CFA Society
United Kingdom

FIDUCIARY DUTY

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Supported by CFA
UK's Market Integrity
and Professionalism
Committee

Position paper
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FIDUCIARY DUTY

This paper describes CFA UK's views on Fiduciary Duty. The term 'fiduciary duty' is used loosely and it is essential that CFA UK members understand what fiduciary duty entails. While CFA UK members are unable to meet the fiduciary standard, members should provide a duty of care that has a fiduciary quality. Just as important is that investment professionals duty of care is the same high standard regardless of the classification of the client.

Much has been made of fiduciary duty but it is not a panacea. Beyond legislation, the need to act responsibly is shared between those with a fiduciary duty (e.g trustees and other that represent the beneficiary's interests), the investment profession, its industry and the regulator.

The Kay Review of the UK Equity Market[1] made 17 recommendations which it believed would enhance the ability of the UK equity market to support long-term corporate performance. The recommendations are based on the assumptions that companies will perform better if asset managers take a more active role in the stewardship of the companies in which they are invested and that the UK equity market suffers from short-termism. In doing so, companies will invest more, perform better and generate returns for savers. Recommendation 9 related to fiduciary duty and asked that the:

'Law Commission should be asked to review the legal concept of fiduciary duty as applied to investment to address uncertainties and misunderstandings on the part of trustees and their advisers.'

The Law Commission responded by issuing an initial paper and then a more comprehensive consultation. The consultation[2] was also notable because the commission decided on a broader remit than just the UK equity market. The broader remit reflected the reality that clients care about the total portfolio not just one asset class or single investment.

CFA UK responded to both publications and engaged with the commission on the application of fiduciary duty. It is important for our members to understand what is meant by fiduciary duty and the challenge to abide by its strict criteria.

To meet the fiduciary standard one must meet the following four conditions:

1. **The 'no conflict rule'** – a fiduciary must not place themselves in a position where their own interest conflicts with the beneficiary.
2. **The 'no profit rule'** – a fiduciary must not profit from their position at the expense of the beneficiary.
3. **The 'undivided loyalty rule'** – a fiduciary owes undivided loyalty to their beneficiary, and therefore must not place themselves in a position where their duty towards one beneficiary conflicts with a duty they owe to another beneficiary.
4. **The 'duty of confidentiality'** – a fiduciary must use information obtained in confidence from a beneficiary for the benefit of the beneficiary and must not use it for their own advantage or for the benefit of any other person.

While point 4 above can be met by investment professionals, the other three points most often cannot. Investment firms face conflicts on a daily basis. They are paid by their clients so profit from their position and act on behalf of more than one client so cannot meet an undivided loyalty rule (consider the simple case of heterogeneous assets that must be allocated to a single client portfolio). It is only those that represent a single beneficiary that can and should meet the fiduciary standard.

CFA UK also agrees that where fiduciary duty does apply is at the trustee level; although investment intermediaries are unable to live up to the fiduciary standard their duty of care should be of a fiduciary quality. Just as important is that investment

[1] *Kay Review of Equity Markets Final Report http://www.bis.gov.uk/assets/biscore/business-law/docs/k/12-917-kay-review-of-equity-markets-final-report.pdf*
[2] *"Fiduciary Duties of Investment Intermediaries"; consultation paper no 215 http://lawcommission.justice.gov.uk/consultations/fiduciary_duties.htm*

professionals duty of care is the same high standard regardless of the classification of the client. In addition, to their regulatory obligations, CFA UK members abide by the CFA Institute's Code of Ethics and Standards of Practice[3]. The Code and Standards requires members to exercise their responsibilities to clients with the fiduciary qualities of loyalty, prudence and care.

We were encouraged by the commission's practical approach to the issue of fiduciary duty whereby further statutory reform was not deemed necessary. The reason why further reform was not necessary was because the commission recognised that the law can only go so far. This approach is further supported by how the courts would view the relationship between the beneficiary (or their representative) and the investment professional. As we understand it the courts are reluctant to intervene even though they have the power to do so. Our members will find it valuable to learn that the courts are influenced by three interdependent considerations:

1. Respect for commercial relationships
2. Regulatory decision-making
3. Contract terms

The requirement to hold to a fiduciary duty would not be a panacea. Beyond legislation, the need to act responsibly is shared between those with a fiduciary duty, the investment profession, its industry and the regulator. It is vital to appreciate how an investment mandate works in practice and the checks and balances that exist in this process. CFA UK has commented in the past that we need a more effective regulatory regime where the onus is on supervision and enforcement rather than new rules and guidance. This view is supported by several Parliamentary reports[4] and the comments by Lord Turner[5] that have highlighted the lack of effective regulation in the years leading up to the financial crisis of 2008.

