

INSIDE INFORMATION

The newsletter for serious financial advisors. (www.bobveres.com)

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EARLY WARNING

- The FPA has received notice that there will be a presentation of oral arguments in the Merrill Lynch Rule lawsuit with the SEC this fall, which will give the association a chance to make its case before the judge.

The SEC's success in court challenges has not been good recently; the Commission's decision that

mutual funds must bring in outsiders as board chairs and that hedge funds must register as RIAs were both overturned in the courts, and the judges didn't always use polite language. The question now is whether the SEC's proposed study of how financial services are marketed is designed as a way to give it a chance to gracefully back down on its brokerage exemption position of yet another court rules against it?

CONNECTING THE FIDUCIARY DOTS

What do Congress, the SEC and the CFP Board have in common? They've all been wrestling with how to define a fiduciary.

If you're thoroughly tired of talking about the fiduciary standards, absolutely the last person you want to talk with is Don Trone, who radiates enthusiasm for the topic the way a star radiates light.

These days, Trone--founder and president of the Center for Fiduciary Studies (www.fi360.com)--has a lot to talk about. The President has just signed the Pension Protection Act, which offers detailed fiduciary standards of conduct for those who are giving advice to pension plans and their participants. The CFP Board's proposed Code of Conduct has stirred up a bit of controversy by making the fiduciary standard a default obligation for all planning engagements--unless the contract between advisor and client specifies otherwise. And the SEC and FPA will soon trade oral arguments in the FPA's lawsuit over the so-called Merrill Lynch Rule, where the FPA will argue that brokers are offering investment advice without having to live up to fiduciary standards.

"If you connect the dots, you start to see a bigger picture," says Trone. "Overall, I think the signs are really encouraging to those of us who want to strengthen and build on the idea of fiduciary advice."

Let's start with the Pension Protection Act--which, among other things, defines who can offer investment advice to 401(k) and other qualified plan participants, and creates a safe harbor standard for people who provide that

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advice. What interests Trone is that Congress used the term “fiduciary adviser,” and eliminated any doubt as to whether the person providing the advice was going to be a fiduciary or not. This is going to require a bit of rethinking on the part of certain large wirehouse organizations.

“In the past, a high percentage of 401(k) plans were package products sold by broker-dealer representatives,” says Trone. “I’ve seen estimates as high as 90%. In a typical case, the product would be sold, the investment committee would open up this bundled 401(k) plan, notice that there are a lot of funds, and they would turn to the broker and say, you’re going to help me with this, aren’t you? Then a conversation would come up about the investment policy statement, and guess who writes the investment policy statement as part of the service? Before long,” Trone continues, “the broker has crossed the line from selling a financial product to providing specific investment advice to the client. Those plan sponsors didn’t realize that they retained personal liability for any of the advice that the broker gave to the participants.”

Under the PPA, that broker--or any other advisor involved in communicating the merits of the investments in the plan--is required to acknowledge his/her fiduciary status in writing. “There is no room for maneuvering,” says Trone. The advisor working with pension plans or participants also has to disclose, in writing, all conflicts of interest

and all forms of compensation, including 12(b)-1 arrangements, Sub-TA fees, soft dollars and, of course, commissions and fees.

But these PPA provisions only relate to qualified plans. How does this dot connect with the SEC and the CFP Board? “In my opinion, PPA establishes and defines the floor for what we mean by a fiduciary standard of care,” says Trone. “If Congress is saying that a 401(k) participant who has a \$500 balance is entitled to a certain standard of care, doesn’t that suggest that a retail investor with a \$500,000 balance should receive at least that same level of care?”

And, as mentioned above, the PPA will potentially affect the livelihood of a lot of brokerage house representatives, who are going to have to adjust to a new regulatory system that takes them back to this fiduciary thing that they’ve been fighting against with the SEC. “The major wirehouses have taken the position that their brokers are never a fiduciary,” Trone explains. “Now, suddenly, they have a significant exception to that rule, if they want to continue to sell packaged 401(k) plans in the marketplace. The Wall Street firms are going to have to identify those facts and circumstances where their brokers are going to be considered fiduciaries.”

Once some brokers, under some circumstances, declare themselves to be fiduciaries, Trone believes there will be pressure to meet that standard with other customers. “They’re going to have to answer the question from the retail investor: you did a great

job helping me with my 401(k) investments; why don’t I get the same standard of care with the rest of my money? Faced with that question, enough times,” he adds, “they may decide to do the logical thing and bifurcate their sales force into people identified as brokers, and others identified as fiduciary advisors.”

That, in turn, would render the Merrill Lynch Rule exemption moot, since brokers would be voluntarily registering as RIAs. Trone acknowledges the possibility that wirehouses will create a new dodge similar to the way they now have a back office RIA create the financial plans on behalf of the non-RIA brokers working with clients. But this means they would be skirting around rules enforced by the Department of Labor AND the SEC at the same time, and the DOL’s enforcement of ERISA provisions may not be as pliable as the SEC’s enforcement of the Investment Advisers Act of 1940. If one clever dodge breaks down, the other one might be endangered as well.

In fact, Trone thinks it is at least possible that the fiduciary language in the PPA was created by Congressional staffers who had watched with some disapproval the way the Merrill Lynch Rule debate was going. There’s an interesting clue to this embedded in the language of the accompanying documents. “The Pension Protection Act suggests to the Secretary of Labor that she seek out advice on these fiduciary issues from the Treasury, not the SEC,” says Trone. “You would think

that, under most circumstances, the SEC would be considered the more logical stakeholder in these fiduciary definitions of standards.” The recommendation only make sense if certain parties in Congress were trying to steer away from the SEC’s position on the subject. This fits nicely with a recent comment by securities attorney Marianne Smythe, former head of the investment management division at the SEC. Congress, she said, has noticed how underfunded most Baby Boomers are for their retirements, and accordingly has a new interest in protecting retirees from poor or biased investment advice.

How does all this connect with the CFP Board’s proposed Code of Conduct? Trone believes it could impact the definition of fiduciary standards embedded in the “definitions” part of the Code.

