



FIDUCIARY PLAN GOVERNANCE, LLC

**Why is being a member of ASPPA similar to  
being a West Point Cadet?**

**The ASPPA Code of Professional Conduct**

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# AGENDA

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- ASPPA Code of Professional Conduct
- Ethics on Wall Street?
- Moral Hazard
- Principal of Due Care
- Negative and Affirmative Ethical Obligations
- Conflicts of Interest
- Fiduciary Expectation



# ASPPA Code of Professional Conduct

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## Communications

A Member who issues a Professional Communication shall take appropriate steps to ensure that the Professional Communication is *appropriate to the circumstances and its intended audience.*



# ASPPA Code of Professional Conduct

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## Communications

Was our information/message accurately understood by the client?



# ASPPA Code of Professional Conduct

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## Conflicts of Interest

A Member shall not perform Professional Services involving an actual conflict of interest unless:

- A. The Member's ability to act *fairly* is unimpaired;
- B. There has been full *disclosure* of the conflict to the Principal(s);
- C. All Principals have *expressly agreed* to the performance of the services by the Member.

*If the Member is aware of any significant conflict between the interests of a Principal and the interests of another party, the Member should advise the Principal of the conflict* and include appropriate qualifications or disclosures in any related communication.



# ASPPA Code of Professional Conduct

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## Conflicts of Interest

**Part I:** If our action was outlined on the front page of the Wall Street Journal, how would a Devil's Advocate criticize us?

**Part II:** If the actions of another (of which you were aware) in a given situation were outlined on the front page of the Wall Street Journal, could a Devil's Advocate criticize the other's actions?



# ASPPA Code of Professional Conduct

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## Disclosure

A Member shall make *full and timely disclosure to a present or prospective Principal* of all sources of direct or indirect material compensation or other material consideration *that the Member or the Member's firm has received or may receive* in relation to an assignment for such Principal.



# ASPPA Code of Professional Conduct

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**Disclosure** is directly related to Communications:

Does the client have the haystack or the needle?

Does the client have information or knowledge?





# ASPPA Code of Professional Conduct

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## Professional Integrity

A Member shall perform Professional Services, and shall take *reasonable* steps to ensure that Professional Services rendered under the Member's supervision are performed, with *honesty, integrity, skill and CARE*.



# ASPPA Code of Professional Conduct

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## Professional Integrity

What are reasonable steps?

What are the meanings of honesty, integrity and skill?

What is the meaning of care?



# ASPPA Code of Professional Conduct

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1. A firm adherence to a code of especially moral or artistic values : incorruptibility
2. An unimpaired condition : soundness
3. The quality or state of being complete or undivided : completeness
4. Saying what you mean and Meaning what you say

*Merriam-Webster &  
Lewis Carroll*



# ASPPA Code of Professional Conduct

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- Charters v John Hancock

- John Hancock countersued their client (Charters) for breach of fiduciary duty, monetary contribution and indemnity *for being negligent in hiring John Hancock in the first place.*

- Haddock v Nationwide Life

- *“If Nationwide Life is found to have violated ERISA by arranging for, receiving, and retaining payments from funds...then the Trustees are reckless and also at fault* to the extent the Plans suffered harm..., because the Trustees had the ultimate responsibility for managing the Plan, and investing Plan assets.”

*“If our conduct caused harm to the plan participants, it was our clients' fault for not being smart enough to put a stop to it.”*

*Dan Solin, Nationwide Tosses Its 401(k) Clients Under the Bus*



# ASPPA Code of Professional Conduct

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- Expert and specialized knowledge\*
- High quality work
- The *professional owes a higher duty to a client*
- Often the professional is required to *put the interest of the client ahead of his own interests.*
- *A high standard of professional ethics*

*\*Sensitivity to Moral Hazard*



# ASPPA Code of Professional Conduct

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The driving force of any profession includes not only the special knowledge, skills and standards that it demands, but *the duty to serve responsibly, selflessly and wisely, and to establish an inherently ethical relationship* between professionals and society.

*JOHN C. BOGLE 4/21/09*



# Criteria for Ethical Decision Making

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## Voluntary:

“Neither buyer nor seller is compelled to enter into the exchange as a result of *coercion, severely restricted alternatives, or other constraints* on their ability to choose.”

## Informed:

“Both the buyer and the seller must *understand* what they are giving up and what they are receiving in return.”

## Consent:

“Both buyer and seller are able at the time of the exchange to make *rational judgments* about its *costs & benefits*.”

