Fiduciary Self-Audits for Nonprofits: Evaluating Decision-Making Processes and Controls

November 10, 2011

12:00 – 2:00 pm EDT

Venable LLP

575 7th Street, NW

Washington, DC 20004

Moderator:

Jeffrey S. Tenenbaum, Esq.

Panelists:

Rory M.Cohen, Esq.

Robert L. Olcott, CIMA

Kenneth N. Lowe, AIF

Shannon V. Spafford, CPA

Presentations

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VENABLE LLP — ORION Investment Advisors — LarsonAllen LLP CPAs, Consultants & Advisors

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Key Considerations for Nonprofit Investment Fiduciaries

Rory Cohen, Partner, Venable LLP

November 10, 2011

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Key Objectives

- Understand the key provisions of the Uniform Prudent Management of Institutional Funds Act
- Discover the components of an effective and disciplined investment process
- Find out about underwater endowment options

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Prudent Management of Institutional Funds Act

- Statutory Guidance
  - Drafted by the National Conference of Commissioners on Uniform State Laws
  - Enacted in 2006; now enacted in 49 states, in some form or another
- Key Implications
  - Modernizes rules governing appropriations and endowment spending rules
    - While providing greater flexibility and broader authority to spend, UPMIFA also seeks to strengthen Board oversight and governance
  - Provides greater flexibility and guidance in connection with the investment and management function
    - Sets forth certain investment factors and standards for delegating management and investment functions to outside agents
  - Provides greater flexibility in releasing donor restrictions on institutional funds

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New York Prudent Management of Institutional Funds Act

- UPMIFA applies to all "institutions" as defined by UPMIFA
- Institution is defined to mean:
  - A person, other than an individual, organized and operated exclusively for charitable purposes
  - A government or governmental subdivision, agency, or instrumentality to the extent it holds funds exclusively for a charitable purpose
  - A trust that had both charitable and noncharitable interests, after all noncharitable interests have terminate.

Prudent Management of Institutional Funds Act

- Applies to not-for-profit corporations and to wholly charitable trusts where the trustee is a not-for-profit corporation
  - Not-for-profits formed exclusively for charitable purposes (Section 501(c)(3) organizations)
  - Non-charitable not-for-profits, including
    - Social welfare organizations (Section 501(c)(4) organizations)
    - Business leagues and trade associations (Section 501(c)(6) organizations)
    - Social clubs (Section 501(c)(7) organizations)
- Apply to endowments created by third parties, not the institution

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Prudent Management and Investment of Institutional Funds

- "Institutional Funds" include endowment funds and other assets held primarily for investment purposes
- Give primary consideration to donor's intent
- Duty of loyalty – different standards for NFP corporations and charitable trusts
  - NFP directors – "best interests"
  - Trustees – "sole interests"
- Duty of care

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Fiduciary Responsibilities

- Duty of care
  - Prudent investor / you are not a guarantor
    - Reasonable care, skill and caution; portfolio approach
    - Good faith and with care an ordinarily prudent person in a like position would exercise under similar circumstances
      - Prudence under the facts and circumstances prevailing at the time of the action or decision
      - Consider the organization's risk/return objectives
      - High standard for directors selected who have particular expertise or experience in investment management
  - Duty to minimize costs: reasonable costs to invest and manage, considering:
    - Size of assets
    - Purposes of the institution
    - Skills/sophistication of investment committee
    - Third party adviser costs should be reasonable

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Fiduciary Responsibilities

- Duty to investigate: reasonable efforts to verify facts pertaining to investment management
  - How are the assets going to be managed?
    - By board or subcommittee
    - Delegation to another officer (e.g., CIO)
    - Delegation to third parties (e.g., RIAs, BDs, banks)
- Modern Portfolio Theory: decisions about each asset in the context of the portfolio
    - e.g., consider risk and return objectives of entire fund
    - Hedge funds, private equity, real estate funds
- Duty to diversify unless due to special circumstances
  - When a decision is made not to diversify, NYPMIFA specifically requires that such decision be reviewed at least annually
  - In light of today's market environment, does prudence dictate more frequent reviews of less diversified portfolios?
- Dispose of unsuitable assets
- Delegation to External Agents
- Develop investment strategy appropriate for the fund and charity

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Managing and Investing Institutional Funds

- In managing and investing an institutional fund, consider:
  - General economic conditions
  - The possible effects of inflation and deflation
  - The expected tax consequences, if any, of investment decisions of strategies
  - The role that each investment or course of action plays within the overall investment portfolio of the fund
  - The expected total return from income and the appreciation of investments
  - Other resources of the institution
  - The needs of the institution and the fund to make distributions and to preserve capital
  - An asset's special relationship or special value, if any, to the charitable purposes of the institution

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Delegation to External Agents

- Delegation to External Agents
  - Subject to the terms of the gift instrument, delegation is explicitly permitted by UPMIFA (authority to delegate was implied under the prior statutes)
  - External agents include an independent investment adviser, investment counsel or manager, bank or trust company
  - UPMIFA not only clearly reflects the authority to delegate, but makes clear that the duty of care extends to the following:
    - Selecting, continuing or terminating an agent and assessing the agent's independence and conflicts of interest
    - Establishing the scope and terms of the delegation, including the payment of compensation, consistent with the purposes of the institution and the institutional fund
    - Monitoring the agent's performance and compliance with the scope and terms of the delegation

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Delegation to Third Party Advisers – Key Practice Considerations

- Duty of care in connection with selection and continued retention
  - Affirmative duty to assess the independence of outside agents and conflicts of interest before and after retaining them
  - Selection should be based on competence, experience, past performance and proposed compensation, not business or personal relationships
  - Coordinate with Conflicts of Interest Policy
  - Directors and investment committee members are not liable for the actions or decisions of such third parties <u>if</u> the selection and retention are proper
  - Key considerations:
    - Transparency of portfolio
    - Transparency of the portfolio manager
    - Regulatory filings and other disclosures

- Good practice to formalize RFPs to ensure consistency of information obtained and reviewed, and the objectivity of selection process

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Prepare and Maintain Investment Policy Statement

- Best Practice: Maintain "written" investment policies
  - No one size fits all
  - Examples of subjects an IPS may include
    - General investment objectives
    - Permitted and prohibited investments
    - Acceptable levels of risk
    - Asset allocation and diversification
    - Procedures for monitoring investment performance
    - Scope and terms of delegation of investment management functions
    - The investment manager's accountability
    - Procedures for selecting and evaluating "external agents"
    - Processes for reviewing investment policies and strategies
    - Proxy voting
  - Frequency of Review – at regular intervals and whenever a change in the institution's financial condition or other circumstances require

