SOCIETY OF FIDUCIARY ADVISORS
FIDUCIARY INVESTMENT STANDARDS INITIATIVE
BEST PRACTICES FOR INDIVIDUAL INVESTORS

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INTRODUCTION

The mission of the Society of Fiduciary Advisors is to elevate the role and counsel of the financial advisor and enhance the well being of the investing public by bringing fiduciary counsel within the reach of every advisor who wishes to act in the investor's best interest. Fiduciary counsel is in the investor's best interests, is a preemptive value proposition for the financial advisor, is required by regulatory mandate and is the right thing to do professionally and ethically. Fiduciary responsibility as defined by statute, case law and regulatory opinion letters makes good business sense as it aligns the interests of the advisor with the consumer. It provides a foundation and a framework for a disciplined investment process which guides fiduciaries in making prudent investment decisions. Though the wisdom of fiduciary counsel and its associated prudent investment process are beyond question, today it is a violation of the internal compliance protocol of most NASD member firms (that support the vast majority of the industry's 658,000 licensed advisors who serve the vast majority of investors) for advisors to acknowledge their fiduciary obligations to their clients. Thus there is little or no support for fiduciary counsel within NASD member brokerage firms who predominate in serving the investing public.

In order to foster the development of large scale institutionalized support for fiduciary counsel, the Society of Fiduciary Advisors will (1) establish Generally Accepted Investment Principles by defining best practices for fiduciary counsel for individual investors and delineating how to provide fiduciary counsel through a prudent investment process, and (2) identify and democratize access to the enabling resources which will bring fiduciary counsel within the reach of every advisor who wishes to act in their clients best interests. The SFA's vision is to assure the appropriate knowledge and experience is brought to bear in every circumstance, every time, incorporating all fiduciary disciplines (trust, custody, record keeping…) not just those limited to fiduciary investment counsel.

In order to make it easier for the consumer to understand whether an advisor is acting in a sales capacity or a fiduciary capacity, effective January 31, 2006 the SEC is requiring all advisors who cannot declare they are acting in a fiduciary capacity to use a disclosure statement. The disclosure statement reads, "Your account is a brokerage account and not an advisory account. Our interest is not the same as yours. Please ask us questions to ensure you understand your rights and our obligations to you, including the extent of our obligations to disclose conflicts of interest and to act in your best interest. We are paid by you and sometimes by people who compensate us based on what you buy. Therefore, our profits, and your salesperson's compensation, may vary by product and also over time."

Effective January 31st, for the first time the consumer can easily determine whether their advisor is acting in a sales capacity, not obligated to act in the consumer's best interest or whether their advisor is acting in a fiduciary capacity, acting in the consumer's best interest. Every consumer will want their advisor to declare their fiduciary status to assure the advisor is acting in their best interest. Every advisor will want to declare fiduciary status, but there is no large-scale institutionalized support for fiduciary counsel. By defining fiduciary counsel the Society of Fiduciary Advisors makes advice scalable and by establishing the enabling resources necessary to support fiduciary counsel, the Society of Fiduciary Advisors makes large scale institutionalized support for fiduciary counsel possible. All the research of the SFA's Fiduciary Investment Standards Initiative (FISI) for Individuals is placed in the public domain for any and all who wish to support fiduciary counsel. There should be extraordinary market pressure in a post January 31st environment, for advisors and their supporting firms to acknowledge their fiduciary obligations to the consumer.

ACKNOWLEDGEMENTS

The elevation of the role and counsel of the financial advisor can only be achieved by those who are committed to the investing public's well being. Addressing and managing a broad range of investment and administrative values necessary to fulfill ones fiduciary responsibility requires the advisor to perform very specific duties. Those duties or best practices are defined in this document and will evolve with codification into Generally Accepted Investment Practices.

The Society of Fiduciary Advisors' Fiduciary Investment Standards Initiative (FISI) for Individual Investors and its predecessor working document the High Net Worth Asset/Liability Study Working Document created by the Society of Senior Consultants, has consumed thousands of man hours by our industry's most accomplished advisors and leading authorities on process and technology. This selfless devotion to elevating the professional standing of the financial advisor at great personal expense in time away from family, friends, and their own businesses speaks well of all who were involved. It is important that this invaluable contribution to our industry to be acknowledged.

We are indebted to the Society of Fiduciary Advisors who funded this research with the objective of building a strong foundation upon which the institutions and infrastructure required to advance fiduciary counsel can be built. Clark Blackman of Investec Advisory Group and an AICPA-FPS Executive Committee Board Member, Steve Kanaly Vice Chairman of Kanaly Trust and Past NAPFA Chairman, and Brent Brodeski of Savant Capital and Founder of the Zero Alpha Group have been particularly helpful in contributing to and supporting building a strong foundation upon which a new profession of fiduciary advisors will be built.

We have benefited greatly from the wise counsel and perspective of leading figures in the industry: Steve Kanaly-Past Chairman of NAPFA, Harold Evensky – past President of the CFP Standards Board, Guy Cumbie – past Chairman of the FPA, and Jim Pupillo – past President of APIC, ICIMC now IMCA, who represent the broad range of advisor constituencies that are engaged in the fee-based counsel. Our industry's top advisors: Clark Blackman—Investec, Brent Brodeski—Savant Capital, Bob Rowe – Raymond James, Dick Smith – Capital Advisory Group, Hugh Anderson – Merrill Lynch, Rich Todd – Innovest, Robby Hazzard – Brock Hazzard/Wachovia Securities, Vince Birley – Ronald Blue and Co., and David Perkins – CapTrust, were invaluable in their assessment, reasoning, and formulation of best practices.

Our industry's leading technical experts in process, technology and expert systems provided a window on how to empower the financial advisor to go far beyond their own expertise to professionally manage an incredible amount of portfolio detail that otherwise would not be humanly possible. These technical authorities are: Ron Pruitt of Placemark – tax efficiency/overlay management, Ron Surz of PPCA – performance evaluation/attribution analysis, Bob Rowe of Rowe Decision Analytics – investment policy/tactical asset allocation, Bob Padgette of Klein Decisions – custom benchmarking, Bevin Crodian of Market Street Advisors – process/technology, Amy Otteson of Prima Capital – manager search and selection, John Michel of Bull Run Financial – attribution analysis/portfolio analysis/tactical asset allocation, Joe Maxwell of Investment Score Card – account data aggregation/AIMR compliant reporting, Justin Vantil of Smartleaf—in-house decentralized sleeveless overlay management.

Special thanks to Don Trone at the Foundation for Fiduciary Studies, whose groundbreaking work in defining fiduciary responsibility and prudent practices and whose research citing case law, statute and regulatory opinion letters, leaves little room for ambiguity as to what is required of financial advisors. Special thanks to Fred Reish of Reish Luftman Reicher &Cohen, whose legal research has established the authoritative (statute, case law, regulatory opinion letters) technical underpinnings upon which we have developed best practices. Special thanks to the AICPA who has become a champion of the investing publics' best interests. Special thanks to Lou Harvey of Dalbar, for his insight in the evaluation and

measurement of client satisfaction. Special thanks to Steve Winks of the Society of Fiduciary Advisors, who organized the Fiduciary Investment Standards Initiative for Individual Investors, created the first draft of the Working Document, and edited all contributor comments into an invaluable, coherent end-product that goes beyond general practice standards to establish the practical "how to" of providing fiduciary counsel.

BACKGROUND

As investment professionals, we are acting in a capacity of trust and are charged by our clients to render continuous, comprehensive investment and administrative counsel. By extension, because we are providing counsel for the benefit of others, we have fiduciary responsibility to act in their best interest. Fiduciary responsibility and its associated liability are not determined by investment performance, but rather, by prudent practices. This requires us to manage a prudent process as defined by statute, case law and regulatory opinion letters. Thus, in managing fiduciary responsibility, it is not whether you win or lose the game (make or lose money), it is how you play the game. So, in adding value for our clients, we must not only work within a prudent process to fulfill our fiduciary obligations but we must have both skill and access to the processes and technology necessary to add value. The skill required to add value is greatly leveraged by process and technology.

The Foundation for Fiduciary Studies ("FFS") has authoritatively and definitively established 27 practice standards which are necessary to fulfill our fiduciary responsibilities based on statutes, case laws and regulatory opinion letters. This is the framework within which we add value. The 27 practice standards have been organized into a prudent process comprised of six financial services: (1) asset/liability study, (2) investment policy, (3) strategic asset allocation, (4) manager search and selection, (5) performance monitor and (6) tactical asset allocation. Each of these six financial services adds value in their own right, but when they are aggregated into a comprehensive investment process, they constitute an extraordinary level of investment and administrative counsel. This level of counsel addresses and manages the full range of investment and administrative values as required by regulatory mandate. The 27 practice standards constitute the breadth of advice. The purpose of the Society of Fiduciary Advisor's FISI for Individual Investors is to define the "how to" or the depth of professional investment and administrative counsel for the individual Investors. This, in essence, is "best practices" that establish the full range of investment considerations in the engagement of our counsel. The end product of the FISI for Individual Investors is a working document that establishes what is required of fiduciary advisors in working with individual investor clients. It is a working document as it should reflect best thinking of its time, yet must accommodate future innovations and technologies that are sure to enhance our counsel. Thus, the end product of the FISI for Individual Investors establishes a reference point from which the industry can build large-scale institutionalized support for fiduciary counsel. Without a definition for fiduciary counsel based on case law, statute, regulatory opinion letters and best practices, fiduciary counsel can mean anything an advisor wants it to mean-- is not scalable and can not be managed. Thus the benefit and importance of the FISI for Individual Investors is it elevates the role and counsel of the advisor by making advice scalable and by identifying the enabling resources necessary to support fiduciary counsel it makes large scale institutionalized support for fiduciary counsel possible.

Statutes, case laws and regulatory opinion letters, serve as the authoritative foundation which provides us guidance in defining best practices in fiduciary counsel for individual investors. In defining best practices, the consistent theme that runs throughout fiduciary responsibility as described in UPIA, ERISA, UMPERS and UMIFA, is that the advisor is to provide continuous and comprehensive counsel to their clients. Thus, in the context of "continuous and comprehensive" counsel, there is a range of investment and administrative values in each of the six financial services (asset/liability study, strategic asset allocation, investment policy, manager search and selection, performance monitor, tactical asset allocation) that advisors must address and manage in order to fulfill their fiduciary obligations. This is the breadth and depth of our counsel, which is described as "best practices" as required by prudence and

fiduciary responsibility. Yet, it is important to acknowledge that professional investment and administrative counsel is as much an art form as it is a science. The Fiduciary Investment Standards Initiative for Individual Investors describes our fiduciary obligations to our individual investor clients and the best practices implied. But skill is also required, as Ron Surz so eloquently noted, "How do we reach into a client's soul and elicit that all important risk assessment and pull out the magic that will let him sleep at night while simultaneously accomplishing his goals?" We all should be humbled by what we do not know and things that remain unknown. Nor should we be reticent to challenge what we know as it is you, the practitioner, who is shaping post-modern portfolio theory. This is a working document because as a practitioner with technological advances, you will be continually finding ways to better serve your clients in ways not possible today.

DECLARATION OF FIDUCIARY STATUS

Individuals and institutions that act on the behalf of others have regulatorily mandated fiduciary responsibilities. When it comes to investments, fiduciary legislation does not expressly require the use of professional money managers, but the investor acting on behalf of others in a fiduciary capacity is held to the same standard of care as money managers. Thus, fiduciaries often delegate portfolio management considerations to professionals who construct portfolios on the fiduciary's behalf. This places the investor/fiduciary in a supervisory role; yet many fiduciaries are not comfortable in being their own counsel in supervising money managers. As a consequence, many investor/fiduciaries engage the services of an investment management consultant, who acts as an intermediary and co-fiduciary between the investor/fiduciary and the money manager.