To make this a bit clearer,

Trone offers a distinction between “hot” and “cool” fiduciary standards. The CFP Board’s definition is basically taken from the old Prudent Man Rule--definitely a “cool” version--while Trone describes the PPA’s standards as much hotter, with their written acknowledgment, fee disclosure etc. “From my vantage point, the way the Pension Protection Act defines a minimum fiduciary standard of care seems to negate the CFP Board debate,” he says. “The CFP Board is going to have to go back and revisit their definition, and say, if Congress is defining this as a minimum engagement for the 401(k) participant, certainly as a profession, where we are using the CFP mark, we shouldn’t have anything less than that.”

Which brings us to the billion dollar question: what IS the standard of care that planner/fiduciaries will have to live up to?

The hardest issue will be compensation, since more than three quarters of all advisors still receive commission income in one for or another. Surprisingly, Trone doesn’t think the profession will have to go totally fee-only to fit under the fiduciary adviser standards. But it *will* have to make some adjustments. “When you serve as a fiduciary under ERISA, you are held to level compensation,” says Trone. “You can’t accept variable compensation, where what you earn depends on what the client purchases.”

So, for example, a fiduciary adviser might accept, in writing, fiduciary status, and disclose in writing that her compensation is 1%

of the client’s \$2 million portfolio--\$20,000 a year. Now suppose the advisor also sells a life insurance policy or VA contract, and receives \$30,000 in commissions. “Under those circumstances, based on the standards of ERISA, the fiduciary advisor would have to rebate back to the client’s account the additional \$10,000,” says Trone. In other words, commission advisors would be able to fit under the fiduciary adviser definition by adopting a fee-offset policy, where the commissions are collected and used to offset their fees.

As I talked with Trone, he was about to board a flight from San Diego, where he had been testifying about some breaches in the fiduciary standards surrounding the city’s employee pension plan--which, at last count, had roughly \$1.4 billion more in liabilities than assets. Among the issues that came out in the forensic accounting was that one of the world’s largest pension consultants was being paid by the city of San Diego to be the investment consultant, and the consultant was also taking millions of dollars from the investment managers it was recommending, in the form of undisclosed “consulting fees.” “This is another illustration of the spectrum of the heat of this PPA,” says Trone; “It now defines a fiduciary standard of care that not even the top investment consultants in the world could meet today, under their current revenue models. That’s pretty profound! Yet,” he adds, most financial advisors, with a few adjustments, could adapt their business models

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Inside formation

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Trendspotter

The FPA and Moss Adams are no longer partners on practice benchmarking studies. Next year, advisors will no longer be able to buy the *Moss Adams Financial Performance Study of Financial Advisory Practices*, created by Mark Tibergien and the Seattle-based accounting/consulting firm, through the FPA. The FPA is working with the McLagan division of Aeon, which has done benchmarking studies in the brokerage industry. The idea is to create scorecards specific to individual cities.

FPA managing director Sean Walters concedes that McLagan doesn't have direct experience working with independent planning shops, and that the pilot project--to be rolled out in greater NY, San Francisco, Dallas/Ft. Worth, Chicago, Boston, Denver and Memphis--will be less comprehensive than the national survey it replaces. "I think depth is always going to be the strength of Moss Adams," he says. "The value of the scorecard is that it lets you benchmark yourself against practices in your market." Cost to participate will be in the \$150-\$200 range.

Tibergien, meanwhile, says that part of the problem with the relationship came when the FPA began asking for a piece of his firm's consulting revenues--even though Moss Adams was subsidizing the study with up to \$50,000 a year. But he does concede that the scorecard could become "a fun and quick way for advisors to look at themselves."

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to meet the standard."

There are other slippery elements to this fiduciary issue, which have yet to be nailed down. When the advisor recommended that VA contract, is she required to choose the "best" one, or the least costly, or meet some other standard of care? In answer, Trone wonders if the annuity was recommended as part of the investment engagement, or some kind of insurance engagement, or estate planning engagement. If it's one of the latter, then you might argue that it doesn't fall under the fiduciary adviser regulatory ambit, even though it is clearly part of the financial planning engagement.

His hope is that the profession will find a way to define the fiduciary standards of care, not just around investment advice, but also around the other elements of financial planning--pointedly including risk management and estate planning.

And the sooner the better. "Historically, it has taken the regulators years to define these terms and standards," Trone warns. "And we may not be happy with what they come up with."

Interestingly, the PPA may also have created a significant business opportunity for some members of the planning profession, and one additional standard which may find its way into the retail marketplace. The Act talks about "advice models" that will govern how advice is offered to pension plan participants, and specifically mentions independent

advisors (who have always given such advice), plus advice offered by mutual funds or investment managers themselves (they will now be allowed to engage in this conflict-of-interest-ridden activity subject to the restrictions described in a moment), and automated advice models such as those offered by Financial Engines and Morningstar. In each case, the advice models and the process by which the advice is generated have to be audited each year, and this fiduciary audit has to determine the quality of the process and, therefore, the quality of the advice that it will produce.

Trone believes, with some justification, that pension plans, when they are looking around for somebody to give advice to their participants, will start asking those advisors about their "advice model." How can you document that your advice model meets PPA standards? Trone, as the CEO of the Center for Fiduciary Standards, has overseen the creation of procedures and provides training for an Accredited Investment Fiduciary designation, which he believes would meet this standard. "People who know what we do have been calling, half-joking, saying, did you write this law?" he says with a laugh. "I've been out of the Congressional loop for years, but I do think our procedures are a good fit for what is going to be required." And it's possible that, like the hot definition of fiduciary, the "advice model" standard will trickle down from pensions to the marketplace at large.

The business opportunity?

Nobody yet knows exactly what that fiduciary audit will have to entail, but the Center currently offers an Accredited Investment Fiduciary Auditor designation which teaches advisors, attorneys and CPAs how to review all the procedures that a qualified plan has set up.

The AIF designation program requires a long weekend of training, and the AIFA can be achieved by adding an extra day and a half of fairly intense classroom education. (Web-based training is also available.) If, suddenly, every 401(k) plan in the country needs to be audited every year, starting next calendar year (the FFA goes into effect December 31), there is going to be a serious shortage of people who are trained to perform those audits, and a lot of demand for those who have that training.