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Due Diligence in a Nutshell

- Can you answer the following:
  - Do you know what you are buying?
  - Who is managing the money?
  - How were they selected?
- Specific Due Diligence Considerations
  - Firm/Firm History (ownership structure; investment team, AUM and AUM growth; capacity of strategy; investor composition)
  - Investment strategy, Objectives and Process
  - Review of Performance
  - Operational Due Diligence and Risk Management Controls
  - Transparency and Frequency of Reporting
  - Conflicts of Interest Considerations and Related Disclosures
  - Underlying Document and Structured Features
  - SEC Registration and Other Regulation
- Absolute and Relative Analysis

It's All About Process

- Educate yourself
- Develop Asset Allocation Strategy
- Prepare and Maintain Investment Policy Statement
- Implement Investment Strategy
- Monitor and Supervise Implementation of Investment Strategy
- Procedures for Controlling and Accounting for Expenses
- Process is key

It's All About Process

Best Practice: Have a Process to Review Your Process

- Evidence competence: be able to illustrate awareness of fiduciary responsibilities
- Substantiation:
  - Document analysis of portfolio-level asset allocations, individual investment decisions and investment manager performance
  - Timing of reviews/analysis
  - Details of reviews and analysis (e.g., issues reviewed, persons involved, supporting calculations; background research and analysis)
- Periodically review overall compliance with investment policies and authority of committee
- Prepare written summaries

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Endowment Spending Considerations

- UPMIFA eliminates the historic dollar value limitation on spending of endowment funds
- An endowment fund is any institutional fund or part thereof that, under the terms of a gift instrument, is not wholly expendable by the institution on a current basis
- Replaces historic dollar value with prudence requirement; prior law required the preservation of the endowment's principal
- An institution may appropriate for spending as much of the endowment fund, including principal, that the governing board determines, subject to the intent of the donor expressed in the gift instrument, is prudent for the uses, benefits, purposes and duration for which the endowment funds is established

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Endowment Spending Considerations

- When deciding whether and the extent to which to appropriate from an endowment fund, UPMIFA requires consideration, if relevant, of the following factors:
  - The duration and preservation of the endowment fund
  - Purposes of the organization and the fund
  - General economic conditions
  - Possible effect of the inflation or deflation
  - Expected total return from income and appreciation of investments
  - Other resources of the organization
  - The organization's investment policy

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Endowment Spending Considerations

- Additional Consideration:
  - Where appropriate, alternatives to spending from the endowment fund and the possible effects of those alternatives on the organization
- Best Practice ---- Maintain Contemporaneous Records
  - For each decision to appropriate funds, the organization must keep a record describing the nature and extent of the consideration that the governing board gave to these factors
  - How detailed should your board or investment committee minutes be?
  - If a particular factor is deemed not to be relevant, the reasons for this also must be documented
- A donor may otherwise limit or restrict expenditure by the gift instrument

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Endowment Spending Considerations

- Rebuttable presumption of imprudence
  - Appropriation of more than 7% of the fair market value of an endowment fund (calculated on the basis of the market values determined at least quarterly and averaged over a period of not less than 5 years immediately preceding the year in which the appropriation for expenditure is made) in any one year creates a rebuttable presumption of imprudence
  - This presumption does not apply to appropriations that are permitted under law or pursuant to the terms of the gift instrument
  - Appropriation of less than 7% of the FMV of the endowment fund is not presumptively prudent either
- Appropriations may be determined simultaneously (and pursuant to a single decision) for multiple similarly-situated endowment funds

Release of Donor Restricted Funds

- Prior law: could seek release of restrictions upon a gift by obtaining authorization of donor
- Court approval, with notice to Attorney General
  - Where donor release not possible due to the death, disability, unavailability or impossibility of identification, the institution, upon prior notice to the AG, may seek court release if the restriction is obsolete, inappropriate or impracticable
- Small, old funds
  - Release by institution, with notice to AG, and no court approval

ORION Investment Advisors

Fiduciary Self-Audits for Nonprofits:

Evaluating Decision-Making Processes and Controls

Presented by: *Rob Olcott, CAE, CIMA, AIF®*
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Investment Consultant, ORION Investment Advisors

November 10, 2011

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Three Types of Fiduciaries

Investment Steward – A person who has the legal responsibility for managing investment decisions.

Investment Advisor – A professional who is responsible for managing comprehensive and continuous investment decisions.

Investment Manager – A professional who has discretion to select specific securities for separate accounts, mutual funds, commingled trusts, and unit trusts.

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Nonprofit Investments and Fiduciaries

Examples of Nonprofit Investments Requiring Fiduciary Oversight:

- Reserve Funds
- Endowment Assets
- Foundation Assets
- Defined Benefit Plans
- Defined Contribution Plans (401(k), 403(b), 401(a))

Examples of Fiduciaries overseeing Nonprofit Investments:

- Executive Director/President
- CFO
- Director of Finance
- Controller
- Director of Human Resources
- Board of Directors
- Members of Investment Committee
- Members of Finance Committee
- Members of Benefits Committee
- Investment Advisors
- Investment Managers

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Global Fiduciary Precepts From Fiduciary360

- Know standards, laws, and trust provisions
- Diversify assets to specific risk/return profile of client
- Prepare investment policy statement
- Use "prudent experts" (for example, an Investment Manager) and document due diligence
- Control and account for investment expenses
- Monitor the activities of "prudent experts"
- Avoid conflicts of interest and prohibited transactions

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Fiduciary Quality Management System (QMS)

- Designed by Fi360™ to define a global fiduciary standard of excellence for investment stewards.
- Technical review by American Institute of Certified Public Accountants.
- Practices outlined in QMS are backed by substantiating code, regulations, and case law

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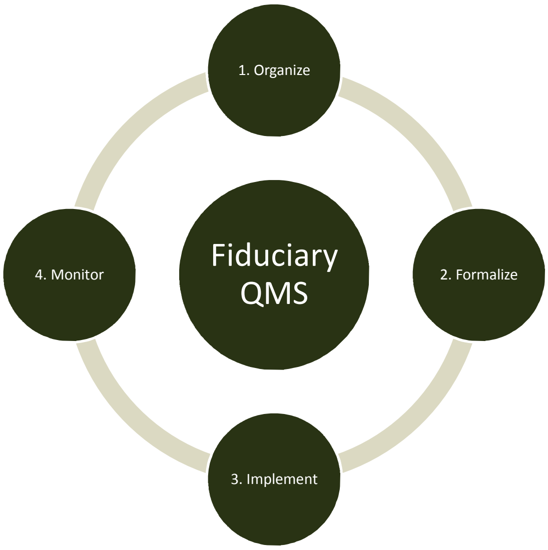
Fiduciary Quality Management System (QMS)



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Source: FI360

Fiduciary QMS: 1. Organize

1.1 Are investments managed in accordance with all applicable laws, trust documents, and written investment policy statements (IPS)?