Individual investors are not fiduciaries because it is their money and they are investing on their own behalf. But individual investors have the same concerns as fiduciaries in being their own counsel in managing money managers. Thus, many individual investors see the wisdom in engaging the professional investment and administrative counsel of an objective investment management consultant to act as an intermediary and co-fiduciary between them and money managers. Individual investors do not have to engage the objective professional counsel of a consultant to act on their behalf. The individual investor can certainly act on their own in making investment decisions. And advisors do not have to act in a fiduciary capacity entailing accountability for investment recommendations but this requires the investor to determine investment merit on their own based on their own limited knowledge and experience. Thus, investors are increasingly becoming aware of the value of well-informed, unconflicted investment and administrative counsel of an investment management consultant who not only acts as a co-fiduciary in addressing and monitoring a broad range of investment and administrative values required by regulatory mandate and client directive, but acts as an intermediary between the investor and the money managers.

Effective January 31, 2006 advisors will have to declare they are acting in a fiduciary capacity or be required to use a disclosure statement as previously cited. To help you determine whether you are a fiduciary and to establish the structural parameters of fiduciary counsel, the following considerations should be evaluated and/or managed.

A. Definition of a Fiduciary: An advisor who manages assets for the benefit of others, exercising discretionary authority or control over those assets and acts in a professional capacity of trust in providing continuous comprehensive counsel.

B. When Are You a Fiduciary: The SEC has established if an advisor is in a position of trust and the consumer relies on the advisors counsel to make an investment decision, the advisor is held to a fiduciary standard of care. If an advisor is a financial planner or represents they offer financial planning services, the advisor is held to a fiduciary standard of care. If an advisor offers fee-based advisory services and/or offers fee-based advisory services programs, they are held to a fiduciary standard of care, regardless of whether those advisory programs were intended to be proxies for

fiduciary counsel or not. Essentially if you have a trust relationship with your clients, or if you act as a financial planner or investment management consultant in providing advisory services you are held to a fiduciary standard of care.

C. What Is The Prudent Investment Process: When you review statutes, case law and regulatory opinion letters on what is required of a fiduciary advisor, there is an implied prudent investment process that has evolved over decades which provides the discipline that makes it possible for advisors to consistently make prudent investment decisions. The six financial service investment process is comprised of (1) the asset/liability study (2) the investment policy statement, (3) strategic asset allocation, (4) manager search and selection, (5) performance monitor, (6) tactical asset allocation. Each of these six financial services adds value in its own right, but when aggregated they constitute an extraordinary level of investment and administrative counsel capable of being held to a fiduciary standard of care.

D. What Are The Uniform Fiduciary Standards Of Care: The seven uniform fiduciary standards of care are the legislated standards of care that guide us on each of the six financial services that comprise the prudent investment process. In each of the six financial services that constitute the prudent investment process a uniform standard of care must be exercised. We must (1) know standards, laws and trust provisions, (2) diversify assets to specific risk/return profile of the client, (3) prepare an investment policy statement, (4) use "prudent experts" (money managers) and document due diligence, (5) control and account for investment expenses, (6) monitor the activities of "prudent experts" and (7) avoid conflicts of interest and prohibited transactions.

E. Managing Conflicts of Interest: If you are in a position of trust and are acting in your client's best interests you should not be able to profit from that position of trust other than being fairly compensated for the services you provide. Conflicts of interest arise when you or the firm supporting you profits from your relationship of trust in ways not disclosed to the client or the advisor and/or their supporting firm put their best interests before the clients best interests. Transparency and disclosure do not eliminate a conflict of interest but are a means to ameliorate any adverse client implications by disclosure. On June 1, 2005 the SEC and DOL issued an advisory letter for plan sponsors that established ten questions advisors should answer before their services are engaged, which have universal application for all investors and all advisors. These questions are intended to bring clarity on the role and counsel the advisor provides and to mitigate potential conflicts of interest before the advisor's services are engaged. In your declaration of fiduciary status, you need to be prepared to respond to the following ten questions.

1. Are you registered with the SEC or a state securities regulator as an investment advisor? If so have you provided all disclosures required under those laws, including Part II of Form ADV? Your answer should be yes.

2. Do you or a related company (your broker/dealer) have relationships with money managers that you recommend, consider for recommendation, or otherwise mention for consideration? If so describe those relationships. This may be out of your control, hopefully your firm does not have proprietary product and/or you choose not to use proprietary product unless fully disclosed and with your client's informed permission.

3. Do you or a related firm (your broker/dealer) receive any payment from money managers you recommend, consider for recommendation, or otherwise mention for consideration? This too is beyond your control. The payment for shelf space, the limiting of shelf space to maximize broker/dealer compensation, the conducting of sales contest, higher advisor compensation for proprietary product—all have been the subject of significant fines even though they are standard industry practices. Hopefully, if you are a broker, your firm has dispensed with these practices and/or you choose not to avail yourself to sales incentives.

4. Do you have any policies or procedures to address conflicts of interest or to prevent these payments or relationships from being considered when you provide advice to your clients? This too may be beyond your control. Here you should respond:

    a. We do not manage money; we manage managers.

    b. We do not accept revenue from money managers.

    c. We do not provide brokerage services; we just use brokerage services.

    d. We have no alliances or external affiliations that would obscure transparency.

    e. We do not provide services of any kind to money managers.

    f. We do not offer actuarial services.

    g. We do not offer or accept referral fees.

    h. We do not split fees in any way.

    i. We do not accept finder's fees for placing managers.

    j. We do not charge managers for inclusion in our data-bases.

    k. We do not accept or pay any soft dollars.

    l. Our client conferences are not subsidized by investment managers.

5. If you allow consumers to pay your consulting fees using brokerage commissions, do you monitor the amount of commissions paid and alert the consumer when consulting fees have been paid in full? If not, how can the consumer make sure they have not overpaid for consulting services? This too may be beyond your control. Hopefully your supporting firm has the technology to track soft dollar compensation.

6. If you allow the consumer to pay your consulting fees using brokerage commissions, what steps do you take to ensure that the plan receives best execution for its securities trades? Hopefully you don't use soft dollar compensation. If you do you are at the mercy of your supporting firm's trading desk, which is a profit center, not a cost center.

7. Do you have any arrangements with broker/dealers under which you or a related company will benefit if money managers place trades for their clients with such broker/dealers? Your response should be no, yet it is common industry practice for the advisory services programs to have program managers trade through the trading desk of the firm sponsoring the advisory services program. Though this is beyond your control, you need to track, document and report that your firm is providing best execution.

8. If hired will you acknowledge in writing that you have a fiduciary obligation as an investment advisor to the consumer? This may be beyond the internal compliance protocol of your firm to acknowledge your fiduciary status.

9. Do you consider yourself a fiduciary under UPIA with respect to recommendations provided to the consumer? The answer should be yes, but again, because it is beyond the internal compliance protocol of your supporting firm, this may be beyond your control.

10. What percentage of your clients utilizes money managers, brokerage services or other service providers from whom you receive fees? The answer should be none. This too may be beyond your control, as if you are an employee of a brokerage firm, your firm views trade execution as a profit center rather than a cost center which should be disclosed and is in conflict with your clients best interests. If you are acting on behalf of your client you are charged with minimizing the cost of trade execution and custody services which you have negotiated on your clients behalf. Volume weighted average daily pricing (V-WAP) is considered best execution and electronic trades at 1.7 cents per share is considered a very attractive cost for trade execution, both can be obtained from Electronic Crossing Networks but leave little or no margin for most retail trading desks. Transparency in the documentation of best trade execution is very telling in whether an advisor has fulfilled their fiduciary responsibility. Charles Schwab, an electronic crossing network (ECN), has created a very large business serving fee-based advisors who have relinquished their brokerage licenses and treat trade execution as a cost center in order to act in their clients best interests and fulfill their fiduciary obligations.

In managing conflicts of interest, the structural impediments to fiduciary counsel become clear. The advisor and the institutions that support us must find a way to minimize unnecessary conflicts to achieve total transparency in support of fiduciary counsel. Only in doing so can the advisor act in their client's best interests.

For those financial advisors who wish to engage their counsel for a fee and fulfill their fiduciary obligations to their clients, the following delineation of best practices describes the "prudent practices" required, based on statue, case law, regulatory opinion letters. This working document will be continuously updated to reflect best practices as they evolve, stimulated by the best thinking of leading practitioners, technological innovation and the enhanced role of the financial advisor. Please note the sections and subsection references noted in the first column under "Practice Standards" in this document, directly correlate with the Foundation for Fiduciary Studies documentation, citing case law, statute, and regulatory opinion letters.

Practice Standards	Best Practices
FFS [TRONE] §1.1. Investments are managed in accordance with the applicable laws, trust documents and written policy statements. **Substantiating Code, Regulations, and Case Law for Practice No. 1.1:** **Employee Retirement Income Security Act of 1974 [ERISA]** §3(38)(C); §104(b)(4); §402(a)(1); §402(b)(1); §402(b)(2); §403(a); §404(a)(1)(D); §404(b)(2) ***Regulations*** 29 C.F.R. §2509.75-5 FR-4; 29 C.F.R. Interpretive Bulletin 75-5; 29 C.F.R. §2509.94-2(2); 29 C.F.R. Interpretive Bulletin 94-2 (July 29, 1994) ***Case Law*** *Morse v. New York State Teamsters Conference Pension and Retirement Fund*, 580 F. Supp. 180 (W.D.N.Y. 1983), aff'd, 761 F.2d 115 (2d Cir. 1985); *Winpisinger v. Aurora Corp.*	a. Review and analyze all documents [PRUITT] pertaining to the client's assets and liabilities. b. Develop and/or review [EVENSKY] the Investment Policy Statement and update accordingly [ROWE] written minutes and/or files from previous meetings. c. Review [EVENSKY] Trust documents i. Do trust documents identify trustees and named fiduciaries? ii. Do trust documents, statutes and/or client instructions restrict or prohibit certain asset classes, as desired by client and reflected in the IPS? [ROWE] iii. Do trust documents allow for the fiduciaries to prudently delegate investment decisions to others? d. Service Agreements (any service vendor) i. Service Agreements must be dated {Brodeski] and in writing. [ROWE] ii. Do service agreements conflict with the fiduciary standards of care? iii. Service Agreements must be cost/benefit efficient [EVENSKY] iv. All Service Agreements should be dated, reviewed and revised annually, at minimum. [ROWE] v. RIAs must offer an ADV no less than once per year {Brodeski]. vi. RFPs for all service providers should be issued every three years at the minimum. Updates in services, pricing and offerings should be actively monitored. On going due-diligence of vendors, documenting conclusions, will suffice in the interim unless changes are required {Brodeski].
of Illinois, 456 F. Supp. 559 (N.D. Ohio 1978); *Liss V. Smith*, 991 F. Supp. 278, 1998 (S.D.N.Y. 1998); *Dardaganis v. Grace Capital, Inc.*, 664 F. Supp. 105 (S.D.N.Y. 1987), aff'd, 889 F.2d 1237 (2d Cir. 1989)	e. Information on Retained Money Managers i. Obtain ADV for separate account managers ii. Obtain prospecti, independent research reports, annual reports and statements of information [BIRLEY] for mutual funds

