

SENIOR CONSULTANT

The Voice of the Investment Management Consultant

Sixteen Steps To Fiduciary Counsel

by Stephen C. Winks

Today we are now working in an entirely different business environment than we were before January 31st. We must either declare we are acting in a fiduciary capacity or use a disclosure statement/consumer warning that clarifies to our clients we are acting in a sales capacity not obligated to act in the consumer's best interests. So if you want to act in your client's best interests and go beyond good intentions to actually perform the necessary tasks to fulfill your fiduciary obligations, where do you turn for help?

It is a violation of the internal compliance protocol of most NASD member firms for you to acknowledge your fiduciary obligations. So we can't rely upon large-scale institutionalized support for fiduciary counsel from our NASD member firms—it just doesn't exist. This leaves the vast majority of the industry's 658,000 licensed advisors, who serve the vast majority of consumers, to fend for themselves. Starting February 1, the difference between a broker and a fiduciary advisor will professionally manage their fiduciary obligations, while the broker is not able to acknowledge they have fiduciary obligations. Without institutional support for fiduciary counsel, fiduciary counsel must become a professional imperative for all advisors of conscience. Every advisor will have to determine what their competitive market position will be in the new post January 31st business environment? Do you want to declare your fiduciary obligations and act in your client's best interests, or do you want to act in a sales capacity and use a consumer warning that confirms to your clients that you are not obligated to act in their best interests? If you are compelled to act in your client's best interests, then you must seek professional standing as a Fiduciary Advisor. The Society of Fiduciary Advisors, a non-profit membership professional association, has been created to help you fulfill your fiduciary responsibilities, at a time when there is no other resource to turn to.

You have two choices. You can become an Invest-

ment Advisor Representative of a NASD member brokerage firm working under their Form ADV or you can become an independent RIA, going beyond the latitude provided within a NASD member firm and create our own form ADV taking control of our value proposition, cost structure and service model. The industry's top advisors have chosen to create their own RIA firms as they can compete very favorably with our industry's largest NASD member firms based on both cost and value proposition. In a free market consumers and advisors will gravitate to where they are best served. If you wish to emulate and learn from our industry's most accomplished advisors and technical experts, there are sixteen steps in creating your own advisory services firm, in creating a preemptive and predatory value proposition that will win clients at will and in creating millions of dollars in personal net

worth ascribed to the value your practice (see SENIOR CONSULTANT, August 2001, "Creating Transferable Value In Your Practice"). You have already done the most complex part, you have hundreds of clients that respect your opinion and, if you are with a major firm, you have between \$50 and \$100 million under advisement. There are just sixteen steps that will take you where you want to go in serving

your clients best interests, managing your cost better, taking control of your value proposition and building your net worth.

1. Vision:

Determine whether you want to build a large business by managing others or whether you would prefer to just better serve your clients. This establishes whether you should create an advisory services firm of your own or whether to collaborate in the creation of an advisory services firm that is bigger than your practice alone. There is nothing wrong in bypassing the complexity of personally having to create your own

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support infrastructure. Focus Financial with \$35 million in financial backing has just acquired an equity interest in four firms with \$3.5 billion in assets under advisement, and has plans to build a very large number of collaborative practices to achieve economies of scale and maximize partnership equity for the benefit of all principle partners. (The same Goldman Sachs bankers who structured the National Financial Partners deal backed by Apollo Management's \$125 million, structured Focus Financial backed by \$35 million from Summit Partner's. Focus is the next generation structure focused on higher end advisors, not insurance agents, both NFP and Focus bring leveraged buyout firm parentage.) You must decide whether you are looking for a like-minded collaborative partner or whether you are you prepared to build your own firm. These two considerations are not mutually exclusive. The industry's leading RIAs prefer to create their own RIA as they can control their value proposition, cost structure and margins. Each of the four firms Focus has initially invested in, were RIAs who built their own practices. These RIAs are now interested in maximizing the value of their equity interest by achieving economies of scale, sharpening their value proposition and building successor management. So, in any event it is a good idea for you to create or collaborate in the creation of your own RIA. Advisors who are captured within the major wirehouses are not the best candidates for acquisition, as they are not self sustaining, they have a dependent value proposition that constrains the advisors practice to the advisors supporting brokerage firm, and are not cost competitive. This makes wirehouse advisors perfect candidates to create their own RIAs. When doing so you should be aware that your RIA might not be your ultimate exit strategy. For established RIAs, opportunities like Focus make your hard work well worth the effort—as Focus goes public, providing you with a liquid exit strategy with a multiple. The SFA can help you reason through the strategy that best works for you.