1.2 Are the roles and responsibilities of all involved parties (fiduciaries and non-fiduciaries) defined, documented, and acknowledged?

1.3 Is there no indication that fiduciaries and parties in interest are involved in self-dealing?

1.4 Are service agreements and contracts in writing and are they written without provisions that conflict with fiduciary standards of care?

1.5 Are assets within the jurisdiction of appropriate courts, and are they protected from theft and embezzlement?

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Fiduciary QMS: 2. Formalize

2.1 Has an investment time horizon has been identified?

2.2 Has a risk level has been identified?

2.3 Has an expected, modeled return to meet investment objectives been identified?

2.4 Are selected asset classes consistent with the risk, return, and time horizon?

2.5 Are selected asset classes consistent with implementation and monitoring constraints?

2.6 Is there an Investment Policy Statement (IPS) which contains the detail to define, implement, and manage a specific investment strategy?

2.7 Does the IPS define appropriately structured, socially responsible investment (SRI) strategies (where applicable)?

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Source: Fi360™

Fiduciary QMS: 3. Implement

3.1 Is the investment strategy implemented in compliance with the required level of prudence?

3.2 Applicable "safe harbor" provisions followed (when elected)?

3.3 Are investment vehicles appropriate for the portfolio size?

3.4 Is a due diligence process followed in selecting service providers, including the custodian?

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Source: Fi360™

Fiduciary QMS: 4. Monitor

4.1 Are there periodic reports comparing investment performance against appropriate index, peer group, and IPS objectives?

4.2 Are periodic reviews made of qualitative and/or organizational changes of investment decision-makers?

4.3 Are control procedures in place to periodically review policies for best execution, “soft dollars,” and proxy voting?

4.4 Are fees for investment management consistent with agreements and with all applicable laws?

4.5 Are “finder’s fees” or other forms of compensation that may have been paid for asset placement appropriately applied, utilized, and documented?

4.6 Is there is a process to periodically review the organization’s effectiveness in meeting its fiduciary responsibilities?

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Source: Fi360™

Fiduciary QMS: Deep Dive

Within each of the 22 practices highlighted in Fiduciary QMS, there are subsets of criteria designed to define the Standard of Excellence

Let’s take a deep dive into one of the practices highlighted –

2. Formalize

2.6 Is there an Investment Policy Statement (IPS) which contains the detail to define, implement, and manage a specific investment strategy?

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Fiduciary QMS: 2. Formalize

2.6 Is there an Investment Policy Statement (IPS) which contains the detail to define, implement, and manage a specific investment strategy?

2.6.1 Does the IPS define the duties and responsibilities of all parties involved?

2.6.2 Does the IPS define diversification and rebalancing guidelines consistent with specified risk, return, time horizon, and cash flow parameters?

2.6.3 Does the IPS define due diligence criteria for selecting investment options?

2.6.4 Does the IPS define monitoring criteria for investment options and service providers?

2.6.5 Does the IPS define procedures for controlling and account for investment expenses?

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Source: Fi360™

Fiduciary QMS: Formalize

The IPS should:

- Have sufficient detail that a third party would be able to implement the investment strategy
- Be flexible enough that it can be implemented in a complex and dynamic financial environment
- Not be so detailed that it requires constant revisions and updates
- Utilize addendums to identify information that will change on a more frequent basis such as the names of board members, accountants, attorneys, actuaries, investment advisors and investment managers
- Include the Capital Market Assumptions used to develop the plan's asset allocation

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Fiduciary QMS: Formalize

Fiduciaries are required to manage investment decisions with a reasonable level of detail. By constructing a clear and effective IPS, fiduciaries can:

- Avoid unnecessary differences of opinion and the resulting conflicts
- Minimize the possibility of missteps due to a lack of clear guidelines
- Establish a reasoned basis for measuring their compliance
- Establish and communicate reasonable and clear expectations with participants, beneficiaries, and investors
- Create continuity as fiduciaries change

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Source: Fi360™

Contact Us

If you would like a copy of this presentation or if you are interested in additional resources regarding Fiduciary Self-Audits feel free to contact us:

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Definitions & Disclosures

Periodic table asset class definitions

- **S&P 500** measures the performance of large capitalization U.S. stocks. The S&P 500 is a market-value-weighted index of 500 stocks that are traded on the NYSE, AMEX and NASDAQ. The weightings make each company's influence on the Index performance directly proportional to that company's market value.
- **S&P/Citigroup 500 Growth** and **S&P/Citigroup 500 Value** measure the performance of the growth and value styles of investing in large cap U.S. stocks. The indices are constructed by dividing the market capitalization of the S&P 500 Index into Growth and Value indices, using style "factors" to make the assignment. The Value index contains those S&P 500 securities with a greater-than-average value orientation, while the Growth index contains those securities with a greater-than-average growth orientation. The indices are market-capitalization-weighted. The constituent securities are not mutually exclusive.
- **Russell 2000** measures the performance of small capitalization U.S. stocks. The Russell 2000 is a market-value-weighted index of the 2,000 smallest stocks in the broad-market Russell 3000 Index. These securities are traded on the NYSE, AMEX and NASDAQ.
- **Russell 2000 Value** and **Russell 2000 Growth** measure the performance of the growth and value styles of investing in small cap U.S. stocks. The indices are constructed by dividing the market capitalization of the Russell 2000 Index into Growth and Value indices, using style "factors" to make the assignment. The Value index contains those Russell 2000 securities with a greater-than-average value orientation, while the Growth index contains those securities with a greater-than-average growth orientation. Securities in the Value index generally have lower price-to-book and price-earnings ratios than those in the Growth index. The indices are market-capitalization-weighted. The constituent securities are not mutually exclusive.
- **MSCI EAFE** is a Morgan Stanley Capital International Index that is designed to measure the performance of the developed stock markets of Europe, Australasia and the Far East.
- **MSCI Emerging Markets** is a Morgan Stanley Capital International Index that is designed to measure the performance of equity markets in 21 emerging countries around the world.
- **BC Agg** is the Barclays Capital Aggregate Bond Index (formerly the Lehman Brothers Aggregate Bond Index). This index includes U.S. government, corporate and mortgage-backed securities with maturities of at least one year.

