
... a duty to be faithful, to be diligent, to be prudent in an administration entrusted to the former, in confidence in his fidelity, diligence and prudence.

King v. Talbot; Justice J. Woodruff; Court of Appeals of NY; March 18, 1869

Chairman Metcalf, Chairman Bradford and members of the Pennsylvania House of Representatives State Government Committee, thank you for the opportunity to testify in this Public Hearing on State Government Regulations and Potential Solutions for Improving Oversight and Relieving Regulatory Burdens.

My name is Paul Brahim and I'm the Chairman, Chief Executive Officer and Chief Compliance Officer of BPU Investment Management, Inc., a fully disclosed introducing and government securities broker-dealer, member Financial Industry Regulatory Authority (FINRA) and Securities Investor Protection Corporation (SIPC); and, a Securities and Exchange Commission (SEC) federally registered investment adviser. I am a CERTIFIED FINANCIAL PLANNER™ (CFP®) practitioner and an Accredited Investment Fiduciary Analyst™ (AIFA®). I have been in the financial services industry since 1986 and a CERTIFIED FINANCIAL PLANNER™ practitioner since 1994. I have provided expert testimony in both FINRA arbitrations and in court cases on matters of investment suitability; failures in supervision; and, breach of fiduciary duty. My CV is included in your packet.

My firm is located in Pittsburgh, Pennsylvania with branch offices in Pittsburgh, Greensburg, Uniontown, Canonsburg and Wexford. We are licensed through FINRA to provide brokerage services in 39 states and licensed through the SEC to conduct advisory business in all 50 states. Our firm is 32 years old with second generation owners. We have over \$1 billion in assets under advisement and serve institutional and retail clients; retirement plans and non-profits; and, corporations who require finance and/or merger or acquisition advice.

Additionally, I serve as the 2017 President of the Financial Planning Association™ (FPA®) of Pittsburgh. We have over 300 members in my chapter; over 900 members in Pennsylvania; and over 23,000 members nationwide. The FPA® is the principal professional organization for CERTIFIED FINANCIAL PLANNER™ (CFP®) professionals, educators, financial services providers and students who seek advancement in a growing, dynamic profession.

Fidelity, diligence and prudence.

Justice Woodruff wrote his opinion in 1869. It long pre-dates today's debate on the need for a uniform fiduciary standard for investment professionals. Yet, his opinion still defines the heart of the matter. Those three simple words – fidelity, diligence and prudence – are all that we need to simplify the regulatory morass that mires our industry today.

Capitalism, Corruption and Regulation – a non-virtuous cycle

The regulatory regime of the financial services industry is fragmented, overlapping, confusing, costly and burdensome. It is reactionary based on the non-virtuous cycle of capitalism, corruption and regulation. History bears this out.

After nearly 100 years of financial chaos beginning with Charles Ponzi in 1920 and culminating with Bernie Madoff in 2008, we've experienced multiple and substantial major legislative reforms impacting the financial services industry, obviously with little to no effect. (See Table 1). These reforms were and still remain conflicted from the perspective of both the consumer and the provider. They are also complex. As an example, the DoL's Conflict of Interest Rule is over 1000 pages long.

Table 1 does not reflect the same breadth, conflict and complexity of the regulatory framework for banking or insurance. We should note that virtually all financial services can be delivered to consumers through all three industry channels - securities, insurance and banking. All three have multiple and conflicting standards of care.

Table 1 - Fragmented Regulatory Environment of the Securities Industry

<i>Uniform Act, Law or Regulator</i>	<i>Applies to</i>	<i>Overseen by</i>	<i>Standard of client care</i>
<i>Glass Steagall Act of 1933, aka The Banking Act</i>	Banking industry	Federal Reserve and the Office of Comptroller of Currency	Separation of Commercial and Investment Banking
<i>Securities Act of 1934</i>	Brokers and Exchanges	SEC	Suitability
<i>Maloney Act of 1938</i>	Broker-Dealer firms	Created the National Association of Securities Dealers (NASD), now known as FINRA	Suitability
<i>Investment Adviser Act of 1940</i>	Investment Advisers or Investment Adviser Representatives	< \$100 MM; States' SECs >\$100,000 MM; SEC	Best interest
<i>ERISA</i>	Retirement Plans and IRAs and those who advise them	Department of Labor with enforcement by Treasury and IRS; private cause of action in courts	Sole interest; prudent expert
<i>Uniform Prudent Investor Act (1997) as adopted by each state</i>	Trusts and trustees and those who advise them	States and state courts	Sole interest
<i>Sarbanes-Oxley 2002</i>	Accounting	Federal government	N/A
<i>Dodd-Frank 2010</i>	Banking and investments	Federal government	Proposed best interest standard designed and implemented by the