As we are learning on a regular basis, firms that acted inappropriately prior to the crisis are only being exposed since the crisis broke. Where the client's interests are not protected, then it is imperative that the governance mechanisms to protect the beneficiary's interests are robust enough to hold those responsible to account.

CFA UK members need to ensure that by exercising a duty of care with a fiduciary quality we:

» place client interests first;

» contribute to market integrity; and

» collaborate with the regulator to ensure that those that act against the client interests and compromise market integrity, are held to account.

We start by restating our view with regard to fiduciary duty; note how a robust investment process is aligned with clients' interests and then focus on the importance of effective regulation.

FIDUCIARY DUTY

'All participants in the equity investment chain should observe fiduciary standards in their relationships with their clients and customers.'

Professor John Kay, The Kay Review Final Report

'The phrase 'fiduciary duties' is a dangerous one, giving rise to a mistaken assumption that all fiduciaries owe the same duties in all circumstances. That is not the case.'

Lord Browne-Wilkinson in Henderson v Merrett Syndicates Ltd

To ensure our members appreciate why they cannot meet the fiduciary standard, it is essential to examine the key elements of the Law Commission's 1992 report. To meet the fiduciary standard one must meet the following four conditions:

1. **The 'no conflict rule'** – a fiduciary must not place themselves in a position where their own interest conflicts with the beneficiary.
2. **The 'no profit rule'** – a fiduciary must not profit from their position at the expense of the beneficiary.
3. **The 'undivided loyalty rule'** – a fiduciary owes undivided loyalty to their beneficiary, and therefore must not place themselves in a position where their duty towards one beneficiary conflicts with a duty they owe to another beneficiary.
4. **The 'duty of confidentiality'** - a fiduciary must use information obtained in confidence from a beneficiary for the benefit of the beneficiary and must not use it for their own advantage or for the benefit of any other person.

[3] Standards of Practice Handbook, Tenth Edition (effective 1 July 2010) http://www.cfainstitute.org/learning/products/publications/ccb/Pages/ccb.v2010.n2.1.aspx
[4] Parliamentary Commission on Banking Standards http://www.parliament.uk/bankingstandards Parliamentary Commission on Banking Standards: 'An accident waiting to happen: The failure of HBOS' http:/www.parliament.uk/business/committees/committees-a-z/joint-select/professional-standards-in-the-banking-industry/news/an-accident-waiting-to-happen-the-failure-of-hbos/
[5] 'Lord Turner admits FSA failures in financial crisis', Amanda Lee, Pensions Age, 15/10/2012 http://www.pensionsage.com/pa/lord-turner-admits-fsa-failures-in-financial-crisis.php

While all investment professionals have a duty of care to their clients, it would not be possible for them – as agents – to meet all of the four criteria listed. Our members abide by the CFA Institute's Code and Standards which ensures that CFA UK members act for the benefit of their clients and place their clients' interests before their own, even though the fiduciary standard cannot be met.

While point 4 can be met by investment professionals, the other three points cannot. Investment firms face conflicts on a daily basis. They are paid by their clients so profit from their position and act on behalf of more than one client so cannot meet an undivided loyalty rule (consider the simple case of heterogeneous assets that must be allocated to a single client portfolio). In addition, CFA UK members have to abide by the UK regulatory requirements and the relationship between client and agent will also be set out in a contract. It is only those that represent a single beneficiary that can and should meet the fiduciary standard.

TRUSTEES

Accordingly, trustees are:

'To be judged by the standards of current portfolio theory, which emphasises the risk level of the entire portfolio rather than the risk attaching to each investment taken in isolation.' [6]

Law Commission

Trustees must act in accordance to the powers that are granted to them by the trust instrument. Within these powers, trustees are afforded discretion when carrying out their duties. This flexibility is set out as follows:

1. Trustees must not 'fetter their discretion' by, for example, applying a pre-existing moral or political judgment.
2. Trustees must consider the relevant circumstances.
3. Trustees must obtain proper advice.

Other considerations may also be needed to be taken into account although these would have to be consistent with the trust instrument and the beneficiary's interests. Trustees have the latitude to take into account other factors and interests for example environmental, social and governance (ESG) factors.

