms, but we also have very high retention rates.

Dan: We're almost exclusively assets inter management billing. We're prepared to change that, but we get no demand for it from our current clientele. Who we're attractive to people who, a big part of their picture is, the investment management function. So, I don't think we're going to see a huge demand for something immediately soon, but we don't care if it's a flat fee or an AUM fee, as long as we're getting paid adequately but right now almost all the fees are AUM.
Paula: What assets do you charge on? How do you decide what the AUM fee is applied to?

Dan: The traditional investment assets: IRAs, 401ks, etc.

Paula: What do you say when the client says, 'Well by employer set me up with a 401k and I don't think that should be in the fee…'?

Dan: Yeah, okay, see ya. It's part of your financial picture, we're comprehensive financial planners, we're not going to advise you without advising on the 401k too.

Paula: Are there any accounts that you pull out comfortably and still maintain the relationship?

Dan: A couple of the things we will not bill on will be things that are hard to value. Things that we didn't put them in like non-traded rets. they're kind of stuck in that type of thing but for the most part, most of our clients…it's a self-fulfilling prophecy, right? You're offering yourself to out to the marketplace as a firm that can handle traditional investment assets as well as the financial planning and you're attracting people who want the financial planning that have lots of the investment assets so it kind of feeds itself that way.
Paula: So, if I'm a client and all of a sudden, I come into money, pick a reason, but my portfolio just went up by 30%. It wasn't from investment prowess. And I'm wondering, 'Why is my fee going up?'

Dan: Well your fee is going up because there is more at stake. That would be one reason. My liability is going up. That would be another reason. There are lots of reasons the fee should go up. It shouldn't go up proportionally, you tier it down, but the higher value client dollar that comes in is billed at a very low rate. It's not a perfect system by any stretch of the imagination but nothing else is. They're talking about how to raise the fees every couple of years. If I was paying a flat-fee and suddenly I forked out a bunch of money for a big charitable contribution, there is a point where you wonder, 'Why am I paying the same fee when there is less at stake here?' You could make an argument either way. If the clients are arguing that much about the fees, I think you have a relationship issue. They're not quite getting the scope of what you're doing or maybe you're charging way too much. That could be a possibility too but we're very average…

"They get a written invoice every quarter. It's right in the statement, hard to miss."

Tom: We're a mix of the two: we're AUM and flat fees or retainer fees, whatever you want to call them. I really don't have much to add. There are conflicts in any model that you have, and you've just got to manage those conflicts but we just find that the mix works best for us.

Paula: And fee transparency?

Dan: Oh yeah, they get a written invoice every quarter. It's right in the statement, hard to miss.

Joel: With NAPFA firms, the idea that given the underlying investment fees, I'll leave that up to each person here, but I think you get to a point of, our job is really to pick investments that we think are there, it's not just the dollars cost, but I think that gets to a point of just added confusion for the client but I think each person has to figure out what they feel comfortable with.

"Our compliance officer, quarterly, randomly selects a dozen clients for review…We push [our advisors] to the edge to find out and make sure we're comfortable with the advice."

Paula: Let's turn now to quality control at the firm level. Pick an issue, some of the ones that we talked about in our pre-conference call included your relationships with professional colleagues, are you exchanging referrals, and why? If an attorney may not be the best for that client but you've got a relationship, how do you manage that? Not only how to do you manage that in the abstract, on a fiduciary financial planning exam, but when you're running a firm, how do you know that out of the scores of people in your firm, that that will happen in a fiduciary manner? What I'm curious about is, what do you measure at the firm level? How do you keep quality control for the fiduciary perspective? Where are you seeing issues that may need management?

Joel: I think if you're building your practice around attorneys, you're in trouble to start. If you've got one referral every two years from an attorney, that's probably a pretty good response rate. But I think it's always the same thing. There are conflicts that are out there, you've got to be careful. Again, situations where family in different businesses, accountants that are out there, insurance people and again, none of us are in the insurance business but there are a lot of insurance agents. If you go to the estate planning counsel, anytime you see people with the orange badges you're always hiding from them because they won't leave you alone. You've got to manage the conflicts. We have reporting on all gifts monthly, we have a custody audit, we have compliance audit, there's a lot of stuff. And we have a peer review audit where each person is required on a quarterly basis to defend a couple of their clients on what they've done, who they referred to in all their agendas and their investments along the way.