Once you connect all the various dots, it appears that the profession is moving toward a new sense of clarity about the fiduciary issue, about what it means, what it requires, who will have to meet those requirements and how. If Trone is right--and I think he may be the profession's most astute commentator on all things fiduciary--then the current debates at the CFP Board and even the SEC are being rendered moot by a higher standard that just came out of Congress. The question now is how to adapt that standard to the planning world--a question that will take on increasing urgency as regulators tackle their own definitions, and as the profession and the CFP Board attempt to define our fiduciary future. ■

The X Themes

Here's an inside look at what the new generation of university-trained planners are thinking, experiencing and looking for in their business environment.

Some of us experienced a clear sense of *deja vu* last weekend when a group of more than 100 younger advisors congregated in beautiful Estes Park, CO for the first annual NexGen conference. See if you've heard this formula before: younger advisors lodging in inexpensive dorm-like facilities, cafeteria food, a packed educational schedule that includes time for open impromptu give-and take group discussions over lunch, new planners sharing their experiences and looking at the future of the profession... This is exactly the recipe that guided the very first ICFP Retreats back when today's most prominent planners were starting their practices.

But while the formula was familiar, there were interesting differences. Attendees at the early Retreats were mostly career changers from insurance and brokerage sales environments, and selling and commissions were an important part of their business discussion. The NexGen planners, in contrast, are the younger planners who are taking staff positions in the companies founded by the pioneers. They are primarily university-educated in planning, and few had ever seen a commission check--or want to.

NexGen's opening keynote

presentation offered a new twist on a story that many of you have heard before: Paul Fain, of Asset Planning Corp. in Knoxville, TN, has now made three conference presentations describing how he inherited a large and somewhat dysfunctional planning firm from his famous father--dysfunctional because it included large brokerage and limited partnership businesses that were increasingly out-of-synch with the advice-driven dynamics of the modern profession. At first, I thought this might be the worst possible example to offer to an audience of ambitious planning employees. But then I realized that in the fairly near future, as the Baby Boomer founders of planning firms retire, many of the attendees are going to be buying into or otherwise inheriting planning organizations, many of which will have interestingly archaic characteristics.

Fain's talk introduced two of the important practice management themes of the meeting:

1) Many planning firm owners regard their staff members as expenses rather than resources.

This--or some version of it--was the founding issue of NexGen. Angie Herbers, of Financial

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Advisor Resource in Santa Fe, NM, spoke for staff advisors everywhere in her first articles in Investment Advisor magazine, where she strongly suggested that much of the university-trained talent at advisory firms was being misused, underutilized and underpaid. Ironically, the attendees of NexGen now happen to be the most sought-after commodity in the planning business: staff advisors with between three and ten years of experience. And it seems clear, in retrospect, that some of their earlier frustration was a direct result of the hiring freeze around the planning profession just as some of these advisors were emerging from college in 1999, 2000, 2001 and 2002.

Even so, Fain gave the basic point some credibility as he told how, after a long struggle to manage a company that really fit his father's personality more than his own, he read the E-Myth books, talked with prominent advisors who had been friends of his father, and realized that the way his father assembled and treated the members of his staff was archaic and potentially harmful.

"The old paradigm says that the staff are tools," Fain told the audience. "There was an 'us vs. them' mentality. I realized I had to change the mindset," he continued, "so I asked the people I worked with to help me create a great and profitable business." His senior employees helped him develop internal training programs while he opened the books, learned to delegate, and focused on the roles

and tasks that he was uniquely qualified for: writing plans and articles, educating clients and community groups. "I learned that many times, excellent leadership means getting out of the way," Fain concluded. Later, he described his company as "an employee-operated firm."

2) Many owners resist change, and they risk stagnating in a world of great opportunity.

Almost every NexGen attendee had at least one story to tell about a former employer who was running a "lifestyle" practice that seemed to be outwardly successful, who recruited them with promises of opportunity, when the reality was that their business was in decline as the owner refused to take on new clients. At some point, the younger advisor realized that the owner wasn't interested in taking the time or putting in the energy to grow the firm or adapt to new professional developments at a late stage of his/her career. The ambitious young planner who signs on with this prestigious firm finds him/herself tied to the mast of a sinking ship, with little prospect for enhanced revenues or career opportunity. While Baby Boomer planners talk favorably about creating lifestyle practices, the NexGen/Generation X advisors see them, often from the inside, as a failed business model, and I expect that when they become leaders of the profession, the remnants of these companies will be gradually consolidated into larger firms that are operated along more traditional business models rather than adjuncts to the owner's life.

In the interim, however, the

disconnect has become a significant dividing line between planners of different generations. When university-trained planners jump ship on a lifestyle practice situation, it causes senior advisors to offer and repeat the generalization, at conference gatherings, that Generation X planners are chronically unable to give their loyalty to employers.

Toward the end of his presentation, Fain conceded that he, himself, was in danger of falling into this stagnation trap. He offered a chart which outlined exactly what the NexGen planners were talking about: a planning firm lifecycle that moved from struggle to rapid growth to peak profitability, and then entering a phase where the owner is transitioning toward retirement, and the company begins a long, slow decline in revenues and relevancy.

Fain decided that he wanted his company to take a different path, and create a second youth which would bring on second rapid growth phase. But where would he find the same energy that propelled it in the early years? His solution was to replace his father's staff with younger advisors and let them help him reinvent the firm with fresh eyes. Along the way, he instituted a policy of, every three years, looking at every product and service, and asking: "If we had to invent it today, would we be doing it the same way?"

The most powerful advice Fain was able to give to the group was how he finally started to incorporate his own value system into his service offering to clients. He talked about what "wealth"

really means to him: the “portfolio” of relationships with his colleagues, his staff, his church community and his family. He created a mission statement that emphasized creating, for every client who walks in the door, a better return on life.

The seven-year result: fewer clients but greater revenues, a profit margin that rose from negative figures to more than 40%, and more free time for Fain and his staff members. More importantly, Fain is now able to focus on answering--for himself and his clients--what he described as life’s three greatest questions: Why am I here? Does my life matter? What is my purpose?

From there, we attendees had the choice of following the practice management track or embark on a technical track which looked a bit challenging to those of us who don’t have a university degree in financial planning. I stuck with the practice management sessions, and found myself immersed in more themes and hallway buzzes than I’ve ever experienced at a national planning conference.

Here are some of the other themes on the minds of NexGen planners these days:

3) The importance, to Generation X planners, of maintaining some semblance of a work/life balance.