*A Modal Evaluation of Sales Practices, David M. Holley*



# Ethics on Wall Street

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- The Securities Exchange Act of 1934 states that securities in transactions are affected with the national interest, and must be conducted so as to protect interstate commerce and *to insure the maintenance of fair and honest markets* in such transactions. These general mandates require that market participants operate with *the highest ethical standards and integrity* and comply with all laws and rules intended to achieve these goals.
- “The Commission’s mission starts with an uncompromising commitment to *the highest ethical standards...*”

*SEC General Counsel David Becker*





# Ethics on Wall Street

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The *foundational rule in FINRA's rather large rule book is an ethical one*: that brokerage firms must conduct their business in accordance with *“high standards of commercial honor and just and equitable principles of trade.”*

*Mary Shapiro, CEO, FINRA 10/14/08*

What's most important of all is for market participants—from senior executives to individual investors—to *possess a commitment to ethics, integrity, and professional responsibility.*

*Rick Ketchum, CEO, FINRA, 10/2/09*



# Ethics on Wall Street?

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- The financial services industry is at a crossroads - we are faced with a little-before seen crisis in the global economy and several instances of *publicized lapses in professional ethics.*

*“Enhancing Professional Conduct in the Financial Services Industry” FINRA*

- “Wall Street’s *moral lapses call into question the moral justification for capitalism.*”

*Joseph Grundfest SEC Commissioner, 1987*

- “Wall Street needs to *re-establish trust, honesty...*

*John Mack, October 13, 2010*



# Ethics on Wall Street?

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In Gallup's 2009 polling just *19% said the honesty and ethical standards of bankers were high*; 12% felt that way about business executives, and *9% about stockbrokers*. Stockbrokers were tied with members of Congress. Both ranked only slightly above HMO managers (8%) and car salesmen (6%), who took last place in the poll.

*Forbes 4/5/10 Karlyn Bowman*

There are *many professions in which one can find examples of hollow values, but nowhere is it more evident than on Wall Street...*

*Jon Huntsman, Winners Never Cheat*



# Ethics on Wall Street?



*"The First Rule for Fiduciaries Is to Put Their Interests Last."*

# Ethics on Wall Street?

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## Goldman Sachs Business Principles

*"Our clients' interests always come first.* Our experience shows that if we serve our clients well, our own success will follow."

"We are dedicated to complying fully with *the letter and spirit of the laws, rules and ethical principles that govern us.* Our continued success depends upon unswerving adherence to this standard."

*"Integrity and honesty are at the heart of our business."*



# Ethics on Wall Street?

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**“Puffery”** has been described by one legal scholar as vague statements of corporate optimism that is often characterized as ***"so obviously unimportant to a reasonable investor that reasonable minds could not differ."***

*Dan Solin: “'Puffery' Can Blow Away Your Retirement Goals”*

**Puffery:** ***“an exaggerated, blustering, and boasting statement upon which no reasonable buyer would be justified in relying”*** or “a general claim of superiority over comparable products that is so vague that it can be understood as nothing more than a mere expression of opinion.”

*U.S. Court of Appeals for the Fifth Circuit, 1984*



# Ethics on Wall Street?

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Goldman's attorney's argument against an investor class action:

"Further, the vast majority of the supposed "misstatements" alleged in the Complaint -- e.g., regarding the firm's *"integrity"* and *"honesty"* -- *are nothing more than classic "puffery"* or statements of opinion that, under well-settled law, cannot give rise to a securities fraud claim."

*United States District Court for the Southern District of New York  
(In re Goldman Sachs Group, Inc. Securities Litigation: Master File No. 1:10-cv-03461)*



# Ethics on Wall Street?

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"[I]f Goldman's claim of *"honesty"* and *"integrity"* are *simply puffery*, the world of finance may be in more trouble than we recognize."

*U.S. District Judge Paul A. Crotty, June 21, 2012*





# Ethics on Wall Street?

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Context	Action	Intention	Example	
Entertainment	Truth not necessary	False or misleading info	Misdirection, intrigue	Movies, novels, magic acts, poker
Etiquette	Truth preferred, but not necessary	Incomplete information	Kindness or respect	"Does this make me look fat?" Tact.
Mistake	Truth expected	Factually incorrect info	Tell the truth	Misremembers
Lying	Truth expected	Factually incorrect info	Mislead, deceive	Lies; steroids in sports
Paltering	Truth expected	Factually correct but incomplete or out of context	Mislead, deceive	Innuendo; Partial truths "lies of omission"

*Lying and Paltering, Bennett Blum, MD*



*"The First Rule for Fiduciaries Is to Put Their Interests Last."*

# Ethics on Wall Street?

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## Paltering:

To intentionally deceive or mislead without making a false statement in order to advantage one's self and /or disadvantage another



# Criteria for Ethical Decision Making

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## Voluntary:

“Neither buyer nor seller is compelled to enter into the exchange as a result of *coercion, severely restricted alternatives, or other constraints* on their ability to choose.”

## Informed:

“Both the buyer and the seller must *understand* what they are giving up and what they are receiving in return.”

## Consent:

“Both buyer and seller are able at the time of the exchange to make *rational judgments* about its *costs & benefits*.”

*A Modal Evaluation of Sales Practices, David M. Holley*



# Pitfalls

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**Paltering = Equivocation:** making an indirect, **ambiguous**, or contradictory statement. To use one word but for multiple meaning, or two words with the same meaning.