In fulfilling their duties, trustees should have the relevant knowledge and skill to ensure that any investment mandate aligns with the objectives of the beneficiaries. This applies not only to pension schemes but also other similar constructs such as endowments, charities and foundations. However, there is flexibility available given the differences that exist between these types of entities.

The trustees should be best placed to hold their investment professionals to account as they have the power to terminate the contract. Taking investment advice and delegating the management of the portfolio does not absolve the trustees of their responsibilities to the beneficiaries. Lack of knowledge or understanding should not be an excuse for trustees not to provide robust challenge. In fact there are training courses and similar types of learning opportunities to enable trustees to improve their knowledge about investments. CFA Institute has published 'A Primer for Investment Trustees'[7] which is publicly available and may be helpful as a source of information and insight to trustees.

PORTFOLIO GOVERNANCE, PREFERENCES AND TYPE OF MANDATE

'I think we should follow a simple rule: If we can take the worst, take the risk.'

Dr Joyce Brothers

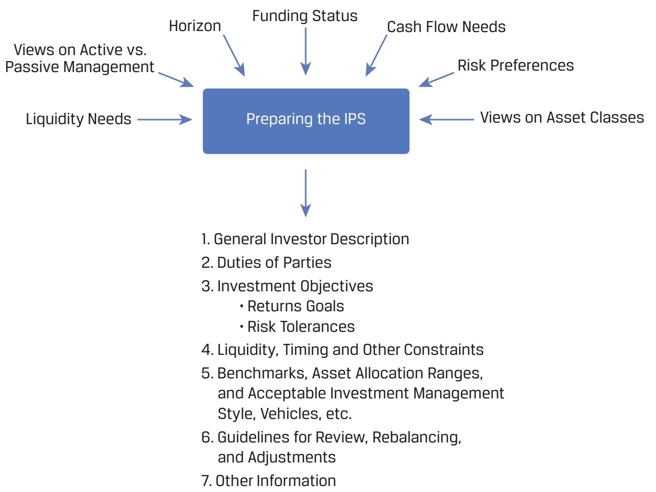
Any investment mandate should be formalised in a Statement of Investment Principles or Investment Policy Statement (IPS)[8]. Figure 1 sets out the variety of factors that need to be considered when designing an appropriate IPS. We recommend that the commission should review the IPS of different types of beneficiaries[9] to see how the contents align with the interests of the beneficiary. Figure 2 provides a potted example of an IPS which may be helpful. The IPS should set out the parameters for the managing the assets on behalf of the beneficiaries. For example risk appetite, capacity for loss and other factors pertinent to the governance of the portfolio. In addition, the IPS can also include preferences that can determine how the portfolio is constructed. Examples of preferences could include:

1. Medical charities often exclude investments in businesses that sell products linked to cancer.

[6] Nestle v National Westminster Bank plc (1996) 10(4) Trust Law International 112 at 115, by Hoffmann J.
[7] 'A Primer for Investment Trustees, Research Foundation Publications January 2011, Vol. 2011, No. 1 http://www.cfapubs.org/toc/rf/2011/2011/1
[8] CFA Institute's IPS July 2013 http://www.cfainstitute.org/about/governance/Documents/reserves_investment_policy.pdf
[9] Wellcome Trust Investment Policy, April 2013 http://www.wellcome.ac.uk/stellent/groups/corporatesite/@msh_publishing_group/documents/web_document/wtx062542.pdf

2. Investing in companies with strong environmental credentials.
3. Excluding companies that are involved with gambling or alcohol production.
4. Trustees may prefer to avoid strategies where there is an extensive use of derivatives.

Figure 1 – Preparing the IPS [10]



Other trustees may have a more flexible approach to where the portfolio is invested. The key here is that the portfolio should be aligned with the beneficiaries' interests or the mission of the organisation.

Trustees should work in collaboration with their investment professionals so that the trustees can ensure that their requirements are being met and that there is sufficient challenge to make sure investment professionals adhere to these requirements. Similarly, investment professionals should be able to convey why the approach being proposed is suitable and aligned with the needs, preferences and requirements of the ultimate beneficiary.