The value system for Baby Boomers is that a new hire will come in and work his/her butt off, putting in long hours to really impress the founding planner--which is, of course, what THEY did in their early years. But Gen X workers are less willing to sacrifice

family relationships for work advancement. In one of the early sessions, Mike Anderson, a vice president at Evensky & Katz in Coral Gables, FL, said that members of his generation expected to work hard every day, but they had also noticed the sacrifices their parents made, many of them spending so much time at the office that they hardly saw their families. It always seemed, he said, that in the end, they would inevitably regret the tradeoff.

Mike Branham, an advisor with Cornerstone Wealth Advisors in Edina, MN, said that he wanted to be able to maintain the same priorities that he would recommend to clients. “It’s important that I attend my son’s hockey practices,” he says. “I spend time with my younger children in a way that my father’s generation never managed.” If somebody told him that this was a bad idea, he’d question their own commitment to walking the financial planning talk of living a productive and balanced life.

4) Newly-hired university-trained advisors often have to take on the added practice management challenge of turning their employer’s instincts into documented systems and procedures.

This won’t be found anywhere in the job description of a new hire straight out of a university, but it has to happen if the newly-minted planner wants to make sense out of whatever job he/she is supposed to be doing.

I was surprised at how many presenters and attendees (often after about the second can of beer)

told essentially the same story: that they had signed on with the founder of a one-advisor planning firm expecting to do planning work under some kind of well-defined system, only to discover that the office procedures either existed entirely in the founder’s head or were instinctively reinvented on the spot as needed.

In some cases, there was not even a marketing brochure that they could show to prospects. “I had to go through a long process of reinventing wheels and developing processes and all the usual materials,” one presenter told the group about his employer, noting that he was an excellent advisor and, unlike some, was interested in growing the company. Once the procedures were in place and other employees could be added to the mix, his company’s growth began to accelerate.

A variation on the theme is to be hired as the personal assistant to an advisor who wouldn’t follow office procedures even if they were created, essentially conforming his (it seems always to be a male advisor) activities to the mundane systems and handling the necessary administrative tasks while the senior advisor focuses on big picture issues. If the university-trained advisor is lucky, he/she will eventually move into a planning position. But in the hallway and luncheon conversations, some NexGen advisors talked about being stuck in what one described as the “chore track.”

My conclusion as this conversation swirled around the conference is that more

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colleges should include practice management courses somewhere in their curricula, and younger advisors should make sure they attend practice management sessions as they start their careers.

5) Where there are dysfunctional relationships between founders and planning staff, it's usually (by default) up to the employees to address the problem.

It became almost a cliché: whenever staff advisors talked about dysfunctions at work, somebody else would say, have you talked this over with your employer? Could you create a proposal that would fix the problem with minimal pain and effort on the part of the founder? If the founding advisor isn't using or valuing his staff's training, the solution may be as simple as asking for a meeting and outlining the tasks that the university-trained advisor wants to take on, and where he/she wants to get more experience.

I had the impression that most of the NexGen attendees had managed to overcome these hurdles, but they had a lot of peers around the country who were still on the drudge track, still performing menial tasks when they were trained for more responsibility, still waiting for the owner/founder to recognize and fix the problem.

6) Are owners willing to give up ownership to key employees? When and how do you bring up the subject?

This topic came up in a panel discussion where three owner/planners--Dan Moisand of Spraker,

Fitzgerald, Tamayo & Moisand, Jon Guyton of Cornerstone Wealth Advisors and Eric Hehman of Austin Asset Management Co. answered questions from the audience. Surprisingly, the owner panelists had a ready answer for the "when" question: during the first performance evaluation or at an off-site lunch during the first year of employment.

Why so soon? Because with the right owner, it can set a positive early tone for the relationship. "If somebody is asking me what she has to do to become a partner or owner," said Hehman, "I know that she's very serious about working here and doing a great job. I can invest in that person knowing that the training is going to pay off for us down the road." Moisand agreed. "Asking that question is a very positive thing," he said, "because it also tells me that they think enough of me and the other partners to be thinking about marriage."

What if the owner isn't open to even talking about the idea? The panelists suggested that time may cure this reluctance, since each year brings the owner closer to retirement age and the need to face transition issues. But there are common obstacles to the conversation that younger planners will need to be aware of. Guyton noted that many founders experienced significant financial hardship in the early years of starting a practice, and some have taken the position that their employees ought to be willing to pay the same dues. On their side of the fence, university-trained advisors feel entitled to participate in the growth and profits that they help to create, and believe they are

being exploited if the owner doesn't share control, profits or equity.

In listening to both sides of the conversation, I began to realize that the term "paying dues" means very different things to different advisors. To some, it means being willing to go through a certain amount of financial pain and sacrifice, and the requisite amount can be highly subjective and is often pulled from painful memories. To others, it means mastering the technical aspects of planning, learning to apply it to real-world problems and learning by experience how to interact with clients and tend client relationships. No NexGen planner I talked with has a problem with the latter definition, but they would argue, plausibly, that forcing everybody to experience the financial hardships of a startup business, where decisions were made by trial-and-error, represents an unrealistic and dysfunctional mindset.

There's a certain rough justice in the ownership track that is evolving in the profession, where the younger advisors are asked to buy equity in the firm created by the founder. The question raised by Hehman, who is buying into his firm, is whether the founder is selling shares simply to gain liquidity, or allowing the younger advisor to participate in the decision-making processes that will lead to future growth and a higher return on that investment.

The most interesting question in this session came when an advisor asked: does it really make sense to work hard and build the firm, knowing that you're also increasing the amount you'll have

to pay for your equity when it's offered? Hehman said that in the real world, you have to prove that you can contribute to the growth before you can expect to be offered a chance at equity in the first place. But here again, a kind of rough justice prevails. Before you make that investment, he said, don't you want to see whether you can contribute to the company's growth and prosperity?

During the discussion, Ben Coombs, now a retired senior advisor, advised the NexGen planners to recognize that their contributions were able to bear fruit only because the founder had spent many years creating a viable platform for future growth--and this is the hardest part of the process. Guyton conceded the theme when he said that founder advisors should simply get over the idea that every generation of planners should suffer as they did. Then confessed that he sometimes had to remind himself of this. He got a laugh from the audience when he said that, early in his firm's life, the company struggled so much that he had qualified for the earned income credit on his personal tax return.

