The New Fiduciary Standard
Tim Hatton, CFP, CIMA, AIF
PRA663A – LCMS and the Age of Financializaton
Martin Edward Lee, April 20, 2020

Tim Hatton, author of *The New Fiduciary Standard*, defines the fiduciary as "anyone who has a legal or **moral responsibility** for managing or making decisions on behalf of someone else's money or property."[1] LC—MS lay and professional church leaders rarely think of themselves as fiduciaries, despite being responsible for "making decisions on behalf of someone else's money or property."[2]

Members of a congregation's governing board or stewardship committee may think they have "delegated" their fiduciary duty to third-party investment companies not realizing that they have only shared their fiduciary duty and not relinquished it. Additionally, third-party investment companies don't necessarily have a fiduciary duty toward the congregation. Thus, Hatton advises, "Being aware of those duties and responsibilities is the first step in fulfilling them."[3]

Hatton states, "The primary tenet of fiduciary investing is that the client's interests come first and that their money is managed for their exclusive benefit."[4] Hatton defines a fiduciary as those who: "(1) have a legal or moral responsibility for managing the property for the benefit of another; (2) exercise discretion, authority, or control over assets; and (3) act in a professional capacity of trust and render investment advice."[5] While stewardship committees may not act in a professional capacity, they do not relinquish their fiduciary oversight through delegation. The executive officers, or trustees, of the congregation retain ultimate fiduciary oversight of all the congregation's activity. He reminds the board, "In other words, the board of directors of a

Commented [SM1]: How would you distinguish between a steward and a fiduciary.

Commented [SM2]: Registered Investment Advisory firms, CFPs, etc. Most banks, credit unions, etc. are acting only as brokers selling a product. The do not provide comprehensive strategic financial or estate plans.

Commented [SM3]: This is key. Then the Christian steward determines how best to use the resources in God's service. While the financial institute presents the very best possible product: low cost, competitive returns, and low risk (volatility).

[1] The New Fiduciary Standard: The 27 Prudent Investment Practices for Financial Advisers, Trustees, and Plan Sponsors," (Bloomberg Press, New York, 2005), 8.
[2] Ibid.
[3] Ibid., xv.
[4] Ibid.
[5] Ibid., 6.

nonprofit corporation has full and final authority over the affairs of the organization, unless the organization's articles of incorporation limit the board's authority in some way."[6]

The investment landscape can be overwhelming for congregations and their stewardship committees. Not all financial institutions are created equal; nor do they all maintain the same level of duty and care. Hatton observes, "The need for a uniform standard of care is great because of the complexities the financial industry has created in delivering its services. High fees, poor performance, lack of disclosure, and a system devoid of accountability characterize the financial industry."[7]

The American Institute of Certified Public Accountants noted that, in a survey conducted of plan sponsors "only 48 percent of those plan sponsors surveyed believe they have a clear understanding of their role as a fiduciary"[8] and "73 percent of plan sponsors believe their fiduciary responsibilities and liabilities have increased over the past twelve to twenty-four months."[9] It seems there is a growing need for education on the role of fiduciary and how best to manage investments for others.

Commented [SM4]: How is this being addressed at the congregational level in the LCMS?

The author believes one of the biggest challenges facing investors comes from within. He cites Warren Buffet's mentor, Benjamin Graham the author of The Intelligent Investor, "The investor's chief problem – and even his worst enemy – is likely to be himself."[10] That may be the case for congregations. Stewardship committee members often have little continuity of

[6] Batts, Michael E., "Nonprofit Financial Oversight: The Concise and Complete Guide for Boards and Finance Committees," (Accountability Press, Copyright 2017 Michael E. Batts.), 3.
[7] Ibid.
[8] Ibid.
[9] Ibid., A Note to the Reader from the AICPA.
[10] Ibid., 5.

membership; that is, high turnover. Members often have inadequate backgrounds in finance and little understanding of fiduciary standards: what it means to manage someone else's property. As a result, these committee members risk inadvertently (possibly relying in good faith on third party investment companies) shirking their fiduciary duties.

Commented [SM5]: Detrimental reliance.

Hatton suggests following a "sound and well-defined investment process."[11] He identifies the 27 Prudent Practices, organized under Five Steps, that were developed by the Foundation for Fiduciary Studies. The Five Steps are measures that professionals can take to demonstrate that they accept, understand, and are fulfilling the role of a fiduciary: analyze current position, diversify-allocate portfolio, formalize investment policy, implement policy, and monitor and supervise. [12]

Luther, on the Seventh Commandment, says we should help our neighbor "improve and protect his property and business."[13] Preferable to assuming all LC—MS lay and professional church leaders are "done with sin"[14] (including honest mistakes) is Hatton's suggestion that "utilizing a well-defined process is the wisest approach for fiduciaries to ensure that they are fulfilling their duties and responsibilities."[15] This would seem an important stewardship concern for congregations entrusted with the management of member funds to promote the gospel of Jesus and sustain ministries.

Commented [SM6]: Avoid stealing or coveting our neighbor's investments.

Commented [SM7]: Two Kingdoms theology – must live within the physical realm and govern accordingly.

[11] Ibid., 6.
[12] The author notes: "There are two companies associated with the Foundation: The Center for Fiduciary Studies (CFS) is the training entity that operates in association with the Center for Executive Education at the University of Pittsburgh Joseph M. Katz Graduate School of Business", (7).
[13] Small Catechism, Concordia Theological Seminary Press, Fort Wayne, IN: 1981, 2.
[14] 1 Peter 4:1b.
[15]

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