*XYZ Firm receives payments of **up to** 0.15% on new asset purchases made by the plan. These payments **may be** referred to as “revenue sharing” **under some circumstances**. The payments are made by the ABC Company to XYZ Firm. Your Financial Advisor does not receive any part of these payments. Amounts payable by ABC Company to XYZ Firm do not result in an additional **direct charge** to your Plan or to the products, **except to the extent** ABC Company applies an asset charge or other charge and pays compensation to XYZ Firm from its general revenues.*



# Pitfalls

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**Paltering = Concealment:** omitting information that is material to the context, or hiding material information

Fiduciaries are required to know all expenses that are being paid by the plan, directly or indirectly, and to determine if they are reasonable (that is, whether the expense is competitive in the marketplace and whether the plan and its participants receive value commensurate with the cost). In addition, *the advisor should be able to explain the structure of the compensation he or she individually receives* from each investment. Fiduciaries are not required to choose the least expensive services; rather, they should ensure that they are getting good value for the plan's money.



# Pitfalls

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## Needle in a Haystack QUIZ

- How many pages of documentation must a plan sponsor review in order to read all of the available information regarding fees, compensation & potential conflicts of interest?

*(Lets assume there is just one mutual fund in the plan!)*

- a) 127
- b) 539
- c) 827



# Pitfalls

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## Needle in a Haystack Quiz

1. Prospectus – 72 pages
2. SAI– 285 pages
3. Annual Report – 44 pages
4. Semi-Annual Report – 36 pages
5. Group Annuity Contract – 33 pages
6. Plan Level Documents – 58 pages
7. Adm. Service Agreement – 11 pages

**539 pages!**



# Moral Hazard

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Gyges was a shepherd for the King. One day, there was an earthquake while Gyges was out in the fields, and he noticed that a cave had opened up on the side of a mountain. When he went to investigate, he discovered the tomb of an ancient King, and on the finger of the corpse was a gold ring. He took the ring and soon discovered that it allowed the wearer to become invisible. Gyges realized that if he was invisible, he could do whatever he desired with no fear of punishment. The next time he went to the palace to give the king a report about his sheep, he put the ring on, killed the king, seduced the queen, and ruled the land. *Plato, The Republic*

*What would you do today with the ring, that you would not have done yesterday without it?*





# Moral Hazard

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- **Information Asymmetry** occurs when one party to a transaction has much more information about the transaction than the other party.
  - Sometimes described as the principal-agent problem.
- **Risk Asymmetry** is where one is likely to take greater risk in a transaction, if one is unlikely to face any potential negative repercussions.
  - Greater risk usually tempers one's desire for greater return; however, if one could obtain greater return at no personal risk, how much would one wager?



# Moral Hazard

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Moral hazard is "any situation in which *one person makes the decision* about how much risk to take, while someone else bears the cost if things go badly."

*Economist Paul Krugman*

*Regarding the Sub-prime mortgages that led to the 2008 financial crisis:*

"Much of the conduct that led to the crisis was unethical and irresponsible, but *some of this behavior—while morally reprehensible—may not necessarily have been criminal.*"

*Attorney General Eric Holder*



# Moral Hazard

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## Information Asymmetry

In the retirement plan industry, service providers typically have greater knowledge regarding the investment vehicle and a plan sponsor's fiduciary duties than the plan sponsor.

## Risk Asymmetry

A service provider faces minimal, if any, risk in selling an imprudent product, while a plan sponsor faces great risk for choosing an imprudent product.



# Information Asymmetry

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- “Plan sponsors were challenged by complex fee arrangements and likely paid more than they realized”  
*GAO-12-325 Survey*
- “Insurance product fees can be difficult for plan sponsors to identify and evaluate”  
*GAO-12-325 Survey*
- “Group annuity contracts are often more complex than plan sponsors realize, *riddled with hidden charges* and lock-up periods...”  
*Forbes, Retirement Plans From Hell*
- “While we acknowledge and agree that situations in which *the sale of a variable annuity within a qualified plan are limited*, and that the *suitability of all such sales should be closely scrutinized*...”  
*Senior Vice President & Chief Compliance Officer,  
John Hancock, Aug 9, 2003*



# Risk Asymmetry

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A fiduciary is *personally liable for any losses* the plan incurs by reason of its breach. A fiduciary who has breached its duty is liable to restore to the plan any profits the fiduciary made through its use of plan assets and for any other equitable or remedial relief deemed appropriate by the court, including removal of the fiduciary.

*ERISA § 409*



# Risk Asymmetry

**Is Your Company's 401(k) Plan Operated by  
any of these Insurance Companies?**

**TRANSAMERICA  
LINCOLN FINANCIAL GROUP  
HARTFORD FINANCIAL GROUP  
NATIONWIDE  
AXA, OR  
JOHN HANCOCK**

If So, You May Have Legal Claims Against, Transamerica, Lincoln Financial Group, hartford financial Group, Nationwide, AXA or JohnHancock.

These potential claims are related to fees and charges taken from retirement assets by Transamerica, Lincoln Financial Group, Hartford Financial Group, Nationwide AXA, or John Hancock.