7) University-trained advisor employees often possess more technical knowledge than their employers.

The point here was not "we're better than them," but that the unspoken reason why some university-trained advisors are hired is to stay on top of the things that the founder no longer wants to keep reading about. This, like the unwritten requirement to create practice management systems and

procedures, often comes as a bit of a surprise to the new hire.

This dynamic can turn dysfunctional if the older founding advisor resists efforts to incorporate technical strategies into planning recommendations simply because he/she doesn't understand them. Whether or not this is prevalent is hard to say from anecdotal evidence, but there was quiet talk about the idea that the so-called "life planning" movement may have had as much to do with declining technical skills among older planners as a sincere desire to more closely incorporate planning services into a client's personal life. In any case, you can expect the profession to take a sudden leap upward in terms of technical skills once the NexGen audience leads the profession--finally reaching that point where an astute consumer can no longer keep up with the knowledge and skillset of the average professional.

A handful of companies are taking the obvious next step and evolving a new career path, where the university-trained advisor will continue to deepen his/her expertise and become the firm's in-house technical specialist. In one of the best sessions of the meeting, Michael Kitces of Pinnacle Advisory Group in Columbia, MD and Herbers talked about how younger advisors can navigate this alternative--and what the opportunities and pitfalls may be if they go down this path.

Both the new and the more traditional career tracks begin at essentially the same place: the university graduate is hired on as a

planner, and applies his/her technical training to behind-the-scenes planning work. Following the traditional path, these advisors would broaden (rather than deepen) their solution knowledge, learn relationship management skills from the founder, and eventually handle client relationships as a lead advisor. At this point, a new casewriter might be hired, and the process would begin all over again.

On the alternative path, which leads to a role that Kitces facetiously described as "the geek behind the scenes," the advisor would develop increasingly deep technical expertise, giving the lead advisors answers to complex questions that would take too long to research on their own. Where the lead advisors need to develop excellent verbal skills, Kitces believes that writing skills are more important for the back-office geek--since clients are unlikely to recall technical details unless they're written down.

The new career path is, currently, only viable at firms which have the economies of scale to support the dead weight cost of a senior planner who doesn't bring in new business, which Kitces estimates to be at least a 2-3 advisor, 10-20 staff firm. He noted that advisors who want to follow this route should recognize that their potential income will fall within a narrower band--predicated on the advisor's market value rather than the number of client relationships he/she could attract. But the career path could eventually lead to supervising a staff of casewriters,

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and ultimately to the firm's chief investment officer or a COO position.

8) There's a lot of misunderstanding between the two generations of planners.

At several points in the meeting, somebody from the podium would tell a person in the audience that he/she didn't want this meeting to turn into a generational gripefest, and it never did. But there was a certain amount of sensitivity behind some of the comments and conversations, an unstated acknowledgment that many senior advisors accuse their generation of not wanting to work hard, of not giving loyalty as readily as past generations, and of wanting equity without having to properly earn it.

If there IS a divide, however, it seems not to be generational, but between university-trained staff people and owners--of any age or generation--who (as Mark Tibergien has memorably put it) see their staff members as dead weight costs to be managed rather than as their key resources to future growth and prosperity. By the end of the meeting, some younger advisors were conceding that their generation will probably produce its share of owners who are inept at running a practice. Meanwhile, the best young minds will gravitate toward the owners who know how to use them. Indeed, most of the advisors at this meeting had positive things to say about the firms where they finally landed.

I can't end this conference

report without mentioning the NexGen leadership, which includes Kitces; Herbers; A.J. Diliberto of Newport Advisory in Newport Beach, CA; Sabrina Lowell of Mosaic Financial Partners in San Francisco, CA; Caleb Brown of Strategic Financial Planning in Plano, TX; Amy Hoffman of Advisors Financial in Falls Church, VA and Eric Kies of The Planning center in Moline, IL. The godfather of the meeting was Aaron Coates, of Compass Wealth Advisors in Elkhart, IN, who pioneered the idea of the conference, served as its chair two years after the initial discussions, and who also found time to serve as the most recent president of NexGen. Coates set a tone which focused on the positive aspects of coming into the profession, and worked with the committee to create a successful conference the first time out--something that seldom happens in this profession.

It is tempting to make generalizations about people of a certain age after seeing 100 of them interact closely for two days and two evenings of shop talk, but there really isn't any way to do that effectively. The NexGen conference didn't attract a statistically significant sampling of the university-trained advisor population; in terms of intelligence and ambition, the attendees could more fairly be described as an all-star group of younger planners, or as advisors who are coming into the professional spotlight long before their peers.

And they're still discovering their potential. Over the course

of the two-day meeting, I saw a realization begin to take shape in the group discussions, as the attendees began to recognize that they--the group at this conference and the next few NexGen gatherings--will form a network that will--sooner or later--become the leadership of the planning world. Even so, it was striking how few of the conversations involved the future of the profession, the CFP Board's proposals, the FPA's lawsuit with the SEC or how the associations are governed.

This was emphasized when FPA CEO Marv Tuttle and FPA president Dan Moisand decided to organize a rap session about these issues which are so important to the founding generation. The audience seemed to be more comfortable asking questions than providing the passionate (all right, angry) feedback you'd often hear at Retreat or FPA National. My guess is that these issues will eventually become central to the NexGen hallway conversations, but right now career issues are drowning out everything else.

And, of course, eventually these advisors will age their way out of the NexGen membership (maximum age seems to be around 35 or 36, depending on which person on the cusp you talk to), and move into the resort-location Retreats and national conferences. They'll leave behind a living forum which, inevitably, will be taken up by Generation Y, and evolve its own themes around the peculiar, amusing and destructive dysfunctions of the Generation X planner generation. ■

Senior Year College Planning

Here's a niche service that practically every traditional planning client with kids either needs or will need in the future.