Practice Standards	Best Practices
Other Interpretive Bulletin 75-5, 29 C.F.R. §2509.75.5; Interpretive Bulletin 94-2, 29 C.F.R. §2509.94-2 **Uniform Prudent Investor Act [UPIA]**	f. Investment Performance Reports from i. Money managers. Depending upon the investment approach, aggregate portfolio performance may be more relevant than performance of underlying managers in the case of index funds or ETFs being used as a benchmark {Brodeski]. ii. Custodians. Influence important parameters in reporting. {Brodeski] iii. Consultants acting as an objective third party intermediary between the investor and the money manager. iv. Other intermediaries: Advisors like banks, trust companies, portfolio managers (PMers) and RIAs may have discretion and act both as consultants and investment managers, using a limited power of attorney {Brodeski].
§2(a) – (d); §4 **Management of Public Employee Retirement Systems Act [MPERS]** §4(a) – (d); §7(6); §8(b)	g. Tax Status/Sensitivity: [EVENSKY] i. State and federal income and capital gains tax exposure and rates must be determined. ii. An assessment of AMT susceptibility must be made. iii. All of a client's holdings must be monitored to manage wash sales and sales to related entities. [PRUITT] iv. Optimal asset allocation must be determined {Brodeski]. v. Loss harvesting opportunities should be capitalized upon {Brodeski]. vi. Discern how cash flow management may affect tax-efficiency {Brodeski]. h. Estate and Philanthropic Objectives [ROWE] i. Review mission statement ii. Review client goals and objectives [EVENSKY] iii. Review spending policy and formulas [ROWE] iv. Discern planned expenditures that deviate from the "typical" rate and for tax purposes determine which of these atypical expenditures are for philanthropic purposes so that an optimal tax solution can be achieved while making charitable contributions. {PRUITT] v. Establish whether the client has an understanding of the logic

Practice Standards	Best Practices
	behind the structure of their assets. {ANDERSON] vi. Utilize appropriate structures to optimize timing of charitable contributions into high tax years (i.e. using Donor Advised Funds of Foundations) {Brodeski]. i. Establish the client's liquidity requirements. {Blackman] j. Monitor insider-trading activities for corporate insiders. {Blackman]
FFS [TRONE] §1.2. Clients {Blackmam] are aware of their duties and responsibilities: Client Education **Substantiating Code, Regulations, and Case Law for Practice 1.2:** **ERISA** §404(a)(1)(B) ***Case Law*** *Marshall v. Glass/Metal Association and Glaziers and Glassworks Pension Plan*, 507 F. Supp. 378 2 E.B.C. 1006 (D.Hawaii 1980); Katsaros v. Cody, 744 F.2d 270, 5 E.B.C. 1777 (2d Cir. 1984),	a. Individual investors understand they are responsible for determining investment goals and objectives with advisor guidance and coaching {Brodeski]. b. Individual investors understand they are responsible for approval of [EVENSKY] an appropriate asset allocation strategy. c. Individual investors understand they should approve an explicit written Investment Policy Statement that is consistent with their goals and objectives. d. Individual investors understand they should approve appropriate money managers or other prudent experts to implement their investment policy. Individual investors should understand whether their financial advisors are acting in a fiduciary capacity, acknowledging their fiduciary responsibility and providing expert counsel or whether the client is required to exercise their own judgment and counsel. The investor's understanding of the difference between an advisor making an informed investment recommendation as a fiduciary and an advisor advancing an investment alternative for the client's consideration where the consumer must determine investment merit on their own, is essential to the consumer's well being.

Practice Standards	Best Practices
cert. denied, Cody v. Donovan, 469 U.S. 1072, 105 S. Ct. 565, 83 L.Ed. 2D 506 (1984); *Marshall v. Snyder*, 1 E.B.C. 1878 (E.D.N.Y. 1979); *Donovan v. Mazzola*, 716 F.2d 1226, 4 E.B.C. 1865 (9th Cir. 1983), *cert. denied*, 464 U.S. 1040, 104 S. Ct. 704, L.Ed.2d 169 (1984); *Fink v. National Savings and Trust Company*, 772 F.2d 951, 6 E.B.C. 2269 (D.C. Cir. 1985) ***Other*** Joint Committee on Taxation, *Overview of the Enforcement and Administration of the Employee Retirement and Income Security Act of 1974* (JCX-16-90, June 6, 1990) **UPIA** §1(a); §2(a); §2(d) **MPERS** §7 ***Case Law*** *National Labor Relations Board v. Amax Coal Co.*, 453 U.S. 322, 101 S. Ct. 2789, 69 L.Ed. 2d 672 (1981)	e. Individual investors understand they should monitor the activities of the overall investment program for compliance with investment policy. Monitoring should incorporate the [EVENSKY] performance measurement objectives and benchmarks that will be used to evaluate money managers at the time of hiring the manager [ROWE] if investment discretion has been delegated to an investment advisor. f. Individual investors understand an objective process and criteria should be used in selecting and removing money managers and other service vendors. g. Individual investors understand they must avoid transactions prohibited by investment policy and/or by regulatory mandate. h. Individual investors understand that they can't abdicate their responsibility in engaging prudent expert counsel. [ANDERSON]
FFS [TRONE] §1.3. The client must determine that advisors acting in a fiduciary capacity and "parties of interest" are, by law and statute [ROWE] not involved in self-dealing. **Substantiating Code, Regulations, and Case Law for Practice 1.3** **Internal Revenue Code of 1986,**	a. Full [EVENSKY] disclosure of all investment expenses and reimbursements. [ROWE]. These expenses must be elevated out of the depths of prospecti and offering memoranda and clearly articulated for client review. [ANDERSON] b. Full disclosure of all forms and amounts {Blackman] of compensation and revenues received and paid [ROWE] from all sources. c. Full disclosure of all soft dollar services obtained and/or defrayment of expenses (reimbursement for due diligence trips, etc.) paid by directed commissions.

Practice Standards	Best Practices
as amended [IRC] §4975 **ERISA** §3(14)(A) and (B); §404(a)(1)(A); §406(a) and (b) ***Case Law*** *Whitfield v. Tomasso*, 682 F. Supp. 1287, 9 E.B.C. 2438 (E.D.N.Y. 1988) ***Other*** DOL Advisory Council on Employee Welfare and Benefit Plans Report of the Working Group on Soft Dollars and Commission Recapture November 13, 1997 **UPIA** §2; §5 **MPERS** §7(1) and (2); §17(c)(12) and (13) **Other** *Forbes* "Pay for Play," Sept 4, 2000; Plan Sponsor "*Fiduciary Fundamentals,*" May 5, 2000, p. 25; *Fortune* "The Seamy Side of Pension Funds," Aug 12, 2002	d. Full disclosure of the fiduciary's services funded by money managers, such as 12(b)1 and Sub-TA {Blackman] fees. e. Full disclosure of outsourced fiduciary responsibilities {Blackman], such as proxy voting.]PRUITT] f. Written {Blackman] acknowledgement of [EVENSKY] fiduciary status and: i. Full disclosure of all commissions incurred relative to volume weighted average daily pricing (VWAP). This assures best execution (price and cost) and avoids conflicts of interest assumed by advisor's required to use their firm's trading desk. ii. If proprietary investment options are used, they are only used when the best and most comparable investment options reasonably [ROWE] available are documented and provided to the client for consideration as part of the investment recommendation. [EVENSKY]
FFS [TRONE] §1.4. Service agreements and contracts are in writing and do not contain provisions that conflict with fiduciary standards of care. **Substantiating Code, Regulations, and Case Law for**	a. Avoid conflicts of interest and prohibited transactions. b. Contracts should acknowledge fiduciary responsibility. {Blackman] c. Contracts that disclaim fiduciary responsibility should clarify on what basis

Practice Standards	Best Practices
Practice 1.4: **ERISA** §3(14)(B) and (38)(C); §3(38)(C); §402(c)(2); §403(a)(2); §404(a)(1); §408(b)(2) ***Case Law*** *Liss v. Smith*, 991 F. Supp. 278 (S.D.N.Y. 1998); *Whitfield v. Tomasso*, 682 F. Supp. 1287, 9 E.B.C. 2438 (E.D.N.Y. 1988) ***Other*** Interpretive Bulletin 94-2, 29 C.F.R. §2509.94-2. **UPIA** §2(a); §5; §7; §9(a)(2) **MPERS** §5(a)(2); §6(b)(2); §7	such disclaimer is made. {Blackman] d. Self dealing and the personal enrichment of the advisor or the advisors affiliate without the expressed disclosure and consent of the investor is prohibited. {Blackman]
FFS [TRONE] §1.5. There is documentation to show timing and distribution of cash flows and payments of liabilities. **Substantiating Code, Regulations, and Case Law for Practice 1.5:** **ERISA** §402(b)(1); §404(a) ***Regulations*** 29 C.F.R. §2550.404a-1(b)(2)	a. Where appropriate (retirement, corporate/business finance, etc.){Blackman] prepare a schedule of the portfolio's anticipated cash flows for the coming 5-year period so the investment time horizons [EVENSKY] can be determined. Establish funding statement spending policy formula. [ROWE] Time horizon is that point in time where consistently {Blackman] more money is flowing out of the portfolio than is coming in from contributions and growth. • If the time horizon is less than five years, it is considered short-term, and a portion, if not all, of the portfolio should be implemented with fixed income and cash as appropriate for each investor's circumstance. • If the time horizon is five years or more, it is considered long-term and can be implemented across most asset classes. b. If the client has a material anticipated extraordinary disbursement within five years, the amount needed should be held in cash or short-term fixed income instruments unless otherwise instructed by the client. In certain cases a broadly diversified fixed income portfolio may include maturities beyond short-term may be appropriate.

Practice Standards	Best Practices
Other Interpretive Bulletin 94-2, 29 C.F.R. §2509.94-2; H.R. Report No. 93-1280, 93d Congress, 2d Session (1974) **UPIA** §1 Comments; §2 Comments; §2(a); §2(b); §2(c) ***Case Law*** *Harvard College v. Amory*, 26 Mass. (9 Pick.) 446 (1830) **MPERS** §7(1) and (2); §8(a)(1)(E)	
FFS [TRONE] §1.6. Assets are within the jurisdiction of the U.S. courts and are protected from theft and embezzlement. **Substantiating Code, Regulations, and Case Law for Practice 1.6:** **ERISA** §404(b); §412(a) ***Regulations*** 29 C.F.R. §2550.404b-1 ***Case Law*** *Varity Corporation v. Howe*, 516 U.S. 489, 116 S. Ct. 1065, 134 L.Ed.2d 130 (1996) ***Other*** H.R. Report No. 93-1280 (93rd Congress, 2d Session, August 12, 1974) **UPIA** §2(a); §5; §9(d) **MPERS**	Offshore accounts for US citizens or residents {Blackman] may be utilized [EVENSKY] as long as their use is [EVENSKY] within the strict federal reporting and tracking requirements of foreign bank accounts and offshore assets. [Patriot Act of 2001] [ROWE]. Non-resident foreign nationals are not impacted. {Blachman]

