

Congressional Code provide an excellent indictment of rules-based standards; rules do not elicit a high level of behavior.

PRINCIPLE OF THE THING

In contrast, principles-based elements tend to promote a higher standard of care. They include codes of ethics, fiduciary standards and ethos:

- **Codes of ethics** are sets of principles governing the conduct of people, especially members of professions. Ethics is intended to define behavior prescribed by principles, not rules. The CFP’s Code of Ethics is an excellent example, requiring planners to have a high level of discernment, which in turn promotes a higher standard of care.

- **Fiduciary standards** are defined by principles that require advisors to act in the best interests of clients. Most people would be surprised to learn that there is little law governing the conduct of investment fiduciaries. Instead, the fiduciary standard is based on several simple principles supplemented by best practices, regulatory opinion letters and case law. The investment fiduciary must show procedural prudence (judgment and objectivity) at all times, which also promotes a higher standard of care.

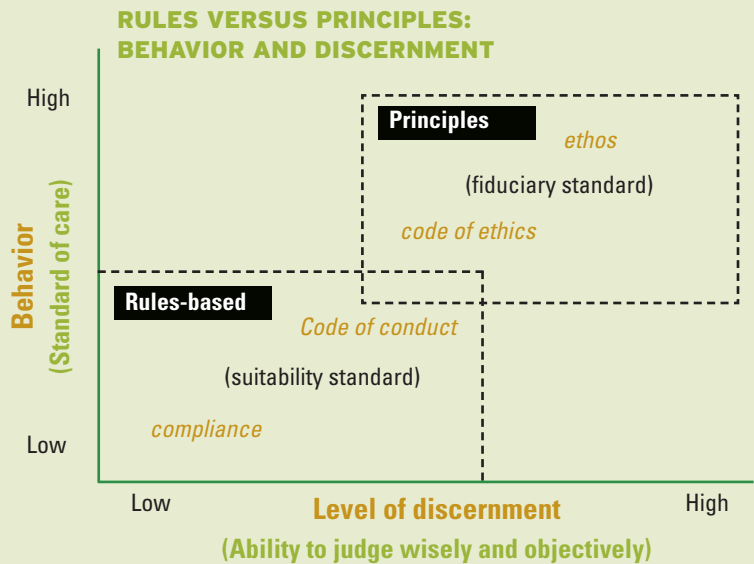
- **Ethos** is the link between behavior, principles and discernment. In addition to the moral behavior (ethics) of the advisor, ethos also examines the advisor’s leadership behavior and decision-making process. Ethos is ethics on steroids; the difference between good and great investment advisors can be explained in terms of the advisor’s defined ethos.

CHANGING THE CULTURE

Returning to the questions at hand: What must the brokerage industry do to support a fiduciary standard properly? How do we move from a rules-based, compliance-driven culture to a principles-based fiduciary standard?

CONNECTING HEAD AND HEART

For advisors to provide the highest standard of care, they must follow principles rather than rules.



How do we rewire the wirehouses so that a fiduciary standard can be effectively implemented? How do we move the brokerage industry culture up and to the right—up from a rules-based orientation and over to the right, to a higher level of discernment?

It’s won’t be easy, and providing fiduciary services won’t be for everyone. Some brokers will elect to stay brokers. Remember, the language of the proposed fiduciary standard is intended to apply only to broker-advisors who wish to provide comprehensive and continuous investment advice or financial planning services. The new legislation and regulations are not intended to affect traditional brokers who are purely executing trades or selling financial products.

However, broker-dealers who do wish to implement a fiduciary standard will need to redefine their cultures and reevaluate what they consider to be the essential behavior of their broker-advisors. They must place greater trust in their broker-advisors’

abilities to discern the best interests of their clients and give broker-advisors more credit for judging the needs of their clients wisely, objectively and well. Broker-dealers that are reluctant to place such trust in their brokers should not provide fiduciary services.

Likewise, regulators who are unwilling to part with their rules should not oversee investment fiduciaries. This is the primary reason why investment advisors currently registered with the SEC are adamantly opposed to FINRA or SIFMA being given oversight for fiduciary advisors; the current rules-based orientation of these self-regulators is not conducive to supporting a fiduciary standard of care. **FP**

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