2. Structure Your Business Entity:

Engage experienced legal counsel to help you (a) leave the employment of your NASD member firm with out either violating the enforceable terms and conditions of your employment agreement and prematurely notifying your firm of your plans (b) create the legal entity you will be operating within, most likely an LLC (c) create and register your RIA (this requires notification of your present employer, so it must be done very carefully, so your hand is not tipped until you want it to be), (d) transfer your licenses to new broker/dealer if you wish to retain commission sales capability (e) create a partnership agreement among key staff and advisor part-

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PROPOSITION.**

ners establishing an ownership formula, employment compensation and a profit distribution method (f) create buy/sell agreements for partners in case a partnership interest needs to be dissolved and (g) create a legal construct, comprised of new account forms, investment policy statements, engagement letters, etc, within which everyone will work that establishes the scope of engagement and protects you in providing fiduciary counsel. (h) Independent of legal counsel, develop a financial model to include start-up cost, which will help you refine and optimize operations over time to maximize free cash flow, compensation and enterprise value. The SFA can objectively help you with all of the above.

3. Establish Your Value Proposition:

Establish the market segments (mass market, retail, high net worth, ultra high net worth individuals; defined contribution, defined benefit, public

funds, profit sharing, Taft-Hartley and foundations and endowments) which will be your principle focus, build a prudent investment process (asset/liability study, investment policy, strategic asset allocation, manager search and selection, performance monitor, tactical asset allocation) that can be audited back to statute, case law, regulatory opinion letters and best practices for each market segment served (see: November 2003 SENIOR CONSULTANT, "Enabling Technology and Infrastructure"). This allows you to create scale, better manage resources and drive down cost. Most of your competition is compromised by not having an equivalent highly disciplined investment process. This empowers you to declare your fiduciary status and to establish an extraordinary value proposition for each market segment in which you compete. Because your investment process is auditable, an extremely high level of counsel is consistently and routinely delivered, effectively building-in a compliance/quality control function highly valued by consumers. Because you are selling your prudent investment process (not investment products) that can be articulated and managed without you, you are creating liquid transferable value in your practice that allows you to cash out and the subsequent buyer to profit from the free cash flow generated after salaries and bonuses (see August 2001 SENIOR CONSULTANT, "Creating Transferable Value in Your Practice"). Thus your value proposition in effect enables you to create value in your practice. The SFA can authoritatively help you reason through your value proposition to include the cost, staffing and technological considerations.

4. Enabling Technology:

Establish the configuration of technology that will empower you to manage an extraordinary degree of account detail for an unlimited number of custom accounts, utilizing real time information at the lowest possible cost, within a fiduciary construct. How technology is used to bring fiduciary responsibility within the reach of all advisors is not the focus of most advi-



sors, broker/dealers and custodians. Yet it is breakthroughs in technology that make the professional management of fiduciary responsibility/liability possible. This is the key to your profitability and your value proposition (see: SENIOR CONSULTANT February/March 2006, "The Enabling Technology That Brings Fiduciary Counsel Within The Reach Of All Advisors"). Here you need to be very specific in leading your custodian to what you need to build your RIA. The major custodians will not provide you with everything you need but they can help you gain access to technology less expensively than you can as an individual, particularly the big-ticket items. Direct access to real time holdings data is the key to managing an extraordinary degree of portfolio detail and providing continuous comprehensive counsel necessary to fulfill our fiduciary obligations. This is accomplished with sleeveless overlay management technology at the advisor level utilizing model portfolios. This technology can automatically recommend and document the rationale behind transactions that will optimize values like risk, return, tax efficiency, liquidity and cost structure essential for each of a very large number of individual clients to achieve their goals and objectives relative to a custom benchmark (see January 2006 SENIOR CONSULTANT, "Smartleaf: The Missing Link In Successfully Providing Fiduciary Counsel"). It is important to note that it is actually faster, easier and less expensive for advisors to assimilate web based technological innovations and make it run as a system, than it is for major firms that are hampered by inflexible and expensive legacy systems which are incapable of immediately accommodating the ever accelerating pace of innovation (see April 2003 SENIOR CONSULTANT, "How Are Top Advisor's Growing Their Business In A Difficult Market?"). Smart custodians will use their buying power to drive down the cost of core enabling resources, thus reducing the capital required for advisors to create their RIAs, expanding the custodian's market, bringing fiduciary counsel within the reach of ever larger numbers of advisors. The SFA can

draw from the industries leading experts in aiding you in creating a vision and evaluation/ selection criteria that will provide a technological configuration that best works for you.