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Employee Benefit Plan Fiduciary Responsibility Overview

November 10, 2011

Shannon Spafford, Manager

LarsonAllen LLP
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Fiduciary Responsibility Overview

- What functions create a fiduciary under ERISA?
  - Exercising discretionary authority or control over the management of the plan or its assets
  - Rendering investment advice for a fee or other compensation
  - Discretionary authority or control in the administration of the plan

Fiduciary Responsibility Overview

- Who is a fiduciary under ERISA?
  - Plan Trustees
  - Custodian
  - Investment Advisors
  - Plan Administrator or any individual exercising discretion in administration of the Plan
  - Plan Administrative Committee
  - Board of Directors who appoint committee

Fiduciary Responsibility Overview

- What are the fiduciary duties under ERISA?
  - Required to act solely in the interest of plan participants and beneficiaries
  - Ensure plan assets are being used exclusively for the payment of plan benefits or for “reasonable” administrative expenses
  - Determine fees for services between a plan and a “party in interest” (for example, trustee, investment advisor or record keeper) are reasonable
  - Obtain sufficient information from providers to enable the fiduciary to make informed decisions about services and costs

How to Limit Fiduciary Liability

- **Demonstrate you have carried out your responsibilities properly**
  - **Document processes used to carry out responsibilities**
- **Give participants control over their investments to limit liability as a fiduciary for investment decisions made by participants**
  - **Offer a variety of investment options**
- **Hire service providers to carry out fiduciary functions**
- **Monitor service providers**
  - **Review service provider's performance**
  - **Read reports provided by the service provider**
  - **Check actual fees charged**
  - **Ask about policies and practices**
  - **Follow up on participant complaints**
- **Maintain proper fidelity bonding**

DOL 408(b)(2) Disclosure Rules

- The DOL issued the 408(b)(2) Interim Final Regulations effective July 16, 2011, which have the following objectives:
  - Provide plan fiduciaries with the information they need to determine the reasonableness of compensation paid to service providers
  - Help fiduciaries understand how those services are affected by potential conflicts of interest.
- The final regulation applies to defined contribution and defined benefit plans covered by ERISA. Health & Welfare plans, SEPs, SIMPLEs and IRA's are exempt from the rules.

Prohibited Transactions

- The 408(b)(2) Final Regulations have the following requirements:
  - Covered providers will be required to provide disclosure of the services they provide and fees they “reasonably expect” to earn under any contract in which they expect to earn $1,000 or more
  - Covered providers would generally include fiduciary services, record-keeping or brokerage services, and virtually anyone who is being compensated indirectly (e.g. accounting auditing, actuarial, consulting, etc.)

DOL 408(b)(2) Disclosure Rules

- Effective for plan years beginning on or after November 1, 2011, the following plan-related and investment-related information must be provided to participants and beneficiaries on or before the date they are first eligible to direct their investments, and on an annual basis thereafter
  - General Plan information
    - ◊ Current list of investment options
    - ◊ Explanation of how individuals provide investment instructions under the Plan
    - ◊ If applicable, descriptions of a brokerage option and/or similar types of outside investments available under the Plan
  - Administrative expense information
    - ◊ Explanation of fees and expenses that may be charged to or deducted from all individual accounts
  - Individual expense information
    - ◊ Explanation of fees that may be charged to individual’s account (i.e. loan fees, QDRO fees, hardship withdrawal fee, distributions fees)

DOL 408(b)(2) Disclosure Rules

- Investment related information
  - ◊ Performance data
    - One, five and 10-year returns for all mutual funds and other plan investment options that do not have a fixed rate of return
    - Annual rate of return and investment term for fixed rate of return
  - ◊ Benchmark data
    - One, five and 10-year returns for appropriate benchmark indexes (to match plan investment performance data periods)
  - ◊ Fee and expense information
    - Non-fixed-rate investments: Total annual operating expenses expressed as a percentage and as a dollar amount per $1,000 invested
    - Any shareholder-type fees or restrictions on purchases or withdrawals must also be provided
    - Fixed-rate investments: any shareholder-type fees or restrictions on purchases or withdrawals

DOL 408(b)(2) Disclosure Rules

- Investment related information (continued)
  - ◊ Internet resources
    - Addresses of websites that can provide additional detailed information about the investment options
  - ◊ Glossary
    - General glossary of terms to assist participants and beneficiaries in understanding the plan's investment options or the address of a website that can provide access to a glossary

- Additional quarterly disclosure
  - Individuals are to receive quarterly statements that report the dollar amount of any fee or expense deducted from their account along with a description of the services related to the fee or expense

DOL 408(b)(2) Disclosure Rules

- Responsibilities of the Plan Sponsor
  - Consider how the new disclosure rules affect the plan
  - Inquire of your service providers regarding their process to comply with the written disclosure requirements
  - Review the disclosures to determine if they satisfy the new disclosure requirements
  - Determine whether the compensation paid the service provider is reasonable based on the services rendered
  - Fiduciaries of the plan should document this review
  - Determine who is a Fiduciary to your Plan

DOL 408(b)(2) Disclosure Rules

- What if the Plan sponsor does not receive the proper disclosures?
  - Request in writing that the covered service provider furnish the required information
  - If the provider fails to comply with such written request within 90 days of the request, the plan fiduciary must notify the DOL of the covered service provider's failure
  - The Plan fiduciary should determine whether to terminate or continue the contract or arrangement
  - The Plan should evaluate the nature of the failure, the availability, qualifications, and cost of replacement service providers, and the covered service provider's response to notification of the failure

Thank You!

Questions?

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Questions and Discussion

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Jeffrey Tenenbaum chairs Venable's Nonprofit Organizations Practice Group. He is one of the nation's leading nonprofit attorneys, and also is an accomplished author, lecturer and commentator on nonprofit legal matters. Based in the firm's Washington, D.C. office, Mr. Tenenbaum counsels his clients on the broad array of legal issues affecting trade and professional associations, charities, foundations, think tanks, credit and housing counseling agencies, advocacy groups, and other nonprofit organizations, and regularly represents clients before Congress, federal and state regulatory agencies, and in connection with governmental investigations, enforcement actions, litigation, and in dealing with the media.

Mr. Tenenbaum was the 2006 recipient of the American Bar Association's Outstanding Nonprofit Lawyer of the Year Award, the inaugural (2004) recipient of the *Washington Business Journal*'s Top Washington Lawyers Award, the 2004 recipient of The Center for Association Leadership's Chairman's Award, and the 1997 recipient of the Greater Washington Society of Association Executives' Chairman's Award. He also was a 2008-09 Fellow of the Bar Association of the District of Columbia and is AV Peer-Review Rated by *Martindale-Hubbell*. He started his career in the nonprofit community by serving as Legal Section manager at the American Society of Association Executives, following several years working on Capitol Hill.