Deborah Fox, founder of Fox College Funding in San Diego, CA, saw her career take an interesting turn after some clients asked her a question that took her outside of her traditional expertise. "I've been doing financial planning since 1984," she says. "In 1998, a couple of clients, within two weeks of each other, both came to me with the same situation." Both had kids in their senior year of high school, and each family had failed to set aside enough money to cover tuition, room and board, books and so forth. "They said to me: Isn't there anything that we can do, at this late date to lower the costs that we'll be shelling out for college?" says Fox. "And," she says, "I felt completely inept, because I didn't have any solutions for them. The only thing I knew about was what you'd call early-stage planning, where there's time to accumulate the necessary funds."

Fox did some research, and made an interesting discovery. "I started piecing together some of the information, and I was floored," she says. "It turns out there are a LOT of things that people can do, even at the last minute."

After giving advice to the two families, Fox took what she'd

learned to the San Diego-area NAPFA study group, thinking to compare notes on late-stage college planning with some of the best minds in the region. "They said, basically, we don't know anything about this either, and would you do a presentation for CE credits?" she says. Soon afterward, she began offering the service, on a referral basis, for clients of the other advisors, and had to hire a part-time assistant to handle the increased demand. The following year, the Securities America broker-dealer asked her to provide late-stage college planning services for clients of its affiliated advisors. In 2003, Fox switched from being a planning generalist to start Fox College Funding, LLC.

As Fox sees it, late-stage college planning addresses a niche market that is small when compared with the total U.S. population, but includes most financial planning clients: families with \$80,000 or more in annual income, who probably won't qualify for needs-based financial aid. "Most of the other services out there focus on financial aid planning, showing less-wealthy people how to lower their expected family contribution, shifting their assets around or

into insurance products," she says. In some cases that she has reviewed, this advice can be less than ideal. "Nothing gets me more angry," she says, "than someone using college funding as a front to sell high-commission insurance products. We're constantly having to differentiate ourselves from that type of planning."

So what, exactly, can be done for parents of high school seniors? Fox identifies three different kinds of planning strategies, all of which figure into the customized plan:

1) Academic Planning. "Most parents don't realize that colleges are willing to pay for certain kinds of students to attend, and that they don't usually have to pay sticker price, especially at a private college," says Fox. "We have students fill out a profile, and we match the student's profile to the various colleges' profiles. If we can match a student to a college that is looking for that kind of student, we can generate tuition discounts or scholarships and grants that can amount to \$5,000 to \$15,000 a year. That one strategy alone can knock off a full year's cost of college."

Alas, these profiles seem not to be posted anywhere. "You have to dig it out," Fox admits. "And while you're looking for that, you might discover that more than 1,000 colleges offer merit scholarships that have nothing to do with financial need, and a good third of those are guaranteed or noncompetitive scholarships. If that student meets a certain criteria--GPA or test scores or whatever, and there are schools that are looking for strong B students--then they might offer a guaranteed

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tuition discount.”

2) Cash Flow Planning. One strategy in this category basically involves low-interest loans backed by the federal government. Fox notes that the Stafford loans, which are made to the students, now carry a maximum fixed rate of 6.8%. The student can borrow up to \$3,500 for his/her freshman year; \$4,500 as a sophomore; \$5,500 as a junior or senior.

The Plus loans, which are offered to parents and can cover the full cost of college attendance less any financial aid, come from two sources. Loans offered through the federal government’s direct lending program carry a maximum rate of 7.9%. Others, backed by the federal government, are offered by participants in the Federal Family Education Loan Program, a consortium of private lenders who have contracted with the federal government’s Department of Education. These loans are offered at a maximum rate of 8.5%.

Fox says that the different rates were the result of an oversight in the Higher Education Reconciliation Act of 2005. “The two should have been the same, either 7.9% or 8.5%,” she says. “The FFELP lenders are furious that their maximum rate is higher than the Direct rate.”

But the important point, says Fox, is that these are MAXIMUM rates. “Many of the private lenders will offer discounts of up to 2.5 percentage points, especially when the government rate is lower,” she says. “So if we have a client with a portfolio of investments that have been performing well, and they expect them to continue performing

well, we can have them take out a Plus loan for college, which requires no collateral and is very easy to qualify for. They keep the portfolio investments and let them pay the loan off after graduation or even later.”

3) Tax reduction strategies.

The central issue here is to find ways to utilize the lower tax rate of the (at least 18-year-old) college student, and shift the tax credits into his/her name. “A family that owns a business or has rental property or appreciated assets can shift income over to the child, have the child fill out his/her own tax return, take advantage of the standard deduction and the personal exemption and the education tax credits, and pretty much zero out any income taxes that are due,” Fox explains. “Most of the time, we find that the parents’ AGI is too high to take advantage of the education credits, so we have to shift them over to the student.”

Among the tax credits is the Hope Scholarship, where the taxpayer gets to deduct 100% of the first \$1,000 of education expenses, for each student, and 50% of the second \$1,000, for a maximum of \$1,500. The Hope scholarship is only available during each student’s first two years of college, and the deduction is phased out completely for filers with more than \$107,000 in AGI). The student could also opt for the Lifetime Learning Credit, which offers tax benefits on a per family (rather than per student) basis. Under the LLC, families can deduct 20% of up to \$10,000 in total education expenses, for a maximum of \$2,000. (This, too, phases out at the same income levels as the Hope Scholarship)

Alas, families or students

who qualify for both the Hope Scholarship and the LLC have to choose one or the other, since you can’t do both in the same year. Fox has found that as a rule of thumb, if the total qualified education expenses for a student come to more than \$7,500 (is there a planet where they come to less?), then the LLC will offer more benefits than the Hope. She has seen cases where families that have more than one student in college can choose to take credits on a per-student, per-year basis, claiming the Hope credit for one student and the LLC for the other student in the same year.

Add everything up, including the personal exemption, the standard deduction and the student qualifying for the Hope or LLC credits, and Fox has calculated that the parents could conceivably shift as much as \$39,100 in income to the student in 2006--and still have the student pay taxes in the 15% bracket.

Too often Fox sees traditional scholarship-based strategies that raise college aid at the expense of a client’s retirement plan. “Strategies that may be appropriate for college planning may not be appropriate for--and are often detrimental to--a family’s estate planning, tax or retirement planning,” says Fox. “One of our mantras is that you need to be able to pay for college and still save for retirement.”