It is also important that the trustees appreciate the different types of mandate they can enter into, an issue not recognised in the consultation. For example, the trustees can have a discretionary mandate where the decisions are made for them without the need to be consulted. Alternatively, the trustees could have an advisory mandate that allows the trustees to be consulted before actions are taken on the portfolio. Both approaches have costs and benefits and it is crucial that whichever is chosen, the trustees make sure that the portfolio aligns with the preferences of the asset owner.

Related to the beneficiary's requirements is their choice of whether or not to participate in the lending of the securities (equity and bonds) they hold in the portfolio. Retail clients have less of a choice then institutional ones. Those that can exercise a choice may choose to forgo the fees by not taking part in securities lending, while others may choose to generate additional returns (income) from this practice. Those that are exposed to securities lending should be made aware of the risks and benefits of the practice. The consultation is correct that securities lending is not without risk. However, those that do provide stock lending for equities and repurchase agreements for bonds should have in place robust processes to minimise the risks in case of default by the borrower (i.e ensuring that these arrangements are collateralised according to reasonable parameters and that the collateralisation practices adhere to the applicable laws, standards or guidelines). Of course this service does require resources and so the lending fee rebated back to the asset owner will be net of reasonable costs.

Figure 2 - Sample extracts from an IPS [11]

Sample Text from University of California Retirement Plan

Section	Text
Objectives	
2. Investment Policy	"Capital Market . . . Asset Class . . . Manager Value-Added Risk" "[Manager] risk is an implementation risk and is the responsibility of the Treasurer (and indirectly the investment managers)." "select managers with experience and expertise . . . benchmark and range of probable outcomes"
4. Performance Objectives	"Return should exceed the Consumer Price Index on a consistent basis over time." "Return should match or exceed the total Retirement Fund weighted benchmark return." "Leverage may be used in Private Equity, Real Estate, and Absolute Return strategies."
5. Asset Class and Manager Guidelines	"All individual manager guidelines will be consistent with broad asset class guidelines and this Policy."
Appendix	"several risk measures which focus on surplus risk . . . [and] ratio of plan assets to liabilities" "Active risk or 'tracking error'"
Constraints	
2. Investment Policy	"implement procedures to provide efficient management of liquidity"
5. Asset Class and Manager Guidelines	"The purchase of securities issued by tobacco companies is prohibited in separately managed accounts." "The use of derivative securities or contracts to create economic leverage in the portfolio is prohibited."
Appendix	US Equity: Russell 3000 Tobacco Free Index
Rebalancing	
Appendix	"monitor monthly . . . rebalance assets . . . in a timely and cost effective manner when actual weights are outside the prescribed ranges" "may utilize derivative contracts (in accordance with Appendix 4) to rebalance the portfolio"
Schedule for Reviews	
5. Asset Class and Manager Guidelines	"Managers are required to submit periodic reports to the Treasurer summarizing investment activity and strategy." "Managers are required to reconcile investment returns with the custodian each month."

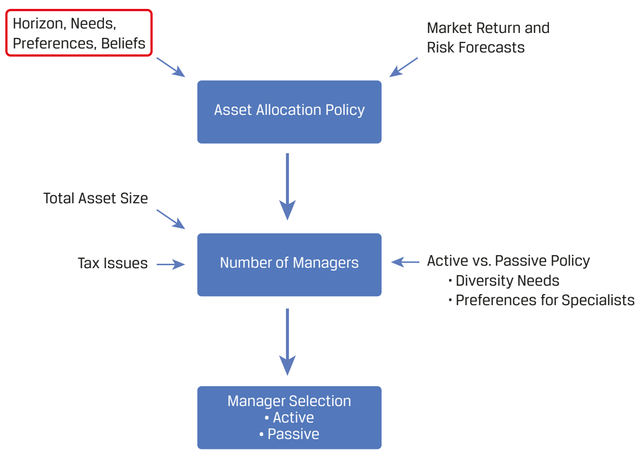
Source: May 2006 University of California Retirement Plan Investment Policy Statement.