Paula: Can you explain that process a little bit?

Joel: Our compliance officer, on a quarterly basis, will randomly select a dozen clients for review and it's spread out among the different advisors. Then a group will sit down, and we'll all review it together. We'll go over all of their investments, we'll go over their agenda, all of the different planning and then we get to quiz them and find out why they recommended certain things or recommended to not pay off the mortgage or what they're doing with the stock options, concentrated stock positions. We get to push them to the edge to find out and make sure we're all comfortable with the advice that's going on and why they do certain things.

Dan: I mentioned a little earlier we have at least two CFP licensees in on every case. In some manner or another. With the policies you want at least two sets of eye balls looking at whatever goes out to a client with respect to recommendations about any of it. That helps quite a bit. For a typical, new client planning case you're going to have a lead advisor, a secondary advisor, you're going to have some support advisor work from our G3 entry level, future planner guys, and client service administrator all involved in creating the output that goes to clients for recommendations.

Tom: Again, not much to add. We do it very similarly. We have a financial planning committee and an investment committee, and they meet monthly and periodically the topic will be, rather than about a product or service, it will be about a particular client's situation. Never really viewed it much like a peer review but more of a sharing of ideas. They also put out minimum standards for both the financial planning and the investment management of the firm.

Paula: To be a thriving, vibrant business you also have to grow and most of us have growth goals. We often criticize the broker community for the sales mentality. As leaders of your firm, how do you manage the potential tension between having a fiduciary culture and going for growth?

Joel: For us, we don't do any marketing. We grow about 8-10% a year from referrals. I don't think that we could grow at 15% a year. Again, that is an AUM thing, because of the complexity of each of the situations, the amount of time and work that goes into the clients. For us, if we move the needle an extra 2% growth. Again, you see within a firm, there are certain people who culturally are better at referrals and network that comes in from there. We do absolutely no marketing and there is no culture around that stuff so, for us, it's really the capacity issues. At most, we can handle maybe 12% a year top line growth.

Dan: Yes, this is an area of concern because it's so dependent on public perception. If you're not growing, you're dying. You're not providing opportunities to your people. You're not getting as much value to the equity you built. So, growth is a very important factor, but the consumer is confused as ever and it's only going to get worse because of (the SEC's) regulation BS. It is a bit concerning on that front. We're reviewing messaging, how to present it, things like that on a more or less continual basis. Every 3 or 4 years we actually change the messaging.

Tom: Growth is very important, too, because it provides opportunities to our staff. For our clients, we have a deeper bench and that's important if somebody dies or goes away from the firm, you want to make sure that you have backups and redundancy. We don't view the growth necessarily in conflict with our fiduciary standards. In fact, we think that growth is part of it. But also, we are not looking to achieve growth for the sake of growth. I don't think many NAPFA firms feel that way. If that's the case, I haven't seen it over the years here. We think growth is in line with being a fiduciary as long as it's kept in perspective.

Paula: Changing the perspective now to a potential client or someone who's shopping for a family member, if someone looks at you from the outside, how do they recognize that you are a fiduciary firm since our part of the world and other parts of the industry tend to use the same language? And I'm interested in hearing a differentiation between if you were going in and shopping for your aunt who knows nothing but you're 5 questions away from understanding what's a fiduciary firm, what would you proactively check out and what would you be listening for? Maybe some questions like, how do you handle this or how do you handle that? But then, also, describe, if you didn't have your expertise, how would you recognize that your firm is a fiduciary firm beyond all the words?

Dan: A couple weeks ago I'm in Las Vegas on this panel and the topic is retirement income. And it's David Blanchet, head of research at Morningstar, myself, and this other guy.