Practice Standards	Best Practices
§2(21); §6(e); §7; §11(c) and Comments	
FFS [TRONE] §2.1. A level of risk has been identified. **Substantiating Code, Regulations, and Case Law for Practice 2.1:** **ERISA** §404(a)(1)(B) ***Regulations*** 29 C.F.R. §2550.404a-1(b)(1)(A); 29 C.F.R. §2550.404a-1(b)(2)(B)(i-iii) ***Case Law*** *Laborers National Pension Fund v. Northern Trust Quantitative Advisors, Inc.* 173 F.3d 313, 23 E.B.C. 1001 (5th Cir.), *reh'g and reh'g en banc denied*, 184 F3d 820 (5th Cir.), *cert. denied*, 528 U.S. 967, 120 S. Ct. 406, 145 E.Ed.2d 316 (1999); *Chase v. Pevear*, 383 Mass. 350, 419 N.E.2d 1358 (1981) **UPIA** §2(b) and (c); §2 Comments	a. Unsystematic Risk [EVENSKY] i. Business [EVENSKY] ii. Financial [EVENSKY] b. Market Risk: statistical measures [EVENSKY]. i. Standard deviation ii. Sortino ratio iii. Beta {Blackman] iv. Sharpe Ratio {Blackman] v. Tracking Error {Blackman] vi. Traynor Ratio {Blackman] Standard Deviation vs Sortino Ratio: Is this widely used at this point? Sortino uses downside risk whereas Sharpe Ratio uses standard deviation. They are equivalent if risk is not skewed but different if they are. Are clients generally comfortable with this concept. In many cases, risk is not quantified using standard deviation (at least the way it is communicated to the client). The risk is described with a statement that describes how you assessed the clients overall risk taking behavior. Most clients can't relate to a standard deviation number. [PRUITT] c. Psychographic tools should also be employed (behavioral finance). [ANDERSON] d. Qualitative and Relative Measures of Risk [ROWE] i. Maximum loss ii. Peak-trough recovery time iii. Monte Carlo Simulation

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MPERS §8(b); §8 Comments	e. Opportunity Risk: [EVENSKY] i. Liquidity risk: [EVENSKY] ii. Interest Rate Risk [EVENSKY] iii. Reinvestment Risk [EVENSKY] iv. Inflation (Purchasing Power) Risk [EVENSKY] v. Implementation Risk: Rebalance strategies to be used. [ROWE] vi. Market Risk: {Blackman] f. Modeling and historical back-testing to demonstrate potential risk levels {Brodeski].
FFS [TRONE] §2.2. An expected, model return to meet investment objectives has been determined, based on current and historical performance information. **Substantiating Code, Regulations, and Case Law for Practice 2.2:** **ERISA** §404(a)(1)(A) and (B) ***Regulations*** 29 C.F.R. §2550.404a-1(b)(1)(A); 29 C.F.R. §2550.404a-1(b)(2)(A) ***Case Law*** *Federal Power Commission v. Hope Natural Gas Company*, 320 U.S. 591, 64 S.Ct. 281, 88 L.Ed. 333 (1944); *Communications Satellite Corporation v. Federal Communications Commission*, 611 F.2d 883 (D.C. Cir. 1977); *Tennessee Gas Pipeline Company v.*	Assumptions made for modeling purposes should be explicitly stated. "Guaranteed" forecasting is not required. [EVENSKY] a. Assumptions made for modeling purposes should be explicitly stated, the fiduciary is not required to forecast future returns. [EVENSKY] i. Assumptions for cash flow, appreciation and total return [ROWE] ii. Range of Outcomes: Best, Worst, Most Probable. iii. Capital Markets Expectations: Risk and Return Inputs. b. Many investment professionals use the "risk premium" model, requiring the calculation of the premium that each asset class has earned over the risk free rate of return. The risk premium is then measured based on possible economic scenarios that may impact each asset class over the next five years. This observation may not be necessary or appropriate as most individuals are using an asset allocation process and forecasted long-term risk and return as inputs to that process. While this is a form of risk premium/economic scenario approach, it may make sense to describe this as most individuals refer to this as investment advice. [PRUITT] / [EVENSKY]

Practice Standards	Best Practices
Federal Energy Commission, 926 F.2d 1206 (D.C. Cir. 1991) **UPIA** §2(b); §2(c)(1-8) **MPERS** §8(a)(1)(A-F); §8(b)	
FFS [TRONE] §2.3. An investment time horizon has been identified. **Substantiating Code, Regulations, and Case Law for Practice 2.3:** **ERISA** §404(a)(1)(B) ***Regulations*** 29 C.F.R. §2550.404a-1(b)(1)(A); 29 C.F.R. §2550.404a-1(b)(2)(A) ***Case Law*** *Metzler v. Graham*, 112 F.3d 207, 20 E.B.C. 2857 (5th Cir. 1997) ***Other*** Interpretive Bulletin 96-1, 29 C.F.R. §2509.96-1; H.R. Report No. 1280, 93d Congress, 2d Session (1974) **UPIA** §2(a); §2(b) **MPERS** §8; §10(b)	a. The individual investor will determine their investment time horizon, which is the point in time in which materially more money is needed from the portfolio {Blackman] than is coming from investment contributions and/or capital appreciation. [ANDERSON] An investment time horizon of less than five years is generally considered short-term and calls for more of an allocation of the portfolio assets to fixed income and case unless otherwise directed by the client. Investment time horizon does not necessarily presume to correlate with the investors future liabilities, implying the investor's assets either out last their life time or are fully expended with in their life time. Thus, investment time horizon for most individuals is the remainder of their life, without consideration of investment draw down. {Brodeski]. b. The client must manage the hierarchy of investment decisions consistent [EVENSKY] with the determination of an investment time horizon. What is the time horizon of the investment strategy? ❑ What asset classes will be considered? • What will be the asset class mix? • What sub asset classes are considered? • What managers will be engaged?
FFS [TRONE] §2.4. Ascertain whether selected asset classes are consistent with the identified risk, return and time	The client must choose the appropriate configuration of asset classes that optimizes the risk and return objectives identified so they are consistent with the portfolio's time horizon. It must be determined whether investment goals and objectives can be reasonably obtained with the allocation.

Practice Standards	Best Practices
horizon. **Substantiating Code, Regulations, and Case Law for Practice 2.4:** **ERISA** §404(a)(1)(B) ***Regulations*** 29 C.F.R. §2550.404a-1; C.F.R. §2550.404a-1(b)(1)(A); 29 C.F.R. §2550.404a-1(b)(2)(B)(i-iii) ***Case Law*** *GIW Industries, Inc. v. Trevor, Steward, Burton & Jacobsen, Inc.***,** 895 F.2d 729 (11th Cir. 1990); *Leigh v. Engle*, 858 F.2d 361 (7th Cir. 1988) ***Other*** Interpretive Bulletin 96-1, 29 C.F.R. §2509.96-1 **UPIA** §2(b) **MPERS** §8(b)	Document the capital markets assumptions used and correlative relationships assumed. {Blackman].

Practice Standards	Best Practices
FFS [TRONE] §2.5. Ascertain whether the number of asset classes is consistent with the portfolio size. **Substantiating Code, Regulations, and Case Law for Practice 2.5:** **ERISA** §404(a)(1)(C) ***Other*** H.R. Report No. 1280, 93rd Congress, 2d Sess. 304, reprinted in 1974 U.S. Code Cong. & Admin. News 5038 (1974) **UPIA** §2(b) ***Other*** Restatement of Trusts 3d: Prudent Investor Rule §227, comment **MPERS** §8(a)(1); §8(a)(4); §10(2)	The appropriate number of asset classes is determined by facts and circumstances of each investor, including: [ROWE] i. The nature (e.g., taxable/tax exempt), number and size of the investor's portfolios. [EVENSKY] ii. Investor and/or portfolio constraints (e.g., behavioral, restricted stock, 401K investment choices). [EVENSKY]. iii. Taxes (e.g., low basis stock). [EVENSKY] iv. The skill and expertise and desires [ROWE] of decision-makers. v. Cost efficiency and operational constraints. [EVENSKY] vi. The investment vehicles available (hedge funds, private equities, managed accounts, model portfolios, index funds, ETFs) {Brodeski].

Practice Standards	Best Practices
FFS [TRONE] §3.1. There is a written Investment Policy Statement (IPS) that has sufficient detail for a third party to implement investment strategy. **Substantiating Code, Regulations, and Case Law for Practice 3.1:** **ERISA** ***Other*** Interpretive Bulletin 94-2, 29 C.F.R. §2509.94-2 **UPIA** §2(b); §4 ***Other*** Restatement of Trusts 3d: Prudent Investor Rule §227(a) **MPERS** §8(b)	a. The written IPS should: [EVENSKY] i. Avoid internal conflicts [EVENSKY] and avert arbitrary and ill-advised, emotional decision [ROWE]. ii. Provide clear and unambiguous expectations and investment monitoring and compliance guidelines. [EVENSKY] b. All assets including tax exempt, closely held or restricted assets are modeled into the overall investment strategy [EVENSKY, ROWE] as clients allow. {Blackman]. c. The IPS is the blueprint for portfolio construction and serves as a business plan in the on-going management of the investment portfolio [ROWE]. Thus, the IPS should be reviewed at least annually to determine whether there have been any material changes to the client's circumstances, goals and objectives, and return considerations. d. The IPS codifies, and optimally automates, investment guidelines such as restricted securities, social criteria, tax budget, turnover, min/max concentrations (sector, cap size, style) and expense sensitivity (min trade size)

Practice Standards	Best Practices
FFS [TRONE] §3.2. The Investment Policy Statement defines the duties and responsibilities of all parties involved. **Substantiating Code, Regulations, and Case Law for Practice 3.2:** **ERISA** §3(38)(c); §402(a)(1); §402(b)(2) and (3); §403(a)(2); §405(c)(1) **UPIA** §9(a)(1) and (2) ***Other*** Restatement of Trusts 3d: Prudent Investor Rule §171 (1992) **MPERS** §6(a) and (b); §8(b)	a. To ensure continuity of investment strategy and prevent omission of critical fiduciary functions, the duties and responsibilities of each party involved in the prudent investment process should be detailed in writing and signed off on [ROWE] to include: b. The role of the investor. c. The role of the advisor/consultant [PRUITT] d. The role of the custodian. e. The role of the managers. [EVENSKY] i. Guidelines for the investment mandate for which the manager has been engaged to manage. ii. Responsibility to seek best execution. iii. Responsibility to account for soft dollars. iv. Responsibility to vote all proxies. f. The role of outside technical counsel i. Attorneys-specialized counsel/legal opinion not necessary ii. Accountants-coordination of tax reporting iii. Other technical/expert counsel
FFS [TRONE] §3.3. The Investment Policy Statement defines diversification, asset allocation and rebalancing of guidelines. **Substantiating Code, Regulations, and Case Law for Practice 3.3:** **ERISA** §404(a)(1)(C) ***Regulations*** 29 C.F.R. §2550.404a-1(b)(2)(i) ***Case Law*** *Leigh v. Engle*, 858 F.2d 361,	a. The strategic asset allocation outlined in the IPS should be that specific mix of asset classes that meet the mutually agreed upon risk/return profile of the investor after considering the following variables: i. Tax status of portfolios. [EVENSKY]. ii. Risk exposure that the investor is willing to take. iii. Expected nominal return. [EVENSKY] iv. Asset class preferences and constraints [EVENSKY] of the investor. v. Time horizon constraints. [EVENSKY] b. The IPS must be monitored and managed to reflect changing markets and investment choices.

