

Senior Consultant

The Voice of the Investment Management Consultant

When Called Upon, Will Advisors Respond to Fill the Leadership Vacuum in Fostering Fiduciary Counsel?

Stephen C. Winks

On January 7, 2005 the SEC will require all SEC-registered RIA's to declare their fiduciary status, which ultimately establishes a new fiduciary criterion against which all advisors will be held accountable. Essentially, the professional standing of the financial services industry is about to be reordered around fiduciary principles, and we are about to discover who our industry's leading advisors are in a self-selection process that will determine their continued success.

There is a leadership vacuum in fostering and advancing fiduciary counsel within the industry that can only be filled by our leading advisors. The NASD member firms that support the vast majority of advisors (both independent advisors and advisors who are employees) will not acknowledge the fiduciary status of their advisors and thus, there is no institutionalized support for fiduciary counsel. The SEC, which acknowledges and advocates the fiduciary status of advisors, does not want to define advice for fear of being characterized as micro-managing the industry. The industry's leading trade associations have not made fiduciary status a condition of membership, as it would not be conducive to growth, threatens the status quo and would infringe upon their turf as an association of advisors, broker dealers and/or vendors with a vested interest in commission sales. So, how will the ethical imperative of fiduciary counsel be perpetuated? Regulators require it, consumers demand it and technologists want to facilitate it, but our supporting institutions will not acknowledge it. Only through the leadership of our industry's leading advisors, working in concert with leading consumer advocacy groups, money managers, regulators, U.S. senators and Congressmen interested in ensuring the trust of the investing public, can fiduciary counsel become self-perpetuating.

Facilitating fiduciary counsel requires a concerted effort and considerable organization. Our leading advi-

sors must articulate what they need to declare their fiduciary status. They must work outside of their supporting firms and cultivate leading technologists and technical efforts to foster innovation to democratize access to enabling resources essential to fiduciary counsel. They must work with consumer advocacy groups, regulators, Senators and Congressmen for public policy that supports fiduciary counsel and brings it within the reach of all. This cannot be achieved by a few advisors acting alone or with an established group with turf to protect that is in conflict with fiduciary principles. It requires new leadership focused on fiduciary counsel, not self-interests.

The only way to resolve this structural disconnect is to democratize access to the enabling resources necessary for fiduciary counsel and to train advisors on how to use these resources

In order for the free market to work, there must be a demonstrable critical mass in advisors that will ensure the commercial viability of the enabling resources necessary for advisors to declare fiduciary status. It couldn't be more clear that investors expect their advisors to put their interests ahead of the advisor's and that of the advisor's firm. Investors want their advisor to be accountable for their recommendations in addressing and managing the full range of investment and administrative values required

by regulatory mandate. Investors want full disclosure and transparency. If it were up to the advisors, fiduciary counsel would be universally provided, but it is not up to the advisor. As the necessary supporting resources are not being made available, for fear of their supporting firms incurring fiduciary liability associated with their advisor's counsel. The only way to resolve this structural disconnect is to democratize access to the enabling resources necessary for fiduciary counsel and to train advisors on how to use these resources (processes, technology and support infrastructure) necessary to facilitate fiduciary counsel.

There are clearly powerful disincentives for our industry's leading financial services institutions to support fiduciary counsel, most of which pertain to



their own self-interests; but they are on the wrong side of history. Once the enabling resources necessary for fiduciary counsel are democratized, the seemingly insurmountable cultural, structural and technological impediments of our supporting firms to acknowledge our fiduciary status will be readily resolved by competitive market forces. It is in the best interest of advisors, investors, consumer advocacy groups, regulators, money managers, U.S. Senators and Congressmen interested in ensuring the trust of the investing public that fiduciary counsel be clearly delineated and brought within the reach of all advisors. By our NASD member firms not acknowledging their advisors render investment advice or have fiduciary responsibility, a caveat emptor (“buyer beware”) relationship with the investor is established which precludes advisors from earning the trust of the investing public. We are at that stage in the evolution of fiduciary counsel that requires leadership, and we cannot count on the support of NASD member firms or industry trade associations with turf and self-interests to protect. **The Society of Fiduciary Advisors (“SFA”)** is being organized for advisors to answer this call for leadership when it is most needed, to fill the industry’s leadership vacuum that only the advisor can fill.

As advisors, we cannot get access to the resources necessary to declare fiduciary status soon enough, and vendors in the free marketplace would like nothing better than to create and provide those resources. Thus, the mission of the Society is:

1. **Define advice, citing case law, statute, regulatory opinion letters for the 16 taxable and tax-exempt entities (as identified by the IRS), incorporating all investment entities.** This makes it possible for fiduciary counsel to be audited back to unimpeachable sources and establishes a professional discipline and standing for the professional investment and administrative counsel advisors provide.
2. **Foster the development of the enabling resources (processes, technology and support infrastructure) necessary for all advisors to declare their fiduciary status.**

The SFA has a 12-objective initiative that will ensure the democratization of access to the resources necessary to declare fiduciary status and fulfill our fiduciary responsibilities.

To define advice, the SFA will create 16 collaborative extranet sites which will be managed by leading advisors/technical experts in each of the 16 major market segments. Each of the 16 working groups will elicit contributions by invitation from leading advisors, technical experts, technologists, vendors and authorities to formulate best practices. From best practices, process, procedure, workflow and tasks will be defined so the demanding disclosure and reporting detail associated with fiduciary counsel can be automated and inexpensively brought within the reach of all advisors.