HONORS

Listed in *The Best Lawyers in America* for Nonprofit Law (Woodward/White, Inc.)

Fellow, Bar Association of the District of Columbia, 2008-09

Recipient, American Bar Association Outstanding Nonprofit Lawyer of the Year Award, 2006

Recipient, *Washington Business Journal* Top Washington Lawyers Award, 2004

Recipient, The Center for Association Leadership Chairman's Award, 2004

Recipient, Greater Washington Society of Association Executives Chairman's Award, 1997

Legal Section Manager / Government Affairs Issues Analyst, American Society of Association Executives, 1993-95

AV® Peer-Review Rated by *Martindale-Hubbell*

Listed in *Who's Who in American Law* and *Who's Who in America*, 2005-present editions

AREAS OF PRACTICE

Tax and Wealth Planning

Antitrust

Political Law

Business Transactions Tax

Tax Controversies

Tax Policy

Tax-Exempt Organizations

Wealth Planning

Regulatory

INDUSTRIES

Nonprofit Organizations and Associations

Credit Counseling and Debt Services

Financial Services

Consumer Financial Protection Bureau Task Force

GOVERNMENT EXPERIENCE

Legislative Assistant, United States House of Representatives

BAR ADMISSIONS

District of Columbia

EDUCATION

J.D., Catholic University of America, Columbus School of Law, 1996

B.A., Political Science, University of Pennsylvania, 1990

MEMBERSHIPS

American Society of Association Executives

California Society of Association Executives

New York Society of Association Executives

ACTIVITIES

Mr. Tenenbaum is an active participant in the nonprofit community who currently serves on the Editorial Advisory Board of the American Society of Association Executives' *Association Law & Policy* legal journal, the Advisory Panel of Wiley/Jossey-Bass' *Nonprofit Business Advisor* newsletter, and the ASAE Public Policy Committee. He previously served as Chairman of the *AL&P* Editorial Advisory Board and has served on the ASAE Legal Section Council, the ASAE Association Management Company Accreditation Commission, the GWSAE Foundation Board of Trustees, the GWSAE Government and Public Affairs Advisory Council, the Federal City Club Foundation Board of Directors, and the Editorial Advisory Board of Aspen's *Nonprofit Tax & Financial Strategies* newsletter.

PUBLICATIONS

Mr. Tenenbaum is the author of the book, *Association Tax Compliance Guide*, published by the American Society of Association Executives, and is a contributor to numerous ASAE books, including *Professional Practices in Association Management*, *Association Law Compendium*, *The Power of Partnership*, *Essentials of the Profession Learning System*, *Generating and Managing Nondues Revenue in Associations*, and several Information Background Kits. He also is a contributor to *Exposed: A Legal Field Guide for Nonprofit Executives*, published by the Nonprofit Risk Management Center. In addition, he is a frequent author for ASAE and many of the other principal nonprofit industry organizations and publications, having written more than 400 articles on nonprofit legal topics.

SPEAKING ENGAGEMENTS

Mr. Tenenbaum is a frequent lecturer for ASAE and many of the major nonprofit industry organizations, conducting over 40 speaking presentations each year, including many with top Internal Revenue Service, Federal Trade Commission, U.S. Department of Justice, Federal Communications Commission, and other federal and government officials. He served on the faculty of the ASAE Virtual Law School, and is a regular commentator on nonprofit legal issues for *The New York Times*, *The Washington Post*, *Los Angeles Times*, *The Washington Times*, *The Baltimore Sun*, *Washington Business Journal*, *Legal Times*, *Association Trends*, *CEO Update*, *Forbes Magazine, The Chronicle of Philanthropy, The NonProfit Times* and other periodicals. He also has been interviewed on nonprofit legal issues on Voice of America Business Radio and Nonprofit Spark Radio.

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Rory Cohen focuses his practice on advising private investment funds, funds of funds and investment managers on structuring and formation as well as operational, distribution, regulatory and compliance issues. Mr. Cohen assists financial institutions in the structuring and implementation of separate account wrap fee programs, unified managed accounts, variable life insurance products, private fund distribution and regulatory examinations. Mr. Cohen has extensive experience negotiating and structuring seed capital arrangements, private fund access platforms and advising on investment manager and private investment fund due diligence. His counsel relates principally to the Investment Company Act of 1940, Investment Advisers Act of 1940, the Securities Exchange Act of 1934 and FINRA and state blue sky laws and regulations.

SIGNIFICANT MATTERS

As a Managing Director at Bear Stearns, Mr. Cohen counseled several of the organization's entities on asset management activities, including Bear Stearns Securities Corp., Bear Stearns Asset Management Inc. and Bear Stearns & Co. Inc. During his tenure, among other things, Mr. Cohen supervised the development, implementation and distribution of separate account, mutual fund/ETF and hedge fund platforms. Mr. Cohen also played a key role during the spin-out of an $8 billion asset manager by Bear Stearns Asset Management Inc. in mid-2007. As Associate General Counsel at Prudential Securities Inc., Mr. Cohen advised on development and implementation of investment advisory and wrap fee programs as well as day-to-day compliance and disclosure issues.

AREAS OF PRACTICE

Corporate

Investment Management

Finance

INDUSTRIES

Green Businesses

Financial Services

BAR ADMISSIONS

New York

New Jersey

EDUCATION

J.D., Boston University School of Law, 1994

B.B.A., University of Michigan, 1991

MEMBERSHIPS

Association of the Bar of the City of New York

Robert L. Olcott, CIMA
Managing Director

Rob Olcott is a recognized leader and resource in the financial services industry and within the nonprofit community. He has more than thirty years' experience advising, teaching, and serving associations, endowments, foundations, hospitals, and corporate retirement plan sponsors.

In 2009, Mr. Olcott was cited as one of the nation's Top 1,000 Independent Advisors by Barron's. He also received industry-wide recognition as one of Registered Representative magazine's Top 10 Brokers, based on his team's outstanding client service, assets under management and regulatory record. Registered Representative is one of the most respected national publications in the securities industry, and it names only 10 financial advisors nationwide to receive this honor each year. Since 2005, the Olcott Consulting Group has been featured in Virginia Business magazine as one of the top 10 financial advisory firms in the Commonwealth selected by author R.J. Shook to be included in his Winner's Circle book, based on client service, assets under management and ethical standards.

Mr. Olcott began his career with a national non-profit organization and pioneered the development of investment vehicles which helped public school districts improve the management of their financial assets. In 1984, he entered the financial services industry and began advising fiduciaries on the management of the funds they oversee.