5. Select Your Custodian:

The reason why you want to wait to select your custodian until you know your technological needs is the custodian (Schwab, Fidelity, TD Ameritrade) can be instrumental in providing you with low cost access to core technology. The bigger your practice or your collective practices, the more latitude the custodian has to help you. This is also why a collaboration of advisors may be a better model than going it alone. Custodians also provide you with low cost product access, trade execution services, a transition team to help you to transfer your accounts, and occasionally provide

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AND VALUE PROPOSITION, YOU HAVE PUT
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EXIT STRATEGY.**

client referrals. Fiduciary advisors, who are product neutral and use objective criteria for investment selection, ascribe little value to the very expensive product distribution overhead of a NASD member firm that is tied to commission sales and by definition adds no value. This is why the custodian's cost structure is very low in comparison to a wirehouse. Fiduciary Advisors simply do not require a very expensive product distribution infrastructure that adds no value. Their custodians actually have better product access and lower trade execution costs. All these cost savings that accrue to custodian result in you having a favorable pricing advantage relative to NASD member firm brokers. Because your custodian does not act as your broker/dealer you keep 100% of the revenues you generate, relative to the 40% you keep at a major wirehouse. Custodi-

ans like Schwab, Fidelity and TD Ameritrade are ideally suited to supporting Fiduciary Advisors, particularly if the advisor wants to make a conflict free work environment and the relinquishing of their brokerage licenses an important part of their value proposition. The major brokerage firms have a difficult time competing on the basis of their value proposition, cost structure and inherent conflicts of interest. The SFA can help you choose a custodian, drawing upon the experiences of our top advisors and specialized industry expertise.

6. Engage Your Transition Team:

Your custodian will assign you a transition team who will help you transition all your accounts from your existing broker/dealer to your new custodian. Advisors that engage their counsel for a fee have excellent success in transferring their clients, typically in the 90% plus range. A principle consideration in selecting your custodian should be their experience and success in transitioning advisory services businesses just like yours. The SFA can be helpful in objectively evaluating and selecting custodians.

7. Select Your Broker/Dealer, If Necessary:

There are advisors who are active in the institutional markets whose clients prefer soft dollar compensation (directed trades in lieu of paying hard dollar consulting/advisory fees) who will need to retain their brokerage license to continue with this compensation arrangement. Though the practice of being compensated by soft dollars is increasingly being subject to regulatory scrutiny and audit, if an advisor is working in the public fund and Taft-Hartley market segments, brokerage licenses may be essential to accommodate clients who prefer soft dollar payment for your services. Otherwise, many top RIAs, particularly those that use Charles Schwab, have found it advantageous to relinquish their brokerage licenses to eliminate any conflicts of interest in the minds of the consumer. Last year, the 3,000 advisors at Schwab Institutional, all of whom have relinquished their brokerage licenses and



have at least \$100 million or more under advisement, garnered \$44 billion in net new assets, while the 15,000 advisors at Merrill (who has more million dollar producers than all the other wirehouses combined) had \$10 billion in net new assets. There is a very strong case to be made that avoiding conflicts of interest is very appealing to the consumer, especially now with the new SEC required disclosure statement. The questions you have to ask in selecting a broker/dealer are (a) do they provide you with the latitude to fulfill your fiduciary obligations, (b) what are the constraints of being an Investment Advisor Representative operating under a NASD member firm's form ADV in creating your own value proposition (c) what is the imbedded cost structure and is it possible for you to compete with RIAs that have a more powerful and less expensive value proposition. The SFA can help you reason through whether you should relinquish your brokerage license and engage a broker/dealer or not.

8. Create A Conflict Free Business Environment:

The new SEC disclosure statement heightens the consumers and advisors awareness of conflicts of interests. The fiduciary advisor is obligated to act in their client's best interests and cannot profit directly or indirectly from a position of trust. Full transparency and disclosure is required. The SEC and the DOL have issued a joint advisory letter establishing ten questions that all advisors should answer. This advisory letter is an excellent point of reference in creating a conflict free business environment for advisors in which to work (see May 2005, SENIOR CONSULTANT, "SEC and DOL: Ten Questions Every Advisor Must Answer"). The most complex aspect of creating a conflict free business environment is how brokerage commissions are handled. The major NASD member firms treat trade execution as a profit center, while a fiduciary would treat trade execution as a cost center. Thus there is a conflict of interest for brokers, as the broker is directly and indirectly (his firm) profiting from trades in accounts in which the client is relying on the broker's advice. The conflict of

interest concerning trade execution is mitigated by omnibus block trading and a highly transparent fee structure. This transparency makes pricing and services offered very clear, bringing clarity to the competitive market position of advisors and brokers alike. The SFA can help you structure a conflict free business environment that affords significant pricing advantages for the RIA and the consumer.

