

The logo for Fi360, featuring the text "Fi360" in a white, sans-serif font. The "Fi" is bold and the "360" is regular weight. The logo is centered within a white square frame.

Fi360

A Broadridge® Company

2020 State of the Fiduciary

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2020 Fi360 Webinar Series – Premier sponsors

John Hancock[®] Investment Management



Topics

- How will 2020 be remembered?
- CARES Act – battling health and economic crises
- Changing regulatory environment for financial advisors
- Fiduciary trends in regulation – state and federal
- Advisor action plans





2020: The Year of Cascading Effects

- Health Crisis
- Economic Crisis
- Governance
 - Public
 - Corporate
- Conduct Standards
 - Personal
 - Professional

Markets in Turmoil

- Dow drops record 3,000 points in one day
- Market-wide circuit breakers suspend trading numerous times
- SEC asks mutual fund managers to disclose pandemic risk in prospectuses
- Non-essential businesses close
- Unemployment claims skyrocket
- Fear and uncertainty change the behavior of financial markets and market participants



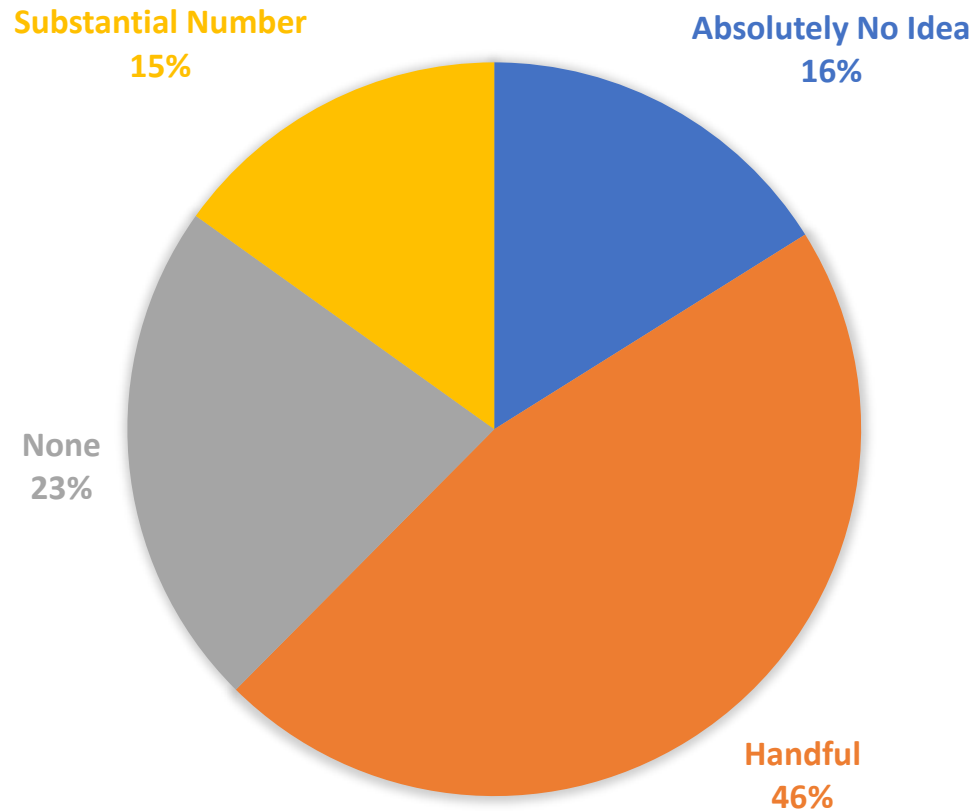
Volatility Index

Coronavirus Aid, Relief, and Economic Security Act

- > \$2 Trillion to battle COVID-19 and its economic effects
 - Cash relief for individuals
 - Loan programs for small businesses
 - Support for hospitals and other medical providers
 - Economic relief for impacted businesses and industries
- Notable provisions impacting individuals, plans
 - Paycheck Protection Program – forgivable loans for small business who retain workers
 - Federal Pandemic Unemployment Compensation (added to state unemployment benefits)
 - \$100,000 in withdrawals from defined contribution plans without withholding or penalties
 - Waiver of required minimum distributions from DC plans and IRAs for 2020
 - Expanded coverage and payment for telehealth services
 - Federal filing and payment date for income taxes, pension funding moved to July 15th



