US Regulatory Considerations

Fiduciary Responsibilities

Fiduciary Relationship → Between advisor and client where the advisor must act in the best interest in the client; "duty of care"

Not all financial professionals act as a fiduciary

Fiduciaries	Not Fiduciaries
"40 Act" advisors Trustees of a Trust Foundations, ERISA plans	Many broker-dealers insurance agents

"DOL Rule" attempting to broaden fiduciary scope to all retirement accounts – but future is uncertain

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Fiduciary Responsibilities – Prudent Man Rule

" to observe how men of prudence, discretion and intelligence manage their own affaires, not in regard to speculation, but in regard to permanent disposition of their funds, considering the probable income, as well as the probable safety of the capital to be invested."

- Invest in assets that only a reasonable person would consider
- Low probability of permanent loss

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Fiduciary Responsibilities – Uniform Prudent Investor Act

(UPIA) Builds on the Prudent Man Rule

Legal doctrine which provides guidance to investment managers regarding the standards for managing an investment portfolio in a legally satisfactory manner. Allows for Modern Portfolio Theory methods.

- Diversification
- Total Returns and risk are analyzed
- Minimize costs
- Care is selecting other advisors

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ERISA

ERISA → Employee Retirement Income Security Act of 1974

Federal law that sets minimum standards for most pension and health plans in non-government plans to provide protection for individuals

Covers employer sponsored retirement plans and welfare benefit plans (Ex. 401(K), defined benefit plans)

Regulated by the U.S. Dept of Labor (DOL), Pension Benefit Guaranty Corporation and IRS

Overview of ERISA Requirements

Disclosure	Financial health, how to participate
Fiduciary Responsibilities	Run the plan solely in the interest of participants; diversify; no conflicts of interest; reasonable fees
Standards for Participation	Minimum standards must be met to maintain favorable tax treatment

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UPMIFA

UPMIFA → Uniform Prudent Management of Institutional Funds Act

Builds on UMIFA (Uniform Management of Institutional Funds Act)

Both are the core laws covering the management of endowments and charities

Rules and guidelines for spending (how much and on what); Rules on investment

UPMIFA Updates

Investment Conduct (Stronger Guidance) → Fiduciary duty: manage cost, total portfolio perspective, diversify, consider risk tolerance

Spending → More flexibility, no floor or income restriction; must be prudent

Modifications of Restrictions → Charity can ask for court approval of a modification of the restriction

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US Securities and Exchange Commission (SEC)

Federal Agency
(Primary Securities Market Regulator)

Created by the Security Exchange Act of 1934

Interprets security laws, provides rules for disclosure for corporations and investment products, and enforces the rules

Mission

Protect Investors

Maintain fair, orderly and efficient markets

Facilitate capital Formation

Works closely with Congress, other federal dept, states, SROs, Financial Accounting Standards Board

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Financial Industry Regulatory Authority (FINRA)

Not part of the government

Self-regulatory Organization (SRO)

All Brokerage firms in US must be registered

All brokers tested, qualified and licensed

Functions

Write, monitor and enforce rules related to securities law

Examine firms for compliance

Foster market transparency

Educate Investors

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State Agencies

- Each State has its own Administrator
- State regulation predates the SEC by more than two decades
- North American Securities Administration (NASAA)

Role

- Licensing brokers and small investment adviser firms
- Registering certain securities
- Enforcing state securities laws
- Investigate Investor Complaints

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