<i>Uniform Act, Law or Regulator</i>	<i>Applies to</i>	<i>Overseen by</i>	<i>Standard of client care</i>
<i>Uniform Management of Institutional Funds Act (2012) as adopted by each state</i> <i>DOL Conflict of Interest Rule (2015)</i>	Non-profit endowments and those who advise them	States and state courts	SEC and never acted on. Sole interest
	Retirement Plans and IRAs and those who advise them	Department of Labor with enforcement by Treasury and IRS; private cause of action in courts	Best interest standard

To add to the confusion, FINRA recognizes 174 “professional” designations, most of which have no accredited education providers or experience requirements. These are mostly marketing ploys, dare I say “fake” degrees.

This fragmented system can be confusing to consumers, providers, arbitrators and triers of facts. For example: today, as a provider of financial services, I can simultaneously sell insurance to a couple under a suitability standard governed by the National Association of Insurance Commissioners (NAIC) and the Pennsylvania Department of Insurance; make investment recommendations on their joint brokerage account under a suitability standard overseen by FINRA; provide investment advice on their IRA rollover under the best interests standard of the DoL Conflict of Interest Rule, unless, of course, they waive that standard with a Best Interest Contract Exemption; and, manage their trust account under a sole interest standard governed by the state; adjudicated by the courts and overseen by either FINRA or the SEC, depending on my licensing.

Confused yet? Importantly, which standard does the consumer believe applies to their overall relationship with their provider?

In my experience of supporting the attorneys who represent claimants and plaintiffs, I’ve observed one common thread. In each instance where substantial loss occurred in a client’s account, the aggrieved parties all believed the “adviser” and the firm were looking out for their best interest. After all, who wouldn’t want their advisor to act in their best interest? The arbitrator or trier of fact has to sort out the multiple standards of care and overlapping regulations; make a judgement as to which is most relevant based on facts and circumstances; and do this based only on their experience and interpretation. As a side note, under FINRA arbitration rules, arbitrators are not required to publish an opinion; so, little is learned from each decision that might shape future behavior. In 2016 alone, there were 1,188 new case filings; 1,200 cases closed; and 4,594 remaining open cases.¹ What have we learned from these proceedings? FINRA publishes the top 15 types of complaints filed; the decision and the amount awarded if applicable. In my opinion, to a reasonable degree of professional certainty, we have learned nothing. What emerges from these decisions? More rules. The 2009 edition of the FINRA

¹ <https://www.finra.org/arbitration-and-mediation/dispute-resolution-statistics>

Consolidated Rule Book, the last paper publication, contained 184 pages of rules. It is now only published on-line.

Rules based or principles based?

Rules based systems attempt to drive behavior through disclosure, disclaimer, record-keeping; compliance; and examination. Principles based systems drive behavior through standardized, accredited education; experience requirements; on-going continuing education, and ethics training. Medicine, law and accounting are principles based professions.

The financial services industry is rules based. Rules emerge retrospectively because of bad outcomes, much like Stop Signs after a bad accident. Bad outcomes result from bad or inconsistent processes. Bad or inconsistent processes exist because there are no clear standards of care promulgated by standardized, accredited education programs; experience requirements; on-going continuing education and ethics training for service providers.

The Certified Financial Planner Board of Standards, Inc. has created a standardized education program delivered by accredited education institutions. To be a CFP® professional you must adhere to a best interest fiduciary standard of care. You must engage in relevant, on-going continuing education, including ethics training, approved by the CFP Board and you must attest and re-attest to a strict Code of Ethics. In my opinion to a reasonable degree of professional certainty, just as medicine, law and accounting have laws that require a practitioner attain certain education and experience requirements before they can practice, so too should financial services professionals, especially when dealing with retail clients, trusts and retirement plans.

As a CERTIFIED FINANCIAL PLANNER™ practitioner, I believe that all clients deserve a best interest standard. As a CERTIFIED FINANCIAL PLANNER™ practitioner, I'm held to and believe that all providers should be held to a fiduciary standard. As a CERTIFIED FINANCIAL PLANNER™ practitioner, I believe that the law should establish and uphold a principles based system for those that provide financial services to consumers. I believe that the burdensome, duplicative, confusing and costly rules based systems used today are a disservice to consumers of financial services. They permit unqualified people with no relevant education or experience to hold themselves out to the public as "trusted" financial advisors. This must stop.