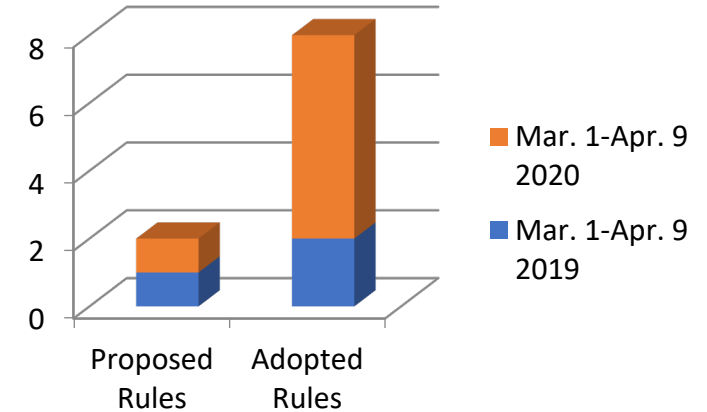
HOW MANY OF YOUR CLIENTS DO YOU BELIEVE WILL TAKE ADVANTAGE OF PENALTY-FREE HARDSHIP WITHDRAWALS FROM THEIR QUALIFIED RETIREMENT PLANS (MADE AVAILABLE UNDER THE \$2 TRILLION CORONAVIRUS RELIEF BILL)?



SEC Regulation/Enforcement: Business as Usual?

Regulatory Mill Keeps Churning

- SEC staff working remotely
 - Six new rules Ok'd during coronavirus
 - 25% increase in litigation actions
 - Will inspection rate of RIAs drop?
- Adviser relief
 - Form ADV filings extended to 6/30
- Business continuity rule for RIAs on deck?
- 30 state regulators providing regulatory relief
 - Specific state updates can be found at <https://www.nasaa.org>



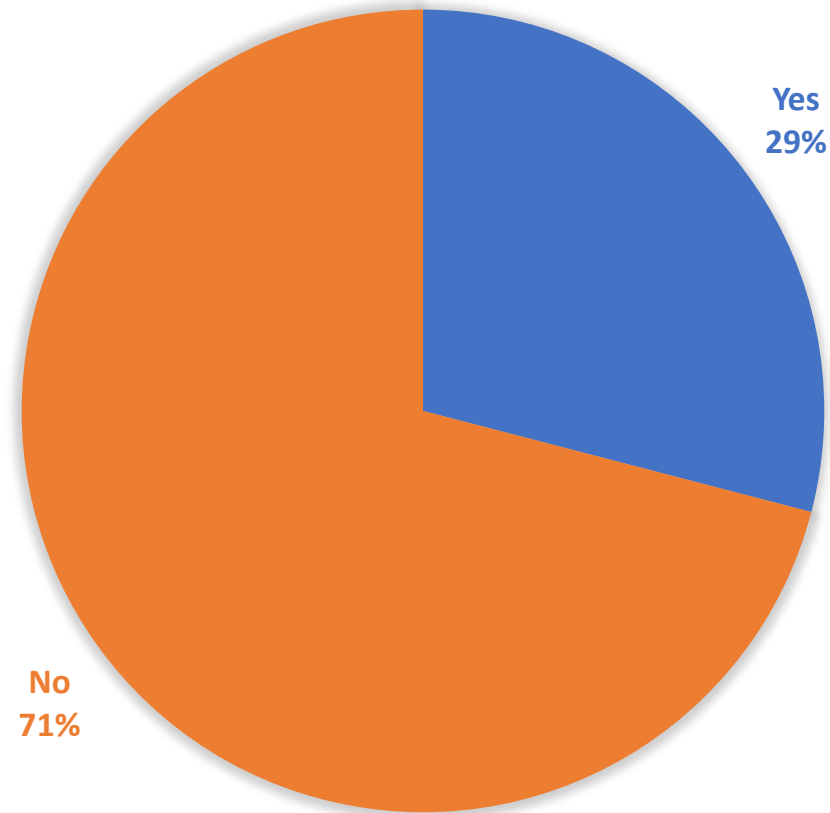
Broker-Dealer Regulation: Policy/Compliance Impact

Regulatory Relief

- FINRA
 - Business Continuity Plan reporting
 - Rep relocation on U4s
 - Temporary branch office relocation
 - Supervisory procedures for sales activities from home
 - Must alert FINRA, preserve customer personal info



WILL YOUR FIRM TAKE ADVANTAGE OF THE SEC'S EXTENSION FOR FORM ADV FILING FROM APRIL 30 TO JUNE 30 FOR ADVISERS IMPACTED BY COVID 19?



