
對於你無法抗拒的，迎接它

“What you cannot avoid, welcome”

Chinese Proverb

THE FIDUCIARY EFFECT

All investment industry scandals have one thing in common: *A fiduciary parlayed their position of trust for personal profits.*

“Breach of fiduciary responsibility” is the leading cause for arbitration against brokers, and leading cause for civil and regulatory suits against RIAs.

Pre-Enron, burden of proof was on plaintiff to show that you were a fiduciary. **Today, presupposition is that you are a fiduciary until you demonstrate otherwise.**

Even a “fix” for Social Security will be dependent upon the public holding Capital Hill to a fiduciary standard of care.

CRITICAL CONCEPT

The investment fiduciary has the critical duty to manage a prudent investment process, without which the components of an investment plan cannot be defined, implemented, or evaluated.

Statutes, case law, and regulatory opinion letters dealing with investment fiduciary responsibility further reinforce this important concept.

DEFINING THE INVESTMENT FIDUCIARY

Investment Fiduciary – a person who has the legal responsibility for managing someone else's money

Applies to more than 5 million men and women who serve as:

- For Members of investment committees of retirement plans, foundations and endowments
- For Trustees of private trusts
- Advisors who provide comprehensive and continuous investment advice

DEFINING THE INVESTMENT FIDUCIARY

Investment fiduciaries manage more than 80% of the nation's liquid investable wealth.

As critical as their function is to the fiscal health of this nation, we do not have a single federal or state agency that provides education and training to the 5 million.

**STAFF REPORT CONCERNING
EXAMINATIONS OF
SELECT PENSION CONSULTANTS**

May 16, 2005



<http://www.sec.gov/news/studies/pensionexamstudy.pdf>

SEC EXAMINATION INTO INVESTMENT CONSULTANTS

1. More than half had on-going conflicts of interests.
2. Many did not acknowledge their fiduciary duties.
3. Many more did not have defined practice standards, and/or advance education and training requirements on fiduciary responsibility.



U.S. Securities and Exchange Commission

Selecting and Monitoring Pension Consultants: Tips for Plan Fiduciaries

The Employee Retirement Income Security Act (ERISA) requires that fiduciaries of employee benefit plans administer and manage their plans prudently and in the interest of the plan's participants and beneficiaries. In carrying out these responsibilities, plan fiduciaries often rely heavily on pension consultants and other professionals for help. Findings included in a report by the staff of the U.S. Securities and Exchange Commission released in May 2005, however, raise serious questions concerning whether some pension consultants are fully disclosing potential conflicts of interest that may affect the objectivity of the advice they are providing to their pension plan clients.

<http://www.sec.gov/investor/pubs/sponsortips.htm>

QUESTIONS A CLIENT SHOULD ASK OF THEIR INVESTMENT CONSULTANT

1. Are you registered with the appropriate regulators as an investment adviser? If so, have you provided me with all the disclosures required under those laws?
2. Do you or a related company have relationships with money managers that you recommend, consider for recommendation, or otherwise mention? If so, describe those relationships?
3. Do you or a related company receive any payments from money managers you recommend, consider for recommendation, or otherwise mention? If so, what is the extent of these payments in relation to your other income (revenue)?

QUESTIONS A CLIENT SHOULD ASK OF THEIR INVESTMENT CONSULTANT

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?
5. If you allow clients to pay your consulting fees using the client's brokerage commissions, do you monitor the amount of commissions paid and alert clients when consulting fees have been paid in full? If not, how can a client make sure it does not over-pay its consulting fees?
6. If you allow clients to pay your consulting fees using the client's brokerage commissions, what steps do you take to ensure that the client receives best execution for its securities trades?

QUESTIONS A CLIENT SHOULD ASK OF THEIR INVESTMENT CONSULTANT

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?
8. If you are hired, will you acknowledge in writing that you have a fiduciary obligation as an investment adviser to the client while providing the consulting services we are seeking?
9. Do you consider yourself a fiduciary with respect to the recommendations you provide the client?
10. What percentage of your client clients utilize money managers, investment funds, brokerage services or other service providers from whom you receive fees?

MANAGEMENT OF INVESTMENT DECISIONS KEY CONCEPTS

Role of fiduciary is to manage the investment process, and the laws dealing with investment fiduciary responsibility further reinforce this important concept.

Fiduciary liability arises when the process is not defined and/or is inconsistently applied.

"It's not whether you win or lose - it's how you play the game."

LEGAL SCRUTINY

Investment fiduciaries are exposed to legal and practical scrutiny - it comes from multiple directions and for various reasons.

It is likely that complaints and/or lawsuits alleging investment mismanagement will continue to increase. Although some of these allegations may be entirely justified, most can be avoided.

