

***Self Assessment Verifications to Evaluate Adherence to
Best Practices for Fiduciary Advisors .
Draft of April 12, 2016***

Advisor Name: _____

Firm : _____

Date: _____

By providing the verification affirmations and documents following each Best Practice, below, you can benchmark your practices against the Institute’s Best Practices.

1. Affirm that the fiduciary standard under the Advisers Act of 1940 and common law principles govern all professional advisory client relationships at all times.

Affirm fiduciary status in the client engagement at all times. Provide a copy of the language in the agreement. ⁱ

I affirm that this language affirming my fiduciary status at all times is included in my engagement agreements from this time forward. _____ (Please initial.)

Language. _____

2. Establish and document a “reasonable basis” for advice in the best interest of the client.

Affirm adherence to a “reasonable basis” standard and, on request, that you will provide this reasonable basis to a client in writing upon request.

I affirm that my advice is rendered on a “reasonable basis” and will provide this reasonable basis to a client upon request. _____ (Please initial.)

3. Communicate clearly and truthfully, both orally and in writing. Do not mislead. Make all disclosures and important agreements in writing.

Affirm all important agreements and disclosures are put in writing.

I affirm that all important agreements and disclosure are made in writing. _____ (Please initial.)

4. Provide a written statement of total fees and underlying investment expenses paid by the client. Include any payments to the advisor or the firm or related parties from any third party resulting from the advisor's recommendations.

Affirm you provide a good faith estimate at the start of the engagement; thereafter, provide annual fee and expense reports. Provide a sample of the good faith estimate and annual report.

I affirm I will provide a good faith estimate of fees and expenses at the start of the engagement, and thereafter provide an annual accounting of fees and expenses. _____ (Please initial.)

5. Avoid conflicts and potential conflicts. Disclose all unavoidable potential and actual conflicts. Manage or mitigate material conflicts. Acknowledge that material conflicts of interest are incompatible with objective advice.

Disclose conflicts in a separate document. Provide an explanation in writing of the steps used to mitigate the harms of material conflicts.ⁱⁱ

I affirm I seek to avoid conflicts of interest and that I disclose and manage or mitigate unavoidable conflicts. I provide a written description for clients or direct clients to where in my ADV the conflicts are disclosed. I provide a written description of the specific steps I take to manage or mitigate conflicts and these steps are outlined in the Attached document. _____ (Please initial.)

6. Abstain from principal trading unless a client initiates an order to purchase the security on an unsolicited basis.

Affirm a policy to not engage in principal trading, and to only facilitate a principal trade upon an explicit client request.

I affirm I meet a policy that requires I abstain from principal trading – unless specifically requested by a client on an unsolicited basis. _____ (Please initial.)

7. Avoid compensation in association with client transactions. If such compensation is unavoidable, demonstrate how the conflict is managed and overcome and the product recommendation and compensation serves the client's best interest.

Either affirm you do not receive compensation in association with client transactions. Or, if applicable, describe how transaction-based compensation conflicts are managed and mitigated. ⁱⁱⁱ

Please initial one of the two statements:

*I affirm I do not receive compensation in association with client transactions. _____
(Please initial.)*

I do receive compensation in association with client transaction. In an attached document I have described how these conflicts are managed and overcome so that the product recommendation and associated compensation serves the clients' best interest. _____ (Please initial.)

8. Avoid gifts or entertainment that are not minimal and not occasional. Avoid third party payments, "benefits" and indirect payments that do not generally benefit the firm's clients and may reasonably be perceived to impair objectivity.

Affirm that any gifts or entertainment are minimal and occasional. Provide a copy of gifts and entertainment report for the prior six months.

I affirm that gifts and entertainment I receive (if any) are minimal and occasional. I also affirm that any third party payments or benefits received by the firm generally benefit the firm's clients and do not impair my objectivity. _____ (Please initial.)

9. Ensure baseline knowledge, competence and ongoing education appropriate for the engagement.

State education degrees and professional certifications and describe ongoing education.