SEC Risk Alerts – Reg BI



Reg BI

- After 6/30 OCIE will assess firm compliance
 - Are policies and procedures sufficient, e.g. disclosure of
 - Broker's capacity (RR or IAR)
 - Material fees and costs of transactions, holdings, accounts
 - Process for considering reasonable alternatives
 - Have firms made adjustments in light of new information?
 - How decisions made regarding rollovers (process)
- Questions should be directed to IABDQuestions@sec.gov

SEC Risk Alerts – Form CRS

BDs and RIAs



- Has firm filed CRS with SEC and posted on its website?
- Delivery timing
- Content
 - All required information – no omissions
 - Qualitative
 - How relationships, fees and services described
 - How conflicts described, including proprietary products, revenue-sharing, principal trading
 - If firm accurately discloses any legal, disciplinary history
 - Whether updates were timely (within 30 days)



Regulation Best Interest -- Comparison

Regulation Best Interest

- Updated existing suitability standard
- Applies to retail customers
- Adds 'Best Interest' requirement
- **Key differences with FINRA Rule 2111:**
- 'Best Interest' requirement
- Replaces 'reasonable basis' standard with ERISA-like "diligence, care and skill" requirement
- Also requires broker to consider
 - Investment costs
 - Reasonably available alternatives, including accounts
- Incorporates Rule 2111's nine suitability factors
- Disclaims fiduciary status

NAIC 'Best Interest' Model Rule

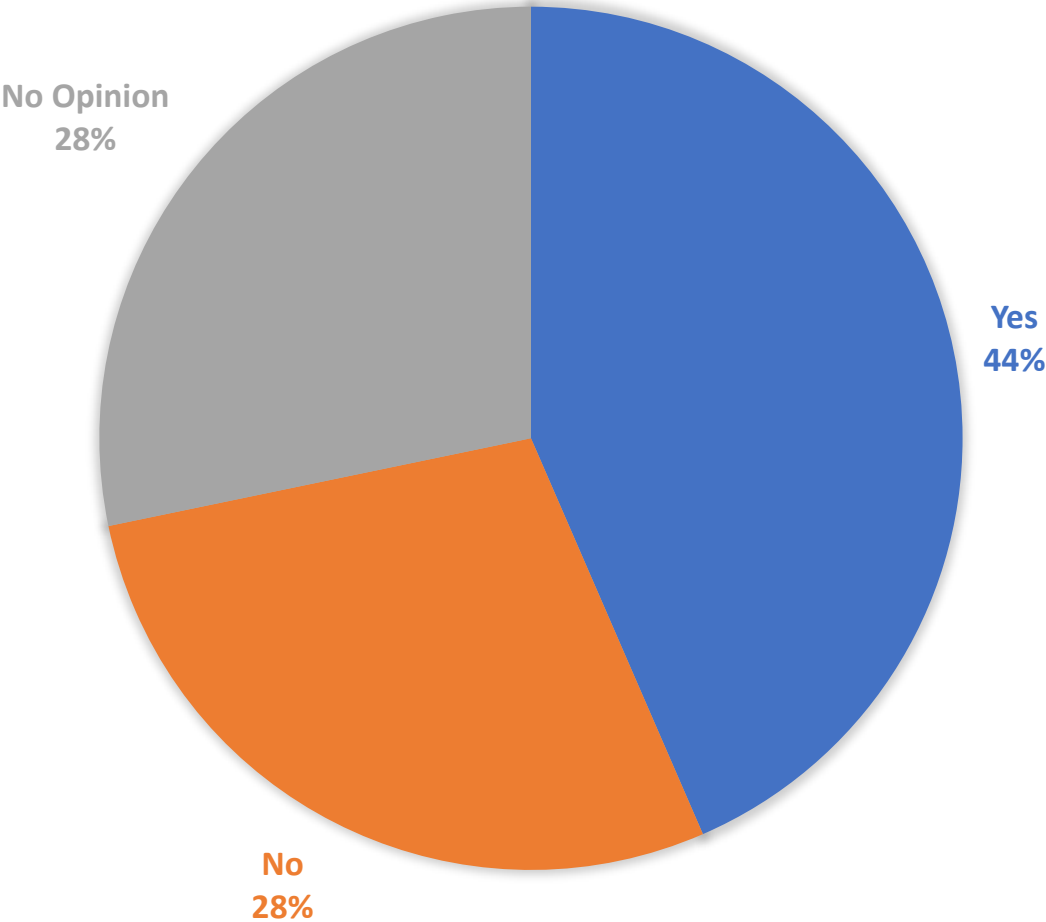
- Updates existing suitability standard; generally conforms to Reg BI except:
- Applies to individual annuity transactions
- In addition to Reg BI suitability factors, clarifies or add the following suitability factors:*
- Financial situation and needs, **including debts and other obligations**
- **Financial** [Investment] experience
- Risk tolerance – **including, but not limited to, willingness to accept non-guaranteed elements in the annuity**
- **Liquid Net Worth**
- **Financial resources used to fund the annuity**
- **Annual income**
- Disclaims fiduciary status
- 'Comparable standards' shall satisfy Model Rule, including Reg BI, fiduciary duties under Advisers Act, ERISA