Fidelity, Diligence and Prudence – these three words are the only rule book needed. We must inculcate this fiduciary standard into the fabric of financial services through standardized, accredited education, experience requirements, continuing education and ethics training designed and implemented to create a principles based system. It is the only answer to a run-away, reactive, overlapping, complex, confusing and costly rules based system that consistently fails consumers on a daily basis.

Thank you for your time and consideration today. I'm happy to answer questions or provide additional commentary.

Paul J. Brahim, CFP®, AIFA®

Chairman and CEO
BPU Investment Management, Inc.

Attachments: Ethics and Enforcement CFP Board

Paul J. Brahim

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Chief Executive Officer, Financial Services Industry

- Nationally recognized financial services professional with over 25 years of experience advising high net worth individuals; retirement plans across diverse industries; institutions; and eleemosynaries.
 - One of 50 CEFEX analysts nationwide. CEFEX (Center for Fiduciary Excellence) is an independent global assessment and certification organization that works closely with investment fiduciaries and industry experts to provide comprehensive assessment programs to improve risk management for institutional and retail investors.
 - Respected leader of financial services teams, boards of directors and advisory committees. Conceptualize and orchestrate financial planning services that effectively reinforce and build upon fiduciary standards.
 - Expert in the technical, conceptual and development of global model portfolios.
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Skills

- Comprehensive Financial Planning
 - Expert Witness, Financial Services Related Cases
 - Creative and Innovative Team Leadership
 - Investment Fiduciary Analysis
 - Speaker and Media Consultant
 - Development of Investment Tools and Services
 - Chief Compliance Officer
 - Personal Financial Education Program Development
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Professional Experience

BPU INVESTMENT MANAGEMENT, INC. (BPU), Pittsburgh, PA – *Financial services boutique with approximately \$1 billion of assets under management*

Chair and CEO, 2013 to Present

Leads the firm and serves as the Chairman of BPU's Board of Directors.

Selected Accomplishments:

- Joined BPU in 1997 as Managing Director of Wealth Management. In that capacity, led the firm's efforts to provide comprehensive financial planning and asset management services to individual clients.
- Introduced and developed BPU's Personal Financial Education (PFE) program and was instrumental in creating the firm's retirement plan offering.
- Promoted to Executive Vice President in 2006, Chief Compliance Officer in 2011 and current position in 2013.
- One of 50 CEFEX analysts nationwide. CEFEX (Center for Fiduciary Excellence) is an independent global assessment and certification organization that works closely with investment fiduciaries and industry experts to provide comprehensive assessment programs to improve risk management for institutional and retail investors.
- Frequently serves as an expert witness in financial services related cases, providing research and testimony for legal counsel and their clients in both FINRA arbitration and court cases.

ALLEGHENY INVESTMENTS, LTD., Pittsburgh, PA – Financial Services Firm

Registered Representative, 1990 – 1997

Education and Professional Designations

Washington and Jefferson College, Washington, PA, Bachelor of Science, 1981

- Major: English and Chemistry

College For Financial Planning, Denver, CO, CFP Professional Education Program, 1984

- CERTIFIED FINANCIAL PLANNER™ designation

University of Pittsburgh, Pittsburgh, PA, Center for Fiduciary Studies Advisors Program, 2000

- Accredited Investment Fiduciary™ designation

College for Financial Planning, Denver, CO, 2001

- Accredited Asset Management Specialist™

University of Pittsburgh, Pittsburgh, PA 2003, Center for Fiduciary Studies Accredited

- Accredited Investment Fiduciary Analyst™

College for Financial Planning Denver, CO, 2005

- Chartered Mutual Fund Counselor™

College for Financial Planning, Denver, CO, 2010

- Accredited Wealth Management AdvisorSM

Licenses

- FINRA Series 24, 53, 6, 7, 63, 65

Professional and Community Affiliations

- Member, Financial Planning Association
 - Member, Board of Directors, Chair, Membership Committee, President Elect 2017 Financial Planning Association of Pittsburgh
 - Member, Board of Directors, Treasurer, Heritage Community Initiatives
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Expert Witness Selected Cases

