Foreword

About 7 years ago, I wrote No Nonsense Finance (NNF) through McGraw Hill. It referenced all areas of personal finance such as insurance, long term care, ethics, etc., and of course investments. Financial Planning Fiduciary Standards under Dodd Frank (FPFSDF) focuses on the fiduciary elements demanded of financial advisers/planners/consultants et al with specific reference and more detail to the risk and rewards of investing before, during and after the debacles of 2000 and 2008. Of course, such risks easily translate over to insurance and annuities as well since the bulk of products have changed dramatically in the use of guarantees from losses, indexing, guaranteed minimum withdrawals for retirement income and much, much more.

In NNF, Mcgraw Hill wanted to fully eliminate the chapter on Ethics and Fiduciary Duty since 'nobody likes to read that stuff". They probably were right and I had to fight to get some of it in. It is true in this business that most of the effort towards ethics, knowledge etc. has been universally rewarded with.....nothing.

But I am nothing if not stubborn and the current focus on exemplary duty gives me another chance to make a difference. But it still won't be easy. Consumer's hubris in estimating their own capacity for understanding difficult material is only matched by an entire industry of journalists, Congressmen, attorneys, SEC, FINRA, university scholars, consumer unions and more that simply never looked at the bottom line of this business. It is truly amazing how far Dodd Frank has come when nary a one understands the risks of investing. The vast bulk of financial 'whatevers' are no better and have had nil knowledge of what they were/are doing because they have never been trained in the fundamentals of investing or insurance. Licensing knowledge is abysmal. Certainly little to do with real life. And then we can go back to the regulators and the licensing requirements- none have ever required licensees to know the real life application of product to even basic suitability levels. It becomes 'apparent' every time you read a scholarly article such as Financial Advisors: A Case of Babysitters?

, -http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1360440& To wit, "The Role of Financial Advice- There is a limited but budding theoretical literature on the possible role of financial advisors. Current theoretical work but also policy debate on financial regulation seem to be based on **the idea that financial advisors know what is good for individual customers** but have an incentive to misrepresent this and to take advantage of their customers, who are typically uninformed and cannot figure out the poor quality of advice. Regulation is then needed to make sure that this conflict of incentives is dealt with."

The flaw is that such reviews accept as universal fact that a financial advisor really ***does*** know what to do. The Dodd Frank bill- and I am only dealing with the element of financial advice and the associated fiduciary duty- starts from a 'non factual' and 'non supported' position advocated by the industry and planning organizations galore that their representatives are already extremely knowledgeable and held to the highest standards.

Nope

It is true that certain material can- and is- being misrepresented intentionally. But the problem not addressed by such authors is that very, very few advisors know what they are doing in the first place. Information incorrectly stated by 'financial advisers' (known in the trade as being conveniently stupid) is little differrent in its ultimate consequences.

Peter Bernstein noted, "Financial planning, like brain surgery, is an extraordinarily precise business. Small mistakes and the wrong tools can just as easily undermine as improve financial health."(For early pundits of this reading, consider the unnecessary losses of 44% and 57% and the consequences to the public.)

These are the fatal flaws in the bill and in those that have attempted to offer their interpretation of what is right without the knowledge of what must be done *first and foremost*. It is absolutely true that a fiduciary standard need be applied- but without the appropriate knowledge, the effort can and will be bastardized by an industry that has money as its pure fiduciary. As an example, have you really seen any of the captains of industry directly involved in causing the meltdown of 2008 go to jail? AIG? Countrywide? Bear Stearns? Mortgage Brokers? Stock brokers? SEC? FINRA? Government?

All culpable.

Adhering to a Fiduciary duty?

I don't think so. You have to know what you are doing.

Has the regulatory effort so far in early 2011 dampened the risk attitude of the giant institutions? From a speech by Financial Services Authority Chairman Adair Turner, "Have we, in the wake of the crisis, patched up the existing system, reformed the technical details, but left our model of capitalism unchanged and existing economic theories largely unchallenged?'