For a free consultation to learn more about your potential claims contact Robert L. Lakind, Esq. at (609)276-0400 or [rlakind@szaferman.com](mailto:rlakind@szaferman.com)

**KNOW YOUR RIGHTS! WE CAN HELP!**

CONTACT THE FIRM OF  
**SZAFERMAN, LAKIND, BLUMSTEIN & BLADER, P.C.**

Attn: Robert Lakind, Esq.

[rlakin@czaferman.com](mailto:rlakin@czaferman.com)

1-609-275-0400

1-888-534-2571

*Newark Star-Ledger  
August 28<sup>th</sup>, 2010*



# Principle of Due Care

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- Because the Principal must depend on the expertise of the Professional, the Principal is vulnerable to Information Asymmetry
- The Principle of Due Care requires one to *foresee* potential issues which helps alleviate this vulnerability
- Due Diligence vs. Due Care
- Physician Example



# Principle of Due Care

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“Make a habit of two things: to help, or at least, to do no harm.”

*Hippocrates 400BC*

***Beneficence:*** an affirmative obligation that means “do good.”

- One ought to act in ways that promote the well-being of others.

***Non-maleficence:*** a negative obligation that means “do no harm.”

- One ought to act in ways that do not cause harm to others.\*

***\*Includes the negative obligation not to do harm inadvertently or by carelessness, or malice or negligence.***





# Principle of Due Care

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## Negative & Affirmative Obligations

A Cadet will not lie, cheat, steal,  
or **tolerate those that do.**

*West Point Honor Code*

“Fiduciaries are not sued for what they do,  
instead they are sued for what they do not do.”

*Fred Reish*



# Principle of Due Care

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## Negative Ethical Obligations

A Member *shall not* perform Professional Services involving an actual conflict of interest unless:

- A. The Member's ability to act fairly is unimpaired;
- B. There has been full disclosure of the conflict to the Principal(s);
- C. All Principals have expressly agreed to the performance of the services by the Member.



# Principle of Due Care

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## Negative Ethical Obligation

**A Cadet will not lie, cheat, steal,**

- A negative ethical obligation refers to an act that we should not perform.
- One has self-control regarding these acts
- AKA: A Sin of Commission



# Principle of Due Care

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## Affirmative Ethical Obligations

**Or tolerate those that do.**

If the Member is aware of any significant conflict between the interests of a Principal and the interests of another party, the Member should advise the Principal of the conflict...



# Principle of Due Care

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## Affirmative Ethical Obligations

**or tolerate those that do.**

- An affirmative ethical obligation *requires one to act* relative to the actions of another
- One cannot control the actions of another
- AKA: A Sin of Omission
- Potential for personal repercussions for fulfilling an affirmative ethical obligation



# Principle of Due Care

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## Standard of Care?

“Many forms of conduct permissible in a workaday world for those acting at arm's length, are forbidden to those bound by fiduciary ties. A trustee is held to something stricter than the morals of the market place. Not honesty alone, but the punctilio of an honor the most sensitive, is then the standard of behavior... the level of conduct for fiduciaries [has] been kept at a level higher than that trodden by the crowd.”

*Chief Judge Benjamin Cardozo*



# Pitfalls

## Individuals vs. Corporations

“Unless they possess the necessary expertise to evaluate such factors, fiduciaries would need to obtain the advice of a ***qualified, independent expert.***”

*DOL Reg. § 2509.95-1(c)(6)*

“For many plan sponsors, investment and other fiduciary responsibilities can seem overwhelming. That’s where we can help.”

“We are dedicated to making your retirement plan a success and, at the same time, helping you meet your fiduciary responsibilities.”

“When it comes to meeting your complete fiduciary responsibilities as a retirement plan sponsor, there are many considerations XYZ can help you make sense of it all.”



# Pitfalls

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## Individuals/Ethics vs. Corporations/Laws

**The Suitability Standard:** a *broker* must have a reasonable basis to believe that *a recommended* investment is suitable given the client's objectives.

Or

**Non-Maleficence / Negative obligation to do no harm**

**The Fiduciary Standard:** an *advisor* must put the client's interests above their own, and act in the client's best interest.

Or

**Beneficence / Affirmative obligation to do good**





# Pitfalls

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## Individuals/Ethics vs. Corporations/Laws

XYZ Financial Advisors are not allowed to recommend investments to the plan sponsor or to plan participants what funds.

No XYZ advisor is allowed to recommend funds to a plan sponsor (to include in the 401k menu.)

In reality, you know full well that advisors recommends investments:  
“No, I would hope not. We have very distinct policies in place that they don’t.”

“No recommendations, only information. Plan sponsor makes the determination.”

*Sworn testimony of the Chief ERISA Attorney of a major broker-dealer*



# Pitfalls

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## Individuals/Ethics vs. Corporations/Laws

“If I know he’s a salesman, I will evaluate his recommendations differently,...When he is an adviser, I don’t question him, I assume he is a *better expert* than I am.”

*Professor Tamar Frankel, Boston University*

“The *greatest risk* the average investor runs is the *risk of being misled* into thinking that the broker is acting in the best interest of the client, as opposed to acting in the firm’s interest.”