- Estate of Corey James Boring, a minor in the Court of Common Pleas of Westmoreland County, Pennsylvania Orphan's Court Division No. 65-90-2129; Counsel of Record for Plaintiff: James E. Whelton, Jr. Esquire of Tremba, Jelley & Whelton, P.C.
- VINCENT D. DiFELICE, on behalf of himself and all others similarly situated, Plaintiff, v. US AIRWAYS, INC. and FIDELITY MANAGEMENT TRUST COMPANY, Defendants. CLASS ACTION COMPLAINT; Counsel of Record for Plaintiff: Richard A. Finberg, Esquire of Malakoff Doyle & Finberg, P.C.
- Flood, et al. v. Makowski, et al. Civil Action No. 3:CV-03-1803; Luzerne County Employee Retirement System, Claimants; ASCO Financial Group, Donald P. Williamson, Maria Williamson, Joseph Perfilio, Michael Joyce, Devonshire Capital Management, LLC, Clients; Counsel of Record for Defendant Clients: Luigi Spadafora or Winget, Spadafora & Schwartzber, LLP
- In the Court of Common Pleas Franklin County, OH; Richard A. Clemens, et al., Plaintiffs, vs. Nelson Financial Group, Inc., et al. Defendants; Case no: 10CVA-01-1221; Counsel of Record for Plaintiff: James P. Connors, Esq.
- Financial Industry Regulatory Authority Dispute Resolution; Frank Porco and Mary Porco, Claimants v. Thomas J. Brancazio (CRD# 3197741) and US Bancorp Investments, Inc. (CRD# 17868), Respondants; Counsel of Record for Claimants: Richard J. Federowicz, Esquire and Rebecca A. Maziarz, Esquire of Dickie, McCamey and Chilcote, P.C.
- Financial Industry Regulatory Authority Dispute Resolution; James G. Bordas, Jr. and Linda M. Bordas vs. Wells Fargo Advisors, LLC (f.k.a. Wachovia Securities, LLC) and Ernest L. Coffindaffer, Case Number: 11-00484; Counsel of Record for Claimants with respect to the Counterclaim: George N. Stewart, Esq. Zimmer Kunz, PLLC
- Elizabeth Breen Gilger, et al. v. BNY Mellon, In the Matter of The J. Richard Gilger Family Trust; Venango County Court of Common Pleas, Orphans' Court Division; Case No. 79-2014; Counsel of record for the Plaintiff Richards & Associates, P.C. Vasilius T. Nacopoulos, Esquire

Select Presentations and Media Appearances

Select Continuing Education Presentations

- **Defining Fiduciary Excellence**, *The Changing Landscape of Fiduciary Responsibility*; Allegheny County Bar Foundation; October 1, 2015; 1 hour Substantive and 1 hour Ethics Continuing Legal Education; 2 hours CFP® CE
- **Practicing Ethics**, *Applying CFP Board's Standards of Professional Conduct*; Financial Planning Association of Pittsburgh; December 11, 2015; 2 hours Ethics Continuing Education for CERTIFIED FINANCIAL PLANNER™ practitioners.
- **Defining Fiduciary Excellence**, *From Trust Law to ERISA and the DOL Uniform Fiduciary Standard*; Philadelphia Bar Association; February 4, 2016; 1 hour ethics and 2 hours substantive Continuing Legal Education.
- **Defining Fiduciary Excellence**, *From Trust Law to ERISA and the DOL Uniform Fiduciary Standard*; Financial Planning Association of Pittsburgh; March 9, 2016; 3 hours CFP® CE credits.
- **Defining Fiduciary Excellence**, *From Trust Law to ERISA and the DOL Uniform Fiduciary Standard*; Philadelphia Estate Planning Council; March 15, 2016; 1 hour CFP® CE credits; 1 hour CLE credit; 1 hour PA, NJ and Delaware Insurance CE credit.

Select Media Appearances and Interviews

- [Pittsburgh Post-Gazette/New Federal Rule Holds Advisors to New Standard](#)
- [WTAE TV, Channel 4/Talking US Steel with Financial Expert Paul Brahim, Part 1](#)
- [WTAE TV, Channel 4/Talking US Steel with Financial Expert Paul Brahim, Part 2](#)
- [WTAE TV, Channel 4/Current Market Volatility](#)
- [Pittsburgh Post-Gazette/Fragmented trading, multiple exchanges key to minimal disruption of marketplace](#)