"Have the technicians of financial regulation been radical enough in the reform of capital and liquidity? Have we significantly reduced the probability and severity of future financial crisis?"

Turner gave his answers " no, no and no"

From Federal Reserve Bank of Kansas City President Tom Hoenig

"In spite of all that's been done and debated, the soundness of the largest financial institutions and the systemic risks they continue to pose is no better". "In my view, **it is even worse than before the crisis."**

Why? Because **supervision is ineffective.**

I repeat the focus of my endeavor- to force regulators to educate and legislate financial entities to minimum levels of standards and knowledge. I am addressing the entities that directly deal with individual consumers. But the comment above is absolutely applicable- who will supervise? Supervisors of brokers have the same lackluster education. If there is no knowledge of the fundamentals of investing, the supervision is simply absent. (Recognize I taught most of the securities licenses. No supervisor has been taught the real life application of product. The fundamentals of investing are not tested and, hence, not taught.)

There are two key focuses that are addressed throughout: the first is the risk- more specifically the risk of loss. Another is the fallacy of backtesting/reversion to the mean in selecting potential returns for future projections.

Risk is still bandied about as the simplistic 'the market can go up and down'. Or it is offered as some pretty charts over lengthy periods of time that tend to imply 'great returns are just around the corner'. However, every portfolio allocation has a numerical risk-of-loss reflecting what can go wrong. It is relatively simple to do, but you need to understand the meaning of standard deviation and have the ability to use a personal financial calculator. There is no other way since there are no calculator programs anywhere on the net or in planning software that does it unilaterally. But for good reason- if these numbers got out, there would be an absolute 180 degree shift in how consumers address risk since they would see that the losses sustained in the past (2000 and 2008) were always known (or could be calculated) but never disseminated to them. While it nonetheless requires additional interpretation, such knowledge to consumers would have forever changed the portfolio allocations offered by the bulk of untrained brokers and advisors or merely assumed by naive consumers. And as in NNF, I point to the inverted yield curve as one of the best indicators of extreme economic risk which universally mirrors itself into a market debacle in the near term. The impact of this is described in detail.

There would be a cost to the industry to upgrade since these facts, once known, taught and presented *would* slow sales dramatically. And the instruction *will* cost a lot.

But said advisers WILL remain untrained since the SEC has never required the fundamentals of investing ever be taught in any licensing. Unfortunately I do not see it happening going forward since the current head of the SEC- Schapiro- did whatever she could at FINRA to avoid such knowledge being disseminated. Nothing in the rhetoric has really changed since she switched. In September 2011,SEC Chairman Mary Schapiro testified before Congress and noted that, over the past two decades, “the markets, products, and participants…have undergone a truly sweeping transformation” and that the SEC must carefully examine how it operates to ensure its “effectiveness.”Sure, it is an absolutely accurate statement but it boils down to "why have you just sat there and watched Rome burn?" Think about the Social Security and Medicare deficits that everyone knew about for more than two decades; the sound bites (lies?) from all the politicians about the current deficit- as though it was always someone else's fault that it happened; all ending up in a financial devastation that could and should have been controlled starting a long time ago. The SEC was part of it with its useless words towards consumer education and nil adviser knowledge. Enough words. Time for all to 'put up or shut up.'

But while the Dodd Frank bill does demand massive changes, the huge amount of money and lobbying (and did I say money?) from the industry, the SEC under Schapiro (actually most past heads of the SEC) will probably waste millions of research monies and end up with bowing to the industry that will thwart the necessary fiduciary responsibility to the bulk of consumers. (This text is concerned about the duty to middle class and poorer consumers. I do not address hedge funds, how to do life insurance premium funding and more sophisticated areas that only the more affluent may use. That said, if the affluent don't learn this stuff or use an adviser that does, they may no longer be affluent.) You will read of her rhetoric in 2006 about the absolute necessity of consumer education- yet the knowledge within licensing requirements is a disgrace.