Practice Standards	Best Practices
10 E.B.C. 1041 (7th Cir. 1988), *cert. denied,* 489 U.S. 1078, 109 S.Ct. 1528, 103 L.Ed.2d 833 (1989) ***Other*** H.R. Report No. 1280, 93rd Cong. 2d Sess. 304, reprinted in 1974 U.S. Code Cong. & Admin. News 5038 (1974) **UPIA** §2; §3 and Comments **MPERS** §8 and Comments	c. Identification of explicitly omitted asset classes and/or strategies (e.g., options, leverage) [EVENSKY] should be stated [ROWE] in IPS. d. Rebalancing criteria should be stated in the IPS providing clear and unambiguous calendar and/or contingent criteria including tax consequences and rebalancing cost [PRUITT, ROWE] for all designated IPS styles and classes. e. The goal of rebalancing is to achieve the appropriate balance between risk and return inherent in diversification. Once diversification is achieved, diversification requires constant rebalancing [EVENSKY]. But rebalancing can not be so highly structured that it leads to tax inefficiency and cost prohibitive under-performing trades [ROWE]. Thus, setting an appropriate rebalancing limit is somewhat subjective. f. For tax managed portfolios, the goal of rebalancing is to automate tax management, dispersion monitoring relative to the blended asset allocation, expense sensitivity (churn aversion), and adherence to all binding constraints and investment guidelines codified in the IPS. [VAN TILL]
FFS [TRONE] §3.4. The Investment Policy Statement defines due diligence criteria for selecting investment options. **Substantiating Code, Regulations, and Case Law for Practice 3.4:** **ERISA** §402(c)(3); §404(a)(1)(B) ***Regulations*** 29 C.F.R. §2550.404a-1(b)(1)(A); 29 C.F.R. §2550.404a-1(b)(2) ***Case Law*** *In re Unisys Savings Plan Litigation*, 74 F.3d 420, 19 E.B.C. 2393 (3rd Cir.), *cert. denied,* 510 U.S. 810, 117 S.Ct. 56, 136 L.Ed2d 19 (1996) ***Other*** Interpretive Bulletin 94-2, 29 C.F.R. §2509.94-2 **UPIA**	The IPS provides clear and unambiguous description of qualities, characteristics and merits as criteria in the selection of money managers and the weight each of these considerations plays in the money manager selection process. [EVENSKY]

Practice Standards	Best Practices
§2(a); §4 **MPERS** §8(b); §8(a)	
FFS [TRONE] §3.5. The Investment Policy Statement defines monitoring criteria for investment options and service vendors. **Substantiating Code, Regulations, and Case Law for Practice 3.5:** **ERISA** §404(a) ***Case Law*** *Morrissey v. Curran*, 567 F.2d 546, 1 E.B.C. 1659 (2nd Cir. 1977); *Harley v. Minnesota Mining and Manufacturing Company*, 42 F. Supp.2d 898 (D.Minn. 1999), *aff'd*, 284 F.3d 901 (8th Cir. 2002); *Whitfield v. Cohen*, 682 F. Supp. 188 9 E.B.C. 1739 (S.D.N.Y. 1988); *Liss V. Smith*, 991 F. Supp. 278 (S.D.N.Y. 1988) ***Other*** Interpretive Bulletin 75-8, 29 C.F.R. §2509.75-8; Interpretive Bulletin 94-2, 29 C.F.R. §2509.94-2(2); Interpretive Bulletin 96-1, 29 C.F.R., §2509.96-1(e) **UPIA** §9(a)(1), (2) and (3) **MPERS** §6(b)(2) and (3); §8(b)	a. Establish clear and unambiguous criteria by which the services of managers are [EVENSKY] terminated. b. Establish clear and unambiguous criteria for appropriately frequent monitoring of managers. [EVENSKY] The custodial statement is insufficient to determine if best execution was achieved. Best execution is achieved when the manager gets the best price available {Blackman] at the time they decide to trade and given the legal structure that dictates how the trades are executed {Blackman]. The only way this could be verified would be looking at Level 2 data at the time of trading. [PRUITT] c. Establish clear and unambiguous criteria for written manager reviews to occur at least quarterly (or more frequently with real-time information) to include issues such as: i. Risk/return performance relative to appropriate benchmarks [EVENSKY] ii. Tax efficiency [EVENSKY, PRUITT] iii. Expense management [EVENSKY] iv. Management personnel [EVENSKY] v. Tracking error for index, ETF and passive asset class funds {Brodeski]. vi. Fiduciary rating of managers {Brodeski]. vii. Integrity of investment discipline {Brodeski].
FFS [TRONE] §3.6. The Investment Policy Statement defines procedures for controlling	The client should examine related issues including: [EVENSKY] i. Money manager fees and annual mutual fund expenses compared

Practice Standards	Best Practices
and account for investment expenses. **ERISA** §404(a)(1)(A)(i and ii); §406(a)(1)(C); §408(b)(2) ***Case Law*** *Liss v. Smith*, 991 F. Supp. 278 (S.D.N.Y. 1998(***Other*** Interpretive Bulletin 94-2, 29 C. F. R. §2509.94-2 **UPIA** §2 Comments; §2(a); §7 ***Other*** OCC Interpretive Letter No. 722 (March 12, 1996), citing the Restatement of Trusts 3d: Prudent Investor Rule §227, comment m at 58 (1992) **MPERS** §7(2), (3) and (5); §7(5) and Comments; §8(b) and Comments	[ROWE] ii. Trade execution expenses. iii. Custodial charges, including custodial fees, transaction charges and cash management fees. iv. Consulting, administrative costs and fees, and other revenue-sharing arrangements have been appropriately applied to offset recordkeeping and other administrative costs. v. All ancillary redemption fees, reimbursement fees and other charges are fully taken into consideration in a comparative analysis {Brodeski].
FFS [TRONE] §3.7. The Investment Policy Statement defines appropriately structured, socially responsible investment strategies when applicable. **Substantiating Code, Regulations, and Case Law for Practice 3.7:** **ERISA** §403(c)(1); §404(a)(1) ***Other*** ERISA Opinion Letter 98-04A (May 28, 1998); Interpretive Bulletin 94-1, 29	If it is determined that the client desires to incorporate socially responsible criteria, the criteria should be reflected in the IPS. Because the investment portfolio is subject to fiduciary standards, the policy should reflect appropriate fiduciary constraints. Individual investors may incorporate socially responsible criteria related to their personal portfolio without regard to legal fiduciary standards. The standards may include but are not limited to: [EVENSKY] i. Direct inclusionary and exclusionary screens [EVENSKY] as directed by client. [ROWE] ii. Direct shareholder activism, [EVENSKY] as directed by client. [ROWE] iii. Economically targeted investment (ETI) [EVENSKY] as directed by client. [ROWE] iv. Direct investment to specific types of economic entities (e.g. minority and women-owned enterprises), [EVENSKY] as directed

Practice Standards	Best Practices
C.F.R. §2509.94-1 **UPIA** §2(a); §2(c); §5 **MPERS** §7(1), (2) and (3); §8(a)(1) and (2); §8(a)(5); §8(b)	by client. [ROWE]

FFS [TRONE] §4.1.
The investment strategy is implemented in compliance with the required level of prudence.

Substantiating Code, Regulations, and Case Law for Practice 4.1:

ERISA

§402(c)(3); §403(a)(1) and (2); §404(a)(1)(B)

Regulations

29 C.F.R. §2550.404a-1(b)(1) and (2)

Case Law

Howard v. Shay, 100 F.3d 1484, 20 E.B.C. 2097 (9th Cir. 1996), *cert. denied*, 520 U.S. 1237, 117 S.Ct. 1838, 137 L.Ed.2d 1042 (1997): *Fink v. National Savings and Trust Co.,* 772 F.2d 951 (D.C. Cir. 1985); *Katsaros v. Cody*, 744 F.2d 270, 5 E.B.C. 1777 (2nd Cir.) *cert. denied*, 469 U.S. 1072, 105 S.Ct. 565, 83 L.Ed.2d 506 (1984); *Donovan v. Mazzola*, 716 F.2d 1226 (9th Cir. 1983), *cert. denied*, 464 U.S. 1040, 104 S.Ct. 704, 79 L.Ed.2d 169 (1984); *United States v. Mason Tenders Dist. Council of*

b. It is the role of a fiduciary, with the assistance of consultants engaged as the co-fiduciaries, to define and manage a prudent investment process that address and manages the investment and administrative values necessary for the investor to achieve their goals and objectives. [EVENSKY] This prudent investment process documents the due diligence process and criteria used in the selection and oversight [ROWE] of money managers.

c. The process should be appropriate to the nature of the investment portfolio(s), the circumstances of the client and should be consistent for all investments. [EVENSKY, OTTESON, ROWE]

d. The minimum due diligence process for the evaluation and selection of money managers incorporates ten screens.

i. Consistency of rolling [OTTESON] returns on a 1-, 3-, 5-year basis of the manager, relative to the median AIMR compliant [ROWE] return of the manager's peer group.

ii. Five- to seven-year [OTTESON] investment performance adjusted for risk: alpha and/or Sharpe ratio relative to the median alpha and/or Sharpe ratio for the manager's peer group. AIMR compliant [ROWE]

iii. Inception date of the investment product: The appropriate threshold is three years. Investment statistics such as alpha, Sharpe ratio and standard deviation require a minimum of 12 observations before a meaningful calculation and observation can be made. In the case of new share classes or the offering of new index, ETF, passive funds from reputable and established vendors (Barclays, DFA, Vanguard, etc) the three year criteria is not imperative {Brodeski].

iv. Correlation of the investment product to the asset class, or peer group, being implemented.

- Manager selection is based on the premise that the manager will adhere to a specific investment management style or strategy as that makes it possible to manage systematic risk. There are no industry standards for determining a money manager's investment management style and/or peer group. This makes it virtually impossible to track a manager across multiple

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Greater New York, 909 F. Supp. 882, 19 E.B.C. 1467 (S.D.N.Y 1995); *Trapani v. Consolidated Edison Employees' Mutual Aid Society*, 693 F. Supp. 1509 (S.D.N.Y. 1988) **UPIA** §2(c); §2(f); §9(a)(1-3) **MPERS** §6(a); §6(b)(1); §6(b)(3); §7(3); §8(a)(1)	databases. Some databases evaluate a manager's style by the securities held, others may use the pattern of performance, others may not assign a mandate to a peer group unless it is a good fit, while still others assign all managers to a peer group. v. Database providers should examine both quantitative and qualitative data on the manager, as well as interview the managers to opine that the information on record is accurate. vi. Total assets in the investment product being considered. The threshold screen for this consideration is that at least $100 million is presently being managed in a manner consistent with the investment mandate being evaluated. vii. Holdings consistent with style of a minimum of eighty percent (80%) of the securities should be from the broad asset class associated with the product. viii. Fees and expenses associated with the investment product. The industry has never drawn a line in the sand to establish "reasonable" expense. When fees for a particular peer group are ranked from least expensive (1st percentile) to most expensive (100th percentile), a reasonable line can be drawn at the 75th percentile {Trone]. Reasonability is the standard. The move to net of fees reporting makes this less of a concern as managers who provide better net returns can charge more without conflict [OTTESON] ix. Organizational stability — manager, research group tenure. It is important to establish whether the main driver of the investment process is the portfolio manager or the research group. [OTTESON] {Surz]. • The investment teams must be delineated {Blackman] and in place for at least two years. In the case of passive, index, funds this does not apply {Brodeski]. • The nature of any pending litigation is disclosed {Blackman]. • Internal management struggles are kept to a minimum {Blackman]. • Changes in ownership are delineated and reported promptly {Blackman] {Brodeski]. • There is rapid growth or loss in assets. x. Financial Stability [ROWE} audited annual financial statement

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	{Blackman]. xi. Tracking Error for passive, index ETF funds. e. The investor should become [ROWE] familiar with the value of diversifying across multiple sub-asset classes or peer groups. f. The investor should be familiar with the application {Blackman] of index funds and their cost/benefit trade-off with active management.
FFS [TRONE] §4.2. Fiduciary is following applicable "safe harbor" provisions. **Substantiating Code, Regulations, and Case Law for Practice 4.2:** **ERISA** §402(c)(3); §404(a) and (c); §405(d)(1) ***Regulations*** 29 C.F.R. §2550.404a-1; 29 C.F.R. §2550.404a-1(b)(1) and (2) ***Other*** Interpretive Bulletin 75-8, 29 C.F.R. §2509.75-8 (FR-17Q); Interpretive Bulletin 94-2, 29 CRF. §2509.94-2; DOL Miscellaneous Documents, 4/13/98 – Study of 401(k) Plan Fees and Expenses; Fed. Reg., Vol. 44, p. 37255 **UPIA** §9(a); §9(c) **MPERS** §6(b); §6(d)	a. If the investment decision-making process is being managed by the engagement of an investment advisor/consultant, then the investor/fiduciary is insulated from certain liabilities by virtue of their not being their own investment [ROWE] counsel. If the advisor/consultant manages the investment decision-making process, then there are eight generally recognized provisions to the "safe harbor" rules that provide helpful guidance for advisors when dealing with individual investors. i. The individual investor and/or the advisor acting as co-fiduciary engages professional money managers as prudent experts to make investment decisions in accordance to the investment mandates established by the investment process. Money managers acting as "prudent experts" are a regulated financial service entities [OTTESON] including: banks, insurance companies, registered investment advisors and registered investment companies (mutual funds). There is pending pension reform legislation that also will recognize registered representatives as appropriate sources of expert advice, serving in similar investment fiduciary capacities [ROWE] thus providing further guidance on the role and responsibilities of advisors to individual investors. ii. Demonstrate that the engaged prudent experts were selected by following a documented and prudent due diligence process. iii. The prudent expert engaged to make investment decisions was given discretion of the assets allocated to their investment mandate. iv. The prudent expert engaged to make investment decisions acknowledges their co-fiduciary status by signing a services agreement and the investment policy statement. Mutual funds are governed by their prospectus and thus are excluded from signing the IPS and do not meet the criteria of safe harbor rules as the SEC considers them as securities. However, selection of mutual fund investments should also a follow similar selection process as that of investment managers, and the stated goals and objectives of the IPS. [ROWE] The individual investor and/or the advisor acting as a co-fiduciary should keep the most recent copy of the mutual fund's prospectus.