- [Pittsburgh Post-Gazette/Money managers say small firms can yield big returns](#)
 - [Pittsburgh Post-Gazette/Staying on top of ETFs](#)
 - [Pittsburgh Business Times/Closer Look: Which Pittsburgh industries are affected by China's economy?](#)
 - [Pittsburgh Business Times/ China Triggers overdue correction on stock market](#)
 - [Pittsburgh Business Times/Dow Cuts Loses but still down 358 points](#)
 - [WESA FM, 90.5/ Coping and Investing in a Volatile Market](#)
 - [Pittsburgh Business Times/Pittsburgh companies in commodities, energy face longer-term stock market struggle](#)
 - [Pittsburgh Business Times/Insights: In light of the sweeping changes to money-market fund regulations, what, if anything, are you advising your clients to do?](#)
 - [Pittsburgh Business Times/Heinz buyouts aim to cut cost, not headcount in Pittsburgh – Pittsburgh Business Times](#)
 - [Pittsburgh Business Times/BPU bucks conventions, takes team approach](#)
 - WESA 90.5 FM
 - [The Economic Cost of Financial Illiteracy](#)
 - [Managing Money As A Couple](#)
 - [What to Know About Financial Planning, Post-Great Recession](#)
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ETHICS & ENFORCEMENT

When it comes to ethics and professional responsibility, CFP® professionals are held to the highest of standards. They are obliged to uphold the principles of integrity, objectivity, competence, fairness, confidentiality, professionalism and diligence as outlined in CFP Board's *Code of Ethics*. The *Rules of Conduct* require CFP® professionals to put your interests ahead of their own at all times and to provide their financial planning services as a "fiduciary"—acting in the best interest of their financial planning clients. CFP® professionals are subject to CFP Board sanctions if they violate these standards.

CFP Board's rigorous enforcement of its *Standards of Professional Conduct* — including releasing disciplinary information to the public — distinguishes the CFP® certification from the many other designations in the financial services industry. Everyone who seeks CFP® certification is subject to a background check, and those whose past conduct falls short of CFP Board's ethical and practice standards can be barred from becoming certified. After attaining certification, a CFP® professional who violates CFP Board's ethical and practice standards becomes subject to disciplinary action up to the permanent revocation of certification. Through diligent enforcement of its ethical and practice standards, CFP Board provides you with the confidence that your CFP® professional is both competent and ethical.

HOW ETHICS AND ENFORCEMENT HELPS YOU

The commitment CFP® professionals make to upholding CFP Board's *Standards of Professional Conduct*, along with CFP Board's enforcement of those *Standards*, provide you an understanding of the high level of ethical and competent service to expect when working with a CFP® professional. Knowing what to expect from a financial planning relationship puts you in the driver's seat — which is exactly where you belong. To get the most out of your experience with a financial planner, you shouldn't settle for anything less than the qualities of a true professional.

1. Integrity

Trust is central to a successful financial planning relationship. You rely on your planner's honesty, professionalism and abilities to achieve your goals. When you know your planner takes his professional obligations seriously and places principles over personal gain, you can form a good working partnership. CFP Board's strict *Standards of Professional Conduct* are designed to ensure your CFP® professional acts in a professionally responsible manner.

2. Objective Advice

Your needs will be at the heart of all your planner's recommendations. A CFP® professional has an ethical obligation to act in your best interest when she provides financial planning advice. Your planner will use her experience and judgment to carefully consider your situation, and then give you advice that best meets your goals. Sometimes this objectivity may require your planner to explain that your goals are unrealistic given your current resources and financial commitments.

3. Competence

CFP® professionals have demonstrated an appropriate level of knowledge to offer financial planning advice. The CFP® certification provides confidence that your financial planner has completed rigorous education and experience requirements — including continuing education coursework—designed to ensure competence in financial planning.

4. Fair Treatment

Fair treatment means your CFP® professional will clearly state what services will be provided and at what cost. Your planner will also explain the risks associated with all financial recommendations, along with any potential conflicts of interest.

5. Privacy

To get the best results from your financial planning relationship, you need to divulge relevant personal and financial information to your financial planner on a regular basis. Your CFP® professional will keep this information in confidence, only sharing it to conduct business on your behalf, at your consent or when ordered to do so by a court of law.

6. Professionalism

Your CFP® professional will not provide investment advice or stock brokerage services unless he is properly qualified

and licensed to do so, as required by state or federal law. If your situation requires expertise which your CFP® professional does not possess, he should suggest other professionals who may assist you.

7. Diligence

Before engaging you as a client, your CFP® professional will discuss your goals and objectives and explain what you can expect from the relationship. Once your planner has determined that she (or her staff or network of related professionals) can assist you, the planner will make recommendations suitable for you. A diligent planner will reasonably investigate the products or services she recommends and closely supervise any staff working with you.