*Professor Arthur Laby, Rutgers School of Law*



# Conflicts of Interest

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**Duty of Exclusive Purpose** - “A fiduciary shall discharge his duties . . for the exclusive purpose of:

- (i) providing benefits to participants and their beneficiaries; and
- (ii) **defraying reasonable expenses** of administering the plan. . . .”

*ERISA §404(a)(1)(A)*

A penny saved is a penny earned.

*Ben Franklin*

***1% in excess fees*** over the average American’s working lifetime,  
***reduces their nest egg at retirement by 28%.***

*DOL, EBSA Website*



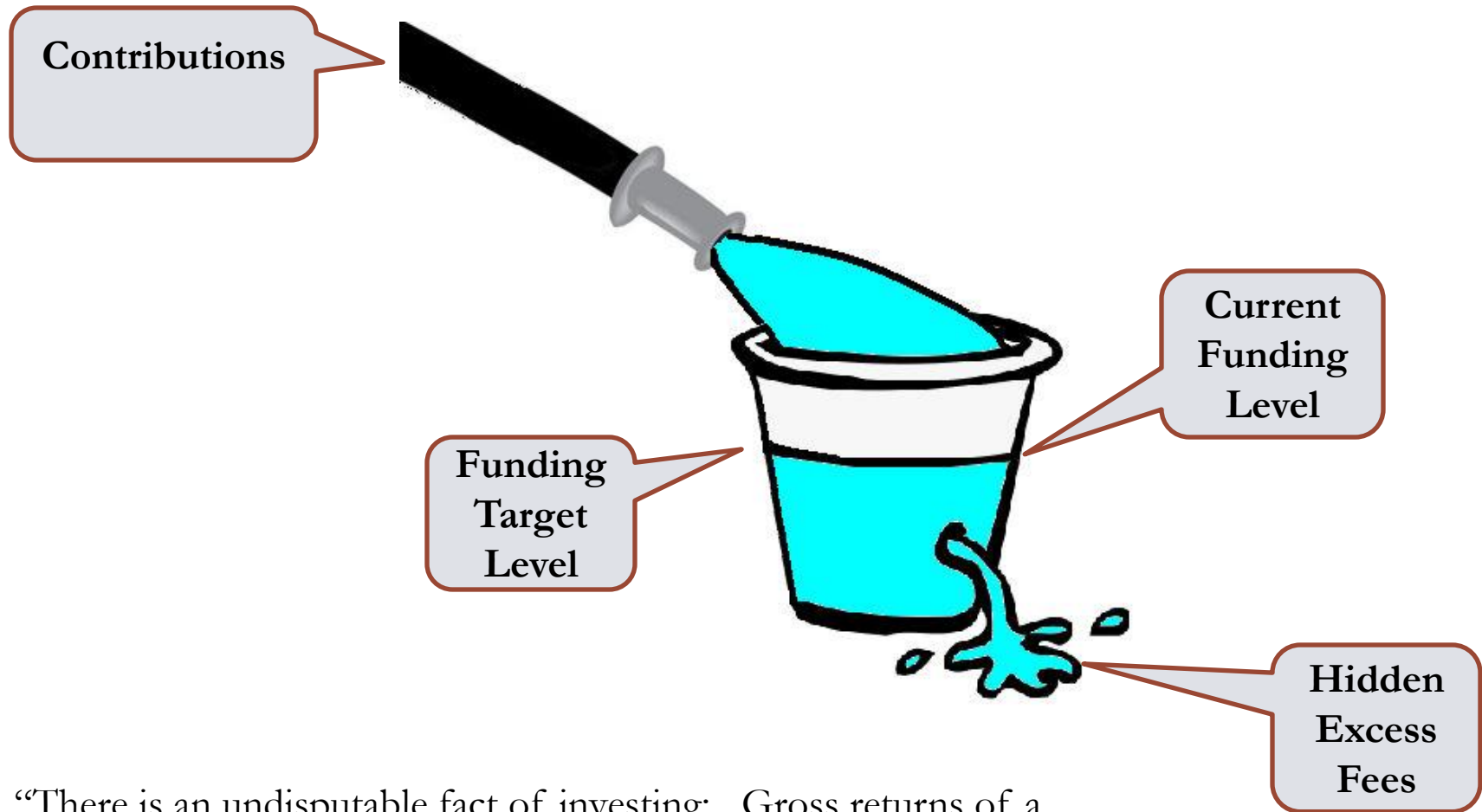
# Conflicts of Interest

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- **Plan Sponsor** – “We aren’t changing our service provider; we’re with ABC Bank and we have our lending relationship there.”
- **Firm selling 401k products** – We only provide our clients with products that pay us for “shelf space.”
- **Product Provider** – We only include investment options on our platform that pay us for “shelf space.”
- **TPA** – I recommend XYZ products; once we have \$25 million with them they pay us an additional 10 bps override
- **Salesperson** – I recommend investment options that pay me a higher commission.