Practice Standards	Best Practices
	v. The individual investor or the advisor acting as co-fiduciary must monitor the prudent expert in their investment decision process [ROWE] to ensure the prudent expert is performing the agreed upon tasks. vi. Investor must be provided at least three different investment options for each investment mandate, each merited by their own risk/return affording the opportunity for prudent diversification. RIAs operating with a limited power of attorney who are in a discretionary portfolio management role acting as both consultant and investment manager may make specific investment decisions based on client determined risk/return objectives {Brodeski]. vii. When desired by client [ROWE], investors should receive sufficient education on the different investment options or allocations {Brodeski] available and that are appropriate per the Investment Policy Statement, [ROWE] so that each investor can make an informed investment decision on each manager that constitutes their portfolio. When the individual investor is not interested in manager level detail, the discussion should be refocused on aggregate portfolio risk/return composition and specific client directives {Brodeski]. Manager level investor education should include: • Each investment option's most recent offering document and marketing materials [ROWE] or similar descriptive document. • A general description of the investment objectives and risk/return characteristics of each investment option. • Information on the fees and expenses associated with each investment option. • The impact upon diversification of the proposed investment, displayed graphically. [ROWE] • Portfolio statistics, such as the alpha, Sharpe ratio and standard deviation of each investment option or asset class [ROWE], does not apply to passive/index/ETF strategies {Brodeski]. • Potential cross-calculation issues [OTTESON] viii. Investors must be provided counsel that affords them the opportunity to adjust their investment strategy and associated asset allocation as is appropriate by market conditions within the guidelines of stated investment objectives.
FFS [TRONE] §4.3. Investment vehicles are appropriate for the portfolio size. **Substantiating Code,**	a. Retail portfolios with assets of less than $50,000 should use individual securities, mutual funds, ETFs, Folios, index funds and model portfolios. Diversification and cost {Brodeski] are the primary consideration. b. High net worth and middle market institutional portfolios with assets

Practice Standards	Best Practices
Regulations, and Case Law for Practice 4.3: **ERISA** §404(a)(1)(B); §404(a)(1)(C) ***Regulations*** 29 C.F.R. §2550.404c-1(b)(3)(i)(C) ***Case Law*** *Metzler v. Graham*, 112 F.3d 207, 20 E.B.C. 2857 (5th Cir. 1997); *Marshall v. Glass/Metal Ass'n and Glaziers and Glassworkers Pension Plan*, 507 F. Supp. 378 (D.Hawaii 1980); *GIW Industries, Inc. v. Trevor, Steward, Burton & Jacobsen, Inc.*, 10 E.B.C. 2290 (S.D.Ga. 1980); *aff'd*, 895 F.2d 729 (11th Cir. 1990); *Leigh V. Engle*, 858 F.2d 361, 10 E.B.C. 1041 (7th Cir. 1988), *cert. denied*, 489 U.S. 1078, 109 S.Ct. 1528, 103 L.Ed.2d 833 (1989) ***Other*** H.R. Report No. 1280, 93rd Congress, 2d Sess. (1974), reprinted in 1974 U.S. Code Cong. & Admin. News 5038 (1974)	between $500,000 and $25 million use ETFs, folios, separate account managers, index funds and sleeveless model portfolios utilizing decentralized in-house overlay management. The adherence to investment management style discipline, tax lot accounting and the cost structure of investment vehicles used to execute a specific investment mandate are primary considerations. Given the following suggested separate account investment minimums per each investment mandate, the use of separate accounts in portfolio construction requires larger accounts. Type of Equities — Investment Minimums Large cap equities — $ 100,000 Small- to mid-cap equities — 250,000 International equities — 250,000 Intermediate fixed income — 1,000,000 Global fixed income — 5,000,000 A small number of firms with massive operational scale have reduced separate account investment minimums to $50,000, which greatly increases their application with individuals. With the advent of the MDA, multi-discipline account, that contain several investment disciplines in one account, some separate account managers are available at $2,000 [PRUITT]. Not withstanding, the advantages of separate accounts, lower investment minimums should never supersede the investment merit of the manager [OTTESON]. Tax managed index funds can be more tax efficient and lass expensive than separately managed accounts particularly if the fund experiences significant new cash flows or has an embedded loss at the time of purchase {Brodeski]. Sleeveless in-house overlay management technology utilizing model portfolios that can be managed at the advisor level, hold much promise. They are less expensive, eliminate repetitive triple account administration (client, manager, trustee levels) cost, have lower investment minimums and facilitate the management of a much higher level of portfolio detail (including tax efficiency) than is possible with old sleeve-based technology (MDAs, UMAs). c. Ultra high net worth and institutional portfolios with assets greater than $25 million, should use model portfolios, ETFs, folios, alternative investments (hedge funds, managed futures, real estate, private equities, venture capital) and separately managed accounts primarily. Overlay management facilitates an extraordinary level of portfolio detail to be managed by the advisor far less expensively than many investment vehicles traditionally utilized at the higher end of the market. The cost and tax [OTTESON] efficiency of the investment vehicles used in portfolio construction is the primary consideration in excluding mutual funds. The specific circumstance of the investor may entail restricted stock, stock options, and other assets which must be monitored and managed, but are client centric rather than advisor driven [ROWE].
UPIA	c. Separate accounts (institutional) vs. managed accounts (wrap fee programs). The term separate accounts and managed accounts are used

Practice Standards	Best Practices
§2(a); §3; §3 Comments **MPERS** §7(3); §8(a)(1)	interchangeably, but there are differences. The money manager's performance will vary between managed accounts and separate accounts because the cost differential in management fees is significantly lower in institutional and ultra high net worth accounts. This is mitigated by firms (e.g., Merrill Lynch, Smith Barney) with large-scale managed account business that have used their scale to drive down management fees. Typically, if there is more than a 50 basis point difference in performance not attributable to pricing breaks, the investor or the advisor acting as a co-fiduciary should determine if there is a material difference between the managed account and separate account investment process of the prudent experts being considered. i. Investors, or advisors acting on the investor's behalf, should ascertain that the same person is responsible for the creation of the institutional track record and the managed account records. ii. Investors, or advisors acting on the investor's behalf, should ascertain the number of securities in a separate account (typically 86) and in a managed account (typically 36). iii. Investors, or advisors acting on the investor's behalf, should ascertain whether securities trades will be executed in blocks with institutional clients (which translates into better execution at lower costs) or whether trades will flow back to the broker/dealer sponsoring the managed account who are held to best execution. [ROWE] iv. Investors, or advisors acting on the investor's behalf, should ascertain whether the prudent experts (money managers) engaged to make investment decisions have the capacity for tax-lot portfolio management. If the money manager is not tracking the adjusted basis of the individual securities within the portfolio, then it is arguably difficult for the manager to claim that a fully tax-sensitive strategy is being employed. The money manager should be able to accommodate tax loss harvesting, tax loss carry forwards [ROWE], and year end tax planning [OTTESON].

Practice Standards	Best Practices
	d. Technical considerations in using separate accounts. i. Electronic protocol: Investors, or advisors acting on the investor's behalf, should ascertain what will be the electronic protocol that will link the money manager, custodian and fiduciary, and facilitate the production of performance reports for independents. More importantly, prepared by who, the manager, consultant? [ROWE] This common protocol should be web-based (not web-enabled) to facilitate continuous comprehensive implied by regulatory mandate. This allows all parties to review account data on a daily basis, if not in real time, as desired by the client. [ROWE] Operational considerations in using separate accounts in a models-based architecture – advisor or firm should employ a model management process to ensure manager models are continuously updated and reviewed for corporate actions. [VAN TILL] ii. Time until fully invested: Investors, or advisors acting on the investor's behalf, should ascertain how long it will take for the money manager to fully invest portfolio assets allocated to the investment managers stated strategy and philosophy [ROWE] iii. Investors, or advisors acting on the investor's behalf, should determine how the money manager seeks best price and execution in trading securities within their accounts. • Money managers have a fiduciary responsibility to seek best strike price and best commission for each trade. • It is an acceptable practice that money managers may use a particular brokerage firm to generate soft dollars to defray the cost of research. However, when the bulk of all trades are going through one brokerage firm, it is likely the manager is not seeking best execution. iv. Proxy voting: The investor, or advisors acting on the investors behalf, has a responsibility to assure proxy votes are properly executed. The most expeditious way of handling proxy voting is to delegate the responsibility to the money manager who has discretion over the funds they have been given an investment mandate to manage. Because they have been engaged to make investment decisions, they should [ROWE] have the best judgment to determine the impact of the proxy vote on the investor's assets in which they have been entrusted.

