

# Opportunity for Reform of Finance in the US in 2021

*Overview for Transparency Task Force:  
Recommendations for the  
Securities & Exchange Commission*

February 11, 2021

Knut A. Rostad, President, Institute for the Fiduciary Standard  
[www.thefiduciaryinstitute.org](http://www.thefiduciaryinstitute.org)



INSTITUTE FOR  
THE FIDUCIARY STANDARD

# Institute Values and Programs

- Formed in 2011 to advance fiduciary principles in advice
- **Why.** Fiduciary deserves same protection as the Bill of Rights
- **How.** Support of Fiduciary luminaries: Tamar Frankel, Luis Aguilar, Phyllis Borzi -- Formerly, John C. Bogle, Paul Volcker, Arthur Levitt
- **How.** Education and advocacy for regulators and consumers: white papers, commentary, blogs, Fiduciary September
- **How.** Real Fiduciary™ Practices for advisors

# Assumptions re: the SEC

- 2021 is best chance for fiduciary since SEC Chair Arthur Levitt in 1993-2001; best chance for broader reforms since FDR
- Gary Gensler as SEC Chairman *could do* historic good
- Myth: damage over 12 years to the fiduciary standard and “best interest” is publicly minimal, called “weakened”, etc.
- Reality: for most retail investors it’s been effectively repealed
- Should be equated to Wells Fargo illegal accounts fraud

# Concerns with Regulation Best Interest (Reg BI)

- Reg BI calls the suitability rule ‘best interest’. Its impact is uncertain. Reg BI **does not** include ...
- Meaningful changes of broker practices,
- Required conflict cuts (but for selected sales contests),
- Required mitigation of conflicts,
- Disclosure that’s been tested as effective, and
- Support from investors, investor advocates, state securities regulators, or independent experts

# Recommendations for Reg BI

- “Fiduciary Leaders call on SEC to Repair defects ...”  
January 27 2021 paper by Rostad, Rhoades, Hamburger
- Rebrand *Regulation Best Interest* rule to *New Suitability* rule, affirm product recommendations are not fiduciary, best interest advice
- Strengthen New Suitability, eliminate certain conflicts  
And provide new guidance
- Scrap Form CRS, redo to explain IA and BD differences
- For Advisers Act, clarify when conflicts must be avoided

<https://thefiduciaryinstitute.org/wp-content/uploads/2021/01/January-2021-SEC-Fiduciary-Leaders-paper-012821.pdf>

# Institute Real Fiduciary™ Practices

All financial advisors sound like a fiduciary and talk the talk. Yet, few *can* act like a fiduciary and do the walk. Real Fiduciary™ Advisors can. They:

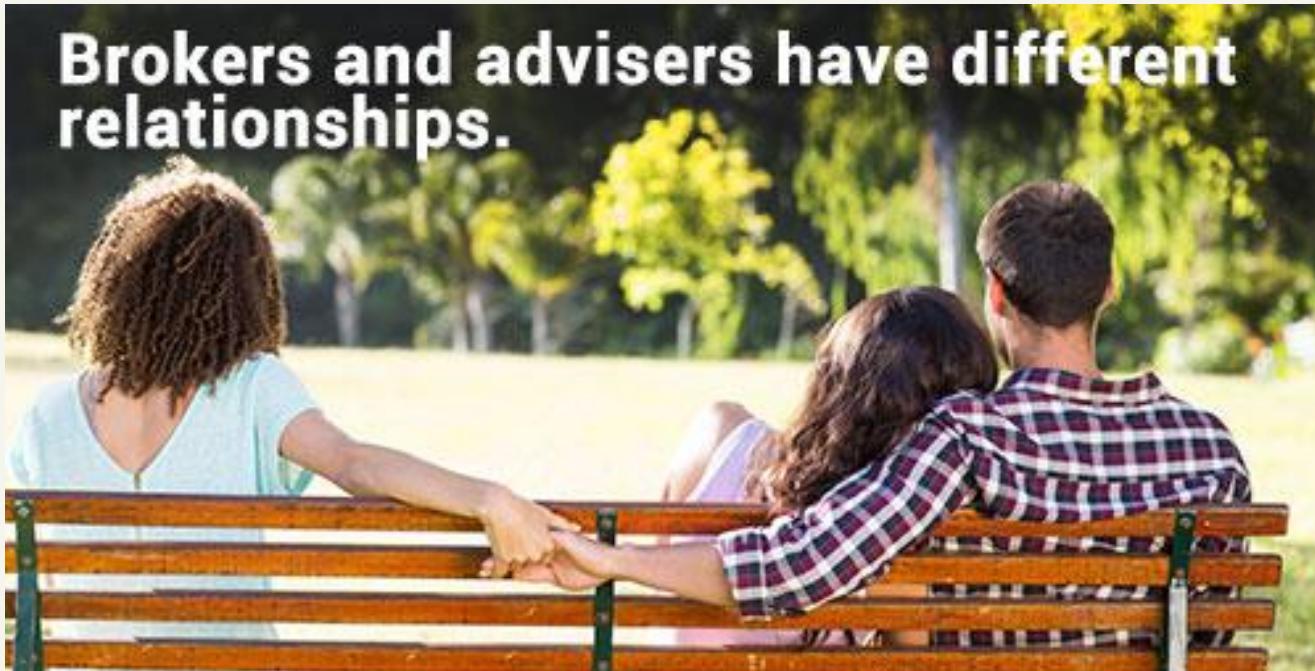
- 1.** Act as a fiduciary at all times. **2.** Only accept client fees as compensation.
- 3.** Avoid conflicts of interest. **4.** Mitigate unavoidable conflicts.
- 5.** Maintain professional knowledge and competence. **6.** Explain disclosures and agreements orally and in writing. **7.** Have a reasonable basis for advice.
- 8.** Follow a prudent process and provide investment policy statements.
- 9.** Decline gifts or entertainment. **10.** Explain fees and investment costs.

Real Fiduciary™ Advisors are experienced and objective and only compensated by client fees. They walk the walk and put what they do in writing for you.



Institute for the Fiduciary Standard Real Fiduciary™ Advisors  
See the Real Fiduciary™ Advisors and Practices here: <https://thefiduciaryinstitute.org>  
More information: [info@thefiduciaryinstitute.org](mailto:info@thefiduciaryinstitute.org)

# Two versus Three



**Brokers and advisers have different relationships.**

**Brokers give incidental advice in sales relationships of three.  
Advisers give fiduciary advice in intimate relationships of two.  
Advisers, tell the SEC. You're in relationships of two.**

# Investors Want Fiduciary\*

A “Best Interest” standard that requires an advisor ...

- Will help me choose the lowest cost products, all other things being equal. **73-11%**
- Will disclose payments that they receive that may influence them to advise me to buy one product over another. **59-15%**
- Will avoid higher compensation when a similar, less costly product is available. **61-19%**

\* RAND 2018 study / (OIAD), “The Retail Market for Investment Advice”

# Investors Want Fiduciary\*

- “How important would it be to you that your financial rep receives all his/her compensation from you directly?”

Not important, not at all important.	22%
Neither.	28%
Important, extremely important.	51%

\* RAND 2018 study / (OIAM), “The Retail Market for Investment Advice”

# Real Fiduciary™ v. “Best Interest”

Real Fiduciary™ Advisors can act as fiduciaries and put what they do in writing. Yet, best interest brokers often just can't do it. These differences are transparent and clear and pretty big to investors.

Act as a Fiduciary	Real Fiduciary™ Advisor	Best Interest Broker
1. Act as a fiduciary at all times.	YES	NO
2. Only accept client fees as compensation.	YES	NO
3. Avoid conflicts of interest.	YES	NO
4. Mitigate unavoidable conflicts.	YES	NO
5. Maintain professional knowledge. competence	YES	NO
6. Explain disclosures and agreements orally and in writing.	YES	NO
7. Have a reasonable basis for advice.	YES	?
8. Follow a prudent process and provide investment policy statements.	YES	NO
9. Decline all but minimal gifts or entertainment.	YES	NO
10. Disclose personalized fees and costs in writing.	YES	NO