* NAIC additions to Reg BI suitability factors in red

FINRA Rule 2111 Amendments

- Makes clear that stricter suitability standard under Reg BI applies to retail customers
- Conforms Reg BI restrictions on sales contests and noncash compensation such as gifts, entertainment
- Indirectly confirms that FINRA is primarily an enforcement organization, not a self-regulatory body

DO YOU THINK THE SEC WILL EXTEND THE COMPLIANCE DEADLINE FOR REGULATION BEST INTEREST PAST JUNE 30TH?

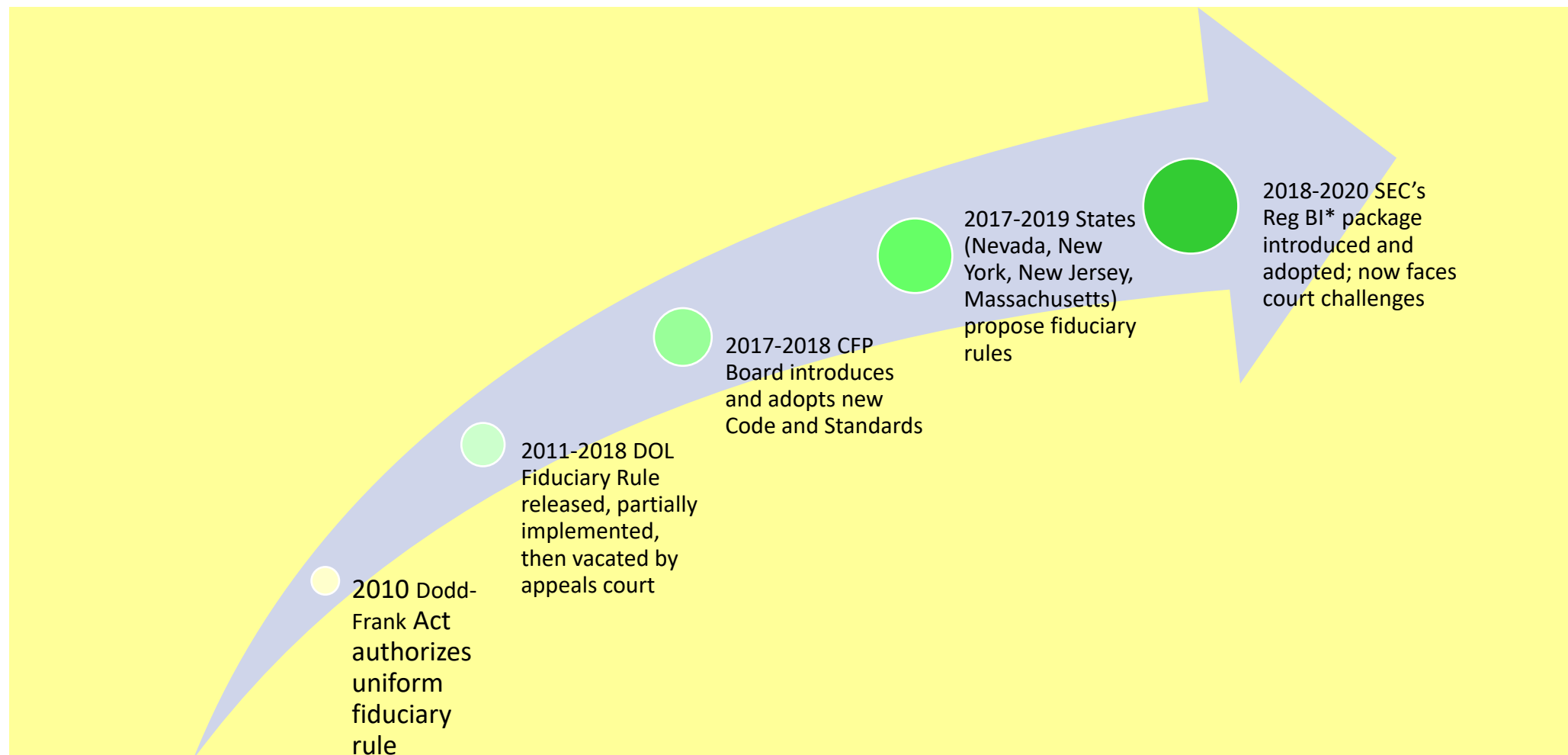


DOL Running Out of Time?



- Revised fiduciary rule and prohibited transaction exemptions delayed
 - Fall 2019 regulatory agenda estimated December 2019 release
- Fi360 estimates rule proposal must be filed by September to avoid Congressional Review Act impact
 - CRA fast-track procedure used by Congress to overturn agency rules
 - GOP-controlled Congress used CRA 16 times to overturn Obama rules; tried, but failed, to overturn Obama DOL fiduciary rule
- Final DOL rule should be published by early October to beat CRA review

Fiduciary Trend



Advisor Action Plans