# Conflicts of Interest



“There is an undisputable fact of investing: Gross returns of a given investment, minus the costs of financial intermediation, equal the net returns actually delivered to investors.”

Jack Bogle, Vanguard



*“The First Rule for Fiduciaries Is to Put Their Interests Last.”*

# Evaluating Conflicts of Interest

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ERISA § 406(a)(1)(c) prohibits plan assets to be used to pay ANY party in interest for ANYTHING! Violation of this statute is a prohibited transaction!

ERISA §408(b)(1) provides a prohibited transaction exemption only if three criteria are met:

1. The services must be *necessary* for the operation of the plan;
2. The services must be furnished under a *contract or arrangement which is reasonable* and;
3. No more than *reasonable compensation* is paid for the service.



# Evaluating Conflicts of Interest

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## **Voluntary:**

Has the plan sponsor had been presented with all of the reasonable options?

## **Informed:**

Does the plan sponsor comprehend the details or limitations?

## **Consent:**

Does the plan sponsor understand that to which he is agreeing?



# Conflicts of Interest

## Disclosure

Fee /Share Class	A	R-1	R-2	R-3	R-4	R-5	R-6
Management Fee	0.43%	0.43%	0.43%	0.43%	0.43%	0.43%	0.43%
Distribution and/or 12b-1 Fees	0.24%	1.00%	0.75%	0.50%	0.25%	none	none
Sub-TA and Other Fees	0.18%	0.21%	0.48%	0.22%	0.18%	0.13%	0.09%
<b>Total Expense Ratio</b>	<b>0.85%</b>	<b>1.64%</b>	<b>1.66%</b>	<b>1.15%</b>	<b>0.86%</b>	<b>0.56%</b>	<b>0.52%</b>
<b>Annual Cost per \$1MM</b>	<b>\$8,500</b>	<b>\$16,400</b>	<b>\$16,600</b>	<b>\$11,500</b>	<b>\$8,600</b>	<b>\$5,600</b>	<b>\$5,200</b>



*"The First Rule for Fiduciaries Is to Put Their Interests Last."*



# Conflicts of Interest

## Disclosure

- Separate Account Investment Management Fee
  - ABC periodically withdraws a separate account investment management fee from each separate account. *This fee will be at a daily rate that on an annual basis does not exceed 1.0%* of the average daily SIA Market Value of the applicable Separate Investment Account.
- Separate Account Services Fee
  - For each asset allocation and alternative equity separate investment account, ABC may periodically withdraw a fee for ancillary separate account services. *This fee will be at a daily rate that on an annual basis does not exceed 1.0%* of the average daily SIA Market Value of the applicable Separate Investment Account.



# Conflicts of Interest Disclosure

## FOOTNOTES FOR INVESTMENT FUNDS PERFORMANCE

For Period From July 01, 2010 through September 30, 2010

Contract Number 995814-000

<sup>41</sup> Transamerica Aggressive Growth Ret Opt- Effective 01-29-07, the Transamerica Aggressive Growth Fund changed its name to the Transamerica Aggressive Growth Ret Opt.

<sup>42</sup> Transamerica Balanced Ret Opt- Effective 01-29-07, the Transamerica Balanced Fund changed its name to the Transamerica Balanced Ret Opt.

<sup>43</sup> Transamerica Core Equity Ret Opt- Effective 01-29-07, the Transamerica Core Equity Fund changed its name to the Transamerica Core Equity Ret Opt. Effective 02-11-02, the Transamerica Value Fund changed its name to the Transamerica Core Equity Fund to be consistent with its expanded investment criteria.

<sup>44</sup> Transamerica Partners Core Bond Ret Opt - The Transamerica Partners Core Bond Ret Opt invested in the Investor Class Shares of the underlying mutual fund prior to 05-14-10 but currently invests in the Transamerica Partners Core Bond Ret Opt. The IM and Admin Charges are 0.93%. No adjustments have been made to performance prior to 05-14-10 to reflect any difference between the charges and expenses for the Separate Account invested in the mutual fund from the charges for the Separate Account invested in the collective trust fund. This Separate Account was named Diversified Investors Core Bond Ret Opt before 06-30-08.

The IM and Admin Charges are 0.93%

<sup>45</sup> Transamerica Partners High Quality Bond Ret Opt - The Transamerica Partners High Quality Bond Ret Opt invested in the Investor Class Shares of the underlying mutual fund prior to 05-14-10 but currently invests in the Transamerica Partners High Quality Bond Ret Opt. The IM and Admin Charges are 0.94%. No adjustments have been made to performance prior to 05-14-10 to reflect any difference between the charges and expenses for the Separate Account invested in the mutual fund from the charges for the Separate Account invested in the collective trust fund. This Separate Account was named Diversified Investors High Quality Bond Ret Opt before 06-30-08.