At the Fiduciary Forum 2011, "A disclosure-based regime may well have been deemed effective in 1930 when just 1.2% of the population--the wealthier segment of the population--owned stocks. That was then. Today, 80 years later, 50% of the population is invested in the capital markets, and individual’s depend hugely on their retirement accounts. Smart regulation is more crucial than ever. As both the SEC and DOL examine what it means for a plan sponsor, advisor or broker to exercise fiduciary duties, it is time to rethink the role of disclosure in fiduciary relationships in securities regulation to ensure that investors’ interests always do come first."

The comment is absolutely correct but almost totally worthless at the same time. It *is* mandatory that consumers be advised on what is happening, any conflicts of interest et al. But where is the disclosure that the brokers have never been trained in the fundamentals of investing and cannot even address the issue of suitability and stock purchases (diversification)? Regulation of those who know little by those who know nothing is yet another violation of fiduciary duty to consumers. (Pundits may rail at this, but ever see those politicians and regulators concerned about money with a financial calculator? Not even close. Never pay much attention to those who do not know how money works.)

All told, many/most portfolios violate the basics of suitability, nevermind fiduciary duty. If you do not know diversification, you cannot determine risk. If you cannot determine risk, you cannot determine suitability.

But so what? Out school systems have been engaged in a systematic effort to teach our children to gamble as much as possible to beat the market- which no reliable text even considers. And nobody cares. Ever see comments about the SMG- Stock Market Game- as a precursor to future financial failure? As a result thereof- or for no reason at all- the adults are no better in their understanding of how to invest. The industry in 2011 is still marketing the idea that the purchase of individual stocks through their own effort or that of their broker will still lead to Nirvana. At least, how to beat the market.

Nope

Even given some latitude, the cognitive (in)ability of humans does not lead them into a rational thought process to investing. I do get upset that most consumers do not read, but I also admit some offset since where can they go to get the advice they need even if they did look? Not Kiyosaki. Not Cramer. Not Orman. Those attempting some effort are left with old theories and homilies such as buy and hold, the market always comes back and on and on. History is mandatory to know but it is a poor set of statistics for the future. As Peter Bernstein noted, "The future is unknown".

Returns

But when one looks at projected returns, history is where the bulk of future returns are determined. Using a data set starting 200 years ago, or effectively any subset thereof, has been the holy grail of forecasting returns well into the future. I have had 'heavy hitting' advisers (meaning Assets Under Management- AUM) say that that is the only method of determining what will happen later on. And just about all planning software does the same thing. I disagree vehemently. The idea that the future looks like what happened before or after the market meltdown of the 1970s is just plain ludicrous. Or I could pick 1987. Or after 2000. I am aware that the future is unknown, but if a gauge/estimate/research of returns does not start in the present day first and foremost, I simply do not believe it is inherently trustworthy at all. The cell phone, computer, internet have all altered the financial marketplace forever. We have had two recent recessions and advisers still think tomorrow will be like periods involving 1861, 1889, 1937, 1967, 1994 or ....????

No, and the material identifying how to look forward- even in view of the ambiguity- is explored.

The material herein should be mandatory reading for every first year finance student and all CFPs, ChFCs, CPA PFS etc. and for ALL second year college students regardless of major. The input will be invaluable over their lifetime. That said, it cannot be compulsory mandatory reading for general 401k participants since they do not have the overall background or interest in pursuing such detail. But the real life application must be understood by all presenters of 401k education in a proper fashion. Otherwise, we will end up in a continual morass from which we will never escape. Comments like the following abound (but she is right):

So what is the meaning of the word retirement, if the only way you can live in retirement is *to work? The answer is, there is no meaning to retirement anymore. We're now shifting from lifetime pensions to lifetime work. It's the end of retirement.*

Prof. TERESA GHILARDUCCI, Notre Dame University

Additional mandatory issue includes how budgeting and retirement planning are done by the numbers, why DCA will universally never work, what is this focus on 60/40, does rebalancing work and a host of others.