Mr. Olcott holds the professional designation of Certified Investment Management Analyst from the Investment Management Consultants Association, of which he is a member. He is also a member of the Financial Planning Association and the International Association of Employee Benefit Plans. He earned his bachelor's degree in business and communications from Drake University and his master's degree in communications from Rowan College.

Kenneth N. Lowe, AIF® Investment Consultant

Kenny Lowe is an Investment Consultant with ORION Investment Advisors. His primary responsibility is to provide advisory and fiduciary services for non-profit retirement plans. In this capacity, Kenny assists organizations in developing and implementing an investment policy, plan benchmarking, ongoing evaluation of investment options, and adherence to fiduciary requirements. In addition, he serves on the group's Investment Committee which forecasts our outlook for the financial markets and determines asset allocation decisions.

Prior to joining ORION, Mr. Lowe was a Manager in the Investment Products Group of Wachovia Securities. He earned a M.B.A. with concentration in finance from Virginia Commonwealth University and holds the professional designation of Accredited Investment Fiduciary from the Center for Fiduciary Studies.

Shannon V. Spafford, CPA

Profile

Shannon joined LarsonAllen in January 2005 and is a Manager in the Benefit Services Group. In the fall of 2009 she transferred from the firm's Minneapolis, Minnesota office to the Arlington, Virginia office. Her background includes audit, consulting, and tax preparation services for single, multiple, and multi-employer employee benefit plans, including defined benefit and defined contribution pension plans, health and welfare plans, and other tax-exempt organizations.

Experience in Servicing Clients

Shannon has prepared, assisted, and trained employees in preparation of reporting and disclosure requirements applicable to employee benefit plans. Shannon has also performed consulting services for plan sponsors with regard to plan administration, operations, and compliance with the Employee Retirement Income Security Act of 1974 (ERISA). She currently takes a lead role in developing and leading the firm's benefit services practice in the DC region and supervises approximately 80 audit and tax engagements on an annual basis.

Education/Professional Involvement

Shannon graduated from the University of Wisconsin – River Falls with a degree in Accounting. She is a Certified Public Accountant (CPA) licensed in Virginia and Minnesota and is a member of the American Institute of Certified Public Accountants (AICPA), the Greater Washington Society of Certified Public Accountants (GWSCPA), and the Virginia Society of Certified Public Accountants (VSCPA). Shannon is currently in the process of obtaining the Certified Employee Benefit Specialist (CEBS) designation.

Additional Information

VENABLE LLP

AUTHORS

Alexandra Megaris

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April 18, 2011

Protection of Charitable Assets Act: What the New Uniform Law Would Mean for Nonprofits

Related Topic Area(s): Corporate Governance, Miscellaneous

The committee tasked with drafting a new uniform law that regulates charities and charitable assets has released the newest version of the proposed law, renamed the *Protection of Charitable Assets Act*, which is currently under consideration by the drafting committee. If ultimately approved, the uniform act could become law in many states.

What is a uniform law? The Uniform Law Commission ("ULC")—the same body that recently drafted and ushered through the *Uniform Prudent Management of Institutional Funds Act*—is an organization comprised of state commissions on uniform laws from each state, the District of Columbia, the Commonwealth of Puerto Rico, and the U.S. Virgin Islands. Once the ULC determines that a specific area of law should be uniform, it appoints a committee to draft the model legislation. The final uniform law is then submitted to a vote by the entire Commission. Once the ULC approves a proposed Model Act, the states then vote. A majority of the states present, and no less than 20 states, must approve an act before it can be officially adopted as a Uniform or Model Act.

At that point, a Uniform or Model Act is officially promulgated for consideration by the states. The state legislatures are urged to adopt Uniform Acts exactly as written, to "promote uniformity in the law among the states."

What would the *Protection of Charitable Assets Act* do? The proposed act would do four main things: (1) define the authority of the state Attorney General over the protection of charitable assets in that state; (2) impose a registration requirement; (3) oblige charities with assets above a minimum amount to file an annual report; and (4) require a charity to notify the state in advance of certain specified "life events."

1. Authority of the State Attorney General. The model act authorizes the Attorney General of each state:

- to enforce the use of charitable assets by a charity for the purposes for which the asset was given;
- to "act to prevent or remedy" a breach of a legal duty by the charity; and
- to seek declaratory or injunctive relief to determine that an asset is a charitable asset.

In addition, the law would give the state Attorney General the power to commence or intervene in an action filed by another party to prevent or obtain damages for a violation of the law. The state Attorneys General would have the ability to initiate investigations and issue administrative subpoenas to charities in order to determine whether charitable assets are being used for the purposes for which the asset was given. While many state Attorneys General already exercise significant regulatory oversight over nonprofit organizations operating in their states, other state Attorneys General take a less active role. The proposed model law, if adopted by the states, would establish uniform standards in this area.

2. Registration and Reporting Requirements. The Model Act, as currently drafted, would require each charity that holds or administers charitable assets above $5,000 *and* that meets one of the following five criteria to register with the state: is organized (*e.g.*, incorporated) under the state's law, has its principal place of business in the state, holds charitable assets in the state other than assets held for investment purposes, conducts activities in the state, or holds assets that are given for the benefit of a person in the state. The registration provision includes limited exemptions for governmental, political, religious and financial entities and certain individuals holding charitable assets.

3. Annual Reports. Charities with assets above $5,000 also would be required to file an annual report with the state Attorney General. The report would require basic accounting and financial information and require the charity to attach its IRS filing (*e.g.*, Form 990).

4. Notice to State Attorney General of Reportable Events. Charities required to register under the proposed statute also would be required to notify the state Attorney General if any of the following events occur:

- dissolution or termination of the charity;
- disposition of all or substantially all of its charitable assets;
- a merger, conversion or domestication; or
- removal of the charity or of a significant charitable asset from the state.

This proposed uniform law would impose significant registration and reporting requirements on many charitable organizations across the country, especially on those that operate in multiple states. We will continue to monitor the status of the proposed model statute. A final draft of the statute is expected to be introduced and voted on at the annual meeting of the Uniform Law Commission commissioners in July 2011.

####

Ms. Megaris *is an attorney in Venable's* ***Regulatory Practice*** *who works regularly with the firm's nonprofit organization clients. She is resident in Venable's New York office.*

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- Practical Due Diligence Considerations for Nonprofit and Other Investment Fiduciaries

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Corporate Governance

February 24, 2009

Practical Due Diligence Considerations for Nonprofit and Other Investment Fiduciaries

Related Topic Area(s): Corporate Governance

Published in the June 2009 issue of *Association Law & Policy*, the March 13, 2009 issue of *Association Trends* and the March-April 2009 issue of *FARSight: The F&A Roundtable Report*.