Indeed, there are times when she has found it better NOT to qualify for financial aid. “Especially with public institutions, the majority of the aid that they award is loan money,” Fox explains. “So even if the family can qualify for \$5,000 or \$10,000 of needs-based financial aid, if 80% of the aid that the school

is awarding is loan money, it often turns out that some non-scholarship, non-financial-aid strategies come out better on a dollar basis. For most financial planning clients with above-average income, a tax strategy will net them out a lot more than the scholarship.

Meanwhile, clients are sometimes under the impression that they can just kick their child out of the house and refuse to support him, and that will make it possible for him to qualify as an independent student for financial aid purposes. Unless the student is 24 years old, or has a dependent child of his/her own, or is a veteran or an orphan or a ward of the court, he/she can't qualify as an independent student. Fox notes wryly that having the parents die is not one of her common planning recommendations.

What do clients pay for this service? The typical fee ranges from roughly \$1,250 to \$2,750, depending on complexity. The highest cost, she says, would apply to clients with multiple children who need stock option planning and complex asset planning. On the other side of the balance sheet, Fox estimates that her services can save the typical client between \$20,000 and \$40,000 in college expenses--and even more for business owners, who typically have more asset flexibility.

By now, a few readers may be feeling a bit discouraged about the complexities of this late-stage college planning thing, even though you now realize that many of their clients either do or eventually will need this kind of service. After offering late-stage college planning full-time for the past five or six years, Fox now believes that it represents a business opportunity

for independent advisors. In the last few months she's expanded her national program, and now offers fee-only advisors a chance to join her network, receive training in the service, extensive marketing support in their community--and the chance to outsource the plans to her offices for those clients who need it. (Why fee-only? "At this point, I don't want to go through the hassle of getting our materials through NASD compliance or the BD compliance department," she says.)

As she rolled out a national program, Fox had to do a bit of re-thinking and streamlining. "I wanted to step back and say, if I were starting to offer this service as a financial planner, all over again, how could I be most productive and effective?" she says. "What system would enable me to offer this service, and still provide planning services to my clients?"

First, and foremost, Fox decided that she would do the planning herself. "To do this right, you have to monitor the financial aid laws, the tax law changes, the admissions strategy changes, the loans and loan rates and federal programs," she says. "There's no way the typical advisor is going to have time to keep track of all that."

Under the Fox College Planning arrangement, advisors would sit down with clients, gather their financial information and send it to Fox in San Diego, who would prepare a plan and deliver it back to the advisor. "We'll be on the phone with them preparing them to present it to their clients," she says. While advisors are charging \$1,250 to \$2,750, they are paying Fox between \$250 and \$750, depending on the plan's complexity.

In addition, members of the network would receive two days of live training (so far, Fox has held training meetings in San Diego, Dallas and Chicago, the latter two because they are central locations near a major airport), plus teleconferences and webinars.

Individual and group coaching is also part of the package. "Typically, one of our coaching club calls will have 8-10 people on the line, either with me or one of my advisory council members," says Fox. "They'll bring up actual cases and talk them through, and people will share ideas. People love it because it gives them a chance to get some hands-on technical training working on real cases."

The marketing materials were created to help advisors go into the community and offer ready-made Powerpoint presentations on what can be done to prepare for college if your student is a junior or senior in high school. "The marketing system is built on building strategic alliances with CPAs, attorneys, schools, college counselors," say Fox. "We have the whole system on how to develop those relationships, all systematized and put in writing for them, and that is what we help support. We actually help build those relationships."

Marketing late-stage college planning can bring in traditional financial planning engagements. "When we do a college plan, we have to look at all their financial information," Fox explains. "It's the same data-gathering process as you'd do with a financial plan. So you ask them: if we find something that would help you improve on your financial situation, would you

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be open to talking about it? In all the years I've been doing this, I haven't ever had a family say no," she says.

Joining the Fox College Funding Network costs \$6,500 a year. Fox points out that hiring an art director to design the Powerpoint slides, or getting a professional to write the newsletters that go out to referral sources and community prospects, can each cost that much. I suspect a lot of mainstream advisors will put the network fee in their training and service budget, expecting to offset the cost by doing five or six late-stage college plans a year for existing clients.

But advisors who haven't developed a marketing program may see the cost differently. Most likely to benefit from the marketing possibilities are younger planners at larger firms, who want to bring in their own clients. The other beneficiaries would be solo advisors who want to hire a casewriter and planner and then quickly bring in new business that will justify the cost. Each type of advisor can look at Fox College Funding as a way to add clients while serving the community.

Either way, you can expect demand for the new planning service to increase fairly quickly. Fox has already been interviewed about late-stage college planning for articles and reports in the *San Diego Union*, the *Wall Street Journal*, Fox News and *Newsweek*. "My biggest problem now," she says, "is that I'm getting calls and messages from people who want to know who provides this service in their area—and I don't have anybody in the network to send them to." ■

Web Everything

Here's a product that might make you see the client services possibilities of the Web in a whole new way.

Some of you have heard at least faint rumors of how San Francisco planner Dave Yeske creates individual web pages for each of his clients, where he can put, right on the front page, their updated "to do" list, and have their performance reports and other planning documents available 24/7 in a password-protected area. Think about it: no more quarterly performance statements, because clients can look up their account values whenever they want. They (and you) can also look at their wills and trust documents, or a scanned image of their homeowners policy or a list of their goals and objectives.

Powerful, yes. But setting up a separate web environment for every client, and keeping it updated, required an awfully significant time commitment.

Until now.

Over the last few days, I've been looking at something called ClientView, a new add-on to the Junxure-i CRM software program. ClientView is essentially Yeske in a box; it makes it surprisingly easy for you to create different web pages and populate them automatically with data and reports that are either created in Junxure as a matter of daily or weekly routine, or reports from Centerpiece/

PortfolioCenter that can be posted and updated automatically. You can add images, PDF files or any other item that the client might want to have stored in a web-based filing cabinet, and the whole thing is customized so that it looks like an extension of your own web site.

Suppose, for example, you want to give your clients access to their portfolio information. You don't really want them focusing on daily white noise, so you decide to have the site give them their returns year-to-date, since inception and the last calendar year, and you want it to be updated every week. You'd like to have an asset allocation illustration, each client's will and trust documents, and you want to start generating "to do" lists, keeping track of them in Junxure and having them automatically update to the site.