[10] *Manager Selection, Research Foundation Publications, December 2013, Vol. 2013, No. 4, CFA Institute pubications http://www.cfapubs.org/toc/rf/2013/2013/4*
[11] *Ibid*

Portfolio implementation, construction, risk adjusted returns; beneficiary interests come first

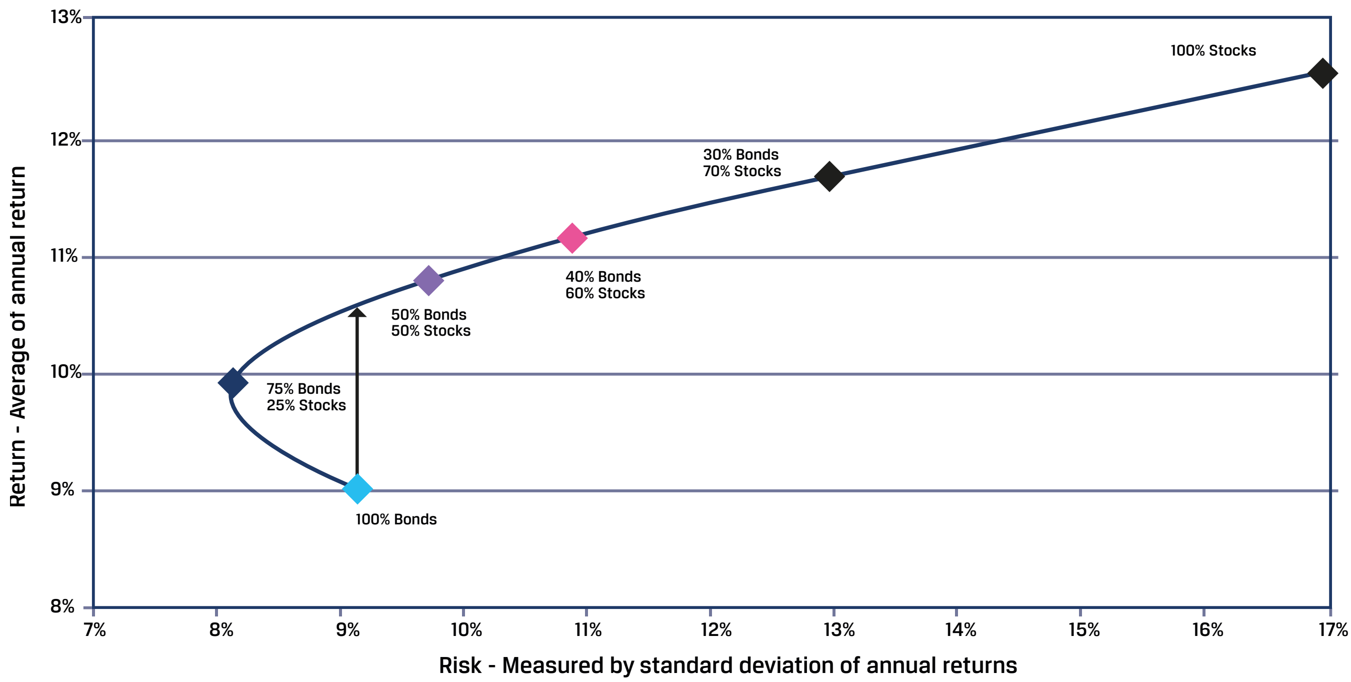
After the IPS has been completed the next stage is implementation which in itself creates a host of decisions which can be presented in Figure 3.

Figure 3 – Implementation process [12]



Based on the beneficiary's requirements, a portfolio can be preferable or appropriate. Chart 1 presents an efficient frontier along which various preferable portfolios are plotted. For the sake of simplicity, the portfolios only use two asset classes, bonds and equities.

Chart 1 – Efficient Frontier [13]



The majority of the portfolios along the frontier are preferable. What this means is that these portfolios maximise the return for a given level of risk, or minimise the risk for a given level of return. Any portfolio that plots below this line is deemed not preferable. For example, the 100% bonds portfolio is concentrated because one could reduce the weighting to bonds say to 60% and increase the weighting to equities from 0% to 40%; thereby move along the frontier to attain a higher level of return for the same level of risk provided by the 100% bonds portfolio.

In practice, while a portfolio on the frontier may be preferable, it may not always be appropriate or aligned with the beneficiary's interests. For instance, the trustees may deem it necessary to keep the entire portfolio invested in bonds for good reasons despite the chance to earn a higher return via a different approach. The reasons could include, a mature liability profile for a defined benefit scheme, the beneficiary having a very low capacity for losses, an aversion to investing in any asset class apart from bonds, and ensuring the portfolio has sufficient assets to meet a series of liabilities. Just as a patient has the right to refuse a beneficial treatment advised by their doctor (informed refusal), the beneficiary has the right to have a portfolio that matches their preferences. The trustee and their advisers have to respect the wishes of the beneficiary.