The December 11, 2008 arrest of Bernard Madoff and his alleged $50 billion Ponzi scheme and more recent arrests of several other investment managers alleged to have similarly defrauded investors have sent shock waves throughout the nonprofit and for-profit financial communities. As a result of these events, and the historic volatility and disruption in global financial markets, many trustees, board members and investment committee members ("Investment Fiduciaries") of foundations, charities, endowments, pension funds, family offices and high net worth investors have begun to more closely consider their investment policies (including the extent to which such policies include allocations to hedge funds and other alternative investments) and their due diligence processes for selecting third party investment managers. Many Investment Fiduciaries seek to use outside consultants and advisers to review, select and monitor investment managers, mutual funds, hedge funds and other pooled investment vehicles. Now is a good time to review their due diligence processes as well.

On January 15, 2009, the Investors' Committee to the President's Working Group on Financial Markets issued its final report entitled "Principles and Best Practices for Hedge Fund Investors" (the "Investors' Committee Report"). The Investors' Committee Report, delayed to permit the Investors' Committee an opportunity to refine its conclusions in light of recent financial market dislocations and the alleged Madoff fraud, sets forth a number of factors that should be considered by investment fiduciaries when evaluating the appropriateness of hedge fund investing. Though the Investors' Committee Report focuses on hedge fund investments, we believe many of the best practices identified can be equally effective with respect to both traditional long-only and hedge fund managers. The Investors' Committee notes that "one cannot eliminate investment risk, but one should be aware of the risks that are being undertaken when investing with individual managers and also in the portfolio as a whole." The Investors' Committee further emphasizes that "there can be no substitute for comprehensive and ongoing due diligence not only of hedge funds in the investment portfolio but indeed of the full portfolio."

Recognizing that due diligence will vary depending upon an organization's needs as well its financial resources, the best practices recommended by the Investors' Committee Report should be viewed as a guide for Investment Fiduciaries responsible for reviewing and implementing investment policies and analyzing the effectiveness of due diligence. Our discussion below touches on several best practices identified by the Investors' Committee and also reflects some of our own observations based upon our experiences advising Investment Fiduciaries.

Duty of Care of Investment Fiduciaries

Investment Fiduciaries are not guarantors of performance. They do, however, owe a "duty of care" with respect to the investment and management of investment funds. This "duty of care" is derived under state laws governing investments by nonprofit organizations. Most state laws incorporate principles derived from one of two uniform statutes approved by the National Conference of Commissioners on Uniform State Laws ("NCCUSL"): the Uniform Prudent Management of Institutional Funds Act ("UPMIFA") and Uniform Management of Institutional Funds Act ("UMIFA"). UPMIFA was approved in 2006 with the intent of superseding UMIFA. [1] (These provisions are frequently incorporated into a state's nonprofit corporation statute).

Among other things, UPMIFA modernizes the standards for investing by nonprofits and, as discussed below, provides some protection for Investment Fiduciaries who properly delegate portions of the investment function. UPMIFA applies generally to charitable organizations organized as nonprofit corporations, unincorporated associations, governmental subdivisions or agencies, trusts (where the trustee itself is a charity) and other entities organized and operated exclusively for charitable purposes. Trusts managed by corporate or other fiduciaries that are not charities do not fall within the scope of UPMIFA but are subject to the "duty of care" set forth under the Uniform Prudent Investor Act as implemented and interpreted by the states.

UPMIFA sets forth a number of factors to be considered in managing and investing the assets of a nonprofit organization, including "the role that each investment or course of action plays within the context of the entire portfolio" and "the expected total return from income and appreciation of investments." UPMIFA also requires an Investment Fiduciary to reasonably seek to verify the accuracy of information used in making decisions and includes a general "duty to diversify" investments. In discharging these responsibilities, some degree of research, or due diligence, should be conducted.

So what does this mean? What can be done? Due diligence should be viewed as far more than a simple "check-the-box" exercise. It is not simply a matter of documenting the receipt and completion of questionnaires and filing them away. Investment Fiduciaries who are directly involved in due diligence and investment selection should be actively engaged. They should be sufficiently knowledgeable about financial markets and investment instruments and remain abreast of current events. If they engage investment managers, they should analyze information provided by such managers. They also should seek to obtain information from independent sources to help evaluate the accuracy and completeness of information provided by managers. In addition, Investment Fiduciaries should strive to ask thoughtful questions in an effort to understand the instruments or funds that they are investing in and to evaluate the relative risks and sources of investment returns.

Delegation of Investment Responsibilities

As contemplated by UPMIFA, Investment Fiduciaries are generally relieved from liability with respect to investment decisions made by third parties to whom investment discretion is delegated via written agreement, provided they exercise the appropriate degree of diligence, care and skill in selecting such third party advisers. For example, Investment Fiduciaries are not liable for decisions made by investment managers to purchase and sell individual securities or decisions by consultants or advisers to hire or fire portfolio managers, provided (a) discretion has been appropriately delegated; (b) they have exercised diligence, care and skill when engaging such parties; and (c) they periodically review the third party's actions to monitor such party's performance and compliance with the scope and terms of the delegation.

However, many relationships with outside consultants and advisers are non-discretionary, whereby the consultant or adviser is engaged solely to "assist" in defining investment policies and/or to "assist" in reviewing, selecting and monitoring investments and investment managers. Investment Fiduciaries should review their advisory agreements to determine whether discretion has been granted and to see if they contain any limitations of liability and/or disclaimers of reliance. In any event, whether or not discretion is granted to outside consultants or advisers, Investment Fiduciaries should carefully consider and periodically review such party's investment selection and due diligence processes. Such reviews should test the robustness and consistency of the underlying advisers' processes and seek to verify, among other things, that such third parties understand the investments they are looking at and risks and sources of returns.

Review Your Investment Process and Portfolio

Due diligence will not solve all problems, but a well-designed process, together with thoughtful analysis can help identify red flags that suggest further questioning or abandonment of an investment opportunity. We offer the following non-exhaustive list of considerations for reviewing investment managers and portfolio performance (and, when applicable, to assess whether outside consultants or advisers include similar considerations as part of their process):

- Review the extent to which due diligence focuses on a manager's investment strategy and objectives. Can the manager clearly articulate his/her investment thesis? How are investment ideas generated? Is the investment manager willing to disclose portfolio positions and discuss specific investments --- both those that performed well *and* those that performed poorly? Are security selection and portfolio composition consistent with the articulated strategy and investment selection process?

