

FIDUCIARY PRINCIPLES

Aristotle, who lived from 384 B.C. to 322 B.C., was one of many who influenced the development of fiduciary principles. He recognized that in economics and business, people must be bound by high obligations of loyalty, honesty and fairness, and that when such obligations aren't required, society suffers. ...

He had the benefit of some 1,400 years of recorded legal history to draw on, since the fiduciary principles trace their roots back to the Code of Hammurabi ...

Later, the Romans refined and formalized fiduciary law even further... In the evolution of law from Roman times through the present, the fiduciary standard has embodied the core duties of loyalty, due care and good faith (honest intentions, full disclosure and applied diligence).

In modern times, perhaps the most well-known quote capturing the significance of the fiduciary standard and recognizing the sanctity of fiduciary principles is from Judge Benjamin Cardozo's opinion in the *Meinhard v. Salmon* case, rendered in 1928 when he was a member of the New York Court of Appeals: "Many forms of conduct permissible in a workaday world for those acting at arm's length are forbidden to those bound by fiduciary ties.

A trustee is held to something stricter than the morals of the marketplace. Not honesty alone but the punctilio of an honor the most sensitive is then the standard of behavior. As to this, there has developed a tradition that is unbending and inveterate. Uncompromising rigidity has been the attitude of courts of equity when petitioned to undermine the rule of undivided loyalty by the "disintegrating erosion" of particular exceptions ...

Only thus has the level of conduct for fiduciaries been kept at a level higher than that trodden by the crowd. It will not consciously be lowered by any judgment of this court." I hope the SEC will conduct the rulemaking process with the same appreciation for the timelessness of the fiduciary standard as is evident in the quote from Mr. Cardozo, who later served as a Supreme Court justice...

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