9. Consider A Trust Company Structure:

Advisors can pay as much as one hundred basis points or more for trust services that are not much more than trust accounting capability which is obtained for free in building your own

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prudent investment process, by simply selecting a sub-accounting, trade and order routing and reporting technology structured for trust accounting when you are establishing your technology platform. Given the convergence of the brokerage industry and banking industry around common fiduciary principles, when one is creating their own RIA, it is not much more work to structure your advisory services firm as a private trust company approved in 40 of the 50 states (see: January 2005, SENIOR CONSULTANT, "Finding An Outstanding Trustee: What Wealthy Families Are Looking For And How They Get It). John P C Duncan, who wrote the model trust law adopted in 40 of the 50 states, sees the Private Trust Company as a very powerful vehicle for RIAs. For unlimited fiduciary responsibility/liability required in the ultra high net worth market, Private Trust Companies can outsource to world class trust companies like Kanaly Trust in Houston. To

enter into a relationship with potentially unlimited fiduciary liability that never ends, Kanaly must review and evaluate the complexity of the relationship, establish pricing and accept each client on a case-by-case basis. The OCC gives Kanaly the highest rating possible and the range of their services is incredible. Thus, it is possible for your private trust company to compete locally with the biggest names in the business on very favorable terms, based on performance, personal service, professional expertise, and pricing. The SFA can help you reason through the advantages and disadvantages of creating a private trust company as an important part of your value proposition.

10. Hire Your CAO And CIO:

The key to building a profitable advisory services business is to recognize different skill sets are required for different functions and a division of labor is required to build a high performance business team. Everyone can play to their strengths, performing their tasks individually far more capably than any other single member of the team. The sum of the parts becomes greater than the whole. The Chief Administrative officer makes disparate technologies function as a system. The Chief Investment Officer, using advanced analytical tools to manage real time information, makes possible the continuous comprehensive counsel necessary to fulfill your fiduciary obligations. The CEO/advisor(s) develops and manages client relationships, provides the vision and initiative to grow revenues, assets and practice valuation (see March 1999 SENIOR CONSULTANT, "Building A World Class Business"). The SFA can help you establish a division of labor, create job descriptions, delineate specific responsibilities by function, establish salary administration guidelines, and establish qualifying competency and proficiency evaluation criteria for each position. The SFA can be helpful in drawing upon industry experts to assist you in building a high performance business team of highly motivated professionals who have the skill and incentive to exceed expectations for



their prescribed duties.

11. Select Your Investment Methodology:

Your Chief Investment Officer will be responsible for continuously and comprehensively managing and monitoring a very large number of custom investment portfolios in accordance to investment policy. This requires him or her to use model portfolios and the latest in evaluation, performance measurement and overlay management technology. The CIO may also wish to engage outside technical resources like RowPyn's EIR, a proven active management investment methodology, to guide in real time how the CIO may manage and adjust the portfolios. This removes a terrible burden of the CIO while assuring excellent performance. Alternatively, the advisor may wish to outsource the CIO function to Dimensional Fund Advisors (DFA), Frank Russell or SEI, all of whom have a market neutral strategy readily ascribed to by leading academics and Fortune 500 companies. Here you build on the sophistication and credibility of these firm's clients and/or the legendary investment prowess of their Nobel Prize caliber principals. The SFA can help you reason through your alternatives, their cost and strategic advantages.

12. Marketing:

Because the financial services industry is focused on product distribution there has been little focus on marketing, everything has been focused on sales and product promotion. The RIA business model shifts the focus to the advisor, who is the value added, the market segments they serve and the services they provide. The power of having your own RIA is that you can delineate the services you offer, to include the acknowledgement of your fiduciary obligations, the conflict free business environment in which you and your colleagues work and your prudent investment process which can be audited back to statute, case law, regulatory opinion letters and best practices (as well as process, pro-

cedures, work flow and task tied to specific job descriptions). An investment advisor representative of a major firm is limited to the services cited in their firm's ADV. As an RIA you can develop your own website without asking permission. You can develop your own marketing campaign to brand your firm and build brand awareness. You can publish white papers directly targeting your targeted market segments. You can have conferences for your chosen market segments establishing your expertise and building bridges to other technical experts and professions that serve the same market segments. You can conduct direct mail and telephone campaigns