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	v. Low cost basis and/or restricted stock: Having a money manager unwind low cost basis and restricted stock over the appropriate time periods can be a great advantage to high net worth investors. The management of "concentrated specific issue risk" is an extraordinary value added service. {Blackman] • Will the money manager accept tax-lot information on a low cost basis and/or restricted stock? Trading restrictions per statute. [ROWE] • Will the manager provide tax-lot accounting and reporting? If advisor employs a models-based architecture, advisor must be able to transition the portfolio in an efficient manner in a risk, constraint, and expense sensitive format, and for tax management accounts, in a tax sensitive format [VAN TILL]. vi. Managing the transition from one manager to another: Will the manager review the portfolio holdings of the previous manager so the manager will not have to fully liquidate the previous portfolio only to have to buy back some of its holdings? This reduces both taxable gains and overall portfolio expenses. vii. Performance report: The investor, or the advisor acting on behalf of the investor, should request an AIMR compliant [ROWE] performance report from the money manager, the custodian and, if appropriate the investment management consultant/advisor who acts as a co-fiduciary. Having different parties calculate performance on the same portfolio can help triangulate and locate reporting errors. Not required with funds {Brodeski]. In a models-based architecture, the advisor or firm has access to the certified returns of the value of the manager's model (intellectual capital) [VAN TILL]. viii. Tax-efficient strategy: Ascertain what strategies the money manager will employ to reduce tax liability. • Buy low dividend stocks. • Harvesting losses regularly to offset external and internal taxable gains. [PRUITT] • Implementing an appropriately low [OTTESON] turnover strategy, ensuring the aggregate turnover of the entire client assets in combination can be managed in a tax efficient, manner. [PRUITT] • Liquidating high cost basis positions first. • Utilize effective asset allocation across qualified, taxable, and

Practice Standards	Best Practices
	other accounts with unique tax characteristics. • Use municipal bonds where appropriate. Matching losses against gains in real time, deferring recognition of gains when losses aren't available and/or when a client tax mandate facilitates limited gains recognition, selling fixed income securities to ensure gains are taxed at capital gains rates. [PRUITT] In a models-based architecture, tax management is performed in an automated fashion throughout the year taking into consideration embedded short term and long term tax rates, loss carry forwards and wash sales policing [VAN TILL].
FFS [TRONE] §4.4. A due diligence process is followed in selecting service providers including custodian. **Substantiating Code, Regulations, and Case Law for Practice 4.4:** **ERISA** §402(a)(1); §402(b)(2); §404(a)(10(B) ***Other*** Interpretive Bulletin 96-1, 29 C.F.R. §2509.96-1; DOL Information Letter, Qualified Plan Service (7/28/98); DOL Information Letter, Service Employee's International Union (2/19/98) **UPIA** §2(a); §7; §7 Comments; §9(a)(1)(2) and (3) **MPERS** §6(a) and (b)(1) and (2); §7	a. The role of the custodian is to hold securities for safekeeping, report on holdings and transactions (capital actions), collect interest and dividends, and in many cases execute trades. At the retail level, the custodian is typically a brokerage firm holding securities in street name commingled with the brokerage firm's other assets. To protect the assets, brokerage firms are required to obtain insurance from the Securities Investor Protection Corporation (SIPC). Most institutional investors choose trust companies as custodians. The primary benefit is that the assets are held in a separate account and are not commingled with other assets in the institution. The investor or the advisor acting on the investor's behalf should: [ROWE] i. Ascertain the financial stability of the custodian. ii. Ascertain the expense ratio associated with the cash management vehicle that will be used. Expense ratios range from 8 to 80 basis points, larger RIAs average less than 8 basis points. iii. Ascertain the level of detail the custodian provides in their monthly statement. Do you see the name of the broker/dealer used for each transaction, the strike price of the security being purchased or sold, and the commission paid? iv. Ascertain if the custodian is providing corrected year-end statements for mutual funds reflecting the year-end dividend payment which impacts mutual fund pricing. v. Ascertain if the custodian will provide tax reporting, which should reduce the complexity and cost of tax reporting. vi. Ascertain if the custodian will provide performance reporting. This is often not part of standard custodial services, but may be negotiated as a condition of doing business, the additional charge is typically nominal.

Practice Standards	Best Practices
FFS [TRONE] §5.1. Periodic performance reports compare the performance of money managers against appropriate peer group or index {Blackman] benchmark comparatives [ROWE] and Investment Policy Statement objectives. **Substantiating Code, Regulations, and Case Law for Practice 5.1:** **ERISA** §3(38); §402(c)(3) ***Case Law*** *Leigh v. Engle*, 727 F.2d 113, 4 E.B.C. 2702 (7th Cir. 1984); *Atwood v.Burlington Indus. Equity, Inc*., 18 E.B.C. 2009 (M.D.N.C. 1994) ***Other*** Interpretive Bulletin 75-8, 29 C.F.R. §2509.75-8 (FR-17Q); Interpretive Bulletin 94-2, 29 C.F.R. §2509.94.2 **UPIA** §2(a); §9(a) (1-3) **MPERS** §6(a) and (b)(1-3); §6 Comments; §6(d); §8(b)	a. The performance monitor reports on the full range of investment and administrative values that constitute the comprehensive nature of the advisor's counsel. It should incorporate sufficient information to evaluate the investment strategy's strengths and weaknesses in achieving the goals and objectives stated in investment policy. The performance monitor is the written substantiation of the advisor fulfilling their fiduciary responsibility to monitor all aspects of an investment strategy investment policy. The performance monitor has the following objectives: i. Confirm mutually agreed upon goals and objectives of investment policy and facilitate effective communication between investors, advisors acting as co-fiduciaries, money managers and other service vendors. ii. Facilitate the evaluation of the asset allocation strategy as directed by the IPS with respect to the portfolio's risk tolerance and modeled return expectations. iii. Support the qualitative and quantitative [ROWE] judgment about the continued confidence or lack of confidence of the money manager's ability. Combines the science of performance measurement with the art of performance evaluation. iv. Facilitate effective communication between all parties involved to determine the continued appropriateness of the overall investment policy. b. Frequency of report: No frequency of monitoring has been specified, but the concept of continuous, comprehensive counsel would suggest a report should be provided frequently on an informal basis as a practical management tool, preferably quarterly or more often as justified by portfolio or market considerations. [ROWE] c. The investor or their advisor acting as a co-fiduciary should establish performance objectives according to their mandate [OTTESON] for each money manager and cite these objectives in the IPS or within manager specific addendums, [ROWE]. For passive portfolio strategies, benchmark reporting is done at the portfolio level as opposed to the asset manager level {Brodeski]. d. At least quarterly, the investor or their advisor acting as co-fiduciary should review manager performance to determine if it conforms to the performance objectives and i. ascertain if the manager is adhering to the guidelines set forth in the IPS,

Practice Standards	Best Practices
	ii. ascertain if there have been material changes in the manager's organization, investment philosophy, and/or personnel, and iii. ascertain if any legal, SEC and/or regulatory agency proceedings may affect the manager. e. Underperformance: The IPS should describe actions taken when a manager fails to meet established criteria. Criteria for taking action should be in the context of long-term performance, not short-term fluctuations. i. Watch List: If a manager is underperforming but doesn't warrant termination, they are put on a watch list if they fail certain criteria such as the following {Blackman]. • Performs below that of their appropriate median peer group as measured by a risk and style adjusted metric over a 1-, 3-, 5-year cumulative period. [ROWE]
	• Five-year [OTTESON] risk adjusted return (alpha and/or Sharpe Ratio) falls below the appropriate peer group {Blackman] median risk adjusted return. • Material change in professionals managing the portfolio. • Significant [OTTESON] decrease or increase [ROWE] in assets. • Material drift from stated style and/or strategy. [ANDERSON] • Material increase in fees and expenses relative to its peer group median {Blackman]. • Extraordinary event interferes with the manager's ability to fulfill their role. • Unreasonable tracking error for index/passive/ETF strategies. ii. Watch list evaluation may include: • A letter to manager asking for an analysis of their underperformance. • An analysis of recent transactions, holdings and portfolio characteristics to gain insight into underperformance or to check for a change in style. • Optional [ROWE]: A meeting with the money manager, which may be conducted on site, to gain insight into organizational changes and any changes in strategy or discipline or cause for under performance. [ROWE]

Practice Standards	Best Practices
	iii. Established minimum manager reporting requirements: For example each manager's performance should be reported against: • appropriate peer groups with absolute and relative comparisons [ROWE], • appropriate indices, • performance objectives cited in policy.
FFS [TRONE] §5.2. Periodic reviews are made of qualitative and/or organizational changes to money managers. **Substantiating Code, Regulations, and Case Law for Practice 5.2:** **ERISA** §3(38) C.F.R. §402(c)(3); §404(a)(1)(B) ***Regulations*** 29 C.F.R. §2550.408b-2(d); 29 C.F.R. §2550.408c-2. ***Other*** Interpretive Bulletin 75-8, 20 C.F.R. §2509.75-8; Booklet: A Look at 401(k) Plan Fees, U.S. Department of Labor, Pension and Welfare Benefits Administration **UPIA** §2(a); §7; §9(a) **MPERS** §6(a) and (b)(1-3); §7(5)	a. Ascertain if there has been turnover in the professional or service staff that should adversely affect quality of service and investment results. b. Ascertain if there has been a change in organizational structure through mergers and/or acquisitions (retention of investment professionals) [OTTESON] which could adversely affect quality of service and investment results. c. Ascertain if the money manager provides the same or better service (such as real-time online access) than is available in the marketplace for comparable fees. [OTTESON] d. Ascertain if the money manager's reports contain all the information that is necessary and useful to the investor. Are reports provided on a consistent and timely basis? e. Ascertain if the money manager consistently responds to information and service requests on a timely basis and that the responses contain the data requested? f. Ascertain if the money manager's explanation of their investment decisions and the factors it considers are explained in a way the investor can understand. g. Ascertain that holdings are consistent with the stated style/strategy {Blackman].

Practice Standards	Best Practices
FFS [TRONE] §5.3. Control procedures are in place to periodically review the money manager's policies for best execution, soft dollars and proxy voting. **Substantiating Code, Regulations, and Case Law for Practice 5.3:** **ERISA** §3(38); §408(c)(3); §403(a)(1) and (2); §404(a)(1)(A) and (B) ***Case Law*** *Herman v. NationsBank Trust Co.*, (Georgia), 126 F.3d, 21 E.B.C. 2061 (11th Cir. 1997), *reh'g denied*, 135 F.3d 1409 (11th Cir.), *cert. denied,* 523 U.S. 816, 19S.Ct. 54, 142 L.Ed.2d 42 (1998) ***Other*** Interpretive Bulletin 75-8, 29 C.F.R. §2509.75-8 (FR-17Q); Interpretive Bulletin 94-2, 29 C.F.R. §2509.94-2(1); DOL Prohibited Transaction Exemption 75-1, Interim Exemption, 40 Fed. Reg. 5201 (Feb. 4, 1975); DOL Information Letter, Prescott Asset Management (1/17/92) (fn.1); DOL Information Letter, Refco, Inc. (2/13/89); ERISA Technical Release 86-1 (May 22, 1986) **UPIA** §2(a); §2(d); §7; §9(a)(3) **MPERS**	a. A fiduciary has a responsibility to control and account for investment expenses. The investor and/or the advisor acting as a co-fiduciary must therefore monitor: i. To ensure best execution practices are followed in securities transactions, make sure the investor secures the best price for the security without regard to whether the broker/dealer or bank functions in an agency (broker) or in a principal (dealer) relationship to the investor. ii. Soft dollar compensation documentation: Soft dollar costs are costs above actual commission cost incurred that direct broker/dealers to offset the cost of research, consulting services, custodial services, rating or technical services and/or subscriptions to investment periodicals which accrue to the benefit of the investor. Failure of the fiduciary to monitor soft dollar expenditures and/or soft dollar expenditures that do not directly benefit the investor is a breach of fiduciary responsibility. If the money manager who exercises discretion over the investor's account determines the total commission paid to execute trades was reasonable in relation to the value of brokerage and research services provided by the broker/dealer, then soft dollar expenses incurred by paying commissions in excess of the actual commission incurred are allowed. iii. Proxy voting must be monitored and documented by the fiduciary. Typically, this responsibility is delegated to the money manager via instructions cited in investment policy. The investor must not only be able to review the manager's proxy voting procedures but must be able to review proxy voting actions taken by the manager.

