Principles vs Rules

DOL's Principles-based Approach is Right for Fiduciary Regulation

New York – June 21, 2016 – In the debate over the Department of Labor Fiduciary Rule many commentators who object to the rule are really objecting to its Principles-based approach versus the traditional securities industry Rules-based regulation.

As a paper published in 2007 in *The American Business Law Journal* explains, "The classic example of the difference between rules and principles or 'standards' involves speed limits: a rule will say, "Do not drive faster than 55 mph," whereas a principle will say, "Do not drive faster than is reasonable and prudent in all circumstances." While the rule is black and white, it may not make much sense during a snowstorm. Rules provide advance determination leaving only factual issues to be determined. Unfortunately reality is not that black and white hence principles incorporate both factual issues and conduct.

The concept of principles-based regulation is both well-established and global in nature. For example, The Institute of Chartered Accountants in England and Wales writes, "Ethics is about principles and values and beliefs which influence judgment and behavior. It goes beyond obeying laws rules and regulations - it is about doing the right thing in the circumstances." And its "Principles versus Rules Debate" paper notes that:

Principles are robust and flexible because they:

- provide guidance that can be applied to the infinite variations in circumstances that arise in practice
- can cope with rapid changes of the modern business environment
- prevent the development of a mechanistic, "box-ticking" approach to decision-making and the use of legalistic loopholes to avoid compliance with guidance
- focus on the spirit of the guidance and encourage responsibility and the exercise of professional judgement, which are key elements of professions

Harold Evensky, Chairman of Evensky & Katz and CFS Steering Group Member, notes that while compliance with rules-based regulation may be much easier for financial service compliance departments (i.e., check the box), it leaves the investor at risk when his or her advisor, taking comfort in "checking the box," recommends driving at 55 mph during a snow storm.

The Committee for the Fiduciary Standard believes that the Department of Labor clearly understands this risk and the DOL fiduciary rule is appropriately Principles based.

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About The Committee for the Fiduciary Standard
The Committee was formed in June 2009 by group of investment professionals and fiduciary experts who volunteer their time to advocate that all investment and financial advice be rendered as fiduciary advice and meet the requirements of the five core fiduciary principles.

The Committee's goal is to advocate for the authentic fiduciary standard. The Committee seeks to help inform and nurture a public discussion on the fiduciary standard. Its objective is to ensure that any financial reform regarding the fiduciary standard, 1) meets the requirements of the authentic fiduciary standard, as presently established in the Investment Advisers Act of 1940, or ERISA, and 2) covers all professionals who provide investment and financial advice or who hold themselves out as providing financial or investment advice, without exceptions and without exemptions.
www.TheFiduciaryStandard.org

The Committee for the Fiduciary Standard believes that investors have a right to know whether or not their advisor is acting in the investor's best interests. For those investors and firms that agree, the Committee has drafted a straightforward Fiduciary Oath declaring an advisor's commitment to adhere to a fiduciary ethic and, in so doing, be accountable for their advice to clients. We call on all advisors to provide a signed copy of this oath every time they enter into an advisory relationship with a client. Many fiduciaries already do this. Similarly, we recommend that investors insist their advisors sign the oath before entering into a financial relationship.

For more information about the Fiduciary Oath, please visit:
http://www.thefiduciarystandard.org/fiduciary-oath/

THE COMMITTEE FOR THE FIDUCIARY STANDARD

The Fiduciary Oath

PUTTING YOUR INTERESTS FIRST

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I believe in placing your best interests first. Therefore, I am proud to commit to the following five fiduciary principles:

I will always put your best interests first.

I will act with prudence; that is, with the skill, care, diligence, and good judgment of a professional.

I will not mislead you, and I will provide conspicuous, full and fair disclosure of all important facts.

I will avoid conflicts of interest.

I will fully disclose and fairly manage, in your favor, any unavoidable conflicts.

Advisor ____________________________

Firm Affiliation ____________________________

Date ____________________________

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www.thefiduciarystandard.org

Fiduciary Oath

I will put my client's best interest first.

I will act with prudence; that is, with the skill, care, diligence and good judgment of a professional.

I will not mislead clients and I will provide conspicuous, full and fair disclosure of all important facts.

I will avoid conflicts of interest.

I will fully disclose and fairly manage, in my clients' favor, any unavoidable conflicts.

Advisor Signature	Date
Advisor Name	Firm Name