[12] Ibid
[13] http://www.youngresearch.com/authors/ejsmith/risk-and-reward-an-efficient-frontier/

INVESTMENT HORIZONS AND GOALS[14]

The focus on the long-term investment horizon is misplaced especially as there is no universal definition of 'long-term'. The 'long-term' means different things to different beneficiaries. An individual saving for their pension may have an investment horizon of 40 years; a charity may have an investment horizon of 100 years; while universities may have multi-century horizons. So which is the right definition of 'long-term'?. There isn't one.

It is important to note that there is no optimal investment horizon. The investment horizon(s) must be linked to the beneficiary's goals. It is preferable to promote the view that the investment horizon should be appropriate to the beneficiary. Since beneficiaries differ in their requirements they may often have several investment horizons, each with an associated goal. These goals may need to meet short, medium and long-term time horizons.

Consideration should be given to goals-based metrics[15] which are adopted by the most forward thinking private sector schemes. The metrics used to measure success are defined for the short, medium and long term goals. Having a goals-based approach can ensure that each scheme has the ultimate beneficiary and stakeholders in mind; all those involved have a set of clear consistent objectives that can be continued regardless of changes in decision-making personnel. This means that the portfolio has to be constructed to take into account these goals and the diversity of time horizons. These portfolios may not always be preferable but will align with the beneficiaries' interests.

ASSET ALLOCATION AND MANAGER SELECTION

Once the portfolio strategy has been agreed the next stage is to decide how the assets should be allocated and which managers should be chosen. This process should take into account the preferences of the trustees or those that act in the best interests of the ultimate beneficiary. How those preferences are formulated is determined by the beneficiary. The key is that the beneficiary or their representatives collaborate with their investment professionals so the portfolio that results aligns with the beneficiary's preferences.

The diversity of investment approaches available to investors should provide sufficient choice to meet a variety of investor preferences outside of purely risk and return. The merits of each selection should be taken into the context of the entire portfolio rather than a single investment. It may be that the beneficiaries prefer an approach that emphasises environmental, social and governance (ESG) factors. Others may favour an approach that is based on religious doctrine such as Sharia Law. Each set of preferences comes with its own costs and benefits which have to be relayed to the representatives of the beneficiaries. For example, the exclusion of interest paying investments from a Sharia portfolio could have seen a portfolio exposed when the financial crisis hit because the portfolio may not have contained the defensive assets of government bonds.

Similarly, the level of stewardship and who undertakes this can be expressed by the beneficiary or the trustee in the IPS. For example, the allocation to equities could be wholly taken up by investments in activist funds (funds which take material stakes in companies with a view to influencing operational and strategic changes) some of which can be less liquid than standard equity funds (which can be liquidated in a matter of days).

Engagement also carries other costs of which the asset owner needs to be aware. The investor needs to be sure that the costs of engagement will be worthwhile and accept that any benefits will be shared by all shareholders. Hence, with little certainty about the success of engaging and the free-rider issue associated with it, the preference may be to sell a holding where there are ESG concerns rather than undertake engagement which has a low probability of success.

Engagement is likely to be more effective where there are formal contractual obligations and this is most relevant for lenders and those that have invested in the debt of a company. Lenders of capital have the potential to call upon the terms and conditions of these contracts should they believe that there are breaches. The strength of these creditors has been demonstrated in high profile examples that range from Woolworths to the Co-op bank. In the latter case, the debt holders agreed to exchange their debt for equity in the troubled organisation.

[14] *Please see CFA UK's position paper 'Termism' for further details.*
[15] *Client Goal–Based Performance Analysis, Stephen Campisi, CFA; CFA Institute Conference Proceedings QuarterlyMarch 2011, Vol. 28, No. 1: 32–41 http://www.cfapubs.org/doi/abs/10.2469/cp.v28.n1.1*

By being able to act efficiently, the asset owner can reduce the opportunity cost to the portfolio of remaining in an investment that gives cause for concern. When considering factors outside of risk and return, the main focus should be opportunity cost, the return foregone elsewhere where the portfolio is not invested.