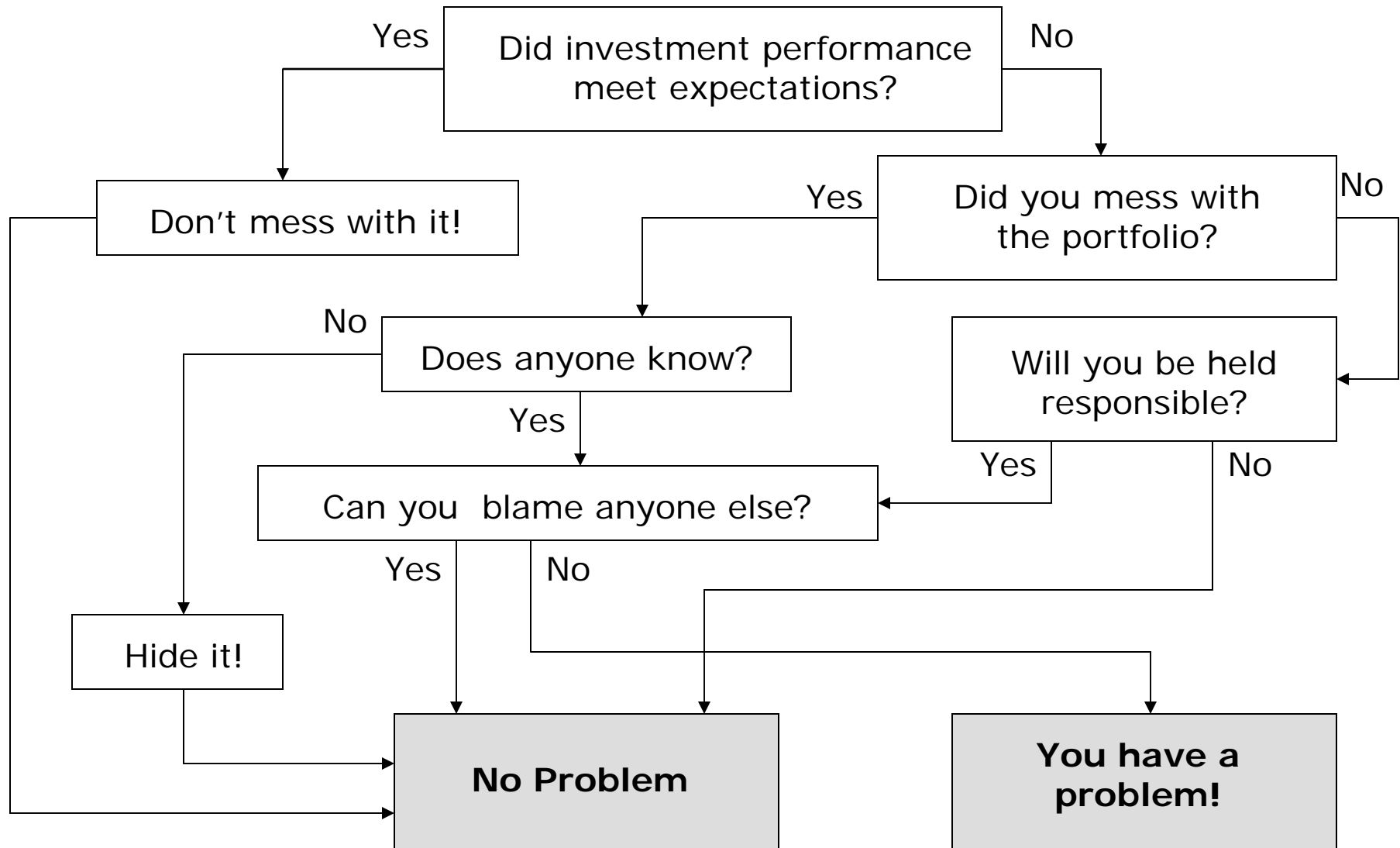


Are you prepared for the “chair” – what process will you need to show to prove you prudently managed investment decisions?

UNIFORM FIDUCIARY STANDARDS OF CARE

1. Know standards, laws, and trust provisions.
2. Diversify assets to specific risk/return profile of client.
3. Prepare 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.”
7. Avoid conflicts of interest and prohibited transactions.

FIDUCIARY FLOW CHART



INVESTMENT FIDUCIARY REVIEW

An *Investment Fiduciary Review* DOES NOT include:

- Financial, actuarial, and/or record keeping issues
- Valuations of closely held stock, limited partnerships, hard assets, insurance contracts, hedge funds, or “blind investment pools”
- Risk management issues such as the use of derivative and/or synthetic financial instruments
- Organizational/structural issues of the fiduciary