The IM and Admin Charges are 0.94%

<sup>46</sup> Transamerica Partners Large Core Ret Opt - The Transamerica Partners Large Core Ret Opt invested in the Investor Class Shares of the underlying mutual fund prior to 05-14-10 but currently invests in the Transamerica Partners Large Core Ret Opt. The IM and Admin Charges are 1.11%. No adjustments have been made to performance prior to 05-14-10 to reflect any difference between the charges and expenses for the Separate Account invested in the mutual fund from the charges for the Separate Account invested in the collective trust fund. This Separate Account was named Diversified Investors Growth & Income Ret Opt before 06-30-08.

The IM and Admin Charges are 1.11%

<sup>47</sup> Transamerica Partners Large Value Ret Opt - The Transamerica Partners Large Value Ret Opt invested in the Investor Class Shares of the underlying mutual fund prior to 05-14-10 but currently invests in the Transamerica Partners Large Value Ret Opt. The IM and Admin Charges are 0.97%. No adjustments have been made to performance prior to 05-14-10 to reflect any difference between the charges and expenses for the Separate Account invested in the mutual fund from the charges for the Separate Account invested in the collective trust fund. This Separate Account was named Diversified Investors Value & Income Ret Opt before 06-30-08.

The IM and Admin Charges are 0.97%

<sup>48</sup> Transamerica Partners Mid Value Ret Opt - The Transamerica Partners Mid Value Ret Opt invested in the Investor Class Shares of the underlying mutual fund prior to 05-14-10 but currently invests in the Transamerica Partners Mid Value Ret Opt. The IM and Admin Charges are 1.21%. No adjustments have been made to performance prior to 05-14-10 to reflect any difference between the charges and expenses for the Separate Account invested in the mutual fund from the charges for the Separate Account invested in the collective trust fund. This Separate Account was named Diversified Investors Mid-Cap Value Ret Opt before 06-30-08. The historical return prior to 09-30-01 is calculated based on the Mid Cap Value Mutual Fund (Institutional Shares) Composite performance of the initial sub-adviser (Cramer, Rosenthal, McGlynn, LLC), but is adjusted to reflect the 1.25% total operating expenses of the underlying mutual fund.

The IM and Admin Charges are 1.21%

# Conflicts of Interest

## Disclosure

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“In 2011, when viewed in relation to total XYZ client assets of in excess of \$1.6 trillion, the payment made *by each\** such service provider...equaled an amount of not more than 31/10,000 of one basis point (otherwise expressed, 31/1,000,000 of one percent). *We do not believe that such payments were made in connection with retirement plan business specifically, and were certainly not made in connection with any particular retirement plan,* but, for perspective, the amount of retirement plan assets included in the total XYZ client asset number set forth above is approximately \$112 billion.”

*\*28 service providers listed below this paragraph*



# Conflicts of Interest

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## Disclosure

“In 2011, when viewed in relation to total XYZ client assets of in excess of \$1.6 trillion, the payment made by each such service provider... equaled an amount of not more than 31/10,000 of one basis point (otherwise expressed, 31/1,000,000 of one percent).”

$$31/10,000 = 0.0031\% \text{ or } 0.00000031$$

$$\$1,600,000,000,000 \times 0.00000031 = \$496,000$$

\$496,000 from EACH

28 listed (“but other providers may have made similar payments.”)

$$28 \times \$496,000 = \$13,888,000?$$



# Conflicts of Interest

## Disclosure

	1 mo.	3 mos.	YTD	1 yr.	3 yrs.	5 yrs.	10 yrs.	Since* Inception	Expense Ratio
Vanguard Target Retirement 2030 Ret Opt	-0.54	10.59	7.58	9.53	-3.67	N/A	N/A	1.90	0.94

Performance shown is average annual total separate account investment choice returns (except 1 month, last quarter, and year-to-date) for the period indicated, net of the total operating expenses of the separate account or underlying investment as listed on the individual investment fact sheets. Performance returns reflect reinvestment of dividends and capital gains distributions. *Application of the contract asset charge and any discontinuance charges or service fees deducted from the account would reduce this return.*



# Conflicts of Interest

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## Disclosure

- Excerpt from a “Fiduciary Warranty”

*“...we are committed to helping you meet the highest fiduciary standards in the investment selection and monitoring process and commit to restore losses and pay litigation costs in the event that legal action is brought against qualifying plans. Now that’s security for your plan!”*

- “Review the minimum Fund requirements and a copy of the Warranty Certificate to see if your plan qualifies.”



# Conflicts of Interest

## Disclosure

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“Also, since past performance is not a guarantee of future results, we cannot warrant or guarantee either that any investment option will yield any specific return, or even that it will yield a positive return. *Nor does our Fiduciary Standards Warranty extend to claims that any expenses paid directly or indirectly by the Plan are reasonable.*”



# Fiduciary Expectation

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## Communications

A Member who issues a Professional Communication shall take appropriate steps to ensure that the Professional Communication is *appropriate to the circumstances and its intended audience.*





# Fiduciary Expectation

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- **Auditor:** There were no noteworthy issues found during our audit.
- **TPA:** You've passed your ADP & ACP testing this year.
- **Advisor:** The funds offered in the plan all have a four or five star Morningstar rating.