PORTFOLIO TURNOVER AND RISK MANAGEMENT

Table 1 – Rebalancing criteria [16]

Asset Class	Long Term Policy Weight (%)	Rebalancing Range (%)
U.S. equity	30	25-35
Non-U.S. developed-market equity	20	15-25
Emerging-market equity	10	5-15
U.S. fixed income	20	15-25
U.S. real estate	5	0-10
Alternative investments	5	0-10
Cash	0	0-5
Total	100	

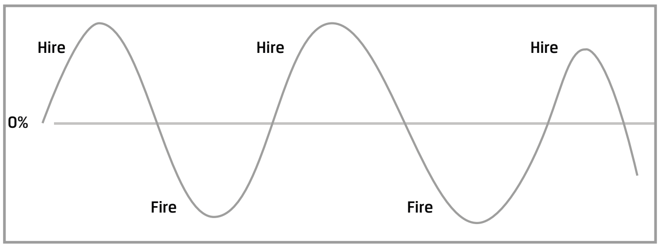
The portfolio of assets should align with the policy asset mix and this should be stated in the IPS. In addition, there should also be an indication when the portfolio should be rebalanced. Table 1 above sets out example target weights for each asset class in a portfolio and when to rebalance. For example, if the allocation to US equities rises to 45% due to strong markets then it would be good risk management practice to sell down the excess allocation and redistribute to the other asset classes subject to the required weights. In doing so this approach ensures that:

1. The portfolio is aligned with the beneficiary's risk tolerance and references
2. The costs and turnover of the portfolio are controlled
3. The risk is managed appropriately

Disciplined portfolio rebalancing ensures that costs and risks are controlled. Rebalancing also demonstrates why turnover in a portfolio can arise for reasons that are consistent with the beneficiary's preferences. Not all turnover should be seen as short-term or against the interests of the beneficiary. For example, some asset managers may use high turnover strategies to generate returns over the long-term. In general, regardless of the approach being used, it is essential that the trustees and their advisors can be reassured that the asset managers are delivering value to the entire portfolio. On occasion, it may be preferable to retain an underperforming manager because of the diversification benefits provided to the portfolio. Risk-adjusted returns (net of fees) are more important than returns by themselves.

We cite evidence in our response to the Kay Review[17] that private sector trustees have a tendency to chase returns and invest in funds that have done well in the past. Often this desire to 'do something' works against the portfolio and the beneficiary's interests. Similarly, trustees should ensure that those responsible for managing the assets adopt a disciplined approach to turning over the portfolio. The trustees have a responsibility to monitor the level of turnover to ensure that it is appropriate. Otherwise trustees can enter a value destroying cycle of 'buying high and selling low' (figure 7).

Figure 7 – The wrong side of the active performance cycle[18]



PORTFOLIO EVALUATION, ATTRIBUTION AND APPRAISAL

'Nothing will work unless you do.'

Maya Angelou

It is vital that the beneficiary (or their representative) evaluate the portfolio to assess the success of the investment mandate. The evaluation also incorporates how the performance was achieved (appraisal). The importance of the evaluation cannot be overstated enough because it provides the following:

1. 'Quality control check'
2. Feedback control mechanism that helps identify the strengths and weaknesses of the investment mandate. A successful mandate can be shown to be appropriate and effective.

3. Reinforces the hierarchy of accountability, responsibility and authority of the governance structure.

The attribution and appraisal processes determine how the portfolio generated its returns and identifies how each manager performed. This process also helps the trustee to determine the value provided by their managers. The information provided to the trustees by investment professionals must be presented in a manner that takes into account the understanding and expertise of those trustees.

EFFECTIVE REGULATION

'Our new regulatory approach will be proactive and preventative, aiming to head off problems in advance.'

Howard Davies, FSA Chairman, 2000[19]

'The crisis was not a bolt from the blue – it arose from poor supervision, bad rules and structures, ... and the errors made by regulators, economists, central bankers and policymakers, as well as bankers themselves......... A lot of apparently very clever people got it very wrong, and the ordinary citizen suffered. We have to do better in future.'

Lord Adair Turner, FSA Chairman 2012[20]

Meeting the fiduciary standard is not a panacea. There is evidence that trustees can act against the interests of the beneficiaries. Similarly, investment intermediaries can also be held to account subject to the relationship they have with the client. What matters is trust. The key issue is when the beneficiaries' interests are not protected, those responsible for failing to place clients' interests first should be held to account. The financial services regulator does have a variety of powers available to hold firms to account.

Where the rules are breached, the FCA has a wide range of disciplinary, civil and criminal enforcement powers. These include powers to:

1. withdraw authorisation;
2. prohibit an individual from operating in all or some regulated financial activities;
3. publicly censure firms and individuals;
4. impose financial penalties;
5. seek injunctions, including asset-freezing injunctions;
6. seek restitution orders; and
7. prosecute firms and individuals.