Follow eight fiduciary precepts*:

1. Follow laws and governing documents
2. Diversify to manage risk and return
3. Prepare and follow an investment policy statement
4. Prudently select fiduciary and non-fiduciary service providers
5. Control and account for costs
6. Avoid or manage conflicts of interest
7. Monitor service providers
8. Monitor and assure conformity to fiduciary obligations

* Source: Fi360's Prudent Investment Practices handbook series



Reg BI's 4 Obligations and Fiduciary Precepts

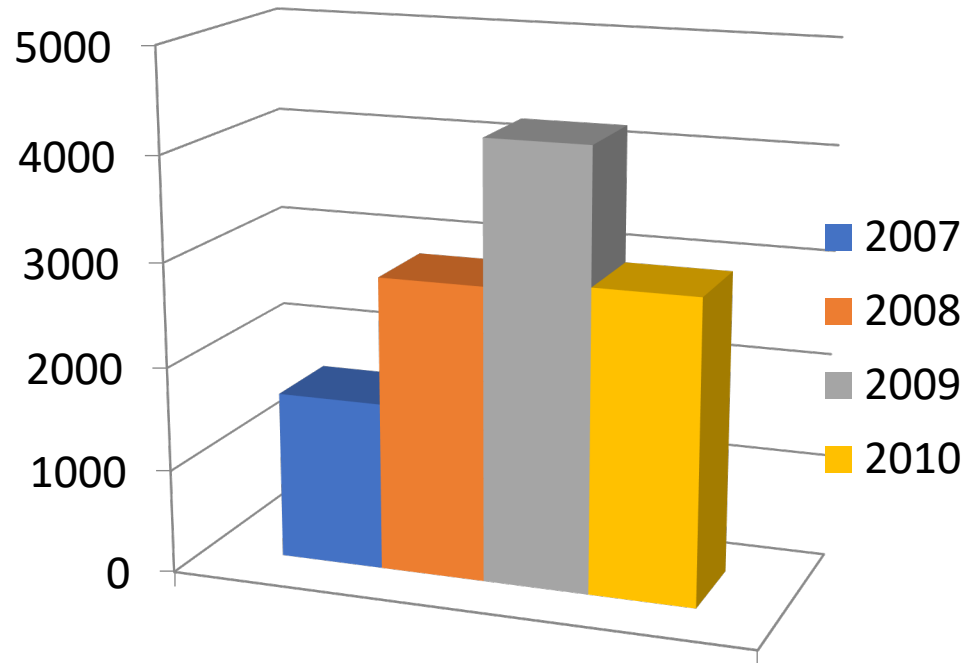
| Reg BI's Four Obligations | Fi360's Fiduciary Precepts |
|---------------------------|--|
| Disclosure | Account for costs Manage conflicts of interest |
| Care | Diversify to manage risk and return Prudently select fiduciary and non-fiduciary service providers Control and account for costs |
| Conflict of Interest | Avoid or manage conflicts of interest |
| Compliance | Follow laws and governing documents |
| | Prepare and follow an investment policy statement Monitor service providers Monitor and assure conformity to fiduciary obligations |