*I affirm my education, professional certifications and ongoing education in the attached document.
_____ (Please initial.)*

10. Institute an investment policy statement (IPS) or an investment policy process (IPP) that is appropriate to the engagement and describes the investment strategy. Have access to a representative universe of investment vehicles that provide ample options to meet the desired asset allocation in consideration of generally accepted criteria.

Provide a sample investment policy statement or investment policy process or similar document describing the assumption and objective of the firm’s investment philosophy and strategy used and affirmed by the client. ^{iv}

I affirm I use or will use an investment policy statement or similar investment policy process or document that is affirmed by clients. A sample copy of this document is attached.

_____ (please initial.)

11. Consider peer group rankings in ensuring underlying investment expenses are reasonable.

Provide peer group rankings applied and / or a description of how “reasonable investment expenses” are assessed.

I affirm that I use peer group rankings and / or have a policy for assessing reasonable expenses. This policy is described in an attached document. _____ (Please initial.)

12. The advisor affirms in writing adherence to Best Practices, and attains written affirmation from the firm that these business practices may be met by the advisor.

Affirm adherence to practices and provide firm’s affirmation the advisor can meet the practices.

I affirm my adherence to Best Practices and my firm’s affirmation is in an attached document.

_____ (Please initial.)

Endnotes

ⁱ This affirmation of fiduciary status for solely registered investment advisers confirms what federal and state law make abundantly clear. As simply stated in the SEC’s instruction for ADV Part 2, <https://www.sec.gov/about/forms/formadv-part2.pdf> “Under federal and state law, you are a fiduciary and must make full disclosure to your clients of all material facts relating to the advisory relationship.” As fiduciary status is indisputably *material*, it is for dual registrants not always legally bound to meet fiduciary duties that this affirmation matters.

Advisors apply different approaches to the language expressing adherence to fiduciary status.

Here are two examples.

WE Family Offices

“WE agrees to provide the agreed upon investment advisory services to client in accordance with applicable law, including the requirements of the Investment Advisers Act of 1940; and consistent with its fiduciary obligations.

Charleston Financial Advisors

“We work with clients on a *fiduciary* basis, meaning our only loyalty is to our clients – not a brokerage firm or a mutual fund company. We feel this is the best way to provide financial advice.”

Rembert Pendleton Jackson

“This agreement sets forth the basis upon which Rembert Pendleton Jackson (RPJ) will furnish investment management services to you. These services are provided in our capacity as fiduciaries, on a best efforts basis and will be designed to integrate the various aspects of your financial affairs.”

ⁱⁱ The steps required to be taken are outlined in the Best Practices for Financial Advisors document:

“ Managing material conflicts involves several steps. First, there must be clear, complete and timely disclosure. Second, fiduciaries must have a reasonable basis for believing that clients fully understand the implications of the conflict to the advisor and client. Implications may include the relative merits and risks of options not chosen by the advisor, and the additional fees earned by the advisor (whether paid out of client funds or not) and any additional client paid expenses incurred. Third, the client must provide "informed, intelligent, and independent" consent before the transaction is completed. Finally, after receiving client consent, the advisor must also be able to demonstrate that the transaction remains reasonable and fair and consistent with the client's best interest.”

iii From Best Practices

“... the advisor’s burden is to demonstrate that the transactional fee associated with the recommendation does not impair objectivity, or is not duplicative and is commensurate with the services provided and serves the best interest of the client. Advisors (or whose firms) who receive such third – party compensation have an obligation to demonstrate the client’s best interest is served.

Examples where such transactional fees or commissions may be effectively managed include:

A commission consistent with the advisor’s other fee arrangements with existing advisory clients, such as C-class shares when handling small accounts, and is provided to the advisor when he or she is not otherwise compensated for the service. A fee-offset commission arrangement. A level fee compensation agreement that requires third party payments exceeding the compensation cap be rebated or otherwise not accepted by the advisor. “

iv An investment policy process may go by other names, such as an investment plan, but at its core, it should include the client’s situation and goals, the investment objectives and constraints, investment philosophy, strategy and assumptions, and implementation responsibilities and reviews. (For more information, see: *The New Wealth Management*, pages 313 - 340).