> *"It's a freak show out there for the public. You try to educate them as best you can."*

This other guy is a fiduciary and basically all he does is he implements every client in a whole series of annuity products. Fixed annuity products. It's a freak show out there for the public. You try to educate them as best you can, and you have them look for the same things I look for. When I get a request for, 'Do you know anybody in such and such North Dakota?' No, I don't. First thing I do is go to the NAPFA site, pray there is somebody on there, pray that they do things in a similar style to what the client needs, and if not, I have to start looking for important signs.

One easy thing to teach perspective clients to do is look for on the marketing materials letterhead: 'securities offered through…' That cuts it right there. That means they're working for a broker-dealer. The essence of the fiduciary duty, clients do understand what it is, they just don't know that what it is fits that word. They want people that are acting truly in their best interest which is why BS is the problem because they're rebranding suitability is what they're doing. The rule's not much different. They're just calling it best interest instead of suitability. It's awful. It's appalling.

"That photograph right there nails it. (Three people in a 'relationship' on a bench). You can't serve two masters."

But what they do understand is the concept of working, and that photograph right there, that little deal, man that nails it right there. They get that. (3 people on a bench photo) Talk in terms of that: you can't service two masters, we don't even try. That's one of the lines on our website. They get that.

Tom: We do the same thing. We, in fact, while we have a prospective client in the room, we'll bring up the website and show them, 'securities offered through…' So that they understand the difference. If it's FINRA vs. the SEC so that's relatively easy as well. But I think there are two components to this: how the world sees us and how we in the industry see us.

When I started in the business, I was on the brokerage side for the first 3-4 years and somebody told me about NAPFA and I went to a conference and, 'Wow, I found it! This is what I was looking for. These people think the way I want to think. They have their practices built the way I want to build a practice.' It was one of those Ah Ha! Moments. It's hard for a lay person to get that Ah Ha moment. It's easier when you're in the business when you're on one side and you see the other side. So, for me as a professional it was rather easy but for a lay person, what I think they like is the transparency that all of us offer that you're not going to see in the brokerage world. I love when a client or prospective client comes in with a brokerage app. And when you open it up and on the back it's in this gray lettering and it's 3 or 4 pages long of nonsense. You don't even know what it means. And then you pull out yours and it's fully transparent about the fees, it has the fiduciary oath right in it. Clients and prospective clients appreciate that transparency and that goes a long way towards understanding that we're different.

Paula: You've got a head start on the next question: There is some talk in the fee-only community about having a one-pager, which would be a shopping guide. In one sense the best practices do that, but I'm thinking of a one-pager that would help the lay person really understand how to recognize a fiduciary firm. You've mentioned a couple of things, but could you guys take a stab at it? What would be on your one-pager? Maybe crowdsource from the three of you?

Joel: New York is a weird marketplace, Tom's in New Jersey and in New York, I don't think we've ever run across anyone in New York that was a fee-only planner as a competitor. It's dominated by Morgan, Goldman, Bernstein, and Newburger. Generally, clients that are coming to us are pre-sold, through friends, and I think the fee-only concept and if you say to the client, 'We're the least conflicted. We're not completely un-conflicted but the least conflicted of the situations out there.' That's what the key is for them and I think if you get too much into the technical aspects of a fiduciary, I think you're going to lose them. And for us, these are pretty much pre-sold. I screw them up maybe 10-20% of the time but they're pretty much easy new clients for us.

"The crux of a one-pager would simply be a short description of the fiduciary and the fact that the only party that pays us is the client directly... Fiduciary v. Suitability Standard."

Paula: But if someone came to your firm and they didn't have a referral and they didn't have a background in our industry, what couple things could they check out that they would say, 'Oh, I don't know anything about this but you're a fiduciary.'

Joel: I would say also, we don't give any advice (before we do a plan), we don't have any model portfolios, we will do a plan first and we will charge you for it and then we will come up with an investment plan after that and you will get a chance to review it and we'll go through it very carefully from a standpoint for you as a team approach to this. Again, for us, we don't take…someone who comes in and says, here's $2M and throw it into my model C portfolio because I'm a reasonably conservative person.