Specifically for attorneys- I am a financial planner. I do act as an expert in financial matters but not exclusively. The cases and reports are about 50/50 defendants and plaintiffs. I don't take sides though the rhetoric herein suggests a plaintiff's position. No so- it is just real life facts. No matter, both sides need to take a careful look at the reality of the industry regarding training with a specific focus on risk. You may also note I suggest the UPIA needs changing- it's way out of date. Admittedly that can take forever, but current cases will need to be refocused for real life.

The material covers insurance and annuities. While investing does at least have some informational services that provide statistics, effectively the bulk of the insurance is mired in esoteric marketing material, journalistic half-truths and a range of agent knowledge that truly borders on the futile. I will provide some independent insight along with new informational opportunities. But as regards what needs to be done for the consumers, some pundits note that there can really not be a fiduciary duty with insurance agents since the agent, first and foremost, owes a duty to the insurance company. That is true- they must be 'sure' that the client has truthfully answered all the health questions properly, can pay the premiums and so on. But what is not covered under such activity is whether the product should have been used in the first place. The SEC passed on the regulation of indexed products (very difficult material that is universally missold) supposedly leaving the effort to the state insurance departments. A rather absurd dialogue in the first place since neither entity has the knowledge of these products, nevermind the financial or manpower wherewithal to prosecute a breach of duty. Indexing, guaranteed minimum withdrawals and more will be addressed. Not all the answers can be provided since the companies can change internal requirements at a whim, but that will be identified anyway.

There are some studies/research in the appendix I have had to do in the past covering premium financing, variable life insurance and more that hopefully will put some of the commentary into a real life focus.

That is where this book comes in. It is not technical jargon without real life application. It cannot address every blog/article/commentary by the industry but I take umbrage with the bulk of said commentary since they are not generated by 'financial planners' for the most part. The point is that financial planning should really be done by ‘financial planners’. Unfortunately, most are allowed to become one by simply saying 'they is one'. Or by getting some designation. These may have some value in terms of minimum criteria but that is generally it. (The WSJ noted that there are currently over 210 various designations. I just ran into a CPhD. Impressive? It is a Certified Philanthropic Development Officer that was presented to the agent after he got a client to put in over $100,000 into a product) A professional planner is one who has a degree in same. Yet, as I will quickly admit, a degree does not reflect the absolute knowledge base or competency in the field. The material changes every day. But I would much prefer to have surgery by one who has formally studied medicine and is recognized as competent (licensed physician) than from a first year med student. Or a hospital janitor. Or someone that only knows that blood is red.

That extensive level of study and discipline is not mandated to date in this industry. Not even close. Hence the exposure to the problem- those masquerading fiduciary competency without the knowledge or intent by same to attain it. I know that there are those out there that 'care', but without the formal background of the fundamentals, caring just doesn't cut it.

Here are the minimum standards to start with.

Post Script

I am old but I have been 'brought up on the Internet and blogging'. I write linearly- all references are offered directly in the text- no footnotes.

I try to write in a conversational style and get to the point fairly quickly. This is not a text book where I drone on and on about the underlying formulas of certain issues- say standard deviation. It is explained for real life purposes and those wanting more insight will need to do more research. Fact is, one will have to read and re-read some areas several times since there will be material you will be unfamiliar with. Obviously if you just want to know what a fiduciary must consider, an overview may be adequate. But if you want to be a fiduciary, there is a lot of work ahead of you.

Financial Planning, done correctly, is a multi discipline profession which demands a knowledge base among investments, insurance, human behavior and more. Therefore there are comments addressed in one chapter that need reaffirmation in others. I have tried to limit certain repetition, but specific elements require repeating.

Please view accordingly.