ARE YOU REVISITING YOUR CLIENTS' INVESTMENT POLICY STATEMENTS WITH THEM SO FAR THIS YEAR AS THE RESULT OF MARKET VOLATILITY?

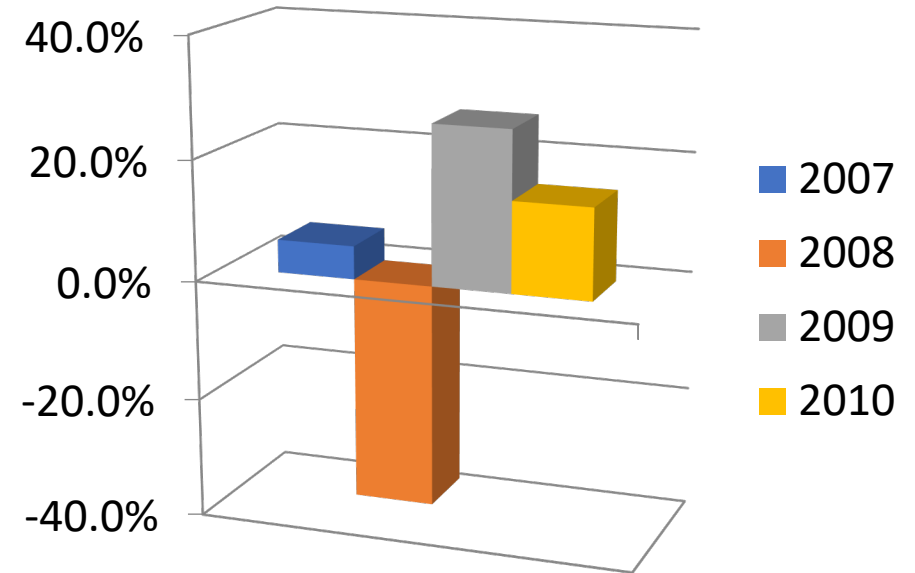


Market Corrections – Looking Back at 2008



Fiduciary Breach Claims

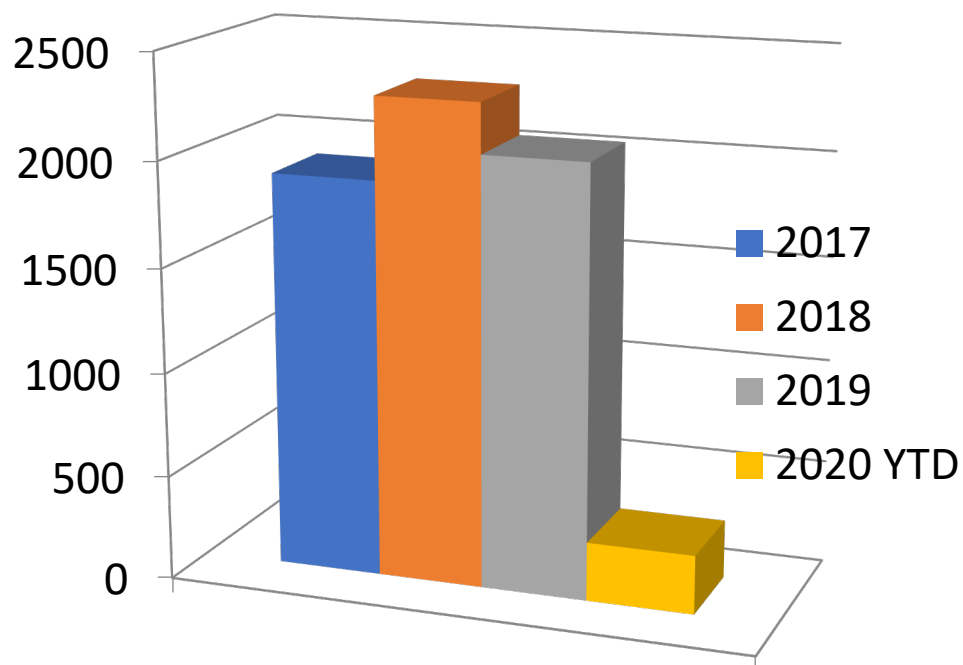
Source: FINRA arbitration data



S&P 500 Returns

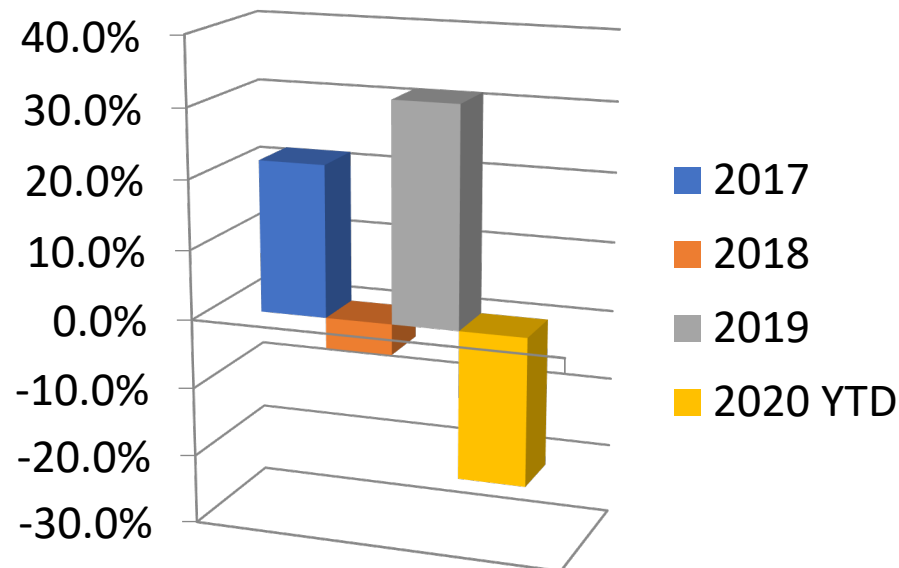


2020 Market Correction – Is There a Correlation?



Fiduciary Breach Claims

Source: FINRA arbitration data



S&P 500 Returns



Establishing Prudence – Methods and Merits

- Procedural prudence – the extent to which the fiduciary assembled, evaluated, and acted upon pertinent information in a professional manner; i.e., applying sound decision-making methodology
- Substantive prudence – whether the fiduciary reached objectively sound decisions; i.e., the merits of the decision made



Demonstrating Prudence: Why? How? What?

- Why? Purpose; decision to be made, for example ...
 - Account type to choose
 - Investment selection
 - Whether to roll a plan distribution to an IRA
- How? Process; choices and the decision-making methodology
 - Alternatives
 - Factors, their relative weights, and the formula to “score” alternatives
- What? Decision; objectively, what should be done

“Why” and “How” demonstrate procedural prudence, using a sound process.
“What” demonstrates substantive prudence, coming to the right conclusion.



Four Ways to Build Trust Amid Uncertainty

- Master all three stages of the client relationship model*
 - Sales – Value proposition, target market, make the future vivid
 - Onboarding – Clarity, transparency, flawless execution
 - Ongoing – Set service standards, showcase accomplishments, substantiate outcomes with relevant facts, add emotional dimension
- Communicate, especially in times of turmoil, and make it personal – show how your processes promote holistic client success
- Leverage technology – reliable, tireless, and conducive to social distancing
- Provide behavior coaching, a key component of “advisor’s alpha”

*Source: Fi360 “Rising Stars” program for 401(k) advisors



Questions



THANK
YOU