Dan: The crux of that one-pager would simply be a short description of the fiduciary duty and the fact that the only party that pays us is the client directly. We don't really give a crap what anybody else thinks because we work for you and you alone.

Tom: My one-pager would be to have things like: fiduciary vs. suitability standard, it would say 'securities offered through…' It would say, do you have an ADV, are you paid fees vs. commissions? There would be 5 or 6 bullet points that separate us, but it would also be things like, we believe and I think all of NAPFA believes that you separate advice from product distribution and product manufacturing. I'd ask them point blank, 'Does your broker or your advisor, does the firm that he or she works at, do they manufacture product? Do they distribute product?' Because none of us here do that and I think that's a very big differentiator. We always tell our clients to separate advice from product manufacturing and product distribution. So, that would be on my checklist as well. And I think the last thing that would be on the checklist is, because some people wear duel hats, would be, 'Who owns you? Are you owned by the people who work at the firm or are you owned by some big subsidiary? Are you a subsidiary of some big firm that does those other things?'

Paula: This last question, this isn't so much about how you run your firms but because you have major firms in the industry I'm wondering, what difference does all of this make? Do you think that the existence of fiduciary financial planning firms makes a difference? Is there a larger purpose than just your firm?

"If drunk driving were not illegal, the vast majority of people would not drive drunk"

Dan: When there's a problem, the first thing both sides want to do is to determine what standard should apply to resolve the dispute. Rules and regulations… if drunk driving were not illegal, the vast majority of people would not drive drunk just because it's inherently dangerous. The fact that's it's illegal does dissuade some people from engaging in that bad behavior but the thing that the law against drunk driving does more than anything else is it gives us as a society a way to deal with drunk drivers.

Regulation in general, that's what it's about. It's not so much imposing restrictions on people that are going to do the right thing in the first place. There is a little bit a dissuasion element to its existence, but it gives us as a society a way to deal with people that don't do the right thing. This fiduciary standard is very important because the only reason you don't need to subject to a fiduciary standard in the investment advice world is because you want to do something that's not in the client's best interest. Because if you're always acting in the client's best interest, being required to do so is not a burden. It's like putting a law out there that says we have to brush our teeth every day. Big freaking deal. We brush our teeth every day, there is no burden there at all.

"The public should not need a freaking glossary to be protected and our regulators are letting down the American public in a big way."

Paula: So, collectively, are we making a difference?

Dan: Yeah, we're making a difference. Yes, exactly, somebody said earlier that people will vote with their feet and their wallets and I agree with that. It's going to be a slow process and regulation BS is going to set that back a lot. It's going to be a much slower process. But people will go where they are served well, when you're not putting client's interest first, and you're acting upon that problem, it will show up and it will show up in the marketplace but it's a very slow, painful process that the public should not have to go through. The public should not need a freaking glossary to be protected and our regulators are letting down the American public in a big way.

Tom: There are two people in the room, Dan and Ron in the back, who write about this all the time. Throughout my career I've always read their material and they harped on the same thing over and over again and Dan's exactly right. I think that's the issue. I think that there is one other thing that we're missing, that has been fantastic for the fiduciary standard, and that is NAPFA. Not just because we're a group of likeminded individuals but because a while back NAPFA made a decision that, because we're so small, we're not going to be able to go out there and convince everyone of being a fiduciary, so they went to the press.

"When I started, I had to explain to them what a fiduciary was…it was like pushing a rock uphill."

And the press has done the job for us. When I started in the business, every prospect that came in the door, I had to explain to them what a fiduciary was and why we're different and it was like pushing a rock up hill. And now virtually everybody that comes in the door already understands what we are and how we're different and that's why they're there as opposed to the brokerage firm down the road and I give that credit primarily to the press and NAPFA pushing that message to the press and getting the word out there. It's a slow slog, there are a lot of people that don't know what a fiduciary is, but they know basically what a fiduciary means. Even if they don't know the word. I give a lot of credit to NAPFA and the press for that.