By using these powers appropriately, the regulator has the means to make an example of the offending firm(s) and send strong signals to other firms. These signals will simultaneously reassure consumers that the regulator will not tolerate behaviour in which client's interests are placed second. While the record of the regulator prior to the crisis has been poor, we hope that the severity of the scandals now being unearthed will prompt the regulator to take stronger action. One U.S regulator has gone as far as issuing a cease and desist order[21] to one global institution over the breach of regulations.

CFA UK MEMBERS' REQUIREMENTS

When it comes to agreeing investment horizons for clients, our responsibilities are clearly set out in the Code of Ethics and Professional Standards of Conduct. The relevant parts of our Code of Ethics are:

» Act with integrity, competence, diligence, respect, and in an ethical manner with the public, clients, prospective clients, employers, employees, colleagues in the investment profession, and other participants in the global capital markets.

» Place the integrity of the investment profession and the interests of clients above their own personal interests.

» Use reasonable care and exercise independent professional judgment when conducting investment analysis, making investment recommendations, taking investment actions, and engaging in other professional activities.

» Promote the integrity of and uphold the rules governing capital markets.

STANDARD I PROFESSIONALISM

» A. Knowledge of the Law. Members and Candidates must understand and comply with all applicable laws, rules, and regulations (including the CFA Institute Code of Ethics and Standards of Professional Conduct) of any government,

[19] http://www.fsa.gov.uk/Pages/Library/Communication/PR/2000/009.shtml
[20] "Lord Turner admits FSA failures in financial crisis", Amanda Leek, Pensions Age 15/10/2012 http://www.pensionsage.com/pa/lord-turner-admits-fsa-failures-in-financial-crisis.php
[21] The Securities and Exchange Commission ("Commission") deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 ("Exchange Act") against JPMorgan Chase & Co.("JPMorgan") http://www.sec.gov/litigation/admin/2013/34-70458.pdf

regulatory organization, licensing agency, or professional association governing their professional activities. In the event of conflict, Members and Candidates must comply with the more strict law, rule, or regulation. Members and Candidates must not knowingly participate or assist in and must dissociate from any violation of such laws, rules, or regulations.

» B. Independence and Objectivity. Members and Candidates must use reasonable care and judgment to achieve and maintain independence and objectivity in their professional activities. Members and Candidates must not offer, solicit, or accept any gift, benefit, compensation, or consideration that reasonably could be expected to compromise their own or another's independence and objectivity.

» C. Misrepresentation. Members and Candidates must not knowingly make any misrepresentations relating to investment analysis, recommendations, actions, or other professional activities.

STANDARD III DUTIES TO CLIENTS

» A. Loyalty, Prudence, and Care. Members and Candidates have a duty of loyalty to their clients and must act with reasonable care and exercise prudent judgment. Members and Candidates must act for the benefit of their clients and place their clients' interests before their employer's or their own interests.

FINANCIAL CONDUCT AUTHORITY REQUIREMENTS

CFA UK members that are Approved Persons within the UK regulatory regime have to ensure that they abide by the responsibilities of their authorised firm and also conduct themselves according to the Approved Persons Regime. Key Principles that may apply to the Approved Persons are:

Statement of Principle 1

An **approved person** must act with integrity in carrying out his **controlled function**.

Statement of Principle 2

An **approved person** must act with due skill, care and diligence in carrying out his **controlled function**.

Statement of Principle 3

An **approved** person must observe proper standards of market conduct in carrying out his **controlled function**.

Even if CFA UK members are not Approved Persons in addition to CFA Institute's Code and Standards; they have to be aware of their employers' responsibilities to the UK regulatory framework and act accordingly.

CALL TO CFA UK MEMBERS

While we are unable to meet the fiduciary standard we do provide a duty of care that is of a fiduciary quality. The law on fiduciary duty can only go so far, the rest is down to the profession, its industry and the regulator. We need to ensure that by exercising a duty of care with a fiduciary quality we:

» place client interests first;

» contribute to market integrity; and

» collaborate with the regulator to ensure that those that act against the client's interests and compromise market integrity, are held to account.

[18] Ibid


CFA Society United Kingdom
INTEGRITY FIRST
We believe
• Competence is critical
• Experience is valuable
• High professional and ethical standards are fundamental
Being a CFA UK member shows you do too
EXPERT • PROFESSIONAL • ETHICAL
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