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directly cultivating your target markets with your branding, your unique value proposition, your professional standing in the industry. You can create a marketing function that develops a pipeline of never ending qualified prospects with a service model that keeps promoting your unique value proposition that keeps everyone happy. The SFA can help you create all of the above

13. Create A Policies And Procedures Manual:

Once you have developed your auditable prudent investment process, have your staff and technology in place and functioning as a high performance business team, the SEC requires you to have a policies and procedures manual. It is the responsibility of the RIA to create and continually enhance the policies and procedures manual, so if they were not available, someone else could step in and perform their responsibilities. This is required but it is also good for the RIA and the client. You are motivated

to do this because the extent you have created a process that can be articulated, managed and executed without you, you have created liquid transferable value in your practice. The free cash flow over and above everyone's salary and bonus establishes the value of your practice as a going concern for all principles shareholders. The free cash flow is in essence the return on the investor's investment in your enterprise. The SFA can help you develop a policies and procedures manual, working with the Center for Fiduciary Studies and other expert resources in accordance to your objectives.

14. Establish A Code of Ethics:

The SEC requires you to create a Code of Ethics and will hold you accountable to whatever standard you wish to be held to. Thus, most Codes of Ethics are intentionally obscure. But if you have a prudent investment process, which can be audited back to statute, case law and regulatory opinion letters, you have a significant competitive edge relative to advisors who are

acting in a sales capacity, who cannot fulfill their fiduciary obligations. With the new SEC disclosure statement good intentions are not enough, the advisor must acknowledge their fiduciary obligations. Thus your code of ethics can be a major point of differentiation that should be designed to embellish the differences between a broker and an advisor. The SFA can help you in creating your Code of Ethics to clarify your preemptive value proposition.

15. Establish Your Client Service Model:

How you serve your clients is more important to the client than all the knowledge, technology and investment sophistication you can muster. Though the latter helps you add value, the consumer understands service. Answering 99% of their questions on the first call, answering the phone by the third ring, being totally prepared on each quarterly review, learning or confirming something new about each client through diagnostic testing/evaluation



at each meeting, knowing how the client best processes information, providing meaningful educational information each quarter so you can elevate the client's consideration, having a pleasant office setting, having a member of your staff that is involved with managing each client meeting, greeting each client, establishing an agenda, establishing objectives to be accomplished, preparation of materials to be assembled, objectives the client hopes to accomplish. Your client service model also establishes how you communicate with you clients, the vehicle and medium used (web, telephone, letters, meetings, conferences, event sponsorship), the content (white papers, research, promotional materials) disseminated and the objective of your communication. By managing the client relationship as part of the investment process there is a structure that allows the advisor and the consumer to derive the most value out of each client relationship. The SFA can help you create your own unique service model.

16. Select A Location:

Your service model and the client experience you wish to create have great influence on the selection of your office location and the configuration of your office space. There are significant advantages to an RIA having a Chief Investment Officer and a Chief Administrative Officer and a robust marketing function that can result in a superior client experience. The pros and cons of the full range of service models should be evaluated based on their advantages, staffing requirements and costs. Once a client gets used to a very high level of service there is an implied quality of service the client will require of other alternative service models that will make it very difficult for your competitors to win favor. Your pricing model is a derivative of your service model and your service model is a derivative of the selection of your office location and the physical configuration of your space. Your cli-

ents may not be able to understand the technical aspects of your services but they can experience the care, professionalism and service you provide. Your Client Service model should be in place before you select a space. The SFA can help you reason through your client service model and thus your location, space and office configuration needs.

Brokers working within NASD member firms, who can not acknowledge their fiduciary status, who are acting in a sales capacity, who are limited by their firms form ADV in the services they provide, who are limited to using a wrap fee program or UMA format, who are not acting in their client's best interests, have been put at terrible disadvantage. Though it is difficult to believe that the industry would put their brokers at such a difficult position, it has been done by choice. By design, it is not possible for the NASD member firm broker to openly acknowledge their fiduciary obligations. Their role has historically been limited to the lowest common denominator of trade execution. Thus your desire to act in your client's best interests marks the emergence of an entirely new profession of fiduciary advisors. You will literally be faster, better, cheaper than your brokerage industry competitors and will be held to a position of trust by your clients, which is not universally possible with in a brokerage firm.

If you would like to do the right thing, act in your client's best interests acknowledge your fiduciary obligations, take control of your value proposition, win clients at will, maximize the value of your practice and become a fiduciary advisor call Steve Winks at the Society of Fiduciary Advisors (804-643-1075) or e-mail swinks@SrConsultant.com. We can help. ■

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