

FIDUCIARIES AND PARTIES IN INTEREST ARE NOT INVOLVED IN SELF-DEALING.

The fundamental duty of the Investment Steward is to manage investment decisions for the exclusive benefit of another party (for example the retirement plan participant or the trust beneficiary). In addition, the Steward has a responsibility to employ an objective independent due diligence process at all times. If a participant or beneficiary is harmed by a decision not conducted at arms length, then a breach is likely to have occurred.

If a Steward even suspects he or she may have a conflict of interest—they probably do. The best advice is to end the relationship, or avoid it in the first place.

The Investment Steward should always be asking: Who benefits most from an investment decision? If the answer is any party other than the participant or the beneficiary, then the Steward is likely to be committing a fiduciary breach.

The Investment Steward should have defined policies and procedures to manage potential conflicts of interests. Special concerns are raised and additional scrutiny may be required when:

- An Investment Manager or Investment Advisor is associated with a custodian, broker-dealer, and/or shareholder services firm.
- An Investment Manager is acting as a subadvisor to a separately managed account (wrap fee account) and is required to direct trades to a particular broker-dealer.
- An Investment Manager accepts an unusually large number of directed brokerage and commission recapture mandates.
- An Investment Steward uses the assets of a public retirement plan to invest in local high-risk business ventures.

Examples of possible breaches:

- If a friend, business associate, and/or relative stands to benefit at the expense of a participant or beneficiary.
- An Investment Steward uses the assets of a private trust to provide unsecured loans to related parties and/or entities of the trustee.
- An Investment Steward hires an Investment Manager for a reason other than qualified merit.
- An Investment Manager uses “soft dollars” for any purpose other than the purchase of investment research.
- An Investment Steward uses a company retirement plan as collateral for a line of credit.
- An Investment Steward buys artwork and/or other collectibles with retirement plan assets, and puts the collectibles on display.

CRITERIA

- 1.3.1 Policies and procedures for overseeing and managing potential conflicts of interests are defined.
- 1.3.2 All fiduciaries annually acknowledge the organization’s ethics policies and agree to disclose any potential conflicts of interest.

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Substantiation

Internal Revenue Code of 1986, as amended [IRC]

§4975

Employee Retirement Income Security Act of 1974 [ERISA]

§3(14)(A) and (B); §404(a)(1)(A); §406(a) and (b)

Case Law

Whitfield v. Tomasso, 682 F. Supp. 1287, 9 E.B.C. 2438 (E.D.N.Y 1988)

Other

DOL Advisory Council on Employee Welfare and Benefit Plans Report of the Working Group on Soft Dollars and Commission Recapture November 13, 1997

Uniform Prudent Investor Act [UPIA]

§2; §5

Uniform Prudent Management of Institutional Funds Act [UPMIFA]

Prefatory Note

Management of Public Employee Retirement Systems Act [MPERS]

§7(1) and (2); §17(c)(12) and (13)

Other

Forbes, “Pay for Play,” Sept 4, 2000; *Plan Sponsor*, “Fiduciary Fundamentals” May 5, 2000; *Fortune*, “The Seamy Side of Pension Funds,” Aug 12, 2002