NOCLAR (Non-Compliance of Laws and Regulations)

NOCLAR is in process of being adopted by the AICPA. Under NOCLAR all CPA retirement plan audits will have to disclose non-compliance with fiduciary laws, if any. Furthermore, all CPAs providing Financial Planning and Wealth Management for millions of investors will be required to comply with all fiduciary laws.

The most overlooked fiduciary law can be found in the Restatement (Third) of Trusts on page 307:

> *"Failure to diversify on a reasonable basis in order to reduce uncompensated risk is ordinarily a violation of the duty of caution and the duties of care and skill."*

We currently estimate that only 10% of all investment fiduciaries comply with above requirement and follow a procedural process to measure and manage Uncompensated Risk, leaving 90% in breach of these fiduciary duties. These fiduciaries represent responsibility for management of billions of dollars.

Their failure seems to rest on a misunderstanding of how "more is better" applies to diversification. They construct portfolios consisting of Mutual Funds, ETF, etc. each containing multiple holdings, believing those multiple holdings increases diversification. However, when analyzed those holdings usually are too highly correlated and too highly concentrated for the portfolios to be considered reasonably diversified.

This obliviousness is unfortunate because according to Markowitz "diversification is the only FREE LUNCH in investing". A *2008 study quantified* higher returns of 2.5% and one of several Institute studies during the Pandemic from *September 2019 through June 2020* showed a 7% advantage!

This scenario can expose any non-compliant investment fiduciary to joint and several personal liabilities. The potential damages for this kind of breach can amount to 1% - 1.5%, or more per annum of risk assets for an indefinite number of years because ERISA's statute of limitation provision does not apply to this kind of breach. See *Tibble v. Edison International*, 135 S. Ct. 1823 (2015), in which the Supreme Court ruled 9–0 that the statute of limitation does not start to run where there continues ongoing failure to discharge a fiduciary duty.

See Restatement Prudent Investor Rules: https://portfolio-diversification-institute.com/resources/Documents/RESTATEMENT_hilited%20pages%20only.pdf/

See Tibble vs Edison 2015 REVISITED http://precisionfiduciary.com/Tibble2015/

See Journal of Accountancy on NOCLAR 3/2021: https://www.journalofaccountancy.com/news/2021/mar/noclar-noncompliance-cpa-ethical-responsibilities.html

See Tax Adviser *Uncompensated Risk: The Orphan of Modern Portfolio Theory* https://portfolio-diversification-institute.com/resources/Documents/Tax%20Adviser%20AICPA.PDF/

See AICPA Webcast: *The Dangers of Ignoring Uncompensated Risk* https://portfolio-diversification-institute.com/resources/Documents/Final-06.19.2019-webcast-slides.pdf/

2008 STUDY https://seekingalpha.com/article/71946-what-is-diversification-worth/

2019-2020 PANDEMIC STUDY https://portfolio-diversification-institute.com/resources/Documents/Risk%20Presentation%20Final%20ASFG.pdf/

"UN-MEASURED IS UN-MANGAGED" *Peter Drucker*

THE INSTITUTE FOR PORTFOLIO DIVERSIFICATION

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