- Is the investment manager registered with the Securities and Exchange Commission ("SEC")? If so, the Investment Advisers Act of 1940, as amended (the "Advisers Act"), requires the adviser to maintain written compliance policies and procedures, a Code of Ethics and policies and procedures to prevent insider trading, among other things. Registered investment advisers must also appoint a Chief Compliance Officer ("CCO") who should be sufficiently knowledgeable about Advisers Act requirements. The CCO should also be competent and "empowered", which, in the view of one prominent SEC Staffer, is one that has "...a position of sufficient seniority and authority within the organization to be able to compel others to adhere to the firm's compliance policies and procedures." [2] Query whether the CCO or person acting in a similar capacity actually has such independence and authority. Even in the absence of SEC-registration, does the investment manager conduct itself as if it was registered and maintain similar policies and procedures? Will the manager permit reviews of its compliance policies and procedures? Interview the CCO or person acting in a similar capacity to understand their strengths and weaknesses and to assess whether they have sufficient competence and independence within the organization.
- Review conflicts of interest. Evaluate how they are identified and how quickly they are resolved. Are they prevalent? Does the manager utilize affiliated broker-dealers, engage in principal trading or other related-party arrangements, permit personal trading or have side-by-side trading considerations that might impact allocations and other portfolio decisions? To what extent are conflicts disclosed in the manager's Form ADV (if registered with the SEC) and, if applicable, fund offering documents.
- Review the extent to which operational risk and risk controls are evaluated. Consider the effectiveness of such process. Some industry professionals distinguish between "risk management" and "risk measurement". Risk measurement is generally the ability to conduct scenario analysis to determine how securities and other portfolio positions may react based on historical reactions. Risk measurement is a quantitative measurement and hypothetical, based on historical behavior, but not a real-time reaction to actual events. Risk management is the ability to illustrate actual actions taken in response to live market events, based on, in large part, a manager's own expectations of future events.

  When evaluating an organization's risk controls, it is helpful to understand a manager's forward-looking views on the economy and financial markets (what do they actually think?) and how they are positioning their portfolios in light of their own future expectations. It is helpful to understand (a) how the manager's systems identify risks, including excess concentration, excessive leverage, changes in correlation (among securities, sectors, countries, etc.) and counterparty risks with prime brokers and other financial institutions and (b) how quickly they can react and reposition the portfolio. Focus not only on portfolio liquidity, but on organizational constraints that might hinder the timely implementation of changes. In other words, who does the risk manager report to and does he or she have sufficient independence to unilaterally make changes to the portfolio? Review the manager's valuation process and cash movement controls. Review trade processing and reconciliation controls.
- Do you apply your due diligence process consistently? Are your due diligence efforts tailored to reflect unique issues posed by different investment strategies? In other words, by way of example, does your process differ for equity, fixed income, currency and real estate managers.
- Review your documentation of due diligence to see if similar documents are collected from each investment manager and fund. Are you maintaining notes of your review and analysis and minutes of investment committee meetings and decisions?
- Monitor and periodically review investment performance, portfolio concentration and the relative merits of continuing to maintain each investment within the portfolio. These types of reviews are helpful with respect to each investment and the entire portfolio and with respect to separate account managers and managers of pooled vehicles such as mutual funds, hedge funds, private equity funds, real estate funds and funds of hedge funds. [3] Continued underperformance and excessive concentration might suggest the need for further consideration internally among Investment Fiduciaries and perhaps externally with outside consultants and advisers, if used.
- When investments perform poorly, re-evaluate your process to potentially identify factors that you may be able to change or emphasize in connection with future investments.

If you have any questions about this alert, your investment or due diligence process or legal considerations that may arise in connection with investment products used by your organization, please contact any member of Venable's Nonprofit Organization or Investment Management practice groups.

1 UPMIFA has been enacted in twenty-six states and UMIFA in forty-seven according to NCCUSL. State statutes should be separately evaluated in order to determine the extent to which its provisions mirror the relevant uniform model statute.
2 Speech by Gene Gohlke, Associate Director, Office of Compliance Inspection and Examinations, U.S. Securities and Exchange Commission at the Managed Funds Association Educational Seminar Series 2005: Practical Guidance for Hedge Fund CCOs Under the SEC's New Regulatory Framework; available at: **http://investor.gov/news/speech/spch050505gg.htm**.
3 Pooled investment vehicles are generally more difficult to evaluate and monitor due to certain inherent limitations, including limited transparency, limitations on withdrawal and the more frequent use of sophisticated investment strategies and instruments (that utilize various options and futures, commodities and currencies, etc.).

ORION Investment Advisors

Investment Consulting for Non-Profit Organizations

About ORION

Registered Investment Advisor (RIA)

Independent, employee-owned firm

Over 60 years of combined experience consulting to non-profit organizations

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Member of Callan Associate's Independent Advisor Group

Ability to serve as a named fiduciary for our clients

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ORION investment Advisors is a wholly owned subsidiary of the Olcott Consulting Group.

Portfolio Consulting

Volatile financial markets, new fiduciary standards and increased scrutiny and a plethora of new investment products have made managing your organization's investments more challenging than ever before.

For more than 20 years the consultants at ORION Investment Advisors have helped organizations with investable assets of $5 million or more in an effort to achieve their long-term investment objectives. Moreover, working with ORION your organization will have access to:

- Objective investment counsel that strives to avoid potential conflicts of interest.
- A disciplined investment process designed to manage risks and help your organization fulfill its fiduciary responsibilities.
- Investment managers which typically are available only to the largest organizations.
- Research and manager due diligence from Callan Associates, one of the country's leading investment consultants advising more than $1 trillion in assets as of February 2010.
- Customized performance reporting to help staff and volunteers monitor performance of your overall fund and each investment manager
- Benchmarking to help you compare your investment strategy and results with other comparable organizations.

In addition, you don't have to change investment managers to benefit from one or all of ORION's investment advisory services.

Retirement Plan Consulting

Recent legal and regulatory changes are forcing organizations to take a second look at their retirement plans—from fees and services, to participant communication and the ongoing monitoring of investment options in the plan.

ORION provides a comprehensive set of services to help you and your organization fulfill your growing fiduciary responsibilities, including:

- Assistance in developing and maintaining a required Investment Policy for your plan.
- Benchmarking the fees and services of your plan provider(s) against other comparable plans.
- Objective, ongoing monitoring of investment options offered in your plan.
- Conducting provider searches, if needed

ORION is not affiliated with any plan provider so you can be sure that we will act in your best interest and you do not need to change plan providers to benefit from one or more of our services.