The process starts with a ClientView wizard, which asks you to specify the graphics or images that you want on the page that your client will log in under, and you can also specify fonts, color, size, background color etc. Then you find out your FTP URL from the company that is hosting your web site, and enter that, along with each client's user name and password.

Then, for each client, you specify which reports you're going to want to post automatically (Junxure alone offers 12 options so far, and you can pull anything that Centerpiece/PortfolioCenter can create as a PDF file), tell the system whether you want to update those files whenever you run these reports (you do), and specify any other files you want to add for each individual client. Such as? Greg Friedman, the Novato, CA planner whose firm created Junxure, is now using ClientView to post a description of the estate planning documents, including a summary of the major provisions, a summary of the documents, when they were last executed and reviewed. But he points out that you could also put up a PDF copy of the client's most recent financial plan--or a picture of a recent client event, or even a personal message.

Once you've gone through the setup process, the system will find your web site and add each client's personal pages, each with its own user name and password. It will find the individual files you specified. Then, instead of creating quarterly statements, you run the batch reports every week, which creates the PDFs that Junxure will search for and use to replace the existing reports in each client web space. In Friedman's office, this is handled by an administrative person who calls up the report and pushes a button. The actual batching process takes some time, but since it all happens in a window on the screen, and the administrative person can work

on the same computer in other windows, this doesn't represent a significant commitment of staff time.

The system has features which let you track usage (so you can see how often your clients are checking their account performances), and a central client view area where you can put individual PDFs, pictures or other files in individual client web folders. And, of course, it gives you an excellent filing system for keeping track of clients, since you would have direct access to a master list of all client folders. The master view shows all the data by client name, portfolio name, account number and account name, plus when the information was last updated, and a description of the reports in each client's web space.

In addition to ending the quarterly performance chore with a more personalized, easier to create solution, Friedman believes that there have been some side benefits to having everything on the web. "If you want your clients to be taking the long view on their investments, it's absolutely crazy to be sending them performance statements every quarter," he says. "This starts to help them get the fact that investing is a long-term process.

Right now, ClientView can only be purchased if you already have, or plan to buy Junxure-i, and the client account reports can be imported from Centerpiece/Portfolio Center or dbCAMS. Friedman reports that he's creating an interface with Advent, and already advisors are giving

him new ideas. Why not have a checklist of things that need to be done, or things that the advisory firm has done for clients this year? Or putting the balance sheet on the cover page? "Those are some of the upgrades we're looking at," says Friedman.

Cost? \$2,995 in the first year, and \$2,500 a year after that--which covers all future upgrades. At the time I talked with Friedman and went through the demo, six firms were using the system, which has not yet been formally marketed to the advisory community.

It seems to me that this is the clear wave of the future. If advisors are going to keep electronic images of client documents in their paperless system, then why shouldn't their clients have convenient access to these documents as well?

When clients can go directly to their financial planning space on the web and look over their documents, their financial plan, check their account balances, the powerful but sometimes hidden organizational services that financial planners provide--keeping track of everything so that nothing slips through the cracks--becomes suddenly, instantly visible.

You'll see more of this, and it will become an increasingly valuable component of the profession's services. In fact, I'll predict here that ClientView and whatever competitors eventually emerge are going to make the quarterly performance statement look awfully old-fashioned before long. ■

Timetable for Fiduciary

A couple of years ago, I was asked to be the opening speaker for the international financial planning forum held in conjunction with the FPA convention. Thinking to shock my audience, I opened by drawing a picture of what must have looked like either a snake or a river, and I said that it represented the continuum of professionals in the financial services industry--and that the picture was essentially the same anywhere in the world you happened to parachute down into. At the back of the twisting line you had advisors who mostly sold stuff for a commission, and saw themselves as salespeople whose job was to convince people to buy whatever their company provided on the shelves. Toward the middle, you had fee-plus-commission advisors who wrote financial plans for a fee as a way to find out what kinds of financial products they needed--and which, therefore, would be the easiest to sell. At the front, you had planners who provided their best advice for a fee, without any agenda.

Of course, I said, there were many different points on this line, and the general trend was for advisors to move from the back of this line toward the front of it; every year, people leave the wirehouse environment for the independent BD world and never go back, and every day people leave the BD environment to go fee-only, and they never go back. Whatever is at the front of the line is the trend of the future.

Then I put an X at some arbitrary place toward the middle of the line, and declared that everybody to the front side of that X were real professionals, and those on the back side were not.

Then I said: the problem is that wherever we draw that X, however we define a "real" professional, there will be people an inch or so behind the X who will argue, bitterly and with some justification, that our placement was arbitrary, and if we could just move the X back a bit, they'd be included in the favored definition.

Lately, I've been thinking about how to solve this problem, which I think will become more intense as the profession begins to get its arms around what a "fiduciary" advisor really is. And it seems to me that

there IS a solution. All we have to do is draw the X at some point in the future, rather than today.

Meaning? The FPA has been less-than-totally-strong about enforcing the original agreement that only CFP designees would be included as full members of the professional organization. The CFP Board has come out with proposals which would take effect instantly, yet seem too weak compared to what we are hoping for in the standards arena. Everybody seems to want us to be fiduciaries, but if Don Trone is correct in our lead story, there are certain procedural hurdles that many advisors would have to go through before they meet a reasonably strict definition.

In each case, we fall short of our goal because we know that there are advisors who do not currently meet the standards, who we still believe to be real professionals. This is not a weakness; it is an acknowledgment of the realities on the ground today. But notice that the word "today" is our limiting factor.

Why not define where we want to put that X on the continuum today, but withhold applying the standards that implies for, say, five years? In other words, lay out exactly what standards we want advisors to follow, what criteria we want them to meet, for this to be a true profession, and then say to the community, here is where the X is going to be. You have five years to get ahead of that point on the spectrum of advisors. If you aren't there on the appointed today, don't blame us for where we placed the mark.

Pushing the date of enforcement out far enough that any reasonable person can retool his/her practice gives us the freedom to dream about what, exactly, we want. A fee-only (or fee-offset) compensation structure? Written fiduciary procedures? Fiduciary standards that are not defaults, but are mandatory for all client engagements? Membership in the professional organization given only for those who have the credentials?

Make it happen, and then challenge the community to go there, providing tools along the way so that those who really believe in fitting the professional designation will have the means to get on the right side of the X. ■