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The collaborative extranet beta test site is up for Private Foundations and is being organized and managed by Sandra Champion of Champion Partners, an authority on foundations and endowments. Sandra is in the process of inviting collaborative technical experts and practitioners, many of whom you will recognize, to constitute the private foundation working group.

The development of the enabling resources necessary for all advisors to declare their fiduciary status requires the formulation and articulation of what specifically the advisor needs to declare fiduciary status and the cultivation of leading technologists and vendors to foster innovation. The innovation fostered by

technologists and vendors will remove most of the labor intensity of fiduciary counsel and bring it within the reach of all advisors. This important advocacy and proactive cultivation role on behalf of advisors will be fulfilled by the Society of Fiduciary Advisors. It is important to reiterate that the need for clarity is paramount, as the dominant financial services firms that support advisors do not acknowledge our fiduciary status, thus the vendors and technologists that can foster technological breakthroughs cannot look to our industry’s largest institutions for direction. The leadership must come from the industry’s leading advisors that, by design, comprise the Society of Fiduciary Advisors. Our largest NASD member firms may not be a catalyst for the development of the enabling resources necessary to declare fiduciary status, but once the enabling resources are developed and brought within the reach of all NASD supporting firms, adoption then becomes a function of competitive market forces. Of course, with the consumer being the arbiter, adoption is inevitable. Through the leadership of our industry’s leading advisors, who constitute the SFA, clarity can be brought to the marketplace and fiduciary counsel can become self-perpetuating.

There are several SFA initiatives that are essential to fostering the broad-based practice of fiduciary counsel.

- **The Fiduciary Investment Standard Initiative (FISI).** Defining professional investment and administrative counsel for the 16 major market segments incorporating all taxable and tax-exempt entities, based on statute, case law, regulatory opinion letters. Refining the granularity of best practices to process, procedure, workflow and task, through 16 collaborative extranet sites eliciting input and contributions from the industry’s leading authorities and practitioners. This fosters the development of expert systems and prudent processes that will bring fiduciary counsel within the reach of all.
- **Technological Innovation Work Group:** Establishing a parallel technology working group to FISI, which will focus on the

automation of disclosure and reporting requirements of fiduciary counsel and the development of web-based tools and resources that constitute expert systems and prudent processes that will take our fiduciary counsel far beyond the three-dimensional human capacity to reason.

- **Build a Critical Mass of Fiduciary Advisors.** Reach several hundred thousand financial advisors each month through a web newsletter, which advocates and promotes fiduciary principles and enabling resources built around best practices, and proactively seeks resolution on behalf of advisors of associated practice management and industry issues, giving fiduciary advisors a voice.
- **Advocacy for Fiduciary Principles.** Win the support of leading consumer advocacy groups, U.S. Senators, Congressmen and regulators for issues essential to fiduciary counsel and ensuring the trust of the investing public. At the top of a long list of issues is the DTCC and SEC working together to create a communications protocol that facilitates the free transferability of client-permissioned data among all custodians. This makes the continuous, comprehensive counsel implied by regulatory mandate possible and shifts the industry's focus from selling products and commission sales to managing investment and administrative values required in fiduciary counsel.
- **Democratize Advisor Access to Enabling Resources.** It is often difficult for advisors to understand in the abstract the value of processes, technology and support infrastructure on a stand-alone basis; but when it is all brought together and a context is established for how each resource or tool fits in, their value becomes clear. The Consultant's Toolbox will help advisors understand how to use enabling resources, will provide direct low cost access to best-in-class enabling resources and will serve as an advisor buying consortium.
- **Practice Management Resources and Benchmarking.** Help advisors understand

the management dynamics of building an advisory services practice around fiduciary principles at varying asset levels, entailing different configurations of staffing, technology, support infrastructures by benchmarking practices based on market focus and size.

- **Training and Education.** Provide high value added impact within advisory practices through training designed for each of the three major divisions of labor within a practice, the Chief Executive Officer, Chief Investment Officer, and the Chief Administrative Officer. The focus is on building and managing an advisory services business not product sales and promotion.

There are actually 12 SFA initiatives in all and counting, some of which are subsets of the big vision over-arching objectives we cite.

The means by which advisors assure access to the supporting resources necessary to declare fiduciary status, either directly or through their NASD supporting firm, is to unleash competitive market forces by becoming an active member and supporter of The Society of Fiduciary Advisors. Competitive market forces will align the investor's best interests with that of the advisor and the advisor's supporting firm.

Every advisor wants to do the right thing. Every client wants their advisor to act in their best interest: provide unconflicted counsel, provide total transparency and fulfill their fiduciary obligations. We are now in a regulatory environment that requires it and, by extension, demands new leadership. When called upon, will advisors respond to fill the leadership vacuum that has occurred, bringing fiduciary counsel within the reach of all? Fiduciary counsel is an ethical and professional imperative. Your active involvement and participation in The Society of Fiduciary Advisors will create a critical mass of advisors who will assure the commercial viability of the enabling resources necessary to declare fiduciary status. Essentially, it is up to us, as advisors. Can we count on you? ■

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