Principal hears: **I'm all squared away!**



# Fiduciary Expectation

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- Also falls under Due Care
- Principals often lack the knowledge to distinguish the areas of expertise of each Professional
- Principals often assume that:
  - a) All of the “experts” they hire are either fiduciaries and/or looking out for their best interest;
  - b) If an expert makes a positive statement about the plan, the statement applies to the entire plan;
  - c) If there were any issues with their plan, their experts would tell them.



# Fiduciary Expectation

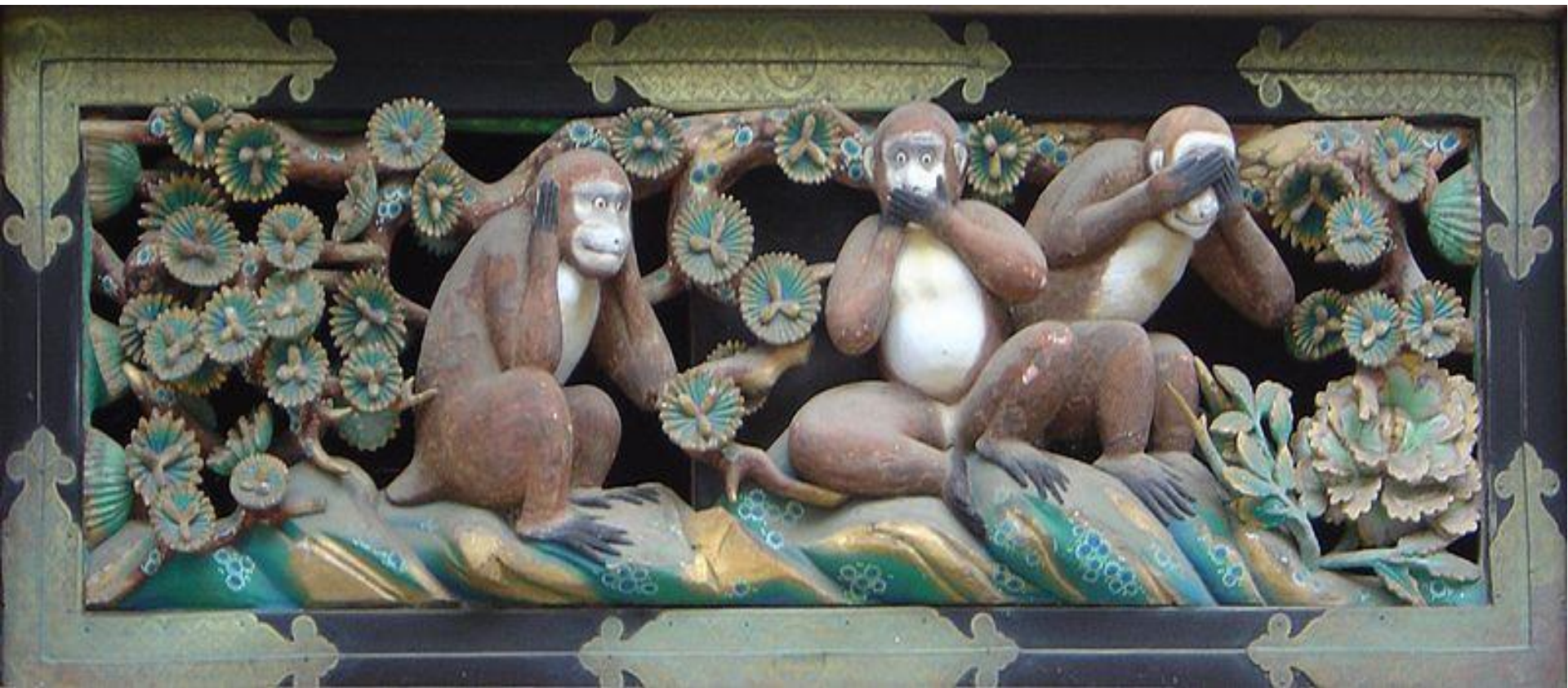
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## FINRA Rule 2210 - Communications with the Public

- Effective February 2013
- Governs 401k marketing materials
- Classifies plan sponsors as institutional investors.
- Institutional investors under Rule 4512: Banks, insurance companies, registered investment companies, registered investment advisors; and also “any other person (whether a natural person, corporation, partnership, trust or otherwise) with total assets of at least \$50 million.”
- Institutional investor has the knowledge and sophistication of a professional investor: ***They are experts!?***



# Parting Thoughts



*"The First Rule for Fiduciaries Is to Put Their Interests Last."*

# Parting Thoughts

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- Ethics is all about how we meet the challenge of doing the right thing when the act will cost more than we want to pay.

*Michael Josephson*

- Courage is not the understanding of what is right or wrong. Rather, it is the strength to choose the right course.

*Jon Huntsman, Winners Never Cheat*

- Encourage us in our endeavor to live above the common level of life. Make us to choose the harder right instead of the easier wrong, and never be content with a half-truth when the whole can be won.

*West Point Cadet Prayer*



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Please contact us for further information on how we can strengthen and broaden your professional services. Our team is looking forward to working with you.

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