Blind Spot Alert: Fiduciary Duty of Care

The Fiduciary Movement cannot be erased from the history books. Given heightened investor awareness (per Figure 1) of the fiduciary rule and its meaning, we think few advisors will fund much success if they do not embrace fiduciary levels of service. However, we think few in the business are prepared to fulfill the Duty of Care.

Figure 1: Interest In “Fiduciary” Reaches All Time High

Sources: New Constructs, LLC and company filings.

Fiduciary duty can be broken down into two pieces: duty of loyalty & duty of care. Duty of loyalty means that the fiduciary must put their clients’ interests first and avoid conflicts. We’ve already seen lots of wealth management firms work to comply with this duty, such as Bank of America Merrill Lynch (BAC) ending commission-based accounts for retirement savers.

Duty of care, by law, means that a fiduciary must act with “care, skill, prudence, and diligence.” In contrast to the constant discussion of the duty of loyalty, we’ve seen much less attention paid to the duty of care.

As Michael Kitces writes, failure to live up to the duty of care could leave wealth managers open to painful class action lawsuits. Even if they don’t run into legal trouble, it’s hard to imagine human advisors holding on to assets against robos without a clearly articulated message for how they provide a higher level of care.

So, how does one define “care, skill, prudence, and diligence?” For starters, any investment recommendations should be based on research that is:

- **Comprehensive.** Analyze all relevant publicly available (e.g. 10-Ks and 10-Qs), including the footnotes.
- **Objective.** Clients deserve unbiased research.
- **Transparent.** Client should be able to see how the analysis was performed and the data behind it.
- **Relevant.** There must be a tangible, quantifiable connection to stock, ETF or mutual-fund performance.

The importance of meeting these criteria is self-evident. In reality, however, very little research meets any of these criteria, which is a big surprise to most average investors.

**How To Get Research That Is Diligent?**

10-K and 10-Q reports can be hundreds of pages long, with important information often buried deep in the footnotes. Emerging Robo-Analyst technology allows for fundamental diligence at a previously impossible scale.

This article originally published on June 1, 2016.

Disclosure: David Trainer and Sam McBride receive no compensation to write about any specific stock, sector, style, or theme. Follow us on Twitter, Facebook, LinkedIn, and StockTwits for real-time alerts on all our research.
New Constructs® - Research to Fulfill the Fiduciary Duty of Care

Ratings & screeners on 3000 stocks, 450 ETFs and 7000 mutual funds help you make prudent investment decisions.

New Constructs leverages the latest in machine learning to analyze structured and unstructured financial data with unrivaled speed and accuracy. The firm's forensic accounting experts work alongside engineers to develop proprietary NLP libraries and financial models. Our investment ratings are based on the best fundamental data in the business for stocks, ETFs and mutual funds. Clients include many of the top hedge funds, mutual funds and wealth management firms. David Trainer, the firm's CEO, is regularly featured in the media as a thought leader on the fiduciary duty of care, earnings quality, valuation and investment strategy.

To fulfill the Duty of Care, research should be:

1. **Comprehensive** - All relevant publicly-available (e.g. 10-Ks and 10-Qs) information has been diligently reviewed, including footnotes and the management discussion & analysis (MD&A).

2. **Un-conflicted** - Clients deserve unbiased research.

3. **Transparent** - Advisors should be able to show how the analysis was performed and the data behind it.

4. **Relevant** - Empirical evidence must provide [tangible, quantifiable correlation](#) to stock, ETF or mutual fund performance.

**Value Investing 2.0: Diligence Matters: Technology is Key to Value Investing With Scale**

Accounting data is only the beginning of fundamental research. It must be translated into economic earnings to truly understand profitability and valuation. This translation requires deep analysis of footnotes and the MD&A, a process that our [robo-analyst technology](#) empowers us to perform for thousands of stocks, ETFs and mutual funds.
DISCLOSURES

New Constructs®, LLC (together with any subsidiaries and/or affiliates, “New Constructs”) is an independent organization with no management ties to the companies it covers. None of the members of New Constructs’ management team or the management team of any New Constructs’ affiliate holds a seat on the Board of Directors of any of the companies New Constructs covers. New Constructs does not perform any investment or merchant banking functions and does not operate a trading desk.

New Constructs’ Stock Ownership Policy prevents any of its employees or managers from engaging in Insider Trading and restricts any trading whereby an employee may exploit inside information regarding our stock research. In addition, employees and managers of the company are bound by a code of ethics that restricts them from purchasing or selling a security that they know or should have known was under consideration for inclusion in a New Constructs report nor may they purchase or sell a security for the first 15 days after New Constructs issues a report on that security.

New Constructs is affiliated with Novo Capital Management, LLC, the general partner of a hedge fund. At any particular time, New Constructs’ research recommendations may not coincide with the hedge fund’s holdings. However, in no event will the hedge fund receive any research information or recommendations in advance of the information that New Constructs provides to its other clients.

DISCLAIMERS

The information and opinions presented in this report are provided to you for information purposes only and are not to be used or considered as an offer or solicitation of an offer to buy or sell securities or other financial instruments. New Constructs has not taken any steps to ensure that the securities referred to in this report are suitable for any particular investor and nothing in this report constitutes investment, legal, accounting or tax advice. This report includes general information that does not take into account your individual circumstance, financial situation or needs, nor does it represent a personal recommendation to you. The investments or services contained or referred to in this report may not be suitable for you and it is recommended that you consult an independent investment advisor if you are in doubt about any such investments or investment services.

Information and opinions presented in this report have been obtained or derived from sources believed by New Constructs to be reliable, but New Constructs makes no representation as to their accuracy, authority, usefulness, reliability, timeliness or completeness. New Constructs accepts no liability for loss arising from the use of the information presented in this report, and New Constructs makes no warranty as to results that may be obtained from the information presented in this report. Past performance should not be taken as an indication or guarantee of future performance, and no representation or warranty, express or implied, is made regarding future performance. Information and opinions contained in this report reflect a judgment at its original date of publication by New Constructs and are subject to change without notice. New Constructs may have issued, and may in the future issue, other reports that are inconsistent with, and reach different conclusions from, the information presented in this report. Those reports reflect the different assumptions, views and analytical methods of the analysts who prepared them and New Constructs is under no obligation to insure that such other reports are brought to the attention of any recipient of this report.

New Constructs’ reports are intended for distribution to its professional and institutional investor customers. Recipients who are not professionals or institutional investor customers of New Constructs should seek the advice of their independent financial advisor prior to making any investment decision or for any necessary explanation of its contents.

This report is not directed to, or intended for distribution to or use by, any person or entity who is a citizen or resident of or located in any locality, state, country or jurisdiction where such distribution, publication, availability or use would be contrary to law or regulation or which would be subject New Constructs to any registration or licensing requirement within such jurisdiction. New Constructs has not reviewed the linked site and takes no responsibility for the content therein. Such address or hyperlink (including addresses or hyperlinks to New Constructs own website material) is provided solely for your convenience and the information and content of the linked site do not in any way form part of this report. Accessing such websites or following such hyperlink through this report shall be at your own risk.

All material in this report is the property of, and under copyright, of New Constructs. None of the contents, nor any copy of it, may be altered in any way, copied, or distributed or transmitted to any other party without the prior express written consent of New Constructs. All trademarks, service marks and logos used in this report are trademarks or service marks or registered trademarks or service marks of New Constructs. Copyright New Constructs, LLC 2003 through the present date. All rights reserved.