Joel: The only thing that I was going to add is, I think, from a standpoint that there is still going to be a niche. It's going to be a long slog. We're never going to have the money of the wire houses. And I actually think it's a marketing advantage. Not that long ago, the NAPFA board was reviewing if the fiduciary rule went through is, how are we going to get members, how are we going to differentiate ourselves on an ongoing basis, and I don't think that's going to be an issue for a while.

Paula: A last question: I'm wondering how each of you see yourselves and your role as advisors and as founders of large firms? It seems to me, if you were just a young person looking for, 'Gee I feel entrepreneurial. I'd like to have a business.' and you look at this business and you look at that business, our business looks really good. It's a good business. One reason you could be in our business is, it's a good business. It could also be that you like operating in a way that's fair dealing with your customer. It could also be, I tend toward servant leadership which, at some point, migrates over into a being a professional and by professional, I mean you have expertise that your client doesn't and you're in a privileged relationship on intimacy and therefore you have more responsibility and more authority. I think, in our industry you could wear any of those hats. And we probably, on different days, feel differently about each one, but I'm wondering where each of you are.

Joel: I'm on the back 9. I'm not sure what your question was but I'm on the back 9.

Dan: Well my kids are 22 and 20 and apparently, I did something wrong because it doesn't look that good to them.

"It's a fantastic way to make a living and it's so much easier when the client is the center of everything and you're held accountable for serving their interests first…It's awesome."

They have no interest whatsoever in financial planning. My daughter did go into another helping profession though, physical therapy. My son, we don't know what the hell he's doing at this point but that's a different issue. It's a fantastic way to make a living and it's so much easier and it's so much better when the client is the center of everything and you're held accountable for serving their interests first. If you are not acting in a fiduciary capacity at all times because of your employment, I don't think you're the devil. When I switched to fee-only and got rid of NASD regulation at the time, it wasn't that I suddenly became smarter and more ethical. I was just as dumb as I am now. What I did was I get rid of one completely dysfunctional pain in the ass regulator for one slightly less dysfunctional pain in the ass regulator. The one that wanted me to be held to a fiduciary standard just made sense. That's what clients want even if they can't articulate it or use the term as we mentioned. It's a fantastic way to make a living, especially from a financial planning perspective. It's just a continual set of new puzzles to solve for people. It's awesome.

Tom: We're a relatively small firm in a relatively small industry that's part of a very large industry and I have no delusions that we're making a difference as a firm, but I'm okay with that as long as we're making a difference in our client's lives and in our staffs lives, I'm good with it and as long as there are organizations out there that are promoting the fiduciary standard and we just want to help out.

Paula: I'd like to thank the panel members not only for your comments today but for what you've done for the industry…

INSTITUTE FOR THE FIDUCIARY STANDARD

(**NOTE:** The Institute for the Fiduciary Standard advances advisor practices that it believes reflect what capable and conscientious advisors do today. Research and anecdote informs us that investors want these practices, but relatively very few brokers and advisors can deliver them. This communication aims to say what capable and conscientious advisors, real fiduciary advisors, will agree to do and say so in writing.)

"Act Like One"

"Putting clients first is ingrained in the way we do business." … "Our clients' always come first." … (Firms' web sites.)

All Advisors talk like a fiduciary. (See above.)
Only some act like one and show you in writing. (See below)
To act like one, he or she will:

1. Act as a fiduciary at all times. **2**. Only be paid by client fees. **3**. Avoid conflicts of interest. **4.** Mitigate or neutralize unavoidable conflicts. **5**. Establish a reasonable basis for advice. **6**. Explain important information clearly and truthfully, orally and in writing. **7.** Have professional knowledge and competence. **8.** Provide an appropriate IPS and reports**. 9.** Decline gifts or entertainment. **10.** Explain all fees and investment costs.

Require your advisor act like a Fiduciary. Get a Real Fiduciary Advisor.

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