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Restoring Investor Trust: The Case for Casuistic Decision-Making

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The investment industry needs to take a page from religion and medicine, and consider the value of Casuistic Decision-Making (CDM)-defined as the application of principles and ethics to aid in investigating and judging "right" from "wrong."* As it pertains to the investment industry, it should be the application of generally accepted fiduciary practices to help clarify legal, ethical and moral decisions made by investment advisors.

Regulations are a necessary feature and can be constructive, but regulations alone will never fully protect the investor. Regulations limit an advisor's obligation only to what the advisor did, not what the advisor should have done. There always will be advisors who hide behind the letter of the law in order to escape the higher demands of the spirit. It is easier to hide duplicity behind regulations than it is without them.

CDM should encourage and inculcate standards of care in investment advisors that are higher than what is required by law. The investment and securities industry already is highly regulated; it would seem that almost every potential decision that could be made by an investment advisor comes complete with a set of prefabricated rules and regulations. Yet less ethical advisors and, in some cases, entire investment advisory firms have found ways to camouflage their self-centered interests behind this very same systematized scheme of codified conduct.

CDM should bridge the gap between what is required by regulators and what is in the best interests of the investor. This trite phrase appears throughout regulations and industry marketing slogans, but the scandals clearly have proven that the words have lost their original meaning. CDM should help to prioritize the natural tension that exists between the three polarities of any investment decision:

1. What is in the best interest of the investor?
2. What is required by law; and,
3. What is in the best interest of the advisor and the advisor's firm.

CDM should be based on fiduciary practices to serve as the working guide for investigating and distinguishing "right" from "wrong," and enable the investment advisor to enter into each decision-making situation fully armed with maxims that serve as illuminators – not as directives. It should form the basis of an intelligible prudent investment process that brings fiduciary and ethical imperatives into practical application with a focus on prospective procedural process rather than retrospective judgment passing.

> "ONLY A MADMAN COULD MAINTAIN THAT THE DISTINCTION BETWEEN THE HONORABLE AND THE DISHONORABLE, BETWEEN VIRTUE AND VICE, IS A MATTER OF OPINION, NOT OF NATURE."
>
> – MARCUS TULLIUS CICERO, ROMAN PHILOSOPHER (106 BC-43 BC)

CDM cannot be simply a checklist; it also must be a state of mind and an attitude. CDM will call for more critical intelligence, more factual information and more self-starting commitment to righteousness than some advisors may be willing to bear.

Investors are not going to let Wall Street return to business as usual. Investors are going to require from their investment advisors evidence that they are following a defined standard of care; one that is higher than what is required by regulators. CDM should go a long way in helping to restore investor trust, because it will prompt the advisor to investigate, not just what is permissible but what is right. ■

Note

*The author acknowledges the significant influence of the book *Situation Effects* by Joseph Fletcher (Westminster Press, 1966).

> **“SOCIETY DEPENDS UPON PROFESSIONALS TO PROVIDE RELIABLE FIXED STANDARDS IN SITUATIONS WHERE THE FACTS ARE MURKY OR THE TEMPTATIONS TOO STRONG. THEIR PRINCIPAL CONTRIBUTION IS AN ABILITY TO BRING SOUND JUDGMENT TO BEAR ON THESE SITUATIONS. THEY REPRESENT THE BEST A PARTICULAR COMMUNITY IS ABLE TO MUSTER IN RESPONSE TO NEW CHALLENGES.”**
>
> – DR. ROBERT KENNEDY,
> “WHY MILITARY OFFICERS MUST HAVE TRAINING IN ETHICS”

About the Author

Don Trone is the president of the Foundation for Fiduciary Studies. The Foundation’s mission is to develop and advance fiduciary standards of care for trustees, investment committees and advisors. In addition, Don is the founder and Director of the Center for Fiduciary Studies, which operates in association with the University of Pittsburgh Joseph M. Katz Graduate School of Business. The Center is the first full-time training facility devoted to the subject of portfolio management and investment fiduciary standards of care. Don is also the CEO of investmgt which is an internet company that develops web-based tools to support the decision making process of investment fiduciaries.

Don was appointed in 2003 by the Secretary of Labor to represent the investment counseling industry on the ERISA Advisory Council. He is co-author of two industry bestsellers, *Procedural Prudence* and *The Management of Investment Decisions* (McGraw-Hill Publishing), and led the development of the recently released handbook, *Prudent Investment Practices*. He serves on GE’s Advisory Council for the Center for Financial Learning; on the Board of Directors for SRIWorld.com; and is the past Vice-Chairman of the U.S. Coast Guard Academy Alumni Association.

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