Practice Standards	Best Practices
§6(2) and (3); §7(5); §8(a)(3)	
FFS [TRONE] §5.4. Ascertain if fees paid for investment management are consistent with agreements and with the law. **Substantiating Code, Regulations, and Case Law for Practice 5.4:** **ERISA** §3(14)(B); §404(a)(1)(A), (B) and (D); §406(a) ***Regulations*** 29 C.F.R. §2550.408(b)(2) ***Other*** Booklet: A Look at 401(k) Plan Fees, U.S. Department of Labor, Pension and Welfare Benefits Administrations; DOL Advisory Opinion Letter (7/28/98) 1998 WL 1628072; DOL Advisory Opinion Letter 89-28A (9/25/89) 1989 WL 435076; Interpretive Bulletin 75-6, 29 C.F.R. §2509.75-8 (FR-17Q) **UPIA** §2(a); §7 and Comments; §9 Comments **MPERS** §7(2) and (5); §7 Comments	a. Determine whether the payment of fees can be paid from portfolio assets, directed commissions or in hard dollars. b. Determine whether the fees are reasonable in light of the services provided. i. Money management fees vary widely depending upon asset class, account size, whether the account is to be managed separately or placed in a commingled or mutual fund. ii. Investment management fees in excess of the industry average should trigger a concern about a potential breach of fiduciary responsibility. iii. The lowest cost share classes, investment vehicles should be a primary investment consideration for each investment mandate {Brodeski].
FFS [TRONE] §5.5. Ascertain if "finder's fees," 12b-1 fees, or other forms of compensation that have been paid for asset placement are appropriately applied, utilized and documented.	a. There is a fiduciary responsibility to account for all dollars spent for services engaged, direct and indirect [ROWE] commissions in lieu of fees, offset plans, rebate plans, whether paid directly from the account or through soft dollars, 12b-1 fees, or other fee-sharing arrangements. i. Identify all parties being compensated for services engaged.

Practice Standards	Best Practices
Substantiating Code, Regulations, and Case Law for Practice 5.5: **ERISA** §404(a)(1)(A) and (B); §406(a)(1); §406(b)(1); §406(b)(3) ***Case Law*** *Brock v. Robbins*, 830 F.2d 640, 8 E.B.C. 2489 (7th Cir. 1987) ***Other*** DOL Advisory Opinion Letter 97-15A; DOL Advisory Opinion Letter 97-16A (5/22/97) **UPIA** §2(a); §7; §7 Comments ***Case Law*** *Matter of Derek W. Bryant*, 188 Misc. 2d 462, 729 NYS 2d 309 (6/21/01) ***Other*** McKinneys EPTL11-2.3(d) **MPERS** §6(b)(2) and (3); §7(2) and (5)	• Custodian: Holding, hypothecation of and safeguarding of securities. • Brokerage firm: Trade execution. • Money manager: Manages investment decisions. • Advisor/consultant: Development and management of overall strategy and adherence of the principles therein. [ROWE] ii. Determine if compensation received by service providers meets a reasonable test and confirm client is aware of all fees being charged. [ANDERSON] b. In a bundled, wrap, or other all inclusive fee investment program the four cost components of (1) the custodian, (2) the brokerage firm, (3) the money managers, and (4) the advisor/consultant must be evaluated independently to ensure no component is receiving unreasonable compensation. c. Exceptional responsibilities and value added services justify reasonable additional compensation. [ROWE]

SOCIETY OF FIDUCIARY ADVISORS MEMBERSHIP APPLICATION

SOCIETY OF FIDUCIARY ADVISORS

RICHMOND, VIRGINIA

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Membership Application

Thank you for your interest in the Society of Fiduciary Advisors (SFA). Our mission is to elevate the role and counsel of the financial advisor by:

1. acknowledging our fiduciary responsibilities;

2. defining fiduciary counsel by establishing best practices, citing statute, case law and regulatory opinion letters; and

3. facilitating the development of and democratizing access to the enabling resources necessary for all advisors to declare their fiduciary status.

The SFA's objectives are to:

- Unify an ecumenical group of advisors who are acting in a fiduciary capacity around common fiduciary principles.

- Educate the media, major consumer advocacy groups, and U. S. Senators and Congressmen interested in financial services reform on why fiduciary responsibility is essential to ensuring the investing public's trust.

- Provide high-impact, substantive practice management training to create a qualified, credentialed labor pool necessary for the counsel we provide to emerge as a profession. SFA conferences will have three tracks (advisor, administration, portfolio construction management) to correspond to the three major divisions of labor within an advisory practice. Because the focus of SFA is on empowering the advisor to become self-sustaining, there is no hierarchical protocol (turf to protect or self-interest) that prevents any topic pertinent to fiduciary counsel or best practices from being discussed. Thus, SFA conferences offer the richest educational content and exchange of information in the industry.

- Reach, cultivate and inspire each month 200,000 advisors to provide fiduciary counsel through a monthly web-based newsletter. The building of a critical mass of fiduciary advisors makes the resources necessary to support broad-based fiduciary counsel economically viable. The editorial focus will be: (1) how to cultivate and serve each of the ten major market segments; (2) addressing the full range of practice management and issues from division of labor, press and technology management to cost and profit margin benchmarking; and (3) innovations in processes, technology and support infrastructure.

- Provide practice benchmarking and management resources which will help advisors understand the management dynamics of building an advisory services business around fiduciary principles for various market segments at various asset and revenue levels, using various configurations of staffing and technical resources.

The SFA is the only advisor trade association that requires the acknowledgement of our fiduciary responsibilities as a condition of membership. If you are providing fiduciary counsel but are prohibited by your supporting firm from declaring your fiduciary status, please note that in the comment box (item 8) in the "Declarations" that follow so we can acknowledge your good work.

Applicant's Declarations

1. As a member of the Society of Fiduciary Advisors, I acknowledge I am acting in a fiduciary capacity with my clients and subscribe to the fiduciary principles advanced by the Society of Fiduciary Advisors, based on statute, case law, regulatory opinion letter and best practices.

2. I always put my client's best interest first, ahead of my best interests and that of my supporting firm and vendors that I may use. I fully disclosed all forms of compensation and any potential conflicts of interest. I do not receive directed trades, soft dollar compensation, or any other form of payment in excess of the compensation negotiated. My compensation and hence my loyalty is derived solely from my client.

3. As a SFA fiduciary, I will maintain on my own, as an individual, a Code of Ethics (as now required by the U.S. Securities and Exchange Commission) that will include a specific reference to my fiduciary capacity and my adherence to my choice of methodology and generally accepted fiduciary practices.

4. _____% of my earnings is derived from the engagement of my counsel to act in a fiduciary capacity.

5. I subscribe to the highest ethical and integrity standards and have no compliance or regulatory indiscretions that would adversely reflect on my practice, the profession, or the Society of Fiduciary Advisors.

6. I have $ _____ (in millions) under advisement.

7. I have been acting in a fiduciary capacity for _____ years.

8. I have earned the following professional designations:

9. Comments pertaining to any previous questions:

In applying for membership into the Society of Fiduciary Advisors, I declare the above statements are true and correct to the best of my knowledge.

Applicants Signature: _____

Please print/type name: _____ Date: _____

Applicant Information

Applicant's Full Name: _____

Position _____

Firm: _____

Address: _____

City: _____ State/Province: _____ Country: U.S. Mail Code/Zip: _____

Phone (with area/country code): _____ Fax (with area/country code): _____

E-Mail (#1): _____

E-Mail (#2): _____

Are you a practicing advisor: ☐ Yes. Please answer questions 1-6 below.
☐ No. Please answer Question 7 below.

Applicant Is Practicing Advisor

1. How would you characterize your services?

   ☐ Consultant ☐ Planner ☐ Broker ☐ RIA ☐ Pmer

   ☐ Investment Advisor Representative (Series 66) ☐ Other _____

2. If securities licensed, who is your broker/dealer? _____

3. If you are a Registered Investment Advisor or an Investment Advisor Representative, which custodians do you use?

4. How many clients do you serve? _____

5. How many employees do you have within your practice? _____

6. What percentage of assets do you hold by market segment?

   A. **Investing Public**

   - Mass Market: Less than $100,000 ..... _____%
   - Retail Market: $100,000 to $1.4 million ..... _____%
   - High Net Worth: $1.4 million to $10 million ..... _____%
   - Ultra High Net Worth: More than $10 million ..... _____%

   B. **Institutions**

   - Defined Benefits ..... _____%
   - Defined Contributions ..... _____%
   - Public Funds ..... _____%
   - Profit Sharing ..... _____%
   - Foundations and Endowments ..... _____%
   - Taft Harley ..... _____%

   C. **Corporations** ..... _____%

   D. **Other**: _____ _____%

Applicant is Non-Practicing Advisor

7. How would you characterize your services?

☐ Broker/Dealer Support	☐ RIA Support	☐ Technology Provider
☐ Process Provider	☐ Asset Management Provider	☐ Expert Resource
☐ Custody Services	☐ Technical Resource	☐ Trust Services
☐ Other: _____		

Membership Fee

The annual membership fee is $1,000 reduced by $150 for each (maximum of three) processional designations noted below:

☐ CFA ☐ CFP ☐ CPA ☐ ChFC ☐ CIC ☐ CIMA ☐ CIMC ☐ PFS ☐ AIFA ☐ AIF

Annual Membership Fee	$ 1,000.00
Less $150 per professional designation show above (maximum of three)	—
TOTAL AMOUNT DUE FOR 2005	$

Thank you for your interest in elevating the role and counsel of the financial advisor. Through your sheer will, personal initiative and perseverance, you have pioneered the processes, technology, and resources necessary to fulfill your fiduciary obligations. You have laid the foundation and established a path for the rest of the industry to follow. Though it has long been clear to you that our counsel must be built upon fiduciary principles, the industry is just now coming to that understanding. Our generation of advisors has the honor of seeing the longstanding promise of fiduciary counsel to its fruition. In becoming a founding member of the Society of Fiduciary advisors, you are:

1. recognized as a pioneer of fiduciary counsel;
2. you establish an ecumenical association of like-minded professionals for networking, training, and advancing fiduciary counsel;
3. you directly impact the development of enabling resources which would reduce the labor intensity of fiduciary counsel, elevate your counsel, and reduce your cost structure, while better serving the investing public, and
4. you fill the industry's leadership vacuum, when leadership is most needed in acknowledging and advancing fiduciary counsel.

PROCESSING INSTRUCTIONS

Please print this completed application form and mail it, along with your membership fee (made payable to the Society of Fiduciary Advisors), to:

SOCIETY OF FIDUCIARY ADVISORS
1457 Crystal Springs Lane
Richmond, Virginia 23231

Should you have any questions/comments, please feel free to contact Steve Winks (804-643-1075, S.Winks@SrConsultant.com).

FOUNDING MEMBERS OF THE SOCIETY OF FIDUCIARY ADVISORS

On January 31st a new profession of fiduciary advisors will emerge along with a disclosure statement required of advisors who cannot acknowledge their fiduciary responsibilities to their clients. Because there is no large-scale institutionalized support for fiduciary counsel, all institutions in support for fiduciary counsel are fledgling. The thirty-eight founding members of the Society of Fiduciary Advisors have provided the vision, leadership and funding to support the development of standards for fiduciary counsel and the delineation of enabling resources necessary to support fiduciary counsel, upon which the profession of fiduciary advisors will be built.

In a post January 31st business environment, fiduciary counsel will be an important point of differentiation for advisors. We look forward to the time when it will no longer be a violation of internal compliance protocol for advisors within NASD brokerage firms to acknowledge their fiduciary responsibilities to their clients. It has been through the sheer will and perseverance of our industries leading advisors who have pioneered the process and technology of fiduciary counsel that a path is provided for the rest of the industry to follow. We are indebted to the following advisors for their courage and leadership in building a foundation upon which our new profession of fiduciary advisors will be built.

Margaret Archer Smith Barney 5565 Glenridge Connector Suite 1900 Atlanta, Georgia 30342 Margie.Archer@SmithBarney.com 404-452-3815	**Jon A. Barrack** Stanford Eagle 6675 Poplar Avenue, Suite 300 Memphis, Tennessee 38120 jbarrack@stanfordeagle.com 901-537-1684	**Pat C Beaird** BHCO Capital Management, Inc 12377 Merit Drive, Suite 220 Dallas, Texas 75251 PatB@bh-co.com 972-503-1040	**Tracy S Beard** tbeard@savantcapital.com
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